



DOL Issues Model COBRA Notices and Election Forms

On March 19, the Department of Labor released model notices and election forms that can be used to satisfy the notification requirements for the COBRA subsidy available under the recently enacted stimulus legislation.

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a subsidy toward the cost of COBRA coverage for individuals who lose health coverage due to involuntary termination of employment. (See our February 24, 2009 [For Your Information](#).) ARRA requires plan sponsors to notify current and former qualified beneficiaries of the premium subsidy. On March 19, the DOL posted to its [website](#) model notices and subsidy election forms. These notices must be provided to qualified beneficiaries by April 18, 2009.

Model Notices

The DOL has provided four different model notices to be used in varying circumstances –

- [General Notice \(Full Version\)](#) – This notice should be sent to qualified beneficiaries who experience any type of COBRA qualifying event on or after September 1, 2008 through December 31, 2009, and who have not previously received a COBRA election notice.
- [General Notice \(Abbreviated Version\)](#) – This notice can be sent to any individual who had a qualifying event on or after September 1, 2008, elected COBRA, and still has that coverage.
- [Notice in Connection with Extended Election Periods](#) – This notice is for individuals who had a qualifying event on or after September 1, 2008 through February 16, 2009, but who either did not elect COBRA or elected COBRA but later discontinued coverage. These individuals have an extended COBRA election period, with coverage generally effective March 19, 2009.
- [Alternative Notice](#) – This notice is for plans that are not subject to federal COBRA but provide continuation coverage under state law. This generally applies to employers with less than 20 employees. While a model notice is provided, it would need to be modified to reflect the requirements in each state.

BUCK COMMENT. *For plans subject to federal COBRA, all qualified beneficiaries with qualifying events on or after September 1, 2008 must receive one of these notices. As a result, even individuals who had a qualifying event that was clearly not an involuntary termination of employment (such as a child reaching a limiting age or a spouse who loses coverage due to a divorce) must receive a notice of the subsidy.*

Further, each individual who was covered under a health plan at the time of the qualifying event has separate COBRA rights. Thus, plan sponsors will need to ensure that each qualified beneficiary has the opportunity to make the appropriate election. For example, if the former employee elected COBRA coverage at the time of the qualifying event, but the spouse or child did not, then those dependents have the right to the extended election period. Also, if a qualified beneficiary had medical and dental coverage, but only elected COBRA coverage for the medical plan, the qualified beneficiary appears to now have extended election rights for dental coverage.

Plan sponsors will need to align their current COBRA election forms and plans with these model notices. Also, employers who provide continued health coverage or enhanced COBRA coverage under severance programs will need to reflect those program provisions in their notices.

The DOL has included optional language and a model form for changing COBRA benefit options, if offered by the plan sponsor.

BUCK COMMENT. *We expect that many employers will not allow qualified beneficiaries to switch their benefit options because of the additional administrative costs and communication requirements. Qualified beneficiaries will still have the ability to switch plans during the annual open enrollment period.*

Request for Treatment as an Assistance Eligible Individual (AEI)

Along with each model notice, the DOL has provided a form to be used by qualified beneficiaries (including dependents) to request the COBRA subsidy. This form would be provided with the model notice. An individual who believes he or she is eligible for the subsidy would complete and return this form to the employer or COBRA administrator for review. If the plan sponsor denies AEI status, the individual can appeal the decision to the DOL or to the Department of Health and Human Services (HHS), as appropriate. The DOL indicates that its appeal application form will be available soon.

BUCK COMMENT. *Plan sponsors should require that all individuals complete this form and not automatically assume any individual is eligible for the subsidy. Even if the termination was involuntary, the individual may not be eligible if he or she is eligible for other group health coverage (see below).*

Notice of Eligibility for Other Group Health Coverage

Eligibility for the new COBRA subsidy ceases when the qualified beneficiary becomes eligible for Medicare or other group health coverage (other than dental, vision, health flexible spending accounts or on-site medical facilities maintained by the employer). The DOL has provided a form with the model notices that qualified beneficiaries can use to notify the employer of eligibility for other coverage. The form highlights the fact that failure to notify the employer could subject the individual to a fine of 110% of the premium subsidy.

BUCK COMMENT. *Plan sponsors should provide this form to qualified beneficiaries who are paying reduced premiums under ARRA so they can notify the plan that they are eligible for other coverage.*

Additional Guidance

In addition to the model notices, the DOL has posted updated FAQs for employers and for employees, but they provide only limited additional guidance on potentially troublesome issues such as determining whether a termination of employment is voluntary or involuntary. Although the DOL website now includes a release from the House Ways and Means Committee that says “a termination that is at the discretion of the employer” would be considered involuntary but death would not, the DOL has not fully addressed these issues. The DOL FAQs for employees do, however, clarify that an involuntary termination would occur if an employee is laid off and told not to return to work until further notice. Termination for gross misconduct will generally disqualify an employee and the employee’s family from COBRA coverage, and thus the subsidy.

Conclusion

Employers have very little time to implement these new notice requirements – they should quickly review the DOL model notices and align their current COBRA election forms and plans with the model notices. In addition, employers should be preparing a list of all individuals with qualifying events on or after September 1, 2008 to determine who may be eligible for the subsidy based on involuntary termination of employment, and identifying dependents who may not be eligible for the subsidy because they are not qualified beneficiaries (e.g., domestic partners or spouses added to coverage after the qualifying event date).

Buck’s consultants would be happy to assist you in reviewing eligibility requirements, preparing the required COBRA notices and in assisting you with their implementation through your COBRA administrator.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.