



DOL Posts Guidance as COBRA Subsidy Eligibility Nears End

The DOL recently posted two new FAQs on its website addressing eligibility for the ARRA COBRA subsidy after December 31, 2009. One Q&A confirms that individuals who do not become eligible for COBRA until on or after January 1, 2010 will not qualify for the subsidy even if the termination of employment occurred prior to that date. The second confirms that individuals who qualify for the subsidy in 2009 may continue to receive it in 2010. Ultimately, Congress may act to extend the subsidy.

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) provides a government paid subsidy of 65% of the COBRA cost for certain qualified beneficiaries whose loss of health coverage results from involuntary termination. These “assistance eligible individuals” may receive the subsidy for a maximum period of up to nine months. (See our [February 24, 2009](#) and [March 26, 2009](#) *For Your Information* publications.)

To be eligible for the subsidy, an individual must –

- be a qualified beneficiary because of an involuntary termination during the period from September 1, 2008 through December 31, 2009
- be eligible for COBRA continuation coverage at any time during that period
- elect COBRA continuation coverage.

IRS Notice 2009-27 provided guidance on an individual’s COBRA subsidy eligibility when an employer practice or severance agreement continues active coverage beyond the date of the involuntary termination. (See our [April 13, 2009](#) *For Your Information*.) Generally, COBRA eligibility is deemed to begin on the date from which the employer measures the 18-month COBRA entitlement. Now the DOL has issued further clarification on eligibility under current law through two new FAQs posted to its [website](#).

DOL FAQs

FAQ 1. The first question asks whether a qualified beneficiary whose status results from an employee’s involuntary termination in 2009 but who is not COBRA-eligible until January 1, 2010 or later is eligible for the COBRA subsidy.

The DOL confirms that an individual who becomes eligible for COBRA after December 31, 2009 does not meet the qualifications to be an assistance eligible individual and is not eligible for the subsidy under current law. It cautions, however, that pending legislation could extend the COBRA subsidy to those individuals.

FAQ 2. The second question asks whether an assistance eligible individual who becomes eligible for COBRA no later than December 31, 2009 will be eligible to receive the full nine months of the COBRA subsidy.

The DOL confirms that, under current law, assistance eligible individuals are entitled to receive the full nine months of the subsidy as long as they remain eligible (i.e., they do not become eligible for other group health coverage or Medicare). For example, an assistance eligible individual who started COBRA on November 1, 2009 would be entitled to the COBRA subsidy through July 31, 2010 provided he or she remains eligible.

BUCK COMMENT. *Plan sponsors need to make certain that assistance eligible individuals whose subsidy eligibility continues into 2010 are only charged 35% of the applicable cost of COBRA coverage.*

Pending Legislation

As noted by the DOL, legislation that would extend the COBRA subsidy is now pending in Congress. A House bill would extend the nine-month subsidy program for an additional six months and would extend eligibility with respect to involuntary terminations occurring through June 30, 2010. A Senate bill would similarly extend the subsidy period from nine to 15 months, and would also increase the subsidy to 75%.

BUCK COMMENT. *Because it is uncertain whether legislation will be enacted, employers that want to ensure that employees involuntarily terminated in December 2009 or earlier qualify for the subsidy should begin their COBRA coverage before January 1, 2010.*

Conclusion

Although pending legislation may extend the COBRA subsidy, it is uncertain whether or when this will come to pass. Employers need to decide how they want to address the subsidy in light of the current state of the law. Buck's consultants are available to assist you in meeting your current obligations and to help you prepare for any subsequent changes.

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.