



## Congress Enacts Extension of COBRA Subsidy

*The Department of Defense Appropriations Act, just signed into law by President Obama, includes provisions that extend the current COBRA subsidy from nine months to fifteen months and expand eligibility to individuals who lose health coverage due to an involuntary termination of employment through February 28, 2010.*

### Background

The American Recovery and Reinvestment Act of 2009 (ARRA), which was enacted in February 2009, provides a government paid subsidy of 65% of the COBRA cost for certain qualified beneficiaries whose loss of health coverage results from an involuntary termination of employment. (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, and be eligible for and elect COBRA coverage by December 31, 2009. Qualified beneficiaries who were terminated before January 1, 2010, but whose COBRA coverage would not start until on and after January 1, 2010 would not be eligible for the subsidy. (See our [December 9, 2009](#) For Your Information.) The subsidy is payable for a maximum period of up to nine months. Because of the nine-month limit, some qualified beneficiaries exhausted the subsidy in November 2009.

President Obama has just signed legislation that includes two significant extensions of this COBRA subsidy. First, the legislation extends the nine-month maximum period to fifteen months. Second, it expands eligibility for the subsidy to involuntary terminations of employment through February 28, 2010. Importantly, the legislation eliminates the requirement that an individual also be eligible for and elect COBRA coverage by the subsidy's end date (i.e., February 28, 2010), and instead provides that only the qualifying event must occur by that date.

### Extension of Subsidy Period to 15 Months

The new law extends the subsidy period by six months – from nine months to fifteen months. It contains transition provisions for assistance eligible individuals who had exhausted their subsidy eligibility before the extension was enacted. Assistance eligible individuals whose nine-month subsidy period ended before December 19, 2009 and who failed to pay the premium for a subsequent period of coverage may elect to reinstate their COBRA coverage by paying the retroactive “subsidized” premium by February 17, 2010, or, if later, 30 days after the notice explaining the changes is provided by the plan administrator. (However, assistance eligible individuals who stopped COBRA payments during their subsidy period are not eligible for reinstatement.) For assistance eligible individuals whose nine-month subsidy period ended before December 19, 2009 and who paid the full COBRA premium for a subsequent period of coverage, the employer may either refund the amount received that is in excess of 35% or credit the amount against future COBRA premiums, similar to the transition provisions in ARRA.

The plan administrator must provide affected assistance eligible individuals with additional notices explaining these transition rules within 60 days of the beginning of the first period of coverage to which the new extension applies.

The plan administrator also must provide additional notices explaining the changes to any individual who was an assistance eligible individual any time after October 31, 2009 or who experiences a qualifying event relating to termination of employment on or after that date. This notice must be given by February 17, 2010 or in the case of new qualifying events, within the time frame specified by COBRA.

**BUCK COMMENT.** *Employers will need to provide notices that describe this additional subsidy period and the ability to retroactively reinstate COBRA coverage as soon as possible. In addition, special notice and administrative procedures may be needed for January COBRA payments, because plan sponsors may receive these payments before they are able to communicate information about the COBRA extension. It is unclear whether DOL will issue new model notices in the near future so employers may need to draft their own notices.*

## Extension of Eligibility to February 28, 2010

The new law extends the eligibility for the subsidy for involuntary terminations by two months – from December 31, 2009 to February 28, 2010. It also clarifies that eligibility for the subsidy is determined by the date of the qualifying event and not by the date COBRA coverage begins. This means that individuals whose coverage is continued beyond February 28, 2010 through employer practice or a severance agreement will be eligible for the subsidy since only the involuntary termination of employment needs to occur by February 28, 2010 – COBRA coverage does not need to begin on or before that date.

**BUCK COMMENT.** *Employers will need to update their employee notices and administration to reflect this extension. Employees who were terminated in December who were not eligible for the subsidy will now need to be informed of their new rights. In addition, employers with severance programs that delayed the start of COBRA coverage until after December 31, 2009 for employees who were involuntarily terminated on or before that date, will also need to notify those individuals about their eligibility for the subsidy.*

## Conclusion

Employers will need to quickly respond to this new legislation by notifying affected COBRA beneficiaries and revising administrative procedures to comply with the new requirements. It is also worth noting that other legislation (the “Jobs for Main Street” bill) could potentially be enacted that includes further enhancements to the COBRA subsidy (e.g., extending the eligibility period to June 30, 2010.) While the “Jobs bill” has been passed by the House, the Senate is not expected to take action until after the New Year. We will keep you apprised of further developments as they occur. Buck’s consultants are available to assist you in meeting your obligations under both current law and under any subsequent modifications.

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*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.*