



DOL Issues Model Notices for COBRA Subsidy Extension

Yesterday, the DOL released model notices that can be used to satisfy new notice requirements arising from the extension of the COBRA subsidy that was enacted late last year.

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) provided a government-paid subsidy toward the cost of COBRA coverage for up to nine months for individuals who lost health coverage due to involuntary termination of employment occurring from September 1, 2008 through December 31, 2009. (See our February 24, 2009 [For Your Information](#).) ARRA required plan sponsors to notify current and former qualified beneficiaries of the premium subsidy and the DOL issued model notices for that purpose. (See our March 23, 2009 [For Your Information](#).) The Department of Defense Appropriations Act for Fiscal Year 2010 (DODAA), enacted on December 19, 2009, increases the maximum COBRA subsidy period to 15 months, extends eligibility for individuals who lose coverage because of involuntary terminations occurring on or before February 28, 2010, and imposes additional notice requirements. (See our December 23, 2009 [For Your Information](#).) The DOL has just posted to its [website](#) model notices that reflect the new provisions, including a notice for individuals who exhausted their nine months of COBRA subsidy prior to the enactment of the subsidy extension.

Model Notices

The DOL has provided three different model notices.

[Premium Assistance Extension Notice](#). This notice may be used to provide information about the premium subsidy extension to two different groups: (1) individuals who had a termination of employment qualifying event (whether voluntary or involuntary) on or after October 31, 2009 but who were not provided a notice that included information required by ARRA as recently amended, and (2) assistance eligible individuals (AEIs) who were receiving the subsidy as of October 31, 2009. This notice generally must be provided no later than February 17, 2010.

There are special notice requirements for a sub-group of AEIs who were receiving the subsidy as of October 31, 2009 – individuals who exhausted their nine months of COBRA subsidy but who otherwise remain eligible for the subsidy. These individuals must be provided the notice no more than 60 days after the first day of their “transition period” (i.e., the first period of coverage for which the subsidy would apply due to the extension from nine to 15

months). Thus, individuals whose nine-month subsidy period ended on November 30, 2009 must be provided the notice about the premium subsidy extension by January 29, 2010.

The model notice advises AEs who may have dropped coverage after they exhausted the nine-month subsidy that they will have an extended grace period in which to make retroactive payment of the reduced premiums for the period or periods of coverage that immediately followed the last period to which the subsidy applied. A plan must allow individuals to reinstate their COBRA coverage retroactively if they pay the back premiums by the latest of February 17, 2010, 30 days from the date the notice was provided, or the end of the applicable grace period.

BUCK COMMENT. *The model notice does not address how the premium overpayments made by individuals who continued their COBRA coverage after their subsidy ended (and paid the full premium) will be applied. As under the initial ARRA transition rule, the DODAA provides that the employer may either refund the amount received that is in excess of 35% of the full COBRA premium or credit the amount against future COBRA premiums (if it is reasonable to assume that it will be used within 180 days).*

Employers will also need to consider how they will handle reinstatements of coverage for individuals who dropped COBRA coverage before the beginning of the new plan year since these individuals may have to be offered the opportunity to change their coverage options effective January 1, 2010. This could affect the amount of back premium due. Some guidance from the DOL would be welcome.

[Updated General Notice.](#) This notice can be sent to any qualified beneficiary who experiences a qualifying event on or before February 28, 2010, including individuals whose qualifying event occurred before the enactment of the DODAA. This notice is an updated version of the model notice that the DOL issued in March 2009 and includes all of the information required in an election notice under ERISA regulations. The regular COBRA timeframes apply to this notice.

BUCK COMMENT. *The model notice includes language about the grace period applicable to individuals who exhausted their COBRA premium subsidy before the enactment of the extension. Inclusion of this language is confusing since recipients of this updated general notice are individuals who will be newly eligible for COBRA and the subsidy.*

[Updated Alternative Notice.](#) This notice is for plans that are not subject to federal COBRA but provide continuation coverage under state law. It can be sent to any qualified beneficiary who experiences a qualifying event on or before February 28, 2010, including individuals whose qualifying event occurred before the enactment of the DODAA. This notice is an updated version of the model notice that the DOL issued in March 2009.

The DOL notes that where an individual may be entitled to more than one type of notice, providing the premium assistance extension notice by the earliest date required will satisfy the notice requirements.

Conclusion

Employers will need to review these DOL notices and determine whether they want to use them as is. The most immediate concern will be identifying those AEIs who were receiving the premium subsidy on October 31, 2009 to ensure that they receive the Premium Assistance Extension Notice. AEIs who dropped COBRA coverage when their subsidy period ended will need to be provided sufficient information, including information about other options that may be available to them if they missed the plan's open enrollment period, to enable them to make retroactive premium payments to reinstate their COBRA coverage.

Buck's consultants would be pleased to assist you in preparing the required COBRA notices and to help you implement the subsidy extension.

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.