

**ARRA COBRA Subsidy
Extended by Congress**

December 2009

The Department of Defense Appropriations Act, 2010 was enacted on December 21, 2009. This act included a provision that amends the American Recovery and Reinvest Act of 2009 (ARRA) to extend the federal government's COBRA subsidy from nine months to 15 months of coverage. Consequently, the previous eligibility end date for the COBRA subsidy of December 31, 2009 under ARRA has been extended to February 28, 2010. Special rules apply to address the uncertainty that was caused by the late effective date of these changes.

As amended, the COBRA subsidy extension (the "Extension") applies as follows:

- An Assistance Eligible Individual (AEI) may receive an additional six months of coverage for a total subsidy period of up to 15 months;
- The eligibility period for the subsidy has been extended to include involuntary terminations that occur on or before February 28, 2010;
- Eligibility for coverage is based on an involuntary termination on or before February 28, 2010, without regard to a different COBRA eligibility date.¹

There are special rules for those who have exhausted their nine months of subsidized coverage or were ineligible for coverage before the Extension was enacted.

Examples:

- An AEI who did not pay COBRA premiums for December following exhaustion of nine months of subsidized premiums may remain covered under COBRA by making an election for retroactive coverage; provided that premiums for the retroactive coverage are paid by February 19, 2010.
- An AEI who continued paying unsubsidized COBRA premiums for December following exhaustion of nine months of subsidized premiums (e.g. on November 30) may be eligible for retroactive credits and/or refunds in addition to continuation of the subsidy beyond nine months of coverage.
- An AEI who would have been eligible for the subsidy but did not qualify because of the subsidy eligibility end date of December 31, 2009 may suspend payment of unsubsidized COBRA premiums

¹ Under ARRA, an individual who terminated in December and whose medical coverage ended on December 31 was ineligible for the subsidy because eligibility for COBRA commenced after December 31. The new rules focus on the date of the involuntary termination and not the commencement date of COBRA coverage.

and apply for retroactive credits and/or refunds in addition to becoming eligible to up to 15 months of coverage.

- An AEI who would have been eligible for the subsidy but did not qualify because of the subsidy eligibility end date of December 31, 2009 and did not pay any COBRA premiums for December may elect retroactive coverage; provided that premiums for the retroactive coverage are paid by February 19, 2010.

In order to take advantage of these “transition period” rules:

- The AEI must have been eligible for COBRA coverage immediately preceding the enactment of the Extension (December 21, 2009);
- The AEI must make an election to suspend and/or retroactively pay subsidized COBRA premiums and/or request refunds and credits;
- The AEI must pay the amount of subsidized COBRA premium due by February 19, 2010 (within 60 days after enactment of the Extension) or, if later, within 30 days of required notice of the Extension as described below.

As enacted, the notification rules will require administrators to identify impacted individuals and notify them as follows:

- To any individual who was an AEI at any time on or after October 31, 2009 or who experiences a qualifying event (consisting of termination of employment) relating to COBRA continuation coverage on or after October 31, 2009:
 - The notice will include additional information regarding the Extension.
 - The additional notification must be given by February 19, 2010.
- To individuals whose subsidy has ended whether or not they have continued paying an unsubsidized premium:
 - The notice will include information regarding the Extension and the ability to make retroactive premium payments in order to maintain COBRA continuation coverage;
 - The notice must be given within 60 days of the loss of the subsidy.

The Department of Labor has advised that it will be providing guidance on these notices.

With respect to qualifying events occurring after December 21, 2009, the general COBRA subsidy notice reflecting the Extension must be provided using the same timing rules that were used for the original ARRA COBRA subsidy notice.

All other terms and conditions of the ARRA COBRA subsidy remain in effect.

Note: COBRA generally does not apply to plans sponsored by employers with less than 20 employees. However, the premium reduction has been available to small plans in California under AB 23. We have not heard whether California will extend availability of the subsidy under Cal-COBRA.

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