



DOL Publishes Model ARRA NDAA Notices

January 14, 2010

As promised, the Department of Labor (DOL) reduced our collective anxiety yesterday by publishing the COBRA Subsidy Extension notices to be used for compliance with the notice provisions of the COBRA Extension legislation included in the National Defense Appropriations Act (NDAA) enacted into law on December 19, 2009.

Background

As we previously reported (2009-20) on December 21, 2009 that Congress extended the availability of COBRA subsidies to Assistance Eligible Individuals from nine months to fifteen months for COBRA Qualifying Events (involuntary terminations) occurring on or after September 1, 2008 through February 28, 2010.

The NDAA legislation requires plans subject to federal COBRA to notify Assistance Eligible Individuals, past and present and future, of these additional rights.

The Notices

1. **Updated General Notice.** Plan Administrators must provide this updated notice to all qualified beneficiaries who experienced or will experience a Qualifying Event at any time from September 1, 2008 through February 28, 2010, regardless of the type of Qualifying Event, and have not yet been provided an election notice. This notice also serves as an election notice. This notice should also go to individuals whose Qualifying Event occurred (in December) but whose COBRA coverage began on or after January 1, 2010. In that case, Plan Administrators must allow these individuals a full 60 days from the date the notice is provided to make their election.
2. **Premium Assistance Notice.** Plan Administrators must provide this notice to individuals who have previously received an ARRA/COBRA notice without mention of the December 19, 2009 extension legislation. There are two classes of individuals involved here:
 - a. **Due Date of Notice: February 17, 2010.** For individuals who experienced an involuntary termination of employment sometime on or after October 31, 2009 and

- b. **Due Date of Notice: No later than 60 days following** the first day the Assistance Eligible Individual has reached the maximum period of the original subsidy (nine months), especially applicable to all of those individuals whose subsidy started March 1, 2009 and ended on November 30, 2009. For these individuals, the Plan Administrator must provide the Premium Assistance Notice no later than January 31, 2010, regarding their right to have the subsidy benefit reinstated back to the date the individual lost the original subsidy.
3. **Small Group/State Law Plans: Updated Alternative Notice.** Insurers that provide group health benefits in states with a small group (under 20 lives) continuation coverage similar to federal COBRA, must provide notice of the extension of subsidy benefits to all individuals who became eligible for subsidy benefits under state law.
You can find electronic versions of each of these notices here:

- [Updated General Notice](#)
- [Premium Assistance Extension Notice](#)
- [Updated Alternative Notice](#)

Or by going to the [DOL website](#).

Further Discussion

1. **DOL Appeals Process.** As under the original COBRA subsidy law, individuals who are denied subsidy rights may request an expedited review by the DOL. The DOL must act within 15 days of receipt of a completed request for approval. The DOL now has a standard form individuals must use to exercise this right. The form appears on the DOL/COBRA website.
2. **Alternative Plan Options.** The new subsidy legislation extends the ARRA unique provision allowing individuals to elect other coverage at the time he/she exercises COBRA rights and the subsidy if an employer offers additional coverage options to active employees and makes these plans available to qualified beneficiaries. In other words, this option is permissible for employers to exercise, but the employer is not required to do so.
3. **Old Income Limits.** The new extension legislation did not change the threshold income limits (\$145,000 single; \$290,000 joint filers) for receiving the subsidy benefit.

On the horizon, as we all know, are various initiatives to extend coverage subsidies well beyond February 28, 2010. We will keep you informed of future developments.

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