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ARRA COBRA SUBSIDY EXTENSION – DOL ISSUES FACT SHEET AND MODEL NOTICES

The Department of Labor has issued a Fact Sheet, as well as new Model Notices for the ARRA Subsidy extension. On the following 3 pages is the fact sheet. The Model Notices may be obtained at www.dol.gov/ebsa Click on “COBRA”; the notices are in the section “For Employers”.

**Fact Sheet: COBRA Premium Reduction
U.S. Department of Labor
Employee Benefits Security Administration
January 8, 2010**

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended on December 19, 2009 by the Department of Defense Appropriations Act, 2010 (2010 DOD Act) provides for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. To qualify, individuals must experience a COBRA qualifying event that is the involuntary termination of a covered employee's employment. The involuntary termination must occur during the period that began September 1, 2008 and ends on February 28, 2010. The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

What is COBRA?

COBRA gives workers and their families who lose their health benefits the right to purchase group health coverage provided by the plan under certain circumstances.

If the employer continues to offer a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage.

The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage; otherwise, they lose all rights to COBRA benefits.

COBRA generally does not apply to plans sponsored by employers with fewer than 20 employees. Many States have similar requirements for insurance companies that provide coverage to small employers. The premium reduction is available for insurers covered by these State laws.

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Changes Regarding COBRA Continuation Coverage Under ARRA, as amended by the 2010 DOD Act

The 2010 DOD Act extended the COBRA premium reduction eligibility period for two months until February 28, 2010 and increased the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).

Individuals who have reached the end of the original premium reduction period will have additional time to pay extension-related reduced premiums that were due prior to notice being provided. To continue their coverage they must pay the 35 percent of premium costs by the later of February 17, 2010, 30 days after notice of the extension is provided by their plan administrator, or the end of the otherwise applicable payment grace period.

Individuals who lost their subsidy and paid the full 100 percent premium for December 2009 should contact their plan administrator or employer sponsoring the plan to discuss a credit for future months of coverage or a reimbursement of the overpayment.

Eligibility for the Premium Reduction: The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals".

An "assistance eligible individual" is the employee or a member of his/her family who:

- * has a qualifying event for continuation coverage under COBRA or a State law that provides comparable continuation coverage (for example, so-called "mini-COBRA" laws) that is the employee's involuntary termination at any point from September 1, 2008 through February 28, 2010; and
- * elects COBRA coverage timely.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for periods of coverage that began prior to February 17, 2009.

Assistance eligible individuals who pay 35 percent of their COBRA premium must be treated as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes.

Period of Coverage

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 15 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Notice Requirements

ARRA, as amended by the 2010 DOD Act, mandates that plans notify certain current and former participants and beneficiaries about the premium reduction. The Department has updated its existing models and created an additional model to help plans and individuals comply with these requirements. Each model notice is designed for a particular group of individuals and contains information to help satisfy ARRA's notice provisions, including those added by the 2010 DOD Act.

Plans subject to the Federal COBRA provisions must provide a General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through

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February 28, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. Individuals who experience any qualifying event after December 19, 2009 must get the updated General Notice within the normal timeframes for providing a COBRA election notice. The updated model General Notice includes information on the premium reduction as well as information required in a COBRA election notice.

Plan administrators must also provide notice to certain individuals who have already been provided a COBRA election notice that did not include information regarding ARRA, as amended. The Department has developed a model Premium Assistance Extension Notice. This model notice includes information about the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act. Listed below are the affected individuals and the associated timing requirements.

* Individuals who were “assistance eligible individuals” as of October 31, 2009 (unless they are in a transition period - see below) and individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated General Notice) must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act by February 17, 2010;

* Individuals who are in a “transition period” must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act within 60 days of the first day of the transition period. (The transition period begins immediately after the end of the nine months of premium reduction in effect under ARRA before the amendments made by the 2010 DOD Act, as long as the premium reduction provisions of the 2010 DOD Act would apply due to the extension from nine to 15 months).

Note: Some individuals may be entitled to multiple notices. To satisfy the notice requirements, these individuals may be provided a single notice that includes all of the required information so long as the notice is provided by the earliest date required.

Insurance issuers that provide group health insurance coverage must provide notice to persons who became eligible for continuation coverage under a State law. The Department updated its model *Alternative Notice* to assist issuers with satisfying this requirement. However, continuation coverage requirements vary among States and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model *Premium Assistance Extension Notice* or the updated model *General Notice* appropriate for use in certain situations.

Expedited Review of Denials of Premium Reduction: Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The official application form is available at www.dol.gov/COBRA and can be filed online or submitted by fax or mail.

Switching Benefit Options: If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage cannot be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

Income limits: If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: 202.693.8664; TTY: 202.501.3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.