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MEMORANDUM
2009-20

COBRA Extension Legislation on President's Desk

December 21, 2009 (Rev. 1-7-10)

On Saturday, December 19, 2009, Congress extended the COBRA subsidy first enacted on February 13, 2009 from nine (9) months to fifteen (15) months for those who undergo an involuntary termination of employment between September 1, 2008 through the end of February 2010.

Discussion

- 1. The Original Nine Month Subsidy.** The American Recovery and Reinvestment Act of 2009 (ARRA) COBRA subsidy provisions provided for the 65% COBRA premium subsidy to begin on March 1, 2009. For Assistance Eligible Individuals (AEI) whose jobs had terminated prior to March 1, 2009, the subsidization ended with the November 2009 premium period. Individuals who lost their jobs after that date whose COBRA began prior to January 1, 2010 would get nine months under the original COBRA subsidy law.
- 2. The New Subsidy.** For those whose subsidy ended as of November 30, 2009, the new law would extend coverage for another six months retroactively to December 1, 2009 through May 31, 2010. Individuals whose COBRA subsidy began after March 2009 will have access to the subsidy for a full fifteen (15) months from the inception of the original COBRA coverage.
- 3. December Terminations.** Under the original law, both the termination and the inception of COBRA had to occur on or before December 31, 2009, leaving individuals whose COBRA benefits began on January 1, 2010 without the advantage of the subsidy. With the passage of the Extension Legislation, these individuals now will have rights to a full fifteen months of subsidy, commencing with the inception of their COBRA coverage.
- 4. February 28, 2010.** The Extension Legislation has eliminated the requirement that inception of COBRA occur no later than February 28, 2010. This means that individuals whose COBRA begins on March 1, 2010 or later will be eligible for the subsidy, as long as the qualifying event occurs prior to March 1, 2010.
- 5. Transition Period.** Since the original subsidy benefit may have expired for some Assistance Eligible Individuals, the Extension Legislation contains transition rules applicable to any period of coverage beginning prior to December 21, 2009 so long as such period is subject to the



provisions contained in the Extension Legislation. The rules applicable to individuals in the transition period follow.

6. Transition Rules:

- a. **Timely Payments.** COBRA continuees whose subsidy ended on November 30, 2009 will have 60 days from December 21, 2009 or no less than 30 days from the date they are notified of the Extension Legislation, to pay their portion of the subsidized COBRA premium. The individual also must have been covered under COBRA continuation coverage to which such premium payment relates for the period of coverage immediately preceding December 21, 2009.
- b. **Overpayments.** In the case of an Assistance Eligible Individual who pays the full COBRA premium for periods (e.g. December 2009 or January 2010) prior to receiving notice, the Plan Sponsor must either credit the overpayment against future COBRA premium payments (as long as the amount is exhausted within 180 days) or refund the overpayment to the individual.
- c. **Notice Requirements.** The Extension Legislation requires Plan Sponsors to provide two types of Notices:
 - General Notice: Regarding the Extension Legislation to all individuals who were or have become Assistance Eligible Individuals on or after October 31, 2009 by February 21, 2010 (60 days after enactment); and,
 - Transition Notice: Regarding the right to restore coverage to individuals who lost assistance by failing to pay full COBRA premiums after the nine (9) month subsidy ceased within 60 days of the beginning of the individual's transition period.
- d. **Model Notices.** We expect that the Department of Labor (DOL) will prepare and publish new model notices within the next 30 days.

- 7. Original ARRA Rules.** All other provisions contained in the original legislation will continue in effect to the extent they are consistent with the Extension Legislation. Please note that states which have adopted "small group" COBRA laws may need to amend current state COBRA laws to achieve conformance with the Extension Legislation.

Action Plan

1. The Plan Sponsor in conjunction with the COBRA Administrator (if applicable) must identify all Assistance Eligible Individuals:
 - a. Whose subsidy began March 1, 2009 or later; and,
 - b. Whose nine (9) month subsidy has expired or will expire shortly.





2. The Plan Sponsor/COBRA Administrator, using the model notices, once provided, must prepare and mail:
 - a. The **General Notice** of the Extension Legislation to all Assistance Eligible Individuals as of October 31, 2009 or later; and,
 - b. The **Transition Notice** of the Extension Legislation to all Assistance Eligible Individuals who have exhausted the nine (9) month subsidy and are currently paying the full COBRA premium (102% of rate for active plan coverage) or who have ceased paying premiums upon exhaustion of the nine (9) month subsidy.

Additional COBRA Changes. It is likely that Congress may, yet again, address the COBRA subsidy issue prior to the end of February 2010, either as a part of the pending Health Reform Act or independently. We will keep you informed of these matters.

[Click here](#) to view the full text of the COBRA Extension Legislation (beginning on Page 64).

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