



# SPECIAL Alert

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*In this first Special Alert for 2010, we discuss the model notices that the Department of Labor recently posted related to the extension of the COBRA subsidy. Employers are required to notify certain former employees about the extended timeframe to qualify for the subsidy and the extended time period for receiving the COBRA subsidy.*

*Employers should send these notices as soon as possible to allow former employees to make informed decisions about COBRA coverage.*

*We welcome your comments and suggestions regarding this issue of our Special Alert. For more information on this article, please contact your Account Manager or visit the McGrawWentworth website at [www.mcgrawwentworth.com](http://www.mcgrawwentworth.com).*

## “DOL Releases Model Notices”

On January 13, 2010, the Department of Labor (DOL) released model notices to assist employers in providing notification about the extension of the COBRA subsidy first introduced by the American Recovery and Reinvestment Act of 2009 (ARRA). The Department of Defense Appropriation Act, 2010 extended the subsidy in two ways:

1. Extended the timeframe to qualify for the ARRA COBRA subsidy. The expiration date for the subsidy was pushed out to February 28, 2010. This means an Assistance Eligible Individual (AEI) who has a qualifying event with COBRA effective on or before February 28, 2010 will be eligible for the COBRA subsidy.
2. Extended the maximum timeframe to receive the COBRA subsidy. Initially, the subsidy was available for 9 months, providing the individual continued to qualify as an AEI. The timeframe has been extended to 15 months.

The extension requires employers to notify certain individuals of the extended timeframe for coverage and allow AEIs who lost coverage when their subsidy expired, a chance to reinstate coverage due to the extended govern-

ment assistance. While the regulations did not require the DOL to draft model notices to assist with communication, they chose to draft model notices.



The DOL drafted a number of notices to assist employers with communicating the new provisions:

• **Updated General Notice:**

Back in May 2009, the DOL released an updated General COBRA notice that included information on the ARRA COBRA subsidy. That General Notice is no longer accurate with the new extended timeframe to qualify and the extended time to receive the subsidy. The updated General Notice includes the changes made by the Department of Defense Appropriation Act, 2010.

The DOL assumes that individuals who experienced a qualifying event (that was a termination of employment) in December 2009 but who were not eligible for COBRA coverage until January 2010 were likely not provided proper notice. These individuals should get the updated **General Notice** AND the full 60 days from the date the updated notice is provided to make a COBRA election.

- **Premium Assistance Extension Notice:** This new notice should be provided to certain individuals who have already been provided a COBRA General Notice but it did not include the information for the new extension. You should send this notice to:

- Individuals who were eligible for the COBRA subsidy and received it for the maximum of 9 months. Some of the AEIs continued COBRA paying the full COBRA premium. Some of these individuals could not afford the whole premium and allowed COBRA coverage to lapse. These individuals are considered to be in a “transition period” according to the DOL. An individual’s “transition period” is the period that begins immediately after the end of the maximum number of months (generally 9) of COBRA subsidy available under ARRA prior to its amendment. An individual is in a “transition period” only if the COBRA subsidy would continue to apply due to the extended timeframe from 9 to 15 months and they otherwise remain eligible as an AEI. Once the extension notice

is provided, the AEI has 60 days from December 21, 2009 or 30 days from the date you notified AEIs of the possibility of reinstatement (whichever is later) to pay 35% of the COBRA premium in order to have coverage reinstated back to the loss of coverage date. Your organization must also communicate how premiums will be refunded if AEIs paid the full premium once the initial 9 months of subsidy was exhausted.

- Individuals who were “Assistance Eligible Individuals” as of October 31, 2009, **and** individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage must be provided the premium assistance extension notice. This is necessary to make sure AEIs are aware of the extended COBRA subsidy. This notice must be provided by February 17, 2010 but employers should send the notice earlier in order for potential AEIs to make informed decisions about electing COBRA.
- **Updated Alternative Notice:** Insurance issuers that provide group health insurance coverage must send the updated Alterna-

tive Notice to persons who became eligible for continuation coverage under a State law. Not many employers are sending out notices addressing state continuation. It is very likely you do not need this notice.

All of the model notices can be found on the DOL website at <http://www.dol.gov/ebsa/COBRamodelnotice.html>. You must subscribe to the page in order to access the notices.

Please read the notices carefully and make any changes you deem appropriate to help explain the situation to your former employees. The model General Notice also includes a new election form. This may be confusing for individuals that have already elected COBRA. At a minimum your organization should require individuals who wish to have coverage reinstated to complete the “Treatment as an AEI” form to verify that they continue to meet the eligibility requirements for the COBRA subsidy. It is important to get the new notices out as soon as possible and keep copies of the distributed notices for your files.

If you have any questions, please contact your McGraw Wentworth Account Manager. **MW**

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