

May 3, 2010

EBS-RMSCO NEWSLETTER
COBRA PREMIUM SUBSIDY EXTENDED THROUGH MAY 31, 2010

The American Recovery and Reinvestment Act of 2009 (“ARRA”) provided a temporary COBRA premium subsidy for certain individuals and imposed related notice and reporting requirements for employer-sponsored group health plans. The Department of Defense Appropriations Act for Fiscal Year 2010 (“2010 Defense Act”) expanded the period during which persons may qualify for the subsidy and imposed new notice requirements. Thereafter, the Temporary Extension Act of 2010 (“TEA”) liberalized the eligibility requirements for the subsidy and again expanded the period during which persons may qualify for the subsidy.

The Continuing Extension Act of 2010 (“CEA”) has once again expanded the period during which persons may qualify for the subsidy and changed the notice requirements. This Newsletter summarizes the CEA changes, and should be read in conjunction with our first Newsletter on the ARRA, our Newsletter on the 2010 Defense Act changes, and our Newsletter on the TEA changes. (To see those Newsletters: [click here](#) for the original Newsletter on the ARRA, [click here](#) for the Newsletter on the 2010 Defense Act changes, and [click here](#) for the Newsletter on the TEA changes.) *Except as noted in this Newsletter, the rules discussed in those prior Newsletters still apply.*

Eligibility for the COBRA Premium Subsidy

The TEA changed the COBRA premium subsidy requirements so that to be eligible for the subsidy (i.e., to be an “assistance eligible individual” or an “AEI”), a person had to:

- be an employee, or employee’s spouse or dependent child who either (i) became eligible for COBRA coverage because of an involuntary termination of the employee’s employment between September 1, 2008 and March 31, 2010, or (ii) became eligible for COBRA coverage because of a reduction in the employee’s hours of employment on or after September 1, 2008 followed by his involuntary termination of employment between March 2, 2010 and March 31, 2010;

and

- elect COBRA coverage during his COBRA election period (or, if he was eligible to elect COBRA coverage before February 17, 2009 and did not have COBRA coverage in effect on that date, he must elect COBRA coverage during an extended election period starting on that date and ending on the date 60 days after he received a COBRA notice reflecting the ARRA premium subsidy rules).

The CEA extends for two months the period during which the involuntary termination of employment must occur to qualify for the COBRA premium subsidy. Now, the involuntary termination can occur anytime between September 1, 2008 and May 31, 2010 if the termination is the COBRA qualifying event, or between March 2, 2010 and May 31, 2010 if the individual

became eligible for COBRA because of a reduction in hours of employment after September 1, 2008.

New Notice Requirements and Special Election Period

The ARRA requires plan administrators to send special COBRA notices to individuals who become eligible to elect COBRA coverage. These notices must now be updated to reflect CEA changes.

Individuals who qualified for the subsidy under the CEA because of an involuntary termination of employment between April 1, 2010 and April 15, 2010, but did not elect COBRA coverage after receiving a prior version of the COBRA notice (or elected but later discontinued COBRA coverage), must be given a second chance to elect COBRA coverage. By June 14, 2010, plan administrators must send these individuals a special election notice explaining the CEA extension and their right to elect or reinstate COBRA coverage during an election period which does not end until 60 days after they receive the special election notice. The Department of Labor (DOL) strongly recommends sending the special election notice even if the plan administrator believes the termination was voluntary, since penalties apply if it is later determined that the termination was involuntary and the notice was not provided. The plan administrator still should deny the subsidy if it believes the termination was voluntary, and the individual can appeal the denial to the DOL (or, for a non-ERISA plan, to the Department of Health and Human Services).

See the DOL web site (www.dol.gov) for updated model notices and further explanation of to whom and when the notices should be sent.

What should employers do about these changes?

Employers should:

- update their COBRA notices for CEA changes and, if they have not already done so, for the 2010 Defense Act and TEA changes; and
- continue to monitor the COBRA premium subsidy guidance published on the DOL website and Treasury web site (www.irs.gov).¹

You should be aware that there is more legislation pending that would extend the eligibility period for the COBRA premium subsidy again through June 30, 2010 or even the end of 2010.

This Newsletter is for general informational purposes only, does not cover all issues and details concerning the COBRA subsidy and should not be considered or relied upon as legal advice.

¹ You can subscribe to e-mail updates on the COBRA subsidy requirements at www.dol.gov/ebsa/COBRA.html.