

DOL Updates COBRA Forms for Subsidy Extension: *Who Gets What?*

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.

As expected, the Department of Labor (DOL) has published new model COBRA forms (<http://www.dol.gov/ebsa/COBRAmodelnotice.html>) reflecting the extension of the 65% subsidy of COBRA premiums. As explained in our December 22, 2009 Labor and Employment Alert (<http://www.vorys.com/publications.html>), the Department of Defense Appropriations Act for Fiscal Year 2010 (the DoD Act) extended the maximum subsidy period from nine months to 15 months and made the subsidy available to individuals entitled to COBRA due to involuntary termination of employment through February 28, 2010.

Updated General Notice

1. Send the [Updated General Notice](#) to individuals entitled to COBRA due to a termination of employment in December 2009 whose COBRA period does not start until January 2010, regardless of whether they have or have not received a pre-DoD Act election notice. Individuals in this group would not have been entitled to the subsidy under the pre-DoD Act rules because, under the pre-DoD Act rules, the subsidy was not available to individuals whose COBRA period started on or after January 1, 2010.

Deadline: Since the election period runs from the date you send the Updated General Notice (and not the date you may have sent a pre-DoD Act election notice), you will want to send the Updated General Notice promptly.

Extended election period: Individuals in this group have 60 days after you send the Updated General Notice to elect COBRA.

Note: You must send the Updated General Election Notice to individuals in this group who are entitled to COBRA due to both voluntary and involuntary termination of

employment, even though only individuals entitled to COBRA due to involuntary termination of employment can be eligible for the subsidy.

2. Send the [Updated General Notice](#) to individuals who experience any type of COBRA qualifying event after December 19, 2009, regardless of whether they have or have not received a pre-DoD Act election notice.

Deadline: The normal timeframe for providing a COBRA election notice applies (typically, within 44 days after the qualifying event or, depending on plan structure, within 44 days after a later loss of coverage).

3. Send the [Updated General Notice](#) to individuals who experience any type of COBRA qualifying event September 1, 2008 through February 28, 2010 who have not yet received a pre-DoD Act election notice.

Deadline: The normal timeframe for providing a COBRA election notice applies (typically, within 44 days after the qualifying event or, depending on plan structure, within 44 days after a later loss of coverage).

Premium Assistance Extension Notice

1. Send the [Premium Assistance Extension Notice](#) to individuals who were Assistance Eligible Individuals (AEIs) as of October 31, 2009 who are in a "transition period." An AEI is in a transition period if: (a) his or her original nine-month subsidy period has expired; and (b) he or she would be entitled to a longer subsidy period due to the extension of the subsidy period under the DoD Act.

Deadline: 60 days from the first day of the transition period. For example, if

an AEI's original nine-month subsidy period ended November 30, 2009, the deadline for the Premium Assistance Extension Notice is January 29, 2010.

Extended grace period for payment: If an AEI failed to pay his or her COBRA premiums during the transition period, the AEI may make a retroactive payment by the latest of: (i) 30 days from the date you send the Premium Assistance Extension Notice; (ii) February 17, 2010; or (iii) the end of the otherwise applicable payment grace period. If payment is made by the deadline, COBRA coverage must be retroactively reinstated.

Note: It appears that the IRS has changed its policy on the timing of payroll tax credits for the COBRA subsidy. According to an e-mail originating with the IRS. "If an employer receives an assistance eligible individual's 35% share of the COBRA premium in 2010, the employer may claim the credit for the related premium subsidy on Form 941 for either the quarter in 2010 in which it receives the individual's 35% premium payment or a later quarter in 2010, but not for a quarter in 2009, regardless of the fact that the premium is for coverage during 2009." Watch for this new position to be posted to the IRS website on the COBRA subsidy (<http://www.irs.gov/newsroom/article/0,,id=204708,00.html>).

2. Send the [Premium Assistance Extension Notice](#) to individuals who were AEIs as of October 31, 2009 and are not in a transition period (i.e., their original nine-month COBRA subsidy period has not yet expired).

Deadline: February 17, 2010.

3. Send the [Premium Assistance Extension Notice](#) to individuals who became AEIs on or after October 31, 2009 who received a pre-DoD Act Election Notice.

Deadline: February 17, 2010.

4. Send the [Premium Assistance Extension Notice](#) to individuals who became entitled to COBRA due to a termination of employment October 31, 2009 through December 19, 2009 who received a pre-DoD Act Election Notice.

Deadline: February 17, 2010.

The DOL also published an [Updated Alternative Notice](#) for use by insurers who are notifying employees of small employers of rights under state mini-COBRA laws. Small employers are, generally, employers with fewer than 20 employees.

It is still possible that Congress will pass an additional extension of the COBRA subsidy.

This client alert is for general information purposes and should not be regarded as legal advice.

IRS CIRCULAR 230 DISCLOSURE: In order to ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any federal tax advice contained in this communication is not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing, or recommending to another person, any transaction or other matter addressed herein.