

COBRA Premium Subsidy Extended

On December 16, 2009, the House of Representatives passed the Department of Defense Appropriations Act for Fiscal Year 2010 (H.R. 3326). The Senate approved the legislation and President Obama signed it into law on December 19, 2009.¹ The law extends the Consolidated Omnibus Budget Reconciliation Act (COBRA) premium assistance subsidy passed in February 2009 as part of the American Recovery and Reinvestment Act (ARRA).² The law does not extend the duration of COBRA continuation coverage itself.

Specifically, the law:

- Extends the COBRA premium assistance subsidy eligibility window from December 31, 2009 to February 28, 2010.
- Extends the subsidy period from nine months to 15 months, for all assistance-eligible individuals, including those whose subsidy ended November 30, 2009 (or is about to end on December 31, 2009).
- Corrects the problem related to the Internal Revenue Service interpretation under the original ARRA subsidy that COBRA would have to start during the eligibility window in order for the person to be eligible for the subsidy.³ For example, under that interpretation, an individual would have to begin a COBRA period prior to December 31, 2009 to be

eligible for the subsidy. As a result, a person laid off on December 31, 2009, whose COBRA started January 1, 2010, could not receive the subsidy. The law changes this so that a person who is involuntarily terminated effective on the last day of the subsidy eligibility window (which will change to February 28, 2010), who gets COBRA continuation coverage starting on March 1, 2010, will be eligible for the subsidy.

- Gives people whose subsidy terminated at the end of the initial nine-month period the opportunity to pay back premiums (at the reduced rate) and continue the subsidy for another six months (for a maximum total of 15 months). This includes those who stopped paying COBRA premiums when they lost the subsidy. Those who paid the full COBRA premium when they lost the subsidy would get credit for their overpayment. The deadline for paying these back premiums (at the reduced rate of 35 percent) ends on February 17, 2010 (*i.e.*, 60 days after enactment) or, if later, 30 days after receiving the notice discussed in the next bullet.
- Requires group health plan administrators to send notices within 60 days of enactment about the subsidy extension to individuals who were eligible for the premium assistance subsidy at any time on or after October 31, 2009 (including those who stopped paying COBRA premiums or paid the full premium) and to individuals who experience a COBRA qualifying event consisting of termination of employment on or after October 31, 2009. For individuals with a qualifying event after enactment, this notice must be sent within the usual time frame for sending COBRA notices with subsidy information.

¹ When the law is available online, it will be accessible from the following page of the Government Printing Office Web site: <http://www.gpoaccess.gov/plaws/111publ.html>

² The introduction of the COBRA premium subsidy was discussed in The Segal Company's February 2009 *Bulletin*, "The Stimulus Law's Temporary Subsidy for COBRA Premiums": <http://www.segalco.com/publications/bulletins/feb09COBRAsubsidy.pdf>

³ This interpretation was discussed in Segal's March 16, 2009 *Capital Checkup*, "IRS Answers Questions on the COBRA Premium Assistance Subsidy and Form 941": <http://www.segalco.com/publications-and-resources/capital-checkup/archives/?id=1196>

For individuals who are in a COBRA continuation coverage period for which they are now eligible for the subsidy, the law also appears to require the plan administrator to inform them of their rights under the Act within 60 days of the beginning of that coverage period, which may be earlier than 60 days after enactment. (For example, it appears that individuals who

started the subsidy on March 1, 2009, and lost it at the end of November would need to receive a notice by the end of January, sooner than 60 days after enactment.)

Implications for Plan Sponsors

Plan sponsors should review the new law with their legal counsel to determine their obligations under the law. It appears that plan sponsors will have to take immediate action, including to:

- Prepare notices about the new COBRA premium assistance subsidy extension and send them out by February 17, 2010 (*i.e.*, within 60 days of enactment),
- Work with their COBRA administrator to assure that a process is in place to allow individuals who may have terminated COBRA to pay back premiums as permitted under the legislation, and
- Assure that individuals who may be caught in the transition between the two time periods are fully apprised of their right to receive the subsidy, which in certain cases would require an earlier notice.

Outlook for Further Extension of the Subsidy

The House of Representatives also passed legislation that would further extend the COBRA subsidy. This bill, the Jobs for Main Street Act (H.R. 2847) is not expected to be considered by the Senate until 2010. The Jobs for Main Street Act would extend the COBRA premium assistance subsidy eligibility window to June 30, 2010 and permit those who lost coverage due to a reduction in hours to obtain the premium assistance subsidy.

Plan sponsors will want to stay informed about further developments on this legislation.



Plan sponsors should rely on their attorneys for authoritative advice on the interpretation and application of the new law extending the COBRA premium subsidy. Segal can be retained to work with plan sponsors and their attorneys to comply with the COBRA premium assistance program, including providing assistance in developing policies and procedures to handle this new program, designing notices and evaluating COBRA premium methodology.



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