



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

DATE: November 30, 2009

TO: Our Valued Client Partners & Friends

FROM: HIB Account Team

RE: LEGISLATIVE UPDATE 2009-19
Important COBRA Alert

We are pleased to bring you our **Legislative Update 2009-19: Important COBRA Alert**. In the following Legislative Update, we have provided you with an update, or lack of, on the American Recovery and Reinvestment Act of 2009 (ARRA). In addition, we have recapped two proposed legislations which could extend this COBRA assistance program beyond the December 31, 2009 deadline.

We will continue to keep you informed of progress on this matter as it occurs, and please, if you have any questions, contact your HIB Account Team for assistance.

Important COBRA Alert

COBRA PREMIUM ASSISTANCE

[IRS Notice 2009-27](http://www.irs.gov/pub/irs-drop/n-09-27.pdf) (<http://www.irs.gov/pub/irs-drop/n-09-27.pdf>) issued April 20, 2009 applicable to ARRA COBRA subsidies contains a very important and now very relevant rule: **Both the qualifying event and the inception of COBRA coverage must occur prior to December 31, 2009 for the ARRA Premium Assistance to apply.**

At present, both Treasury and the Department of Labor have confirmed that there has been no modification to this rule. Here is the rule:

NOTICE 2009-27: Q& A 13

Q-13. If an individual's involuntary termination occurs no later than December 31, 2009, but the loss of coverage resulting in eligibility for COBRA continuation coverage occurs after December 31, 2009, is the individual an assistance eligible individual?

A-13. No. Both the involuntary termination and eligibility for COBRA continuation coverage must occur during the period from September 1, 2008, through December 31, 2009. If the loss of coverage is after December 31, 2009, the individual cannot become an assistance eligible individual.

DISCUSSION

1. **Background on ARRA Subsidy.** The American Recovery and Reinvestment Act of 2009 (ARRA) provides for a 65% reduction of actual premiums required for COBRA coverage payable by assistance eligible individuals. To be assistance eligible, an individual must be a COBRA Qualified Beneficiary as a result of an involuntary termination of employment occurring during the period beginning on September 1, 2008 and ending on December 31, 2009, and who elects COBRA coverage. Employers, under most circumstances, front the 65% subsidy and recover the full amount as a credit toward their payroll taxes.

2. **Termination of Health Care Coverage.** Most group health plans contain a provision allowing health care coverage under the active employee plan to continue until the last day of the month during which a COBRA Qualifying Event occurs (“End of Month” Termination). A small number of plans will terminate active coverage on the day the Qualifying Event occurs (Immediate Termination).
 - a. **“End of Month” Termination.** In the event the active plan benefits terminate on the last day of the month, COBRA coverage begins on the first day of the month following the month in which the COBRA Qualifying Event occurs. Under these circumstances, a COBRA Qualifying Event (involuntary termination) which occurs in December 2009 will result in COBRA coverage becoming available on January 1, 2010, eliminating the availability of the COBRA 65% subsidy.
 - b. **Immediate Termination.** If the plan’s active coverage ends on the date of the COBRA Qualifying Event, COBRA coverage, if elected, begins the following day. As a result, the premium subsidy would apply to all involuntary terminations in December (except for one which occurs on December 31, 2009) since COBRA coverage, if elected, would begin on or before December 31, 2009.
 - c. It is unlikely that a health care insurer would entertain a request at this time to amend an existing group policy to modify its termination provisions from “End of Month” to “immediate” cessation of active plan coverage upon the occurrence of an involuntary termination.

3. **Proposed Legislation.** In early November, two Senators authored and introduced the [COBRA Subsidy and Enhancement Act of 2009 \(S.2730\)](#), (<http://www.govtrack.us/congress/billtext.xpd?bill=s111-2730>). This proposed legislation would extend the availability of the subsidy beyond December 31, 2009 to June 30, 2010, increase the amount of the subsidy to 75% and extend the period of benefits from nine (9) months to fifteen (15) months. This bill now sits in the Senate Committee on Health, Education, Labor, and Pension (HELP).

The House has a similar bill ([Extended COBRA Continuation Protection Act of 2009 \(H.R. 3930\)](#)), (<http://www.govtrack.us/congress/billtext.xpd?bill=h111-3930>). currently under review by House Ways and Means, as well as the House Committees on Education and Labor, and Energy and Commerce. H.R. 3930 would extend benefits from nine (9) to fifteen (15) months for current Assistance Eligible Individuals, that is, those with involuntary terminations between September 1, 2008 and December 31, 2009, who qualify for assistance under the original Act (ARRA). The bill would also cover involuntary terminations occurring between January 1, 2010 and June 30, 2010. H.R. 3930 does not appear to address those whose Qualifying Events occurred in 2009 with COBRA beginning in 2010. Finally, this bill would extend traditional COBRA from 18 months to 24 months for those whose job losses occurred as a result of the recession, from 2008 to present; however, this extension would not continue beyond December 31, 2010.

At present, neither bill has progressed beyond Committee level. To see copies of these bills, please refer to the links above.

We will keep you informed of developments.

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