

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Publication of Model Notices for Health Care Continuation Coverage Provided Pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and Other Health Care Continuation Coverage, as Required by the American Recovery and Reinvestment Act of 2009 (ARRA), as amended by the Department of Defense Appropriations Act, 2010, Notice

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of the Availability of the Model Health Care Continuation Coverage Notices Required by ARRA, as amended.

SUMMARY: On December 19, 2009, President Obama signed the Department of Defense Appropriations Act, 2010 (Pub. L. 111-118), which extended the availability of the health care continuation coverage premium reduction provided for COBRA and other health care continuation coverage as required by the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5). ARRA, as amended, retained the requirement that the Secretary of Labor (the Secretary), in consultation with the Secretaries of the Treasury and Health and Human Services, develop model notices. These models are for use by group health plans and other entities that, pursuant to ARRA, as amended, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. This document announces the availability of the model health care continuation coverage notices required by ARRA, as amended.

FOR FURTHER INFORMATION CONTACT: Kevin Horahan or Mark Connor, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693-8335. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) created the health care continuation coverage provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code (Code), and the Public Health Service Act (PHS Act). These provisions are commonly referred to as the “COBRA continuation provisions,” and the continuation coverage that they mandate is commonly referred to as “COBRA continuation coverage.” Group health plans subject to the federal COBRA continuation provisions are subject to ARRA’s premium reduction provisions and notice requirements. The federal COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. Many States require health insurance issuers that provide group health insurance coverage to plans not subject to the COBRA continuation provisions to provide comparable continuation coverage. Such continuation coverage provided pursuant to State law is also subject to ARRA’s premium reduction provisions and notice requirements.

II. Description of the Model Notices

a. In General

ARRA mandates the provision of certain notices. Each of these notices must include: a prominent description of the availability of the premium reduction, including any conditions on the entitlement; a model form to request treatment as an “Assistance Eligible Individual”;¹ the name, address, and telephone number of the plan administrator (and any other person with information about the premium reduction); a description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan; and (if applicable)

¹ In general, an “Assistance Eligible Individual” is an individual who has experienced an involuntary termination of employment that is a COBRA “qualifying event” at any time from September 1, 2008 through February 28, 2010 if he or she elects such COBRA coverage.

a description of the opportunity to switch coverage options.

The Department of Labor (the Department) created these model notices to cover an array of situations in order to deal with the complexity of the various scenarios facing dislocated workers and their families. In an effort to ensure that the notices include all of the information required under ARRA, as amended, while minimizing the burden imposed on group health plans and issuers, the Department has created several packages. As with those developed by the Department originally under ARRA, each of the new packages is designed for a particular group of qualified beneficiaries, and contains all of the information needed to satisfy the content requirements for ARRA's amended notice provisions. The packages include the following disclosures:

- A summary of ARRA's premium reduction provisions.
- A form to request the premium reduction.
- A form for plans (or issuers) that permit qualified beneficiaries to switch coverage options to use to satisfy ARRA's requirement to give notice of this option.
- A form for an individual to use to satisfy ARRA's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage or Medicare.
- COBRA election forms and information, as appropriate.

b. General Notice

The amended General Notice is required to be sent by plans that are subject to the COBRA continuation provisions under Federal law.² It must include the information described

² Under ARRA, as amended, the Secretary generally is responsible for developing all of the model notices with the exception of model notices relating to Temporary Continuation Coverage under 5 U.S.C. 8905a, which is the responsibility of the Office of Personnel Management (OPM). In developing the original ARRA model notices, the Department was required to, and did, consult with the Departments of the Treasury and Health and Human Services, OPM, the National Association of Insurance Commissioners, and plan administrators and other entities responsible for providing COBRA continuation coverage. This set of models is an update of the originals and was created in

above and be provided to ALL qualified beneficiaries, not just covered employees, who experience a qualifying event through February 28, 2010.³

The Department has updated the earlier version of this model notice so that it includes all of the information related to the premium reduction and other rights and obligations under ARRA, as amended. This model also includes all of the information required in an election notice required pursuant to the Department's final COBRA notice regulations under 29 CFR 2590.606-4(b).⁴ Using this model to provide notice to individuals who have experienced any qualifying event from September 1, 2008 through February 28, 2010 will satisfy the Department's existing requirements for the content of the COBRA election notice as well as those imposed by ARRA, as amended.

c. Alternative Notice

consultation with staff at the Departments of the Treasury and Health and Human Services.

³ In the event of a qualifying event that occurs prior to this model becoming available, this notice need not be provided to the extent that proper notice has already been provided. However, in cases where the qualifying event was a termination of employment, the Premium Assistance Extension Notice may be used to satisfy the statutory requirement to notify individuals of their new rights under ARRA, as amended.

⁴ The 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. ARRA provides that COBRA election notices provided for qualifying events that are related to a termination occurring during the effective dates of the premium reduction period are not complete if they fail to include information on the availability of the premium reduction.

The amended Alternative Notice is required to be sent by issuers that offer group health insurance coverage that is subject to comparable continuation coverage requirements imposed by State law. The Alternative Notice must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event through February 28, 2010.⁵ Continuation coverage requirements vary among States. The Department updated the earlier version of this model notice. It should be modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement should feel free to use the model Alternative Notice or the model General Notice (as appropriate).

d. Premium Assistance Extension Notice

The Premium Assistance Extension Notice is required to be sent by plans and other entities that are subject to continuation of health coverage provisions under either Federal or State law. This notice serves several purposes. It serves as a notice of the extension of the premium assistance from nine to 15 months for individuals who were receiving premium assistance as of October 31, 2009. It also provides this information to individuals who became Assistance Eligible Individuals, or who experienced a qualifying event that was the termination of a covered employee's employment, on or after October 31, 2009, but who were provided a notice that did not include the information required by ARRA, as amended by the Department of Defense Appropriations Act, 2010.⁶ Notices for these individuals must be provided by February 17, 2010 which is 60 days from the December 19, 2009 date of enactment. Additionally, this notice may be used to notify individuals who are in a "transition period" of their new right to make a retroactive, reduced payment. The transition period is the first period of coverage that

⁵ See note 3 above.

⁶ Generally, individuals do not need to receive two notices; if they are one of two classes of individuals described in this paragraph and receive the Premium Assistance Extension Notice, they do not need to receive the General Notice as well.

began prior to the date of enactment for which the premium assistance would apply due to the extension from nine to 15 months. These individuals have received the full nine months of premium assistance required under ARRA and either did not make any payment for subsequent periods of coverage or made payment of the full premium otherwise required to maintain coverage absent the subsidy. The notice must be provided to these individuals within the first 60 days of their transition period. The Department has created a single model notice that can be used in any of the above circumstances.

III. For Additional Information

For additional information about ARRA's COBRA premium reduction provisions as amended by the COBRA Premium Assistance Extension Act of 2009, contact the Department's Employee Benefits Security Administration's Benefits Advisors at 1-866-444-3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA web page www.dol.gov/COBRA that will contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number; further, the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the

collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

This Notice revises the collections of information contained in the ICR titled Notice Requirements of the Health Care Continuation Coverage Provisions approved under OMB Control Number 1210-0123. OMB has approved this revision to the ICR pursuant to the emergency review procedures under 5 CFR 1320.13. The public reporting burden for this collection of information is estimated to average approximately 3 minutes per respondent, including time for gathering and maintaining the data needed to complete the required disclosure. There is also an additional \$0.39 average cost per response for mailing costs. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of the Chief Information Officer, Attention: Departmental Clearance Officer, 200 Constitution Avenue, N.W., Room N-1301, Washington, DC 20210 or email DOL_PRA_PUBLIC@dol.gov and reference the OMB Control Number 1210-0123.

V. Models

The Department has decided to make the model notices available in modifiable, electronic form on its website: www.dol.gov/COBRA.

VI. Statutory Authority

Authority: 29 U.S.C. 1027, 1059, 1135, 1161-1169, 1191c; Pub. L. 111-5, 123 Stat. 115, sec. 3001(a)(5), 3001(a)(2)(C), 3001(a)(7); Pub. L. 111-118, 123 Stat. 3409; and Secretary of Labor's Order No. 6-2009, 74 FR 21524 (May 7, 2009)..

Signed at Washington, DC this _____ day of _____, 2010.

Phyllis C. Borzi
Assistant Secretary,
Employee Benefits Security Administration.

Billing Code: 4510-29-P