

# COBRA SUBSIDY EXTENSION

**\*\*\* IMPORTANT \*\*\* Notices of the new extension rights must be provided to all individuals who experienced a COBRA-qualifying loss of employment on or after October 31, 2009.**

On Dec. 21, 2009 President Barack Obama signed into law Department of Defense Appropriations Act, 2010 (H.R. 3326), a bill that appropriates funds for the Department of Defense. Included in the law was a provision that extends the federal 65% employer subsidy of COBRA premiums originally created by the American Recovery and Reinvestment Act of 2009 (ARRA). These subsidies were due to expire December 31, 2009. The Department of Defense Appropriations Act, 2010 (DDAA) includes the following provisions:

- DDAA extends to 15 months the total time an individual could receive the 65% employer COBRA subsidy authorized under ARRA. This gives individuals a maximum of six additional months of a 65% employer subsidy of their COBRA premiums in the event of a defined involuntary termination of employment that results in a loss of employer health coverage.
- Additionally, DDAA extends eligibility for the 65% employer subsidy of COBRA premiums to all individuals who have a defined involuntary termination of employment between September 1, 2008 and February 28, 2010 that also results in the loss of employer health coverage. For all individuals originally eligible for the 65% employer subsidy under ARRA, DDAA eliminates the dual eligibility requirement based on the date of the employment termination *and* the date the COBRA coverage period began. As long as the COBRA qualifying event of loss of employment occurs on or before Feb. 28, 2010, and such loss is involuntary and results in COBRA eligibility, the individual will be an assistance eligible individual (AEI) under ARRA.
- The legislation also allows individuals whose ARRA employer COBRA subsidy periods have already expired and who failed to pay their full unsubsidized premiums to retroactively pay those premiums. Employers and other COBRA administrators will need to quickly revise their standard COBRA documents and notices to reflect these new employee rights as well as to prepare new paperwork that communicates the requirements of the DDAA COBRA subsidy extension legislation to previously terminated COBRA subsidy-eligible individuals. Notices must be provided within 60 days of the law's effective date.

## **Revisions required will need to reflect**

- The extra six months of coverage with a 65% employer subsidy of COBRA premiums that result from a defined involuntary termination of employment that causes a loss of employer health coverage;
- The new February 28, 2010 cut-off date to qualify for the subsidy;
- That an individual's eligibility for the 65% employer subsidy is now based *only* on the date of the individual's involuntary employment termination (*instead of the date of their employment termination and the date their COBRA coverage period begins*);
- That any AEI who is now eligible for the premium subsidy due to the extension of eligibility and whose COBRA coverage was previously terminated for non-payment of premiums, will be allowed to make retroactive premium payments in order to maintain their COBRA coverage. The retroactive premium payment will be considered timely if the individual pays the employer-subsidized premium (i.e. the 35% premium) no later than 60 days after the effective date of the law or 30 days after new notices are provided by the employer, whichever is later;
- That any individual who paid the full premium amount (i.e. 100% of the COBRA premium) will be reimbursed for the excess premiums (i.e. the 65% that the employer is now liable for under the extension).