

# Employee Benefits Briefing

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## Model COBRA Notices Published — Immediate Attention Required

On March 19, the U.S. Department of Labor (DOL) published four model COBRA notices relating to the COBRA subsidy provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). These model notices require immediate attention by employers and their COBRA administrators, as an important **April 18 deadline** for distributing the so-called Second Election Notice now looms.

Two key takeaways from these models are:

1. All qualified beneficiaries (i.e., affected employees and their eligible dependents) who received COBRA notices on or after February 17, 2009 without the ARRA subsidy provisions must receive a new COBRA notice containing these provisions.
2. The so-called Second Election Notice must be sent by April 18 to affected employees and their eligible dependents who lost coverage on account of an involuntary termination of employment between September 1, 2008 and February 16, 2009, and who either declined COBRA or dropped COBRA coverage.

### Model Notices

- *General Notice (full version)*—intended to be the primary model COBRA notice for individuals who have qualifying events between September 1, 2008 and December 31, 2009, and who receive their COBRA notice on or after February 17, 2009. See [www.dol.gov/ebsa/COBRAGeneralNoticeFullVersion.doc](http://www.dol.gov/ebsa/COBRAGeneralNoticeFullVersion.doc).
- *General Notice (abbreviated version)*—intended to be a supplemental notice about ARRA's COBRA subsidy provisions for individuals who incurred a qualifying event between September 1, 2008 and February 16, 2009 and who currently have COBRA coverage. See [www.dol.gov/ebsa/COBRAGeneralNoticeAbbreviatedVersion.doc](http://www.dol.gov/ebsa/COBRAGeneralNoticeAbbreviatedVersion.doc).
- *Second Election (Extended Election Period) Notice*—intended for individuals who lost coverage due to an involuntary termination between September 1, 2008 and February 16, 2009, and who declined or dropped COBRA coverage. See [www.dol.gov/ebsa/COBRAExtendedElectionPeriodNotice.doc](http://www.dol.gov/ebsa/COBRAExtendedElectionPeriodNotice.doc).

- *State Law Coverage Notice*—intended to provide information to individuals whose plans are not subject to Federal COBRA (i.e., those with fewer than 20 employees), but whose state laws contain continuation coverage rights for small employers. See [www.dol.gov/ebsa/COBRAalternativenotice.doc](http://www.dol.gov/ebsa/COBRAalternativenotice.doc).

## Discussion

*General Model (full version):* The model General Notice is intended as a model COBRA notice for all types of qualifying events that occur between September 1, 2008 and December 31, 2009, and for which the COBRA notice is delivered to the affected individual on or after February 17, 2009. ARRA required that COBRA notices contain the following:

- a prominent description of the availability of the premium reduction including any conditions on the entitlement;
- a model form to request treatment as an individual eligible for the COBRA subsidy;
- the name, address, and telephone number of the plan administrator (and any other person with information about the COBRA premium reduction);
- a description of the obligation of individuals paying reduced COBRA premiums to notify the plan if they become eligible for other coverage; and
- (if applicable) a description of the opportunity to switch coverage options.

In addition, the General Model contains (1) a Summary of the COBRA Premium Reduction Provisions under ARRA (the “Summary Sheet”), (2) a Request for Treatment as an Assistance Eligible Individual (the “Involuntary Termination Form”), and (3) an optional form for electing a lower cost health plan if the employer decides to allow such an election as a part of the COBRA process.

We would anticipate that many COBRA administrators will modify existing COBRA notices to include the required ARRA information listed above, and then include in the regular COBRA package copies of the Summary Sheet and the Involuntary Termination Form.

*General Model (abbreviated version):* This model is intended to be provided to individuals who are currently covered by COBRA, along with the Summary Sheet and Involuntary Termination Form.

*Second Election (Extended Election Period) Notice:* The Second Election Notice is required to be sent to any individual who lost medical coverage as a result of an involuntary termination that occurred on or after September 1, 2008 and on or before February 16, 2009 and who either did not elect COBRA coverage or dropped COBRA in the interim. This notice must be sent by April 18, 2009.

*State Law Notice:* This notice is directed at insurers who issue group insurance policies to small employers (i.e., those with fewer than 20 employees) in states that contain state law continuation coverage requirements.

## Which Qualified Beneficiaries Get Which Notices

Qualified Beneficiaries	Full General Notice	Abbreviated General Notice	Second Election Notice
Qualifying Event (regardless of whether due to an Involuntary Termination) between September 1, 2008 and February 16, 2009 and has <i>electd</i> COBRA	No	<b>Yes</b>	No
Involuntary Termination (September 1, 2008 to February 16, 2009) and did <i>not</i> elect COBRA or <i>subsequently dropped</i> COBRA	No	No	<b>Yes</b>
Qualifying Event (other than Involuntary Termination) between September 1, 2008 and February 16, 2009, was provided the pre-ARRA COBRA notice <i>before</i> February 17, 2009, and did <i>not</i> elect COBRA or <i>subsequently dropped</i> COBRA	No	No	No
Qualifying Event (regardless of whether due to an Involuntary Termination) between September 1, 2008 and February 16, 2009, and was provided the pre-ARRA COBRA notice <i>after</i> February 17, 2009, or has not yet received a COBRA notice	<b>Yes</b>	No	No
Qualifying Event (regardless of whether due to an Involuntary Termination) that occurs between February 17, 2009 and December 31, 2009	<b>Yes</b>	No	No

The population that should receive the various notices is relatively easy to identify, except for the population that is to receive the Second Election Notice. In order to determine the precise population to receive this Second Election Notice, the employer would first need to determine who lost coverage between September 1, 2008 and February 16, 2009 due to an involuntary termination, and then would need to compare that population to the individuals who either declined to elect COBRA or who subsequently dropped the coverage. In light of this complexity, the DOL has suggested in informal discussions that it may be administratively easier for employers to send the Second Election Notice to a relatively broad group of individuals (e.g., all former employees—regardless of how their

employment terminated—and their eligible dependents who are not currently covered by COBRA) rather than determining the precise parameters of the group that must receive the notice.

As noted above, the IRS is expected to issue guidance the week of March 30. We will continue to monitor these developments and update our guidance as warranted.

In the meantime, if you have any questions regarding these materials, please contact **Phil Mowery** (312-609-7642), **Paul Russell** (312-609-7740) or any other Vedder Price attorney with whom you work.

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