

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, 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.

SUMMARY: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5). ARRA includes a 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, 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.

FOR FURTHER INFORMATION CONTACT: Kevin Horahan or Amy Turner, 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 COBRA continuation provisions are subject to ARRA's premium reduction provisions, notice requirements, and an additional election period. The 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 who 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 but not the additional election period.

II. Description of the Model Notices

a. In General

ARRA mandates the provision of three notices – a “General Notice,” an “Alternative Notice,” and a “Notice in Connection with Extended Election Periods.” 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) a description of the opportunity to switch coverage options. The Notice in Connection with Extended Election Periods must also include a description of the extended

¹ In general, an “Assistance Eligible Individual” is an individual who is eligible for COBRA continuation coverage as a result of an involuntary termination of employment at any time from September 1, 2008 through December 31, 2009; and who elects COBRA coverage (when first offered or during the additional election period).

election period.

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 included all of the information required under ARRA while minimizing the burden imposed on group health plans and issuers, the Department created several packages. Each package is designed for a particular group of qualified beneficiaries and contains all of the information needed to satisfy the content requirements for ARRA's 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) who 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 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 above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a

² Under ARRA 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 these notices, the Department has consulted 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.

qualifying event at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event.

The Department has created two versions of this notice. The abbreviated version is for individuals who have elected COBRA and are still covered after experiencing a qualifying event at some time on or after September 1, 2008 to advise them of the availability of the premium reduction and other rights and obligations under ARRA. The longer version includes all of the information related to the premium reduction and other rights and obligations under ARRA as well as 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).³ Providing the longer notice to individuals who have experienced a qualifying event from September 1, 2008 through December 31, 2009 will satisfy the Department's existing requirements for the content of the COBRA election notice as well as those imposed by ARRA.

c. Alternative Notice

The Alternative Notice is required to be sent by issuers that offer group health insurance coverage that is subject to 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 at any time from September 1, 2008 through December 31, 2009, regardless of the type of qualifying event. Continuation coverage requirements vary among States. Thus, the Department crafted a single version of this notice that should be modified to reflect the requirements of the

³ ARRA provides that COBRA election notices already provided for qualifying events occurring during this time period but which did not include information on the availability of the premium reduction are not complete. As such, the end of the 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. Moreover, although under COBRA a timely election may require a plan to make coverage available retroactively to the date of the loss of coverage, ARRA provides no new requirement for a plan to allow an individual to elect COBRA continuation coverage for any period prior to the first coverage period beginning on or after February 17, 2009.

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 abbreviated model General Notice (as appropriate).

d. Notice in Connection with Extended Election Periods

The Notice in Connection with Extended Election Periods is required to be sent by plans that are subject to COBRA continuation provisions under Federal law. It must include the information described above and be provided to any Assistance Eligible Individual (or any individual who would be an Assistance Eligible Individual if a COBRA continuation coverage election were in effect) who: had a qualifying event at any time from September 1, 2008 through February 16, 2009; AND either did not elect COBRA continuation coverage or who elected but subsequently discontinued COBRA. This notice MUST be provided by April 18, 2009, which is 60 days after the date ARRA was enacted.⁴

III. For Additional Information

For additional information about ARRA's COBRA premium reduction provisions, 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.

⁴ ARRA could be read to require Assistance Eligible Individuals with qualifying events from September 1, 2008 through February 16, 2009 who are already enrolled in COBRA coverage to receive both a General Notice and a Notice in Connection with Extended Election Periods with duplicate content. Because the COBRA election information would be of no practical importance to individuals already enrolled, plans may send just the abbreviated General Notice to such individuals and satisfy both ARRA notice requirements if the 60-day time frame for providing the Notice in Connection with Extended Election Periods is satisfied.

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, and 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 7 minutes per respondent, including time for gathering and maintaining the data needed to complete the required disclosure. 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), and Secretary of Labor's Order No. 1-2003, 68 FR 5374 (Feb. 3, 2003).

Signed at Washington, DC this ___17th_____ day of _____ March _____, 2009.

Alan D. Lebowitz
Deputy Assistant Secretary,
Employee Benefits Security Administration.

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