

TRAINING AND EMPLOYMENT NOTICE	NO. 42-08
	DATE May 1, 2009

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: GAY M. GILBERT /s/
Administrator
Office of Workforce Investment

SUBJECT: COBRA Premium Reduction and Extended Eligibility Provisions
in the American Recovery and Reinvestment Act of 2009

1. **Purpose.** To increase awareness of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provisions in the American Recovery and Reinvestment Act of 2009 and inform states and local areas about resources available to assist dislocated workers, businesses, and partners in understanding the new law.
2. **References.** American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Section 3001, 123 Stat. 115 (2009).
3. **Background.** Title III of Division B of the American Recovery and Reinvestment Act of 2009 (the Recovery Act) provides for premium reductions and additional election opportunities for health benefits under COBRA.

COBRA provides workers who lose their jobs, and related health benefits, the right to purchase group health coverage provided by their former employer's plan under certain circumstances. If the employer continues to offer a group health plan, the former employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage.

Under the Recovery Act, assistance eligible individuals pay 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the health coverage provider through a tax credit. An assistance eligible individual is an employee or a member of his/her family who:

- * Is eligible for COBRA continuation coverage at any time from September 1, 2008 through December 31, 2009;
- * Elects COBRA continuation coverage (when first offered or during the additional election period); and
- * Is eligible for COBRA as a result of the employee's involuntary termination from September 1, 2008 through December 31, 2009.

Under the Recovery Act, the term "COBRA continuation coverage" includes continuation coverage required under certain similar state laws.

Those who are eligible for other group health coverage (such as a spouse's plan or new employer's plan) or Medicare are not eligible for the premium reduction. The premium reduction only applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to nine months.

In addition, under the Recovery Act, individuals who did not elect COBRA coverage when they were eligible or elected COBRA but dropped it from September 1, 2008 through February 16, 2009, may be eligible for a new opportunity to elect COBRA coverage and take advantage of the premium reduction.

Plans are required to provide notice to employees and their families to make them aware of their new rights – a general notice regarding the premium reduction which includes the forms individuals need to establish eligibility for the premium reduction, and a notice of the new COBRA election period. The Department of Labor's Employee Benefits Security Administration (EBSA) has issued model notices that plans can use to comply. The model notices are available at www.dol.gov/COBRA.

If a private-sector plan that is subject to COBRA requirements denies any request, the individual can request an expedited review of the denial from the U.S. Department of Labor. EBSA is finalizing an official application form that will be required to be completed for appeals. Individuals will be able to file the application online at www.dol.gov/COBRA or print the application from the Web site and mail or fax it to the Department. The Department must make a determination within 15 business days of receipt of a completed application for review. Appeals under other plans are handled by the U.S. Department of Health and Human Services (for additional information please consult the resources identified in Section 4.)

Part VI of Title I-I of Division B of the Recovery Act also makes several amendments to the Health Coverage Tax Credit (HCTC) provisions that were enacted as part of the Trade Act of 2002. The HCTC assists certain individuals who become eligible for trade adjustment assistance and certain retired employees who are receiving pension payments from the Pension Benefit Guaranty Corporation (PBGC) in paying for qualified health insurance coverage, including COBRA continuation coverage. Under those provisions, eligible individuals may either claim a year-end tax credit or have monthly advance payments made on their behalf in an amount equal to 65

percent of the amount paid for qualified health insurance coverage. The Recovery Act increases the amount of the credit to 80 percent of the premium amount for coverage months beginning on or after May 1, 2009 and before January 1, 2011, and provides temporary extensions of the maximum period of COBRA continuation coverage for PBGC recipients (covered employees who have a nonforfeitable right to a benefit any portion of which is to be paid by the PBGC) and TAA-eligible individuals. The Recovery Act also amends the definition of eligible TAA recipients for purposes of HCTC to include certain TAA recipients who are in breaks in training and certain TAA recipients who are receiving unemployment compensation regardless of whether they have met TAA enrollment in training requirements (see Unemployment Insurance Program Letter 21-09 for a further description of the changes to the definition).

4. Resources. EBSA is providing assistance to employees and their families as well as employers regarding the new COBRA provisions. The public can contact EBSA toll-free at 1-866-444-3272 (EBSA) or electronically at www.askebsa.dol.gov for assistance from EBSA Benefit Advisors across the country to answer questions, provide information, and informally resolve benefit disputes.

EBSA also is engaged in an outreach and education campaign to create awareness and understanding of the new COBRA provisions by dislocated workers, their families, and businesses to assist them in taking the timely actions necessary to exercise their rights and responsibilities. For example, plans are required to provide the notice of the new COBRA election period by April 18 and dislocated workers and their families have 60 days from receipt of the notice to elect COBRA coverage.

The campaign includes, among other efforts:

- A dedicated Web page, www.dol.gov/COBRA which includes educational information (fact sheet, frequently asked questions (FAQs), publications), compliance assistance materials (FAQs for employers, model notices, publications, guidance), tools to use for outreach (posters, flyers, and shortly videos), tools to assist individuals in exercising their right to expedited review by the Department (a downloadable version of the official application and the ability to file online (available shortly)), as well as information on upcoming outreach events sponsored by EBSA. The Agency is providing many of these materials on the Web page in Spanish. EBSA is encouraging visitors to subscribe for notice of updates to the page. The Web page also includes links to the COBRA Web pages of the U.S. Department of Health and Human Services and the Internal Revenue Service.
- Posters and flyers for distribution to create awareness among dislocated workers and their families as well as employers in English and Spanish.
- Updates to three publications: Retirement and Health Care Coverage...Questions and Answers for Dislocated Workers; An Employee's Guide to Health Benefits Under COBRA; and, An Employer's Guide to Group Health Continuation Coverage Under COBRA. The Spanish versions of these

three publications also will be updated. EBSA also is updating additional COBRA materials.

- A video of EBSA's rapid response presentation which includes information on the new COBRA provisions. EBSA is in the process of developing this video in Spanish as well as a video solely on the new COBRA provisions to help individuals understand their new rights and responsibilities.
- Webcasts and expanded health compliance seminars to assist employers in understanding their new responsibilities.

5. **Action Requested.** Addressees are requested to share this information with dislocated workers, businesses, and partners in their local areas as appropriate by linking their Web site to EBSA's dedicated COBRA page, placing posters and flyers in their office and making other materials available to visitors. EBSA is preparing to send the addressees hard copies of the posters, flyers and official application for requesting the Department's review. Additional copies of the posters, flyers, and application as well as copies of the fact sheet, publications, or video can be requested as noted below.

6. **Inquiries.** For questions or additional copies of materials, contact Debra Golding at (202) 693-8665.