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FOLLOW-UP TO CLIENT ALERT  
The American Recovery and Reinvestment Act of 2009

Dear Clients:

We are writing in follow-up to our recent client alert. We are attaching a recently published fact sheet from the United States Department of Labor (DOL) regarding the new COBRA changes overviewed in our recent client alert. You will note that DOL has indicated that employers have 60 days from February 17, 2009 to issue the notices discussed in our client alert. As previously noted, DOL has 30 days from February 17, 2009 to issue model notices. As of yet, these have not been issued by DOL.

Sincerely,

Angela L. Thomas

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Attachment

The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.

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# Fact Sheet



U. S. Department of Labor  
Employee Benefits Security Administration  
February 26, 2009

## COBRA PREMIUM REDUCTION

The American Recovery and Reinvestment Act of 2009 (ARRA) provides for premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium reduction applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months.

### COBRA

COBRA gives workers who lose their jobs, and thus their health benefits, the right to purchase group health coverage provided by the plan under certain circumstances.

If the employer continues to offer a group health plan, the 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.

The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage, otherwise they lose all rights to COBRA benefits.

**Note:** COBRA generally does not apply to plans sponsored by employers with less than 20 employees. Many States have similar requirements for small plans providing benefits through an insurance company. The premium reduction is available for plans covered by these State laws.

### Changes Regarding COBRA Continuation Coverage Under ARRA:

**Premium Reduction:** The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals".

An "assistance eligible individual" is the employee or a member of his/her family who:

- is eligible for COBRA continuation coverage at any time between September 1, 2008 and December 31, 2009;
- elects COBRA coverage; and
- is eligible for COBRA as a result of the employee's involuntary termination between September 1, 2008 and December 31, 2009.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for premiums paid for periods of coverage prior to February 17, 2009.

ARRA treats assistance eligible individuals who pay 35 percent of their COBRA premium as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes. If the credit amount is greater than the taxes due, the Secretary of the Treasury will directly reimburse the employer, insurer or plan for the excess.

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction starts on March 1, 2009 for plans that charge for COBRA coverage on a calendar month basis. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 9 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

**Special COBRA Election Opportunity:** Individuals involuntarily terminated from September 1, 2008 through February 16, 2009 who did not elect COBRA when it was first offered OR who did elect COBRA, but are no longer enrolled (for example because they were unable to continue paying the premium) have a new election opportunity. This election period begins on February 17, 2009 and ends 60 days after the plan provides the required notice. This special election period does not extend the period of COBRA continuation coverage beyond the original maximum period (generally 18 months from the employee's involuntary termination). COBRA coverage elected in this special election period begins with the first period of coverage beginning on or after February 17, 2009. This special election period opportunity does not apply to coverage sponsored by employers with less than 20 employees that is subject to State law.

**Notice:** Plan administrators must provide notice about the premium reduction to individuals who have a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009. Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event. This notice must go to all individuals, whether they have COBRA coverage or not, who had a qualifying event from September 1, 2008 through December 31, 2009.

Individuals eligible for the special COBRA election period described above also must receive a notice informing them of this opportunity. This notice must be provided within 60 days following February 17, 2009.

**Expedited Review of Denials of Premium Reduction:** Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The Department is currently developing a process and an official application form that will be required to be completed for appeals.

**Switching Benefit Options:** If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage can not be coverage that provides only dental, vision, a

health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

***Income limits:*** If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds \$145,000 (or \$290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between \$125,000 and \$145,000 (or \$250,000 and \$290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at [www.irs.gov](http://www.irs.gov)

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: (202) 693-8664; TTY: 1-202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.