

## COBRA Notice Requirements

Last Updated: April 21, 2010

Several pieces of recent legislation have had important impacts on the administration of federal COBRA benefits. The American Recovery and Reinvestment Act (ARRA) from February 17, 2009 established COBRA subsidies of 65% of the premium cost available to certain Assistance Eligible Individuals (AEIs) for a period of up to 9 months in conjunction with involuntary terminations of employment through December 31, 2009. The Department of Defense Appropriations Act of 2010 (DOD Act) amended ARRA and extended these subsidies for an additional 6 months (now a total of 15) for involuntary terminations through February 28, 2010. The Temporary Extension Act of 2010 (TEA) pushed the involuntary termination date to March 31, 2010, and the Continuing Extension ACT of 2010 (CEA) further extended the deadline to May 31, 2010. Additionally, these new laws (collectively referred to hereafter as "ARRA as Amended") provided several new election opportunities for individuals who may have previously been offered and did not elect COBRA or elected and subsequently discontinued COBRA.

There are now, more than ever, many different COBRA notices that are either required or recommended by the federal Department of Labor (DOL); some are the responsibility of the employer, some are the responsibility of the employee and/or Qualified Beneficiaries, and some are the responsibility of the Plan Administrator (or the employer if the employer and Plan Administrator are one in the same).

The following chart lists each of the COBRA notices, the individual responsible for initiating the notice, and important information regarding the purpose and timing of the notice as impacted by ARRA as Amended. While not all notices are required in every situation, employers and their Plan Administrators should be familiar with all of them.

Notification Document	Responsible Party	Important Information
<b>General Notice*</b> (previously called Initial Notice)	Plan Administrator	<p>The General Notice must be sent to the covered employee and the covered employee's spouse no later than 90 days from commencement of coverage, or 90 days from the Plan being required to comply, or the first date on which the Plan Administrator is required to furnish a Notice of Qualifying Event.</p> <p>Notices should not be given to newly hired employees prior to their enrolling in the available plan(s).</p> <p>A separate notice does not need to be sent to a covered spouse if the employer's most recent information indicates that the covered spouse resides at the same address as the employee, the notice is addressed to both, and the spouse's coverage commences at the same time. There is no requirement to send the General Notice to any covered dependent child who lives at the same address as the employee or spouse. First-class mail is acceptable, but some method of proof of mailing is recommended.</p> <p>There are approximately 20 points that <b>must</b> be covered in this Notice, including the name and contact information of each of the plan(s). Thus, if an employer has plans with different effective dates, a separate General Notice must be sent to all Qualified Beneficiaries for each plan.</p> <p>All Summary Plan Descriptions (SPDs) must include information about COBRA rights. If the SPD has all of the information required in the General Notice and is distributed within the proper timeframe, the SPD can be given in lieu of the General Notice. However, most SPDs fall short in this area. As a result, we recommend providing a General Notice in addition to the SPD.</p>

Notification Document	Responsible Party	Important Information
<b>Notice to Plan Administrator</b>	Qualified Beneficiary (employee or covered dependent)	<p>Qualified Beneficiaries must advise the Plan Administrator, within 60 days, of one of the following Qualifying Events: a divorce/legal separation, dependent child ceasing to be a dependent child, a Secondary Event, Social Security disability eligibility, or change in Social Security disability status.</p> <p>Employers must have specific written procedures on how this Notice is to be provided and the timeframe in which they must advise Qualified Beneficiaries. Absent written procedures, any form of notice, including verbal notice, provided by the Qualified Beneficiary within the required timeframe will be deemed sufficient. It is recommended that the written procedure be included in the General Notice.</p>
<b>Notice of Unavailability</b>	Plan Administrator	<p>Upon receipt of a Notice to Plan Administrator submitted by a Qualified Beneficiary, if it is determined that the Qualified Beneficiary is not entitled to continued coverage, the Plan Administrator must provide a written explanation to the Qualified Beneficiary within 14 days of being advised of the occurrence.</p>
<b>Election Notice*</b> (previously called Qualifying Event Notice)	Plan Administrator	<p>When a Qualifying Event has occurred, this Notice must go to each Qualified Beneficiary except that a single notice may go to a covered employee and spouse residing at the same address, or to the covered employee or spouse for each dependent child at the same address. This Notice appraises the Qualified Beneficiaries of their right to elect COBRA.</p> <p>The Employer has 30 days to notify the Plan Administrator of a Qualifying Event. The Plan Administrator then has 14 days to send the Election Notice. Where the Employer is the same as the Plan Administrator, they have a cumulative 44 days to send the Notice. First-class mail is acceptable, but some method of proof of mailing is recommended.</p> <p>There are 14 points that the federal DOL has recommended be covered in the standard notice. ARRA as Amended now requires the inclusion of additional information* in this notice.</p> <p>FOR CALIFORNIA ONLY: A HIPP Notice* from the California Department of Health must also be included.</p>
<b>Extended Election Period Notice - due 4/18/2009*</b>	Plan Administrator	<p>ARRA provided an extended election period for individuals (and their Qualified Beneficiaries) involuntarily terminated from 9/1/08 through 2/16/09 who did not elect COBRA when it was first offered or who did elect COBRA but were no longer enrolled as of 2/17/09.</p> <p>This Notice must include all of the elements contained in the Qualifying Event Election Notice (including ARRA information as described above), a description of the extended election period, and instructions regarding the extended election process.</p> <p><b>NOTE: This Notice was due by 4/18/09.</b> Plan Administrators who missed the deadline should still issue the required notice immediately to mitigate any penalties for non-compliance.</p>

Notification Document	Responsible Party	Important Information
<p><b>Premium Assistance Extension Notice - due on or before 2/17/2010*</b></p>	<p>Plan Administrator</p>	<p>The DOD Act extended the ARRA subsidy from 9 to 15 months, made the subsidy available to individuals involuntarily terminated through February 28, 2010, and provided extended payment grace periods for individuals whose subsidy had previously expired. This Notice must be provided to Employees and Qualified Beneficiaries who:</p> <ul style="list-style-type: none"> <li>• were receiving premium assistance as of October 31, 2009 <b>AND</b> <ul style="list-style-type: none"> <li>○ received the full 9 months of premium subsidy under ARRA and did not make any payment for subsequent periods of coverage, <b>OR</b></li> <li>○ made payment of the 35% (or some other amount that is less than the full premium), <b>OR</b></li> <li>○ made payment of the full premium to maintain coverage absent the subsidy;</li> </ul> </li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>• become AEIs or experienced an involuntary termination on or after October 31, 2009 but were not provided a notice that included information about the subsidy extension under the DOD Act.</li> </ul> <p>NOTE: <b>This Notice was due on or before February 17, 2010.</b> For those whose 9-month subsidy expired prior to the enactment of the DOD Act (December 19, 2009), this Notice was due within 60 days of the expiration of their subsidy. All others were to receive this Notice no later than 60 days from the enactment of the DOD Act (December 19, 2009). Plan Administrators who missed the deadline should still issue the required notice immediately to mitigate any penalties for non-compliance.</p>
<p><b>Extended Election Period Notice - March and April<sup>1</sup> 2010 Terminations*</b></p>	<p>Plan Administrator</p>	<p>This Notice, required by the TEA and the CEA, must be provided to Employees and all Qualified Beneficiaries who:</p> <ul style="list-style-type: none"> <li>• experienced a Qualifying Event that was an involuntary termination of employment between March 1 and May 31, 2010; <b>AND</b></li> <li>• were provided a COBRA notice that did not inform them of their rights based on the TEA and/or the CEA amendments to ARRA; <b>AND</b></li> <li>• either did not elect COBRA when first offered, or elected and subsequently discontinued COBRA.</li> </ul> <p>This Notice is due within the same timeframes as the regular Election (Qualifying Event) Notice.</p>

<sup>1</sup> This Notice should be used for applicable Qualifying Events prior to the enactment of the CEA (April 15, 2010) and assumes that all individuals who lose coverage after that date will be provided with the new, updated Election (Qualifying Event) Notice that includes the necessary information.

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<b>New Election Period Notice - Previous Reduction in Hours*</b>	Plan Administrator	<p>This Notice, required by the TEA and the CEA, must be provided to Employees and all Qualified Beneficiaries who:</p> <ul style="list-style-type: none"> <li>• experienced a Qualifying Event that was a reduction in hours on or after September 1, 2008; <b>AND</b></li> <li>• subsequently experienced an involuntary termination of employment between March 2 and May 31, 2010; <b>AND</b></li> <li>• either did not elect COBRA when first offered due to the reduction in hours, or elected and subsequently discontinued COBRA.</li> </ul> <p>This Notice must be provided within 60 days of the date of termination.</p>
<b>Supplemental Information Notice*</b>	Plan Administrator	<p>This Notice, required by the TEA and the CEA, must be provided to Employees and all Qualified Beneficiaries who previously elected COBRA for one of the following reasons and have maintained COBRA coverage through the current date:</p> <ul style="list-style-type: none"> <li>• experienced a Qualifying Event that was a reduction in hours on or after September 1, 2008 and subsequently experienced an involuntary termination of employment between March 2 and May 31, 2010. Notice for these individuals must be provided within 60 days of their termination of employment.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>• experienced an involuntary termination of employment any time in March or April<sup>2</sup> 2010 for which notice of availability of the premium subsidy was not originally given. Notice for these individuals must be provided within the same timeframes as the regular Election Notice.</li> </ul>
<b>Summary of the COBRA Premium Reduction Provisions under ARRA as Amended*</b>	Plan Administrator	<p>This Notice, required by ARRA as Amended, must be provided to Employees and all Qualified Beneficiaries at the same time as the Election (Qualifying Event) Notice, <b>OR</b> the Extended Election Period Notice, <b>OR</b> the New Election Period Notice, <b>OR</b> the Supplemental Information Notice, up until the date ARRA as Amended ceases to provide premium subsidies.</p>
<b>Request for Treatment as an Assistance Eligible Individual*</b>	Plan Administrator	<p>This document, required by ARRA as Amended, must be provided to Employees and all Qualified Beneficiaries at the same time as the Election (Qualifying Event) Notice, <b>OR</b> the Extended Election Period Notice, <b>OR</b> the New Election Period Notice, <b>OR</b> the Supplemental Information Notice, up until the date ARRA as Amended ceases to provide premium subsidies.</p>
<b>Participant Notification of other group health plan coverage or Medicare</b>	Qualified Beneficiary (employee or covered dependent)	<p>Any Assistance Eligible Individual who elects COBRA must notify the Plan, in writing, if he/she becomes eligible for other group health plan coverage or Medicare. Failure to provide such notification may subject the individual to a penalty of 110% of the premium reduction.</p>
<b>Extension Notification</b>	Plan Administrator	<p>Federal COBRA coverage can be extended from 18 to 36 months because of a Secondary Event, Medicare entitlement, or Social Security disability.</p> <p>The DOL strongly encourages employers to inform any Qualified Beneficiary of the new continuation timeframe, monthly rates (which can be 150% of premium in the case of Social Security disability), premium due dates, and reasons coverage can be cancelled prior to the end of the maximum extension period.</p>
<b>Open Enrollment Notification</b>	Plan Administrator	<p>During any Open Enrollment period, COBRA participants must be advised of any plan and/or premium changes and given the same options provided to active employees. For the purposes of Open Enrollment, COBRA Participants are individuals currently enrolled and paying for COBRA, individuals in their 60-day election period, and individuals who have elected, but not yet paid for, COBRA.</p>

<sup>2</sup> This Notice should be used for applicable Qualifying Events prior to the enactment of the CEA (April 15, 2010) and assumes that all individuals who lose coverage after that date will be provided with the new, updated Election (Qualifying Event) Notice that includes the necessary information.

Notification Document	Responsible Party	Important Information
<b>Notification of Plan Changes</b>	Plan Administrator	Notification of Plan and/or benefit modification must be communicated to all Plan participants, including COBRA participants, as required by the Employee Retirement Income Security Act (ERISA). This Notice must be provided within 60 days after the change has been adopted by the plan.  The IRS requires that all Qualified Beneficiaries be notified of any rate change prior to charging them the new rate.
<b>Notice of Early Termination of Coverage</b>	Plan Administrator	If an employer terminates a plan, Qualified Beneficiaries must be informed of the early termination of COBRA coverage, the reason for termination, and description of any rights they have to other coverage (example: California's 18-month continuation requirement).
<b>Right to Convert Notice</b>	Plan Administrator	Must be sent to COBRA participants within 180 days prior to the expiration of their COBRA coverage, if a conversion option is provided under the Plan. (The insurance carrier sometimes sends this Notice, but the Plan Administrator is responsible for ensuring it is sent in a timely fashion; therefore, it is recommended to send a notice separate from any notice sent by carrier.)
<b>Notice of Insignificant Premium Underpayment</b>	Plan Administrator	COBRA participants may not have their coverage terminated for underpaying premiums when the shortfall is considered "insignificant" (a shortfall is not significant if it is no greater than the lesser of \$50 or 10% of the required amount).  This Notice advises the Qualified Beneficiary of the underpayment amount and the fact that coverage will terminate if balance of payment is not received within 30 days from the date of the notice.  Absent this notice, it is presumed the Plan Administrator is accepting the underpayment as payment in full.
<b>Disclosure to Health Care Provider</b>	Plan Administrator	The Plan Administrator is required to provide complete information regarding a Qualified Beneficiary's coverage status to an inquiring Healthcare Provider. In other words, if a Qualified Beneficiary is not covered during the election period, the Plan Administrator must inform an inquiring Healthcare Provider that while the Qualified Beneficiary doesn't have current coverage, the coverage will be retroactive if he/she elects and pays for COBRA. The regulations do not require written notice, so any verbal notice of this kind should be documented.

*All documents shown above with an asterisk (\*) are included in [Vantaggio HR's COBRA Notice Kit](#).*

*Due to the costly fines and penalties that can be assessed and the significant liability for the employer in the event someone does not receive the appropriate coverage, we urge our clients to take COBRA administration very seriously. You should review and update all COBRA procedures and documents on no less than an annual basis, or more frequently as the law changes.*

*If you do not have a third-party administrator (TPA) for COBRA, please contact Vantaggio for a recommendation. Although we believe that a competent TPA is the best course of action, for our clients who elect to keep this function in-house, we have developed a self-administration kit. Please click here for more details: [Vantaggio HR's COBRA Notice Kit](#).*

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