

TRAINING AND EMPLOYMENT NOTICE	NO. 14-09
	DATE November 16, 2009

TO: STATE WORKFORCE AGENCIES
 STATE WORKFORCE ADMINISTRATORS
 STATE WORKFORCE LIAISONS
 STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
 STATE LABOR COMMISSIONERS
 ONE-STOP CENTER SYSTEM LEADS
 COMPREHENSIVE AND AFFILIATE ONE-STOP CAREER CENTER
 DIRECTORS
 STATE RAPID RESPONSE COORDINATORS

FROM: JANE OATES /s/
 Assistant Secretary

SUBJECT: Notice to One-Stop Career Centers and Others Concerning 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. **Most of the language in this notice is identical to TEN 42-08, and is repeated because two important groups of addressees have been added. For those who received the previous notice, all of the new material is highlighted in boldface type. Most of the additions are in Section 5 (Action Requested) and Section 7 (Attachments).**
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 **has finalized** an official application form that will be required to be completed for appeals. Individuals **can** 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 (**such as state or municipal 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).

NOTE: At the time of the issuance of this TEN, legislation was pending that would extend the COBRA premium reduction. Please check EBSA's COBRA web page at www.dol.gov/COBRA for updates.

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 tollfree 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 COBRA election period **and their rights to the premium reduction**, 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 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), 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 **have been** 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 **has developed** this video in Spanish as well.
- 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 **has sent the One-Stop Career Centers** hard copies of the **appropriate flyers, a fact sheet and the official application for requesting the U.S. Department of Labor's (DOL) review for individuals whose employer or health insurance plan denied them the COBRA premium reduction. Copies** of the posters – **and additional copies of the flyers, fact sheet and application for DOL review** -- as well as copies of **other publications and a video** can be requested as noted below.

The premium reduction is extremely valuable to eligible individuals, who can pay almost two thirds less to continue their health coverage for up to nine months. In view of the One-Stop Career Centers' role as a vital link in service delivery for dislocated workers, ETA requests that the One-Stop Career Centers make available to all relevant customers the EBSA materials listed below. Please note that all of the documents listed below (except the application form) are attached to this notice. The Internet addresses are included for your convenience.

Documents for Workers or Former Workers

- COBRA poster in the format of a flyer (www.dol.gov/ebsa/pdf/joblossposter2.pdf in English, and www.dol.gov/ebsa/pdf/joblosspostersp2.pdf in Spanish).
- COBRA flyer for individuals (www.dol.gov/ebsa/pdf/cobrastimulusflyer2.pdf in English, and www.dol.gov/ebsa/pdf/cobrastimulusflyersp2.pdf in Spanish).
- COBRA flyer for individuals whose employer or health insurance plan denied them the COBRA premium reduction (www.dol.gov/ebsa/pdf/distributionflyer09.pdf in English, and www.dol.gov/ebsa/pdf/distributionflyersp09.pdf in Spanish).
- Official application for DOL review for individuals whose employer or health insurance plan denied them the COBRA premium reduction (www.dol.gov/ebsa/COBRA/main.html).

Documents for Employers

- COBRA flyer for employers (www.dol.gov/ebsa/pdf/cobrastimulusflyer1.pdf in English, and www.dol.gov/ebsa/pdf/cobrastimulusflyersp1.pdf in Spanish).

ETA also requests that One-Stop Career Centers review the information on the EBSA Web site dedicated to explaining this benefit to individuals who have lost their jobs in

the current economic recession, and make available to individuals and employers any other relevant flyer from this EBSA Web site (www.dol.gov/ebsa/COBRA.html).

All recipients of this TEN are invited to participate in a Webinar jointly hosted by ETA and EBSA to explain the COBRA provisions under the Recovery Act. The Webinar will be conducted on Monday, November 23, 2009, from 2:00 to 3:00 p.m. Eastern Standard Time. ETA will include instructions on how to sign up for this Webinar in a subsequent invitation.

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

7. **Attachments.** For your convenience, the EBSA documents listed below are attached to this notice. If you would like free copies of the full-size version of the poster, printed versions of the flyers listed below, the application to request DOL review, or any other documents (such as a *Frequently Asked Questions* document or *Retirement and Health Care Coverage...Questions and Answers for Dislocated Workers* – known as the red book), visit EBSA’s dedicated COBRA Web site (www.dol.gov/ebsa/COBRA.html), or call EBSA toll-free at 1-866-444-3272.
 - The COBRA poster in the format of a flyer (in English and Spanish)
 - COBRA flyer for individuals (in English and Spanish)
 - Flyer for individuals whose employer or health insurance plan denied them the COBRA premium reduction (in English and Spanish)
 - COBRA flyer for employers (in English and Spanish)