

Finding and Fixing Errors Through A COBRA Compliance Review

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More and more employers and administrators are focusing on COBRA compliance issues, particularly in light of the relatively new rules governing the COBRA excise tax. Under these rules, as explained more fully in ¶1511 of the *Guide*, the COBRA excise tax is enforced through a self-reporting approach. Among the principles governing the COBRA excise tax system are rules that do not

See *Compliance Review*, p. 2

COBRA Legislative Review Foreshadows its Future

By Constance Gilchrest



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Generally, when driven people say they will do something, it happens — one way or the other.

The 111th Congress, which convened in 2009-2010, was driven to action when the issue was COBRA. The following laws illustrate this persistence:

- On Feb. 17, 2009, President Obama signed into law H.R. 1, the American Recovery and Reinvestment Act of 2009 (ARRA). This could also be referred to as “*The bill that kept on giving.*”

See *Legislative Review*, p. 6

Also In This Issue

Court Clarifies Employer's Evidence Burden In Allowing Notice Claims to Advance..... 4

Arrivederci ARRA — for the Most Part..... 8

Cumulative Index 8

Practice Tool

HCTC Extension Inching Along 6

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The major change was the 65-percent COBRA subsidy for up to nine months for assistance-eligible individuals who had an initial qualifying event for an involuntary termination of employment on or after Sept. 1, 2008, and on or before Dec. 31, 2009.

- On Dec. 19, 2009, H.R. 3326, the Department of Defense Appropriations Act of 2010 extended the ARRA subsidy eligibility period to Feb. 28, 2010. The maximum ARRA subsidy period increased from nine months to 15 months.
- On March 2, 2010, H.R. 4691, the Temporary Extension Act of 2010 extended the ARRA subsidy eligibility period under from Sept. 1, 2008, to March 31, 2010. Other changes related to reduction-of-hours qualifying events.
- On April 15, 2010, H.R. 4851, the Continuing Extension Act of 2010, extended the ARRA subsidy eligibility period one last time to May 31, 2010.
- Finally, on Dec. 29, 2010, H.R. 6517, the Omnibus Trade Act of 2010, extended the maximum COBRA coverage period for Health Coverage Tax Credit (HCTC) recipients from Dec. 31, 2010, to Feb. 12, 2011. The HCTC's 80-percent subsidy ended on Feb. 12, 2011, as well. (See sidebar for an update, however.)

COBRA has not met its death as some had greatly anticipated or expected. The new health care reform law,

the Patient Protection and Affordable Care Act, did not eliminate COBRA or change the rules. As a matter of fact, it is quite the opposite. Congress is still working on COBRA provisions to make it a part of the health care reform equation.

As of the date of this writing, several COBRA bills have been introduced in the 112th Congress. Divided into three categories, here are the latest actions for each bill and a brief description of their COBRA provisions if they were to be signed into law:

Bills That Would Expand the Definition of a Qualified Beneficiary

- **S. 598:** The Respect for Marriage Act of 2011 was introduced by Sen. Dianne Feinstein (D-Calif.). It would repeal the Defense of Marriage Act (DOMA) and ensure respect for state regulation of marriage. This would affect the definition of a qualified beneficiary under COBRA, which has always been limited to a lawfully wedded, opposite-sex spouse. A domestic partner would be considered a qualified beneficiary and would have the same rights as a similarly situated active employee. On July 20, 2011, this bill went before the Senate Judiciary Committee with a scheduled hearing.
- **S. 563/H.R. 1028/H.R. 2310:** The Equal Access to COBRA Act of 2011 was introduced by Sen. Barbara Boxer (D-Calif.), former Rep. Anthony Weiner (D-N.Y.) and Rep. Jackie Speier (D-Calif.),

See Legislative Review, p. 7

HCTC Extension Inching Along

At least in the Senate, a consensus is being reached on trade adjustment assistance that could lead to an extension of premium subsidies under the Health Coverage Tax Credit (HCTC) program.

Here are two snippets from a joint statement issued Aug. 3:

[Senate Majority Leader Harry Reid (D-Nev.)]: "My staff and Senator McConnell's staff have been in discussions for weeks over the Trade Adjustment Assistance [TAA] program and the three outstanding FTAs [free trade agreements]. We believe those discussions have provided a path forward in the Senate after we return for passage of the bipartisan compromise on the Trade Adjustment Assistance program, followed by passage of the three FTAs."

[Senate Minority Leader Mitch McConnell (R-Ky.)]: "I agree with the Majority Leader that we have a path forward on TAA and the Free Trade Agreements."

The HCTC program was enacted as part of the Trade Act of 2002 to certain workers receiving benefits through programs like TAA. (For more details on the HCTC program, see ¶1284 of the *Guide*.)

TAA programs must be periodically reauthorized, and as part of that process, the White House on June 28 announced an agreement that included increasing the HCTC from 65 percent to 72.5 percent. While TAA enjoys broad bipartisan support, Congress had been debating along party lines under what procedure a TAA extension will be enacted. (See August newsletter.) While the Aug. 3 statement points to a possible consensus on that procedure, it looks like any extension won't happen though, until Congress reconvenes in September. 🏠

Legislative Review (continued from p. 6)

respectively. It would amend the Internal Revenue Code regarding the definition of a qualified beneficiary, expanding that term to include a domestic partner. The Senate bill is currently pending in the Senate Committee on Health, Education, Labor and Pensions (HELP) and the two House bills were referred to three House committees.

The chances of the above DOMA-repeal bills passing on their own are unlikely. However, they could find their way into law as an amendment to another bill. Clearly, there is growing sentiment to repeal DOMA, which was, ironically, signed into law by a Democratic president.

Bills Related to the HCTC and Trade Adjustment Assistance (TAA)

- **S. 1117:** The TAA Health Coverage Improvement Act was introduced by Sen. John D. Rockefeller (D-W.Va.). This bill would extend temporary provisions for the HCTC and also increase the subsidy amount from 65 percent to 95 percent, retroactive to Feb. 13, 2011. On May 26, 2011, it was referred to the Senate Finance Committee.
- **S. 308:** The Trade Extenders Act was introduced by Sen. Robert P. Casey, Jr. (D-Pa.). This bill would extend the all TAA programs (including the HCTC, which would increase to 80 percent)

through June 30, 2012. On Feb. 8, 2011, the bill was referred to the Senate Finance Committee.

- **S. 221:** Introduced by Sen. Sherrod Brown (D-Ohio), this bill would amend the tax code to extend the HCTC. This would extend the COBRA benefits for certain TAA-eligible individuals and Pension Benefit Guaranty Corporation recipients to June 30, 2012, and would apply to periods of coverage retroactive to Feb. 12, 2011. This bill is currently pending with the Senate Finance Committee.

Other COBRA-related Bills

- **S. 150:** The Health Care and Training for Older Workers Act was introduced by Sen. Herb Kohl (D-Wis.). This bill would provide 36 months of COBRA coverage for an employee who experiences a reduction of hours and is at the early retirement age but not yet entitled to Social Security benefits. On Jan. 25, 2011, this bill was referred to the Senate HELP Committee.
- **H.R. 1654:** The Medicare Enrollment Protection Act of 2011 was introduced by Rep. Kurt Schrader (D-Ore.). This bill would establish a special enrollment period for seniors who miss their enrollment periods due to problems with COBRA coverage. It would also create a continuous enrollment period that would allow seniors to sign up for Medicare Part B outside of the general enrollment period, and receive health coverage the following month. On April 25, 2011, this bill was referred to the House Subcommittee on Health.



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25 Years — and More

April 7, 2011, marked the 25th anniversary of COBRA. Secretary of Labor Hilda L. Solis stated COBRA has assisted some 50 million workers and their families maintain affordable health coverage:

For 25 years, COBRA has been an essential safety net for those workers who play by the rules, yet still find themselves weathering difficult times. ... And, we are focused on ensuring that these jobs offer not just a means for Americans to provide for their families but also the very health coverage benefits that COBRA helps keep in place during times of need.

With everything going on regarding health care reform, one can only speculate what will happen during the 112th Congress. Everyone should keep their ears and eyes open for future actions that could extend COBRA provisions. As Congress continues to work on various bills to assist the uninsured, it does not appear COBRA is going down like the sinking Titanic. 🏠