



**Newly Extended COBRA Subsidy Rules  
Require Employers, Administrators Send Required Notices & Update Health  
Plan Documents & Procedures Quickly**

*December 30, 2009*

Employer and union sponsored group health plans, their sponsors and administrators must act quickly to provide required notifications and implement other plan document and procedural changes required to comply with the extension and expansion of temporary "COBRA Subsidy Rules" for "assistance eligible individuals" signed into law as part of the Department of Defense Appropriations Act (H.R. 3326).

The COBRA Subsidy Rules originally were added to the group health plan medical coverage continuation requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") by the American Recovery and Reinvestment Act of 2009 ("AARA") last February.

H.R. 3326 extended the period that employer and union-sponsored group health plans must allow employees and members of their family that lose group health plan coverage due to an involuntary employment loss to continue their group medical coverage under the reduced premium and other temporary ARRA COBRA Subsidy Rules and lengthened the period during which an involuntary employment loss can qualify an otherwise COBRA-eligible employee or dependent as an assistance eligible individual. Health plan administrators must provide notifications to assistance eligible individuals and restore COBRA eligibility and coverage at reduced premiums for certain assistance eligible individuals who allowed their coverage to lapse before the extension.

**Original COBRA Subsidy Rules**

As originally enacted, the ARRA COBRA Subsidy Rules limited the COBRA premium that a COBRA-covered group health plan could charge a COBRA-eligible employee or dependent whose group health plan eligibility ended due to an involuntary employment loss between September 1, 2008 and December 31, 2009 ("assistance eligible individual") to 35% of the otherwise applicable COBRA premium (the "Reduced ARRA Premium") for a period of up to 9 months (the "Subsidy Period"). ARRA dictated that employers sponsoring these group health plans must pay the remaining 65% of the COBRA premium (the "COBRA Subsidy") for the assistance eligible individual during the Subsidy Period, but allowed employers to seek reimbursement by claiming a payroll tax credit for these COBRA Subsidy payments by complying with applicable IRS procedures. AARA also mandated that group health plans offering a choice of coverage options offer assistance eligible individuals the option to switch coverage options and required group health plans to notify assistance eligible individuals of the special COBRA Subsidy Rules.

**H.R. 3326 COBRA Subsidy Rules Extension**

H.R. 3326 amended the original COBRA Subsidy Rules effective immediately. It:

- Extends the period during which an involuntary employment loss can qualify an otherwise COBRA-eligible employee or dependent as an assistance eligible individual for an additional two months (from December 31, 2009 to February 28, 2010);

- Adds an additional 6 months (from 9 to 15 months) to the Subsidy Period during which an assistance eligible individual experiencing an involuntary loss of employment between September 1, 2008 and February 28, 2010 is entitled to pay the Reduced AARA Premium;
- Requires group health plans to notify assistance eligible individuals of the extension; and
- Requires group health plans to allow additional time for assistance eligible individuals who had exhausted their original 9-month Subsidy Period before H.R. 3326 extended the Subsidy Period to 15 months to pay the Reduced AARA Premium related to the extension.

### **Quick Action Required To Comply With Notification Mandates**

Group health plans, their employer or union sponsors, administrators, insurers and service providers will need to act quickly to prepare and provide required updated notifications to assistance eligible individuals of these extended eligibility periods and their resulting rights, and otherwise update their plan documents, procedures, and COBRA notifications in light of these new rules. H.R. 3326 requires that group health plan administrators provide written notice about the changes made to the premium reduction provisions of ARRA individuals who have already been provided a COBRA election notice (unless the election notice included the updated premium reduction information). H.R. 3326 mandates that required notices be provided no later than the following fast-approaching deadlines:

- Individuals who are "assistance eligible individuals" must be provided this notice by February 17, 2010;
- Individuals who experience a termination of employment on or after October 31, 2009 and lose health coverage must be provided this notice within the normal timeframes for providing continuation coverage notices; and
- Individuals who are in a "transition period" (a period that begins immediately after the end of the nine months of premium reduction in effect under ARRA before the amendments made by H.R. 3326, as long as those nine months ended before December 19, 2009 and the premium reduction provisions of H.R. 3326 would apply due to the extension from nine to 15 months) must be provided this notice within 60 days of the first day of the transition period.

While these are the maximum allowed periods for providing notice, employers and health plans generally will benefit by providing required notifications and making plan and procedural updates well before these notification deadlines to minimize the continued expansion of the number of assistance eligible individuals to whom special notification and retroactive correction procedures will be needed. Additionally, delay in notification of these reinstated and expanded rights extends the period that assistance eligible individual has to elect to exercise these rights. Accordingly, most employers, administrators and their service providers will want to act quickly to expedite the implementation of required amendments and distribution of required notifications.

If you have questions about or need assistance evaluating, commenting on or responding to these or other employment, health or other employee benefit, workplace health and safety, corporate ethics and compliance or other concerns or claims, please contact the author of this article, Curran Tomko Tarski LLP Labor & Employment Practice Group Chair Cynthia Marcotte Stamer. The author of the "Health Plan Eligibility Toolkit," Ms. Stamer already has amended group health plans and provided assistance with helping employers, plan administrators, health plans, administrators and insurers to comply with the amendments made by H.R. 3326 as well as the original ARRA COBRA Premium Subsidy mandates and a wide range of other health plan eligibility and other mandates. She is experienced with assisting employers, insurers, administrators, and others to design and administer group health plans cost-effectively in accordance with COBRA and other applicable federal regulations as well as well as advising and defending employers and others against tax, employment discrimination and other labor and employment, and other related audits, investigations and litigation, charges, audits, claims and investigations by the IRS, Department of Labor and other federal and state regulators.. Chair of

the American Bar Association RPTE Employee Benefits & Other Compensation Group, a representative to the ABA Joint Committee on Employee Benefits Council, past Chair of the ABA Health Law Section Managed Care & Insurance Interest Group and Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization, Ms. Stamer has advised and represented employers on these and other labor and employment, compensation, employee benefit and other personnel and staffing matters for more than 22 years. Ms. Stamer also speaks and writes extensively on these and other related matters. For additional information about Ms. Stamer and her experience or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly. For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarski LLP team, see [here](#).

### **Curran Tomko Tarski LLP Attorneys Can Help**

If your business needs assistance with distressed or bankruptcy company, defined benefit plan funding or other employee benefit, human resources, corporate ethics, and compliance practices, or other related concerns or in responding to restructuring and bankruptcy, employment or employee benefits related charges, audits, investigations or suits, please contact Curran Tomko Tarski LLP Corporate Restructuring & Bankruptcy Chair G. Michael Curran at [mcurran@cttlegal.com](mailto:mcurran@cttlegal.com), (214) 270-1402, Employment Practice Chair Cynthia Marcotte Stamer at [cstamer@cttlegal.com](mailto:cstamer@cttlegal.com), (214) 270-2402, or another Curran Tomko Tarski, LLP attorney of your choice.

Mr. Curran provides legal counsel on all aspects of out-of-court reorganizations and workouts, as well as bankruptcy proceedings. He has represented debtors, debtors' and creditors' committees, and third party purchasers in a variety of complex factual and legal scenarios, and has also acted as special counsel. His experience includes substantial experience addressing labor and employment, employee benefit and compliance issues arising in connection with restructuring, bankruptcy and other significant business events and transactions.

Ms. Stamer is experienced with assisting employers, fiduciaries, bankruptcy creditors and trustees, investors, purchasers and others about employee benefit, labor and employment, compensation and other services related concerns involved with distressed businesses or benefit plans, bankruptcy and restructuring transactions and other corporate or plan related events. Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization and Chair of the American Bar Association RPTE Employee Benefits & Other Compensation Group and a Joint Committee on Employee Benefit Council Member, Ms. Stamer has advised and represented these and other business clients on employee benefit, labor and employment, compensation, employee benefit and other personnel and staffing matters for more than 22 years. Her experience includes significant experience representing and advising clients about the planning, implementation, risk management and defense of reductions in force and other labor and employment, employee benefits, compensation, insurance, compliance and other concerns affecting transactions involving bankrupt or distressed corporations. Ms. Stamer also speaks and writes extensively on these and other related matters. Among her many publications are her recent November, 2009 publication, *Calculation of Minimum Contributions Required For Single Employer Pension Plans: The Final Rules for The Measurement of Assets and Liabilities For Pension Funding Purposes under Final Treasury Regulation Section 1.430(d)* and *A Proactive Approach To Hr And Benefits Planning For Mergers, Acquisitions, Downsizing, Reengineering And Other Organizational Changes.* Persons interested in a copy of either of these publications may contact Ms. Stamer. For additional information about Ms. Stamer and her experience or to access other publications by Curran Tomko Tarski attorneys, see [here](#) or contact Ms. Stamer or Mr. Curran directly. For additional information about the experience and services of members of the Curran Tomko Tarski LLP team, see [here](#).

### **Other Helpful Resources & Other Information**

We hope that this information is useful to you. Curran Tomko Tarski LLP offers a variety of updates, publications, training and other resources to assist its business clients and their leaders meet their legal and operational challenges. If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we

have your Current contact information – including your preferred e-mail- by creating or updating your profile at [www.CTTLegal.com](http://www.CTTLegal.com) and/or register to receive our CTT Corporate Compliance, Risk Management and Internal Controls updates in blog form at [here](#). Some other recent updates that may be of interest include:

- [Certain Workforce Reductions May Trigger Plant Closing Notice Obligations](#)
- [Stamer Speaks To CPAs About “Privacy & Information Security: Managing Your Accounting Practice’s Liabilities & Counseling Your Clients” January 12, 2010](#)
- [Employee Benefit Plan Sponsors & Fiduciaries Urged To Audit Bonding, Staff & Service Providers Under ERISA Requirements](#)
- [Supreme Court: ERISA Participants Can Sue Fiduciaries For Individual Damages](#)
- [Enron Litigation Has Implications For Plan Sponsors And Management](#)
- [IRS Guidance For Correcting Employment Tax Overpayments Released](#)
- [Rising Defined Benefit Plan Underfunding & Changing Rules Create New Obligations & Risks For Business](#)
- [New GINA Genetic Information Based Employment Discrimination & Confidentiality Mandates Require Updated Employment Poster, Policies & Procedures Now](#)
- [Employer H1N1 Risk Management Must Include Management of Employment Liabilities](#)
- [Confirm Credentials of Individuals Dealing With Employee Benefit Plans & Adequacy of ERISA Bonding](#)
- [Department Of Labor Announces Plans To Expand Reporting Employee Benefits, Wage & Hour, OSHA & Other Reporting & Disclosure Requirements & To Implement Other New Employee Benefit Regulations](#)
- [Rising Defined Benefit Plan Underfunding & Changing Rules Create New Obligations & Risks For Business](#)
- [Stericycle Inc.’s Acquisition Of Medserve Inc. Challenged As Anticompetitive](#)
- [House Passes Chemical Facility Anti-Terrorism Bill Requiring “Chemical Facilities” To Implement Complex New HR & Other Safety & Security Mandates](#)
- [Sept 23 Deadline For Employer & Other Health Plans, Health Care Providers & Other HIPAA-Covered Entities & Business Associates To Comply With New HHS Health Information Data Breach Rules](#)
- [Don’t Be a “Rubber Stamp” – Information Concerning the Submission of the Toxic Release Inventory Form](#)
- [Tighten Employment, Ethics & Internal Controls Policies & Practices To Minimize DOJ & Other Antitrust Exposures](#)

### **Other Information & Resources**

We hope that this information is useful to you. If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#) or e-mailing this information [here](#) or registering to participate in the distribution of these Curran Tomko Tarski Compliance, Risk Management & Internal Controls distributions [here](#). For important information concerning this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word “Remove” in the Subject [here](#).