COBRA Subsidy Extended

The 2010 Department of Defense Appropriations Act (DDAA), enacted earlier this week, includes provisions that continue the COBRA subsidy program that was part of the American Recovery and Reinvestment Act of 2009 (ARRA). The DDAA extends to February 28, 2010 the period during which an involuntary termination of employment triggers eligibility for the premium subsidy. It also extends the duration of the subsidy from nine months to 15 months.

For individuals who became eligible for the COBRA subsidy when it was first available on March 1, 2009, the nine-month premium subsidy period ended on November 30, 2009. The DDAA extension provides additional subsidy relief not only for these individuals but also for those whose subsidy periods have yet to expire and for employees whose employment is involuntarily terminated on or before February 28, 2010.

Employers and group health plan administrators should be mindful of the following:

- Any assistance eligible individual whose subsidy terminated and who dropped COBRA coverage has the right to elect to pay subsidized premiums retroactively and maintain coverage as of the date coverage was dropped. These assistance eligible individuals have until February 19, 2010 (or, if later, 30 days after the date the employer or plan administrator provides notice of the extension) to make this election.

- Any assistance eligible individual who continued COBRA coverage once the COBRA subsidy terminated is eligible to receive a refund or credit for any premiums paid during that period in excess of 35 percent of the cost of the employee's premium. These refunds and credits can be issued in the same manner used to issue credits and refunds when the subsidy program was first established under ARRA.

- The plan administrator, or its delegate, must provide notice of the subsidy extension and, if applicable, the right to elect to pay premiums retroactively to any individual who was an assistance eligible individual at any time on or after October 31, 2009, or who experiences a qualifying-event termination of employment on or after October 31, 2009. The notice must be provided no later than February 19, 2010 or, in the case of a qualifying event occurring after December 21, 2009, in accordance with the timing required for COBRA notices generally. As a practical matter, employees whose qualifying event occurs after December 21, 2009 should continue to receive COBRA notices that include a description of the ARRA COBRA subsidy program and the definition of an assistance eligible individual, both as amended by the DDAA.

- The subsidy is available to any assistance eligible individual who has a COBRA qualifying event on or before February 28, 2010. This is an important change from the original program, which defined an assistance eligible individual as someone who, among other things, became entitled to elect COBRA continuation coverage between September 1, 2008 and December 31, 2009. The Department of Labor interpreted the earlier provision to mean that anyone who was involuntarily terminated on or before December 31, 2009 and who had health care coverage through December 31, 2009 would not be eligible for the subsidy because the individual would not be entitled to elect COBRA coverage until January 1, 2010. By linking subsidy eligibility to the qualifying event rather than to eligibility

to elect COBRA coverage, involuntarily terminated employees whose health care coverage terminates on February 28, 2010, and who would not be entitled to elect COBRA until March 1, 2010, will be deemed to be assistance eligible individuals eligible for the fifteen month subsidy.

- The Act has not modified any other aspects of the subsidy program and those remain in effect. Please click here to see our earlier alert on the ARRA subsidy program.

For more information on the expanded COBRA subsidy program, please contact any member of the Employee Benefits Practice Group or your usual Ropes & Gray advisor.