



BURNING BENEFITS NEWS

STEVENS
ON
KEPPELMAN
ASSOCIATES

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IN THIS ISSUE:

1. FEBRUARY 17TH DEADLINE FOR GIVING NOTICE OF THE EXTENDED COBRA PREMIUM SUBSIDY; AND

2. ROLLOVERS AND ROLLOVER NOTICE FOR NONSPOUSE BENEFICIARIES.

1. NOTICE OF COBRA PREMIUM SUBSIDY REQUIRED BY FEBRUARY 17 (OR IN SOME CASES, EARLIER)

The COBRA premium subsidy enacted by the American Recovery and Reinvestment Act of 2009 (“ARRA”) allows assistance-eligible individuals (see item “a” below) to pay only 35% of their COBRA premiums. The plan sponsor is reimbursed for the remaining 65% by the government through a payroll tax credit. In our December 2009 newsletter, we told you that the Department of Defense Appropriations Act of 2010 (the “DOD Act”) extended the 65% COBRA premium subsidy period (by 6 months) and the eligibility period (which would have expired at the end of 2009). Because of a February 17 deadline, we would like to remind you about the notice requirements as well as other key features of the extended COBRA premium subsidy.

- a. **Extended Eligibility Period.** Assistance-eligible individuals are employees who experience an involuntary termination of employment September 1, 2008, through February 28, 2010 (previously December 31, 2009) and their COBRA eligible dependents, provided they elect COBRA continuation coverage.
- b. **Extended Subsidy Period.** The length of the subsidy period has been extended by 6 months (from 9 to 15 months of subsidized COBRA coverage).
- c. **Retroactive Election Period.** Individuals who dropped COBRA coverage after reaching the end of the subsidy period (before the legislation extended it to 15 months) will have an extension of their grace period to pay the reduced premium. To continue the subsidized COBRA coverage without a gap in coverage, they must pay the 35% of premium costs for any past due periods by (i) February 17, 2010, or, if later, (ii) 30 days after notice of the extension is provided by their plan administrator. If an individual already paid the full premium, the excess must be credited against additional months of coverage or refunded.
- d. **Additional Notice Requirements.** As part of the COBRA election notice, plan administrators must provide information about the subsidy to all individuals who have COBRA qualifying events from September 1, 2008 through February 28, 2010. Plan administrators must provide an additional notice about the changes made to the subsidy to any individual who is an assistance-eligible individual at any time on or after October 31, 2009, or who experiences a qualifying event (consisting of termination of employment) relating to COBRA continuation coverage on or after October 31, 2009. Notice of the changes to the subsidy must be made no later than

February 17, 2010, or in the case of a qualifying event occurring after December 19, 2009, consistent within the normal timeframes for providing COBRA continuation coverage notices.

A different notification rule applies to assistance-eligible individuals (i) who were covered under COBRA continuation coverage to which the premium subsidy relates for the period of coverage immediately before the “transition period” (as defined below) and (ii) who did not timely pay the premium for any period of coverage during the transition period or paid the full (unsubsidized) COBRA premium. The “transition period” is the period that begins immediately after the end of nine months of the premium subsidy (in effect under ARRA before the extension granted by the DOD Act) and ends prior to December 19, 2009. For assistance-eligible individuals in a transition period, notice of the changes to the subsidy is due within 60 days of the first day of the “transition period.” The notice must include information on the ability to make retroactive premium payments with respect to the transition period.

The extension of the COBRA premium subsidy increases administrative effort. Failure to comply with the subsidy provisions is a COBRA violation subject to penalties of up to \$110 per day and attorney’s fees. Let us know if we can assist in complying with the COBRA subsidy extension or in drafting the required notices.

2. ROLLOVERS AND ROLLOVER NOTICE FOR NONSPOUSE BENEFICIARIES

Beginning this year (2010), in addition to allowing participants and surviving spouses the opportunity to elect a direct rollover of a distribution from a retirement plan, qualified retirement plans must now allow a nonspouse beneficiary (such as the parent, child, domestic partner or sibling of a deceased participant) to elect a direct rollover to an individual retirement arrangement (IRA). If we handle your plan amendments, we would have previously sent you a PPA amendment that reflects this requirement.

Plan administrators must give all participants, surviving spouses and nonspouse beneficiaries a written notice (“Special Tax Notice”) explaining the direct rollover rules and the mandatory 20% income tax withholding rules for distributions not directly rolled over. The explanation should be given no earlier than 180 days and no later than 30 days before making the distribution.

The IRS has updated the Special Tax Notice which you must provide to participants and beneficiaries (including nonspouse beneficiaries) who receive a distribution which qualifies for a rollover. (Qualifying distributions generally include a lump sum distribution or distribution other than a monthly payment for the life of the participant and/or joint annuitant.) IRS Notice 2009-68 contains two versions of the notice (one for use with distributions not from a designated Roth account, and the other for distributions from a designated Roth Account). If your plan is making distributions which may qualify for rollover treatment, please call us for an updated copy of the notice.

Burning Benefits News is a communication designed to provide timely information regarding current employee benefits issues. It does not constitute legal advice, as we must address your specific facts in rendering legal opinions. As required by tax regulations, any tax information contained in the communication is not intended to be and cannot be used for the purpose of avoiding tax penalties.