


Employer Compliance Alert

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▶ **DOL RELEASES APPLICATION FOR REVIEW OF COBRA SUBSIDY DENIAL**

The February 2009 economic stimulus package included a temporary 65% federal premium subsidy for individuals becoming entitled to COBRA coverage due to an employee’s involuntary termination of employment. Congress recognized, however, that the purpose of this subsidy could be undermined if disputes between employers and their former employees as to the subsidy’s availability took months or even years to resolve. Accordingly, Congress provided that any such dispute would be resolved by a federal agency – the Department of Labor (“DOL”) for private employer plans subject to the federal COBRA provisions; the Department of Health and Human Services (“HHS”) for governmental plans and small insured plans covered by state “mini- COBRA” statutes. Moreover, these agencies are to resolve such disputes within 15 days.

The DOL has now released the Application form to be used by an individual to request a review of an employer’s denial of the premium subsidy. This same form may also be used to request a review of an employer’s refusal to offer a second COBRA election period to an otherwise-eligible individual whose termination of employment occurred before the subsidy was enacted (but on or after September 1, 2008). The [Application](#) is posted on the DOL’s website, along with supporting [instructions](#).

This Application is designed to be completed and submitted online, and that approach is officially “encouraged” by the DOL. Alternatively, however, an individual may complete, print, and submit the Application via facsimile or regular mail, following the instructions provided on the Application’s cover page. These instructions also note that separate Applications are required for any family members who do not have identical plan information.

Applicants are encouraged to submit any documents that might be relevant to the DOL’s review. Examples of such documents include a COBRA election notice, a completed

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“Request for Treatment as an Assistance Eligible Individual” (the model form issued by the DOL earlier this year), an insurance card, payroll stubs showing deductions for health benefits, any documents detailing the date and circumstances of the employment termination, and any documentation regarding the employer’s denial of the premium subsidy or second election period.

The DOL website contains a separate [link](#) to be used in submitting these documents. It appears that this same link would be used by an employer in submitting any documents it believes support its denial of the individual’s request.

Employers will want to disseminate information concerning this Application to their current and former employees. An e-mail message containing a link to the online Application might be an ideal method of doing so. Employers will also want to make a special point of contacting any individuals who have already expressed disagreement with a prior denial of the premium subsidy or second election period.

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