



# Health Insurance Continuation Coverage Under COBRA

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## Summary

Most Americans with private group health insurance are covered through an employer, coverage that is generally provided to active employees and their families, and may be extended to retirees. A change in an individual's work or family status can result in loss of coverage. In 1985, Congress enacted legislation to provide temporary access to health insurance for qualified individuals who lose coverage due to such changes. Under Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272), an employer with 20 or more employees must provide those employees and their families the option of continuing their coverage under the employer's group health insurance plan in the case of certain events. The coverage, usually for 18 months, can last up to 36 months, depending on the nature of the triggering event. Employers who fail to provide the continued health insurance option are subject to penalties.

Since the start of the recession in December 2007, the number of unemployed persons has increased by 7.6 million to 15.1 million, and the unemployment rate has doubled to 9.8%. Many of these individuals were eligible to continue their employer-sponsored health insurance, but did not elect coverage under COBRA because of the cost. On average, employees pay 27% of the premium for family coverage under an employer-sponsored health insurance plan. Those extending coverage through COBRA can be required to pay up to 102% of the premium, which averaged \$13,643 for a family in 2009. Congress addressed this issue under Title III of the American Recovery and Reinvestment Act (P.L. 111-5), which included a temporary 65% subsidy for COBRA premiums. The subsidy is available to individuals who meet the income test and who are involuntarily terminated on or after September 1, 2008, and before January 1, 2010.

The 111<sup>th</sup> Congress is currently considering whether to extend COBRA benefits beyond the current coverage. Some argue that even with the subsidy, high premiums make COBRA coverage unaffordable to many. Others maintain that in requiring employers to provide former employees with the option of continuing their health insurance coverage, COBRA has resulted in extra costs for employers (in the form of increased premiums for employers' group health insurance policies), as well as added administrative burdens.

This report provides background information on continuation health insurance under COBRA and on the COBRA population. It will be updated as events warrant.

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## Recent Developments

Title III of the American Recovery and Reinvestment Act (ARRA; P.L. 111-5) included a temporary 65% subsidy for COBRA premiums. The subsidy is available for up to nine months to individuals who meet the income test and are involuntarily terminated and eligible for COBRA coverage on or after September 1, 2008, and before January 1, 2010. For more information, see CRS Report R40420, *Health Insurance Premium Assistance for the Unemployed: The American Recovery and Reinvestment Act of 2009*, coordinated by Janemarie Mulvey.

On December 16, 2009, the House passed two versions of a COBRA subsidy extension. An amendment to the Senate amendment to H.R. 3326, Defense Appropriations for FY 2010, extends eligibility for the COBRA subsidy to include individuals who are involuntarily terminated between January 1, 2010 and February 28, 2010. The House also passed an amendment to the Senate amendment to H.R. 2847, the Departments of Commerce and Justice, and Science appropriations bill, which extends eligibility for the COBRA subsidy to include individuals who are involuntarily terminated between January 1, 2010, and June 30, 2010. Both bills extend the period of time the COBRA subsidy is available from nine to 15 months. And under both bills, generally individuals who are eligible for the extended coverage but allowed their COBRA coverage to lapse when the original COBRA subsidy expired are given 60 days from the date of enactment to pay back premiums. Eligible individuals who continued to pay for coverage when the original subsidy lapsed can receive a credit or refund of 65% of the paid premiums.

## Background

Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA; P.L. 99-272) requires employers who offer health insurance to continue coverage for their employees under certain circumstances. Congress enacted the legislation to expand access to coverage for at least those people who became uninsured as a result of changes in their employment or family status. Although the law allows employers to charge 102% of the group plan premium, this can be much less expensive than coverage available in the individual insurance market. The law affects private sector employer group health plans through amendments to the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. COBRA continuation coverage for employees of state and local governments is required under amendments to the Public Health Service Act. Continuation coverage similar to COBRA is provided to federal employees and employees of the Washington, DC, district government through the law authorizing the Federal Employees Health Benefits program under Title 5 of the U.S. Code.

Before enactment of COBRA, if an employee's job was terminated (voluntarily or involuntarily), the insurance offered by the employer also ceased, usually within 30 to 60 days. Women were especially vulnerable to loss of insurance coverage if they became unemployed, widowed, or divorced. Although some employers offered the option of buying into the group plan, there was no certainty of that option. In 1985, 10 states had laws requiring insurance policies sold in their states to include a continuation of coverage option for laid-off workers. However, self-insured employers (employers that assume the risk of the health care costs of their employees rather than using private insurers) were not regulated by these state-mandated benefit laws; self-insured plans were regulated at the federal level under ERISA. Health insurance coverage for these affected workers and their families was not consistently available.

# COBRA Coverage

## General Requirements

Under COBRA, employers must offer the option of continued health insurance coverage at group rates to qualified employees and their families who are faced with loss of coverage due to certain events. Coverage generally lasts 18 months but, depending on the circumstances, can last for longer periods. COBRA requirements also apply to self-insured firms. An employer must comply with COBRA even if it does not contribute to the health plan; it need only maintain such a plan to come under the statute's continuation requirements.<sup>1</sup>

## Covered Employers

COBRA covers all employers, with the following exceptions.

- Small employers. Employers with fewer than 20 employees are not covered under COBRA. An employer is considered to meet the small employer exception during a calendar year if on at least 50% of its typical business days during the preceding calendar year it had fewer than 20 employees.
- Church plans.
- Federal, state, and local governments. Although federal employees are not covered under COBRA, employees of the Washington, DC, district government have been entitled to temporary continuation of coverage (TCC) under the Federal Employees Health Benefits Program (FEHB) since 1990.<sup>2</sup> Continuation coverage for state and local employees is mandated under the Public Health Service Act with provisions very similar to COBRA's protections. See 42 U.S.C. § 300bb-1 et seq.<sup>3</sup>

## Qualified Beneficiaries

In general, a qualified beneficiary is

- an employee covered under the group health plan who loses coverage due to termination of employment<sup>4</sup> or a reduction in hours;

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<sup>1</sup> On Feb. 3, 1999, the Internal Revenue Service (IRS) published final rules (64 *Federal Register* 5160-5188), effective January 1, 2000, defining COBRA coverage requirements. Final rules addressing COBRA issues applying to business reorganizations, bankruptcy, and COBRA's interaction with the Family and Medical Leave Act were issued on Jan. 10, 2001 (66 *Federal Register* 1843-1859). Final rules addressing notification requirements were issued on May 24, 2004 (69 *Federal Register* 30083-30112).

<sup>2</sup> Some variations exist between COBRA and FEHB TCC. For example, there are different eligibility requirements under FEHB, there is no extended coverage for disabled individuals, and there are no bankruptcy provisions. However, the length of coverage and qualifying events under both plans are the same. For more information, see the *Federal Employees Health Benefits Program Handbook*, at <http://www.opm.gov/insure/health/reference/handbook/fehb16.asp>.

<sup>3</sup> Federal, state, and local workers are eligible for the temporary premium subsidy under ARRA.

<sup>4</sup> A termination of employment (for reasons other than gross misconduct) can be either voluntary or involuntary. Voluntary reasons include retirement, resignation, and failure to return to work after a leave of absence. Involuntary (continued...)

- a retiree who loses retiree health insurance benefits due to the former employer's bankruptcy under Chapter 11;
- a spouse or dependent child of the covered employee who, on the day before the "qualifying event" (see below), was covered under the employer's group health plan; or
- any child born to or placed for adoption with a covered employee during the period of COBRA coverage.

## **Qualifying Events**

Circumstances that trigger COBRA coverage are known as "qualifying events." A qualifying event must cause an individual to lose health insurance coverage. Losing coverage means ceasing to be covered under the same terms and conditions as those available immediately before the event. For example, if an employee is laid off or changes to part-time status resulting in a loss of health insurance benefits, this is a qualifying event. Or, if an employer requires retiring individuals to pay a higher premium for the same coverage they received immediately before retiring, the retirement can be a qualifying event even though coverage is not lost or benefits reduced. Events that trigger COBRA continuation coverage include

- termination or reduction in hours of employment (for reasons other than gross misconduct).

Spouses and dependent children can experience the following qualifying events leading to their loss of health insurance coverage:

- the death of the covered employee,
- divorce or legal separation from the employee,
- the employee's becoming eligible for Medicare, and
- the end of a child's dependency under a parent's health insurance policy.

Under the following circumstances, a covered employer must offer a retiring employee access either to COBRA or to a retiree plan that satisfies COBRA's requirements for benefits, duration, and premium.

- If a covered employer offers no retiree health plan, the retiring employee must be offered COBRA coverage.
- If the employer offers a retiree health plan but it is different from the coverage the employee had immediately before retirement (for example, if the plan is only offered for six months or if the premium is higher than it was for the employee immediately before the retirement), the employer must offer the option of COBRA coverage in addition to the offer of the alternative retiree plan. If the retiring employee opts for the alternative coverage and declines COBRA coverage, then she or he is no longer eligible for COBRA.

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reasons include layoffs, firings, and the employer's bankruptcy under Chapter 11 of Title 11 of the U.S. Code. Strikes and walkouts might also trigger COBRA coverage if they result in a loss of health insurance coverage.

- If the employer's retiree health plan satisfies COBRA's requirements for benefits, premium, and duration, the employer is not required to offer a COBRA option when the employee retires, and the coverage provided by the retiree plan can be counted against the maximum COBRA coverage period that applies to the retiree, spouse, and dependent children. If the employer terminates the plan before the maximum coverage period has expired, COBRA coverage must be offered for the remainder of the period.
- The only other access a retiree has to COBRA coverage is in the event that a former employer terminates the retiree health plan under a Chapter 11 bankruptcy reorganization. This option would be available only to those retirees who are receiving retiree health insurance. In this case, the coverage can continue until the death of the retiree. The retiree's spouse and dependent children may purchase COBRA coverage from the former employer for 36 months after the retiree's death.

## **Nature of COBRA Coverage**

The continuation coverage must be identical to that provided to "similarly situated non-COBRA beneficiaries." The term "similarly situated" is intended to ensure that beneficiaries have access to the same options as those who have not experienced a qualifying event. For example, if the employer offers an open season for non-COBRA beneficiaries to change their health plan coverage, the COBRA beneficiary must also be able to take advantage of the open season. By the same token, COBRA continuation coverage can be terminated if an employer terminates health insurance coverage for all employees.

ARRA also allows employers to permit eligible individuals the right to elect a different plan offered by their former employer, within 90 days of their notification of the subsidy.

## **Duration of Coverage**

The duration of COBRA coverage can vary, depending on the qualifying event.

- In general, when a covered employee experiences a termination or reduction in hours of employment, the continued coverage for the employee and the employee's spouse and dependent children must continue for 18 months.
- Retirees who lose retiree health insurance benefits due to the bankruptcy (a reorganization under Chapter 11) of their former employer may elect COBRA coverage that can continue until their death. The spouse and dependent children of the retiree may continue the coverage for an additional 36 months after the death of the retiree.
- For all the other qualifying events listed above (death of employee, divorce or legal separation from employee, employee's becoming eligible for Medicare, the end of a child's dependent status under the parents' health policy), the coverage for the qualified beneficiaries must be continued for 36 months.

Different provisions apply to disabled individuals. If the Social Security Administration (SSA) makes a determination that the date of an individual's onset of disability occurred during the first 60 days of COBRA coverage or earlier,<sup>5</sup> the employee and the employee's spouse and dependents are eligible for an additional 11 months of continuation coverage. This is a total of 29 months from the date of the qualifying event (which must have been a termination or reduction in hours of employment). This provision was designed to provide a source of coverage while individuals wait for Medicare coverage to begin. After a determination of disability, there is a five-month waiting period for Social Security disability cash benefits and another 24-month waiting period for Medicare benefits. See the "Paying for COBRA" section below regarding the premium for this additional 11 months.

Under some conditions, COBRA coverage can end earlier than the full term. Although coverage must begin on the date of the qualifying event, it can end on the earliest of the following:

- the first day for which timely payment of the premium is not made (payment is timely if it is made within 30 days of the payment due date and payment cannot be required before 45 days after the date of election (see below));
- the date on which the employer ceases to maintain any group health plan;<sup>6</sup>
- the first day after the qualified beneficiary becomes actually covered (and not just eligible to be covered) under another employer's group health plan, unless the new plan excludes coverage for a preexisting condition;<sup>7</sup> or
- the date the qualified beneficiary is entitled to Medicare benefits, if this condition is specified in the group health plan.

If a COBRA-covered beneficiary receiving coverage through a region-specific plan (such as a managed care organization) moves out of that area, the employer is required to provide coverage in the new area if this can be done under one of the employer's existing plans. For example, if the employer's plan is through an insurer licensed in the new area to provide the same coverage available to the employer's similarly-situated non-COBRA employees. Further, if this same coverage would not be available in the new area, but the employer maintains another plan for employees who are not similarly-situated to the beneficiary (such as a plan offered to management or another group within the firm) that would be available in the new area, then that alternative coverage must be offered to the beneficiary. If, however, the only coverage offered by the employer is not available in the new area, the employer is not obliged to offer any other coverage to the relocating beneficiary.

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<sup>5</sup> In most cases, the SSA makes its disability determination later than within the first 60 days of COBRA coverage. However, the date of the disability onset can be set retroactively to a date within the first 60 days.

<sup>6</sup> A bankruptcy under Chapter 7 of Title 11 of the U.S. Code would be such an instance. Chapter 7 bankruptcies (business liquidations) are distinct from Chapter 11 (reorganization) bankruptcies. Under Chapter 7, the employer goes out of existence. COBRA is provided through the employer; if there is no employer, there is no COBRA obligation. Under Chapter 11, the employer remains in business and must therefore honor its COBRA obligations.

<sup>7</sup> Under the Health Insurance Portability and Accountability Act (P.L. 104-191), the new health plan cannot impose a pre-existing condition limitation or exclusion longer than 12 months after the enrollment date. The new group plan must reduce the pre-existing condition limitation period by one month for every month the individual had creditable coverage under the previous plan or COBRA. If the individual has not had 12 months of such creditable coverage, the new plan can impose an appropriate limitation period. In this case, the individual may maintain COBRA coverage under the former employer's plan.



## COBRA Coverage and Medicare

COBRA coverage varies for Medicare beneficiaries depending on whether they become eligible for COBRA before or after they become eligible for Medicare. Medicare law requires that certain employers (those with 20 or more employees) provide their employees who are Medicare beneficiaries with the same coverage offered to their other employees. This includes family coverage, if it is offered.<sup>8</sup>

If a working Medicare beneficiary experiences a qualifying event (e.g., retirement, job termination), he or she becomes eligible for 18 months of COBRA coverage from the date of the qualifying event. If the beneficiary's family members lose coverage because of the qualifying event, they would be eligible for COBRA coverage for up to 36 months *from the date on which the employee became eligible for Medicare*. For example, if an employee becomes eligible for Medicare in January 2008 and then retires 12 months later in January 2009, the covered family members would be eligible for 24 months of COBRA coverage, rather than 36 months. However, no matter when the second qualifying event occurs, COBRA coverage for qualified family members can never be less than 18 months.

On the other hand, if an individual is receiving COBRA benefits and becomes eligible for Medicare during the 18 month period, COBRA coverage can be terminated early (see above, under "Duration of Coverage"). In this case, the individual's covered family members can continue their COBRA coverage for up to 36 months from the date of the original qualifying event.

## Notice Requirements

Employers, employees, and the employer's health plan administrators all have to meet requirements for notifying each other regarding COBRA.

- At the time an employee first becomes covered under a health plan, the plan administrator must provide written notification to the employee and his or her spouse regarding COBRA rights if a qualifying event should occur.

If a qualifying event occurs, other notices are required.

- The employer must notify the plan administrator of the event within 30 days of the death of the employee, a termination, or reduction in hours, the employee's becoming entitled to Medicare, or the beginning of bankruptcy proceedings.
- Within 14 days of receiving the employer's notice, the plan administrator must notify, in writing, each covered employee and his or her spouse of their right to elect continued coverage.
- The employee must notify the employer or plan administrator within 60 days of a divorce or legal separation of a covered employee or a dependent child's ceasing to be a dependent of the covered employee under the policy.

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<sup>8</sup> For more information on working Medicare beneficiaries, see CRS Report RL33587, *Medicare Secondary Payer - Coordination of Benefits*, by Hinda Chaikind.

- COBRA beneficiaries who are determined by the SSA to have been disabled within the first 60 days of COBRA coverage must notify the plan administrator of this determination in order to be eligible for the additional 11 months of coverage. They must provide this notice within 60 days of receiving the SSA's decision.

## **Elections**

A qualified individual must choose whether to elect COBRA coverage within an election period. This period is 60 days from the later of two dates: the date coverage would be lost due to the qualifying event, or the date that the beneficiary is sent notice of his right to elect COBRA coverage. The beneficiary must provide the employer or plan administrator with a formal notice of election. Coverage is retroactive to the date of the qualifying event. The employee or other affected person may also waive COBRA coverage. If that waiver is then revoked within the election period, COBRA coverage must still be provided. However, coverage begins on the date of the revocation rather than the date of the qualifying event. The Trade Act of 2002 (P.L. 107-210) provided for a temporary extension of the election period for those individuals who qualified for the Health Coverage Tax Credit (HCTC). Under the provision, qualified individuals who did not elect COBRA coverage during the regular election period can elect continuation coverage within the first 60-day period beginning on the first day of the month when they were determined to have met the qualifications. For a further discussion of the HCTC, see CRS Report RL32620, *Health Coverage Tax Credit*, by Bernadette Fernandez.

## **Paying for COBRA**

Employers are not required to pay for the cost of COBRA coverage. They are permitted to charge the covered beneficiary 100% of the premium (both the portion paid by the employee and the portion paid by the employer, if any), plus an additional 2% administrative fee. For disabled individuals who qualify for an additional 11 months of COBRA coverage, the employer may charge 150% of the premium for these months. The plan must allow a qualified beneficiary to pay for the coverage in monthly installments, although alternative intervals may also be offered.

## **Conversion Option**

Some states require insurers to offer group health plan beneficiaries the option of converting their group coverage to individual coverage. Conversion enables individuals to buy health insurance from the employer's plan without being subject to medical screening. Under the Health Insurance Portability and Accountability Act (HIPAA, P.L. 104-191), a person moving from the group to individual insurance market is guaranteed access to health insurance coverage either under federal requirements or an acceptable alternative state mechanism. The beneficiary must have exhausted all COBRA coverage before moving to the individual market. Although the policy must be issued, the premium might be higher than the premium under a group plan. Despite the higher premiums, the conversion option may be attractive to a person who would otherwise have difficulty obtaining health insurance because of a major illness or disability.

## **Penalties for Noncompliance**

Private group health plans are subject to an IRS excise tax for each violation involving a COBRA beneficiary. In general, the tax is \$100 per day per beneficiary for each day of the period of noncompliance. ERISA also contains civil penalties of up to \$100 per day for failure to provide the employee with the required COBRA notifications. State and local plans covered under the Public Health Service Act are not subject to the same financial penalties provided under the tax code or ERISA. However, state and local employees have the right to bring an “action for appropriate equitable relief” if they are “aggrieved by the failure of a state, political subdivision, or agency or instrumentality thereof” to provide continuation health insurance coverage as required under the act.

## **Issues**

COBRA was enacted to provide access to group health insurance for people who lose their employer-sponsored coverage, and thus to help reduce the number of uninsured. However, the law has limitations in its effectiveness in covering persons leaving the workforce and, from the point of view of both employees and employers, has costs that can be burdensome.

## **Number of Beneficiaries and Duration of Coverage**

Statistical data on COBRA beneficiaries is sparse; however some data is collected. The Medical Expenditure Panel Survey, Agency for Health Care Quality and Research, U.S. Department of Health and Human Services, provides an annual estimate of COBRA beneficiaries based on survey data:<sup>9</sup>

- 2006: 3,114,000;
- 2005: 2,562,000; and
- 2004: 2,847,000.

Charles D. Spencer & Associates,<sup>10</sup> a company that provides employee benefits analysis, surveyed 120 employers who subscribe to its service regarding COBRA, capturing information on the 2008 plan year for about 1.6 million workers. Its 2009 COBRA survey found that less than 10% of those who were eligible for COBRA benefits elected to take them, down significantly from the 2006 survey which showed that about 27% of those eligible elected coverage. Average length of COBRA coverage was the lowest since the survey started in 1994. The average beneficiary under an 18-month qualifying event kept COBRA coverage for 7.5 months, down from 8.3 months in 2006 and 10.1 months in 1999. The average beneficiary under a 36-month

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<sup>9</sup> Medical Expenditure Panel Survey, Agency for Health Care Quality and Research, National totals for enrollees and cost of hospitalization and physician service health plans for the private sector and ...Government Sector, [http://www.meps.ahrq.gov/mepsweb/data\\_stats/quick\\_tables\\_results.jsp?component=2&subcomponent=1&year=-1&tableSeries=4&searchText=&SearchMethod=1&Action=Search](http://www.meps.ahrq.gov/mepsweb/data_stats/quick_tables_results.jsp?component=2&subcomponent=1&year=-1&tableSeries=4&searchText=&SearchMethod=1&Action=Search).

<sup>10</sup> Charles D. Spencer & Associates, Inc. surveys its subscribers; because this survey does not represent a random sampling of employers, it is not known whether its findings are representative of all employers in the United States.

qualifying event kept coverage for 14.2 months, down from 16.6 months in 2006 and 23.4 months in 1999.<sup>11</sup>

Ceridian, a business services provider, recently analyzed the effect of the ARRA premium subsidy on COBRA enrollment. Using data on 7.3 million employees from its client base of about 50,000 employers, Ceridian found that about 12% of those eligible elected to take up COBRA coverage in the months before the ARRA subsidy went into effect (September 2008 to February 2009). Once the subsidy was available, just under 18% of those eligible elected to take up COBRA coverage (March 2009 to mid-August 2009).<sup>12</sup>

## Cost Issues

Employees are concerned about the cost of COBRA coverage. A Kaiser study<sup>13</sup> provides figures for the average premiums for employer-sponsored health insurance coverage in 2009: \$4,824 for individual coverage, and \$13,375 for a family policy. On average, employers covered approximately 73% of the premium for a family plan for their active employees. Under COBRA, former employees may be required to pay up to 102% of the premium, or approximately \$4,920 for an individual and \$13,643 for a family, for a year's coverage priced at the average cost. This can be a hardship for newly unemployed individuals. An individual depending on unemployment insurance could expect to pay more than 80% of his or her unemployment insurance income on health insurance premiums for their family.<sup>14</sup>

Employers also express concerns about costs. Spencer & Associates, in its 2009 survey, reported that average claim costs for COBRA beneficiaries exceeded the average claim for an active employee by 53%. The average annual health insurance costs per active employee was \$7,190, and the COBRA cost was \$10,988.<sup>15</sup> The Spencer & Associates analysts contend that this indicates that the COBRA population is sicker than active covered employees and that the 2% administrative fee allowed in the law is insufficient to offset the difference in claims costs.

## Coverage Issues

COBRA is a method for retaining health insurance coverage. Individuals who do not have health insurance coverage at the time of a qualifying event are not eligible for health insurance under COBRA. For example, COBRA coverage is not extended to individuals who work for an employer, regardless of size, that does not offer group health insurance. Nor is it available to an employee who declines coverage under an employer's plan. COBRA does not provide for continuation of coverage for family members unless an employer offers a family option.

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<sup>11</sup> "2009 COBRA Survey: Recession Takes Hold: More Were Eligible, Fewer Elected, Costs Stay High," *Benefits News*, Commerce Clearing House, June 12, 2009.

<sup>12</sup> Ceridian Corporation, *Ceridian analyzes COBRA enrollments in light of a premium subsidy in the American Recovery and Reinvestment Act of 2009 (ARRA): Complexity and added restrictions may have limited the program's impact*, 2009.

<sup>13</sup> Kaiser Family Foundation and Health Research and Educational Trust, *Employer Health Benefits, 2008 Annual Survey*, September 2008, <http://ehbs.kff.org/pdf/7790.pdf>.

<sup>14</sup> Families USA, *Squeezed! Caught Between Unemployment Benefits and Health Care Costs*, January 2009, <http://www.familiesusa.org/resources/publications/reports/cobra.html>.

<sup>15</sup> "2009 COBRA Survey: Recession Takes Hold: More Were Eligible, Fewer Elected, Costs Stay High," *Benefits News*, Commerce Clearing House, June 12, 2009.

Even for those with employer-sponsored health insurance coverage, the universe of individuals covered by COBRA is limited in a number of ways. The small employer exception exempts employers with fewer than 20 employees from offering COBRA coverage. If an employer declares bankruptcy under Chapter 7 or simply discontinues operation, COBRA is not an option for employees who might otherwise have been eligible for COBRA benefits.

## Employer Size

Currently, COBRA provides an exception for employers with fewer than 20 employees. According to the Census Bureau's *Statistics of U.S. Business*, in 2006, approximately 21.6 million people, or 18% of employees covered in the survey, worked in firms with fewer than 20 employees.<sup>16</sup> According to The Commonwealth Fund, in 2007, 5% of employed adults aged 19 to 64 were ineligible for COBRA because their employer-sponsored insurance was provided through a firm with fewer than 20 employees.<sup>17</sup> Forty states and the District of Columbia have attempted to address this issue through "mini-COBRA" laws, which require that continuation coverage be offered to employees in smaller firms.<sup>18</sup> However, in some states, the continuation coverage may be offered for a shorter period or provide fewer benefits than federal COBRA law requires.

## Retirees

Many retirees obtain health insurance coverage through retiree plans offered by their former employers. In 2005, about 77% of retirees under the age of 65 received health benefits from a former employer or a spouse's former employer in the first year of retirement.<sup>19</sup> The number of employers who offer retiree plans has been falling. The 2009 Kaiser annual employer survey reported that the percentage of employers with 200+ employees who offered retiree health benefits had dropped from 66% in 1988 to 29% in 2009. Small firms are less likely to offer such coverage: 5% of firms with 3 to 199 workers offered retiree plans in 2009.<sup>20</sup>

For retirees who are under the age of 65, and the near-elderly, those aged 55-65, separated from employment, COBRA coverage can be an important source of health insurance: the 18 months of COBRA benefits provide a bridge to Medicare for those who are close to the age of 65. When COBRA benefits run out, the near-elderly can have unique problems finding health insurance coverage on the individual market.<sup>21</sup> The Census Bureau estimates that, in 2006, 12.5% of people aged 55-64, many of whom are retirees, were uninsured.<sup>22</sup>

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<sup>16</sup> U.S. Census Bureau, *Statistics of U.S. Business*, <http://www.census.gov/econ/susb/data/susb2006.html>.

<sup>17</sup> The Commonwealth Fund, *Maintaining Health Insurance During a Recession: Likely COBRA Eligibility*, 2009, [http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Jan/Maintaining%20Health%20Insurance%20During%20a%20Recession%20%20Likely%20COBRA%20Eligibility/Doty\\_maintaininghltinsrecessionCOBRA\\_1225\\_ib%20pdf.pdf](http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/Jan/Maintaining%20Health%20Insurance%20During%20a%20Recession%20%20Likely%20COBRA%20Eligibility/Doty_maintaininghltinsrecessionCOBRA_1225_ib%20pdf.pdf).

<sup>18</sup> National Conference of State Legislatures, *State COBRA Expansions for Small Businesses*, October 2009, <http://www.ncsl.org/IssuesResearch/Health/StateCOBRAExpansionsforSmallBusinesses/tabid/16795/Default.aspx>.

<sup>19</sup> Urban Institute, *What Happens to Health Benefits After Retirement?*, 2007, [http://www.urban.org/UploadedPDF/1001053\\_Health\\_Benefits.pdf](http://www.urban.org/UploadedPDF/1001053_Health_Benefits.pdf).

<sup>20</sup> Kaiser Family Foundation and Health Research and Employee Trust, *Employer Health Benefits 2009 Annual Survey: Retiree Health Benefits*, 2009, <http://ehbs.kff.org/Default.aspx?page=sections&id=2>.

<sup>21</sup> For more on this topic, see CRS Report RL34596, *Health Insurance Coverage of People Aged 55 to 64*, by Chris L. Peterson, and CRS Report RL32944, *Health Insurance Coverage for Retirees*, by Hinda Chaikind.

<sup>22</sup> U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2008*, September 2009. (continued...)

## Legislation in the 111<sup>th</sup> Congress

The 111<sup>th</sup> Congress is considering legislation that would affect health insurance continuation coverage under COBRA. Several bills would extend expiring COBRA coverage (H.R. 694, S. 29, and S. 1488). H.R. 3962, the Affordable Health Care for America Act, would allow individuals to keep their COBRA coverage until a Health Insurance Exchange is up and running.<sup>23</sup> Other legislation would extend COBRA coverage for certain older workers (S. 281) or early retirees (S. 960).

H.R. 3930 would extend both the time period for COBRA coverage and the premium subsidy offered under ARRA. H.R. 3966 would extend the period of eligibility for premium assistance provided under ARRA. S. 2730 would increase the ARRA premium subsidy to 75% and make it available for 15 months or until December 31, 2010. H.R. 3140 would repeal premium assistance provided under ARRA.

On December 16, 2009, the House passed two versions of a COBRA subsidy extension. An amendment to the Senate amendment to H.R. 3326, Defense Appropriations for FY 2010, extends eligibility for the COBRA subsidy to include individuals who are involuntarily terminated between January 1, 2010 and February 28, 2010. The House also passed an amendment to the Senate amendment to H.R. 2847, the Departments of Commerce and Justice, and Science appropriations bill, which extends eligibility for the COBRA subsidy to include individuals who are involuntarily terminated between January 1, 2010, and June 30, 2010. Both bills extend the period of time the COBRA subsidy is available from nine to 15 months. And under both bills, generally individuals who are eligible for the extended coverage but allowed their COBRA coverage to lapse when the original COBRA subsidy expired are given 60 days from the date of enactment to pay back premiums. Eligible individuals who continued to pay for coverage when the original subsidy lapsed can receive a credit or refund of 65% of the paid premiums.

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<http://www.census.gov/prod/2009pubs/p60-236.pdf>.

<sup>23</sup> For additional information on the health insurance exchange, see CRS Report R40885, *Private Health Insurance Provisions of H.R. 3962*, by Hinda Chaikind et al.