

# FLORIDA INSURANCE REPORT

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## Legislature Finishes Substantive Bills, Returns for Budget

By: Travis Miller

Florida like most states faces a decline in state revenues due to the economic downturn. Despite prior budget reductions, the legislature in the 2009 session was confronted with difficult choices in cutting programs in most areas of government. The areas to be affected by cuts, and differences of opinion about whether and how to increase revenues, precluded a budget deal from being reached by the scheduled May 1 end of the regular session. As the session neared its scheduled end with no budget deal in sight, many wondered whether the legislature would adjourn and return for a special session or would simply extend the current session. In either case, this also left the question whether any special session or extended session would allow for continuing discussion of substantive bills or would be limited to budget issues.

The legislature answered these questions late Friday when the chambers passed a resolution extending the session until May 8, but only for budget issues and

issues being considered by conference committees. This means important issues such as the future of gambling and the use of tobacco settlement proceeds are still in play. However, the insurance industry can rest easy because decisions affecting it, for better or worse, are finished for this year...or perhaps more accurately, we can turn our attention to monitoring the Governor's actions in either allowing bills that passed to become law or vetoing them.

We hope you find this recap of legislation that passed helpful. Please feel free to contact us about the future of any of these proposals.

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## Workers' Comp Bill Restoring Attorney Fee Caps Headed to Governor

By: Tom Crabb

A bill restoring the cap on workers' compensation attorney fees is now headed to the Governor. In 2003, the Florida workers' compensation law was amended to prohibit the award of hourly attorney fees to successful claimants. At least that was the apparent intent of the 2003 legislation. Late last year, the Supreme Court of Florida in *Emma Murray v. Mariner Health* construed the attorney's fees statute in the workers' comp law by holding that attorneys representing successful workers' compensation claimants were entitled to a "reasonable" fee. That decision effectively returned the law to its pre-2003 state. Trial lawyers hailed the decision, noting that it had become increasingly difficult for workers' comp claimants to secure counsel at the fee caps provided in the statute. Business groups immediately argued that the *Emma Murray* decision would result in a dramatic increase in workers' compensation insurance rates, thwarting the legislature's workers' comp reforms that had dramatically decreased rates over the last five years. In January, the OIR approved a rate filing by the National Council on Compensation Insurance (NCCI) increasing rates by 6.4% in Florida as a result of the Supreme Court's decision.

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On Friday May 1, the Legislature passed House Bill 903 and its Senate counterpart, which effectively overturned *Emma Murray* by amending the fees provision in the workers' comp laws to make clear that the caps in the statute apply in all situations. References in the statute to "reasonable" attorney's fees have been removed, leaving only the fee caps. Business groups immediately hailed the passage of the bills as reflecting the intent of the 2003 reforms and as an action required to keep rates low. If HB903 becomes law, it will take effect on July 1, 2009. 



## Proposals That Did Not Pass

By: Travis Miller

Every year our legislative edition of the *Florida Insurance Report* contains a list of issues that received the "thumbs down". This year's list includes some of the following:

**State to Write All Wind Risk** - After an early workshop in the House, nothing became of bills that would have resulted in the state writing all wind risk on residential policies.

**Removing Citizens from TICL** - Some proposals would have removed Citizens from the TICL layer to create a better chance of funding it, but this ultimately did not occur.

**Increasing the TICL Co-Payment** - In addition to reducing the upper TICL limit, the House proposed to increase insurers' co-pays. In the end, only the top end was reduced.

**Limiting Nonrenewals to 2%** - Early animosity toward State Farm for its withdrawal plan resulted in a bill that would have limited insurers to nonrenewing 2% of their business per year. The tide turned, with the legislature eventually passing a rate deregulation bill that benefits large insurers like State Farm.

**Mandatory Product Offerings** - As in past sessions, a proposal surfaced that would require insurers to offer in Florida all lines they write in other states. The idea did not receive much attention this year.

**Altering DOAH Standards** - Late in the session, an amendment surfaced that would have eliminated the ability of DOAH judges to modify rate requests and would have altered the characterization of facts versus legal conclusions in administrative actions.

**My Safe Florida Home Funding** - Many legislators wanted to use part of an increase in Citizens' rates to fund My Safe Florida Home. However, those believing Citizens needs all the money it can get eventually prevailed.

## Bill to Prohibit "Accident Response" Fees On Its Way to Governor

By: Bert Combs



The Florida Legislature has passed legislation that prohibits counties and cities from charging accident response fees to recover the costs of first responders at motor vehicle accidents. Several local governments had enacted such fees via ordinances in an attempt to recover these costs, forcing insurers to decide whether such fees should be covered by their insurance policies.

Senate Bill 2282 expressly prohibits local governments from imposing a fee or seeking reimbursement for any costs or expense that may be incurred for services provided by first responders to an accident. However, the bill does contain exceptions relating to the costs to contain or clean up certain "hazardous materials" and the costs for transportation and treatment provided by private or publicly owned ambulance services, including air ambulance services.

If signed into law by the Governor, the bill will create two new statutes (Section 125.01045 and Section 166.0446) that apply to counties and municipalities, respectively. The new statutes would take effect July 1, 2009.

## Updates - By: David Yon

If you are looking for updates or more details on any of the bills in this issue check out our website,

[www.radeylaw.com](http://www.radeylaw.com) or contact any of our insurance specialists. We will be keep-

ing up with the Governor's actions on each bill and the regulatory process for implementing the new laws.



## Condo Glitch Bill Passes

By: Travis Miller

Several legislative proposals surfaced this year to address concerns with condominium insurance legislation passed in 2008. In the end, the so-called glitch bill that survived was SB 714. The bill revised numerous provisions of Florida's condominium insurance laws. Those pertinent to the insurance industry include:

- Requiring \$2000 loss assessment coverage with a deductible not exceeding \$250— The legislature mandated \$2000 in loss assessment coverage last year. This year's debate centered around whether a deductible should apply to the loss assessment coverage. Although some proposals would have applied no deductible to the coverage, the final bill provides for a \$250 deductible, but only if no other deductible has been applied to the policy arising from the same cause of

loss. The loss assessment coverage applies to perils covered under the unit owner's policy, which is easier to administer for insurers than other proposals that would have referred to covered perils under the association policy.

- Eliminating the provision making unit owners responsible for the costs of insuring property used by fewer than all of the owners.
- Deleting the provision allowing associations to force-place coverage on unit owners who do not maintain policies.
- Eliminating the requirement for unit owners' insurers to add the associations as additional named insureds and loss payees.

The bill revises references to "hazard" insurance to now refer to property insurance. The new provisions take effect July 1, 2009, if the bill becomes law.

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## Variety of Life and Health Insurance Bills Headed to the Governor

By: Tom Crabb

While property and casualty again dominated the legislative session, there were a number of significant bills passed related to life and health insurance as well. Here are some highlights of several of the key bills now awaiting action by the Governor:

**SB2158 FIGA Public Record Exemption** – this bill exempts from disclosure under the public records law the following documents of the Florida Insurance Guaranty Association: claims files for pending claims unless they remain exempt by other provisions of law; medical records that are part of a claims file and other information related to the medical condition or medical status of a claimant; and records pertaining to matters reasonably encompassed in privileged attorney-client communications.

**SB918 Florida Kidcare Program** – this bill clarifies that all eligible uninsured children are eligible for the program; removes the limitation on MediKids enrollees enrolling in a Healthy Kids plan only if a child has a sibling enrolled in a Healthy Kids plan; and increases the number of "good cause" reasons that families can use to voluntarily cancel their health insurance coverage and be immediately eligible for KidCare coverage without a waiting period.

**SB162 Electronic Health Records** – this bill allows a health care provider to release or access an identifiable health record of a patient without the patient's consent for use in the treatment of

that patient for an emergency medical condition under certain circumstances; requires AHCA to operate an electronic health records system adoption loan program; and authorizes a lab to release, without patient consent, test results that have been ordered by a practitioner to other health care practitioners involved in the care or treatment of the patient.

**HB 483 Investor Protection** – This bill expands the jurisdiction of the Office of Statewide Prosecution to criminal violations of the Florida Money Laundering Act and Florida Securities and Investor Protection Act; subjects certain viatical settlement transactions to the Investor Protection Act's prohibitions against fraudulent transactions, falsification or concealment of facts, false representations, deceptive words, boiler rooms, and other prohibitions; and authorizes the Florida Department of Law Enforcement to enter into agreements and pay rewards from seized assets to any individual or entity who provides information leading to the recovery of fines or penalties for a violation of the law.

**HB7039 Insurance Claim Data Exchange** – Insurers can participate in a program by which they send to the Florida Department of Revenue identifying information about noncustodial parents having insurance claims. This information can then be used by the Department for child support enforcement. HB7039 extends a public records exemption for identifying information received by the Department until a parent with a delinquent support obligation is identified.

## Late Deal Allows Property Insurance Bill to Pass on Session's Last Day

By: Travis Miller

Throughout the 2009 legislative session, the House and Senate took differing positions on important issues such as the status of the Florida Hurricane Catastrophe Fund, increasing rates at Citizens Property Insurance Corporation, and allowing insurers to recover additional costs they incur as a result of buying additional private market reinsurance. On the eve of the session's final day, leaders from both chambers worked with Governor Crist's staff to craft compromises that would satisfy all parties and allow the bill to pass. Even so, the bill had to withstand several attempts to amend it, which might have jeopardized the deal. In the end, however, legislators kept the agreed bill intact and it passed both the House and Senate on the session's last day.

### Far-Reaching Effects of the Property Bill

The property bill has some effect on most areas of property insurance, including the Florida Hurricane Catastrophe Fund, Citizens Property Insurance Corporation, rate filings and other important issues. The following summarizes important changes set forth in the bill:

#### **Florida Hurricane Catastrophe Fund**

- Converts the FHCF to a calendar-year basis beginning January 1, 2011
- Extends the limited apportionment layer for three years; allows insurers to purchase the coverage if they bought it in 2008, qualify as limited apportionment companies, or participated in the capital build-up incentive program
- Specifies that the optional limited ap-

portionment coverage is accessed before the insurer's mandatory layer of coverage, but once exhausted the insurer's mandatory layer retention continues to apply

- Clarifies that the estimates produced by the FHCF in May and October of each year must include its projected claims-paying capacity
- Provides that the FHCF will reduce all participants' reimbursement multiples proportionately if it projects that it will not be able to fully reimburse all participants
- Adds a rapid cash build-up factor to the FHCF's rates; the factor begins at 5% in 2009 and increases by 5% each year until reaching 25% in 2013 and thereafter; the rapid cash build-up factor does not apply to TICL premiums
- Allows the State Board of Administration to require insurers to submit notarized documents
- Creates a phase-out plan for TICL beginning this year and extending through 2013; TICL is reduced to \$10 billion this year and by \$2 billion in each subsequent year until it is only \$2 billion in 2013 and gone in 2014
- Increases the rates for TICL coverage each year; an insurer's premium will be multiplied by a factor of 2 this year, rising by one each year until the factor reaches 6 in 2013
- Eliminates the optional \$4 billion extension of additional FHCF coverage; the FHCF has not used this option previously

#### **Rate Filings**

- Extends the prohibition against "use and file" rate filings through the end of 2010
- Allows an insurer to make a separate

rate filing limited solely to adjusting rates for the costs of reinsurance or financing products associated with (a) replacing or financing the payment of the amount covered by the TICL layer including the amount being eliminated, (b) the cost associated with the TICL rate multiple, and (c) the amount paid due to application of the rapid cash build-up factor; the filing cannot result in an overall premium increase of more than 10% for any individual policyholder; costs associated with financing products cannot result in premium increases of more than 3%; costs cannot be loaded for expenses or profit; the rate filings cannot make any other changes and the insurer cannot have "implemented" a rate increase within the six months immediately preceding the filing; the insurer then is prohibited from filing for a rate increase under any other provision for six months after "making a filing" under the new cost recovery provision and can use the cost recovery provision only once in a 12-month period; the OIR has 45 days to review costs recovery filings under the standard that the rates are not excessive, inadequate, or unfairly discriminatory

- Clarifies that an insurer may recover its costs of replacing TICL if the filing does not result in an annual base rate increase of more than 10% and the costs are not increased for expenses or a profit load
- Specifies that assessments by Citizens or any other residual market constitute advances that an insurer is fully entitled to recoup; the insurer may recoup the amount of the assessments by applying a factor to its rates over a 12-month period; if the insurer does not recover the full amount of the assessment during the 12-month period, it may recalculate a recoupment factor over one or

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more additional 12-month periods; the insurer must submit its initial or subsequent recoupment factor to the Office of Insurance Regulation for informational purposes at least 15 days before applying it; no later than 90 days after the insurer has completed its recoupment process, it must file a final accounting with OIR

### **Citizens Property Insurance Corporation**

- Requires that notwithstanding rate levels recommended by Citizens' board of governors and subject to OIR approval, Citizens must implement a rate increase each year not exceeding 10% for any single policyholder, excluding coverage changes and surcharges; the incremental increases end when Citizens reaches actuarially sound rates, at which point it must continue to develop annual recommendations for actuarially sound rates; Citizens may also implement an increase associated with the FHCF's introduction of the rapid cash build-up factor
- Provides for staggered terms for Citizens board members
- Eliminates a requirement for sellers of personal residential properties insured by Citizens to provide written disclosure of the uniform home grading scale score by January 1, 2010
- Delays a reduction in the High Risk Account boundaries from February 1, 2010 to December 1, 2010.

### **Mitigation**

- Requires the Florida Commission on Hurricane Loss Projection Methodology to hold public meetings to receive testimony and data relating to the implementation of mitigation discounts; requires the commission to prepare a report by February 1, 2010 including recommendations for improving the process of assessing, determining, and applying mitigation discounts

- Adds licensed building contractors, in addition to general and residential contractors, to the list of persons eligible to complete mitigation verification forms
- Allows insurers to accept mitigation verification forms from any individual or entity the insurer believes has the necessary qualifications to properly complete the form
- Specifies that a person who knowingly provides a false mitigation form with the intent to receive a discount is guilty of a first degree misdemeanor
- Specifies that My Safe Florida will continue to provide inspections as funding allows; a proposal to use funds from Citizens Property Insurance Corporation to fund the inspections but the proposal did not survive in the final bill
- Expands the construction techniques and mitigation features for which My Safe Florida grants may be available
- Specifies that the mitigation discounts associated with the uniform home grading scale to be adopted in 2011 will supersede the discount program currently in effect

### **Public Adjusters**

- Prohibits public adjusters from compensating persons who refer residential insurance business to them
- Restricts public adjusting firms to no more than 12 apprentices and limits supervising public adjusters to overseeing no more than 3 apprentices
- Requires the state's Office of Program Policy Analysis and Government Accountability to submit a report by February 1, 2010 reviewing laws applicable to public adjusters; the review must include consideration of Citizens' claims statistics and the laws and regulations of other states relating to public adjusters

### **General Provisions**

- Specifies that an existing statute allowing insureds to recover replacement cost whether or not they repair does not prohibit the insurer from exercising its right to repair in accordance with the policy
- Revises the transparency law to require the OIR to publish on the Internet for residential property filings (a) the amount of rate change approved by the OIR as well as all of the actuary's assumptions and recommendations forming the basis of the OIR's decision, (b) certification by the OIR's actuary that his or her recommendations are consistent with accepted actuarial principles, and (c) a means for affected policyholders to e-mail the OIR about proposed rate changes; the bill also eliminates a provision added last year regarding the OIR's attorney-client privilege
- Revises a statute governing whether admitted market insurers must include windstorm insurance coverage on policies based on their eligibility for wind coverage with Citizens
- For ex-wind policies, specifies that an insurer must notify any mortgageholder or lienholder that the insured has elected not to purchase wind coverage even if the policy is located in an area eligible for wind-only coverage with Citizens
- Allows licensed agents to explain the existence or function of the Florida Insurance Guaranty Association to applicants or policyholders
- Allows reinsurers complying with Section 624.610 to provide coverage directly to a public housing authority self-insuring its liabilities; the public housing authority is considered the insurer for the sole purpose of facilitating their purpose of reinsurance under this new provision

## Legislature Sends Large Insurer Rate Deregulation Bill to Governor

By: Travis Miller

A legislature known for adopting lengthy bills that pervade most aspects of the business might have caused its greatest stir with the simple six-page HB 1171. The bill, which passed late on the last day of session, would exempt large insurers from key provisions of Florida's rating law.

### Results of the Bill:

The bill would allow certain large insurers to charge rates for residential property insurance in excess of their filed and approved rates. The insurer would be required to submit its excess rates to the Office of Insurance Regulation, but the OIR's review would be limited to determining adequacy or whether the rates use unlawful rating factors. The legislature chose to limit the benefits of the bill to insurers with:

- \$500 million in surplus;
- \$200 million in surplus with a net writings ratio not exceeding 2:1, as long as reinsurance used in maintaining the ratio is provided by reinsurers rated superior, excellent, exceptional or similarly by recognized rating organizations;
- \$150 million in surplus and having a primary purpose of providing insurance to members of a nonprofit organization.

An insurer seeking to avail itself of the new rating flexibility cannot purchase TICL coverage from the FHCF. In addition, the insurer will be required to notify each affected policyholder that the rate being charged may exceed its filed rate and obtain a signed acknowledgment.

The insurer also will be required to provide a premium quote from Citizens Property Insurance Corporation or an admitted insurer willing to write the policy.

Notwithstanding the provisions of Section 627.4133 relating to cancellations and nonrenewals, an insurer canceling or nonrenewing a policy subject to excess rates will be required to give 180 days notice.

### Benefits and Drawbacks:

The bill marks the first meaningful effort by the Florida Legislature in recent years to grant rate flexibility to insurers, thereby potentially attracting capital and allowing insurers to timely respond to market conditions. The bill also seeks to attract financially strong insurers and therefore increase competition.

On the other hand, according to legislators during floor debate, the bill benefits only about 15 insurers. Other insurers with strong credentials might fall outside of the bill's thresholds and therefore not be able to avail themselves of the statute's benefits. Also, small insurers arguably need at least as much pricing flexibility, if not more so, than insurers with large surpluses. The bill, if it becomes law, would limit the ability to raise rates only to insurers that might have the greatest need to do so. Floor debate on this bill also revealed concerns among some legislators that it will result in growth for Citizens Property Insurance Corporation, particularly in the state's areas of greatest coastal exposure where legislators perceive that the large insurer's rate increases will be the largest.

### The Bill's Future:

The bill next will be presented to the Governor. Some predict the Governor will veto the bill. However, many observers also have been predicting throughout the 60-day session that the bill would not pass. This bill undoubtedly will attract a

lot of attention in the coming weeks as the Governor considers it.

## Pasco Legislators Combine to Pass Sinkhole Revisions

By: Travis Miller

Bills filed by Senator Mike Fasano and Representative John Legg initially sought to review the effectiveness of local building codes designed to reduce sinkhole losses. In the end, however, the bills also addressed the manner in which insurers may offer and underwrite sinkhole coverage in Pasco and Hernando Counties.

The bill (SB 742) would allow insurers in Pasco and Hernando Counties to nonrenew policies including sinkhole coverage and offer policies with catastrophic ground cover collapse coverage instead. The insurers must notify insureds of the reason for nonrenewal, provide an appropriate premium credit for the reduction in coverage, and allow insureds to request to add the sinkhole coverage back to their policies upon appropriate underwriting and inspection of the risks.

The bill also requires the Financial Services Commission to review the effectiveness of local building codes designed to limit or prevent sinkhole losses. Upon studying the issue, the Financial Services Commission will determine by rule the appropriate amount of discounts on insurance premiums that should be associated with the heightened building codes. The new statutes contemplates that the process of collecting data and determining the discounts will take about four years.

# Florida Legislature Passes HB 853 Relating to Surplus Lines Insurance

By: Travis Miller

The Florida Legislature held the surplus lines industry in suspense late in the 2009 legislative session until it finally passed HB 853 in the waning hours. The bill began this session as an effort to return surplus lines insurance to a largely unregulated status after court rulings in 2008 suggested that due to construction of historical statutes, surplus lines insurance was subject to most admitted market form and rate requirements. Unfortunately, the bill became a key battle ground between the industry and the trial bar, which pointed to last year's court rulings as evidence that surplus lines insurers should be subjected to greater regulation. Absent a bill this session, surplus lines insurers would have remained exposed to potential adverse court rulings and increasing regulatory requirements. Late agreements on key issues, however, allowed the bill to pass.

## Results of the Bill:

Most importantly, the bill specifies that Chapter 627 of the Insurance Code does not apply to surplus lines insurance except as specifically stated. Surplus lines insurers traditionally have been subject to limited provisions in Chapter 626 of the code and have not been regulated under Chapter 627, which generally contains rate and form approval requirements and other substantive regulations for admitted insurers.

Under the bill, surplus lines insurers effective October 1, 2009, will need to add certain disclosures to their policies. One disclosure will state that the forms and rates are not subject to Florida regulatory approval. Another will inform personal residential policyholders of potential

deductibles or co-payments.

Other revisions to the surplus lines law address forms of premium and claims payments and the insurer's obligation to provide information about a liability policy when requested by a claimant.

Finally, the bill contains an attorneys' fee provision.

## Retroactive Application:

One of the most contentious issues throughout the session was the industry's desire to have the bill apply retroactively. From the industry's standpoint, the court rulings in 2008 exposing the industry to admitted market form and rate requirements resulted from statutory constructions that clearly did not reflect regulatory intent or practices. The Florida Office of Insurance Regulation supported this view, pointing out that it did not ever intend to regulate surplus lines and that doing so would put Florida out of step with the remainder of the country. The industry therefore argued that the new law would be remedial in nature and should be made retroactive to the date of the original surplus lines law (October 1, 1988).

The trial bar, however, made persuasive counterarguments. They pointed to statements from the Florida Supreme Court that the legislature knew it was subjecting surplus lines to admitted market requirements when it constructed the statutes. They also argued that while surplus lines insurance once filled only unique or niche markets, it now overlaps with the admitted market in many areas, including some personal residential insurance. For this reason, the trial bar also sought to apply several more admitted market regulations to surplus lines insurers.

A late compromise on retroactivity and the scope of regulations to be applied to surplus lines insurers allowed the bill to

pass. In the final bill, the new provisions are said to be remedial in nature and retroactive to October 1, 1988 except as to any lawsuits that are filed by May 15, 2009.

The bill next will be sent to the Governor for action. In light of the effort by all sides to reach acceptable compromises on key areas of contention, the bill is expected to become law.

## Professional Liability Claim Reporting Bill Contains Important Clarifications

By: Travis Miller

Insurers became concerned with apparent differences of interpretation with the Office of Insurance Regulation in its closed claim reporting requirements when the OIR converted to an online reporting system for professional liability closed claims. The industry therefore worked with the Office of Insurance Regulation to identify ways that the reporting triggers and requirements could be clarified. This effort resulted in the passage of SB 2252.

The bill attempts to clarify what constitutes a claim for purposes of the reporting requirements. The bill then provides that the insurer's duty to report arises when there is a final judgment, execution of a settlement agreement, final payment of any indemnity amount, or a claim is closed without an indemnity payment but with at least \$5000 in loss adjustment expenses. The bill also describes insurers' obligations when claims are closed and later re-opened. Finally, the bill contains an important provision that limits insurers' obligations to track and update previously reported claims to one year following their initial reports.

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## ARRA Brings COBRA Changes

By: Christopher B. Lunny

New COBRA Rules: The American Recovery and Reinvestment Act of 2009 ("ARRA") was enacted to help workers maintain group health insurance coverage for themselves and their families after losing their jobs. ARRA provides for 65% premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). ARRA requires employers to comply with strict notice requirements and to advance the subsidized payments for qualified individuals electing such coverage. ARRA then permits employers to obtain a reimbursement for the advanced funds via a credit on employment taxes. The subsidy (or premium reduction) applies to periods of health coverage beginning on or after February 17, 2009 and lasts for up to nine months. It is for those eligible for COBRA during the period beginning September 1, 2008 and ending December 31, 2009 due to an involuntary termination of employment that occurred during that period (referred to as "assistance eligible individuals"). In early April, the Internal Revenue Service issued a twenty-seven page guidance which, among other things, addresses when a worker's departure is "involuntary."

ARRA also implements new notice requirements. Plan administrators are required to provide notices of the subsidies to all employees and dependents covered by the group health plan (excluding flexible spending accounts) who have a COBRA-qualifying event during the periods from September 1, 2008 through December 31, 2009, regardless of the reason for the qualifying event and regardless of whether the individual previously declined COBRA or failed to make COBRA payments. The plan administrator then reviews the elections to determine whether the individual is an assistance

eligible individual.

The United States Department of Labor ("DOL") has posted model notice packages at [www.dol.gov/ebsa](http://www.dol.gov/ebsa). These packages include (1) a general explanation of COBRA rights as modified by the new subsidy rules, (2) a summary of the COBRA subsidy provisions, and (3) an application for the subsidy. There are three employer notices for different situations: (1) The General Notice is the typical initial notice containing all of the information required of a COBRA notice. (2) The Abbreviated General Notice is for those currently enrolled in COBRA, but who have not yet received notice of their additional rights under ARRA, and thus, lacks COBRA election information. It may be sent in lieu of the full version to individuals who experienced a qualifying event on or after September 1, 2008, have already elected COBRA coverage, and still have it. (3) The Notice of Extended Election Period should be sent to any assistance eligible individual (or any individual who would be an assistance eligible individual if a COBRA continuation election were in effect) who: (a) Had a qualifying event at any time from September 1, 2008 through February 16, 2009; and (b) Either did not elect COBRA continuation coverage, or who elected it but subsequently discontinued COBRA.

Notices are available in English and Spanish. Employers need to modify these Model Notices to accurately reflect the employer's particular plan. Issues the employer would want to reference include any prohibition against employees opting for a different employer-offered plan, a special notation limiting applicability for plans including domestic partners, and an explanation of the implications of any pre-existing employer subsidies. Employers must immediately revise or supplement their COBRA plan documents/ summary plan descriptions so that the notices and plans are consistent.