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Issue: # 2009-5

February 19, 2009

American Recovery and Reinvestment Act Creates COBRA Subsidy

On February 17 President Obama signed the American Recovery and Reinvestment Act of 2009 (the "Act") into law. This law includes an expansion of COBRA to include a temporary federal subsidy for people who lose group health plan coverage due to an involuntary termination of employment. We highlight below some of the key provisions of this COBRA subsidy and the actions that employers will need to take to implement the subsidy.

Eligibility

To be eligible for the subsidy a COBRA qualified beneficiary must lose group health plan coverage between September 1, 2008 and December 1, 2009 due to an involuntary termination of employment. Qualified beneficiaries who are eligible for the subsidy include former employees and any of their dependents who lost coverage due to the termination of employment. These individuals are collectively referred to as Assistance Eligible Individuals ("AEI") under the Act.

Subsidy

The Act provides a federal subsidy equal to 65% of the COBRA premium that an AEI would be required to pay for up to 9 months of COBRA coverage. Employers will provide this subsidy directly to AEIs through the COBRA billing process then claim the amount of the subsidy as a credit against their payroll tax payments.

Timing

The subsidy is effective the first period of coverage beginning after the Act becomes law (for most plans, March 1, 2009) or the date of the loss of coverage, if later. For individual participants the subsidy will terminate at the earliest of:

- The exhaustion of the 9 month period
- The date on which their COBRA coverage terminates
- The date the individual becomes eligible for coverage under another group health plan (regardless of whether the qualified beneficiary actually elects coverage under the other plan). Individuals who do not notify the plan administrator that they are eligible for coverage under another group health plan are subject to a tax equal to 110% of the subsidy provided after the AEI's eligibility terminated.

Limitations

The Act applies the following restrictions to subsidy eligibility:

- **Voluntary Employer Subsidy:** If an employer voluntarily subsidizes COBRA coverage (e.g., under the terms of a layoff or severance agreement), the subsidy is calculated as 65% of the remaining premium due from the AEI.
- **Income limitation:** COBRA qualified beneficiaries whose modified adjusted gross income (AGI) exceeds \$145,000 (\$290,000 for joint filing) are ineligible for the subsidy. Plan administrators do not need to make income eligibility determinations prospectively as the subsidy will be recaptured through individual income taxes. However, plan administrators need to exclude from the subsidy any high income individuals who notify them that they are irrevocably waiving receipt of the subsidy.

Administration

The administration of this subsidy creates notice, enrollment, billing, and filing responsibilities for plan administrators, which are summarized below:

- **Notice-** Plan administrators must provide notices to all AEIs. The initial notice must be sent within 60 days of the enactment of the Act. The Treasury Department is required to provide a model notice within 30 days of enactment.
- **Enrollment-** AEIs who are not currently enrolled in COBRA coverage will have a special election period to enroll in COBRA. This special election period ends 60 days after the date the plan administrator provides the required notice to the AEI. Enrollment under this special election period is effective as of the first day of the next period of coverage following enactment (typically, March 1, 2009). AEIs who enroll under this special election period are deemed to have no break in

coverage for the purpose of applying any pre-existing condition provision.

- **Billing-** Plan administrators must apply the subsidy to the AEI's COBRA billing. If they are unable to do so during the first two months of transition, they must either issue a refund within 60 days or apply the credit to future billings (provided that they reasonably expect the credit to be completely applied within 180 days).
- **Filing-** Employers will be required to submit filings that report the individuals, type of coverage, amount of subsidy and amount of payroll tax credit claimed. The form and timing of these filings will be determined by Treasury Department regulations.

Next Steps for Employers

The Treasury Department will be issuing regulations to address procedures and model notices. In the meantime, employers can prepare for complying with the Act by:

- Identifying all AEIs who lost health plan coverage due to an involuntary termination of employment on or after September 1, 2008
- Determining which AEIs are currently enrolled in COBRA and which are eligible for the special election period
- Identifying any AEIs who are receiving a voluntary employer COBRA subsidy and calculating adjusted subsidy amounts for those individuals
- Determining how to apply any refunds or credits due during transition
- Preparing to issue the required notices to AEIs (we anticipate most employers will send notices once Treasury issues the model notice)
- Adjusting COBRA administrative procedures to apply the subsidy for AEIs, process subsidy terminations (which may or may not correspond to terminations of COBRA coverage), and accommodate waiver requests from high income qualified beneficiaries

Please contact your Harbridge Consultant with any questions (via email above or phone) or contact Steve Chase at 315-703-8986.

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