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Department of Labor Publishes Model COBRA Subsidy Notices

On March 18, 2009, the Department of Labor (DOL) published model notices as required by the COBRA premium subsidy provisions of the American Recovery and Reinvestment Act of 2009 (ARRA). As you may recall, on February 20, 2009, Reinhart published a preliminary analysis of ARRA describing our current understanding of the then-new COBRA compliance requirements under ARRA. As you know, we are learning new information about the COBRA subsidy provisions of ARRA almost daily. Many of the items we previously reported have been clarified and updated by the DOL and the Internal Revenue Service (discussed in a companion e-alert). This e-alert is intended to update our prior guidance and provide additional commentary on the DOL's model notices.

Individuals Entitled To Notice. Preliminary analysis of ARRA indicated that notice of the COBRA subsidy would have to be provided to all qualified beneficiaries who experienced a qualifying event after September 1, 2008. Thankfully, the DOL has narrowed the notice requirement to the following three groups:

- All qualified beneficiaries who experienced an involuntary termination of employment and a loss of coverage on or after September 1, 2008 AND who elected COBRA AND who are still on COBRA;
- All qualified beneficiaries who experienced an involuntary termination of employment and loss of coverage on or after September 1, 2008 and who either did not elect COBRA or who elected COBRA but let it lapse prior to February 17, 2009; and
- All COBRA qualified beneficiaries who experience a qualifying event and loss of coverage prior to December 31, 2009 and who either have not yet received a COBRA election notice or who received a COBRA election notice that was mailed after February 17, 2009.

Department of Labor Model Notices. The DOL offers a model notice to be mailed to each of the above noted groups. The DOL notices are labeled, respectively, an abbreviated notice, an extended election notice and a general notice. The Model Notice is available on the DOL website.

The DOL models are based on original DOL model COBRA notices published in 2004 with the final COBRA regulations (the "2004 model notices"). In 2004, we noted that the model notices did not describe all of the COBRA information that a

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qualified beneficiary needs to make an informed decision. Therefore, we recommended significant modifications to the 2004 model notices. Because the new DOL model COBRA notices are based on the 2004 model notices updated to add the required ARRA information, the new model notices are still missing pertinent general COBRA information. Use of the new DOL models will likely require significant revisions to bring the new models in line with your current COBRA notices.

If you would prefer using your current COBRA notices with a supplement to address the required ARRA information, Reinhart has prepared supplementary materials intended to comply with ARRA. Please contact your Reinhart attorney for assistance with the compliance process.

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