



LAMBERT & CARNEY

Benefits Group, LLC

Established 1984

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Your Source for 360° Benefit Solutions





LAMBERT & CARNEY

Benefits Group, LLC

Independent Benefit Brokerage and Consulting Firm

Representing over 150 Clients

Ranging in size from 10 to 5,000 Employees



# American Recovery and Reinvestment Act of 2009 (ARRA)

Feb. 2009

Lambert & Carney Benefits Group, LLC Providing 360<sup>0</sup> Benefit Solutions

The information contained in this presentation is confidential.



# Agenda

- ARRA- What is it
- Impact on COBRA
- Important Definitions
- Administration Issues

# American Recovery and Reinvestment Act of 2009

## Also known as the Stimulus Bill

- 1,071- page document
- \$787 billion economic stimulus package
- 3,500,000 to 4,000,000 jobs

# COBRA

## Most COBRA Rules Remain the Same

- Under Present Law COBRA applies to:
  - Organizations that have at least 20 employees;
  - Are not Church Plans
  - Are not Government Plans
- ARRA will cover
  - Companies with fewer than 20 employees if there is a state continuation mandate in place
  - Governmental Employers

# Previously Under COBRA

- Qualifying Events
  - Death of covered employee
  - Divorce or legal separation
  - A dependent child aging out
  - Termination of employment (for other than gross misconduct) or reduction in hours
- ARRA impacts **only those with involuntary terminations** (for other than gross misconduct)

# ARRA's Impact on COBRA

- **COBRA Subsidy**
- **Employee Eligibility**
- **Special Enrollment**
- **Notice Requirements**
- **Effective Date**

# 65% COBRA Subsidy

Subsidy available for up to 9 months

- Employers to receive a credit against payroll taxes
- Subsidy terminates upon **offer** of new employer-sponsored health care coverage or Medicare eligibility
- Beneficiary must pay their portion of the premium

# 65% COBRA Subsidy

- Employer's payment to carrier doesn't change
- 65% subsidy is recouped through offset against income tax withholding from wages or FICA
- Entities wishing to claim reimbursements will need to file certain reports, including attestation of the involuntary termination of employment

# 65% COBRA Subsidy

- Multi-employer will be responsible for subsidy when they are the plan provider
- Will need to file for reimbursement since they don't have access to withholdings

# 65% COBRA Subsidy

Applies to All COBRA Offered Plans....

- Medical
- Dental
- Vision

● .....Except FSAs

# ARRA's Impact on COBRA

## Assistance Eligible Individual (AEI)

- Any COBRA qualified beneficiary eligible for COBRA continuation by virtue of the covered employee's involuntary termination between 9/1/2008 and 12/31/2009
- Employees with annual incomes less than \$125,000 (single) or \$250,000 (couples) eligible for the full assistance
- Prorated subsidy for employees earning \$125,000 to \$149,999 (single) or \$250,000 to \$289,999.

# How is Income Tracked

- Eligibility for the subsidy is based on the income for the taxable year in which it is received (either 2009 or 2010)
- Adjusted Gross Income on personal return
- If income exceeds limits then the subsidy for all months during the taxable year must be repaid
- Individuals can waive right to subsidy

# Assistance Eligible Individual (AEI)

- AEI would include
  - (i) a covered spouse defined by federal law
  - (ii) a covered dependent child
- Does not include same-sex domestic partners
  - Even if offered continuation coverage by the plan, such an individual is not a “qualified beneficiary” for purposes of federal COBRA
  - Same-sex domestic partners don’t have independent right to Subsidy

# Assistance Eligible Individual (AEI)

- Second Qualifying Event
  - If second event happens within the 9 month subsidy other qualified beneficiary gets subsidy through the end of 9 month period

# Notice Requirements

**Model notices are due from the DOL 30 days after enactment**

- Must include information on the availability of premium assistance
  - placed in a prominent manner.
- Option to enroll in other coverage if permitted
- Info on forms necessary to establish eligibility for subsidy
- Contact information of plan administrator
- Description of the extended election period

# ARRA Special Election

- Current COBRA- 60 to notify
- AEI termed prior to 3/1/2009 now have additional 60 days from later of date of notice or March 1, 2009
- Preexisting Conditions
  - HIPAA's 63 day gap in coverage rule waived
- Under Special Election- COBRA coverage begins March 1

# ARRA's Impact on COBRA

## Special Enrollment

- Employers can offer chance to elect different coverage under the plan
  - It is up to the employer to determine if it wants to do this
- Only available if the alternative plan is less expensive
- The alternative plan must also be available to active employees

# AEI's Notice Responsibility

- Must provide notice to the health plan when eligible for other coverage
- Failure subject to 110% penalty

# AEI's Payment Responsibility

- The bill did not mention how long an AEI has to make a payment.

# Putting it Together

	Employee 1	Employee 2	Employee 3
Date of Term	10/1/2008	9/1/2008	8/1/2009
Eligible for Subsidy	yes	yes	yes
Elected COBRA @ Term	yes	no	yes
Entitled to New Enrollment	NA- already in	yes	NA term after 3/1/2009
COBRA Coverage Begins	10/1/2008	3/1/2009	8/1/2009
COBRA Subsidy Begins	3/1/2009	3/1/2009	8/1/2009
Subsidy Terminates	11/30/2009	11/30/2009	4/30/2010
COBRA End Date (18 months)	3/31/2010	2/28/2010	1/31/2011

# Putting it Together- How the Subsidy Works

## Assumptions:

Termination date February 1, 2009

Premiums- \$1,000

2% admin charge- \$20

Hypothetical employer contribution during  
severance- 50% of COBRA (\$510)

Severance paid until May 31, 2009

On COBRA through January 31, 2010

# Putting it Together- How the Subsidy Works

Under the scenario on the previous page the subsidy would be:

February- No Subsidy

March-May- 65% of \$510 or \$331.50

June-November- 65% of \$1,020 or \$663.00

December- January 2010- No Subsidy

# ARRA

**Effective Date**

**March 1, 2009**

And there is only 1 full working day left in February

# What to Do Right Now

- Determine who has been involuntarily terminated since September 1, 2008
  - Identify those who elected COBRA (don't forget dependents only)
  - Determine who has not elected COBRA previously and their last known address
- Update COBRA materials to comply with new requirements
- Determine whether to permit individuals to elect different health plan options
- Review severance policies to determine need for employer COBRA premium contributions
- Notify terminated individuals of their new rights and responsibilities under ARRA
- Develop processes and procedures for the administration of the COBRA subsidy

# What to Do Right Now

- Provide “high income individuals” the means to permanently waive the premium subsidy
- Determine how you will refund premiums to participants if they have paid in advance for premiums due March 1, 2009 or later
- Follow-up on status of the soon to be released model forms and regulations
- Coordinate with COBRA administrator to determine who will be responsible for what activity
- Contact your payroll vendor if they file payroll taxes on your behalf

# But There are Only 3 Days to March 1, 2009

- Unlikely that the vast majority will be able to comply by 3/1/2009
- If AEI's pay the full premiums for March and or April plan Administrator must credit the subsidized portion against future payments or refund subsidized portion within 60 days

# Other Changes

- Impact on HIPAA
  - Revised Business Associate Agreements needed
- Change in Transit Pass
  - Effective 3/1 limit will increase to \$230

# More to Come in 2009

## Expect Change

- President Obama signed legislation extending government-financed health care to millions of lower-income children.
- Obama first legislative signature was on the Lilly Ledbetter bill that made it easier to sue employers for discrimination.



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## What do Lambert & Carney Clients Need to Do

- If you offer multiple plans, you need to determine if you will allow AEs the opportunity to switch to a lower cost plan
- You need to identify employees that have involuntarily terminated employment since September 1, 2008
- You will also need to work with your payroll vendor to establish how you will pass information to them

## Lambert & Carney is offering our clients COBRA administration at no cost

- You will be held harmless on COBRA fines and penalties for noncompliance
- All you need to do is let us know when new employees are added and when employees are terminated





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## Other Lambert & Carney Value Added Benefits

- HR Communication Portal and Website
- Personalized Employee Benefit Statements
- Zywave HR portal
- Signature ready 5500 forms for groups over 100
- Continual Compliance Assistance
- Employee New Hire Kits and Benefit Summaries
- Benefit Benchmarking Analysis





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**We are pleased to have made this educational presentation available to you. Please keep in mind it is for educational purposes only and while every attempt has been made to accurately assess the provisions of ARRA it is not exhaustive and should not be construed as legal advice. Lambert & Carney Benefits Group, LLC does not practice law and would recommend that you seek legal counsel for legal advice.**

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