

**DOL Releases Model COBRA Notices for
Stimulus Bill 65% Assistance Payment Provisions**

March 19, 2009

Today the Department of Labor (DOL) issued its long-awaited (and Congressionally mandated) model COBRA notices addressing the 65% assistance payment provisions enacted as part of the Stimulus Bill signed into law February 17.

The four model notices can be found, along with new questions and answers related to the COBRA assistance payment provisions and previously released DOL material, at <http://www.dol.gov/ebsa/cobra.html>.

The appropriate model notice must be sent, along with the relevant additional COBRA material, to each current, prior, or prospective COBRA qualified beneficiary by April 18, 2009.

The model notices are designed for the four major groups of individuals impacted by the assistance payment provisions. Surprisingly, some of the models contain entire COBRA enrollment packages that may or may not mesh well with current COBRA enrollment material.

While the model notices do not provide any new or significantly revised interpretations of the assistance payment rules, they and the accompanying DOL questions and answers:

- Clearly require, contrary to the preferred approach of many COBRA administrators, that qualified beneficiaries declare themselves eligible for the 65% assistance payment;
- Contemplate a pen-and-paper process for electing COBRA and the 65% assistance payment;
- Fail to indicate that employers or COBRA administrators are free to use any other forms of their choosing; and
- Fail to recognize that employers or COBRA administrators can use electronic or telephonic processes to enroll in COBRA, claim eligibility for the 65% assistance payment, or notify an employer that a qualified beneficiary is no longer eligible for the assistance payment.

Perhaps further guidance from the DOL will indicate that the model forms can be revised as necessary to mesh with current COBRA enrollment material and that the 65% assistance payment eligibility can be established through electronic or telephonic means.

The Internal Revenue Service has also recently expanded and reorganized its 65% assistance payment and IRS Form 941 reimbursement process information. This expanded information can be found at <http://www.irs.gov/newsroom/article/0,,id=204708,00.html>.

For additional information regarding the COBRA 65% assistance payment provisions, see our February 24, 2009 LawFlash (available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAFurtherDetails_LF_24feb09.pdf) and our February 17, 2009 LawFlash (available at http://www.morganlewis.com/pubs/EconoStimulus_COBRAAction_LF_17feb09.pdf). A copy of the presentation given during our webcast, “Stimulus Plan COBRA Changes: Rules and Ramifications,” as well as supplementary material and an audio recording of the webcast, can be accessed at <http://morganlewis.com/pubs/cobrawebcast>.

For a broader discussion of these and other issues, please contact any of the following Morgan Lewis attorneys:

Chicago

David Ackerman	312.324.1170	dackerman@morganlewis.com
Andy R. Anderson	312.324.1177	aanderson@morganlewis.com
Brian D. Hector	312.324.1160	bhector@morganlewis.com

Dallas

Riva T. Johnson	214.466.4107	riva.johnson@morganlewis.com
John A. Kober	214.466.4105	jkober@morganlewis.com
Heath Miller	214.466.4118	hmillier@morganlewis.com
Erin Turley	214.466.4108	eturley@morganlewis.com

New York

Craig A. Bitman	212.309.7190	cbitman@morganlewis.com
Gary S. Rothstein	212.309.6360	grothstein@morganlewis.com

Philadelphia

Robert L. Abramowitz	215.963.4811	rabramowitz@morganlewis.com
I. Lee Falk	215.963.5616	ilfalk@morganlewis.com
Amy Pocino Kelly	215.963.5042	akelly@morganlewis.com
Robert J. Lichtenstein	215.963.5726	rlichtenstein@morganlewis.com
Joseph E. Ronan, Jr.	215.963.5793	jronan@morganlewis.com
Steven D. Spencer	215.963.5714	sspencer@morganlewis.com
Mims Maynard Zabriskie	215.963.5036	mzabriskie@morganlewis.com
David B. Zelikoff	215.963.5360	dzelikoff@morganlewis.com

Pittsburgh

Lisa H. Barton	412.560.3375	lbarton@morganlewis.com
John G. Ferreira	412.560.3350	jferreira@morganlewis.com
Lauren Bradbury Licastro	412.560.3383	llicastro@morganlewis.com
R. Randall Tracht	412.560.3352	rtracht@morganlewis.com

Washington, D.C.

Jessica R. Bernanke	202.739.5447	jbernanke@morganlewis.com
Althea R. Day	202.739.5366	aday@morganlewis.com
Benjamin I. Delancy	202.739.5608	bdelancy@morganlewis.com
David R. Fuller	202.739.5990	dfuller@morganlewis.com
Mary B. (Handy) Hevener	202.739.5982	mhevener@morganlewis.com
Dean R. Morley	202.739.5989	dmorley@morganlewis.com
Gregory L. Needles	202.739.5448	gneedles@morganlewis.com

Palo Alto

S. James DiBernardo	650.843.7560	jdibernardo@morganlewis.com
Zaitun Poonja	650.843.7540	zpoonja@morganlewis.com

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