

The Department of Labor (DOL) has finally issued, after eighteen years, formal guidance on the notices that must be provided under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986. New regulations, originally proposed in May 2003, have been finalized and they set time limits for providing notices, specify what information must be included, and establish new notice obligations.

The effective date of the new rule is the first day of the first plan year beginning on or after November 26, 2004. Thus, plans based on a calendar year must comply beginning January 1, 2005.

*** COBRA Rights and the New Regulations ***

Under COBRA, employers that provide group health plans and have 20 or more employees must offer continuation coverage to qualified beneficiaries who have lost health care coverage as a result of certain qualifying events. Covered employers are not required to pay for the cost of the coverage, but are required to make it available to the beneficiaries.

The new regulations focus on four specific notices required by COBRA and also impose two new notice obligations on administrators:

*** 1. Notice to Newly Covered Employees ***

Under COBRA, all employees and their covered spouses (if any) must be notified in writing of their COBRA rights when they first become covered under the group health plan. The original law states simply that notice must be given, but does not provide a time frame.

The new regulations now include a 90-day notification requirement. The plan administrator generally must give employees and spouses notice within 90 days of the date coverage begins. In addition, one notice may be sent to both the covered employee and spouse, if they live at the same address and the spouse's coverage begins on or after the date of coverage for the covered employee.

The new regulations also specify six items to be covered in the notice and provide a model general notice that single-employer plans can use to comply. In addition, the plan administrator can satisfy the initial requirement by including the required information in a summary plan notice description (SPD).

*** 2. Employer Notices to the Plan Administrator ***

COBRA requires both employers and employees to notify the plan administrator when a qualifying event occurs. The new regulations make it clear that the employer must notify the plan administrator within 30 days of a qualifying event that is triggered by termination, reduction in hours, death of the covered employee, the covered employee's enrollment in Medicare, or the employer's initiation of bankruptcy proceedings. Note that if the plan states that continuation coverage begins on the date of loss of coverage (as opposed to the date of the qualifying event), the employer must notify the plan administrator within 30 days of the date the beneficiary actually loses coverage under the plan.

The new regulations give limited guidance on what information must be in the notice. They state simply that the notice should contain "sufficient information to enable the administrator to determine the identity of the plan, the covered employee, the qualifying event, and the date of the qualifying event."

*** 3. Beneficiary Notices to the Plan Administrator ***

COBRA requires covered employees or qualified beneficiaries to notify the plan administrator within 60 days of a divorce, legal separation, or the date a child ceases to be a covered dependent under the plan. In addition, they must inform plan administrators of disability determinations from the Social Security Administration and second qualifying events for extended continuation coverage.

The new regulations also impose new burdens on the plan administrator to establish "reasonable procedures" for beneficiaries to follow to provide these required notices. The regulations then go on to suggest several topics the plan should incorporate to meet this standard, including describing the procedures in the plan's SPD, specifying who should receive the notices, and setting time limits for the notices.

*** 4. COBRA Election Notice ***

Under COBRA, the plan administrator has 14 days to notify each qualified beneficiary of the right to elect COBRA continuation coverage once it has received notice of a qualifying event. The COBRA statute does not specify that the election notice to qualified beneficiaries must be in writing.

The new regulations, however, do require that the notice be in writing and be written in such a manner that the average plan participant can understand it. The notice must address 14 topics explaining the beneficiary's right to continuation coverage and the consequences of not electing the coverage. The new regulations provide a model election notice intended to satisfy these requirements.

*** New Notice Obligations for Plan Administrators ***

The new regulations also impose two new notice obligations on the plan administrator, not specified in the COBRA statute. First, a plan administrator must provide a notice of unavailability (denial) of continuation coverage, if the administrator receives notice of a qualifying event from a beneficiary and determines that the individual is not entitled to continuation coverage. The administrator must then provide the individual an explanation of why the coverage was denied. The regulations set the same time frame (14 days) and delivery requirements as apply to election notices.

Second, a plan administrator also must provide notice of early termination of continuation coverage. This notice requirement is triggered when a plan cancels a beneficiary's coverage prior to the maximum coverage period, such as for nonpayment or when the employer ceases to offer health care coverage. The notice must include the reason the coverage has terminated early, the date of coverage termination, and any conversion rights the beneficiary might have. The regulations specify that the notice must be provided "as soon as practicable" following the administrator's determination that coverage is terminating.