



# Society of Professional Benefit Administrators

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July 23, 2003

ATTN: COBRA Notice Regulations  
Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5669  
U.S. Department of labor  
200 Constitution Avenue NW  
Washington, DC 20210

These comments on the proposed COBRA notice regulations are submitted on behalf of the Society of Professional Benefit Administrators (SPBA). SPBA is the national association of Third Party Administration (TPA) employee benefits outsourcing firms which manage client employee benefit plans. It's estimated that 55% of US workers from every size and format of employment are covered by employee benefit plans managed by such TPA firms.

## Effective Date

The Department proposes to make these regulations, in their final form, effective and applicable as of the first day of the first plan year that occurs on or after January 1, 2004. We urge the Department to make these final regulations effective at least 90 days after the regulations are issued in final form to ensure adequate time for employers and their administrators to make adjustments to their COBRA notices.

## §2590.606-1(b) Timing of Notice

We applaud the decision to provide plan administrators of group health plans up to 90 days to furnish the general notice from the date coverage commences (unless a qualifying event occurs within the first 90 days). A 90-day requirement is helpful because it is consistent with the SPD distribution requirement.

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### **§2590.606-1(e) Notice in Summary Plan Description (SPD)**

The Department should recognize that most SPDs are not mailed and instead are distributed at the workplace. Therefore, when a spouse becomes covered under a plan at the same time as the employee, the prevalent method of distributing the SPD will not relieve administrators from the responsibility of having to send the COBRA notice.

The Department needs to be clear in stating their position to avoid misinterpretations. The preamble to the proposed rule is instructive in stating that in-hand furnishing of the general notice at the workplace to a covered employee is deemed to be adequate delivery to the employee, although such delivery to the employee would not constitute delivery to the spouse. We encourage the Department to retain this explanation in the final preamble and clarify further that in situations where the plan sponsor does not send the SPD to spouses who become covered under the plan, the COBRA notice must be sent to the spouse's last known residence.

In addition, §2590.606-1(e) should include a note that a plan administrator may not satisfy the requirement to provide notice by including COBRA information in the summary plan description when a spouse has become covered under the plan and the summary plan description is provided through in-hand delivery to the employee. The present wording of §2590.606-1(e) will mislead readers.

### **§2590.606-3c(2)**

The proposed regulation sets forth the time limit for furnishing a notice of disability determination as not to end before the date that is 60 days after the later of the date of the disability determination by the Social Security Administration or the date on which the qualified beneficiary is informed of both the responsibility to provide notice and the plan's procedures for providing such notice to the administrator.

The following scenario will highlight the confusion surrounding the wording used in the proposed regulation.

**Scenario:** An employee has a spouse who has been disabled since 2000. The spouse's Social Security disability determination date occurred in February 2000. In May 2003 the employee terminates employment, elects COBRA and presents his spouse's Social Security disability determination letter from 2000 and requests an 11-month extension to the 18 months of COBRA triggered by the termination of employment.

The proposed regulation will lead readers to believe that the plan is not obligated to provide the 11-month extension because the spouse's notice of disability determination was not submitted within 60 days after the date of disability determination. While the employee is employed, the employee does not think to submit the disability determination letter in the event that the employee terminates employment or has a reduction in hours at some future date.

I have had conversations with IRS on this issue and their interpretation is that plans are required to provide the 11-month disability extension to qualified beneficiaries who have been determined disabled at any time prior to the first day of COBRA and have not had their disability determination revoked, even though the qualified beneficiaries can not satisfy the literal wording of the 60-day notice requirement (i.e., furnishing a disability determination within 60 days after the Social Security disability determination date).

The IRS further informed me that they believed the Department of Labor would clarify this issue in future guidance. The proposed regulations do not clarify this issue.

### **Model General Notice**

Throughout the section explaining when individuals become qualified beneficiaries, the notice references "enrolled in Medicare (Part A, Part B, or both)." We are concerned that the word "enrolled" will confuse plan participants and dependents. According to the IRS final COBRA regulations, a qualifying event occurs when a covered employee becomes entitled to Medicare benefits (§54.4980B-4). The date a person enrolls in Medicare is not usually the same date a person becomes entitled under Medicare. Social Security encourages individuals to enroll in Social Security and Medicare three months before turning age 65. Most group health plans use the word "entitled" currently and plan participants are accustomed to this term. Many SPBA member TPAs have expressed concern and alarm about the proposed word "enrolled." If the Department seeks to simplify the word "entitled," we suggest using the term "becomes covered."

The section explaining when a spouse will become a qualified beneficiary, item number five (You become divorced or legally separated from your spouse), could be expanded to explain what happens if the employee drops his or her spouse from coverage in anticipation of a divorce or legal separation. Many current COBRA notices explain that when a divorce occurs after the spouse has been dropped from the plan, the divorce will still be considered a qualifying event provided the ex-spouse notifies the administrator within 60 days of the divorce and is able to establish that the coverage was dropped earlier in anticipation of the divorce. This is valuable information for a divorced spouse.

The section explaining when the individual must notify the plan administrator of a qualifying event (divorce or legal separation of the employee and spouse, or a dependent child losing eligibility for coverage as a dependent child) should explain the consequences of failure to notify. Many current COBRA notices explain that if a family member fails to notify in a timely manner and claims are paid mistakenly for expenses incurred after the qualifying events, the family members will be required to reimburse the plan for expenses paid. If individuals understand the consequences of failure to notify, they will make a greater effort to follow the notice procedures.

Most general COBRA notices include information on when COBRA may terminate before the end of the maximum coverage period. The Department should consider adding such an explanation to their model general COBRA notice.

### **Model Notices**

SPBA encourages the Department to adhere to its position in the proposed regulation that use of the model notices will not be required. Employers and TPAs have been perfecting COBRA notices over the last 17 years as they have received feedback from plan participants and this feedback has been used to improve and clarify COBRA notices.

### **Model COBRA Election Notice**

Many group health plans provide two different COBRA election notices, depending on the type of qualifying event. One notice is sent for a termination of employment or a reduction of hours; another notice is sent for other qualifying events. The Department should permit two different notices depending on the type of qualifying event, as employers and TPAs have found qualified beneficiaries can grasp the contents better if the notice is tailored to their specific event.

The model includes a space for a date to be entered instructing the qualified beneficiary as to the date the election form must be post-marked. Some current election notices inform the qualified beneficiary that a completed election form must be received by the date that is 60 days after the date of the notice, while others include a post-mark date. The Department should permit flexibility in this area.

The information accompanying the model election notice explains circumstances when continuation coverage will be terminated before the end of the maximum period. One of

these circumstances is enrollment in Medicare. Again, we object to the vagueness of the word "enrollment" and believe that qualified beneficiaries will be misled by this term. This is an especially problematic area of COBRA that does not make sense to qualified beneficiaries. Qualified beneficiaries have a difficult time understanding why they lose COBRA if the Medicare entitlement occurs after the COBRA election date, whereas they are able to retain COBRA if their Medicare entitlement occurs before the COBRA election date. Using the word "enrollment" will only complicate matters further.

### **Notice of Early Termination of Continuation Coverage**

The new proposed notice of early termination of continuation coverage is not needed given that most initial (general) COBRA notices, as well as the COBRA election notices, currently include explanations of when COBRA coverage will be terminated before the end of the maximum period. In addition, many administrators utilize a COBRA coupon booklet (similar to a home mortgage coupon booklet) that COBRA qualified beneficiaries send in with their premium payment. This booklet explains when COBRA coverage will be terminated before the end of the maximum period allowable. Some of the coupon methods used pose questions that the COBRA qualified beneficiaries are required to complete before they mail in the coupon with their payment. These questions ask whether an event has occurred that would result in a termination of COBRA coverage. If the Department becomes aware of many of the current COBRA practices, the Department will recognize that plan participants and COBRA qualified beneficiaries have sufficient exposure to the early termination rules and that creating another notice requirement for early termination is superfluous.

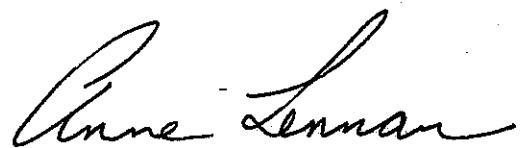
If the Department is still concerned that qualified beneficiaries will not have adequate notice of when COBRA can be terminated before the end of the maximum period, we suggest requiring an explanation of this in the general notice, as well as in the COBRA election notice.

### **Notice of Unavailability of COBRA Coverage**

The new proposed notice of unavailability of COBRA continuation coverage is not needed given that clear explanations of when an individual is eligible for COBRA are provided in the initial (general) COBRA notice, as well as the SPD.

We urge the Department to undergo a comprehensive review of current COBRA notices and procedures and incorporate best practices into the model COBRA notices. SPBA would be happy to assist the Department in this endeavor.

Thank you for considering these comments,

A handwritten signature in black ink, appearing to read "Anne Lennan".

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