0017

Principal Life
Insurance Company

July 28, 2003

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Ave., N.W
Washington, D.C. 20210

RECEIVED
OFFICE OF REGULATIONS
AND INTERPRETATIONS
2003 JUL 29 PM 2:45

Attn: COBRA Notice Regulations

RE: Proposed COBRA Notice Regulations

We are responding to the request for public comment issued in the May 28, 2003, Federal Register regarding the proposed COBRA notice regulations.

The Principal Financial Group® (The Principal®) is a leader in offering businesses, individuals and institutional clients a wide range of financial products and services, including retirement and investment services, life and health insurance and mortgage banking through its diverse family of financial services companies. More employers choose the Principal Financial Group for their 401(k) plans than any other bank, mutual fund, or insurance company in the United States. A member of the **Fortune 500**, the Principal Financial Group has $11.1 billion in assets under management and serves some 13 million customers worldwide from offices in Asia, Australia, Europe, Latin America and the United States. Principal Financial Group, Inc. is traded on the New York Stock Exchange under ticker symbol PFG.

For the past 17 years, group health plans have complied in good faith with various COBRA notice requirements. Generally, the proposed regulations clarify and establish minimum standards for COBRA notice content and timings. However, certain aspects of the proposed regulations may increase liability and/or administrative cost to employers and plans.

1. **90-day timing for initial (general) notice of COBRA rights.** The proposed regulations provide a new timing for plan administrators to provide the initial notice. COBRA law specifies under 29 U.S.C 1166 (a) (1) that the initial notice must be provided "at the time of commencement of coverage under the plan." Since COBRA has been in effect, plan administrators have been providing the initial notice when coverage becomes effective.

The proposed regulations would now allow plan administrators to provide the initial notice up to 90 days after coverage becomes effective, or earlier if a qualifying event occurs during the this 90-day period. While the 90-day period may appear to benefit the plan administrator by providing more time to issue the notice, it actually creates greater liability upon the plan administrator for

not providing proper notice in a timely manner. For example, if a dependent qualifying event occurs during the first 90 days of coverage, neither the member or dependent will be informed of their COBRA notice obligation to notify the plan administrator within 60 days of the qualifying event. Plan administrators generally are not aware of dependent qualifying events in order to alert the member or dependent of their COBRA notice obligation. Also, it is important to note that for some employee and/or dependent events the individual can select between COBRA and a state mandated continuation. In order to make an informed choice, they would need to know of all the options available.

Beyond the above, we believe courts may still find the plan administrator liable for failure to provide COBRA notice in situations such as this even though the plan administrator is relying on the proposed regulation's 90-day provision.

We recommend that the final regulations state that the initial notice must be provided when coverage becomes effective. This is how plan administrators are currently handling and it is consistent with COBRA law.

Include the employer's notice obligation to the plan administrator in the general notice. Providing detailed information in the general notice concerning an employer's notice obligations to the plan administrator may confuse the individual who receives the general notice. First, for the majority of plans the employer is the plan administrator as defined by ERISA. The plan administrator/employer may delegate certain administrative functions of the plan to an insurance carrier or third party administrator. However, the employer remains the plan administrator and in such situations including the employer's notice obligation would be misleading.

Second, the general notice is intended to provide information to the individual so that he/she will understand any COBRA rights and determine what action must be taken to initiate those rights. Providing unnecessary information may distract from important details necessary to the individual.

We recommend that the employer's notice obligation to the plan administrator not be a required statement in the general notice.

2. **Notice from a qualified beneficiary when the plan has not established reasonable procedures for providing notice of a qualifying event.** If reasonable procedures have not been established for providing notice of a qualifying event, the proposed regulations allow any written or oral communication as notice of a qualifying event. This notice may be directed to the employer (including an officer) for single-employer plans or to the insurance company (including an officer) that handles the claim's administration of a plan. We have specific concerns with the proposal that notice is provided in this manner.

First, we strongly believe any notice of a qualifying event should be directed to the plan administrator. For the majority of plans, under ERISA, this would be the employer. By allowing an employee or qualified beneficiary to notify anyone other than the plan administrator will delay COBRA benefits and may increase the liability of the plan administrator to provide timely election

notice of COBRA. The plan administrator, who knows if a qualifying event has actually taken place, is required to provide specific notices under COBRA law and is the entity in most circumstances to receive the election form and any premiums. It is important to note that the Plan Administrator may be obligated by plan provisions or state mandate to provide other notice of options of continuation for the qualifying event. .

Second, the contract between the plan administrator/employer and the insurance carrier establishes specific obligations and expectations of each party. By allowing an individual to provide COBRA notice directly to an insurance carrier is extending the liability of the insurance carrier beyond the contract.

Third, the plan administrator (employer) may contract with a third party (e.g., an insurance carrier) to handle the COBRA billing and/or administrative functions. Generally, the plan administrator must first confirm with the third party that a qualifying event has occurred before any COBRA notices are issued by the third party. Again, there may be significant delays to COBRA benefits if an individual reports a qualifying event to the incorrect party.

Fourth, an employer may contract with separate insurance carriers and HMOs for medical, dental, or vision coverage. When the plan administrator is informed of a qualifying event, the plan administrator is able to inform all affected carriers. However, an individual may mistakenly report a qualifying event to only one carrier and believe that they have provided notice to all affected carriers. For example, the medical carrier was informed, but the dental and vision carriers were not. In this situation, the individual may lose their right to elect dental or vision coverage because the plan administrator was not involved.

As long as the general notice meets the requirements under the regulations (which requires procedures for the qualified beneficiary to notify the plan administrator), there should not be an exception that allows an employee or qualified beneficiary to notify anyone else.

3. **Notice of disability determination.** The proposed regulations state that plans may require the notice of disability determination to be provided before the end of the 18-month continuation period. COBRA law specifies that the disability extension will only apply if the qualified beneficiary provides notice of the Social Security determination "before the end of the 18 months." We recommend that the regulations clarify that the notice and request for the disability extension must be provided before the end of the 18-month continuation period.

4. **Notice from qualified beneficiaries that do not contain all information requested by the plan administrator.** The proposed regulations allow the plan administrator to establish reasonable requirements for the content of any notice provided by the employee or qualified beneficiary of a qualifying event. The plan administrator, however, may not deem a notice as untimely if it meets the 60-day timing requirement, but does not contain all the information required by the plan administrator. We believe that the regulations should clarify that while the notice will not be deemed untimely, COBRA will not be afforded until complete information is provided. For example, many plan administrators require a copy of the Social Security determination letter prior to extending COBRA continuation due to disability. Simply providing

notice of the Social Security determination within the timing requirements under COBRA should not imply that the individual would automatically receive the COBRA disability extension.

5. **Representatives acting on behalf of qualified beneficiaries may provide notice.** The proposed regulations allow, in addition to employees and qualified beneficiaries, a representative acting on behalf of an employee or qualified beneficiary to provide notice to the plan administrator. We believe that the rules need to clarify that representative may only provide notice within the context of the HIPAA privacy rules. When providing notice, communication between the individual and the plan administrator generally requires the transfer of protected health information.

6. **Plans may provide longer notice periods or provide COBRA continuation without any notice.** We believe it is important to note that while a plan administrator may wish to provide greater benefits than what is required under COBRA, many insured policies limit COBRA to the requirements specified under the law. The plan administrator is bound by these limits applied in the insured contract and cannot provide greater benefits. If a plan administrator desires to provide greater benefits than COBRA he/she may do so by self-insuring however, the plan administrator must be consistent between individuals and not discriminate. Stating that a plan administrator may provide greater COBRA provisions may mislead employers who unknowingly offer greater benefits without realizing the liability and impact upon their plan, and also result in misinformation to qualified beneficiaries.

7. **Election notice must include a description of any other health coverage available.** Plans generally have separate forms that describe other available health coverage. These forms, along with the COBRA election notice, are provided to the employee or qualified beneficiary with a cover letter describing the options available. We believe that including a detailed description of every possible option will cause confusion for the individual and add unnecessary expense on the plan administrator for maintaining duplicate information/forms. We recommend that the COBRA election form may reference the possibility of other options available and to contact the plan administrator and/or review the Summary Plan Description (SPD) for further information.

8. **Information concerning COBRA and the Trade Act of 2002.** The preamble states that due to the importance of the right to elect COBRA as a TAA-eligible individual, information should be included in the SPD. The model election notice also has a variable paragraph that addresses trade adjustment assistance. We believe information concerning the possibility of trade adjustment assistance in the COBRA election form may create confusion since the law has very limited applicability. Therefore, we recommend that the regulations clarify that the paragraph in the COBRA election notice is a variable and not a requirement.

We also recommend that the preamble clarify that the SPD is not required to include information concerning the Trade Act of 2002. The Trade Act of 2002 has a limited audience. While we agree that this is an important benefit we believe the program developed by the Department of Treasury will more accurately inform TAA-eligible individuals of their COBRA election rights (along with information concerning other qualified plans) when they receive a HCTC Program

Kit. The information received from HCTC will be much more valuable and timely to the individual.

However, if it is deemed the rules are to include a requirement, we would recommend a standard statement that refers the qualified beneficiary to their Plan Administrator (employer) if they have lost coverage due to the Trade Act of 2002 as they may be eligible for the tax credit.

Thank you for considering our comments. Please do not hesitate to contact me at (202) 682-1280 if you have any questions.

Sincerely,

R. Lucia Riddle/dr

R. Lucia Riddle
Vice President, Federal Government Relations
Principal Life Insurance Company
1350 I Street, Northwest
Suite 1030
Washington, D.C. 20005-3305
Phone: (202) 682-1280
Fax: (202) 682-1412
riddle.lucia@principal.com