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American Federation of Labor and Congress of Industrial Organizations



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OFFICE OF REGULATIONS
AND INTERPRETATIONS

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VIA E-MAIL

July 28, 2003

Office of Regulations and Interpretations
Employee Benefits Security Administration
200 Constitution Avenue, NW, Room N-5669
Washington, DC 20210
Attn: COBRA Notice Regulations

To Whom It May Concern:

In response to the request by the Department of Labor for comments on its proposed regulations implementing the notice requirements of the health care continuation coverage (COBRA) provisions of Part 6 of title I of the Employee Retirement Income Security Act of 1974 (ERISA), the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) is submitting the following comments. The AFL-CIO is a voluntary federation of 65 national and international labor unions, representing approximately 13 million working women and men of every race and ethnicity and from every walk of life. The mission of the AFL-CIO is to improve the lives of working families—to bring economic justice to the workplace and social justice to our nation.

At times of significant personal and work-related changes, working families must be able to protect what may be their only source of health insurance coverage. Overall, the proposed rule will improve the notification process for this critical employee right to continued health plan coverage. Plan participants and administrators alike will benefit from the establishment of clear new standards for the timing, content and administration of COBRA notices. The Department's proposal to include information about newly established Trade Adjustment Act (TAA) health insurance tax credits also represents a positive step on behalf of working families.

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Our comments address specific requirements for notifying qualified beneficiaries about TAA benefits, as well as the broader COBRA notification process.

I. TRADE ADJUSTMENT ACT

A. Inclusion of detailed TAA information in the election notice should be mandatory.

The proposed rules give plan administrators the discretion to determine if employees "might be eligible" for trade adjustment assistance, and therefore, whether it is appropriate to include TAA information in the election notice. Inclusion of this information should be mandatory. The administrator is not authorized by law to make this complex determination and may not have all the necessary information to determine if this information would be relevant to plan members.

B. A brief reference to TAA should be included in the general notice

The right to an extended election period is perhaps the most important information that a TAA-eligible individual needs. Some participants and beneficiaries (particularly divorced spouses) may not have access to the summary plan description (SPD) that contains this information. Therefore, in the section of the model general notice that informs workers about the 60-day election period, there should also be a brief reference to TAA subsidies for COBRA and the additional 60-day election period available to TAA-elgibles.

C. The TAA language in the model election notice should include a clear explanation of how the subsidy works.

The high cost of COBRA premiums is a significant deterrent to enrollment, according to a recent study.¹ The election notice must clearly explain the amount of the subsidy and the option to receive the subsidy monthly in the form of an advanceable tax credit. It should also briefly set out the eligibility criteria, i.e. (1) workers must have lost their jobs due to foreign trade; or (2) Between 55 and 65 years old and receiving benefits from a pension plan administered by the Pension Benefit Guaranty Corporation. Finally, it

¹ *Health Insurance: States' Protections and Programs Benefit Some Unemployed Individuals*, GAO-03-191. Washington, D.C.: October 25, 2002 (citing Jennifer Edwards, et al, "The Erosion of Employer-Based Health Coverage and the Threat to Workers' Health Care: Findings from the Commonwealth Fund 2002 Workplace Health insurance Survey," Commonwealth Fund, 2002.)

should refer workers with TAA questions to the Health Care Tax Credit Customer Contact Center at 1-866-628-HCTC (1-866-628-4262)

II. GENERAL COBRA COMMENTS

A. Both notices should clearly state that each qualified beneficiary has an independent right to elect COBRA.

The model election notice should contain additional language to make clear that each eligible family member can elect COBRA coverage even if the employee or other family members do not do so. We suggest the following language on page 31852: "Each of the following persons is entitled to elect to continue health coverage under the plan independently of one another." The model general notice should contain the same information as the election notice.

B. The consequences of not electing COBRA should be fully explained in both notices.

Both notices should fully set out the impact of turning down COBRA. As proposed, only the election notice (page 31855) alerts qualified beneficiaries to the differences between continuation coverage and other coverage options. This alert should be written in a less technical manner that avoids confusing phrases such as "right to avoid having pre-existing condition exclusions applied to you." Examples should be provided to make clear the impact of a pre-existing condition exclusion, lack of guaranteed issue and other differences. The same language should be included in the model general notice.

C. The impact of Medicare on COBRA rights should be explained in both notices.

Both notices should alert workers to the risk of having a gap in coverage if they fail to enroll in Medicare Part B within six months of the qualifying COBRA, and inform them that they can get additional information from the Medicare program (1-800-Medicare or 1-800-633-4227) or local State Health Insurance and Assistance (SHIP) Program.

D. Notice of appeals rights should be provided.

Both notices and the final rule should make clear that violations of COBRA rights can be appealed through the plan's claims procedure, including the right to go to court.

E. Retirees facing a loss of coverage due to bankruptcy need separate notification.

Both notices should make clear that retirees who lose their health care benefits due to an employer bankruptcy may be entitled to unique COBRA rights if a benefit reduction or elimination occurs. Specifically, they may be entitled to lifetime COBRA benefits that could continue with a successor employer. Currently, such retirees receive standard COBRA notices. We agree with the proposed rule that the model notices cannot adequately address the unique circumstances of these retirees. Therefore, another model notice tailored to retirees whose benefits are affected by employer bankruptcies should be provided. In addition, these notices should include information about TAA benefits.

F. Notices for Limited English Proficient (LEP) beneficiaries: Consistent with the SPD regulations, both notices should be made available to LEP beneficiaries in languages other than English.

G. Additional sources of assistance: Both notices should include the following additional sources of information about COBRA benefits:

1. DOL EBSA (1-866-444-3272)
2. HCTC Customer Contact Center 1-866-628-HCTC (1-866-628-4262)
3. 1-800-Medicare
4. State Health Insurance Assistance Programs

Thank you for this opportunity to provide input on the Department's proposed COBRA regulations. We believe consideration of these comments and incorporation of the suggestions they contain in the final rule will better protect and assist America's workers and their families confronting the possible loss of health insurance coverage.

Sincerely,

Christine L. Owens, Director
Public Policy Department