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Private and Confidential

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

Attention: COBRA Notice Regulations

We are writing concerning the Department of Labor (the "Department") proposed regulations governing the notice requirements of the health care continuation coverage provisions of Part 6 of Title 1 of ERISA (COBRA). These proposed COBRA regulations were published on May 28, 2003 in 68 Fed. Reg. 31832.

Who We Are

Hewitt Associates LLC is a global management consulting and employee benefit delivery firm. Hewitt Associates specializes in human resource solutions and is the largest provider of total outsourcing services for employee benefit plan administration. Hewitt Associates consults on and assists in the benefits administration of our clients' group health and welfare plans, which cover nearly 5 million employees, retirees, spouses, and dependents combined. Our clients have an average of 34,000 employees. Hewitt Associates is also one of the largest COBRA administrators in the country and has a significant amount of experience in the administration of benefits under the terms of COBRA.

Our Concerns

While we are pleased to see additional COBRA guidance from the Department, we are concerned about the additional costly burdens placed on COBRA administrators (including employers) under the terms of the proposed regulations. Further, after such a long period of inactivity on this topic, it is unrealistic and unnecessary to expect that COBRA administrators can react to regulations that are still in proposed form by January 1, 2004. Lastly, given the many years that have passed since the adoption of COBRA, most COBRA administrators have well-oiled COBRA practices, including the use of established notices, that deserve greater deference than is offered by the proposed regulations.

As a result, we urge the Department to:

- Drop the new notice requirements from the proposed regulations;
- Unlink COBRA notices and Summary Plan Description (SPD) language;

- Recognize the far larger cost associated with the proposed changes to COBRA notices;

- Delay the effective date of the final regulations until at least January 1, 2005; and

- Explicitly state that use of any model notice contained in the final regulations is not a safe harbor and, instead, is only one item that is taken into account in order to determine if a COBRA administrator has satisfied the notice obligations under COBRA. This should be coupled with a stronger statement that any notice or series of communications that contains the statutory requirements of COBRA is acceptable, even if it is significantly different in form, content, or medium from any model notice contained in the final regulations.

Additional Costly Burdens
The proposed regulations, if finalized unchanged, would impose a number of additional costs on COBRA administrators.

First, the COBRA statute does not contemplate providing a written notice when COBRA ends unexpectedly or when requested COBRA coverage is not available. Regardless of whether such notices may represent good business practices, neither notice is required by the COBRA statute and should be dropped from the final regulations.

Second, the proposed regulations contemplate sending a conversion notice whenever COBRA coverage ends earlier than the maximum period available. The statute, by contrast, only requires such notification in the waning months of COBRA coverage when the reason for the end of the coverage is anticipated to be the end of the maximum period available. Therefore, the final regulations should only require a notice of conversion rights in a manner reflected in the statute.

Third, the proposed regulations contain a number of requirements that are unnecessarily mechanical or, worse yet, misleading to qualified beneficiaries. For example, once the COBRA administrator is notified by an employee or qualified beneficiary of a COBRA qualifying event, the proposed regulations require sending a COBRA election notice to the appropriate qualified beneficiary. We would suggest that it would be far more efficient to allow the COBRA administrator to immediately enroll the appropriate individual into COBRA, particularly when the reasonable notification process adopted by the administrator permits an oral notification of the qualifying event. This would greatly speed the receipt of COBRA coverage, reduce the amount of the initial COBRA

bill, and both initiate and conclude the COBRA transaction with a single telephone call. For example, when a dependent graduates from college and becomes ineligible for employer group health coverage, the individual can make one phone call to notify the COBRA administrator that he/she has become ineligible, learn about the available coverage through COBRA including the associated cost, and enroll in COBRA coverage. This makes a simple process for the qualified beneficiary and results in no break in coverage as well as no large initial COBRA premium. A paper-based process after the notification of the qualifying event would, instead, require the following steps:

- Insert time to produce and mail a COBRA notice;
- Time in US mail;
- Time for the qualified beneficiary to review the material, make a decision, complete the enrollment form, and mail it to the COBRA administrator;
- More time in US mail, and, last:
- Time for the COBRA administrator to review the form and process the election.

The paper requirement could convert a process that takes minutes to complete into one that takes weeks to complete and results in a large first premium due from the qualified beneficiary.

Another example of unnecessarily mechanical requirements is the regulatory and model notice language about employer notices to administrators. While this may be necessary when the employer and administrator play separate roles in COBRA administration, typically the employer and administrator act as one with respect to COBRA and the regulatory and notice language is unnecessary.

Another example is the regulatory and model notice language about the cost of COBRA coverage. Since the notice already specifically describes the cost, the 102 and 150 percent language is unnecessary and confusing, particularly in circumstances when employers may not charge the full 102 or 150 percent premium.

Fourth, there are numerous links in the proposed regulations between the COBRA notices and SPDs. We believe that it is inappropriate to place such regulatory obligations on SPDs because: COBRA is often administered by a third party; COBRA notices are often far more detailed and current than SPD language; and SPDs cannot

satisfy COBRA notice obligations for any spouse with subsequently-acquired medical coverage. Instead, we would recommend allowing COBRA notices to represent fully-formed, stand-alone vehicles that would convey the entire body of COBRA notification and administration rules. This would guarantee that qualified beneficiaries have a single source for the information they need to exercise their rights under COBRA, greatly streamline COBRA administration, and facilitate changes in COBRA administrators. While employers can certainly permissively include COBRA information on their SPDs, this should not be mandatory, and SPDs should not, worse yet, become the primary vehicle for disseminating information about COBRA rights.

Finally, we believe that the proposed regulations have greatly underestimated the time and cost associated with revising well-established and often highly automated COBRA notification processes. The Department states that all entities are expected to review and revise their COBRA notices. Also, since many COBRA notices are the product of a highly automated process, we anticipate that the average COBRA service provider will spend approximately $50,000 on the analysis, programming, testing, and implementation of the changes associated with these proposed regulations. Using the Department's estimate of 3,000 entities that perform COBRA administration, the cost of the proposed regulations could easily exceed $150,000,000.

Delay the Effective Date

COBRA administrators already have deeply ingrained COBRA administrative processes that have been built over the past 17 years. Since the proposed regulations cannot be finalized before August or September of 2003, it is unrealistic to expect COBRA administrators to react to the final regulations by January 1, 2004. In addition to this process being much more costly than anticipated by the Department, most COBRA administrators are currently fully engaged in 2004 annual enrollment planning, programming, testing, and implementation and will remain so through early 2004. There simply isn't enough time to react to final COBRA regulations this fall, and the risk of jeopardizing a successful annual 2004 enrollment by diverting resources to COBRA notices isn't worth the return to COBRA administrators. As such, we request that the final COBRA regulations should not take effect until at least a full 12 months after they are issued in final form. Thus, if the regulations are finalized this fall, they should not take effect until at least January 1, 2005.

Greater Deference to Non-Model Notices

We believe that the proposed regulations do not go far enough to recognize that all COBRA administrators already have COBRA notices (which, by the Department's own estimates, already do a good job of conveying COBRA information) and that most

COBRA administrators will continue to use modified versions of their own notices in the future. This is a particularly likely outcome because of the paper-centric model notices in the proposed regulations (as contrasted with the more efficient processes used by many COBRA administrators, which rely on telephonic responses from qualified beneficiaries). Also, many COBRA administrators spread parts of the model notice concepts into other vehicles such as statements associated with billing and payment procedures. Finally, many COBRA administrators currently issue highly automated COBRA rights and COBRA enrollment notices that specifically and narrowly target individual audiences (such as spouses, children, QMCSO recipients, or 36-month qualifying event beneficiaries).

As a result, we believe that the final regulations should, at a minimum, clearly state that use of the model notices is not a safe harbor and that use of the model notices are merely one item that is taken into account in order to determine if an employer satisfied the notice obligations under COBRA. This should be coupled with a stronger statement that any notice or series of communications that contains the statutory requirements of COBRA is acceptable even if it is significantly different in form, content, or medium from any model notice that may be contained in the final regulations. Absent this clarification, there will be significant pressure to change current COBRA notices that, frankly, may already do a better and more targeted job of conveying COBRA information to a number of fragmented and unique audiences.

Further, we may even suggest that model notices are only useful in the early stages of the life of a new statute. However, once the employee benefits community grapples with a new statute for a few years, the subsequent appearance of a model notice is actually counterproductive--unless it is very clearly stated that other notices that encompass revised regulatory requirements are not only permissible but actually encouraged. Such a clear statement of regulatory purpose will allow the employee benefits community to target regulatory concepts towards the intended audience in a manner that best meets the diverse needs of employees and uses the best current communications tools and technologies—while also encouraging the use of subsequently emerging tools and technologies.

Conclusion
We believe that the proposed COBRA notice regulations place additional costly burdens on COBRA administrators. Further, it is unrealistic to expect that COBRA administrators can react to final regulations by January 1, 2004. Finally, most COBRA administrators have well-oiled COBRA practices, including the use of established notices, that deserve greater deference than is offered by the proposed regulations.

We hope that you will address the issues noted above in the final regulations.

If you have any questions or comments, please contact the undersigned at the telephone number or electronic mail address provided below.

Sincerely,

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