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THE ERISA INDUSTRY COMMITTEE (ERIC)

*Representing the Employee Benefits Interests of America's Largest Employers*

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July 28, 2003

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

Attn: COBRA Notice Regulations

Attached are three courtesy printed copies of written comments previously submitted via electronic mail.

If you have any questions regarding the written comments, please contact me at 202-789-1400 or [aknettel@eric.org](mailto:aknettel@eric.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Knettel", is written over a faint, larger version of the same signature.

Anthony J. Knettel  
VP Health Affairs

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Attn: COBRA Notice Regulations

*Transmitted by mail and electronically to eORI@EBSA.dol.gov*

We are pleased to submit the comments of The ERISA Industry Committee ("ERIC")<sup>1</sup> on the Department's proposed regulations regarding health care continuation coverage. See 68 Fed. Reg. 31832 (May 28, 2003).

When the Department issued the proposed regulation, it asked that comments be submitted by July 28, 2003. ERIC is presenting its initial comments on the proposed regulations in this submission, and reserves the right to present additional comments.

### GENERAL COMMENTS

*The timetable for implementation of the new requirements is too ambitious, especially for employers that administer COBRA continuation coverage internally rather than outsourcing administration to a vendor.* The specificity of the new requirements pose substantial administrative and information technology burdens on plan sponsors under the best of circumstances. These burdens are compounded, however, by the timing of the promulgation of the new requirements and the timetable for implementation. Many employers conduct their annual open enrollment processes in the second half of the calendar year; it will be very difficult for them to implement the proposed new requirements concurrent with this staff- and resource-intensive activity. The burden will be greatest for employers that administer COBRA continuation coverage requirements internally rather than outsourcing this activity to a vendor

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<sup>1</sup> ERIC is a nonprofit association committed to the advancement of the employee retirement, health, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage, and other economic security benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their costs and effectiveness, and the role of those benefits in the American economy.

## SPECIFIC COMMENTS

1. *The requirement that the COBRA administrator be identified in detail in the initial COBRA notice is unnecessary, burdensome, and potentially confusing to recipients.*

The proposal requires a greater degree of detail in the contents of the initial COBRA notice than is required under the statute or has been the prevailing practice among employers. ERIC believes that the new requirements are unnecessarily and inappropriately specific given the statutory intent to provide only general information, especially regarding the requirement that the name, address and telephone number of the party responsible for COBRA administration be included in the initial notice.

The initial COBRA notice is not the source of information used by individuals in making their COBRA elections: the election notice contains the information to be used by individuals in making COBRA elections. Thus, there is no need for specific details regarding the identity of the COBRA administrator in the initial notice. Moreover, for many employees, years elapse between receipt of the initial notice and the election notice. Including such specific information in the initial notice will result in individuals receiving information that is outdated and potentially confusing if consulted an extended period of time after the initial notice was provided.

This requirement is burdensome on employers as well. It necessitates revision of the initial notice whenever a third party COBRA administrator is retained or removed. This means that employers with multiple vendors (not uncommon among large employers) must update the initial notice each time one vendor changes or use separate initial notices for each vendor. Similarly, for employers that administer COBRA internally, this requirement necessitates revision of the notice whenever a relevant change occurs (e.g., one of the staff in the Benefits Department who handles COBRA administration changes).

2. *The requirement that specific details of alternative coverage and conversion rights be included in the COBRA election notice is unnecessary and burdensome.*

Where a plan offers alternative continuation coverage or individual conversion options, it is important for affected individuals to have information about these options in order to make a more fully informed decision on whether to elect COBRA continuation coverage. The COBRA election notice is not the most effective conduit for this detailed information, however, and requiring that detailed information on alternative continuation options be included in the COBRA election notice is likely to produce unintended negative consequences, particularly in circumstances where third party COBRA administrators are utilized.

For third party COBRA administrators, the requirement that each plan's COBRA election notice contain detailed information on the availability and consequences of alternative continuation coverage options that may be available under the plan would be extremely onerous. In effect, each vendor would have to maintain and update a customized COBRA election notice for each client plan to reflect any changes that occurred in the alternative options available under each plan. Under these circumstances,

the term "model notice" is no longer meaningful. The burden of complying with this requirement would increase the cost of third party COBRA administration to the detriment of plan sponsors and participants.

Under current practice, details of alternative continuation coverage options are typically included in a plan's summary plan description, as well as other informational materials provided by the employer in response to particular circumstances (e.g., the termination or retirement packets distributed to employees during the exit process). These documents originate with, and are kept up to date by, the employer. Requiring the inclusion of this information in the election notice effectively transfers responsibility for maintaining and transmitting the information to the COBRA vendor. ERIC is not convinced there is a compelling reason to alter prevailing practice.

3. *The requirement that "reasonable procedures" for notice by covered employees and qualified beneficiaries be described in detail is unnecessarily specific and could operate to the disadvantage of participants and beneficiaries.*

The proposal identifies elements of "reasonable procedures" for notice by covered employees and qualified beneficiaries, including the means by which notice must be given and the specific information the plan deems necessary in order to constitute notice, which are more detailed than prevailing practice. If a plan fails to establish "reasonable procedures," even a casual communication can be deemed to constitute notice.

ERIC is concerned that coupling a requirement to specify a detailed procedure with such draconian consequences for failure to describe and communicate that procedure will force employers to adopt unnecessarily formalistic and inflexible procedures. These, in turn, will make it more difficult (compared to current practice) for participants and beneficiaries to provide effective notice to the administrator.

4. *The new notice of unavailability of coverage and notice of early termination of COBRA period are unsupported by statute, unnecessary and unduly burdensome.*

Although circumstances sometimes give rise to communications with participants and beneficiaries regarding the unavailability of continuation coverage or the early termination of coverage, the statutory framework does not enumerate a notice requirement in either case, nor can either new notice requirement be considered a logical extension of one of the enumerated notice requirements. Therefore, ERIC urges that these portions of the proposal be deleted.

Implementation of the two new notices would impose significant administrative and information technology costs on employers because they do not currently have comparable processes in place. As noted in the general comment above, the timing of the proposal makes compliance within a short time frame even more burdensome. Moreover, the information required to be provided largely duplicates information already provided via other means, such as in SPD or COBRA election notices.