

CLIENT ALERT

DOL Issues Proposed COBRA Notice Regulations

May.30.2003

The U.S. Department of Labor ("DOL") on May 28, 2003 issued new proposed regulations clarifying the notice requirements for group health plans covered by the Consolidated Omnibus Budget Reconciliation Act ("COBRA") continuation coverage rules. COBRA gives certain former employees, their spouses, and their dependent children the right to temporarily continue health coverage at group rates when coverage is lost due to certain events. The rules' primary focus is on single employer plans. The rules are proposed to become effective on the first day of the first plan year beginning on or after January 1, 2004. However, according to the Preamble, plans must immediately (effective May 28, 2003) revise their COBRA notices to conform to the requirements of the new model notices provided in the regulations.

Notices required under COBRA include the (i) general notice given to employees and their spouses when they become covered by a group health plan; (ii) notice of a COBRA qualifying event to qualified beneficiaries; and (iii) COBRA election notice to qualified beneficiaries. The following discussion summarizes the proposed rules.

General Notice. The general notice would have to provide basic information on COBRA to allow employees and family members to protect their rights should a qualifying event occur. Plans would have to provide the notice to qualified individuals within 90 days after group health plan coverage begins. Plans could meet this requirement by providing the notice in the plan's summary plan description (SPD) and furnishing the SPD within 90 days after plan coverage starts. The regulations provide a new model general notice.

Notice of Qualifying Event. Employers would have to notify plan administrators of certain types of qualifying events, such as job loss, reduction in work hours, the employee's death and the employee's enrollment in Medicare within 30 days of the qualifying event. Plans would have to have reasonable procedures in place for requiring employees and their families to give notice of a qualifying event such as divorce, separation or loss of legal dependent status under the plan. Employees and family members would have to provide this notice within 60 days of the qualifying event. Plans would have to establish reasonable procedures for employees and families to provide this notice. Plans would have to accept any notice that satisfied certain minimum content requirements.

COBRA Election Notice. The election notice would have to contain certain key information individuals need to decide whether to elect COBRA coverage, including available health plan options, premium payments, the consequences of failing to elect COBRA, and how COBRA coverage could be extended due to disability or a second qualifying event. The election notice would have to be provided within 14 days after the plan administrator is notified of a qualifying event. The regulations provide a model election notice.

Other Notices. After receiving a notice of qualifying event from an employee or family member, plans would have to notify the affected individual whenever the plan administrator determines that he or she is not eligible for COBRA. Plans also would have to provide notice when COBRA coverage terminates before the end of the statutory period.

Although these are only proposed regulations, employers that sponsor group health plans should begin thinking about how their plans would choose to comply with these new requirements should they become final, especially in view of the proposed 2004 effective date. Of more immediate concern, employers should review their COBRA notices to make certain that they comply with the notice requirements of these new proposed regulations. If you would like us to review your plan's COBRA notices to make certain that they comply with the requirements of the new proposed regulations, please contact us.

If you have any questions or need any additional information, please contact your regular Crowell & Moring contact or any attorney on our [Health Care team](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.