

## Client Alert

### What Employers Should Know about New Guidance Affecting COBRA Compliance

May 9, 2014

The federal government on May 2 issued two important announcements affecting employers' COBRA compliance responsibilities.

**First**, the Department of Labor (DOL) issued two new model COBRA notices – one to be used as the "general" COBRA notice (which is provided contemporaneously with an employee first becoming covered under a group health plan), and the other to be used as the COBRA "election" notice (which is to be sent to employees and their dependents when a COBRA "qualifying event" has occurred). The model notices are available on the DOL's [website](#).

These model notices were revised to provide employees with more information about the new insurance marketplaces under the Affordable Care Act. They are intended to provide employees with additional information as to how coverage available through the marketplaces could impact an employee's decision as to whether or not to elect COBRA coverage. The new model notices, for example, note that coverage through a marketplace may be less expensive for employees than COBRA coverage. The new model COBRA election notice provides employees with specific information on when they can enroll in marketplace coverage. It also advises employees about certain implications of electing marketplace coverage instead of COBRA coverage. For example, the notice states that if employees sign up for marketplace coverage, they cannot thereafter sign up for COBRA coverage based on the same COBRA qualifying event.

The DOL also issued proposed changes to the COBRA notice regulations. The proposed regulations would allow the DOL to maintain and update the "official" model notices on the DOL website rather than as an appendix to published regulations under the Administrative Procedure Act. The proposed regulations also state that use of the model notices, as "appropriately modified and supplemented" (i.e., customized for a particular employer and plan), will be deemed to satisfy the requirements of the DOL's COBRA notice regulations.

**Second**, HHS issued a Bulletin on May 2 that, among other things, provides a special enrollment period, until July 1, 2014, in the ACA's federal marketplace for any individuals already enrolled in COBRA. HHS stated that the special-enrollment period was needed because the former model COBRA notices may have been unclear regarding the ability of COBRA qualified beneficiaries to enroll in marketplace coverage. Because enrolling in COBRA coverage would generally preclude enrollment in marketplace coverage outside of open enrollment periods, this modification is necessary to permit individuals who may not have understood their rights to marketplace coverage to make the switch from COBRA to marketplace coverage. Employers may want to consider conducting outreach to former employees who have enrolled for COBRA coverage, to notify them of their opportunity to switch from COBRA coverage to marketplace coverage.

Employers should consider revising their COBRA notices to address the new model notices. At a minimum, employers and other plan sponsors should consider appropriate modifications to the model notices to address include plan-specific enrollment options, premium information and contact information. Many employers may want to explore other ways to customize the model notices to conform them to their organizational benefits documents.

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

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