DOL/EBSA FINAL COBRA REGULATIONS
(Eff. Date: 1st Plan Year Beginning On or After 11/26/2004)

COBRA, as enacted in 1985, gives the Department of Labor (DOL) authority to interpret and issue regulations relating to the notice and disclosure requirements imposed on group health plans by COBRA. Under that authority the DOL issued final regulations on May 26, 2004 which specify the time frame and content requirements relating to the provision of initial notices under COBRA, the provision of the notice of right to elect COBRA coverage, and the content of the plan's SPD relating to COBRA. The regulation also creates two new obligations for notification relating to determinations that COBRA is not available and termination of COBRA prior to the end of the maximum period.

The following summarizes the changes from current practice or interpretation of COBRA that would be made by the final regulations. A copy of the final COBRA Regulation can be downloaded from the Internet at http://www.dol.gov/ebsa/regs/fedreg/final/2004011796.htm. Section number references from the regulation have been provided below to assist you in finding the provisions in the regulation for more detail.

SPD CONTENT

Trade Act of 2002

The Trade Act of 2002, Public Law 107-210, created an additional election period under COBRA for individuals that were determined to be eligible for trade adjustment assistance (TAA) under the Act. Specifically, if an individual does not elect COBRA during the original 60 day election period and is later determined to be TAA eligible, the plan must provide an additional 60 day election period beginning on the first day of the month the individual is determined to be TAA eligible. Determination of TAA eligibility and election during the second period must occur within 6 months of the original loss of coverage under the plan.

The proposed regulation stated the DOL's position that the availability of a second election period is a material provision of COBRA, even if it impacts a very limited number of individuals or no one at all, and must be included in a group health plan SPD. *(Preamble Proposed Regulation – B. COBRA Notice Requirements)*

Procedures for Providing Notice

The regulation requires the plan to establish reasonable procedures for an employee or dependent to provide notice to the plan of a qualifying event, and to include the procedure in the plan's SPD. A reasonable procedure must specify whom notice should be made to, how notice is to be provided, and what information must be provided in the notice. *(2590.606-3(b) – Reasonable Procedures)*

INITIAL COBRA NOTICE

Effective as of 5/28/2003, the proposed regulation revoked the sample notice provided by the DOL in ERISA Technical Release 86-2 by stating in the preamble that the Department will no longer consider use of the Model Notice provided in TR 86-2 as good faith compliance with COBRA.
(Preamble Proposed Regulation – C. Overview of Proposed Regulations)

A Model Notice is provided as part of the proposed regulation, however its use is not required and the DOL acknowledges that a variety of other notices could satisfy the requirements of the regulation.
(2590.606 -1(g) – Model Notice)

Timing of Initial Notice

The regulation establishes a maximum time frame within which the Initial COBRA Notice must be provided. Initial notice must be provided within 90 days after the effective date of coverage or if a qualifying event occurs for the individual prior to the 90th day of coverage, the date that notice of the right to elect COBRA is due.
(2590.606-1(b) – Timing of Notice)

In the case of an individual who experiences a qualifying event prior to the 90th day of coverage, the requirement to provide Initial Notice is considered satisfied by providing the Notice of Right to Elect COBRA as required by the regulation. Provision of both an Initial Notice and the Notice of Right to Elect is not required.
(2590.606-1(b)(3) – Timing of Notice)

Content of Initial Notice

The proposed regulation requires that notice be provided in writing and include the following additional information:

1. The plan name and the name, address and telephone number of the party responsible for providing information about the plan and about continuation coverage under the plan.
   (2590.606-1(c)(1) – Content of Notice)

2. A general description of COBRA provisions.
   (2590.606-1(c)(2) – Content of Notice)

3. A description of the plan's procedures for the individual to provide notice of a qualifying event, a secondary qualifying event or a determination of total disability. *(2590.606-1(c)(3) & (4) – Content of Notice)*

4. A statement of the importance of notifying the plan administrator of an address change for anyone that is covered under the plan and is or could become a qualified beneficiary. *(2590.606-1(c)(5) – Content of Notice)*

5. A statement that the notice is a summary only and that complete information regarding COBRA and other rights under the plan is available from the plan administrator or in the plan's SPD.
   (2590.606-1(c)(6) – Content of Notice)

Delivery Options for Initial Notice

The regulation restates the department's existing position that a single notice addressed to the employee and spouse is considered notice to all dependents residing at that address and is considered compliant as long as the most recent information available to the plan indicates that the spouse is residing at that address.
(2590.606-1(d) – Single Notice Rule)

The regulation also confirms the department's existing position that Initial Notice requirements can be satisfied through the plan's SPD (Summary Plan Description). To be considered compliant the SPD must meet the content requirements of the regulation and those for SPD Content, and be delivered in compliance with time frames and delivery options required by the regulation (e.g. the SPD would need to be mailed to the employee's home, addressed to the employee and spouse, within 90 days of the date coverage begins).
(2590.606-1(e) – Notice in Summary Plan Description)

COBRA ELECTION NOTICE

A Model Notice is provided as part of the regulation, however its use is not required and the DOL acknowledges that a variety of other notices could satisfy the requirements of the regulation.

(2590.606-4(g) – Model Notice)

The regulation requires the plan to establish reasonable procedures for an employee or dependent to provide notice to the plan of a qualifying event, and to include the procedure in the plan's SPD. A reasonable procedure must specify whom notice should be made to, how notice is to be provided, and what information must be provided in the notice. If a reasonable procedure has not been established by a plan, notice will be considered given when either written or oral communication is made regarding the event to the department of the employer that handles benefit issues.
(2590.606-3(b) – Reasonable Procedures)

Notice of a qualifying event may be provided by the employee, any qualified beneficiary or a representative acting on either's behalf. Once notice is provided by one individual in relation to a qualifying event, notice is considered to be provided for all qualified beneficiaries resulting from the event.
(2590.606-3(e) – Who May Provide Notice)

Although the plan is required to establish procedures for providing notice of a qualifying event, it is not allowed to consider a notice untimely as long as the notice is provided within the time limits required by the regulation and the plan is able to determine from the notice the plan name, the employee and qualified beneficiaries, the qualifying event and the date the event occurred.
(2590.606-3(d) – Required Contents of Notice)

The regulation requires the employer to provide at a minimum the following information to the plan administrator regarding a qualifying event: the plan name, the employee name, what the qualifying event was, and the date of the event.
(2590.606-2(c) – Content of Notice)

Timing of COBRA Election Notice

The regulation reaffirms that when the employer is also the plan administrator Notice of the Right to Elect COBRA must be provided within 44 days of a loss of coverage that is a qualifying event under COBRA (i.e. the employer must notify the plan administrator within 30 days and the plan administrator provide notice to the individual within 14 days after that).
(2590.606-4(b)(2) – Notice of Right to Elect Continuation Coverage)

Content of COBRA Election Notice

The regulation requires the Notice of COBRA Election to contain at a minimum the following information:

1. Plan name;
2. Name, address and phone number of the entity responsible for COBRA administration;
3. Qualifying event;
4. Qualified beneficiaries;
5. Date coverage under the plan terminates;
6. Statement of each individual's independent right to elect COBRA, the employee's or spouse's right to elect for all family members, and the right of a parent or legal guardian to elect on behalf of a minor child;
7. Explanation of the plan's procedure for electing COBRA, including an explanation of election time period and the date election must be made by;
8. Explanation of the impact of failing to elect or waiving COBRA, including a statement regarding the possible affect on future rights to portability of coverage, guarantee issue of an individual policy and special enrollment rights under HIPAA, reference to where more information on HIPAA can be obtained, and a description of the procedure to revoke a waiver of COBRA prior to the end of the election period;
9. A description of the coverage that will be provided, either by reference to the plan's SPD or including a benefit description;
10. The date COBRA will be effective, if elected;
11. Description of the provisions of COBRA, including the maximum COBRA period and termination date, explanation of events that could result in early termination, a description of events that could result in a longer COBRA period (second qualifying event or total disability determination);

12. Description of notice requirements for qualified beneficiaries that experience a second qualifying event or are determined to be totally disabled and the plan's procedure for making notice and the impact of not providing notice;
13. Premium amount, payment due dates and grace periods, address to send payments to, and a statement of the impact of non-payment or delayed payment;
14. Explanation of the importance of keeping the administrator informed of address changes;
15. Statement that the notice does not fully describe COBRA or other rights under the plan and that complete information is available in the plan's SPD or from the plan administrator.

(2590.606-4(b)(4) – Notice of Right to Elect Continuation Coverage)

NOTICE OF UNAVAILABILITY OF COBRA

The regulation requires that if the plan administrator receives notice of a qualifying event and determines that the individual is not eligible for COBRA, the plan administrator must provide notice to the individual that they are not eligible to elect COBRA and why. This notice must be furnished within the same time period allowed to provide notice of the right to elect COBRA (e.g. 44 days from the date coverage was lost).

(2590.606-4(c) – Notice of Unavailability of Continuation Coverage)

NOTICE OF TERMINATION OF COBRA PRIOR TO THE MAXIMUM PERIOD

The regulation requires that if COBRA is terminated prior to the end of the maximum period allowed under COBRA, the qualified beneficiaries must be provided notice of the termination. This notice must be provided as soon as reasonably possibly following the determination that COBRA will terminate and must include the following information:

1. The reason COBRA terminated;
2. Termination date;
3. Any rights the individual may have to elect an alternative coverage or conversion plan.

(2590.606-4(d) – Notice of Termination of Continuation Coverage)