

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****29 CFR Part 2590**

RIN 1210-AA60

**Health Care Continuation Coverage****AGENCY:** Employee Benefits Security Administration, Labor.**ACTION:** Proposed regulations.

**SUMMARY:** This document contains proposed regulations implementing the notice requirements of the health care continuation coverage (COBRA) provisions of Part 6 of title I of the Employee Retirement Income Security Act of 1974 (ERISA). The continuation coverage provisions generally require group health plans to provide participants and beneficiaries who under certain circumstances would lose coverage (qualified beneficiaries) the opportunity to elect to continue coverage under the plan at group rates for a limited period of time.

The proposed rules set minimum standards for the timing and content of the notices required under the continuation coverage provisions and establish standards for administering the notice process. This document also contains model forms for use by administrators of single-employer group health plans to satisfy their obligation to provide general notices and election notices. These proposed regulations, if finalized, would affect administrators of group health plans, participants and beneficiaries (including qualified beneficiaries) of group health plans, and the sponsors and fiduciaries of such plans.

**DATES:** Written comments on these proposed regulations should be received by the Department of Labor on or before July 28, 2003.

**ADDRESSES:** Comments (preferably at least three copies) should be addressed to the 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. Comments also may be submitted electronically to [ORI@EBSA.dol.gov](mailto:ORI@EBSA.dol.gov). All comments received will be available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fields or Suzanne M. Adelman, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8523. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:****A. Background**

The continuation coverage provisions, sections 601 through 608 of title I of ERISA, were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which also promulgated parallel provisions that became part of the Internal Revenue Code (the Code) and the Public Health Service Act (the PHSA).<sup>1</sup> See Code section 4980B; PHSA, 42 U.S.C. 300bb-1 *et seq.* These provisions are commonly referred to as the COBRA provisions, and the continuation coverage that they mandate is commonly referred to as COBRA coverage. The COBRA provisions of title I of ERISA generally require that “any group health plan”<sup>2</sup> offer “qualified beneficiaries” the opportunity to elect “continuation coverage” following certain events that would otherwise result in the loss of coverage (“qualifying events”).<sup>3</sup> Continuation coverage is a temporary extension of the qualified beneficiary’s previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in

<sup>1</sup> The Code and PHSA COBRA provisions, although very similar in other ways, are not identical to the COBRA provisions in title I of ERISA in their scope of application. The PHSA provisions apply only to State and local governmental plans, and the Code provisions grant COBRA rights to individuals who would not be considered participants or beneficiaries under ERISA. See PHSA, 42 U.S.C. 300bb-8; Code section 5000(b)(1).

<sup>2</sup> A group health plan is not subject to the COBRA provisions for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year. See section 601(b).

<sup>3</sup> Each of the quoted terms is specifically defined in the COBRA provisions. In particular, the term *group health plan* is defined in section 607(1) to mean an employee welfare benefit plan as defined in section 3(1) that provides medical care (as defined in section 213(d) of the Code) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise. The Department notes that employee welfare benefit plans under ERISA include, *inter alia*, plans sponsored by unions for their members as well as plans sponsored by employers for their employees. Such union-sponsored plans would not involve employers in any sponsorship capacity, nor would they necessarily cover individuals all of whom are employees. Although the proposed regulations use the terms “employer” and “employee,” as do the COBRA provisions, in assigning duties, they are intended to apply to all group health plans, as defined in section 607(1), subject to COBRA.

health coverage that otherwise could limit their access to health care.

COBRA, as enacted, provides that the Secretary of Labor (the Secretary) has the authority under section 608 to carry out the provisions of part 6 of title I of ERISA. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage.<sup>4</sup> Under its authority to interpret the COBRA provisions, the Treasury has issued final regulations that provide rules for determining which plans are subject to the COBRA provisions, who is or can become a qualified beneficiary, which events constitute qualifying events, what COBRA obligations exist in the case of mergers and acquisitions, and the nature of the continuation coverage that must be offered. See Treas. Reg. §§ 54.4980B-1 through 54.4980B-10. These proposed rules implementing the notice requirements of the COBRA provisions of Part 6 of title I of ERISA would apply for purposes of the COBRA provisions of section 4980B of the Code.<sup>5</sup>

**B. COBRA Notice Requirements**

Section 606(a)(1) requires group health plans to provide a written notice containing general information about COBRA rights to each covered employee and his or her spouse when coverage under the plan commences. Sections 606(a)(2) and 606(a)(3) require the plan administrator to be notified when a qualifying event occurs, and the nature of the qualifying event determines whether the employer or the covered employee and qualified beneficiary must give this notice to the plan

<sup>4</sup> H.R. Conf. Rep. No. 99-453, 99th Cong., 1st Sess., at 562-63 (1985). The Conference Report further indicates that the Secretary of Health and Human Services, who is to issue regulations implementing the continuation coverage requirements for State and local governments, must conform the actual requirements of those regulations to the regulations issued by the Secretary and the Treasury. *Id.* at 563.

<sup>5</sup> As noted in footnote 1, above, certain COBRA provisions (such as the definitions of group health plan, employee and employer) are not identical in the Code and title I of ERISA. The Treasury has reviewed these rules and concurs that, in those cases in which the statutory language is not identical, §§ 2590.606-1 through 2590.606-4 would nonetheless apply to the COBRA provisions of sec. 4980B of the Code, except to the extent that such regulations are inconsistent with the statutory language of the Code.