

is either the employee's termination of employment or reduction in hours of employment, the employee's death, the employee's becoming enrolled in Medicare, or the commencement of a proceeding in bankruptcy with respect to the employer. Proposed § 2590.606-2 addresses this notice obligation of employers.

Paragraph (b) of the regulation provides that an employer shall notify the plan administrator of a qualifying event no later than 30 days after the date of the qualifying event. However, paragraph (b) further provides that, for any plan under which continuation coverage begins, pursuant to section 607(5), with the date of loss of coverage, the 30-day period for providing the notice of qualifying event must also begin with the date of loss of coverage, rather than the date of the qualifying event. Paragraphs (b) and (d) also recognize that multiemployer plans may have different notice periods, as permitted under sections 606(a)(2) and 606(b).

Paragraph (c) of the regulation requires that an employer provide the plan administrator sufficient information to enable the administrator to determine the identity of the plan, the covered employee, the qualifying event, and the date of the qualifying event.

#### *Section 2590.606-3 Qualified Beneficiary's Notices*

Under section 606(a)(3), each covered employee or qualified beneficiary is responsible for notifying the plan administrator of a qualifying event that is either the divorce or legal separation of the employee from his or her spouse or a dependent's becoming no longer eligible to be covered as a dependent under the plan. This notice must be provided within 60 days after the occurrence of the qualifying event. Proposed § 2590.606-3 provides guidance with respect to this notice obligation and other notice obligations of qualified beneficiaries, such as the notice of disability or second qualifying event.

Paragraph (b) of the regulation requires plans to establish reasonable procedures for the furnishing of notices by covered employees and qualified beneficiaries and sets general standards for what will be considered reasonable.<sup>15</sup> A plan's procedures generally would be deemed reasonable if they are described in the plan's SPD,

specify who is designated to receive notices and specify the means qualified beneficiaries must use for giving notice and the required content of the notice. Paragraph (b) further provides that, if a plan does not have reasonable procedures for qualified beneficiaries' notices, notice will be deemed to have been provided if certain information adequately identifying a specific qualifying event is communicated to any of the parties that would customarily be considered in charge of the plan. Paragraph (b) provides that plans may require notices to be submitted via a specific form, if the form is easily available to qualified beneficiaries without cost, and may require specific information to be provided.

Paragraph (d) provides that a plan may not reject an incomplete notice as untimely if the notice is provided within the plan's time limits and contains enough information to enable the plan administrator to identify the plan, the covered employee and qualified beneficiary(ies), the qualifying event or disability determination, and the date on which it occurred. However, if a timely notice fails to supply all of the information required under the plan's procedures, the plan administrator can require qualified beneficiaries to supply the missing information.

Paragraph (c) provides that the statutory time limits for the qualified beneficiaries' notices are minimum time limits and that plans can provide for longer notice periods. The proposed regulation specifies, however, that a plan's time limit for providing any of the qualified beneficiaries' notices could not begin to run unless and until the plan had satisfied the general notice requirements of section 606(a)(1) with respect to the affected qualified beneficiaries.

Paragraph (c) further requires that a plan structured in accordance with section 607(5) to begin continuation coverage with the date of loss of coverage, rather than the date on which a qualifying event occurs, must provide that the 60-day period for qualified beneficiaries' notices also begins with the date of loss of coverage.<sup>16</sup> Paragraph (e) provides that any of the qualified beneficiary notice obligations can be satisfied with respect to all qualified beneficiaries affected by a single qualifying event through a single notice and that any individual representing the

qualified beneficiaries can provide the required notice.

With respect to the notice of disability required to be provided under section 606(a)(3), paragraph (c) specifies that qualified beneficiaries can be required by a plan to provide the disability notice within 60 days of the date of the Social Security Administration's determination of disability and before the end of the initial period of 18 months of continuation coverage. Under the proposed regulation, therefore, failure to provide the disability notice within those time limits, if required by the plan, could be a basis for concluding that notice had not been timely provided under section 606(a)(3). Paragraph (c) makes clear, however, that plans may not decline to provide the disability extension for failure to provide a timely disability notice unless the affected qualified beneficiaries were adequately notified, in advance, of the notice obligation. The regulation further specifies that plans may adopt more generous notice requirements.

#### *Section 2590.606-4 Plan Administrator's Notice Obligations*

Section 606(a)(4) requires a plan administrator to notify each qualified beneficiary who is entitled to elect continuation coverage of his or her COBRA rights. Section 606(c) requires a plan administrator to provide such notice within 14 days after the plan administrator is notified of a qualifying event. Proposed § 2590.606-4 provides guidance on the requirements of sections 606(a)(4) and 606(c). The regulation describes timing and content requirements for election notices, requires administrators to notify individuals if continuation coverage is determined not to be available, and requires plan administrators to provide notice when continuation coverage terminates before the end of the maximum period for such coverage.

Paragraph (b) of the regulation sets forth the information that must be included in an election notice.<sup>17</sup> In

<sup>17</sup> The regulation requires an administrator to provide an election notice only when it has been determined that a qualified beneficiary is entitled to elect continuation coverage. In this regard, the Department notes that it is the administrator's responsibility, as a fiduciary, to determine whether individuals who are named in a notice of qualifying event are entitled to continuation coverage and that disputes may arise over the correctness of the administrator's determinations. These proposed regulations are not intended to provide guidance on the substantive rights provided by the COBRA provisions, as such issues are beyond the scope of the Department's authority. The administrator, in reaching decisions on COBRA issues, must apply the COBRA provisions as interpreted by the Treasury regulations. For example, Treasury has

<sup>15</sup> ERISA does not mandate that qualified beneficiaries provide notices of qualifying event. A qualified beneficiary may not wish to elect continuation coverage and may therefore decide to forgo providing the notice of qualifying event without violating the COBRA provisions.

<sup>16</sup> Section 607(5) requires coordination of the running of the employer's period for providing notice of qualifying event with the beginning of the continuation coverage period.