



LEGISLATIVE BRIEF

COBRA Common Questions: Notification Requirements

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that covered employers provide former employees and dependents who lose group health benefits with an opportunity to continue group health insurance coverage. Individuals who are eligible for health coverage under COBRA are known as “Qualified Beneficiaries.”

This Alan Benoy Insurance Services Legislative Brief provides answers to commonly-asked questions regarding COBRA’s general notice requirements.

What notices must the Plan Administrator provide to Qualified Beneficiaries?

The Plan Administrator is required to provide Qualified Beneficiaries with the following notices:

- General (or Initial) Notice,
- Election Notice,
- Notice of Unavailability of COBRA Continuation Coverage, and
- Notice of Early Termination of COBRA Continuation Coverage and Conversion Rights.

Under COBRA, when must the Plan Administrator provide Qualified Beneficiaries with a General Notice?

The Plan Administrator must provide Qualified Beneficiaries with a General Notice within 90 days after initial plan coverage begins.

A General Notice must also be sent to any new dependents added to the plan after the Employee’s initial enrollment. The General Notice must be provided within 90 days from the date coverage begins. For example, an Employee currently covered under the Health Plan gets married. If the new spouse is added to the plan, the Plan Administrator must provide the new spouse with a General Notice within 90 days of the effective date of his or her coverage.

Where a covered individual experiences a Qualifying Event within 90 days of becoming covered under the plan, an Election Notice should be provided to the covered individual. The General Notice need not be provided.

How should the Plan Administrator deliver the COBRA General Notice?

The Plan Administrator may deliver a single notice addressed to a covered Employee and the covered Employee’s spouse at their joint residence, provided the plan’s latest information indicates that both reside at that address.

The Plan Administrator is not required to provide the General Notice to dependent children covered under the plan that live with the covered Employee.

Hand-delivery of the General Notice to the Employee at the workplace is deemed to be adequate delivery to the Employee, but does not constitute delivery to the spouse.

Can the plan meet its obligation to provide the General COBRA Notice by incorporating it into the Summary Plan Description?

Yes. The General Notice can be incorporated into the summary plan description provided the summary plan description a) contains all of the information required to be included within the General Notice, and b) it is delivered in



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a manner that complies with the delivery rules applicable to COBRA notices. However, the rules governing the electronic delivery of COBRA notices are more stringent than those applicable to summary plan descriptions.

Under COBRA, when must the Plan Administrator provide Qualified Beneficiaries with an Election Notice?

The Plan Administrator must provide Qualified Beneficiaries with an Election Notice within 14 days of receipt of the notice of a Qualifying Event.

Where the employer is also the Plan Administrator and the Qualifying Event is one for which the employer is required to notify the Plan Administrator, the employer must provide the Qualified Beneficiary with an Election Notice within 44 days of the date of the Qualifying Event (or the date on which the Qualified Beneficiary loses coverage as a result of the Qualifying Event, if the employer uses the extended notice rule).

When must the Plan Administrator provide Qualified Beneficiaries with a Notice of Unavailability of COBRA Continuation Coverage?

In the event that the Plan Administrator receives a notice of a Qualifying Event from an individual not entitled to COBRA, the Plan Administrator must notify the individual of the reason why COBRA is not available.

The Plan Administrator is required to notify the individual within the same time period as applicable to Election Notices (i.e., within 14 days of receipt of notice).

Under COBRA, when must the Plan Administrator provide Qualified Beneficiaries with a Notice of Early Termination?

In the event coverage is terminated before the end of the maximum COBRA continuation period, the Plan Administrator must provide Qualified Beneficiaries with notice that coverage will terminate. The Plan Administrator must provide notice as soon as practicable following the decision to terminate.

For example, the Plan Administrator is required to notify the Qualified Beneficiary whose coverage terminates for failure to pay COBRA premiums in a timely manner. The Plan Administrator is not required to provide advance notice that the Qualified Beneficiary will lose coverage if payment isn't received by the end of the grace period.

Where conversion coverage is available, the Plan Administrator is required to provide information on conversion rights within the Notice of Early Termination of COBRA Continuation Coverage.

Plans that include an option for conversion to individual coverage after group coverage ends must make this option available to Qualified Beneficiaries during the 180-day period ending on the expiration date of the period of COBRA coverage. While there is no specific requirement to provide a notice of the conversion option, that may be a necessary part of making the conversion option available.

Under COBRA, what notices must the employer provide to the Plan Administrator?

Where an employer has engaged the services of a third party to administer its COBRA obligations, that third party is referred to as the Plan Administrator. If an employer has hired a Plan Administrator, the employer is required to notify the Plan Administrator of the occurrence of the following events:

- Employee's death,
- Employee's termination of employment (other than by reason of gross misconduct),
- Employee's reduction in hours,
- Employee becoming entitled to Medicare, or
- Employer's filing for Chapter 11 bankruptcy.

Under COBRA, when must an employer provide the Plan Administrator with notice of a Qualifying Event?

If an employer has hired a Plan Administrator, the employer is required to notify the Plan Administrator within 30 days of a Qualifying Event. However, if the employer uses the delayed notice rule, where the COBRA maximum coverage

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period begins on the date of the loss of coverage, the employer must notify the Plan Administrator within 30 days of a loss of coverage due to the Qualifying Event.

A special rule applicable to multi-employer plans allows for a longer period of time within which the employer must provide the Plan Administrator with notice.

The employer's notice must provide sufficient information to enable the Plan Administrator to determine the following:

- Plan name
- Covered employee,
- Type of Qualifying Event, and
- Date of the Qualifying Event (including date of loss of coverage).

Under COBRA, what notices must Qualified Beneficiaries provide to the Plan Administrator?

Qualified Beneficiaries must provide the Plan Administrator with notice of the occurrence of the following Qualifying Events:

- Divorce,
- Legal separation,
- Child's loss of dependent status under the plan,
- Second Qualifying Event,
- Determination of disability by the Social Security Administration, and
- Determination by the Social Security Administration that a Qualified Beneficiary is no longer disabled.

Qualified Beneficiaries are required to follow the reasonable procedures established by the Plan Administrator for providing these notices.

Under COBRA, when must a Qualified Beneficiary provide the Plan Administrator with notice of a Qualifying Event?

Qualified Beneficiaries are required to follow the reasonable procedures established by the Plan Administrator for providing notice of a Qualifying Event. The Plan Administrator's procedures may not impose time limits which are shorter than those listed below.

Notice of Divorce, Legal Separation, Loss of Dependent Status & Second Qualifying Events

Qualified Beneficiaries are required to notify the Plan Administrator within 60 days of the later of:

- The date of the Qualifying Event,
- The date of the loss of health coverage, or
- The date on which the Qualified Beneficiary is informed of his or her responsibility to provide notice to the Plan Administrator.

Notice of Disability Determination

Qualified Beneficiaries that are determined to be disabled by the Social Security Administration must notify the Plan Administrator within the original 18-month COBRA continuation period and within 60 days of the later of:

- The date of the Social Security Administration's disability determination,
- The date on which a Qualifying Event occurs,
- The date on which the Qualified Beneficiary loses (or would lose) coverage under the plan as a result of the Qualifying Event, or

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- The date on which the Qualified Beneficiary is informed of his or her responsibility to provide notice to the Plan Administrator.

Notice of Change in Disability Status

Where the Social Security Administration determines that a Qualified Beneficiary is no longer disabled, the Qualified Beneficiary is required to notify the Plan Administrator within 30 days of the later of:

- The date of the Social Security Administration's determination that the Qualified Beneficiary is no longer disabled, or
- The date on which the Qualified Beneficiary is informed of his or her responsibility to provide notice to the Plan Administrator.

Is the Plan Administrator required to establish reasonable procedures for Qualified Beneficiaries to follow when providing COBRA notices?

Yes. Plan Administrators must establish reasonable procedures for Qualified Beneficiaries to follow when providing notice to the Plan Administrator of a Qualifying Event.

A plan's procedures will generally be considered reasonable if they:

- Are described in the plan's summary plan description,
- Specify who is designated to receive notices,
- Specify the means Qualified Beneficiaries must use for giving notice, and
- Specify the required content of the notice.
- A plan may require Qualified Beneficiaries to use a specific form, provided that any such form is easily available, without cost.

Where the Plan Administrator fails to establish reasonable procedures, a Qualified Beneficiary's notice will be deemed to have been provided, whether oral or written, if the Qualified Beneficiary provides information identifying a specific event and is communicated in a manner reasonably calculated to bring the information to the parties that would customarily be considered to be responsible for the plan.

Not only does COBRA require the Plan Administrator to establish reasonable procedures, but reasonable procedures will help to minimize disputes between the Employee and Plan Administrator regarding whether appropriate notice was provided.

Under COBRA, is the Plan Administrator required to notify Qualified Beneficiaries if their payment is late?

No. The Plan Administrator is not required to provide late payment notices to Qualified Beneficiaries. The Plan Administrator is only required to notify Qualified Beneficiaries that COBRA has been terminated for failure to make payment within the grace period.