

COMPLIANCE OVERVIEW

Provided by Clarke & Company Benefits, LLC

COBRA Notice and Disclosure Rules

To administer coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), employers and plan administrators are required to provide specific notices and disclosures to covered individuals and qualified beneficiaries. The most significant COBRA notice requirements for plan administrators are the **general notice** and the **election notice**.

- Plan administrators must provide covered individuals with the **general notice** within 90 days after their group health plan (GHP) coverage begins.
- Plan administrators must provide qualified beneficiaries with an **election notice** within 14 days after receiving notice of a qualifying event (44 days under certain circumstances).

Qualified beneficiaries are also subject to notice requirements under COBRA. Qualified beneficiaries are required to notify the plan administrator when certain qualifying events occur, such as a divorce or a dependent child's loss of dependent status.

LINKS AND RESOURCES

- [Final regulations](#) on COBRA's notice and disclosure requirements
- DOL [webpage](#) on COBRA compliance, including links to the [Model General Notice](#) and the [Model Election Notice](#)
- [An Employer's Guide to Group Health Continuation Coverage](#) (DOL publication)

HIGHLIGHTS

GHP NOTICE REQUIREMENTS

- General Notice
- Notice of Qualifying Event
- Election Notice
- Notice of COBRA Ineligibility
- Notice of Early Termination

MODEL NOTICES

- The Department of Labor (DOL) has a model general notice and a model election notice for employers to use.
- Employers are not required to use the DOL's model notices.
- Using the model notices, however, will constitute a good faith effort to comply with the requirements for these notices.

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.



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GENERAL NOTICE

Plan administrators must provide a written general notice of COBRA rights to each covered employee and spouse (if any) **within 90 days** after their coverage under a GHP begins. The general notice must also be sent to any new dependents added to the plan after the employee's initial enrollment. In this case, the general notice must be provided within 90 days of the effective date of the new dependent's coverage.

The general notice must include information about the plan coverage, a list of individuals who can become qualified beneficiaries under the plan, an explanation of the qualified beneficiaries' obligations when a qualifying event under COBRA occurs and other details.

A plan administrator may incorporate the general notice into the GHP's summary plan description (SPD), but only if the SPD:

- Contains all of the information that is required to be included within the general notice; and
- Is delivered in compliance with the delivery rules applicable to COBRA notices.

A single general notice may be provided to a covered employee and his or her spouse if they reside at the same address. However, hand-delivery of the general notice to the covered employee at the workplace does not constitute delivery to the spouse.

Model Notice: The DOL has a [COBRA Model General Notice](#) that can be used by single-employer group health plans to meet their notice obligations. Employers are not required to use the DOL's model notice. However, use of the model notice, appropriately completed, will be considered by the DOL to be good faith compliance with COBRA's coverage requirements for the general notice.

EMPLOYER'S NOTICE OF A QUALIFYING EVENT

Employers are required to notify their plan administrators when any of the following qualifying events occurs:

- ✓ Death of a covered employee;
- ✓ Termination of a covered employee's employment (for reasons other than gross misconduct);
- ✓ Reduction in the hours of a covered employee's employment;
- ✓ A covered employee's entitlement to Medicare; or
- ✓ The employer's Chapter 11 bankruptcy filing.

The employer's notice to the plan administrator must be provided **within 30 days** after the later of:

- The date of the qualifying event; or

- The date on which a qualified beneficiary would lose coverage because of the qualifying event.

QUALIFIED BENEFICIARY'S NOTICE OF A QUALIFYING EVENT

Covered employees and qualified beneficiaries are required to notify the plan administrator when any of these events occur:

- The covered employee **divorces or legally separates** from his or her spouse;
- A covered child **loses dependent status**;
- A **second qualifying event** entitles a qualified beneficiary to extend continuation coverage beyond an 18-month maximum; or
- The Social Security Administration (SSA) determines that a qualified beneficiary who is entitled to a maximum of 18 months of continuation coverage has **become disabled**, if the disability determination is made during the first 60 days of the qualified beneficiary's continuation coverage.

Plan administrators must establish **reasonable procedures** for covered employees or qualified beneficiaries to provide these notices. The procedures should be described within the SPD. The SPD may require covered employees or qualified beneficiaries to use a specific form for the notices, as long as the form is readily available without cost.

Unless the GHP provides a more generous deadline, covered employees and qualified beneficiaries must provide the notices within **at least 60 days** of the later of:

- The date of the qualifying event (the covered employee's divorce or legal separation, the child's loss of dependent status, or a second qualifying event or SSA disability determination that would entitle a qualified beneficiary to extend continuation coverage beyond 18 months);
- The date on which the qualified beneficiary would lose coverage as a result of the qualifying event; or
- The date on which the qualified beneficiary was first notified of the obligation and procedures for providing notice.

A qualified beneficiary whose continuation coverage is extended beyond an initial 18-month maximum due to an SSA disability determination must notify the plan administrator if the SSA makes a later determination that he or she is no longer disabled. The notice procedures outlined in an SPD may require the qualified beneficiary to provide this notice within at least 30 days of:

- The SSA's determination that the qualified beneficiary is no longer disabled; or
- The date on which the qualified beneficiary was first notified of the obligation and procedures for providing notice.

COBRA ELECTION NOTICE

After receiving notice of a qualifying event, the plan administrator must notify qualified beneficiaries of their right to elect continuation coverage under COBRA. The election notice must be provided no later than **14 days** after the plan administrator's receipt of the notice of a qualifying event.

In many cases, the employer is also the plan administrator. For qualifying events where the employer is required to provide notice to the plan administrator (for example, employee's termination or reduction in hours, death of the employee or employee becoming entitled to Medicare) and the employer is also the plan administrator, the election notice must be provided to the qualified beneficiary within **44 days** of the later of:

- The date of the qualifying event; or
- The date on which the qualified beneficiary loses coverage due to the qualifying event.

Plan administrators may mail a single COBRA election notice to all qualified beneficiaries (for example, employee, spouse and dependent children) who reside at the same address. However, the election notice must identify the qualified beneficiaries covered by the notice by name or status (for example, former spouse) and explain that each qualified beneficiary has a separate and independent right to elect COBRA coverage.

Model Notice: The DOL released a [COBRA Model Election Notice](#) that can be used by single-employer group health plans to meet their notice obligations. To use the model notice properly, a plan administrator must fill in the blanks with the appropriate plan information. Plan administrators are not required to use the model notice, but properly using it is considered good faith compliance with COBRA's election notice content requirements.

PLAN ADMINISTRATOR'S NOTICE OF COBRA INELIGIBILITY

If a plan administrator determines that an individual is not eligible for continuation coverage after it receives notice of a qualifying event relating to that individual, the plan administrator must notify the individual of the reasons he or she is not eligible for COBRA coverage. This notice is due within the same time periods applicable to election notices. Plan administrators may send one notice of COBRA ineligibility to all qualified beneficiaries who reside at the same address.

PLAN ADMINISTRATOR'S NOTICE OF EARLY TERMINATION

If a plan administrator determines that a qualified beneficiary's COBRA coverage will terminate before the end of the plan's maximum period for the coverage, the plan administrator must notify the qualified beneficiary as soon as practicable after the determination. The notice must explain why the coverage will terminate earlier than the end of the maximum coverage period, provide the date the coverage will terminate and describe any rights the qualified beneficiary may have to elect other coverage. Plan

administrators may provide one notice of early termination to all qualified beneficiaries who live at the same address.

DELIVERY REQUIREMENTS

General Requirement

Plan administrators must provide COBRA notices to individuals in a manner that is consistent with the DOL's requirements for delivering documents required by the Employee Retirement Income Security Act (ERISA).

Under ERISA, employers must use delivery methods reasonably calculated to **ensure actual receipt of this information** by plan participants and beneficiaries. In general, employers may satisfy this delivery method requirement by mailing the documents to employees' homes, distributing the documents to employees at work or including the information in a company newsletter or publication.

Rules for Electronic Delivery

The DOL has [established](#) a "safe harbor" for using electronic media to satisfy ERISA's delivery method requirements. This includes delivering documents by email, using a company website to post documents and providing documents on other electronic media. The DOL's safe harbor allows employers to distribute documents electronically to: (1) employees with work-related computer access; and (2) other plan participants and beneficiaries who consent to receive disclosures electronically.

In addition to the consent requirement described above for individuals without work-related computer access, the DOL's safe harbor imposes the following requirements on electronic delivery:

- ✓ A **notice** must be sent either electronically or in paper form to plan participants and beneficiaries at the time the document is provided electronically.
- ✓ Employers must take steps to ensure that the electronic delivery results in **actual receipt**. For example, this may include using electronic mail features, such as a return receipt or notice that the email was not delivered, or conducting periodic reviews or surveys to confirm receipt of the transmitted information.
- ✓ Plan participants and beneficiaries are entitled to receive a **paper copy** of the disclosure provided electronically.

Application to COBRA Notices

Employers must provide COBRA notices to nonemployees in certain situations. For example, the general notice must be provided to covered employees and spouses within 90 days of initial plan participation. Also, an election notice must be provided to each qualified beneficiary who has the right to elect COBRA coverage.

As a general rule, an employer may send a single COBRA notice to employees and family members who reside at the same address. However, providing the COBRA notice to the employee at work (for example, through in-hand delivery) does not satisfy the employer’s obligation to provide the notice to family members. Also, if employers use electronic delivery, they must follow the DOL’s rules for obtaining consent prior to using electronic delivery for nonemployees, such as spouses. It is not enough to electronically provide a COBRA notice to employees with instructions to share it with family members.

Due to this complexity and potential for error, many employers **mail COBRA notices** to employees and their family members rather than using other delivery methods, such as email or in-hand delivery to employees at work.

CHART OF COBRA NOTICE AND DISCLOSURE RULES

COBRA NOTICE AND DISCLOSURE RULES		
NOTICE	TIMING REQUIREMENTS	CONTENT REQUIREMENTS
Plan administrator’s general notice to covered individuals	<p>Within 90 days after coverage begins.</p> <p>New dependents added after the covered employee's initial enrollment must be provided a general notice within 90 days from the date their coverage begins.</p> <p>If a covered individual experiences a qualifying event within 90 days of becoming covered under the plan, the general notice is not required; instead, an election notice should be provided.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant and must include all of the following:</p> <ul style="list-style-type: none"> • The name of the GHP and the name, address and telephone number of the party responsible for administering COBRA; • A general description of the continuation coverage available under the GHP, including identification of: <ul style="list-style-type: none"> ○ The classes of individuals who may become qualified beneficiaries; ○ The types of qualifying events that may give rise to the right to continuation coverage; ○ The employer’s obligation to notify the plan administrator of certain qualifying events; ○ The maximum periods of continuation coverage and circumstances under which they may be extended; and ○ The requirements for paying premiums for continuation coverage.

COBRA NOTICE AND DISCLOSURE RULES		
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		<ul style="list-style-type: none"> An explanation of qualified beneficiaries' responsibility to notify the employer of certain qualifying events (divorce, legal separation, loss of dependent status and SSA disability determinations); An explanation of qualified beneficiaries' continuing obligation to notify the employer of any address or eligibility changes (becoming enrolled in Medicare, death of covered employee, divorce, legal separation and SSA disability determinations); and A statement that the notice does not fully describe all COBRA rights and that further information can be received from the employer or plan administrator.
Employer's notice of qualifying event to plan administrator	Within 30 days after a qualifying event or loss of GHP coverage due to the qualifying event, whichever is later.	<p>Must include sufficient information to enable the plan administrator to determine:</p> <ul style="list-style-type: none"> The GHP; The covered employee; The qualifying event; and The date of the qualifying event (including date of loss of coverage).
Qualifying Beneficiary's notice of qualifying event to plan administrator	<p>Within at least 60 days after a qualifying event, the date a qualified beneficiary would lose coverage, or the date the qualified beneficiary was notified of the notice requirements and procedures, whichever is latest.</p> <p>If the SSA makes a disability determination within the first 60 days after an individual</p>	<p>Plan administrators must establish reasonable procedures for qualified beneficiaries to follow when providing these notices. Procedures are deemed reasonable if they:</p> <ul style="list-style-type: none"> Are described in the SPD; Specify the person or entity designated to receive the qualifying beneficiary's notice; Specify the means by which a qualified beneficiary may give the notice; and Describe the information about the

COBRA NOTICE AND DISCLOSURE RULES		
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	<p>becomes entitled to an initial 18-month COBRA coverage period, the notice is due within 60 days after the SSA disability determination. If the SSA later determines the individual is no longer disabled, notice of this change is due within 30 days of the SSA determination.</p>	<p>qualifying event or SSA disability determination that the plan deems necessary in order to provide continuation coverage rights.</p>
<p>Plan administrator's notice of right to elect COBRA coverage to qualified beneficiary</p>	<p>Within 14 days of receipt of the notice of a qualifying event.</p> <p>Where the employer is the plan administrator, within 44 days of the qualifying event or the loss of coverage date, whichever is later.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant and contain the following:</p> <ul style="list-style-type: none"> • The name of the plan and the name, address and telephone number of the COBRA administrator; • Identification of the qualifying event; • Identification of each qualified beneficiary entitled to elect COBRA and the date coverage will terminate if he or she does not elect COBRA; • A statement that each qualified beneficiary has an independent right to elect COBRA, and that certain qualified beneficiaries may elect COBRA for others; • An explanation of the plan's procedures for electing COBRA, including the time period in which the election must be made and the date the election must be made; • An explanation of the consequences of failing to elect or waiving COBRA and of how to revoke a COBRA waiver; • A description of the coverage available under COBRA, including the date COBRA would commence (may refer to SPD); • An explanation of the maximum period for

COBRA NOTICE AND DISCLOSURE RULES		
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		<p>which COBRA will be available, including the termination date and the events that might cause COBRA to be terminated earlier;</p> <ul style="list-style-type: none"> • An explanation of when COBRA may be extended due to a second qualifying event or SSA disability determination; • An explanation of the qualified beneficiary's obligation to provide the plan administrator with notice of qualifying events; • A description of the amount the qualified beneficiary will be required to pay for COBRA coverage; • A description of the due dates for payments, the qualified beneficiary's right to pay on a monthly basis, grace periods, the address to which payments should be sent and the consequences of delayed payment or nonpayment; • An explanation of the importance of keeping the plan administrator informed of the current addresses of all beneficiaries under the plan; and • A statement that the notice does not fully describe COBRA or other rights under the GHP and that more complete information regarding these rights is available in the SPD or from the plan administrator.
<p>Plan administrator's notice of COBRA ineligibility to covered individual on whose behalf a notice of a qualifying event was provided</p>	<p>Within 14 days of receiving notice of a qualifying event.</p> <p>Where the employer is also the plan administrator, within 44 days of the qualifying event or the date the individual loses GHP coverage, whichever is later.</p>	<p>Required if the plan administrator receives notice of a qualifying event concerning an individual whom the plan administrator determines is not eligible for COBRA.</p> <p>Must be written in a manner calculated to be understood by the average plan participant and include an explanation of why the individual is not entitled to COBRA.</p>

COBRA NOTICE AND DISCLOSURE RULES

NOTICE	TIMING REQUIREMENTS	CONTENT REQUIREMENTS
<p>Plan administrator's early termination notice to qualified beneficiary</p>	<p>As soon as practicable after the plan administrator's determination that COBRA coverage will terminate.</p>	<p>Must be written in a manner calculated to be understood by the average plan participant and contain the following:</p> <ul style="list-style-type: none"> • The reason COBRA coverage will be terminated earlier than the end of the maximum coverage period; • The date the COBRA coverage will terminate; and • A description of any rights the qualified beneficiary may have under the GHP or applicable law to elect alternative group or individual coverage.