

COMPLIANCE OVERVIEW

COBRA Common Questions – Notification Requirements

The Consolidated Omnibus Budget Reconciliation Act (COBRA) allows individuals to continue their group health plan coverage in certain situations. Specifically, COBRA requires group health plans to offer continuation coverage to covered employees and dependents when coverage would otherwise be lost due to certain specific events, such as a termination of employment, a divorce or a dependent child's loss of eligibility under the terms of the plan.

COBRA sets rules for how and when continuation coverage must be offered and provided, how employees and their families may elect and pay for continuation coverage and when continuation coverage may be terminated. COBRA also requires employers, plan administrators and qualified beneficiaries to comply with certain notice requirements.

This Compliance Overview includes answers to commonly asked questions regarding COBRA's notification requirements.

LINKS AND RESOURCES

- The Department of Labor's (DOL) COBRA Continuation Coverage [webpage](#)
- [An Employer's Guide to Group Health Continuation Coverage Under COBRA](#) – DOL resource
- The DOL's model COBRA forms – [Model General Notice](#) and [Model Election Notice](#)

COBRA Notices

Plan administrators are required to provide the following COBRA notices:

- General (or Initial) Notice
- Election Notice
- Notice of Unavailability of COBRA Coverage
- Notice of Early Termination of COBRA Coverage

Qualified Beneficiary Notices

- Qualified beneficiaries must notify the plan administrator when certain qualifying events occur, such as divorce or a child's loss of dependent status under the plan.
- The plan administrator should have reasonable procedures in place for providing these notices.

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COBRA Notices

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 Coverage	Notice of Early Termination of COBRA Coverage

COVID-19-Related Deadline Extensions

Due to the COVID-19 pandemic, the federal government has [extended](#) the time to furnish COBRA notices and disclosures, if good faith efforts are made to provide them as soon as administratively practicable. Participants also have additional time to comply with deadlines to elect and pay for regular COBRA coverage, as well as notify the plan of a qualifying event. [IRS Notice 2021-58](#) clarifies the application of the deadline extensions for electing COBRA coverage and paying COBRA premiums.

Specifically, these deadlines have been extended by disregarding an “outbreak period” that is tied to the national emergency. Federal agencies have announced that the outbreak period will end on **July 10, 2023**, and have informally remarked that this date is not impacted by the national emergency’s early end date of April 10, 2023. However, official guidance has not been issued and would be helpful in determining when the deadline extensions end.

Once the outbreak period ends, health plans can return to their nonextended deadlines. Federal agencies have advised that, if changes are made to a plan after the end of the national emergency, plan sponsors and employers must **clearly communicate these changes to participants and beneficiaries before they take effect**. Additional resources on the ending of the COVID-19 emergency periods are available on the DOL’s Response to COVID-19 [website](#).

General Notice

Under COBRA, when must the plan administrator provide qualified beneficiaries with the General Notice?

The plan administrator must provide qualified beneficiaries with the General Notice within 90 days after initial plan coverage begins. The General Notice must also be sent to any new dependents added to the plan after the employee’s initial enrollment, 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 the 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, the 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. Hand-delivery of

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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.

The plan administrator is not required to provide the General Notice to dependent children covered under the plan who live with the covered employee.

Can the plan meet its obligation to provide the General Notice by incorporating it into the summary plan description (SPD)?

Yes. The General Notice can be incorporated into the SPD, provided that the SPD:

- Contains all of the information required to be included within the General Notice; and
- Is delivered in a manner that complies with the delivery rules applicable to COBRA notices.

However, the rules governing electronic delivery of COBRA notices are more stringent than those applicable to SPDs.

Election Notice

Under COBRA, when must the plan administrator provide qualified beneficiaries with the Election Notice?

The plan administrator must provide qualified beneficiaries with the 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 the 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).

Notice of Unavailability of COBRA Coverage

When must the plan administrator provide qualified beneficiaries with the Notice of Unavailability of COBRA 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 the Election Notice (that is, within **14 days** of receipt of notice).

Notice of Early Termination of COBRA Coverage

Under COBRA, when must the plan administrator provide qualified beneficiaries with the 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. The notice must describe the date coverage will terminate, the

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reason for termination and any rights the qualified beneficiary may have under the plan or applicable law to elect alternative group or individual coverage.

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.

Employer Notices

Under COBRA, what notices must the employer provide to the plan administrator?

The plan administrator is the person designated as the health plan's administrator in the plan documents. If a plan document does not designate a different plan administrator, the employer sponsoring the plan is typically the plan administrator. If the plan administrator is not the employer, the employer is required to notify the plan administrator of the occurrence of the following qualifying 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 the employer is not the 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 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).

Notices by Qualified Beneficiaries

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:

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- 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

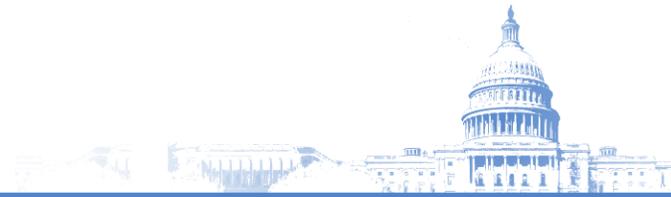
Qualified beneficiaries that are determined to be disabled by the Social Security Administration must notify the plan administrator within the original 18-month COBRA continuation period and within **60 days** of the later of:

- 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
- 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:

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- 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.

Late Payments

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.

For more information about employee benefits, contact us today by emailing info@hwphillips.com or calling (202) 331-9200.