

# Issue Brief

## Department of Labor Releases Model Notice of Exchange

Issue Date: May 2013

The Department of Labor (DOL) has released guidance and model notice language for employers to use to meet the Affordable Care Act (ACA) employee exchange notice requirement. The guidance can be found at <http://www.dol.gov/ebsa/newsroom/tr13-02.html>.

### Background

The ACA requires that employers must provide each employee with a written notice containing the information regarding exchanges, and possible subsidies when purchasing individual coverage through a public exchange. The statute requires that the following information be addressed in the notice:

- Informing the employee of the existence of the Marketplace (referred to in the statute as the Exchange) including a description of the services provided by the Marketplace, and the manner in which the employee may contact the Marketplace to request assistance;
- If the employer plan's share of the total allowed cost of benefits provided under the plan does not provide minimum values, the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Marketplace; and
- If the employee purchases a qualified health plan through the Marketplace, the employee would lose the tax free employer contribution to any health benefits plan offered, and premiums paid for individual coverage would be made on an after-tax basis.

The ACA required the notice be provided to employees by March 1, 2013, however on January 24, 2013, the DOL issued guidance delaying the notice requirement until after guidance was released.

### Effective Date

Employers are required to provide the notice to current employees no later than October 1, 2013. Employers are also required to provide the notice to each new employee at the time of hiring beginning October 1, 2013. For new hires, a notice provided within 14 days of an employee's start date will be considered timely through the end of 2014 (pending additional guidance).

- The guidance specifically states the notice may be provided by first-class mail, or electronically if the requirements of the DOL's electronic disclosure safe harbor are met.
- While this guidance does not specifically endorse the distribution of the notice directly to employees at the worksite, previous comments by the DOL have implied that distribution of the notice with other benefits and enrollment material would be allowed. Further clarification from the DOL regarding this possible method of distribution would be helpful.
- The notice must be provided to all employees, full time and part time, regardless of enrollment status. Employers are not required to provide the notice to spouses and/or dependents.

### Employers Subject to the Notice Requirement

The requirement applies to all employers subject to the Fair Labor Standards Act (FLSA). In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce. However, an exception exists for some small firms with less than \$500,000 in annual revenue. The DOL provides guidance relating to the applicability of the FLSA at [www.dol.gov/elaws/esa/flsa/scope/screen24.asp](http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp).

## **New Guidance and Model Notice**

A model notice has been provided by the DOL and can be found at [www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform). Employers are not required to use the model notice as long as the required elements described in the statute are included in an employer's communication.

- The model contains no requirement to provide specific exchange contact information. The model notice simply directs the employees to [www.HealthCare.gov](http://www.HealthCare.gov) to find information on how to contact the exchange in their area. This is welcome news for multi-state employers who were concerned about providing various contact details for different state exchanges.
- The model notice contains a more extensive section on the employer's current plan offering than was anticipated. This section includes plan eligibility information, employer EIN, employee contact information, etc.
- There is also an "optional section" of the notice the employer can use to provide employee specific information including the cost to participate in the plan, employee specific eligibility dates, and more. This section is designed to assist the employee in supplying the information they need to provide to an exchange when applying for individual coverage. Considering the fact that this section is optional, and the administrative burden to provide this employee specific information could be significant, it will be interesting to see how many employers choose to provide this data.

## **New Model COBRA Election Notice also Released**

In conjunction with the model exchange notice the DOL has released an updated model COBRA election notice. The new COBRA notice contains information about the availability of subsidized coverage through the public exchanges. This new notice can be found at [www.dol.gov/ebsa/cobra.html](http://www.dol.gov/ebsa/cobra.html).

Beginning in 2014 the availability of individual health insurance with no medical underwriting, and the possibility of subsidies, will significantly reduce the need for former employees and dependents to elect COBRA. Since COBRA coverage generates additional claims costs for employer sponsored plans, it will benefit employers to clearly communicate these new individual health insurance options to individuals experiencing a COBRA event.

## **Summary**

Employers have until October 1, 2013 to distribute the notice to employees. However, many employers will likely distribute it much sooner. Employees are already starting to ask questions about the availability of coverage and subsidies through exchanges. It is also expected that media coverage will increase as the October 1 opening of enrollment approaches, generating even more questions from employees.

For many employers, the answer to employee questions is simple. If the employer offers affordable minimum value coverage (as defined by the ACA) to an employee, the employee and their family will not be eligible for subsidized individual coverage.

On the other hand, employers may wish to more aggressively promote the availability of these options to categories of employee's (such as part-time or seasonal employees) who are not eligible for the employers plan.

*While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept liability for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it. This publication is distributed on the understanding that the publisher is not engaged in rendering legal, accounting or other professional advice or services. Readers should always seek professional advice before entering into any commitments.*