

May 9, 2013

**NEW GUIDANCE ON
THE NOTICE TO EMPLOYEES OF MARKETPLACE COVERAGE OPTIONS AND
THE UPDATED MODEL COBRA ELECTION NOTICE**

Beginning January 1, 2014, individuals and employees of small businesses will have access to coverage through new competitive health insurance markets known as Health Insurance Marketplaces (formerly known as Health Insurance Exchanges). Open enrollment for health insurance coverage through the Marketplaces begins October 1, 2013.

On May 8, 2013 the Department of Labor issued Technical Release 2013-02, which:

- **Provides temporary guidance regarding the employer notice requirement to employees concerning Marketplace availability**
- **Announces the availability of a Model Notice to Employees of Marketplace Coverage Options**
- **Provides an updated model COBRA election notice for group health plans to include additional information regarding health coverage alternatives to COBRA offered through the Marketplaces.**

**I. GUIDANCE FOR THE NOTICE TO INFORM EMPLOYEES OF
MARKETPLACE COVERAGE OPTIONS**

The ACA statute requires employers (not later than March 1, 2013) to provide new hires and current employees a written notice with information regarding the existence of a new Marketplace as well as contact information and description of the services provided by a Marketplace. The notice must also inform the employee that the employee may be eligible for a Federal premium tax credit if the employee purchases a qualified health plan through the Marketplace; and contain a statement informing the employee that if the employee purchases a qualified health plan through the Marketplace, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

On January 24, 2013, the Department of Labor issued guidance stating that the notice requirement would not take effect on March 1, 2013 and that the expected timing for distribution of notices will be the late summer or fall of 2013, which will coordinate with the open enrollment period for the Marketplace.

According to Technical Release 2013-02, the temporary guidance and model notice is being issued in advance of the expected timeframe announced in the January 24, 2013 guidance because of multiple employer requests for a model notice on an earlier timeframe so that they may be able to inform their employees now about the upcoming coverage options through the Marketplace.

A. Model Notice

In conjunction with the temporary guidance, the Department of Labor released two model notices that employers may use to notify employees of Marketplace coverage options, as follows:

- One model notice for employers who do not offer a health plan, available at <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf> and
- One model notice for employers who offer a health plan to some or all employees, available at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>
 - *This model notice includes information inserted by the employer describing plan details and single coverage cost, as well as employer contact information if the Marketplace has questions.*
 - *The spaces on the notice for employers to provide plan information use line numbers that correspond to the same line numbers of the Marketplace application that an employee would complete and submit to the Marketplace when applying for coverage*

B. Providing Notice to Employees

- Employers must provide a notice of Marketplace coverage options to each full-time and part-time employee, regardless of plan enrollment status
- Employers are not required to provide a separate notice to dependents or to other individuals who are or may become eligible for coverage under the plan, but who are not employees

C. Timing and Delivery of Employee Notice

- Beginning October 1, 2013, employers are required to provide the notice to each new employee at the time of hire
 - For 2014, a notice will be considered to be provided at the time of hire if the notice is provided within 14 days of an employee's start date
- For employees who are current employees before October 1, 2013, employers are required to provide the notice not later than October 1, 2013
- The notice is required to be provided automatically and free of charge
- The notice must be provided in writing and may be provided by first-class mail
- Alternatively, the notice may be provided electronically if the requirements of the Department of Labor's electronic disclosure safe harbor are met

D. Employers Subject To the Notice Requirement

The requirement to provide a notice to employees of coverage options applies to employers to which the Fair Labor Standards Act (FLSA) applies. In general, the FLSA applies to employers that employ one or more employees who are engaged in, or produce goods for, interstate commerce.

II. THE REVISED MODEL COBRA ELECTION NOTICE

Under COBRA a group health plan must provide qualified beneficiaries with an election notice, which describes their rights to continuation coverage and how to make an election. The election notice must be provided to the qualified beneficiaries within 14 days after the plan administrator receives the notice of a qualifying event.

Technical Release 2013-02 acknowledges that some qualified beneficiaries may want to consider and compare health coverage alternatives to COBRA continuation coverage that are available through the Marketplace. Qualified beneficiaries may also be eligible for a premium tax credit to help pay for some or all of the cost of coverage in plans offered through the Marketplace.

The Department of Labor's model election notice that plans may use to satisfy the COBRA election notice requirement is being revised to help make qualified beneficiaries aware of other coverage options available in the Marketplace.

The revised model election notice is available in modifiable, electronic form on the Department of Labor's website:

- Revised COBRA model election notice, available at: <http://www.dol.gov/ebsa/modelectionnotice.doc>
- Revised COBRA model election notice (redline version to show May 2013 changes), available at: <http://www.dol.gov/ebsa/modelectionnoticeredline.doc>

Use of the model election notice, appropriately completed, will be considered by the Department of Labor to be good faith compliance with the COBRA election notice content requirements.

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Please contact me if you have any questions.

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