



Guidance on Forthcoming Required Employer Notice on Health Care Coverage Options

[ERISA Technical Release 2013-02](#)

The Employee Benefits Security Administration (EBSA) has issued guidance about the written notice that certain employers must provide to employees beginning in October on health care coverage options.

Background. Beginning Jan. 1, 2014, individuals and employees of small businesses will have access to affordable health care coverage through a new competitive private health insurance market called the "Health Insurance Marketplace" (the Marketplace). The Marketplace offers "one-stop shopping" to find and compare private health insurance options. Open enrollment for health insurance coverage through the Marketplace begins on Oct. 1, 2013. Section 1512 of the Affordable Care Act created a new Fair Labor Standards Act (FLSA) section 18B that requires employers to provide written notice to employees about health insurance coverage options available through the Marketplace.

New guidance on notice requirement. The new EBSA guidance fleshes out the notice requirement as follows:

- *Who must provide notices.* Notices must be provided by any employers to whom the FLSA applies. Generally, this means an employer that employs one or more employees who are engaged in, or produce goods for, interstate commerce. For most firms, a test of not less than \$500,000 in annual dollar volume of business also applies.
- *To whom must notices be provided.* Employers must provide a notice to each employee, regardless of plan enrollment status (if applicable), or of part-time or full-time status. Employers do not have to provide a separate notice to dependents or other individuals who are, or may become, eligible for coverage under any available plan, but who are not employees.
- *Form and content of notice.* The notice must be provided in writing in a manner calculated to be understood by the average employee. The notice must include information regarding the existence of a new Marketplace, as well as contact information and a description of the services provided by the Marketplace. In addition, the notice must: (1) inform the employee that the employee may be eligible for a premium tax credit under [Code Sec. 36B](#) if the employee purchases a qualified health plan (QHP) through the Marketplace, and (2) include a statement informing the employee that if the employee purchases a QHP, 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.
- *Timing and delivery of notice.* Employers must provide the notice to each new employee at

the time of hiring *beginning Oct. 1, 2013*. For 2014, the Department of Labor (DOL) will consider a notice to be provided at the time of hiring if the notice is provided within 14 days of an employee's start date. For employees who are current employees before Oct. 1, 2013, employers must provide the notice no later than *Oct 1, 2013*. The notice may be provided by first-class mail. Alternatively, a notice may be provided electronically if it meets the requirements of EBSA's electronic disclosure safe harbor (see [Labor Reg. 2520.104b-1\(c\)](#)).

Model notice. There is model language for the notice on [EBSA's website](#). There is one model for employers who do not offer a health plan, and another model for employers who offer a health plan to some or all employees. Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements in [ERISA Technical Release 2013-02](#).

References: For low-income individuals allowed premium assistance credit after 2013 for health insurance purchased on Exchange, see [FTC 2d/FIN ¶ A-4241](#); [United States Tax Reporter ¶ 36B4](#); [TaxDesk ¶ 138,650](#); [TG ¶ 1381](#).

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