

# CBIZ Health Reform Bulletin



Subject: **October 1<sup>st</sup> Deadline Reminder: Notice to Employees of Marketplace Coverage Options**  
Date: August 28, 2013

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October 1<sup>st</sup> is fast approaching and that means the Affordable Care Act's Marketplace Notice must be distributed to employees (see CBIZ HRB, [Notice to Employees of Coverage Options; Updated COBRA Model](#), 5/10/13).

As background, the Affordable Care Act (ACA) requires all employers to provide a notice of marketplace options to their employees explaining the health insurance marketplace (also known as "exchange"). Beginning October 1, 2013, each state will have a marketplace either established by the state itself, or through a federally-facilitated marketplace, or by a federal-state partnership marketplace through which individuals can buy health coverage. The Marketplace Notice is intended to explain important information about the pros and cons of buying coverage through the marketplace.

## ***Who is required to provide the Marketplace Notice?***

All employers subject to the Fair Labor Standards Act (FLSA) are required to provide the Marketplace Notice to their employees. The FLSA generally applies to virtually all employers employing at least one employee.

## ***Who gets the Marketplace Notice?***

All employees, including full-time and part-time employees, without regard to eligibility status for the health plan.

## ***Who need not be given the Marketplace Notice?***

The Marketplace Notice need not be provided to dependents of employees, former employees including retirees, or to former employees on COBRA continuation coverage. Note, though, an active employee on COBRA, for example due to a reduction in hours, would get the notice.

## ***When must the Marketplace Notice be given?***

- For current employees, the notice must be provided before October 1, 2013; AND
- All new hires hired on or after October 1, 2013 must be provided the Marketplace Notice timely, which means that, at least through 2014, within 14 days of hire.

## ***What must the Marketplace Notice say?***

The DOL's Employee Benefit Security Administration provides two model Marketplace Notices that contain required information that must be communicated to employees. One model notice is to be completed by employers offering coverage, and the other for employers who do not

offer coverage. Both model notices can be viewed and/or downloaded from the DOL's website and are available in both English and Spanish:

- ☐ The model notice for use by employers **who offer coverage** to some or all of their employees:
  - English (available in [pdf format](#) or [word format](#))
  - Spanish (available in [pdf format](#) only)
- ☐ The model notice for employers who **do not offer health coverage**:
  - English (available in [pdf format](#) or [word format](#))
  - Spanish (available in [pdf format](#) only)

***What information must be included in the Marketplace Notice?***

The required elements of a Marketplace Notice for employers **who offer health coverage** include a general overview of the insurance marketplaces (Part A), and Part B that provides information specifically relating to the employer plan, including:

1. Employer's name, contact information and EIN;
2. Whether health coverage is offered to all or some of the employer's employees and their dependents;
3. Whether coverage meets the minimum value and affordability standards; and
4. Optional language (page 3) derived from the Marketplace Employer Coverage Tool that intended to assist employees to understand their coverage options.

Elements of a Marketplace Notice for employers **who do not offer health coverage** include similar Part A language relating to the marketplace overview, and Part B that provides contact information about the employer, together with a statement that there is no employer plan available for which the individual is eligible.

The appropriate Marketplace Notice can be tailored to the employer as long as the minimum elements contained in the model notices are communicated.

***Why is it important to explain whether the health plan meets minimum value and is affordable?***

Providing information as to whether a health plan meets minimum value and affordability is important because it is determinative of whether an employee could be eligible for government assistance, such as a premium tax credit, for coverage purchased through the marketplace.

Generally, individuals are eligible for government assistance when their income falls between 100% and 400% of the federal poverty level, and they are ineligible for minimum value coverage that is affordable. In addition, an individual is ineligible for government assistance if the individual is actually covered by a health plan, whether or not that plan meets minimum value or affordability. This clarification might be a good addition to the language contained in the Marketplace Notice for employers who offer coverage, or included in a cover letter or memorandum provided with the model Notice.

***How can the Marketplace Notice be delivered to employees?***

The Marketplace Notices must be in writing in a manner calculated to be understood by the average employee.

- Paper versions of the notice can be sent to employees by first class mail; or,

- The Notice can be provided electronically, as long as the DOL's electronic disclosures rules are followed, i.e., employees must have regular employment-based access to the employer's computer system. It is important to note that simply posting the notice to an employer's intranet and providing a link to it would not satisfy delivery of receiving the notice. For employers sending the notice as an e-mail attachment, it is recommended to confirm receipt of the message and notice by initiating a delivery and/or read receipt, or other tracking mechanism, to the e-mail message.

***Does the COBRA election form need to be revised to reflect ACA changes?***

For an employer plan subject to federal COBRA, there is no mandate at this time to modify its COBRA election form. However, due to the advent of the marketplace, the elimination of preexisting condition exclusion limitations applicable to plan anniversaries beginning on or after January 1, 2014, and the expiration of certain COBRA penalties, the DOL has provided a new model COBRA election form containing these changes. An employer may wish to begin using this modified COBRA election form in late 2013; or, coincident with the employer's plan anniversary occurring in 2014.

The revised model COBRA election form is available in both [English](#) and [Spanish](#). The DOL also provides a [red-lined version](#) to indicate the particular changes made to the model election form language.

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