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The Affordable Care Act (“ACA”) requires each Health Insurance Marketplace (“Marketplace”) to notify any employer whose employee was determined to be eligible for Advance Premium Tax Credits (“APTC”) and Cost Sharing Reductions (“CSR”) because the employee attested that he or she was not:

- enrolled in employer sponsored coverage, or
- eligible for employer coverage that is affordable and meets minimum value requirements.

In 2016, the Federally-Facilitated Marketplace (“FFM”) will begin issuing these notices to employers. State-based Marketplaces began this notification process in 2015.

Briefly, these notices serve as an initial “heads-up” to the employer if any employee receives a subsidy and buys coverage in the Marketplace during the current calendar year.

Following are some frequently asked questions.

Q1. What states have an FFM?

Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming.

Q2. Which employers will be notified through FFM's employer notice program?

The FFM will send notices to employers whose employees received an APTC in 2016 and whose employees provided FFM with information identifying the employer (e.g., the employer's address).

Any employer (regardless of size) may receive a notice from FFM. The notice will identify the specific employee and include a statement that the employee is enrolled in FFM coverage with APTC. The notices will not contain the employee's personal health information or federal tax information.

After 2016, the Department of Health and Human Services ("HHS") will evaluate and determine whether to further expand and improve the notification program.

Q3. When can employers expect to receive notices?

The FFM will send notices in batches. The first batch will likely be released in the spring of 2016. HHS anticipates this will be the largest batch of notices as it will include employers whose employees enrolled in Marketplace coverage with APTC during Open Enrollment which ended on January 31, 2016. Additional batches of notices are expected throughout 2016.

Q4. Is there an appeal process?

Yes. An employer may appeal a notice and assert that it provides its employee access to affordable, minimum value employer sponsored coverage or that its employee is enrolled in employer coverage, and therefore ineligible for APTC. If the employer is successful, FFM will notify the employee to encourage him or her to update their information to reflect access to, or enrollment in, other coverage. Employees will be notified that their failure to update this information with the Marketplace may result in a tax liability.



Q5. How does the employer submit an appeal?

In the FFM, the employer has 90 days from the date of receipt of the notice to request an appeal. The appeal request form is available here: <https://www.healthcare.gov/downloads/marketplace-employer-appeal-form.pdf>. Note, employers will need to use the correct appeals form identified by state.

An employer must either mail or fax an appeal request to FFM. The address and fax number are available on the form.

Q6. Is this a penalty assessment notice?

For applicable large employers, subject to the employer mandate, this is not a notice of a penalty assessment. Penalty assessment determinations are made by the Internal Revenue Service (“IRS”) in the year that follows the calendar year to which any assessment relates.

However any applicable large employer that receives a notice from the FMM or a state Marketplace should carefully review current year records to determine whether the employee identified in the notice is an ACA full-time employee.

Q7. What about the appeals process for state-based Marketplaces?

Some states, including California, Colorado, the District of Columbia, Maryland, Massachusetts, New York and Vermont, use the Federal appeals process.

Other states, including Washington and Connecticut, have adopted their own appeals process.

Q8. Where can I get more information?

For more information, visit:

- FAQs on FFM notice process.
<https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Employer-Notice-FAQ-9-18-15.pdf>
- How to appeal a Marketplace decision.
<https://www.healthcare.gov/marketplace-appeals/>