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Open enrollment for health insurance coverage through the Exchange (now referred to as the Health Insurance Marketplace) begins October 1, 2013. The Affordable Care Act creates a new Fair Labor Standards Act (FLSA) section that requires employers to provide each employee at the time of hiring, as well as current employees, a written notice that includes information regarding the new Health Insurance Marketplace. Earlier materials referred to this notice as the "Exchange Notice," however, it is now referred to as the "Notice of Coverage Options."

The notification requirement was initially effective March 1, 2013; however, the Department of Labor delayed it until after guidance is issued. The DOL just released Technical Release 2013-02, containing temporary guidance and model notices. Employers may use the model notices and may rely on this guidance prior to the October 1, 2013 applicability date.

### Who is Required to Provide the Notice?

All employers subject to the FLSA are required to provide the Notice of Coverage Options, regardless of whether a health plan is offered by the employer. Employers subject to the FLSA include employers that employ 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 applies. Other entities covered by the FLSA and subject to this notification requirement include hospitals, schools, federal, state and local governments. Employers will need to determine if they are subject to the FLSA. General guidance relating to the applicability of the FLSA (which includes an internet compliance assistance tool to determine applicability of the FLSA) can be found through the Department of Labor's Wage and Hour Division ([www.dol.gov/elaws/esa/flsa/scope/screen24.asp](http://www.dol.gov/elaws/esa/flsa/scope/screen24.asp)).

It is important to note that employers must provide the Notice of Coverage Options – insurance carriers and third-party administrators of group health plans are not responsible for providing the Notice on behalf of an employer.

### Who Must Receive the Notice?

The Notice must be provided to each employee, regardless of plan enrollment status or of part-time or full-time status. Employers are not required to provide the Notice to spouses or dependents who are not employees.

## When and How Must the Notice be Provided?

For new hires, employers must provide the Notice to each new employee at the time of hiring beginning October 1, 2013. For 2014, the 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 prior to October 1, 2013, employers must provide the Notice no later than October 1, 2013. The Notice is required to be provided automatically, free of charge.

The Notice is required to be provided in writing in a manner calculated to be understood by the average employee. It may be provided by first-class mail, but also may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor are met.

## What Must the Notice Provide?

The Notice must inform employees of the existence of a new Marketplace, as well as contact information and a description of the services provided by a Marketplace. The Notice must also inform the employee that the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Marketplace. Additionally, the Notice must include 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.

## COBRA Model Election Notice

Some qualified beneficiaries may want to consider and compare health coverage alternatives to COBRA continuation coverage that are available through the Marketplace. The DOL's model COBRA election notice has been revised to help make qualified beneficiaries aware of other coverage options available in the new Marketplace. As with all earlier model notices, in order to use this model election notice properly, the plan administrator must complete it by filling in the blanks with the appropriate plan information. Use of the model election notice, when appropriately completed, will be considered by the DOL to be good faith compliance with the election notice content requirements of COBRA.

## Model Notices

The DOL provides two model Notices that will satisfy this requirement. One Notice applies to employers who offer a health plan to some or all employees. The other Notice applies to employers that do not offer a health plan. Employers will need to complete Part B of the applicable notice with the requested information. If the employer offers a health plan, the employer must provide some basic information about the health plan coverage, including who is eligible for coverage and whether the coverage satisfies minimum value and is intended to be affordable based upon employee wages. The model Notices can be found as follows:

- Model Notice for employers who offer a health plan to some or all employees:  
[www.dol.gov/ebsa/pdf/FLSAwithplans.pdf](http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf)
- Model Notice for employers who do not offer a health plan:  
[www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf](http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf)
- Revised COBRA Model Election Notice (which includes a redline version of the May 2013 changes):  
[www.dol.gov/ebsa/cobra.html](http://www.dol.gov/ebsa/cobra.html)