



July 2013 Update

Employer Exchange Notice: Updated Guidance and Model Notice Now Available

On May 8, the Department of Labor issued Technical Release 2013-02 which included the much-anticipated model notice that employers may use to satisfy the Affordable Care Act (ACA) requirement of informing employees about the Health Insurance Marketplace (formerly known as the Exchanges). In addition, updated guidance was released announcing October 1 as the new deadline for distribution.

With this information in hand, employers can now move forward with customizing the model notice for their employees and determining a distribution method that makes the most sense for their organization.

Content Requirements

While a model notice has been made available, employers **are not** required to use it as-is. A “modified version” of the notice may be developed, but it must include the following, at a minimum, in order to meet the content requirements:

- > Information about the existence of the new Exchanges;
- > A description of Exchange services;
- > Contact information for the Exchanges (i.e. www.HealthCare.gov);
- > A statement regarding eligibility for subsidized coverage if the employee purchases a qualified health plan through an Exchange; and
- > A statement that if an employee buys a qualified health plan through an Exchange, he/she may lose the employer’s contribution to any health plan offered by the employer and that all or a portion of the employer’s contribution may not be subject to federal income taxes.

Additional information may be included at the employer’s discretion, such as:

- > Employer contact information
- > Eligibility rules for employees and dependents
- > An indication of whether or not the employer’s coverage meets the minimum value and affordability standards
- > The employee cost for the employer’s lowest cost minimum value plan
- > Any coverage changes for the upcoming plan year (*if available prior to distribution*)

In the Reformant Spotlight:

PROVISION:

Updated Guidance on the Notice to
Employees of Coverage Options
Under Health Care Exchange

DOL Technical Release 2013-02

APPLIES TO:

Employers covered by the Fair
Labor Standards ACT of 1938

EFFECTIVE DATE:

October 1, 2013

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CONTENT REQUIREMENTS (CONTINUED)

Interestingly, information that is specific to the employer's health plan need only reflect the standing of the plan at the time of issuance. Therefore, calendar year plans need not speculate as to what plan changes (if any) will take effect on January 1, assuming the decisions that would influence this content may not be final as of the issue date (see Timing section below).

Distribution Requirements

EMPLOYERS

Any employer who is subject to the Fair Labor Standards ACT of 1938 is required to distribute the Exchange Notice to its employees. Employers who do not currently offer health care coverage to their employees and/or are not subject to the Employer Mandate under the ACA **are not** exempt from this notification requirement.

EMPLOYEES

ALL employees must be provided with an Exchange Notice, including employees who are not eligible to enroll in employer-sponsored benefits. A few exceptions do apply. A notice **does not** need to be issued to:

- > Spouses and dependent children covered under an employer's plan,
- > COBRA participants, and
- > Retirees (even if they are enrolled in an employer-sponsored health plan).

TIMING

The notification deadline is based on when an employee was hired (as indicated in the table below).

Employees Hired Prior to October 1, 2013	Employees Hired On or After October 1, 2013
The Exchange Notice must be provided no later than October 1, 2013 (i.e. postmarked by October 1).	The Exchange Notice must be provided within 14 days of the employee's hire date.

The deadline for the initial notification makes it problematic from the standpoint of trying to coordinate it with other mailings and required disclosures. October 1 will likely be too soon for many employers to include the notice within open enrollment materials. Since the Summary of Benefits and Coverage (SBC, see next page for additional information) must also be delivered in connection with open enrollment, the possibility of coordinating a simultaneous release of the two is very limited.

DELIVERY

When it comes to getting the Exchange Notice into the hands of employees, the updated guidance provides employers with two options: **1)** First Class Mail and **2)** Electronic Distribution. You may choose one option for all employees or a combination of both (depending on your employee population). **Please note that electronic distribution is only permissible if the following DOL regulations are satisfied:**

- > Access to the electronic delivery system is an integral part of the employees' work duties.
- > A statement regarding the importance of the Exchange Notice is provided.
- > A free paper copy is made available upon request.

For these reasons, hard copy issuance on a standalone basis via traditional mail will likely become the de facto standard used by many employers. Moving forward, the issuance will most frequently coincide with methods and materials used to communicate with newly eligible employees.



Additional Considerations

REVISED COBRA ELECTION NOTICE

DOL Technical Release 2013-02 also included an updated Model COBRA Election Notice. The revised model notice includes language regarding the Exchanges and potential eligibility for subsidized coverage.

UPDATED TEMPLATE FOR SUMMARY OF BENEFITS AND COVERAGE (SBC)

Sections regarding minimum essential coverage and minimum value have been added to the (SBC) template. It is important to note that the existing template may continue to be used as long as it is accompanied by a cover letter or similar communication that includes the required minimum essential coverage and minimum value language. All other SBC content and distribution requirements have remained unchanged for the second year of issuance.

LOOKING AHEAD: CODE SECTIONS 6055 AND 6056 REQUIREMENTS (2014)

In 2014, a new information return must be filed by employers subject to Code Section 4980H. This return must provide information about the employer's plan as well as full-time employees, and will be used by the IRS to administer penalties. As part of these requirements, a written statement must be provided to all full-time employees identified in the report by January 31 of the following year.

Next Steps

While the initial notification deadline is still months away, employers should begin taking steps now to determine how they will structure this notice. Also, employers should consider whether or not they will surround the notice with any supplemental communications in an effort to maximize the effectiveness of the messages delivered to employees before the Health Insurance Marketplace goes live. Among the practical considerations include the following:

- > **Make it your own.** As tends to be the case with model notices, which by design are intended for consideration by a multitude of audiences, the released model is riddled with generalities. Most frequently, you'll see loose statements punctuated by the words "if" and "may." Whenever possible, an employer should edit this content into definitive statements that clearly reflect their environment. Doing so will help minimize guesswork among employees.

Also, decide if you will issue different notices to different populations of employees (ineligible vs. eligible, for example). It may cost you more to do so, especially if you mail your statements; however, it may pay off in terms of the overall quality and effectiveness of the message.

The Vantagen Communications Team is ready to assist with helping you "make it your own."

- > **Decide on your distribution method.** Vantagen can support both traditional mail fulfillment and batch email distribution. The initial notification distribution will be priced according to client specifications and billed separately for the costs tied to printing, mailing list preparation, fulfillment, and postage.
- > **Pick a date.** Work with your Vantagen Account Manager to schedule a preferred release date. For capacity reasons, Vantagen will be staging these releases, especially those scheduled for the second half of September. Therefore, the earlier you reserve a date, the more feasible it will be for us to support it.
- > **Await future guidance.** Because this is a new notification, additional guidance on the mechanics and content are expected as employers begin to work with the model notice. Future guidance should help clarify any employer confusion or uncertainty and improve the overall effectiveness of the notice.