

FYI[®] Alert

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Agencies issue FAQs addressing Exchange Notice, HRAs, and PCORI fees

The Departments of Labor (DOL), Health and Human Services (HHS), and Treasury jointly issued a new set of [FAQs](#) that address some important issues for employers complying with the Affordable Care Act (ACA). Specifically, the agencies have delayed the distribution of the Exchange Notice, a required notice describing coverage offered in the public Exchange. Required by the ACA to be provided by employers on or before March 1, 2013, the agencies postponed distribution of this notice to late summer or fall of 2013, so the notice could correspond with the open enrollment periods of the Exchange. The FAQs also address, among other things, stand-alone HRAs, generally providing that such arrangements will not comply with the prohibition on annual and lifetime limits unless integrated with other major medical coverage (that complies with annual and lifetime restrictions). In addition, the FAQs discuss fixed indemnity coverage and the exception for such coverage from ACA mandates, and the permitted use of ERISA plan assets to pay the Patient-Centered Outcomes Research Institute (PCORI) fee by the joint board of trustees of a multiemployer plan.

Background

Section 18B of the Fair Labor Standards Act (FLSA), as added by the ACA, generally requires employers to provide each new employee at the time of hiring (and current employees, not later than March 1, 2013) a written notice describing the public Exchange. This Exchange Notice will be used to inform employees:

- About the existence of Exchanges, including a description of the services provided by the Exchanges and how they can contact Exchanges to request assistance
- That they might be eligible for a premium tax credit if they purchase a qualified health plan through an Exchange and the employer plan's share of the total costs of benefits under the plan is less than 60 percent
- That they may lose any employer contribution and tax savings towards the cost of employer-sponsored coverage if they purchase a qualified health plan through an Exchange

With the deadline of March 1, 2013 looming and no guidance from the DOL, employers had become concerned about the specific content of the notice and how it should be furnished.

FAQ addresses Exchange Notice

Q&A-1 in the most recently released set of FAQs provides that this notice requirement will not take effect on March 1, 2013, and that distribution of this notice will not be required until the late summer or fall of 2013, so that efforts can be synchronized with the open enrollment period for Exchanges. The DOL cites several reasons for the delay. First, it notes that the Exchange Notice should be coordinated with HHS's educational efforts and IRS guidance on minimum value, which might affect whether an employee would be eligible for the premium tax credit. Second, it states that the delay would promote a smooth implementation by providing employers with sufficient time to comply and would ensure that employees receive the information at a meaningful time.

The DOL also states that it will consider providing model language that could be used to satisfy the notice requirement. The DOL also might allow employers to satisfy the notice requirement by providing employees with information using the employer coverage template discussed in recently [proposed regulations](#) that, among other things, addresses some issues related to eligibility and enrollment in Exchanges. This template will be available for download at the Exchange web site. The agencies are considering using this template as a tool to determine an individual's eligibility for government subsidized health coverage (such as Medicaid or CHIPRA) or eligibility for a premium tax credit or cost-sharing reduction for coverage purchased through an Exchange.

In closing

The postponement of the Exchange Notice requirement is welcome news for employers. A separate FYI will address guidance related to HRAs, indemnity plans, and PCORI fees, among other things.

Authors

Sharon Cohen, JD
Richard Stover, FSA, MAAA

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