ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- The DOL extended the expiration date on its model Exchange notices through May 31, 2020.
- The content of the model notices has not substantively changed.
- The expiration date largely serves an administrative purpose and does not affect the applicability of the model notices.
- There is no fine or penalty for failing to provide the notice.

IMPORTANT DATES

October 1, 2013
The ACA's Exchange notice requirement first took effect.

May 31, 2020
The DOL extended the expiration date on its model Exchange notices through May 31, 2020.

Provided By:
Cowden Associates, Inc.

EXCHANGE MODEL NOTICE EXPIRATION DATE EXTENDED

OVERVIEW

The Department of Labor (DOL) recently extended the expiration date on its model Exchange notices through May 31, 2020. These model notices (or a modified version)—which the DOL calls "Model Notices to Employees of Coverage Options"—may be used to comply with the Exchange notice requirement under the Affordable Care Act (ACA).

Despite the updated expiration date, the content of the DOL's model notices has not substantively changed. The expiration date is included on the model notices largely as an administrative function for the DOL and does not impact the notices' applicability or an employer's ability to use them. Employers can continue to use and rely on DOL model notices after the expiration date has passed.

ACTION STEPS

The ACA requires employers to provide an Exchange notice to all new hires at the time of hiring. **Note that there is no annual requirement to provide the notice to existing employees**. In addition, the DOL stated that **there is no fine or penalty under the ACA for failing to provide the notice**.

COWDEN
444 Liberty Avenue, Suite 605
Pittsburgh, PA 15222
Ph: 412.394.9330
Website: www.cowdenassociates.com

As of 2013, the ACA requires all employers that are subject to the Fair Labor Standards Act (FLSA) to provide a written notice to their new employees about the ACA's Health Insurance Exchanges (known as Exchanges or Marketplaces). The notice must be provided to all new hires within 14 days of the employee's start date. However, there is no requirement to provide the Exchange notice to current or existing employees on an annual basis.

The Exchange notice must:

- Include information regarding the existence of an Exchange, as well as contact information and a description of the services provided by an Exchange;
- Inform the employee that he or she may be eligible for a premium tax credit if the employee purchases a qualified health plan through the Exchange; and
- Contain a statement informing the employee that, if he or she purchases a qualified health plan through the Exchange, 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 that contribution may be excludable from income for federal income tax purposes.

The DOL has issued the following two model notices to help employers comply with this requirement:

- Model Notice to Employees of Coverage Options for employers who do not offer a health plan
- Model Notice to Employees of Coverage Options for employers who offer a health plan to some or all employees

Employers may use one of these models, as applicable, or a modified version (provided it meets the content requirements). More compliance assistance information is available in a DOL Technical Release.

Extended Expiration Date

The DOL recently extended the expiration date on its model Exchange notices through May 31, 2020. Note that the content of the DOL's model notices has not substantively changed, and the expiration date does not mean that the model notice is out-of-date or that employers should stop using it. The expiration date is included on the model notices largely as an administrative function for the DOL, and does not impact the notices' applicability or an employer's ability to use them. Employers can continue to use and rely on DOL model notices after the expiration date has passed.

The expiration date on the model notices refers to a federal process where agencies receive approval from the federal Office of Management and Budget (OMB) for certain information collections. Approved information collections must display an OMB control number and an expiration date, which is usually set three years from when the OMB grants approval. This means that federal agencies must periodically ask for an extension of OMB approval. Often, OMB approval is not received before the expiration date passes.

No Penalties for Failure to Comply

Although employers should provide an Exchange notice to their new hires, the DOL asserted in an FAQ that there is no fine or penalty under the ACA for failing to provide the notice. **This means that employers cannot be fined for failing to provide employees with notice about the ACA's Exchanges**.

However, there are several reasons employers may still want to provide the notice. For example, the Exchange notice can help employers answer employee questions about what the Exchange is, how Exchange plans are different from the employer's plan and whether the employer's plan is intended to be affordable and provide minimum value. If the employer's plan is affordable and provides minimum value, employees will not be eligible for federal subsidies through the Exchange. However, most employees will have the option of waiving employer-sponsored coverage and, instead, enrolling in coverage through the Exchange.

In many cases, employer-sponsored coverage may be a better option for employees than Exchange coverage. For example, premiums for employer-sponsored coverage will often be cheaper for the employee than premiums for coverage through the Exchange. Additionally, the employee portion of the premium for employer-sponsored coverage is typically excluded from taxable income and is therefore tax-free. This is not the case in the Exchange.

More Information

Please visit the DOL website or contact Cowden Associates, Inc. for more information on the Exchange notice requirement.