

HBE Notice to Employers:

Responding to a Health Benefit Exchange (HBE) Notice of an Employee's Eligibility for Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions to an Employer

Situation:

- A Health Benefit Exchange (HBE) must notify an employer when the employer's employee enrolls in a qualified health plan (QHP) through the HBE and receives a health insurance premium tax credit (subsidy), if the employee attests that the employer did not offer coverage, or that coverage that was offered is not affordable.
- If the state agency or institution employer did offer PEBB coverage to the employee, and PEBB coverage was affordable (based on HBE criteria), the employee may not be eligible for the subsidy.
- State agencies and institutions are required to annually provide information about offers of coverage to employees, and affordability of the coverage that was offered (based on Play or Pay criteria), to the Internal Revenue Service (IRS).

Impact to Employee:

- If an employee provides inaccurate information when applying for QHP enrollment through an HBE, the IRS may determine the employee was not eligible for a subsidy and the employee would not be eligible for the premium tax credit. As a result, the employee would not receive expected tax credits when he or she files a tax return for the year in question.

Benefits of Responding to an HBE Notice:

- Proactive communication by the employer to the employee will inform the employee of potential future tax liability.
- Responding to the HBE notice may help support an eventual appeal to the IRS.

Process:

The following process should be followed when an agency or institution receives a *Notice of an Employee's Eligibility for Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions* ("notification letter") from the Washington HBE, dated January 1, 2015 or later. This process may also work if the notification letter is from a different state or federal HBE.

- 1) **Search for the individual named in the notification letter to determine if they are an employee in your agency or institution.**
- 2) **If the individual is not an employee of your agency or institution:**
 - a. Forward the letter to PEBB Outreach and Training (O&T). PEBB O&T will attempt to identify the employer of the employee (resources: HRMS and SWHRDB HCA Extract).
 - b. If PEBB O&T can identify the employer of the employee, PEBB O&T will forward the letter to the employee's agency or institution. The employee's employer will follow this guidance beginning with step 3.

- c. If PEBB O&T cannot identify the employer of the employee, it will return the letter to the employer that received the letter from the HBE.
- d. The employer that received the letter from the HBE must complete [Employer Request for Hearing](#) form (Washington HBE's form) and submit to HBE within 90 days of the date on the notification letter¹.

Note: A sample Employer Request for Hearing form for this circumstance will be attached to this guidance document. The employer must retain this request form for future use.

Note: The Washington HBE indicates no action may be needed in this circumstance, but until penalty and appeal provisions related to Play or Pay requirements are published by the IRS, agencies and institutions will respond to the error through the HBE appeal process.

3) If the individual is an employee of your agency or institution:

- a. Determine if the employee was determined to be eligible for PEBB benefits under [Washington Administrative Code](#) (see also [PEBB benefit eligibility tools and worksheets](#)), and if the employee was notified of his or her eligibility for PEBB benefits.
- b. If the employee was determined "Not Eligible" for PEBB benefits:
 - i. Validate employee eligibility was determined correctly. If PEBB eligibility was not determined correctly, correct the enrollment according to [WAC 182-08-187](#).
- c. If the employee was determined "Eligible" for PEBB benefits:
 - ii. Complete [Employer Request for Hearing](#) form (Washington HBE's form), and submit to HBE within 90 days of the date on the notification letter.¹

Note: The employer must retain a copy of the completed Employer Request for Hearing form for future use.

4) Washington HBE Hearing

- a. In the majority of cases, the Washington HBE indicates the employer's dispute of the employee-provided information is resolved without a hearing.
- b. The Washington HBE will notify the employer when a hearing is scheduled. Hearings are conducted by telephone and typically take about 15-20 minutes.
- c. The employer will need to provide the Washington HBE information about the offer of coverage, and may include the following as applicable:
 - i. Summary of Benefits and Coverage (SBC)
 - ii. Cost of lowest employee-only premium
 - iii. Date employee was eligible for coverage
 - iv. Enrollment form showing employee waived coverage

¹ The Washington HBE plans to update their notification letter to include specific information about employer appeals and time limits. Until that update occurs, Washington HBE appeals staff informally indicated they would accept appeals received beyond the 90-day limit.