



“Meeting employee needs is a challenge.  
Meeting the government’s is critical.”

## Employer Compliance Alert

### BUDGET COMPROMISE ELIMINATES "FREE CHOICE VOUCHERS"

As a part of the recent compromise allowing for passage of a federal budget for the fiscal year ending September 30, 2011, congressional Republicans succeeded in repealing a significant provision of last year's Affordable Care Act (ACA). This provision would have required most employers (regardless of size) to offer "free choice vouchers" to certain of their lower-paid employees who chose not to enroll in the employer's health plan. The vouchers were to be equal to the amount that the employer would have paid toward their health coverage, had they enrolled in the employer's plan. The employees could then use those vouchers to purchase health coverage through one of the state-wide "Exchanges" created by the ACA.

The repeal of this voucher provision was possible largely because even labor unions had turned against it. They agreed with employers that vouchers could have contributed to "adverse selection" under employer-sponsored plans. That is, vouchers would encourage healthy employees to waive coverage under an employer plan in favor of purchasing coverage through an Exchange.

This is because employees would have been allowed to retain (on a taxable basis) any portion of a voucher amount that exceeded the premium required for Exchange-provided coverage. As healthy employees fled the employer plan for Exchange-provided coverage, the employees *remaining* in the employer plan would, on average, become less healthy. That, in turn, would cause the cost of the employer plan to increase. As employers attempted to shift these cost increases to their employees, even more employees would leave the plans -- driving them into a "death spiral."

These free choice vouchers also seemed likely to impose an administrative burden on employers. This is because they were to be provided only to employees whose household income did not exceed 400% of the federal poverty level and whose required contribution for the employer-sponsored coverage would have fallen between 8% and 9.8% of the employee's total household income. Employers -- and even some members of the Obama

administration -- were asking how an employer was to determine each employee's *household* income. Were they to ask their employees to provide copies of their tax returns, along with the returns filed by all other family members? Obviously, employers did not relish that prospect. Repealing the voucher concept alleviates this concern.

The budget compromise also includes directives to both the Government Accountability Office and the Medicare Chief Actuary to prepare various reports to Congress concerning aspects of the ACA's implementation. The apparent purpose of these reports would be to justify further revisions to the ACA -- even if sufficient support for those revisions does not materialize until after the 2012 elections. Employers may therefore see further revisions to the ACA before the bulk of its provisions are implemented in 2014.

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