

September 2015

## **RE: Important Information on Employer Payment Plans for Medical Coverage**

The Internal Revenue Service (IRS) and Department of Labor (DOL) issued guidance (DOL technical release 2013-03 and [IRS Notice 2013-54](#) found online at) that may impact how your church funds medical coverage for some employees. The guidance states that, effective January 1, 2014, organizations may no longer directly pay premiums for an individual health insurance policy [a health insurance policy for an individual or family purchased directly from an insurance company (an “issuer”) or through the Affordable Care Act’s (ACA) Marketplaces (also called exchanges)] for an employee, nor reimburse an employee who purchases an individual health insurance policy. These arrangements are sometimes called “Employer Payment Plans” (EPPs) or stand-alone health reimbursement arrangements (HRAs).

Although Employer Payments Plans and stand-alone HRAs are no longer permitted for active employees, an employer can establish a payroll practice of forwarding after-tax employee wages to a health insurance issuer at the direction of the employee, if the arrangement satisfies a few other requirements:

- No contributions are made by the employer, i.e., the payment is part of the employee’s taxable salary that is being forwarded by the employer to the insurance issuer.
- Participation in the program is completely voluntary for employees.
- The employer collects premiums through payroll deduction and remits them to the insurer without endorsing the program.
- The employer receives no consideration (e.g., cash) other than reasonable compensation for administrative services rendered to collect the premiums.

In frequently asked questions ([ACA FAQ XXII](#)) published by the IRS (along with the DOL and the Department of Health and Human Services), the government agencies made clear that employers could also violate the ACA by reimbursing employees for premiums employees paid to the issuer with dollars reported as taxable income. These taxable reimbursement arrangements would be considered employer group health plans and would also be prohibited under the ACA as violating the prohibition on annual dollar limits in a health plan. This latest guidance means that *the only way employers can assist their employees in paying for individual health insurance policies is through increased salaries or the above described safe harbor salary-forwarding type arrangement.*

***Local churches that rely on Employer Payments Plans to cover lay employees, deacons or part-time clergy should terminate those plans immediately.*** Continuing these plans risks Affordable Care Act (ACA) excise tax penalties to the local church, namely a penalty under Section 4980D of the Tax Code that levies a penalty of **\$100 per day per affected employee** on the employer (e.g., the local church). This can amount to \$36,500 annually per employee. Moreover, these arrangements, even if prohibited, would be considered “minimum essential coverage” under the ACA, and the local church would be required to submit year-end information reporting forms (Forms 1095-B) to the IRS related to the 4742/072815 coverage for each employee. Failure to report minimum essential coverage (no matter how small an employer/plan sponsor is) can result in significant additional penalties to the employer.

Local churches that wish to continue providing financial assistance to help employees purchase individual health plans or policies through the ACA Marketplace or the private market still have a few options:

1. A local church can increase the employee's taxable wages, provided the church does not condition the wage increase on the purchase of insurance. This option also increases the employee's taxes and the church's payroll (FICA) taxes and has implications for other benefits, such as retirement benefits through the Clergy Retirement Security Program (CRSP) and United Methodist Personal Investment Plan (UMPIP), as well as denominational and conference average compensation (DAC and CAC).
2. A local church can establish a payroll practice of forwarding after-tax employee wages to a health insurance issuer at the direction of an employee, if the practice meets the following criteria:
  - No contributions are made by an employer.
  - Participation in the program is completely voluntary for employees.
  - The employer collects premiums through payroll deduction and remits them to the insurer without endorsing the program.
  - The employer receives no consideration (e.g., cash) other than reasonable compensation for administrative services rendered to collect the premiums.
3. A local church can adopt plans through the Small Business Health Options Program (SHOP) Marketplace for employees and provide a tax-free contribution toward coverage.

**Exception:** A church may be exempt from the EPP penalty **if only one employee is involved**. Notice 2015-17 clarified the IRS' position that an EPP with fewer than two participants who are "current employees" is exempt from the ACA's "group health plan" market reform requirements. *Thus, if a church had only one employee for whom it paid or reimbursed premiums for individual health insurance policy, the ACA requirements and penalties would not apply.* **Note:** This exception is of limited value for UMC employers, unless they have only one employee for whom they would like to provide such assistance (presumably, the clergyperson but no lay employees). *Furthermore, it is possible that a court in a future ruling might disagree with the IRS' position on this exception.* The IRS stated clearly that an employer with more than one current employee cannot maintain separate EPPs for each employee; the IRS would treat the two EPPs as one group plan—subject to the EPP prohibition and other ACA market reforms. Any employer contemplating this one-employee exception should keep in mind the nondiscrimination rules under Section 105(h) of the Code, which would prohibit offering an EPP to only the clergy and not offering it to other similarly situated employees, particularly lower-paid employees.

In addition, there are ACA restrictions on health flexible spending accounts (FSAs). Employees at local churches should not be provided a health FSA unless they have also been offered access to an employer group health plan, e.g., a small group market plan, SHOP plan or an annual conference plan that is sponsored, adopted or "participated in" by the local church.

Employers also can offer tax-free excepted benefits (such as employee assistance programs, dental and vision plans) to employees. Employers also can use deferred compensation arrangements [e.g., 403(b) plans, etc.] as a complementary approach to relying on the ACA Marketplaces.

If you have any questions, please contact the NC Annual Conference Benefits Office.

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