Health Care Reform
Bulletin

IRS Addresses ACA Rules for Employer-provided Health Coverage

Provided by Power Kunkle Benefits Consulting

Quick Facts

- Notice 2015-87 clarifies a number of ACA rules for employer-provided health coverage.
- Key topics include employer payment plans, affordable coverage and employer penalties.
- This guidance generally applies for plan years beginning on or after Dec. 16, 2015.
- Taxpayers may apply this guidance for all prior periods, and some transition relief is available.

Notice 2015-87 clarifies certain aspects of the affordability determination for purposes of the employer shared responsibility rules, including the impact of flex credits and opt-out payments.

On Dec. 16, 2015, the Internal Revenue Service (IRS) issued **Notice 2015-87** to address how certain provisions under the Affordable Care Act (ACA) apply to employer-provided health coverage.

The notice covers the ACA's market reforms as well as the employer shared responsibility rules and related reporting requirements.

Key provisions of the notice include:

- **Confirmation of adjusted employer shared responsibility penalty amounts.** For 2015, the adjusted penalty amounts are $2,080 and $3,120. For 2016, the adjusted penalty amounts are $2,160 and $3,240. The IRS anticipates that adjustments for future years will be posted on the IRS.gov website.
- **Application of the adjusted affordability percentage to the affordability safe harbors under the employer shared responsibility rules.** The adjusted amounts are 9.56 percent for 2015 and 9.66 percent for 2016.
- **Clarification on how the employee contribution for coverage is calculated.** The IRS has provided information on how the cost is affected by HRA and flex contributions, opt-out payments and Service Contract Act/Davis-Bacon Act fringe benefits.

The guidance provided in Notice 15-87 generally applies for **plan years beginning on or after Dec. 16, 2015**. However, taxpayers may apply this guidance for all prior periods, and transition relief is available for some rules.

The ACA's Market Reform Rules

The ACA includes certain market reforms that apply to group health plans and health insurance issuers in the group and individual markets.

Notice 15-87 supplements previous guidance addressing health reimbursement arrangements (HRAs) and employer payment plans (group health plans under which an employer pays for an employee's individual health insurance premiums).

Clarifications on these plans include:

- An HRA covering retirees or other former employees (rather than current employees) is not subject to the ACA's market reforms.
- A current-employee HRA that allows employees to purchase individual market coverage will violate the ACA's market

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reforms. However, using certain previously credited amounts to reimburse medical expenses will not violate the market reforms.

- A family HRA cannot be integrated with self-only coverage under the employer's group health plan to comply with the market reforms (transition relief is available for plan years beginning before Jan. 1, 2016).
- An HRA or employer payment plan is permitted to pay for individual coverage that consists solely of excepted benefits.
- An employer payment plan may not reimburse the cost of individual coverage offered through a Section 125 cafeteria plan.

Affordability of Coverage for Purposes of the Employer Shared Responsibility Rules

Under the ACA's employer shared responsibility rules, employer-sponsored coverage is considered affordable if the employee's required contribution for self-only coverage does not exceed 9.5 percent of his or her household income (as adjusted).

The IRS has provided three optional safe harbors for employers to use in determining whether coverage is affordable: the Form W-2 safe harbor, the rate of pay safe harbor and the federal poverty level safe harbor.

Determining the Cost of Coverage

Notice 15-87 clarifies certain issues related to calculating the employee's cost of coverage.

Employer Contributions

In some cases, employer contributions to an HRA and flex credit contributions to a Section 125 cafeteria plan can **reduce the employee's required contribution**. Specific requirements must be met to apply this reduction. However, opt-out payments will generally **increase an employee's required contribution** beyond the amount of salary reduction elections.

Transition relief for flex credits is available for plan years beginning before Jan. 1, 2017, permitting any flex contribution that may be used towards both health and non-health benefits to reduce an employee's required contribution.

This relief is not available for flex contribution arrangements offering non-health benefits that were adopted after Dec. 16, 2015, or that substantially increase the amount of the flex contribution after Dec. 16, 2015.

The requirement to increase an employee's contribution by the amount of an opt-out incentive will apply only after final regulations are issued, unless the employer adopts an unconditional opt-out arrangement after Dec. 16, 2015.

The Service Contract Act (SCA) and the Davis-Bacon Act (DBA) require federal contract workers to be paid prevailing wages and fringe benefits, which often may be cashed out. The IRS continues to consider how the SCA, the DBA and the employer shared responsibility rules may be coordinated.

Until further guidance is issued (at least through 2016 plan years), employer fringe benefit payments under the SCA or DBA that may be used to pay for coverage under an eligible employer-sponsored plan will be treated as **reducing the employee's required contribution**, but only to the extent it does not exceed the amount required under the SCA or DBA.

Affordability Contribution Percentage

Although the 9.5 percent required contribution percentage is adjusted annually for purposes of other ACA provisions, the affordability safe harbors specifically refer to 9.5 percent as the required contribution. Thus, ALEs using an affordability safe harbor generally had to measure their plan's affordability using 9.5 percent (instead of the adjusted percentage).

The IRS intends to amend the employer shared responsibility regulations to reflect that the applicable percentage in the affordability safe harbors should be adjusted, consistent with other ACA provisions. Employers may rely upon the **9.56 percent** for plan years beginning in

2015, and **9.66 percent** for plan years beginning in 2016.

Employer Shared Responsibility Rules
Notice 15-87 also clarifies other aspects of the employer shared responsibility rules and related Section 6056 reporting requirements.

Hours of Service
The notice confirms that an hour of service does not include:

- Any hours after the individual terminates employment with the ALE;
- An hour for which an employee was paid or entitled to payment as a result of worker's compensation, unemployment or disability insurance laws; and
- An hour of service for a payment that solely reimburses an employee for medical or medically related expenses.

The notice also clarifies that there is no 501-hour limit on the hours of service required to be credited for any single continuous period during which an employee performs no duties, if the hours of service would otherwise qualify as hours of service.

For purposes of determining whether an hour of service must be credited, a payment is deemed to be made by or due from an employer regardless of whether it is made by or due from the employer directly, or indirectly through, among other things, a trust fund or insurer that the employer contributes or pays premiums to (such as short- or long-term disability payments, but not state or local workers' compensation wage replacement benefits).

The notice also addresses the following items:

- ***Break-in-service Rules for Educational Organizations***—The IRS intends to amend the employer shared responsibility rules to extend the 26-week break-in-service rule (and the related definition of "employment break period") to also apply to any employee providing services primarily to educational organizations for whom a meaningful opportunity to work the entire year is not made available.
- ***AmeriCorps Members***—An AmeriCorps member providing services to a grantee receiving assistance under the national service laws is not considered an employee (of either AmeriCorps or the grantee) for purposes of these rules.
- ***Offers of TRICARE Coverage***—An offer of coverage under TRICARE for any month, due to employment with an employer that results in eligibility for TRICARE, is treated as an offer of minimum essential coverage by that employer under an eligible employer-sponsored plan for that month.

Other Issues
Notice 15-87 also addresses various other issues related to employer-sponsored health coverage, including:

- When individuals receiving medical benefits from the Department of Veterans' Affairs can contribute to a health savings account (HSA); and
- How the COBRA continuation coverage rules impact unused carry-over amounts in a health flexible spending arrangement (health FSA).

More Information
Please contact Power Kunkle Benefits Consulting for more information on these ACA issues.