General Board
Pension and Health Benefits

Caring For Those Who Serve

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Health Care Reform—Employer Shared Responsibility Rule
Part 2A—Local Churches: Controlled Group Rules (Employer Aggregation)

Most United Methodist Church local churches will have fewer than 50 Full-Time Employees or Full-Time Equivalent Employees (collectively "FTEEs") and therefore would not be subject to the Employer Shared Responsibility Rule ("Rule") described in **Part 1**. However, local churches with fewer than 50 FTEEs may still be subject to the Rule if they are part of a Controlled Group that has, in aggregate, at least 50 FTEEs and therefore is considered an Applicable Large Employer. Controlled Groups are described below.

Is Your Church Part of a Controlled Group?

As part of determining whether a local church is an Applicable Large Employer—and, therefore, whether the Employer Shared Responsibility Rule applies—the local church must first determine if it is part of a **Controlled Group**. A Controlled Group is a group of employers that are required to be treated as one employer for purposes of the Employer Shared Responsibility Rule under the Affordable Care Act. All employees within a Controlled Group are counted together when determining whether the Controlled Group is an Applicable Large Employer (i.e., has at least 50 FTEEs). Thus, *a local church with fewer than 50 FTEEs would actually be subject to the Rule if it is part of a Controlled Group that has collectively 50 or more FTEEs.*

Many local churches share resources and are in other ways associated with other ministries, such as day-care centers, after-school programs and soup kitchens. Many of these associated ministries have employees. If there is enough common control among these related employers (for example, among the church and the day-care center), then the two could be treated as one employer under the Employer Shared Responsibility Rule. Similarly, there may be circumstances wherein two or more local churches that are part of the same charge may share enough common control to be considered a Controlled Group.

A **new law** (passed in late December 2015) clarifies the test for church organizations[1]. Specifically, a church or qualified church-controlled organization that is eligible to participate in a church plan will be considered under common control with another church or church-controlled organization (whether qualified or not[2]) if:

> (1) One of the organizations provides, directly or indirectly, at least 80% of the operating funds for the other organization; **and**
>
> (2) There is common management or supervision, such that the organization providing the operating funds is directly involved in the day-to-day operations of the other organization.

Because it is viewed as a clarification, this should be applied to historical questions as well as future events.

The rule provides greater clarity and guidance for churches and church-controlled organizations. Generally, church-controlled organizations are eligible to participate in church plans[3]. Thus, the two-part test above would be applied to determine if a church and a church-controlled organization are in the same Controlled Group[4].

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[1] The church-related provisions appear in Section 336, which begins on page 868 of the PDF available at the "new law" hyperlink above.

[2] A *non-qualified* church-controlled organization is one that offers goods or services to the public, and receives more than 25% of its support from governmental sources or from the sale of goods or services.

The new provision also gives churches more flexibility in some respects. While the rule may not require a church-controlled organization to be treated as one employer with the church, the church may elect to treat the organizations as a single employer. Conversely, a church may elect not to be in the same Controlled Group as an entity that is not a church.

Finally, the Act expressly approves of a regulation issued by the IRS a number of years ago, which provides that if the IRS Commissioner determines that the structure of a church or the positions taken by church-controlled organizations has the effect of evading or avoiding any of the provisions to which the Controlled Group Rule applies, the Commissioner may treat the entities as a single employer.

Is the Controlled Group an Applicable Large Employer?

If the local church is part of a Controlled Group—and if the Controlled Group of employers cumulatively has 50 or more FTEEs (as explained in **Part 1**), then all employers within the Controlled Group are considered Applicable Large Employers and are subject to the Employer Shared Responsibility Rule for offering health insurance coverage that meets defined standards for affordability and minimum value.

However, each employer within the Controlled Group is separately subject to the Rule and thus separately responsible for any applicable penalties (see **Part 4**) assessed by the Internal Revenue Service if it does not offer Affordable, Minimum Value health coverage to Full-Time Employees.

IRS Authority

Under anti-abuse rules, the IRS has the power to ignore changes in structure and relationships of affiliated employers (such as a local church and a day-care) if the governing and relationship structures were changed solely to avoid application of the ACA's Employer Shared Responsibility Rule. In other words, the IRS can treat the two employers as one if it thinks the two employers have been separated only to avoid being treated as an Applicable Large Employer.

In addition, the IRS reserves the right to issue further future regulatory guidance about how the Controlled Group Rules apply to churches and conventions and associations of churches. Future guidance may clarify further when churches and related organizations are treated as one employer.

Questions and Information

If you have questions or would like additional information, please send your inquiries to **healthcarereform@gbophb.org**. General information about health care reform is available from the federal government at **www.healthcare.gov**.

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[3] "Church plan" is defined as a plan established and maintained for its employees by a church or a convention or association of churches, and "employee of a church or a convention or association of churches" is defined to include an employee of an organization which is exempt from tax under Section 501 and which is controlled by or associated with a church or a convention or association of churches. (Code 414(e)) Similarly, a church or convention of churches which is exempt from tax under Section 501 shall be deemed the employer of any individual included as an employee under the definition above. So as long as an organization is exempt from tax under Section 501 and is controlled by or associated with a church, etc., its employees will be deemed employees of the church, and thus the plan is established for them.

[4] For two or more non-qualified church-controlled organizations, there is a different test. For one non-qualified church-controlled organization to be considered one employer with another such organization (or one that is not exempt from tax at all), at least 80% of the directors or trustees of the second organization must be either *representatives of* or *controlled by* the first organization.