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Health Care Reform—Employer Shared Responsibility Rule
Part 2B—Annual Conferences: Controlled Group Rules

The Employer Shared Responsibility Rule ("Rule") applies to employers with at least 50 Full-Time Employees or Full-Time Equivalent Employees (collectively, "FTEEs"). Annual conferences may be subject to the Rule if they are part of a Controlled Group, as described below, that in aggregate has at least 50 FTEEs and therefore is considered an Applicable Large Employer. Applicable Large Employers are subject to the Employer Shared Responsibility Rule for providing affordable health insurance coverage (described in **Part 1**).

Annual conferences are common-law employers of lay employees at the conference office, which may include the employees of the conference board of pensions (CBOP), other boards and agencies, and other administrative personnel. Under the Employer Shared Responsibility Rule, annual conferences also *may* be considered the employer of certain other employees, including:

- Other lay employees of affiliated organizations, such as other conference agencies, district offices, affiliated camps and retreat ministries, foundations and mission organizations

- Certain clergy, including clergy appointed to conference positions, district superintendents, clergy on short-term disability if paid by the conference[1], clergy on other paid leaves, and clergy being paid by the conference due to lack of other appointment[2]. These clergypersons should be counted in the conference's assessment of whether or not it is subject to the Employer Shared Responsibility Rule as an Applicable Large Employer (i.e., at least 50 FTEEs)

It appears, under a reasonable, good faith interpretation of the Internal Revenue Code (Code) and common law employment principles as permitted under the Rule for churches and conventions and associations of churches, that local churches would be considered the "employers" of clergy appointed to local churches and charges within an annual conference for purposes of the Rule.

Information and guidelines in this toolkit are based on the assumption that the local church—not the annual conference—is considered the applicable "employer" of local clergy for purposes of the Employer Shared Responsibility Rule. See **Part 5** for more information.

[1] This assumes clergy retain their status as an employee. The IRS has clarified that, for purposes of the Employer Shared Responsibility Rule, no hours of service will be counted if the individual is no longer an employee. Thus, clergy on long-term disability under the Comprehensive Protection Plan (CPP) may be excluded from the count if they no longer retain their status as an employee. See IRS Notice 2015-87, Q & A 14.

[2] See Judicial Council Decision No. 492.

Is the Annual Conference Part of a Controlled Group?

As part of determining whether an annual conference is an Applicable Large Employer—and, therefore, whether the Employer Shared Responsibility Rule applies—a conference first must determine whether 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. Thus, an annual conference 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 conferences are organized such that multiple conference agencies share office space and other resources. The conference as an employer may be comprised of a council on finance and administration, a cabinet, a conference board of pensions and other program agencies. (**Note:** Members of these boards and agencies are usually volunteers, and volunteers are generally not considered employees.) In addition, conferences may be associated with other ministries, such as foundations, district offices, and camp and retreat ministries, or a United Methodist hospital. These relationships may be through shared boards of directors or trustees, or through the conference's appointment powers over directors or trustees of the affiliated employers.

If there is enough common control among these employers (for example, for the conference and the camp and retreat ministries), then the two could be treated as one employer, i.e., a Controlled Group under the Employer Shared Responsibility Rule.

All employees within a Controlled Group are counted together when determining whether the Controlled Group is an Applicable Large Employer (i.e., whether it has at least 50 FTEEs).

A **new law** (passed in late December 2015) clarifies the test for church organizations[3]. 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[4]) 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[5], and thus to determine if a church and a church-controlled organization are in the same Controlled Group, the two-part test above is applied[6].

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

[4] 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.

[5] "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.

[6] 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.

A conference will generally be a qualified church-controlled organization, and thus would apply this test to see if it is in a Controlled Group with another church-controlled organization[7].

Finally, the Act expressly approves of a regulation issued by the IRS a number of years ago, providing 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 conference 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 assessed by the IRS (see **Part 4**), if it does not offer affordable, minimum value health coverage. These include the No Coverage Penalty and the Inadequate Coverage Penalty.

IRS Authority

Under anti-abuse rules, the IRS has the power to ignore changes in structure and relationships of affiliated employers, such as an annual conference and a summer camp, 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 that the employers have been separated only to avoid being treated as an Applicable Large Employer.

In addition, the IRS reserves the right to issue further 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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[7] 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.