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800 Marquette Avenue, Suite 1050
Minneapolis, MN 55402-2892
(612) 752-4117 • Fax (612) 334-5399

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Acting on Behalf of Church Benefits Programs

CHURCH ALLIANCE

Counsel:
K&L Gates LLP
1601 K Street NW
Washington D.C. 20006
Tel (202) 778-9000
Fax (202) 778-9100

July 15, 2011

Internal Revenue Service
CC:PA:LPD:RU (*Notice* 2011-28)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20224

Re: Notice 2011-28

Comments Regarding Interim Guidance on Informational Reporting to Employees of the Cost of Their Group Health Insurance Coverage Under Notice 2011-28

To Whom It May Concern:

The Church Alliance is submitting this letter as a public comment to *Notice 2011-28: Interim Guidance on Informational Reporting to Employees of the Cost of Their Group Health Insurance Coverage* (the "Notice") published by the Internal Revenue Service ("IRS") in 2011-16 I.R.B on April 18, 2011.

The church benefit plans represented by the Church Alliance provide health plan coverage to over one million participants (clergy and lay workers) serving over 155,000 churches, synagogues and affiliated organizations. For over 50 years, many denominational church plans, mostly nationwide self-funded plans, have allowed clergy families the comfort and security of career-long portable, comprehensive medical coverage, on an affordable basis through a plan that reflects their denomination's belief system. The members of the Church Alliance hope to continue to offer employment-based coverage to clergy and lay employees under the new health care reform regime.

The Church Alliance commends the IRS for timely issuing the Notice and other guidance under the Patient Protection and Affordable Care Act (PPACA). Although the Notice addresses many concerns of employers in church plans, it leaves a number of important questions unanswered. The Church Alliance notes that the IRS has specifically requested comments about the Notice from plan sponsors of self-funded church plans (welfare

benefit plans not subject to federal continuation requirements, i.e., COBRA). We hope this comment will help the IRS establish reasonable methods for church employers to comply with the new reporting requirement.

The PPACA requires employers to report the aggregate cost of employer-provided health care coverage on employees' *Forms W-2*. Initially this requirement was to be effective for the 2011 tax year—which means the information would have been required on *Forms W-2* issued in January 2012. *Notice 2010-69*, issued in October 2010, made this requirement optional for all employers for the 2011 tax year *Forms W-2*.

The Notice provides continuing relief for smaller employers that issue fewer than 250 *Forms W-2*. This reporting requirement is optional for such employers for the 2012 tax year (i.e., *Forms W-2* furnished in January 2013) and will continue to be optional for smaller employers until the IRS issues further guidance. Many church employers issue fewer than 250 *Forms W-2*, so this relief and additional relief the IRS provides smaller employers should benefit many churches.

In addition, Q&A 21 of the Notice provides temporary exemption with respect to coverage under a *self-insured church plan* not subject to COBRA. This transitional relief will continue at least through the 2012 tax year, until the IRS issues further guidance. The Church Alliance appreciates this temporary exemption. It will allow church plans and church employers more time to properly prepare for this reporting requirement.

Church Structures and Church Plan Contributions

The application of Federal benefit laws to denominational church plans presents different challenges than it would to a typical single or multi-employer group health plan. Each denomination has a unique polity (governance structure) established to reflect its theological beliefs. The governance structures of the Church Alliance members range from purely hierarchical churches to independent churches or denominations that are congregational in nature. The governance structure of a denomination often determines how direct the relationship between each church and the denominational plan is, and may affect the way contributions for coverage are established. As a result, the “cost of coverage” under a self-insured church health plan is not always readily evident.

In some denominations the church plan sponsor has the ability to mandate employer coverage and set contributions. In other denominations, the church plan can only control the plan design and administration, but participation remains optional for local church employers; therefore contributions may be more like a risk and experience-based premium. In some denominations the church plan charges an established contribution or premium to a regional sub-unit of the denomination, such as a diocese, presbytery or state convention. These intermediate bodies may alter the method of sharing costs among participating churches.

Sometimes contributions set by the church plan, e.g., single coverage rates and family rates, are blended by the intermediate body in various ways. Rates may be blended to remove any perceived barriers to appointment/employment at a particular church due to a clergy person's family size. For example, assume a state conference pays the denominational plan \$7,000 to

cover single clergy and \$13,000 to cover clergy with families. The conference blends the rates and charges each church \$10,000 for coverage. The church employer may not know the actual value of coverage for its employees without additional information from (and cost to) the church plan.

Some denominations and intermediate church bodies may cross-subsidize churches through contribution structures. They may charge higher contribution rates to churches with larger memberships, greater revenue (giving), or more assets, and in turn charge a reduced contribution rate to smaller, rural or underprivileged churches. This cross-subsidization may serve the mission work of these denominations. In these cases, the cost of coverage to the denominational plan may be substantially different than the value of coverage for the local employer's employees. Also in these cases, a participating church may have to report a value of health coverage on a participant's *Form W-2* that is substantially lower or higher than the dollar amount the church pays for such church plan coverage.

Some church plans charge a contribution for coverage that is simply a fixed percentage of a clergyperson's, or an employee's, compensation. This amount may not directly reflect the actual value of coverage. In other cases, the contribution under the health plan may be combined with the contribution to the church pension plan to set one benefits coverage contribution for the church. In some cases an intermediate body may combine health plan contributions with other general church remittances for participating churches. These contributions may also be varied within a denomination, e.g., to subsidize poorer or smaller churches, to reflect mission needs and church values. Without some additional information from the church plan or intermediate body, and an associated cost of providing that information, the employing church may not be able to easily determine the value of coverage for an employee's *Form W-2*.

Though not subject to COBRA or most state continuation coverage requirements, most church plans nonetheless offer continuation coverage of some sort. Church plans require a contribution, i.e., they charge a continuation coverage premium, for such coverage. However, in some cases these continuation coverage premiums are filtered through intermediate church bodies before reaching the former employee.

Future Guidance

Based on the forgoing background and explanation, the Church Alliance asks that the IRS consider the following suggestions when issuing future guidance about this reporting requirement as applied to coverage under self-insured church plans:

First, the Church Alliance respectfully requests that the IRS grant employers providing coverage through a self-funded church plan as long a transition period as possible. Churches and church plans face many unique challenges in implementing the provisions of the PPACA. Churches are making best efforts to implement all the requirements, but given the atypical employment and polity structures of churches and denominations, longer time periods to implement these changes are necessary. Accordingly, the Church Alliance suggests delaying making this reporting requirement mandatory for these employers until after 2014.

Second, the Church Alliance respectfully requests that the IRS establish a very flexible reporting requirement rule for church plan employers. The rule should allow church plan employers to use any reasonable method to determine the value of coverage. Where available and applicable, church plan employers should be allowed to use a continuation coverage premium provided by the church plan. In other cases, church plan employers should be able to use a reasonable estimate of the “fair market value” or applicable “premium” – whether blended, cross-subsidized, or otherwise – extrapolated from the church contributions required of them.

In cases where such estimate is not available or estimable without significant cost, or is impracticable to obtain, the Church Alliance suggests allowing church plan employers to use the applicable (based on state of residence, coverage type, etc.) state average premium for the small group market published by the U.S. Department of Health and Human Services as an estimate of the “value of coverage” for *Form W-2* reporting purposes.

Thank you for your consideration of our views on this important issue to church employers and employees. If you have questions, please feel free to contact our representative, Stephen Cooper of K&L Gates LLP, at (202) 661-3882 or stephen.cooper@klgates.com.

Sincerely,
Barbara A. Boigegrain, Chair