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CHURCH ALLIANCE
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February 1, 2019

By hand delivery

Internal Revenue Service
Attention: Laurie Brimmer
Room 6529
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Proposed Extension of Information Collection Request Submitted for Public Comment; Health Plan Disclosure of the Summary of Benefits and Coverage

To Whom It May Concern:

The Church Alliance is submitting this letter in response to the request for comments relating to the proposed Extension of Information Collection published on December 3, 2018 by the Department of the Treasury at 83 Fed. Reg. 62402. We welcome the opportunity to comment.

The Church Alliance is a coalition of the chief executive officers of 37 church benefits organizations affiliated with mainline and evangelical Protestant denominations, three national Jewish entities, and Catholic schools and institutions. The benefit programs offered by these organizations provide retirement and health benefits to more than one million clergy,[1] church lay workers, and their family members at more than 155,000 churches, parishes, synagogues and church-associated organizations across the country.

The Church Alliance represents numerous church group health plans across the United States. For over fifty years, national church benefit organizations have offered health benefits through denominational church health plans. Church plans are unique organizations and are defined in various sections of federal law, including Section 414(e) of the Internal Revenue Code ("Code") and Section 3(33) of the Employee Retirement Income Security Act ("ERISA"). Denominational church health plans generally are self-funded. However, unlike other employer self-funded health plans, church health plans are composed of many small employers and, in some instances, individuals (e.g. self-employed

[1] As used in this comment letter, the term "clergy" refers to ministers, priests, rabbis, imams, and other spiritual leaders.

clergy). The Church Alliance is submitting this comment to explain the unique burdens that our church health plans encounter in producing and distributing the Summary of Benefits and Coverage ("SBC") under current regulations and to suggest ways to lessen these burdens and enhance the utility of the information contained in the SBC. The Church Alliance recognizes this request for comment is narrow in scope, and our comments here are limited accordingly.

A. Significant Burden Could be Eliminated if Church Plans were Permitted to Electronically Distribute SBCs without regard to ERISA Requirements

Church benefits organizations strive to provide church workers with the clearest, most accurate picture of employee benefits, including health plan benefits and coverage. During a typical open enrollment period, a church plan member receives comprehensive information from the plan describing available medical plan options as well as dental, vision, EAP and prescription drug benefits. Medical benefits need to be presented in the context of related benefits to create a meaningful compensation picture. The SBC disclosure rules require a much narrower benefits presentation so church plans have to provide the SBC as a duplicative collateral document.

For church plans, the process of preparing and distributing SBCs is far more complex than the Agencies (Departments of Labor ("DOL"), Health and Human Services ("HHS"), and Internal Revenue Service ("IRS")) may contemplate. As an example, one of our typical Church Alliance member health plans serves approximately 3,300 employers in 48 states. Approximately 3,100 of these employers are individual congregations. Because today's health plan must be responsive to local and regional available delivery systems as well as church budget constraints, a total of 40 SBCs were prepared by this plan for the 2019 enrollment period.

The SBC preparation process for a Church Alliance member organization may start in January with staff members drafting, using the calculator, and conducting round after round of careful editing and reviewing, often coordinating with outside third party administrators ("TPAs") and other vendors. Moreover, an SBC is rarely in final form for very long once it is prepared. Due to rapidly changing network providers, pharmacy benefit managers and other vendor changes, most SBCs are subject to continual updating. In addition, employers are not all on a uniform enrollment schedule. SBCs for new employers are created mid-year. Countless staff hours are required to get the SBCs correct and published on time.

With preparation beginning in January, SBC documents can be ready in July to be sent to a printer, which requires the daunting task of figuring out how many of each should be printed. Over the next few months, tens of thousands of employers in the health plans of Church Alliance members use these and other materials to select which plans will be offered to their employees for the upcoming year. Then in the fall, after each employer has made its selections, the requisite number of SBCs are mailed to each employer for each plan offered, along with all of the other materials necessary to explain the related health benefits.

The Church Alliance is mindful that the SBC requirements are substantially statutory and therefore the Agencies' ability to alter the requirements is circumscribed. Section 2715(d)(2) of the Public Health Service Act ("PHSA") provides that a health plan will be deemed in compliance if the SBC is provided in paper or electronic form. The PHSA requirements are

incorporated into the Code in section 9815. The regulations under Code section 9815 then distinguish between providing the SBC to participants already covered under the plan versus individuals who are eligible but not covered under the plan (26 C.F.R. 54.9815-2715(a)(4)(ii)(A) and (B)). For eligible individuals, electronic notice is permitted without regard to DOL ERISA disclosure regulations; for participants, a prerequisite to electronic notice is that the DOL regulations be satisfied. (In both cases, there are additional notice requirements to be satisfied.)

The DOL regulatory requirements permitting electronic disclosure (29 CFR 2520.104b-1) essentially require each participant's consent. It is inconceivable that a church plan could obtain consent from the tens of thousands of employees at thousands of locations. Even if once obtained, it could not be kept current due to constant workforce changes. In today's world of accessing remote information via the internet (even the SBC template has seven internet links to other sites on top of links to definitions), it is reasonable and appropriate to allow this access to satisfy publication requirements.

Presumably, the tie to the DOL regulation relates to ERISA requirements for disclosures to ERISA plan participants. Church plans are not subject to ERISA's reporting and disclosure requirements.

The Church Alliance requests that church health plans be allowed to comply with 26 C.F.R. 54.9815-2715(a)(4)(B) instead of (a)(4)(A), as permitted by the statute. Permitting electronic posting with the safeguards of an email or postcard advance notice would greatly reduce the burden of compliance for church health plans by eliminating the need to print and mail and all the related costs. It would also shorten the annual timeframe that SBCs are "in process" within the church plan's administration framework. The job could start later in the year if no time for printing, assembling and mailing were required. In addition, any necessary corrections could be promptly made online.

B. Significant Burden Could be Eliminated if Church Plans were Permitted to Make Assistance Available Instead of Translating SBCs

Church benefits organizations strive to ensure all participants obtain the services they need from the plan, but the requirement of translation, in addition to the burden of frequently creating updated SBCs, could be mitigated by changing the approach to the requirements of PHSA Section 2719. Specifically, instead of providing translations on request for counties in which at least 10% of the population speaks the same non-English language, the requirement might be to place a statement in the SBC, in the non-English language in question, with contact information enabling assistance for those having difficulty understanding any part of the SBC. This is the approach ERISA uses for summary plan descriptions, and would be much less burdensome than the current translation regulations. See 29 C.F.R. Section 2520.102-2(c).

C. Providing an SBC to an Applicant at the Time of Application is Overly Burdensome for a Church Plan

A church health plan is like other multiple employer and multiemployer plans in that it is operated on a centralized basis totally apart from its adopting employers. It has no access to payroll or general employee data of its adopting employers. A church plan may not be notified of a newly hired employee for several days (even weeks) after the employee is hired and eligible for coverage. Sometimes enrollment occurs after the effective date of coverage. Even though it cannot perform this function itself, a church plan is subject to severe penalties for failure to provide SBCs in accordance with the statute.

It is up to the local church employer to provide the correct SBC(s) to a new hire. A substantial portion of the adopting employers are small churches with three or fewer employees and often a volunteer treasurer who handles employee benefit plan enrollment.

The Church Alliance requests that this burden be eliminated by Treasury adopting a flexible interpretation of the statutory term “at the time of application” (PHSA Sec. 2715(d)(1)(A)) to be the time the application or initial enrollment is received by the health plan.

D. The Calculator Needs to be Revised

The calculator required for the coverage examples is particularly challenging because it is not producing the results expected. It often produces results that are incorrect. Moreover, it is difficult to make sense of the examples as they are required to be presented. The Church Alliance recommends that the calculator be revised to be clearer, more intuitive, and provide more representative examples.

The instructions on use of the calculator are not intuitive and are heavily dependent on the user understanding all the underlying assumptions to enter data properly in the calculator. The maximum out-of-pocket has to be keyed in <u>after</u> subtracting the deductible or incorrect results are produced. This apparently occurred in the calculator’s first revision.

The calculator utilizes complex medical service and actuarial data in the background. An out-of-pocket maximum may or may not be reached depending on the average service pricing not known to the reader. The calculator incorrectly applies coinsurance prior to applying deductibles.

The SBC example process could be greatly simplified with no loss of communication value. Each example produces only four or five figures. The background data and assumptions are unnecessary to an understanding of what Peg, Joe and Mia pay in the examples. The examples do not provide sufficient information to understand how the amounts the participant pays are calculated. All figures necessary to work the example should be in the example. As they stand, the examples are confusing and frustrating to the reader.

Conclusion

The Church Alliance appreciates this opportunity to comment and hopes Treasury finds our comments helpful. We are happy to meet or provide further clarification. The Church Alliance welcomes the opportunity to play a constructive role in ensuring future rulemakings appropriately address church plans.

Please contact the undersigned at (202) 778-9128 if you have any questions or wish to discuss any of this information further.

Sincerely,

Karishma Shah Page
Partner, K&L Gates LLP
On Behalf of the Church Alliance