

CASH-IN-LIEU OF BENEFITS & AFFORDABILITY

By Emily Tonkovich

In early July the IRS released proposed regulations addressing how offering cash to employees who decline health insurance (cash-in-lieu of benefits) should be treated when calculating whether the health insurance an employer offers is “affordable” under the ACA.

The proposed regulations state that if an employer maintains an **unconditional** cash-in-lieu of benefits arrangement, the amount offered must be added to the employee’s contribution when calculating affordability.

For example:

- Employer offers employees health insurance. Employees who elect health insurance must contribute \$150 per month.
- Employer offers employees who decline health insurance \$100 per month. The employer does not require employees to provide evidence of having other coverage.
- For the purpose of calculating affordability under the ACA, the employee’s contribution is \$250 per month.

An employer is not required to add the amount to the employee’s contribution if the arrangement is **conditional**. A cash-in-lieu of benefits arrangement is considered conditional if it meets the following requirements:

- The employer requires employees who decline coverage to provide reasonable evidence that they and their dependents have minimum essential coverage that is not individual coverage,
- An employee’s attestation is considered reasonable evidence unless the employer knows or has reason to know that is not true, and
- The employer requires the employee to provide evidence of other coverage each year.

For example:

- Employer offers employees health insurance. Employees who elect health insurance must contribute \$150 per month.
- Employer offers employees who decline health insurance \$100 per month so long as they provide evidence that they and their dependents have health insurance on an annual basis. The coverage cannot be an individual health insurance plan.
- For the purpose of calculating affordability under the ACA, the employee’s contribution is \$150 per month.

These proposed regulations are slated to go into effect for the first plan year beginning on or after January 1, 2017. Until then, employers are not required to treat cash-in-lieu as increasing contributions as long as the arrangement was adopted before December 16, 2015. Limited exceptions may apply to cash-in-lieu of benefits arrangements required under the terms of a collective bargaining agreement in effect before December 16, 2015.

Disclaimer: This article is for informational purposes only. It is not intended to be exhaustive and should not be construed as or substituted for legal or tax advice. Please consult with legal counsel or a tax advisor for further guidance.

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