# The Impact of Employer HRA Contributions and Flex-Credits on ACA Affordability Calculations

IRS Notice 2015-87 ("the Notice") provided guidance in the form of questions and answers on certain group health plan provisions of the Affordable Care Act (ACA). ErisaALERT 2016-01 discussed the impact of opt-out incentives on ACA affordability. This ALERT discusses the impact of employer HRA contributions and flex credits on ACA affordability.

**Quick overview of affordability**

Affordability is a key component of the shared responsibility requirements. An employer might find itself subject to a penalty if an employee goes to the Marketplace (formerly known as an Exchange) and obtains a premium credit because the employer plan is not affordable or does not provide minimum value.

An employee is not eligible for a premium tax credit for any month in which the employee is offered employer sponsored coverage that is affordable and provides minimum value. Affordability is measured as 9.5% (9.56% for 2015 and 9.66% for 2016) or less of household income. For purposes of determining group health affordability, employers can look to the cost of self-only coverage compared to an employee's W-2 wages (other methods of calculating affordability are available).

**Employer HRA contributions**

Employer HRA contributions that are required under the terms of the plan or otherwise determinable within a reasonable time before the employee must decide to enroll in the plan reduce the employee's contribution for purposes of the affordability calculation. The HRA contributions must be used to pay premiums or other cost sharing expenses for health benefits. For Form 1095-C purposes, the HRA contribution is treated ratably for each month.

Q&A 7 of the Notice indicates that a $1,200 employer HRA contribution would reduce the employee's contribution by $100 per month.

**Flex-Credits**

Whether flex-credits impact the affordability calculation depends on how the flex-credit can be used. Flex-credits that are considered "health flex contributions" reduce the employee's contribution for purposes of affordability.

A health flex contribution is one in which the employee may:

1. not opt to receive it as a taxable benefit
2. use it to pay for minimum essential coverage and
3. use it to pay for IRC §213 medical expenses.

Like the HRA contribution, a health flex contribution is treated ratably each month for Form 1095-C purposes. Q&A 8 of the Notice provides an example.

Conversely, an employer flex contribution that can be used to pay for non-health benefits such as life insurance or can be received as cash is not considered a health flex contribution and does not reduce the employee's contribution for affordability purposes.

Similar to the opt-out incentive (ErisaALERT 2016-01), there is a transition rule for flex contributions that are not health flex contributions. Flex contributions for coverage before January 1, 2017 that can be used for non-health benefits will be treated as reducing the amount of the employee's contribution for affordability purposes. This transition relief is not available if the flex contribution arrangement was adopted or substantially increased after December 16, 2015.

A flex contribution arrangement will be treated as adopted on or before December 16, 2015 if:

1. The employer offered the flex contribution arrangement (or a substantially similar flex contribution arrangement) with respect to health coverage for a plan year including December 16, 2015
2. A board committee, or similar body or an authorized officer of the employer specifically adopted the flex contributions arrangement before December 16, 2015 or
3. The employer provided written communications to employees on or before December 16, 2015 indicating that the flex contribution arrangement would be offered to employees at some time in the future.

**Some key take-aways**:

The rules are complicated and there are a lot of moving pieces for employers that offer opt-out incentives, HRAs and flex credits. Make sure you document the steps you take when you work on your 2015 and eventually 2016 Form 1095-C reporting.

**Note**: all links are active as of the date of issuance of this ErisaALERT.