

**MEMO TO CHURCHES
FOR
REFORMED BENEFITS ASSOCIATION (“RBA”)
MASTER FLEXIBLE BENEFITS PLAN**

What is a flexible benefits plan?

A flexible benefits plan is an employee benefit plan governed by Section 125 of the Internal Revenue Code. The purpose of a flexible benefits plan is to allow employees to make contributions for various benefits on a pre-tax basis (vs. the post-tax basis). This is true with respect to income taxes and payroll taxes (including the employer’s share). So, by allowing employees to make these contributions on a pre-tax basis, it can also result in savings to the church (with respect to the employer share of FICA).

What types of pre-tax employee contributions can be made under a flexible benefits plan?

Employees can pay their required contributions, if any, for medical, dental and vision coverage under the RBA’s Health Benefit Plan on a pre-tax basis. Further, if employees participate in the RBA’s High Deductible Health Plan (“HDHP”) and establish a health savings account (“HSA”), they can make contributions to their HSA on a pre-tax basis.

Can a church allow employees to make these contributions on a pre-tax basis without establishing a flexible benefits plan?

No. By law, the only way these contributions can be made on a pre-tax basis is through a flexible benefits plan. Otherwise, the contributions must be made on a post-tax basis.

Is there any other reason why a church may want to establish a flexible benefits plan?

Yes. An employer can make HSA contributions on behalf of its employees who are enrolled in the RBA’s HDHP option. However, federal law generally requires the employer contributions to be made on a “comparable” basis. Under the comparability rules, a church must generally make its HSA contribution in the same amount for each enrolled employee or in the same amount depending on whether the employee is enrolled in single (individual) or family coverage. If any employer contribution is made under these comparability rules, the contributions do not need to be run through a flexible benefits plan. On the other hand, if the church is interested in making HSA contributions on some other basis, the contributions must be run through the Flexible Benefits Plan and must satisfy IRS requirements which prohibit the contributions from impermissibly favoring the highly compensated. The most common alternative is an employer matching contribution (for example, for each dollar an employee contributes to his or her HSA, the church will provide a matching contribution of 25¢).

Are there any downsides to establishing a flexible benefits plan?

One downside is the additional administrative responsibility associated with the flexible benefit plan. The church will need to establish the paperwork which accompanies this memo and obtain completed and signed election forms from employees. The church will also need to make sure that its payroll system is adjusted so these contributions are made on a pre-tax basis.

A second downside is that the IRS views a flexible benefits plan as a tax subsidy and so certain “strings” are attached. The most significant “string” for this purpose is the prohibition on mid-year election changes with respect to medical, dental and vision coverage. In other words, once an employee makes an election during open enrollment prior to the beginning of a plan year, that election cannot be changed during the plan year. Rather, a participant must live with that election for the balance of the year **unless** he or she experiences a change in status or other qualifying event. For example, if the employee gets married or has a baby or gets divorced or if there is a death, the election can be changed to reflect the number of dependents enrolled in coverage. However, if the employee simply decides he or she does not want coverage anymore, such an election is not permitted until the first day of the next plan year. If you are going to allow employees to make mid-year changes, they must complete a change in status form to prove that it is due a qualifying circumstance. (See the change in status form discussed later in this memo.) If you allow employees to make mid-year changes without requiring proof the request is due to a qualifying circumstance, it will jeopardize the tax-favored status of the entire plan. In other words, the pre-tax contributions of all participants must be re-characterized as post-tax contributions.

A third potential downside is the nondiscrimination rules. Flexible benefit plans must not impermissibly discriminate in favor of the highly compensated with respect to eligibility and contributions or benefits. For this purpose, someone is generally viewed as highly compensated under the same rules which apply for retirement plan purposes (e.g., an employee making more than \$115,000 last year). If the church does not have any employees who are highly compensated under this definition or everyone participates on the same basis, these nondiscrimination requirements should not come into play. On the other hand, if the church does have highly compensated employees and there are variations in participation in terms of waiting period and required contributions, this is an issue which should be reviewed.

What is the RBA doing to help churches?

The RBA, has established a Master Flexible Benefits Plan for churches to use to establish their own individual flexible benefits plan. The plan enables W-2 employees of a church to pay any required contributions for medical, dental and vision coverage under any health benefit plan made available through the RBA on a pre-tax basis and allows W-2 employees enrolled in an HDHP made available through the RBA to make pre-tax HSA contributions. (By law, self-employed individuals may not participate in a flexible benefits plan.) Finally, it allows churches to make HSA contributions on behalf of their W-2 employees who are enrolled in an HDHP made available through the RBA. The documentation includes the following:

- Master Flexible Benefits Plan
- Adoption Agreement
- Sample resolution
- Summary Plan Description (“SPD”)
- Election forms (three versions)
- Change in status form

How should a consistory use the RBA's sample documents to establish its own flexible benefits plan?

Step One – Prepare plan document

The consistory's "plan" will consist of the Master Flexible Benefits Plan and the Adoption Agreement. The Master Flexible Benefits Plan is a document created and maintained at the RBA level. Consistories do not need to complete or revise that document. Rather, a consistory establishes its own individual plan by signing and completing the Adoption Agreement. The Adoption Agreement "adopts" the Master Flexible Benefits Plan for the employees in your congregation. The two documents together will comprise your plan.

The Adoption Agreement is fairly straightforward. However, please note the following:

- The effective date under Section 3 for new plans must be prospective. Similarly, if you want to amend any information in the Adoption Agreement going forward and need to amend your plan, you should complete a new Adoption Agreement and the amendment date must also be prospective.
- Items 4, 5 and 6 are the three options available to you in establishing your plan. You can elect one, two or all three.
- The document should be signed by an authorized representative of your consistory.

Step Two – The Consistory should approve the establishment of the Plan

We have provided a sample resolution to include in Consistory minutes for this purpose.

Step Three – Employees must be notified of the Plan

You should provide employees with a copy of the Adoption Agreement and the SPD.

Step Four – Each employee should complete and sign an election form

Three versions of the election form have been provided. One is for consistories only wanting to allow employees to make pre-tax contributions toward the purchase of medical, dental and vision coverage. The second is for consistories only wanting to allow employees to make pre-tax HSA contributions. The third is for consistories who want to provide employees both of these options.

All existing employees who want to participate should complete a form at the time the plan is established. Newly eligible employees should complete a form upon initial enrollment. Thereafter, employees do not need to complete a new form each year. However, if employees do not complete a new form each year, their prior elections will be considered to continue in future years. If the current health insurance election in

which an employee is enrolled is not being offered during a subsequent plan year, the employee will be enrolled in the most similar option. Further, with respect to medical, dental and vision coverage, they will automatically be considered to agree to pay any higher required employee contribution amounts.

Step Five – Change in status form

As stated above, employees' elections regarding medical, dental and vision coverage generally cannot change during a plan year unless an employee experiences a qualifying event. If this occurs and an employee wants to change his or her medical, dental and vision coverage elections mid-year, this form should be completed to document the change.

NOTE: We recommend that you review the above documents and this memo with your own legal counsel. If you don't have legal counsel with expertise in this area of the law, we can refer you to our legal counsel, Mary Bauman at Miller Johnson in Grand Rapids, Michigan. Telephone number is (616) 831-1704. Email address is baumanm@millerjohnson.com. You will be charged directly for her services.

Is there anything else to be aware of?

As stated above, the nondiscrimination rules apply. However, if the employer does not have any special rules differentiating between employees in terms of waiting period, required contributions, etc., then these rules are likely not an issue.

There are no governmental filing requirements with respect to the flexible benefits plan.