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## Relief for Small Employers Reimbursing Individual Policies

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An employer cannot offer employees cash to reimburse the purchase of an individual policy, whether or not the employer treats the money as pre-tax or post-tax to the employee. Such arrangements (called “employer payment plans”) are subject to the market reform provisions of the Affordable Care Act (“ACA”), including prohibition on annual limits and the requirement to provide certain preventive services without cost sharing with which it cannot comply. These arrangements may be subject to a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee).

Recently, the Departments of Labor (“DOL”), Health and Human Services (“HHS”), and the Treasury (collectively, the “Departments”) provided temporary relief to employers that are not applicable large employers (“ALEs”) from this rule until July 1, 2015. An ALE for a calendar year is generally an employer who employed an average of at least 50 full-time employees (taking into account full-time equivalent employees) on business days during the preceding calendar year. For determining whether an entity was an ALE for 2015, an employer may determine its status as an applicable large employer by reference to a period of at least six consecutive calendar months, as chosen by the employer, during the 2014 calendar year. Since ALE status is determined annually, the specific relief is (1) for 2014 for employers that are not ALEs for 2014 and (2) for January 1 through June 30, 2015 for employers that are not ALEs for 2015.

This relief does not extend to stand-alone HRAs or other arrangements to reimburse employees for medical expenses other than insurance premiums.