



Writers' Guild-Industry Health Fund

Gregory L. Suller, Chief Executive Officer

April 9, 2012

Department of Labor
Washington, DC

Re: Notice 2012-17

To Whom It May Concern:

The Writers' Guild – Industry Health Fund (the “Fund”) submits these comments on Internal Revenue Service Notice 2012-17 (“Notice 2012-17”), which addresses certain issues related to implementation of the Patient Protection and Affordable Care Act (the “Affordable Care Act” or the “Act”). Any reference to Notice 2012-17 is also intended to refer to the Department of Labor’s Technical Release 2012-01, as both forms of regulatory guidance are substantially identical.

The Fund is a multiemployer plan, established and maintained pursuant to collective bargaining agreements between the Writers' Guild of America West, Inc. or the Writers' Guild of America East, Inc., and various employers within the entertainment industry (including, for example, all of the country’s major motion picture and television producers, as well as thousands of other producers of entertainment programs, commercials and others). Currently, those collective bargaining agreements typically require contributing employers to pay to the Fund 8.5% of the compensation paid to employees for services covered by the applicable collective bargaining agreement.

Established in 1968, the Fund has provided its participants with comprehensive and affordable health care coverage, including major medical, hospital, prescription drug, mental health and substance abuse, vision and dental benefits (as well as life insurance and accidental death and dismemberment benefits) for over five decades. As of December 31, 2011, the Fund’s plan of benefits (the “Plan”) had over 7,900 employees who qualified and were automatically enrolled for coverage, along with over 9,000 dependents enrolled. The Fund has over 800 signatory employers that contribute to it.

The Fund submits these comments in the hope that the relevant regulations will be designed to preserve the generous eligibility provisions and comprehensive benefits already provided by the Fund (and for other, similarly designed multiemployer plans) – benefits and eligibility provisions which have been carefully honed by the bargaining parties and the Fund’s Board of Trustees over many years to accommodate the many unique features of the workforce that are customary in the entertainment industry. In addition, the Fund believes that the issues raised in Notice 2012-17 should be resolved taking into account certain administrative challenges faced by multiemployer plans like the Fund.

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I. Overview of Comments

These comments respond to Notice 2012-17 and address the Act's ban on waiting periods of more than 90 days.

As explained more fully below, we respectfully ask the Departments of Labor, Health and Human Services, and the Treasury (the "Departments") to:

- Commence the start of the waiting period's 90-day clock upon the completion of the eligibility period used to determine whether the participant has sufficient earnings (as designated by the multiemployer plan's eligibility rules) to become eligible for health coverage through the multiemployer plan, and allowing such eligibility period to extend up to 12 months.
- Treat a plan's three (3) consecutive month waiting period as the equivalent of the 90-day waiting period so that enrollment can take effect at the start of a month, as is typically the case today.

II. Comments on 90-Day Waiting Period Rules

1. Background

Public Health Service ("PHS") Act section 2708, as added by the Affordable Care Act, provides that a group health plan shall not apply any waiting period that exceeds 90 days. PHS Act section 2704(b)(4), ERISA section 701(b)(4), and Code section 9801(b)(4) define a waiting period to be the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan. In previous regulations, the Departments defined a waiting period to mean the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.

2. Eligibility Rules for Multiemployer Health Plans in General

Notice 2012-17 specifically states that the upcoming guidance under section 2708 is expected to address situations in which, under the terms of an employers' plan, employees are eligible for coverage once they complete a specified cumulative number of hours or service within a specified period (such as 12 months). The Notice also specifically asks for comments on how the waiting period should be applied to plans that credit hours of service from multiple different employers and plans that use hours banks.

Many multiemployer plans cover participants in industries where employment is historically fluid, with participants moving from one employer to another. Hours worked and/or earnings can fluctuate daily, weekly or monthly, and work can be erratic and episodic. This is particularly true with respect to industries like the entertainment industry

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in which the Fund operates. Indeed, the essential purpose of the multiemployer plan is twofold in terms of allowing its:

- contributing employers (which often are small employers) to pool their resources to provide benefits, and
- participants to pool their service with multiple contributing employers in order to obtain health coverage and other benefits under one health plan.

As a result, employees who regularly work in the entertainment industry can maintain continuous coverage even if they frequently change covered jobs. If it were not for the multiemployer plan structure, a significant percentage of these workers might not have access to affordable, comprehensive health coverage for themselves and their families.

Eligibility rules for multiemployer health plans are established by each plan's joint board of trustees (which, pursuant to the Taft-Hartley Act, is almost always comprised of an equal number of union and employer representatives) and are designed to reflect the unique working conditions of the particular industry. Typically, contributing employers pay an amount to a multiemployer plan that is set forth in a collective bargaining agreement. The amount can be based on the number of hours, days, or weeks of covered work performed by a covered employee. In the entertainment industry, earnings, rather than hours or some other measure, is often the relevant measure of work.

Whether the multiemployer plan uses hours, work weeks or earnings, the intent is the same: to establish a proxy for full-time employment in an industry where plan participants work for a number of different employers in any month. Since the working conditions of a particular unionized industry vary, each plan's board of trustees design eligibility rules that make sense in the context of the work pattern in the particular industry. In so doing, the board of trustees typically establishes an eligibility period, with work or earnings during that period leading to a later coverage period. Many multiemployer plans use a single calendar quarter as the eligibility period, but a fair number have longer eligibility periods. The reasoning behind the longer eligibility periods is not to deprive employees from coverage but rather to permit employees a longer period of time to be able to meet the requirements to qualify for coverage. Employees who do not accumulate sufficient hours or earnings in their first eligibility period often qualify for coverage during the second eligibility period or possibly later.

Most multiemployer plans also have an established lag period between the end of the eligibility period and the effective date of coverage (i.e., the start of the coverage period), to allow reports documenting hours worked or earnings from the contributing employers to be prepared and sent to the plan and to allow the plan to determine eligibility. Once hours or earnings have been counted and eligibility determined, coverage typically takes effect at the start of the coverage period, on the first day of a month.

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Once participants earn coverage during the eligibility period, coverage continues for the full period for which the person is eligible, even if he or she is no longer working in the industry by the time the coverage period begins. Unlike single employer plans, where coverage begins around the date of hire and ends at termination of employment (subject to COBRA), multiemployer plans begin coverage after an eligibility period and then continue coverage on the back end, throughout the coverage period, even if the individual retires or is otherwise not working in the industry. In the entertainment industry, this “tail” of coverage typically lasts at least as long as the eligibility period. In essence, the lack of coverage during the initial eligibility period is balanced out by the extended coverage provided during the tail.

3. Eligibility Rules for this Fund

Consistent with these principles, the Fund has established eligibility rules that its Board of Trustees believes functions as a proxy for full-time employment for its sector of the entertainment industry.

In order to qualify for eligibility under the Fund, an employee must earn a specific amount of compensation from any variety of covered services (including earnings for active work and residual compensation) during a period of four calendar quarters or less. This minimum amount is set at the Writers' Guild of America minimum for a one-hour network prime-time story and teleplay. Covered earnings were chosen by the Fund as the basis for eligibility qualification because it is not possible to establish “hours worked” at covered services. Among the variety of reasons contributing to this difficulty, the following represents the most glaring:

- Writers work independently and at their own pace (often offsite –frequently at home) to create scripts and no equitable relationship between type, length, or quality of script and hours to produce can be established,
- Writers may work concurrently on multiple scripts for multiple employers, and
- Writers may work in “teams” with different degrees of contribution from each member of the team.

Employment contracts are usually structured for a body of work or tasks related to stories, teleplays, rewrites, segments, etc., none of which has an hours-based effort associated with it.

An employee who meets this requirement is automatically enrolled in coverage (and, for one \$50 monthly premium, may also enroll all of his or her qualified dependents) that lasts for 12 months. The coverage period is twelve months but, to accommodate administrative processes concerning receipt of earnings information, does not take effect until one quarter after the eligibility requirements are satisfied.

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A graphic illustration of the Fund's eligibility rules is as follows:

Eligibility requirement first satisfied in quarter ending:	One quarter waiting period	Four-quarter coverage period:	Four-quarter earnings cycle for determining continued qualification:
September 30	October 1-December 31	January 1-December 31	October 1-September 30
December 31	January 1-March 31	April 1-March 31	January 1 – December 31
March 31	April 1-June 30	July 1-June 30	April 1-March 31
June 30	July 1-September 30	October 1-September 30	July 1-June 30

As you can see from the illustration above, the waiting period for Plan coverage is one calendar quarter between when a writer earns enough to qualify and when his or her coverage with the Fund begins. By way of example of how the "tail" coverage works under the Fund, theoretically, a writer could earn enough to satisfy the minimum earnings requirement any time in the quarter ending September 30, 2011. While the writer would not receive coverage until the following January 1, the writer would be eligible for coverage for the *entire* 2012 calendar year *even if* the writer never worked again after September 30, 2011. The writer will qualify for continued coverage under the Fund if he or she has enough covered earnings during each successive four-quarter earnings cycle. Thereafter, the writer who loses coverage under the Fund will be offered COBRA continuation benefits.

You will note that, in summary, **none of the Fund's eligibility and coverage rules described above require a waiting period that exceeds one calendar quarter, as long as the period during which eligibility conditions are being met is not counted toward the waiting period.** Since the period during which the writer accumulates eligibility is typically made up for in the "tail" period, we believe that interpreting the Act to disregard such period in determining whether the 90-day rule is satisfied is protective of employees and consistent with the purposes of the Act.

4. Recommendation

Notice 2012-17, A7 specifically states that other conditions for eligibility under the terms of a group health plan would generally be permissible under PHS Act section 2708, unless the condition is designed to avoid compliance with the 90-day waiting period limitation. It is our view that eligibility rules should continue to be set by the multiemployer fund's board of trustees. To implement the Act's ban on waiting periods of more than 90 days, we recommend that the Departments start the 90-day clock at the end of the eligibility period during which the participant works sufficient hours, work weeks or has sufficient earnings to become eligible for Fund coverage. This would mean

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that a multiemployer plan's lag period between earning eligibility and commencement of coverage – if it had such a lag period – could not exceed the longer of: 90 days, or a three (3) consecutive month waiting period (which we suggest is the equivalent of the 90-day waiting period), from the date that is the end of the plan's eligibility period.

To the extent that the Departments do not wish to provide a blanket rule in that regard, we respectfully submit that the Departments should disregard the eligibility period when the period of coverage is not less than the period used for the particular participant to attain eligibility. Since the period of coverage is no less than the eligibility period plus 90 days, it would be unreasonable to conclude that such a rule is in any way designed to avoid compliance with the 90-day rule.

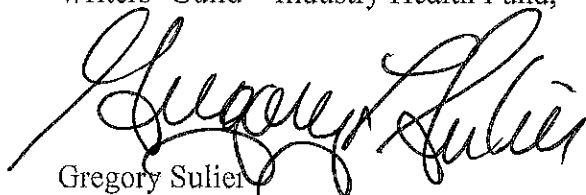
As mentioned above, we also recommend that if a plan has a three (3) consecutive month waiting period, that waiting period be treated as the equivalent of 90 days so that enrollment can take effect at the start of a month, as is typically the case today. Because most health plans measure eligibility in monthly or quarterly increments and base their programming on this standard, a strict 90-day provision would be extremely disruptive, forcing plans to start coverage on the 28th or 29th day of the month, which would only serve to confuse participants. In addition, for those plans that are not currently designed to operate under this mandate, this change will cause them to incur significant costs to change their administrative systems at a time when most plans simply can't afford it and are struggling to maintain benefits in the wake of tepid growth in the economy, historically low investment returns, and rising medical inflation headwinds.

We believe that the foregoing recommendations addresses the unique concerns important to multiemployer plans from a practical perspective while maintaining the underlying fundamental goals of the Act with regard to the prohibitions on excessive waiting periods.

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We appreciate the opportunity to submit comments on these important issues. Please do not hesitate to contact me at (818) 846-1015, if you have any questions about our comments or need additional information.

Respectfully submitted on behalf
of the Board of Trustees of the
Writers' Guild – Industry Health Fund,



Gregory Sulier
Chief Executive Officer



Writers' Guild-Industry Health Fund

Gregory L. Sulier, Chief Executive Officer

September 28, 2012

By e-mail (e-ohpsca-er.ebsa@dol.gov)

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: DOL Technical Release 2012-02 and IRS Notice 2012-59

To Whom It May Concern:

The Writers' Guild – Industry Health Fund (the “Fund”) submits these comments on IRS Notice 2012-59,¹ which addresses the ban on waiting periods of more than 90 days as required under the Patient Protection and Affordable Care Act (the “Affordable Care Act” or the “Act”). We thank the Departments for the opportunity to comment on a matter of critical importance to the Fund and the multiemployer plan community in general.

I. Background.

The Fund is a multiemployer plan, established and maintained pursuant to collective bargaining agreements between the Writers' Guild of America West, Inc. or the Writers' Guild of America East, Inc., and various employers within the entertainment industry (including, for example, all of the country's major motion picture and television producers, as well as thousands of other producers of entertainment programs, commercials and others). Since its establishment in 1968, the Fund has provided a comprehensive array of affordable health benefits including major medical, hospital, prescription drug, mental health and substance abuse, vision and dental benefits (as well as life insurance and accidental death and dismemberment benefits) to the covered employees and their eligible dependents for over five decades.

Generally speaking, individuals initially qualify for 12 months of coverage under the Fund once they earn a specific amount of compensation from any variety of covered services during a calendar quarter with coverage taking effect one calendar quarter after the satisfaction of the initial quarterly measurement period. After the initial qualification for benefits, individuals continue to receive coverage if they satisfy the earnings requirement in the subsequent 12-month earnings cycle that begins on the first day of the subsequent calendar quarter following the initial quarterly measurement period. A covered employee who satisfies the earnings requirement is automatically enrolled in coverage (and, for a \$50 monthly premium, may also enroll all of his or her qualified

¹ References to Notice 2012-59 are intended to include references to DOL Technical Release 2012-02 and the parallel Bulletin issued by the Department of Health and Human Services.

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dependents) that lasts for 12 months. As of December 31, 2011, the Fund's plan of benefits (the "Plan") had over 7,900 employees who qualified and were automatically enrolled for coverage, along with over 9,000 dependents enrolled. The Fund has over 800 signatory employers that contribute to it.

The Fund cites to its comment letter, dated April 9, 2012 (hereinafter referred to as the "Prior Comments," copy attached), in which it made extensive comments and certain requests related to the 90-day waiting period requirement under the Act and the accompanying guidance set forth in IRS Notice 2012-17. The Fund wishes to reiterate the proposals in its Prior Comments and make certain additional proposals in response to Notice 2012-59.

As a preliminary matter, the Fund believes that its eligibility provisions provide coverage consistent with the intent of this guidance and the Act. However, due to the unique nature in which multiemployer plans in general and entertainment industry plans in particular operate, there is some ambiguity (as more fully explained below) as to the application of the rules set forth in Notice 2012-59. The comments provided by the Fund respectfully request certain clarifications and modifications that will accommodate the unique aspects of these plans without undermining the underlying intent of this regulatory guidance or the spirit of the 90-day compliance mandate. Failure to grant the relief requested will ultimately reduce coverage and potentially undermine the viability of the Fund and multiemployer plans generally – particularly those in the entertainment industry.

II. Comments Regarding 90-Day Waiting Period

The background and unique issues related to multiemployer health plans, as well as the eligibility rules of the Fund are set forth in detail in the attached Prior Comments, which we incorporate herein by reference.

1. The 90-day waiting period should be deemed satisfied as long as coverage commences on the first of the month coincident with or next following the completion of a 90-day period after eligibility is established.

The Prior Comments requested that a period of three (3) consecutive months be treated as the equivalent of 90 days so that enrollment can take effect at the start of a month, as is typically the case today. Since most multiemployer health plans, particularly those that use measurement periods for freelance or casual work, measure eligibility in monthly or quarterly increments and base their programming on this standard, a strict 90-day provision would be extremely disruptive, forcing plans to start coverage on the 28th or 29th day of the month. There is little to be gained from such disruption, given that the difference between 90 days and a calendar quarter is, at most, a few days, and that in multiemployer plans the lack of initial coverage is made up as part of the "tail" that provides coverage beyond the termination of employment.

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To the extent that the Departments do not believe they have the authority to interpret the term "90 days" to mean three consecutive months, the Departments can address this issue simply by instead stating that the period between a 90-day waiting period and the first day of a month is not considered part the waiting period.

2. The Departments should confirm that an eligibility condition in a multiemployer plan that an employee earn a specific amount of covered earnings within a specified period of no longer than four calendar quarters in order to participate in the plan is neither based solely on the lapse of time nor designed to avoid compliance with the 90-day waiting period limitation.

As discussed in the Prior Comments, many multiemployer plans, including the Fund, have established eligibility rules reflecting the fact that there is no simple paradigm to coordinate health coverage and the variations of employment in their particular industries. This creates the necessity for multiemployer plans to establish rules that make sense within the context of industry work patterns not under the plans' control. These rules existed long before health reform and, in many cases, have no tie to length of service. They were clearly not intended to avoid a 90-day waiting period limitations that did not exist when the rules were established.

In addition, it is clear that these requirements are not based solely on the lapse of time. By way of example, in the Fund's case, as discussed in the Prior Comments, in order to obtain coverage, a collectively bargained writer must earn a specific amount of compensation from any variety of covered services (including earnings for active work and residual compensation) during a period of four calendar quarters or less. This minimum amount is set at the Writers' Guild of America minimum for a one-hour network prime-time story and teleplay. However, there is usually little relationship between the covered compensation earned and the hours worked on writing. Thus, a writer could earn this amount after working only a small number of hours in a very limited period or by working a few hours per month over a period of year. In either case, after one quarter in which the work history is obtained and processed, the writer would receive one year of coverage (even if the writer never worked again after satisfying the earnings requirement).

The fact that a writer can satisfy the earnings requirement in a very short time or a longer time demonstrates that the period used to establish eligibility is not designed to avoid the 90-day prohibition, but rather is to determine eligibility in light of the unique aspects of this segment of the entertainment industry. Further evidence that this is merely an eligibility condition is the fact that any period in which the participant is establishing eligibility is made up for in the "tail" period, meaning that the participant receives coverage for one full year, even if the participant is no longer employed.

For these reasons, we respectfully request that the Departments clarify that an eligibility condition in a multiemployer plan that an employee earn a specific amount of covered earnings within a specified period of no longer than four consecutive quarters in order to

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participate in the plan is neither based solely on the lapse of a time period nor designed to avoid compliance with the 90-day waiting period limitation.

3. If the Departments do not confirm the rule in item 2 above, multiemployer plans that condition eligibility on a specified amount of covered earnings should be permitted to apply Section III.B. of Notice 2012-59 using covered earnings in lieu of hours worked. Were the Departments to do so, certain changes should be made to the measurement period rules to allow multiemployer plans to apply them.

Were the Departments not to clarify the rule as requested in item 2, they should permit multiemployer plans with these eligibility provisions to apply Section III.B. of Notice 2012-59 by considering covered earnings rather than hours as the eligibility criteria, and, like those based on hours, should not count the measurement periods as part of the waiting period. A multiemployer plan should be permitted to use any reasonable amount of covered earnings in applying the measurement period. (Failing that, the Departments should adopt an equivalency that could be used to convert covered earnings to hours for this purpose.)

In order to apply Section II.B. of Notice 2012-59, certain changes would be needed to accommodate multiemployer plans. These would include, for example, the following:

- Eliminating the requirement that coverage be made effective no later than 13 months from the employee's start date (plus the time remaining until the first day of the next calendar month). Stated differently, the 13-month rule should be a 15-month rule, meaning that multiemployer plans with a 12-month measurement period should be permitted to have a period of three additional months before coverage must commence. This is necessary because it is not possible to make eligibility determinations in a month due to the need to gather and process information from many employers.
- Allowing multiemployer plans that uniformly and consistently apply an eligibility rule based on a measurement period of no more than 12 months to do so even if the actual measurement and stability periods differ within the plan for particular employees. This is necessary because multiemployer plans cover employees of many employers and require a level of uniformity that cannot be employer or employee specific.

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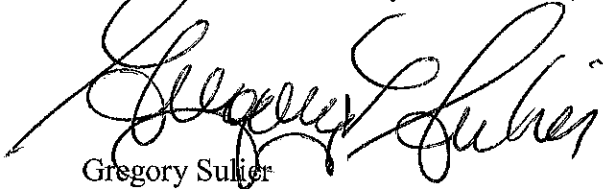
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We believe that the foregoing recommendations address the unique concerns important to multiemployer plans (and, particularly for those in the entertainment industry) from a practical perspective while maintaining the underlying fundamental goals of the Act with regard to the prohibitions on excessive waiting periods. We appreciate the opportunity to

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submit comments on these important issues. Please do not hesitate to contact me at (818) 846-1015, if you have any questions about our comments or need additional information.

Respectfully submitted on behalf
of the Board of Trustees of the
Writers' Guild – Industry Health Fund,

A handwritten signature in black ink, appearing to read "Gregory Suller", written in a cursive style.

Gregory Suller
Chief Executive Officer

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