MOTION PICTURE INDUSTRY
PENSION & HEALTH PLANS®

September 28, 2012

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

CC:PA:LPD:PR (Notice 2012-58)
Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20044

Re: Comments to Notices 2012-58 and 2012-59

To Whom It May Concern:

The Motion Picture Industry Health Plan (the Plan) submits these comments to Notice 2012-58 and Notice 2012-59, which address certain issues related to implementation of the Patient Protection and Affordable Care Act (the Affordable Care Act or the Act). Notices 2012-58 and 2012-59 were jointly released by the Departments of Labor, Health and Human Services (HHS) and the Treasury on August 31, 2012.

The Plan submitted comments in the past jointly with other multiemployer funds in the entertainment industry, including the AFM Local 802 Health and Benefits Fund, the Directors Guild of America-Producer Health Plan, the Equity-League Health Trust Fund, the IATSE Local One Welfare Fund, the IATSE Local 306 Health Fund, the IATSE Local 764 Welfare Fund, the IATSE National Health and Welfare Fund, the League-ATPAM Welfare Fund, the Motion Picture Industry Health Plan, the Screen Actors Guild-Producers Health Plan, the SDC League Health Fund and the USA Local 829 Welfare Fund. On April 9, 2012, the joint group of funds submitted comments to Technical Release 2012-01.

At the outset, we would like to state our appreciation for the guidance the Departments recently released in Notices 2012-58, on determining full-time employees for purposes of

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shared responsibility for employers regarding health coverage (Section 4980H), and 2012-59, on the 90-day waiting period limitation under public health service act Section 2708. In the Notice 2012-58 guidance, the Departments expanded the safe harbor method to provide the look-back measurement period of up to 12-months to determine whether new variable hour employees or seasonal employees are full-time employees, defined variable hour and seasonal employees, provide an optional administrative period and provided a process for employers to transition new employees to the determination of eligibility method for ongoing employees. In the Notice 2012-59 guidance, the Departments defined the waiting period and set out its application to variable hour employees where a specific number of hours of service per period is a plan eligibility condition. We applaud the Departments for recognizing the fact that many multiemployer health benefit plans have developed eligibility provisions to fit the variable and/or seasonal nature of work in the covered industries, and by their nature cover employees that may not fall under the shared responsibility provisions, because either the work would not be considered full-time or the contributing employers are not applicable large employers. We applaud the Departments for providing guidance that allows the waiting period to begin at the end of the measurement period for variable hour employees.

We are submitting these comments concurrently to Notices 2012-58 and 2012-59, since the 90-day waiting period and employer shared responsibility provisions are interrelated with respect to multiemployer plans.

Overview of Comments

We ask the Departments to respect the decisions reached by the collective bargaining parties and the Plan's Board of Trustees (comprised of an equal number of union and employer representatives) by:

1. Allowing a waiting period of **three calendar months** after the employee is otherwise eligible to enroll under the terms of the plan (the measurement period), ***or***

   Allowing a waiting period under which **coverage becomes effective the first of the calendar month following a period of no longer than 90-days** after the employee otherwise is eligible to enroll under the terms of the plan (the measurement period), ***and***

   Providing guidance so that neither of the above noted waiting periods would be considered designed to avoid compliance with the 90-day waiting period limitation.

2. Applying the 90-day waiting period limitation only to initial eligibility, and not to ongoing eligibility.

3. Eliminating the requirement that coverage be made effective within 13 months (plus the time remaining until the first day of the next calendar month) of an employee's start date for multiemployer plans, ***or***

Changing the requirement to make coverage effective within 15 months (plus the time remaining until the first day of the next calendar month) of an employee's start date for multiemployer plans.

4. Exempting contributing employers from the shared employer responsibility provisions of Section 4980H of the Internal Revenue Code (Code) ***with respect to collectively bargained employees for whom the employer makes collectively bargained contributions to a multiemployer plan that provides health benefits***. This means that such employees (a) would not be counted in determining whether the employer is large enough to be subject to the free-rider penalty; and (b) would not be taken into account in determining how much is owed, if the penalty applies with respect to the employer's non-bargained employees.

Rationale for Comments

In Notice 2012-58, although in a different context, the guidance states that new employees who are reasonably expected to work full time will not be subject to the employer responsibility payment under Section 4980 by reason of its failure to offer coverage to the employee for up to the initial three calendar months of employment. We are asking for recognition that any waiting period of three calendar months will satisfy the 90-day waiting period limitation.

In Section III. D. of Notice 2012-58, the safe harbor for variable hour and seasonal new employees allows the combined total of the measurement period and the administrative period not to exceed 13 months, plus a fraction of a month, to account for the fact that the anniversary of an employee's start date may not be at the beginning of a calendar month. We are asking for recognition that coverage provided by the Plan starts at the beginning of a calendar month, so we ask that a waiting period may be allowed if coverage becomes effective the first of the calendar month following a period of no longer than 90-days.

Since many of the Health and Welfare Funds in the entertainment industry collect contributions from tens or hundreds of employers, it takes time to collect those contributions, allocate them properly to participants and generate information to determine eligibility. This aggregation allows the Funds to extend coverage to participants who do not work enough with one employer to achieve eligibility. We believe that this is consistent with the overall goal of the Patient Protection and Affordable Care Act, to provide health care coverage to more individuals throughout the country. This is the rationale behind requesting that the requirement to provide coverage within 13-months of the date of hire be eliminated for multiemployer plans, or at least amended to 15 months to allow additional time for the Funds to process the necessary information.

This Plan, like all funds in the entertainment industry, accepts contributions that are set forth in collective bargaining agreements negotiated by contributing employers and union representatives. Many of those agreements call for contributions to be made to the Plan based

on a requirement other than hours, so the Plan and often the contributing employers do not know how many hours a participant works. Contributions are often made to the Plan based on days, specific projects or as a percentage of earnings. There is an information gap between the employers that make the contributions and the benefit plan. The employers may make contributions to a large number of multiemployer plans for various types of employees, such as actors, makeup artists, lighting specialists, camera crew, etc., and the employers may have no way to determine whether the employees are eligible for coverage under the various multiemployer plans to which the employer is required to make such contributions. Employers, by contributing to multiemployer funds based on their collective bargaining agreements, are offering their employees the opportunity to enroll in minimum essential coverage. Since employees can work for multiple employers, it is almost impossible for any one employer to determine whether the employees are achieving eligibility and whether the employee's required contribution to the plan does not exceed 9.5% of the employee's household income. The relief to use Form W-2 wages to determine affordability will not help employers with employees who work for multiple employers throughout the year.

Due to the nature of the collective bargaining agreements, Funds rarely know the number of hours that a participant works, as contributions are made based on earnings, days of work or on a project basis. The structure of the payments to the Funds make it difficult or impossible for the employers to know what amount the employees pay for coverage, if any, and the Funds generally do not know the number of hours that an employee works for an employer. This is the reason we are asking for the contributing employers to be exempt from the shared employer responsibility provisions of Section 4980H of the Internal Revenue Code (Code) with respect to collectively bargained employees for whom the employer makes collectively bargained contributions to a multiemployer plan that provides health benefits.

We appreciate the opportunity to submit comments on these important issues.

Respectfully submitted,

Gail Stewart

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