



August 8, 2013  
*Updated* June 10, 2015

Re: Patient Protection and Affordable Care Act

Dear Contributing Employer,

**UPDATED NOTE TO EMPLOYERS**

We have received or if you are preparing to request information about the Health & Welfare Fund in connection with the required ACA employer 2016 reporting for the 2015 coverage year (IRS Forms 1094-C and 1095-C). The letter below, which initially was sent to contributing employers in August 2013 and which resides on the Fund's website, [www.iatsenbf.org](http://www.iatsenbf.org), answers the questions posed in your request. In addition, please be advised that, in order to further assist employers in complying with their ACA reporting obligations, we are working on a web-based solution (via the Fund's secure website) for processing employer requests for information with respect to employees who participate in the Fund. This process will require contributing employers to complete and submit a form via the Fund's website in which the employer certifies its status as an "applicable large employer" for ACA purposes and to upload a list of the full-time employees on whose behalf it was obligated to contribute to the Fund. Further details about this process will be provided within the next few months.

We have received many inquiries from employers that contribute to the I.A.T.S.E. National Health and Welfare Fund (the "Fund") asking about compliance with the Patient Protection and Affordable Care Act (called the "ACA" in this memo). In response to those inquiries, we are providing this letter that includes general information about the Fund's status with regard to various provisions of the ACA in order to assist contributing employers in their compliance with certain provisions of the ACA with respect to employees for whom they contribute to the Fund. Although the Treasury Department recently announced that the employer shared responsibility payments and reporting obligations will not apply until 2015, the Department has stated that, once it publishes proposed rules implementing the employer information reporting requirements this summer, it will work with employers and strongly encourage voluntary employer implementation of those reporting requirements in 2014.

**The Employer Shared Responsibility Penalty**

The ACA imposes a penalty on large employers (50 or more full-time employees) that either do not offer health coverage to their full-time employees or offer coverage that is not of minimum value or is unaffordable. (As noted above, this penalty will not go into effect until 2015). Prior to announcing the one-year delay in the employer penalties under the ACA, the government set forth



a transition rule for 2014 for large employers participating in a multiemployer plan. If this rule is extended to 2015 (when the penalty goes into effect), employers will not owe any penalty for full-time employees for whom they contribute to a multiemployer plan, if the following three criteria are met:

- the employer is required to contribute to a multiemployer plan with respect to that employee pursuant to a collective bargaining agreement,
- coverage is offered under the multiemployer plan to the full-time employee and the employee's dependent children, and
- coverage offered to the full-time employee is affordable and provides minimum value.

Here is how the Fund measures up under the transition rule criteria:

- **The participation of contributing employers is generally pursuant to collective bargaining agreements.**
- **Once participants meet the Fund's eligibility requirements, coverage is offered to employees and their dependents, including children through the end of the year in which they turn age 26.**
- **The Fund's coverage meets the ACA minimum value standard.** In general, coverage is considered "minimum value" under the ACA if the plan covers at least 60% of eligible expenses. The Fund's outside actuarial consultant has determined that all of the Fund's medical plan options -- Plans A, C-1, C-2 and C-3 -- exceed the ACA minimum value standard.
- **The Fund is able to determine that, for the majority of Fund participants, the Fund's coverage is affordable.** In general, coverage is considered "affordable" under the ACA if the premium cost for participant-only coverage is not more than 9.5% of the participant's annual household income. For example, if a participant's annual household income is \$40,000, coverage is considered affordable if the participant-only coverage does not cost the participant more than \$3,800 a year. Since employers may not have information about their employees' annual household income (and the Fund does not have that information), the government developed three safe harbor tests that may be used for determining affordability under the ACA, which are discussed below.

With regard to the Fund's plans, for those participants covered under **Plan A**, the coverage is affordable (under all of the government tests) because participants are not required to pay *any* share of the premium cost for that coverage.

As for the various plan options available under the Fund's **Plan C**, the ACA measure of affordability is based on the cost of the lowest level of single coverage, which is C-3 Individual coverage, *regardless of which level of Plan C coverage the particular participant is actually enrolled in*. Plan C-3 Individual coverage will cost \$1,131 per quarter for the quarter beginning January 1, 2014. Accordingly, if a participant has enough money in his/her CAPP account to pay for that coverage, the coverage is affordable under the ACA (since there is no cost to the participant).



If a participant is required to pay for Plan C coverage (beyond what is in his CAPP account), the coverage will be considered affordable under the ACA if the participant is not required to pay more than 9.5% of his or her **household income** to supplement what is in his/her CAPP account in order to afford C-3 Individual coverage, again regardless of which Plan C option the participant is actually enrolled in. Alternatively, under the government safe harbor tests, C-3 Individual coverage will be considered affordable if the participant is not required to pay more than 9.5% of his or her **W-2 wages** reported to the employer for that coverage. Another government safe harbor provides that coverage is affordable if the participant's cost does not exceed 9.5 percent of the federal poverty level for a single individual (\$11,490 in 2013).

The third safe harbor, which is based on "rate of pay," provides that coverage is affordable if the employee's monthly contribution for coverage is no more than 9.5% of his hourly rate of pay multiplied by 130 hours.

Because of the nature of Plan C coverage (as well as the fact that the Fund does not have information regarding participants' household or W-2 income), employers will need to make their own determinations as to whether coverage is affordable for a particular employee in 2015, assuming this transition relief for multiemployer plans is extended beyond 2014. In many situations, it will be necessary to review the applicable contribution rate for the employee at issue. In this regard, as a benchmark, it may be helpful to know that, for full-time employees who work 30 or more hours per week, the Plan C-3 individual coverage, at \$4,524 per year currently, only costs about \$2.90 per hour.

As with all issues relating to ACA compliance, we urge all employers to discuss the application of the affordability tests with their advisors.

Remember, as explained above, employers will not be subject to the ACA's shared responsibility penalty in 2014. (More information about the delay can be found in IRS Notice 2013-45, available on [www.irs.gov](http://www.irs.gov)).

## **90-Day Waiting Period**

Some employers have asked whether the Fund's eligibility rules comply with the 90-day waiting period requirements of the ACA. Section 2708 of the ACA provides that, for plan years beginning on or after January 1, 2014, a group health plan cannot apply a waiting period of more than 90 days for an employee or dependent who is otherwise eligible to enroll in the plan. The guidance defines a "waiting period" as the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of the plan can become effective. Being "otherwise eligible to enroll" means that the employee has met the plan's substantive eligibility conditions, such as being in an eligible job classification or achieving job-related licensure requirements specified in the plan's terms.

The Fund believes that the eligibility provisions of Plans A and C are consistent with the current applicable ACA guidance and requirements for the 90-day waiting period.



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There are numerous provisions of the ACA that apply to the Fund. The Fund's Board of Trustees is working diligently with the Fund's actuaries and Co-Counsel to assess the Fund's compliance with the law, accompanying regulations and interpretive guidance. However, we encourage employers to consult with their advisors regarding their own ACA compliance.

This notice is being provided as a courtesy to assist you and does not constitute legal or tax advice.

For further information about the ACA, the federal government has a website dedicated to ACA information -- [www.healthcare.gov](http://www.healthcare.gov).

Sincerely

A handwritten signature in black ink, appearing to read "Anne J. Zeisler".

Anne J. Zeisler  
Executive Director