



August 16, 2010

Via Email, E-OHPSCA1251.EBSA@dol.gov  
Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
United States Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210  
Attention RIN 1210-AB42

Re: Interim Final Rules for Group Health Plans and Health Insurance  
Coverage Relating to Status as a Grandfathered Health Plan Under  
the Patient Protection and Affordable Care Act

To Whom It May Concern:

The recent regulations regarding grandfathering under the Patient Protection and Affordability Act promulgated jointly by the Department of Labor, Internal Revenue Service, and Health & Human Services on June 17, 2010 provide for loss of grandfathering as a result of certain changes in employer contributions. On behalf of the IATSE National Health & Welfare Fund, a multiemployer Fund representing 25,000 covered lives (participants and dependents) engaged in various aspects of behind the scenes production work in the entertainment industry, including motion picture, television, live theater, award shows, exhibition and trade shows, symphonies, ballet, sports networks, local television stations, and amusement parks, we submit the following comments and requests for clarification. The Plan is self-insured for hospital, medical, and prescription benefits.

Specifically, the Fund writes regarding the provision for the loss of grandfathering due to a "Decrease in contribution rate by employers and employee organizations." 26 CFR Section 54.9815-1251T(g)(1)(v)(A) and (B); 29 CFR 2590.715-1251(g)(1)(v)(A); 45 CFR 147.140(g)(1)(v)(A). For convenience, further references will be to the Treasury Regulations only.

The Fund seeks clarification as to the application of the regulations to the various scenarios under which employers contribute to the Fund. The Fund maintains four different plans of benefits (Plans A, C1, C2, and C3). Eligibility for Plan A is based on days worked – 60 days of work within a six-month period earns six months of coverage. To participate, employers must pay a minimum daily

amount established by the Trustees each year. Eligibility for Plans C1, C2, and C3 is based on the amount of contribution dollars received on a particular individual's behalf from the various employers each quarter. Plans C1, C2, and C3 provide different levels of coverage, with C1 providing the highest level of coverage at the greatest cost and C3 providing the most modest coverage at the lowest cost. The quarterly charge to participants is set by the Trustees periodically based on the costs of each plan and whether the participant elects individual or family coverage. After the Fund receives a certain threshold level of contributions on an individual's behalf, the individual is eligible to select Plan C1, C2, or C3. To the extent that employer cumulative contributions on the employee's behalf in the prior quarter are less than the quarterly charge for the option he or she selects, the employee must self-pay the difference in order to obtain the coverage. The Fund has approximately 1,000 collective bargaining agreements requiring contributions to the Fund, contributing under hundreds of different formulas, including a percentage of compensation, fixed dollar amount per unit of time worked (e.g. per hour, shift, day, month or quarter), the charge for coverage under the Plan (i.e., C1, C2, or C3), or the charge for coverage subject to some percentage or flat dollar limitation (e.g., the participant charge for Plan C2 not to exceed a certain amount or not to exceed a certain percentage increase per year). An individual may and often does work for many different employers with a variety of contribution formulas during the course of a year.

Based on these facts, the Fund has the following questions, comments and requests for clarification:

1. Please clarify that with respect to Plan A, if the required daily contribution rate decreases but the benefits stay the same and coverage continues at no cost to those employees who are eligible, Plan A would not lose grandfathered status as result of that contribution decrease. As a reminder, Plan A participants are not required or permitted to pay any premium for Plan A; eligibility is based solely on the number of days worked.
2. Please clarify that where an employer's contribution is based on a formula (fixed dollar amount per unit of work) and the employer's contribution decreases solely because the employee works fewer units, that if the fixed dollar amount per unit of work remains unchanged the Plan would not lose grandfathered status as result of that contribution decrease.
3. Please clarify that if the cost to the employee increases because the employee elects a higher cost option (e.g. changing from individual to family coverage or from Plan C3 to C1) but employer contributions remain the same that such increase in the employee costs does not result in the loss of grandfathering. Although we do not believe that would have been the intention, the regulations could be read literally to require that result. For a self-insured plan such as this, the "contribution rate based on cost of coverage means the

amount of contributions made by an employer... compared to the total cost of coverage, expressed as a percentage... In the case of a self-insured plan, contributions by an employer... are equal to the total cost of coverage minus the employee contributions toward the total cost of coverage.” 26 CFR 54.9815-1251T(g)(3)(iii)(A) and (B) and parallel provisions in 29 CFR Part 2590 and 45 CFR Part 147.

4. The Fund has employers that contribute to the Fund a fixed amount per month or quarter. Such amount may be equal to the amount of one of the levels of coverage or it may not. It may explicitly reference the cost of coverage or it may not. It may or may not vary depending on whether the individual is single or has a family. In the multiemployer context, absent a reference to the cost of coverage in the text of the collective bargaining agreement it is difficult to know the basis for the numbers bargained by the parties. The Fund will presume that unless the collective bargaining agreement explicitly defines the rate by reference to the cost of coverage (or differs for single and families) the contribution is based on a formula (a fixed amount per period of time), though further guidance would be welcome.

5. The charge for coverage is set by the Trustees periodically based primarily on the cost of coverage (including administrative fees), offset by any income (such as forfeitures and any investment income that the Fund receives). The charge for a particular benefit option might not be the exact cost and could be slightly higher or lower at different points in time (for example due to the cost fluctuations of a self-insured plan). Individuals who are eligible to participate can then apply available employer contributions to the Fund's charge for their desired benefit option. If employer contributions are less than the Fund's charge for the option they select, participants may self-pay the difference between the charge and available employer contributions. The Fund interprets the interim regulations to mean that an increase in the Fund's charges for a particular benefit option that does not exceed the increase in the actual costs to the Fund to provide such option by more than 5% would not by itself result in the loss of grandfathered status for that option.

a. In some collective bargaining agreements the employer's contribution is explicitly based on the charge for one of the Plan C options, but either does not provide for increases as the charge for those options increases or there is a limitation on the increases (for example, the rate will not increase more than 5% per year). The interim regulations could be read to mean that, if at any point because of increases in the charges for Plan C option(s) on which the employer's contribution is based, the employees' cost share for that particular option increases by more than 5% (measuring from March 23, 2010) the affected option would lose its grandfathered status. However, as noted below, the Fund argues that for a multiemployer plan "employer" under the regulations should be the interpreted as aggregate of all contributing employers. Aggregating employer

contributions is particularly important for administering an multiemployer fund such as this Fund, which has approximately 1,000 collective bargaining agreements with different expiration dates whose bargaining cycles do not coincide with the dates on which the Trustees set the charges for the different options.

b. Assume the same facts as above but because of contributions from other employers, the employee does NOT have to pay more (or the increase in cost share to the employees is 5% or less). If the same is true for all employees then it appears that the Fund does not lose grandfathered status. And, as argued herein, if the same is true on average for all employees, the Fund should not lose its grandfathered status. The definition of "contribution rate based on cost of coverage" provides that "In the case of a self-insured plan, contributions by an employer... are equal to the total cost of coverage minus the employee contributions towards the total cost of coverage." 26 CFR 54.9815-1251T(g)(3)(iii)(A) and (B) and parallel provisions in 29 CFR Part 2590 and 45 CFR Part 147. It thus appears that all employer contributions (regardless of whether employer contributed based on the cost of coverage or based on a formula), could be deducted from the cost to determine the cost to the employee. (Many, if not most, employees work for multiple employers under different contribution formulas.) The Fund, however, notes that the interim regulations could be read to mean that if any collective bargaining agreement requiring contributions to Plan C of the Fund that are based on a formula (as opposed to based on the cost of coverage) provides for a decrease in such rate by more than 5% on or after March 23 that such change would result in loss of grandfathering for Plan C, even if it did not result in an increased cost to the employee (for example, because of other employer contributions, additional units of work requiring more units of contributions, or lower charges for the benefits). As noted below, the Fund proposes that "employer" be interpreted as the aggregate all employers for multiemployer plans.

6. Assume again that under the collective bargaining agreement the employer's contribution is explicitly based on the charge for one of the Plan C options. The Fund notes that the interim regulations could be read to mean that if because of decreases in the rate paid by the employer, the employee's cost for that particular option increases by more than 5% (measuring from March 23, 2010) the affected option would lose its grandfathered status. However, as noted below, the aggregation of all employers should be considered the "employer" under the regulations for multiemployer plans.

a. Assume the same facts as above but because of contributions from other employers, the employee does NOT have to pay more (or the increase in cost share to the employees is 5% or less). If the same is true for all employees is it the case that the Fund does not lose grandfathered status? Moreover, as argued herein, if the same is true on average for all employees, is it the case that

the Fund does not lose its grandfathered status. As set forth above, the definition of "contribution rate based on cost of coverage" provides that "In the case of a self-insured plan, contributions by an employer... are equal to the total cost of coverage minus the employee contributions towards the total cost of coverage." 26 CFR 54.9815-1251T(g)(3)(iii)(A) and (B) and parallel provisions in 29 CFR Part 2590 and 45 CFR Part 147. It thus appears that all employer contributions (regardless of whether employer contributed based on the cost of coverage or based on a formula), could be deducted from the cost to determine the cost to the employee.

7. If the Fund's interpretation in 5(a) and 6(a) above is correct, could the Fund, for administrative simplicity, aggregate all employer contributions and employee costs and use the average percentage of employee cost to determine whether employee costs have increased by more than 5% over the increase in the cost of coverage since March 23, 2010?

8. The Fund seeks guidance on how to apply 26 CFR 54.9815-1251T(g)(3)(iii)(A) and (B) when (as has happened) an employer's contribution formula for contributing changes from cost based to formula based. Does the Fund measure any percentage change at the point of the change and add (or subtract) any future percentage changes? For example, if an employer was paying the cost of coverage and such percentage had decreased by 1% from March 23, 2010 until the time of the change in December 31, 2010, to a fixed dollar amount per day, can the employer's contribution decrease up to 4% (5% - 1%) before the Fund loses its grandfathered status?

9. The Fund seeks guidance as to the date that the changes required by the loss of grandfathering must be implemented and proposes that such changes be required as of the first day of the plan year following the loss of grandfathering. The Fund notes that a multiemployer plan may not learn of changes (such as a decrease) in collectively bargained contribution rates until after it goes into effect. Therefore, the Fund may learn retroactively that it lost grandfathered status. Moreover, to the extent that the Fund can aggregate and average the employees' cost share compared the Fund's costs to provide coverage, it would be burdensome to make such comparison except on a periodic basis (such as every quarter) since the costs of a self-insured plan fluctuate. The Fund would likely not know in advance that it was going to lose grandfathered status on this base. Even once a Fund learns that it has lost grandfathered status, it must then in turn contact the vendors who administer the benefits to implement such changes. It would not be possible to make such changes instantaneously.

Please contact the undersigned with any further questions.

Sincerely

Anne J. Zeisler  
Executive Director of the IATSE National Benefit Funds on behalf of  
The Board of Trustees of the IATSE National Health & Welfare Fund