

# ALSTON & BIRD LLP

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September 27, 2012

*Submitted electronically via*

*Notice.comments@irscounsel.treas.gov and e-ohpsca-er.ebsa@dol.gov.*

Internal Revenue Service  
Ben Franklin Station  
P.O. Box 7604  
Room 5203  
Washington, DC 20044  
Attn: CC:PA:LPD:PR (Notices 2012-58, 2012-59)

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

Re: IRS Notices 2012-58 and 2012-59

On behalf of many of our clients, Alston & Bird, LLP (“A&B”) commends the agencies for the guidance set forth in the above mentioned Notices -- guidance that is reflective of the agencies’ ongoing willingness to work closely with stakeholders to develop rules and regulations that are both consistent with the applicable statutory requirements and administratively feasible for stakeholders. In particular, we applaud the clarifications made in Notice 2012-59 regarding the application of Section 2708 to employees whose eligibility for a group health plan is otherwise tied to accumulated hours of service.

Example #4 in Notice 2012-59 indicates that a plan’s terms of eligibility that require an employee to accumulate no more than 1200 hours of service before becoming eligible are not designed to avoid compliance with Section 2708 as long as coverage (if elected) begins on the 91<sup>st</sup> day following the satisfaction of the cumulative hours requirement. We firmly believe that this clarification in Example #4 appropriately gives employers flexibility -- flexibility that will incent employers to continue offering coverage to part-time employees in the future -- in a manner that is fully consistent with the requirements and underlying policy purposes of Section 2708.

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We are pleased that we can rely on this guidance at least through the end of 2014. If, however, the agencies issue additional guidance or regulations on Section 2708 in the future, we wish to encourage the agencies to incorporate a rule that is *no more restrictive* than the guidance set forth in Example #4. Many of our clients believe that any rule that is more restrictive than Example #4 would inappropriately discourage coverage and would not be consistent with Section 2708.

Thank you for the opportunity to submit comments. If you have any questions or wish to discuss this issue further, please feel free to contact me.

Sincerely

A handwritten signature in black ink, appearing to read "AG", with a horizontal line extending to the right.

Mr. Ashley Gillihan

AG:del  
LEGAL01/13440402v1