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Nicholas W. Clark
General Counsel

September 28, 2012

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Room S-2524
Washington, D.C. 20210

VIA: e-ohpsca-er.ebsa@dol.gov

J. Mark Iwry
Senior Adviser to the Secretary and
Deputy Assistant Secretary for
Retirement and Health Policy
U.S. Department of Treasury
Departmental Offices
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

VIA: Notice.comments@irs.counsel.treas.gov

Re: Request for Comments on 90-Day Waiting Period Limitation
Under the Patient Protection and Affordable Care Act – IRS Notice
2012-59, DOL Technical Release 2012-02 and IRS Notice 2012-
58

Dear Assistant Secretary Borzi and Deputy Assistant Secretary Iwry:

The United Food and Commercial Workers International Union (“UFCW”) submits these comments in response to the request for comments pursuant to IRS Notice 2012-59 and DOL Technical Release 2012-02 (“Guidance on 90 Day Waiting Period Limitation Under Public Health Service Act §2708”) and IRS Notice 2012-58 (“Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§4980H)”) on the 90-day waiting period limitation for group health plans under Section 1201 of the Patient Protection and Affordable Care Act (“ACA”).

UFCW is a labor organization which represents working men and women across the United States. UFCW's 1.3 million members work in a range of industries, with the majority working in retail food, meat packing and poultry, food processing and manufacturing, and retail stores. We are North America's neighborhood union, and the largest union of young workers, with 40% of UFCW members under the age of 30. UFCW members are from many backgrounds and walks of life, but come together as UFCW for the shared goal of achieving the American dream. UFCW is about workers helping workers improve working and living standards through better wages, benefits, and working conditions. Accordingly, UFCW was a staunch supporter of the effort to enact the ACA.

UFCW appreciates this opportunity to offer the following comments in response to IRS Notice 2012-59 and Technical Release 2012-02 (collectively "Guidance") and IRS Notice 2012-58 with respect to the issue of how the 90-day limitation on waiting periods for group health plans should be applied under the ACA to part-time employees. UFCW represents a substantial number of part-time workers, and therefore, is able to offer a unique perspective on how this provision should be applied.

The Guidance provides that a plan may have a cumulative hours of service requirement for eligibility for part-time employees, with a waiting period of up to 90 days after the employee becomes eligible, but an example in the Guidance suggests that there is a cap of 1,200 hours of service per year for part-time eligibility (Section IV, Example 4). We believe that a more appropriate rule would be one that reflects the annual requirement to determine part-time status under the ACA and Section 4980H of the Internal Revenue Code, i.e., on average less than 30 hours per week, which would translate into under 1,560 hours per year, or other part-time

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equivalency. We believe that modifying the example in this way is most consistent with the intent of the ACA.

We appreciate your consideration of these comments and look forward to providing any additional information you may need in addressing this important aspect of the ACA.

Sincerely,

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a horizontal line extending to the right.

General Counsel

cc: William T. McDonough
Christyne Neff
Barbara Gilbert-Chen
Arne Anderson
Jeffrey Endick

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