



INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Providing leadership for the fire and emergency services since 1873

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September 10, 2013

The Honorable Daniel Werfel
Acting Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20004

Dear Mr. Werfel:

On behalf of the nearly 10,000 fire and emergency medical services (EMS) leaders that are members of the International Association of Fire Chiefs (IAFC), I thank you for the opportunity to provide comment on the Internal Revenue Service's (IRS) interim final rule on §4980H of the Patient Protection and Affordable Care Act (P.L. 111-148), also known as the "shared responsibility provision." As the IRS develops its final rule, I encourage you to examine closely the negative and unintended impact it may have on our nation's volunteer firefighters and emergency medical personnel.

There are approximately 750,000 volunteer firefighters in the United States – these volunteers represent 72% of all firefighters, and together they serve in 20,000 all-volunteer fire departments and 5,000 combination career-volunteer fire departments. Many communities rely exclusively upon volunteer fire departments for fire protection and emergency medical services. In these communities, volunteers may receive nominal incentives and may be assigned to multiple 12- and 24-hour shifts – easily allowing them to work in excess of 30 hours per week. As a result, I encourage you to consider the following points when developing the IRS' final rule for implementing the shared responsibility provision:

- 1) **Exclusion of Volunteer Firefighters:** Prospective volunteers rarely, if ever, enter the volunteer fire service with an expectation of receiving health insurance. Generally, these volunteers are seeking a way to contribute to their communities, much like they would through other community volunteer opportunities. Volunteer fire departments are well aware of the definition of "volunteer" in 29 CFR 533.101-106, and work to ensure they maintain a relationship with their volunteers that adheres to these regulations. When defining an employee for the purposes of the shared responsibility provision, I encourage you to include the definition of "volunteer" found in 29 CFR 533.100-106 and expand that definition to include volunteer firefighters and emergency medical personnel in fire departments classified as 501(c)(3) organizations.
- 2) **Defining Hours of Service:** If you are unable to exclude volunteers from being considered employees, I encourage you to count only hours spent on-duty, in training, or responding to emergency incidents. In many volunteer fire departments, volunteers are not assigned to a shift and are permitted to remain at home or work, and only respond to emergencies when alerted. In these cases, volunteers are free to control their own activities when not responding to emergencies and are not required to remain in any geographic location. Hours of service should

not be counted when a volunteer merely has their pager or cell phone and are not responding to an emergency.

Lastly, I strongly encourage you to refer to the attached list of questions as you develop the final rule for §4980H. Answers to these questions will help clearly inform fire departments about their obligations with respect to the shared responsibility provision. I encourage you to include a section in the final rule which clearly and specifically addresses how volunteer firefighters and emergency medical personnel should be treated under the shared responsibility provision.

Thank you for your attention to this important matter and your efforts to ensure that the shared responsibility provision is not applied in an unintentionally burdensome manner. If incorrectly implemented, volunteer fire departments may be unintentionally forced to comply with requirements that could force them to close or curtail their emergency response activities.

Sincerely,

A handwritten signature in black ink, appearing to read "William R. Metcalf". The signature is fluid and cursive, with a large, stylized initial "W".

Chief William R. Metcalf, EFO, CFO, MIFireE
President and Chairman of the Board, IAFC

Encl: *IAFC-PPACA Questions*

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Questions about the Patient Protection and Affordable Care Act and the Fire and Emergency Services

- 1) Do volunteer firefighters/EMTs count as employees under the Shared Responsibility Provision?
- 2) If a volunteer firefighter/EMT receives no compensation, do they still need to receive a W-2?
- 3) If a part-time firefighter/EMT receives a tax credit to purchase insurance, will the department be assessed a fine?
 - a. Does this change if a part-time firefighter/EMT is a full-time employee for another employer?
 - b. If a part-time firefighter/EMT is not offered insurance, will the department be assessed a fine?
- 4) If a firefighter/EMT of any type has a second job, which employer is responsible for offering insurance?
 - a. Does it matter if the second job is either a full- or part-time job?
- 5) If a firefighter/EMT has a second job, but becomes unemployed and loses their health insurance, is their fire department now responsible for them being insured?
 - a. Does it matter if they are part-time or full-time?
- 6) If a firefighter/EMT, of any type, is retired from a career in the fire service and receives health insurance as part of their retirement benefits, is their current fire department still required to offer them insurance?
 - a. Is the current fire department required to offer health insurance if the insurance the firefighter receives from their retirement benefits is not deemed to be “qualified” insurance?
- 7) Many volunteer fire departments operate as 501(c)(3) organizations, yet offer their volunteers the ability to obtain health insurance through the township, county, or city in which they are located. In a situation such as this, if a firefighter has the opportunity to obtain health insurance through the local government entity, is their fire department still required to offer health insurance since they are a 501(c)(3) and fully independent of the local government entity with which they partner to respond to emergencies?
 - a. If a volunteer in this arrangement obtains “unqualified” insurance through the local government entity, will the volunteer fire department receive a penalty?
- 8) In some instances, volunteer firefighters/EMTs working for independent 501(c)(3) fire departments are seen as employees of the 501(c)(3) organization when performing non-emergency response duties, such as fundraising for the organization, and then considered employees of the local government’s fire department when working in an operational role to respond to emergencies. In cases such as these, are both the 501(c)(3) volunteer fire department *and* the local government fire department required to offer health insurance to the volunteer?