



Supporting Those Who Serve

September 9, 2013

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

Dear Acting Commissioner Werfel:

I am writing to you on behalf of the National Volunteer Fire Council (NVFC), a national non-profit organization representing the interests of the nation's volunteer fire, emergency medical services (EMS) and rescue community. As the Internal Revenue Service (IRS) develops implementing regulations for the Patient Protection and Affordable Care Act (PPACA) (P.L. 111-148), I urge you to clearly exempt volunteers from being considered "employees" of the organizations they serve under the Employer Shared Responsibility Provisions of the law.

87 percent of the nation's fire departments are staffed by volunteer firefighters, whose donated services are estimated to be worth approximately \$140 billion annually. Fire departments composed of all- or mostly-volunteer personnel protect 37 percent of the nation's population. There are more than 750,000 volunteer firefighters in the United States and the NVFC estimates that there are another 200,000-300,000 volunteer EMS personnel that are not cross-trained firefighters.

Many volunteer fire and EMS personnel receive minor benefits, which serve to demonstrate that their efforts are appreciated and to help offset expenses that they may incur in the course of their service. The Fair Labor Standards Act (FLSA) 29 CFR 553.106 allows for volunteers to be "...paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers." Organizations that provide minor benefits to their volunteers are familiar with and take steps to ensure compliance with 29 CFR 553.106.

In spite of 29 CFR 553.106, the Internal Revenue Service (IRS) has made a common-law determination to define compensated volunteers as "employees" for the purposes of taxation. This is because the agency has control over how and where the volunteers respond and furnishes personnel with equipment and apparatus. The PPACA does not reference volunteer emergency responders at all but because of the IRS' treatment of volunteers as employees in the past it seems likely that volunteers will be considered employees under the health care reform law unless they are explicitly exempted in the final regulations.

It is not uncommon for volunteer emergency responders to donate 30 or more hours per week on a consistent basis in service to their agency. Additionally, many volunteer and combination departments will qualify as "large employers" as defined under the PPACA. Depending on how/whether the final implementing regulations address the status of volunteer emergency responders, thousands of agencies could end up being penalized for not providing health insurance to their personnel.

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This would be a public safety disaster. Volunteer fire and EMS agencies do not have the resources to provide their members with health insurance. Communities that rely on volunteer emergency responders are commonly rural, with small tax bases and higher-than-average rates of poverty. Most volunteer agencies raise money by serving meals at the fire station, selling raffle tickets or holding community events just to make ends meet. The cost of complying with the Employer Shared Responsibility Provision of the PPACA could exceed the operating budgets of many volunteer agencies, which mainly consist of paying for insurance, fuel, electricity, training and equipment.

Volunteers do not have an expectation that they will receive health insurance benefits through the departments that they serve. Many volunteers, like approximately 60 percent of all Americans, receive employer-sponsored health insurance through their full-time jobs. Although there are some cases where volunteers have access to health insurance through their department currently, it is generally because the agency provides coverage to full- or part-time paid personnel and the volunteers are eligible to purchase their own insurance as part of the group plan. The NVFC is not aware of any instances of departments paying for health insurance coverage for volunteer members at the present time.

If volunteers are treated as employees under the PPACA, hundreds of thousands of people across the country who donate their time and services to improve their communities could end up losing their benefits, having their activities curtailed, or even seeing their volunteer agencies/programs eliminated. I urge the IRS to clearly exempt volunteers, including those who receive reasonable benefits and nominal fees, from being considered employees under the PPACA. Furthermore, it is imperative that this exemption be granted as soon as possible so that organizations that rely on volunteers know where they stand. Many organizations that rely on volunteers do not have access to legal resources to guide them in complying with the PPACA. Without a clear exemption, volunteer groups may simply take a "better safe than sorry" approach and curtail their activities in an unnecessarily broad manner to avoid incurring penalties under the PPACA.

If you have any questions or would like to discuss this matter, you are welcome to contact me directly or through the NVFC's Director of Government Relations, Dave Finger, at (202) 887-5700 or dfinger@nvfc.org.

Sincerely,


Heather Schafer
Executive Director