Employers that contribute to a multiemployer health plan, the plan’s trustees and administrator, and the management group and union that cosponsor the plan will need to work together to comply with new obligations and mandates.

by Joseph A. Brislin
Effective January 1, 2014, the Affordable Care Act (ACA) will impose new obligations on employers participating in a multiemployer health plan and new mandates on health plan trustees.

ACA also imposes monetary penalties for noncompliance with the obligations and mandates. However, employers and trustees can avoid those penalties by cooperating and communicating with each other. This article uses the following ACA employer obligations and trustee mandates to illustrate potential liability issues and show why cooperation and good communication will be necessary:

- The employer’s premium share
- The state exchange health insurance application form
- The IRS notice letter to the employer or other contact
- The IRS annual report
- The summary of benefits and coverage (SBC).

ACA places additional obligations on employers and trustees beyond those discussed in this article. The agencies that will enforce ACA—the Internal Revenue Service (IRS), Department of Health and Human Services (HHS), Department of Labor (DOL) and Treasury Department—have published some regulations that are either temporary or transitional. Also, some ACA requirements may not fully apply to a multiemployer health trust, especially plans that are self-funded or “grandfathered,” or to employers with fewer than 50 full-time equivalent employees. ACA allows individual states to impose additional requirements on health plans within the state’s jurisdiction. The multiemployer health plan’s professional advisors continuously must update trustees on changes in legislation and regulations that will affect plan administration.
The Employer's Premium Share Requirement

ACA requires all large employers (those with 50 or more full-time or full-time equivalent employees) to "offer the opportunity for full-time employees to enroll in an employer-sponsored health plan." The employer's health plan must provide "minimum essential benefits," be "affordable," provide "value" and comply with limitations on eligibility and waiting periods. Employers that fail to meet these requirements face substantial fines and penalties. There are regulations for the employer to follow to calculate the number of full- and part-time employees to determine if it is a large employer. Other regulations define essential benefits and which health plans must provide those benefits, and guide the employer in calculating affordability, eligibility and waiting periods.

In a multiemployer plan, the employer is not the plan sponsor of the health plan. Rather, a management group and a union cosponsor the multiemployer health plan and appoint the trustees whose fiduciary duties include establishing policy and administering the health plan. ACA enforcement agencies have recognized that an employer is not the plan sponsor. The temporary regulations provide that an employer will comply with the requirement to "offer the employee and dependents the opportunity to enroll in a health plan" when the employer makes contributions to the multiemployer health plan on behalf of the employee and dependents in accordance with the collective bargaining agreement. Under the temporary regulations, the multiemployer health plan must be in compliance with ACA requirements to provide essential benefits, be affordable, have value and comply with limitations on eligibility and waiting periods.

Example One: Potential Employer Liability

Rock Construction Co. hires workers to install widgets in construction jobs. Rock contributes to the widget workers' multiemployer health plan on behalf of new employee Harry according to the terms of the collective bargaining agreement. Rock has met its obligation to offer to enroll employee Harry and his dependents in the health plan. However, the widget workers' health plan is not in compliance with one of ACA's requirements. This multiemployer plan's noncompliance may result in a monetary penalty being imposed on Rock.

Example one shows how a violation of an ACA requirement may cause a participating employer to be held liable for a multiemployer plan's administrative omissions or errors. To avoid potential penalties, the trustees and cosponsors must assure that their plan always complies with ACA requirements and mandates. The trustees must establish policies and procedures for contributing employers to follow when an ACA enforcement agency notifies an employer of a potential violation. The management association or other employer entity that cosponsors the multiemployer plan should continuously educate and communicate with the participating employers regarding liability issues and how to respond to ACA enforcement agency notices. Trustees should educate employees and their dependents about eligibility and coverage under the multiemployer health plan and when they should and should not apply for insurance coverage from the state marketplace insurance exchange. These communication and educational issues will be discussed below.

The State Exchange Health Insurance Application Form

ACA calls for the establishment in each state of health insurance exchanges administered by the state, the federal government or a partnership of the state and federal governments. An individual will be able to apply for health insurance coverage through this insurance marketplace and, depending on the individual's annual household income, may be eligible for a tax credit to subsidize the cost of the monthly insurance premium.

However, an individual is not eligible for health insurance coverage or a tax credit from the state marketplace exchange if he or she is eligible for and offered employer-sponsored health insurance coverage as either an employee or dependent that meets the benefits, value, affordability and waiting period requirements.

The proposed application form published by IRS requests information regarding any employment the applicant and his or her family members may have. The request for employment information includes identification of the employer with the EIN identification number; the employer's address; the name, phone number and e-mail address of an employer contact about health insurance; the name of the lowest cost health plan the employer offers; whether the health plan meets the minimum value standard; the employee's premium share; and if the health plan is affordable. The application also
asks about the employee's hours and wages and if the individual has lost employer health insurance coverage.

When the individual applies for health insurance coverage through the state marketplace exchange, IRS has the authority to verify the information on the application form and determine if the individual is eligible for marketplace exchange coverage. The verification and eligibility determination may include an IRS notice letter sent to the employer or other verbal or electronic contact by IRS. IRS has the authority to verify employment and inquire whether the individual or dependent is offered the opportunity to enroll in an employer’s health plan. IRS also has the authority to ask the employer to demonstrate whether the health plan offers minimum essential benefits, is affordable, provides value and meets limitations on eligibility and waiting periods.

**Example Two: Who Has the Information to Respond to the IRS Notice Letter?**

Harry is a new employee for Rock Construction Co. starting May 1. He also applies for health insurance coverage from the state exchange. Rock receives an IRS notice letter requesting information about Harry’s eligibility for coverage under the Rock’s health insurance plan and asking whether Harry and his dependents are offered the opportunity to enroll. Rock will contribute to the widget workers’ health plan based on the hours Harry works starting on May 1. How can Rock respond to the IRS notice letter since the company does not know if the widget workers’ multiemployer health plan has complied with all ACA requirements or when health coverage for Harry and his dependents will commence or end?

As discussed above, an employer (such as Rock) that participates in a multiemployer health plan may not have all of the information IRS may request in the notice letter. In some industries such as the building trades or entertainment, where an individual may work for several employers during the same month, the employer may not know if the employee is eligible for or receives health coverage from the multiemployer health plan. An employer that receives an IRS notice letter or other IRS contact in conjunction with a state qualified child medical support order may not know the health plan’s eligibility rules for dependent coverage. It is imperative, therefore, that the trustees, plan cosponsors and plan administrator educate the employer on what to do if it receives an IRS notice letter or other IRS contact and provide the assistance and information necessary for the employer to make a timely response.

Trustees also should educate plan participants and their dependents about health insurance eligibility and coverage under the multiemployer health plan. The employees and dependents need to understand when it is and is not appropriate to apply for insurance coverage from the state marketplace exchange. An individual who receives health coverage under the multiemployer plan and is also receiving a tax credit for marketplace exchange insurance coverage may be required to repay IRS the amount of any tax credits he or she received.

**Example Three: Cooperation and Communication for the IRS Notice Letter**

The trustees of the widget workers’ health trust foresee the issues related to the IRS notice letter or other IRS contact. The trustees adopt a policy directing the plan administrator to help participating employers respond to an IRS notice letter. The plan administrator develops a template that contains the trust information IRS will ask the employer to provide regarding benefits, affordability, value and waiting periods. The management cosponsor of the multiemployer health plan and the plan administrator educate the participating employers about what to do if they receive an IRS notice letter. The trustees provide educational material, an administrative telephone help line and information on the
trust’s website for employees and dependents to receive information on eligibility for health coverage from the widget workers’ health plan and when it is or is not appropriate to apply for coverage through the state marketplace exchange.

Harry uses the health plan’s telephone help line and website to learn when his and his dependents’ coverage in the widget workers’ health plan will commence. He learns that it is appropriate to obtain insurance coverage for himself and his dependents through the state exchange before his widget workers’ health plan coverage commences.

When Rock receives the IRS notice letter, it contacts the administrator of the widget workers’ health plan and is informed when Harry and his dependents’ eligibility for coverage under the trust’s health plan will commence. The plan administrator provides Rock with the template information to respond to all the information on benefits, affordability, value and waiting periods that IRS requested in the notice letter.

This education, communication and cooperation among the trustees, the plan administrator, Rock and Harry are proactive steps to eliminate the potential ACA penalty liability for Rock and tax credit repayment for Harry.

Delinquent Employers

An employer that is delinquent in contributing to the multiemployer health plan according to the terms of the collective bargaining agreement will fail the ACA requirement to offer employees and dependents health insurance. This will impose a potential ACA penalty on the delinquent employer as well as any remedies imposed by the multiemployer health plan. Trustees should consult with their professional advisors about this new development in the collection procedures.

The IRS Annual Report

All employers will be required to submit an annual report to IRS that outlines the terms and conditions of health care coverage provided to the employer’s eligible full-time employees during the prior calendar year. This requirement is effective January 1, 2015. IRS regulations currently are in the draft stage. However, the request for comments published in the IRS proposal listed the following items that may be required in the annual report:

- The employer’s tax ID
- Certification that full-time employees and dependents are offered the opportunity to enroll in the employer’s health coverage
- The monthly premium for the lowest cost health plan option the employer provides and the employee’s share of the premium. (For example, if the employer provides a health maintenance organization (HMO) and a preferred provider organization (PPO) option to employees and dependents, the lowest cost option must be identified. Many multiemployer health plans administer the health plan on employer contributions and do not require an employee to pay a portion of the premium. However, if the multiemployer health plan allows a participant to self-pay a portion of the premium when he or she does not have enough hours for eligibility during a month, this employee will pay a portion of the premium. Any amount an employee pays toward the premium will be considered in the “affordability” calculation.)
- The number of full-time employees the employer employs each month
- Identification of each full-time employee, including the name, address and taxpayer ID for each covered employee and dependent.
IRS has not yet determined if the multiemployer plan administrator may file the IRS annual report on behalf of all participating employers. In addition, ACA requires the employer to provide each employee with information related to the health insurance coverage the employer reported to IRS in the annual report. IRS probably will develop templates for the employer to use for these reporting requirements. However, no matter who will be required to file this IRS annual report, there must be a sharing of information between the employer and plan administrator. For example, the plan administrator may not have an employee's wages or earnings, and the employer may not know the months an employee and dependents received health coverage from the multiemployer health plan.

Example Four: Who Has the Data for the IRS Annual Report?

Sally works off and on for Rock and two other employers during 2014, depending on which employer provided widget construction job opportunities. All three employers contribute to the widget workers’ multiemployer health plan on behalf of Sally depending on the number of hours she worked for each in 2014. None of the employers knows whether Sally gained eligibility for health coverage under the widget workers’ health trust, nor do the employers know the dollar amount for the premiums the self-funded multiemployer health plan uses for underwriting purposes.

The trustees of the widget workers' health plan foresee the IRS annual report issues and use their professional advisors to recommend a procedure for the plan administrator to use to coordinate with participating employers to complete the annual report. The participating employers are alerted as to what information they should provide to the plan administrator and what information the plan administrator can provide to the participating employers. The communication and cooperation between the plan administrator and participating employers is a proactive step for the timely filing of the IRS annual report.

IRS Will Monitor Eligibility

IRS and HHS will use the information in the annual report to monitor eligibility for coverage through the state marketplace exchange. If an employee or dependent is listed as eligible for coverage in the multiemployer health plan and also has coverage from the exchange during the same time period, an IRS notice letter probably will be sent to the employer. As discussed above, the plan cosponsors and trustees will need to assist the employer in responding to an IRS notice letter.

Example Five: IRS Monitors Eligibility

After the IRS annual report is filed, Rock receives an IRS notice letter regarding Sally’s health insurance coverage. Sally received coverage in 2014 from the state exchange during the same time period that she worked for Rock and was covered under the widget workers’ health plan. The health plan adopted the procedures in example two on helping the employer respond to an IRS notice letter. Rock communicates with the health plan administrator regarding the IRS notice letter. The plan administrator provides Rock with the information necessary to respond to the IRS notice letter regarding Sally’s eligibility and coverage under the widget workers’ health plan during the periods Sally worked for Rock.

Summary of Benefits and Coverage

All health plans must provide an employee and dependents with a copy of the health plan’s summary of benefits and coverage (SBC) in the enrollment materials when the employee is first eligible to enroll in a health insurance plan. Eligibility to enroll in the health plan normally is prior to eligibility for health coverage from the plan. The informa-
tion in the SBC about health coverage under the plan must conform to the eight-page template developed by the ACA enforcement agencies. The method and process to deliver the SBC to the employee and dependents must also conform to the regulations published by the ACA enforcement agencies. Failure to comply may result in fines and penalties for either the employer or plan sponsor that has the duty to properly deliver the SBC.

Also, the SBC regulations require delivery of the SBC to employees and dependents if requested. For example, a dependent child away at college can request a copy of the SBC. Some of the information an individual must provide on the state’s health insurance exchange application form will be included in the future on the SBC, such as whether the health plan meets the ACA minimum value standards and is affordable. An employee or dependent may ask the employer for a copy of the SBC when he or she is applying for exchange coverage. The employer must have access to the multiemployers’ SBC to provide it to an employee, dependent or nonemployee who requests it.

**Example Six: Cooperation and Communication on SBC Delivery**

The trustees of the widget workers’ health plan have a current copy of the SBC on the trust’s website. Participating employers are educated on how to access the website and download a copy of the plan’s SBC if needed. This procedure allows an employer to meet its SBC delivery obligations if an employee or dependent requests information about the employer’s health plan or requests a copy of the SBC.

**Summary**

ACA has placed new obligations on employers participating in a multiemployer health plan and new mandates upon the trustees. These obligations and mandates will require the plan cosponsors, trustees and administrator to coordinate and communicate with the participating employers.

The health plan’s professional advisors must be diligent in reviewing ACA, the regulations published by the ACA enforcement agencies, and state laws and regulations that may supplement ACA.

The enforcement agencies have warned that many of the regulations are interim or temporary and are subject to change. Some regulations are pending. All parties in a multiemployer health plan need to be constantly vigilant of ACA requirements and recognize that noncompliance can result in monetary penalties. All parties must devise and comply with procedures that will provide communication and cooperation between the trustees and participating employers to eliminate the potential of the penalties.

**Editor’s note: Benefits Magazine** goes to press about four weeks before distribution. Please be aware that federal agencies are continually releasing regulatory guidance regarding ACA. The latest guidance and updates are available at www.ifebp.org/acacentral.