

February 11, 2014 PresNet Message to NAICU Member Presidents

Dear NAICU Colleagues,

I want to alert you to guidance released yesterday from the IRS regarding health insurance coverage requirements mandated in the Affordable Care Act (ACA) for adjunct faculty and student employees. As you may recall, the higher education community has been requesting this information from the IRS and the Department of Health and Human Services (HHS) since March of last year. Today, the College and University Personnel Association for Human Resources (CUPA-HR) released a summary of the guidance, and the background of the issues and the process. We wanted to share [this summary](#) with you as well as the [story that ran today in *Inside Higher Ed*](#).

I hope this information is helpful as you navigate the new requirements. We will keep you informed of additional community efforts, including any further comments being submitted in response to this information, and upcoming webinars or additional guidance.

Sincerely,

David L. Warren
President

From CUPA-HR

IRS Issues Guidance on ACA Coverage for Adjuncts and Students

Today, the Internal Revenue Service (IRS) published a rule containing additional guidance on employers' obligations to provide full-time employees with health coverage under the Affordable Care Act (ACA). The rule specifically addressed several issues CUPA-HR and our partners at other higher education associations raised with the IRS ([see here](http://lists.cupahr.org/t/409954/8989393/37125/4/) and [here](http://lists.cupahr.org/t/409954/8989393/37727/5/)), including methods for determining when adjunct faculty and students are entitled to employer-provided health coverage under the ACA.

While we are still reviewing the rule, we have set forth a summary below of some the provisions that specifically address issues pertinent to higher education employers. The IRS has also provided a fact sheet [here](http://lists.cupahr.org/t/409954/8989393/38366/6/), with important information about changes in employers' responsibilities under the ACA for 2015. We encourage you to look at this fact sheet as well as the information below.

You can view a copy of the rule here [here](http://lists.cupahr.org/t/409954/8989393/38367/7/).

CUPA-HR will provide additional education on this rule to members, so look out for future webinars and resources. In the meantime, the IRS is continuing to refine the guidance in this rule and has invited additional comments. Please let us know your thoughts by emailing aca@cupahr.org, as we will be filing additional comments.

Adjunct Faculty

Under Section 4980H of the Internal Revenue Code, which was added by the ACA, large employers (those with 50 or more employees) must provide full-time employees with health insurance coverage or possibly face tax penalties. The ACA defines a “full-time employee” as one who works 30 or more hours per week.

Higher education has some unique challenges in this regard. Adjunct faculty, for example, are typically paid for specific academic deliverables (e.g., teaching a course) rather than paid by the hour. Colleges and universities do not track work “hours” for any faculty, and doing so is impractical if not impossible.

Prior Guidance

On December 28, 2012, the IRS issued a Notice of Proposed Rulemaking<<http://lists.cupahr.org/t/409954/8989393/37025/8/>> (NPRM) and a related questions and answers document<<http://lists.cupahr.org/t/409954/8989393/37026/9/>> on section 4980H. In the NPRM, the agencies acknowledged concerns raised by CUPA-HR and other higher education associations (p. 225), but did not provide any specific guidance on adjuncts, stating simply that employers with such employees “must use a reasonable method for crediting hours of service that is consistent with the purposes of section 4980H.” The NPRM, however, provides little guidance as to what is reasonable, simply noting that it would not be reasonable to “take into account only classroom or other instruction time and not other hours that are necessary to perform the employee’s duties, such as class preparation time.” CUPA-HR and our partners at other higher education associations file comments on the NPRM (see [here](http://lists.cupahr.org/t/409954/8989393/37125/10/)<<http://lists.cupahr.org/t/409954/8989393/37125/10/>> and [here](http://lists.cupahr.org/t/409954/8989393/37727/11/)<<http://lists.cupahr.org/t/409954/8989393/37727/11/>>) and over the last year have repeatedly urged the IRS to issue additional guidance.

New Guidance

In today’s rule, the IRS provides more definitive guidance as to what constitutes a reasonable method for calculating adjunct hours. Specifically, the rule states that: one (but not the only) method that is reasonable for this purpose would credit an adjunct faculty member of an institution of higher education with (a) 2 1/4 hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time (in other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 1/4 hours for activities such as class preparation and grading) and, separately, (b) an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).

Thus, according to the rule, a college or university could deem an adjunct faculty member who teaches 12 credits as having worked 27 hours a week (12 x 2.25). If the institution required the adjunct to hold office hours for 2 hours per week, it would need to credit that adjunct with 29 hours (27 for the 12 credits and 2 for the office hours). If the institution also required an adjunct to attend a one-hour faculty meeting each week, it would need to credit that adjunct with 30 hours (27 for the 12 credits, 2 for the office hours and 1 for the faculty meeting). In other words, institutions must carefully assess all required work outside of the classroom.

The IRS states that while it may issue further guidance on this issue, higher education employers may rely on this formula for calculating adjunct hours at least through the end of 2015. The agency also notes in the rule that “employers may credit more hours of service than would result under the method described in the preceding paragraph and also may offer coverage to additional employees beyond those identified as full-time employees under that method.”

Under the rules, employers may use other “reasonable methods” for crediting hours of service for adjunct faculty. The IRS specifically states in the rule that the example it provides is not the only reasonable method of crediting hours of service and “whether another method ... is reasonable is based on the relevant facts and circumstances.” It also notes that some commenters (CUPA-HR was one) asked whether a university could adopt a method whereby an adjunct faculty member would be treated as full-time for ACA purposes only if he or she is assigned a course load that is 75 percent the average course load assigned to full-time faculty members. While the IRS acknowledges in the rule that course loads assigned to other faculty “may be a relevant factor in an employer’s determination of the number of hours of service to be credited to an adjunct faculty member,” it cautions that the method may be difficult to administer as “the course loads of faculty treated as full-time employees may vary considerably.”

Student Employees

CUPA-HR and our partners in other higher education associations expressed concern about ACA application to student employees ([see here](http://lists.cupahr.org/t/409954/8989393/37125/12/) and [here](http://lists.cupahr.org/t/409954/8989393/37727/13/)). The IRS acknowledges these comments in the rule and provides the following guidance:

- * To avoid having the application of section 4980H interfere with financial aid through work study programs, the IRS states that service performed by students in positions subsidized through the federal work study program or a substantially similar program of a State or political subdivision thereof do not count as hours of service for section 4980H purposes. The exemption is limited to these programs, however, and “[a]ll other hours of service for which a student employee ... is paid ... are required to be counted as hours of service for section 4980H purposes.”

- * One issue that has generated some concern is how to credit “on call” hours by resident assistants. The IRS provided the following guidance on that issue: “[u]ntil further guidance is issued, employers of employees who have on-call hours are required to use a reasonable method for crediting hours of service that is consistent with section 4980H. It is not reasonable for an employer to fail to credit an employee with an hour of service for any on-call hour for which payment is made or due by the employer, for which the employee is required to remain on-call on the employer’s premises, or for which the employee’s activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee’s own purposes.”

- * The rule does not specifically address exemption of graduate research and teaching assistantships, so institutions will have to carefully manage working hours expectations of these roles to determine whether or not the assistantships qualify as full-time in accordance with the ACA.

- * With respect to internships and externships, the IRS states “services by an intern or extern would not count as hours of service for section 4980H purposes ... to the extent that the student does not receive, and is not entitled to, payment in connection with those hours.” Some paid interns or externs, however, may nonetheless qualify for exemption from the 4980H requirements as seasonal employees. The rule has a full section detailing the various factors used to determine whether an employee qualifies as seasonal.
