



American Federation
of Teachers, AFL-CIO

AFT Teachers
AFT PSRP
AFT Higher Education
AFT Public Employees
AFT Healthcare

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Submitted to <http://www.regulations.gov>

March 18, 2013

CC:PA:LPD:PR (REG-138006-12),
Internal Revenue Service, room 5203,
POB 7604, Ben Franklin Station,
Washington, DC 20044

Dear Ladies and Gentlemen:

On behalf of our 1.5 million members, the American Federation of Teachers (AFT) welcomes the chance to comment on Treasury's proposed rule on shared responsibility for employers regarding health coverage (REG-138006-12). The AFT is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities.

The AFT supports the Affordable Care Act's expansion of health coverage, as well as the act's consumer protections and emphasis on preventive care. The AFT strongly believes that every person should have high-quality, affordable healthcare that does not leave them with a zero-dollar paycheck, or consume so much of the family budget that there is no room for savings or other investments in the future.¹ For years, AFT members have fought to protect health benefits at the bargaining table, often at the expense of wages. However, some members' paychecks are entirely subsumed by the cost of family health coverage.

The AFT believes that the premium tax credits available on the exchanges should provide some relief for families struggling to pay very high premiums for sponsored family coverage.² The need for such relief is clear. For instance, the *South Florida Sun*

¹ Members who find it hard to afford the premiums for their employer-sponsored coverage find it even more difficult to pay the costs associated with actually using their coverage. In their April 2011 report for the Commonwealth Fund, Jonathan Gruber and Ian Perry find that while the ACA will result in "affordable" coverage for most people, out-of-pocket costs can be very high for those facing serious illnesses: "The major risk to affordability under the Affordable Care Act comes ... from exposure to high out-of-pocket costs" (p. 12.):

http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2011/Apr/1493_Gruber_will_affordable_care_act_make_hlt_ins_affordable_reform_brief_v2.pdf.

² AFT members in the Broward County, Fla., public schools can receive single coverage through an HMO for free. However, the family HMO high option costs the employee \$1,170.50 per month. Members who choose the PPO family plan pay \$4,440.12 per month:

http://www.broward.k12.fl.us/benefits/Forms/Employees_Health_Rates_2013.pdf. In the Dade County, Fla., school district, certain employer-sponsored plans are free to the employee, but

Sentinel reported on Jan. 19, 2013, that some Broward County Public School teachers cannot afford the high premiums for employer-sponsored family coverage, and instead insure their children through a public CHIP program for low-income children.³ If eligibility for the Affordable Care Act's exchange premium subsidies were based on the affordability of family coverage, the ACA would come closer to fulfilling its promise of affordable coverage.

Family Coverage Is Unaffordable for Many

The proposed rule considers coverage affordable if an employee pays 9.5 percent or less of household income for self-only coverage. The major flaw in the proposed rule is that affordability for single coverage determines affordability for all tiers of coverage. In keeping with the act's intention to make coverage more affordable, we again ask that Treasury base affordability determinations on the share of the premium that an employee actually pays, not just the employee share of the single coverage premium. Affordability determinations should consider the employee premium share for all tiers of coverage, including employee-plus-children, employee-plus-spouse, and family coverage.

Affordable Coverage Should Be Available to Spouses and Children

The proposed rule requires employers to offer affordable health coverage to full-time employees and their children up to age 26 in order to avoid a shared responsibility penalty. However, no penalty would be assessed on employers who fail to offer coverage to spouses of full-time employees. Spouses with no offer of employer-sponsored coverage could be eligible for exchange premium tax credits.

While this provision may aid spouses who could access exchange subsidies, it could also harm members with affordable family coverage by encouraging their employers to withdraw offers of coverage for spouses. In addition, this proposed spousal carve-out would create chaos in the insurance market, which does not generally offer multiple insurance products to individual families. These issues are of great concern to the AFT.

To remedy this situation, the AFT asks that affordability determinations be based on the cost of family coverage in instances where the employee has selected family coverage.

We plan to submit further comments and suggestions at the public hearing on April 23, 2013, and may also submit follow-up ideas to Treasury in writing.

family coverage ranges from \$3,324 to \$11,004 per year, depending on the employee's income and choice of plan:

http://riskmanagement.dadeschools.net/benefits/2013/pdfs/Med_Premium_Comparison_13-12.pdf.

³ "Broward School Workers Going Elsewhere for Health Insurance," by Maria Mallory White, *South Florida Sun Sentinel*, January 19, 2013: http://articles.sun-sentinel.com/2013-01-19/news/fl-broward-schools-medical-rates-20130118_1_broward-school-dianne-howard-health-insurance/2.

The AFT Supports the Employment-Break-Period Averaging Method for Employees of Educational Organizations

The AFT applauds Treasury's recognition of the special circumstances of educational employees. We urge Treasury to retain the provision requiring employers to use the look-back measurement method to exclude employment break periods. The proposed employment-break-period rules provide a much-needed safeguard against the misclassification of full-time educational employees as part-time. We also offer the following suggestions:

- We urge Treasury to retain the anti-abuse language prohibiting employers from crediting an employee with hours of service solely to undermine the employment break period.
- The employment break period should be extended to employees of educational employers who use a month-to-month determination of full-time status.
- The transition rules for 2014 should also include this safeguard for educational employees.
- In addition, the final rule should clearly require employers using the look-back measurement method to follow the employment-break-period averaging rules.
- Further, the final rule should clarify that educational employers are potentially liable for a penalty for all 12 months in which they fail to affordably insure a full-time educational employee. This should apply to employers using either the month-to-month calculation method or the look-back measurement method.
- The proposed employment-break-period rules prevent full-time educational employees from being classified as part-time. The employment-break-period rules should apply both for calculating hours for the purpose of the 4980H penalty and for determining applicable large-employer status.

Employment Break Period Should Apply to Shorter Unpaid Breaks

The AFT represents many hourly educational support staff, including cafeteria workers, bus drivers, custodians, school secretaries and administrative assistants, and teachers' assistants. These employees are often not paid for school vacations.

While the employment-break-period rules will help many educational employees, hourly educational support employees remain a concern. This situation would be remedied by treating an unpaid school break of at least one week as an employment break period for hourly employees. This would ensure that employers using the look-back measurement method would determine full-time status based on the hours worked while school is in session.

The AFT Supports the Special Unpaid Leave Provision

The proposed rule would not allow employers using the look-back measurement method to include unpaid Family and Medical Leave Act (FMLA) leave, jury duty, or Uniformed Services Employment and Reemployment Rights Act leave in the calculation of hours worked. This is in keeping with the spirit of the shared responsibility provisions of the ACA and should be retained in the final rule. The provision will protect full-time employees who have used such leave from being deemed part-time for purposes of the employer penalty.

Additional Concerns

Contingent Faculty

The AFT applauds the preamble's acknowledgment of the special circumstances of adjunct faculty and welcomes the recognition that the duties of contingent faculty extend beyond the classroom.

While the preamble provides welcome guidance on the calculation of hours for contingent faculty, the recent high-profile reductions in contingent faculty hours⁴ make it clear that more regulatory action is needed to stop the ACA from being used as cover for bad employer behavior. Anti-abuse provisions up to and including penalties for violators should be codified in the final rule.

Contingent faculty members must be treated as professionals; colleges and universities must not be permitted to reduce contingent faculty course loads and shirk the responsibility of providing health coverage under the guise of complying with the ACA. Guidance that incorporates these principles, either in the final rule or in other guidance directed at institutions of higher education, would be most welcome.

Anti-Abuse Language Needed to Prevent Bad Employer Behavior

The proposed rule outlines the health coverage requirements that employers must fulfill in order to avoid section 4980H shared-responsibility penalties. The AFT is concerned that the proposed rule encourages employers to reduce employee's hours, carve out spouses, or otherwise alter their benefits eligibility.

⁴ See the *Wall Street Journal*, "Health Law Pinches Colleges," January 18, 2013, http://online.wsj.com/article_email/SB10001424127887323635504578213502177768898-1MyQjAxMTAzMDIwODEyNDgyWj.html?mod=wsj_valettop_email; ThinkProgress, "Four Public Colleges Will Cut Adjunct Faculty Hours to Avoid Providing Health Coverage Under Obamacare," January 14, 2013, <http://thinkprogress.org/health/2013/01/14/1445301/four-public-colleges-obamacare/?mobile=nc>; *Inside Higher Ed*, "So Close Yet So Far," November 20, 2012, <http://www.insidehighered.com/news/2012/11/20/college-cuts-adjuncts-hours-avoid-affordable-care-act-costs>; *Inside Higher Ed*, "Who Deserves Affordable Care?," December 5, 2012, <http://www.insidehighered.com/news/2012/12/05/higher-education-officials-look-washington-guidance-adjuncts-and-affordable-care-act>.

The AFT supports the following language in the preamble and encourages its inclusion in the final rule: “Employers always can treat more employees as eligible for coverage, or otherwise offer coverage more widely, than would be required to avoid an assessable payment under section 4980H.”

Thank you for the opportunity to comment on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Cowan', with a stylized flourish at the end.

Kristor W. Cowan
Director, Legislation