



American Federation
of Teachers, AFL-CIO

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

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October 12, 2012

Mark Iwry
Senior Advisor to the Secretary and Deputy Assistant Secretary
(Retirement and Health Policy)
Office of the Benefits Tax Counsel, Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington, DC 20220

Dear Mark:

Thank you for taking the time to meet with labor representatives to discuss Notice 2012-58 on the determination of full-time employees for the purposes of the employer shared responsibility penalty.

We very much appreciate your sensitivity to the situation of school employees and some workers in higher education. The question of whether full-time school-year employees will be considered full-time for purposes of the penalty is a pressing issue for our members, many of whom are currently negotiating agreements that will be in effect in 2014 and beyond.

Given the urgency of the situation for our members and their employers, an immediate preliminary statement of Treasury's position as discussed in our recent meeting would be most welcome. The AFT believes that all school-year employees who are expected to work 30 hours or more per week on average should be treated as full-time for purposes of the employer penalty under Section 4980H. Such employees should not be treated as "variable hour" and should not be subject to the safe harbor outlined in Notice 2012-58. We would welcome a confirmation of your agency's position prior to the issuance of a formal notice on this matter.

Again, thank you so much for all your time and careful attention to this matter.

Sincerely,

Amy Clary
Associate, AFT Research and Strategic Initiatives

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cc: Bill Cunningham, Senior Associate Director, Legislation
Jewell Gould, Director, Research and Strategic Initiatives
Lynne Mingarelli, Deputy Director, Research and Strategic Initiatives
Tom Moran, Director, AFT PSRP
Craig Smith, Director, AFT Higher Education
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