



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

FEB 01 2013

RECEIVED
FEB 12 2013
DJM

ASSISTANT SECRETARY

The Honorable John Kline
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Kline:

Thank you for your recent letter to Secretary Geithner, Secretary Solis, and Secretary Sebelius regarding the identification of full-time employees for purposes of sections 1513 and 10106 of the Patient Protection and Affordable Care Act (Affordable Care Act). Because these sections added section 4980H to the Internal Revenue Code (Code), the Treasury Department is responsible for issuing regulations and other guidance in this area. Accordingly, Treasury's Office of Tax Policy is responding on behalf of the Departments of the Treasury, Labor, and Health and Human Services.

Code section 4980H provides that an applicable large employer may be required to make an employer-responsibility payment if one or more of its full-time employees are certified as having received an applicable premium tax credit or cost-sharing reduction and the employer fails to offer minimum essential coverage meeting certain requirements. For this purpose, a full-time employee means an employee who is employed at least 30 hours of service per week on average. As noted in your letter, Treasury and the Internal Revenue Service (IRS) issued guidance in August 2012 to help employers determine whether their employees have at least 30 hours of service per week on average by using a "look-back" measurement period of up to 12 months. You have expressed concern that employers may need additional clarity as to whether they must track employee hours beginning as early as January 1, 2013, in order to be able to comply with section 4980H when it becomes applicable in 2014.

We understand the importance of providing employers with the guidance necessary to identify their full-time employees and satisfy the requirements of section 4980H. On December 28, 2012, Treasury and the IRS issued comprehensive proposed regulations under section 4980H, which addressed the look-back measurement method for identifying full-time employees and many other issues under section 4980H. These proposed regulations describe the look-back measurement method in significant detail, and we believe they give employers the information necessary to determine the full-time status of their employees for 2014. Employers may rely on these proposed regulations until the issuance of final regulations or other guidance.

Employers are not required to track employee hours beginning on January 1, 2013. Under both the proposed regulations and the guidance issued by Treasury and the IRS in August 2012, an employer's use of the look-back measurement method is entirely voluntary. Any employer may, if it wishes to, begin counting an employee's actual hours of service beginning in 2014 and use those hours for purposes of determining whether an employee is full-time for that month. While many employers requested that regulations provide them a workable and convenient option for

determining full-time status, such as the look-back measurement method, the look-back measurement method is an alternative to the monthly method that employers may use if they wish.

If employers choose to use the look-back method, however, they still do not need to begin counting hours on January 1, 2013. Under both the proposed regulations and the August 2012 guidance, employers may choose a look-back measurement period that is between three months and twelve months in length. They generally may also choose to use a reasonable administrative period of up to 90 days following the look-back measurement period to determine which employees are eligible for coverage and to notify and enroll employees, although this is not required. Therefore, employers with health plans that operate on a calendar year could choose to start counting hours as late as October 1, 2013, if they choose to use a three-month look-back measurement period and no administrative period.

To further ease the burden on employers, the proposed regulations include transition rules that give employers additional time to prepare for the counting of employee hours. One transition rule permits employers to use a six-month look-back measurement period, and begin counting hours as late as July 1, 2013, when they otherwise would be required to begin counting hours earlier in the year. Another transition rule under the proposed regulations provides that many fiscal (i.e., non-calendar) year plans will not be subject to penalties under section 4980H until the start of their 2014 plan years, and employers sponsoring those plans can postpone the counting of employee hours accordingly.

Your letter also seeks an analysis of how the employer-responsibility payment under section 4980H will affect employment. As you are aware, Congress enacted the employer-responsibility payment in section 4980H of the Code as part of the Affordable Care Act and the statute itself would drive any shifts in employment. The Treasury Department and IRS are responsible for implementing this provision through regulatory guidance. We have not conducted any specific analysis of the effects on employment. In developing our proposed regulations, we have worked closely with employers and other stakeholders and have sought to provide employers with practical alternatives for satisfying the statutory requirements without unnecessary disruption of their business activities.

Thank you for your interest in these important issues.

Sincerely,



Mark J. Mazur
Assistant Secretary (Tax Policy)

Identical letter sent to:

The Honorable David Roe, Chairman, Subcommittee on Health, Employment, Labor, and Pensions

cc: The Honorable Hilda L. Solis, Secretary, U.S. Department of Labor

The Honorable Kathleen Sebelius, Secretary, U.S. Department of Health and Human Services