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CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

VIA E-MAIL ONLY

Re: **Affordable Care Act**
Transition Rules for Educational Organizations

On February 12, 2014, final regulations regarding the Affordable Care Act's employer shared responsibility provisions ("employer mandate") under Internal Revenue Code Section 4980H were issued by the United States Department of Treasury.¹ Previously, employers were notified that the employer shared responsibility provisions under section 4980H (and the information reporting provisions) will become effective for 2015. The purpose of this update is to highlight those provisions in the final regulations that include additional transition rules pertaining only to 2015.

I. TRANSITION RULES

A. Determining Applicable Large Employer Status. For 2015 only, an employer may determine its status as an ALE by reference to a period of six or more consecutive calendar months during the 2014 calendar year rather than the entire 2014 calendar year. However, it must be noted that, with regard to seasonal workers, the educational organization must use the entire 2014 calendar year. "Seasonal workers" are those who perform labor or services at certain periods of the year which are not carried on throughout the year (e.g. walk-on coaches).

Commenters to the regulations noted that, under the transition guidance for ALE status in 2014, the hours of service during the summer season could be taken into account by schools in determining ALE status even though, during the summer, employees may provide no formal, in-school service. The commenters expressed concern that this would

¹ (U.S. Treasury Department Final Regulations Implementing Employer Shared Responsibility Under the Affordable Care Act ("ACA") for 2015, February 12, 2014)

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affect the educational employer's total number of full-time employees and status as an ALE by overweighting the summer period in relation to the non-summer academic year. However, the Treasury Department and the IRS have concluded that the options for addressing this concern would add more complexity and administrative burden than is justified for a rule that applies only for 2015.

B. Offer of Coverage. The final regulations provide in general, that if an ALE member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month. Solely for purposes of January 2015, if an ALE member offers coverage to a full-time employee no later than the first day of the first payroll period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015.

C. Coverage for Dependents. In order to provide employers sufficient time to expand health plans to add dependent coverage, the proposed regulations had provided that any employer that takes steps during its 2014 plan year toward offering coverage to full-time employees' dependents will not be liable for any assessable payment under Section 4980H solely on account of a failure to offer coverage to the dependents for that plan year. The final regulations extended this relief to 2015 plan years with respect to plans under which (1) dependent coverage is not offered, (2) dependent coverage that does not constitute MEC is offered, or (3) dependent coverage is offered for some, but not all, dependents. The relief is available only if the employer takes steps during the 2014 and/or 2015 plan year to extend coverage under the plan to dependents not offered coverage during the 2013 and/or 2014 plan year.

D. Assessable Payments. As an Applicable Large Employer (one that has 50 or more full-time employees), an educational organization may be required to pay a penalty tax if full-time employees are not offered minimum essential coverage ("MEC") that provides minimum value (i.e. the plan's share of the total allowed costs of benefits provided under the plan is at least 60% of those costs), and is affordable (i.e. the employee's required contribution for self-only coverage does not exceed 9.5% of the taxpayer's household income for the taxable year).

Eligible ALEs will not be subject to assessable payments under Section 4980H until the first day of the 2016 plan year. To be eligible, the ALE must (1) average at least 50-99 full-time employees, including full-time equivalents during 2014, (2) maintain the size of its workforce and aggregate hours of service, and (3) maintain previously offered health coverage.

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An educational organization may be liable for the assessable payment under Section 4980H(a) (also referred to as "Pay or Play Penalty", "Employer Shared Responsibility" or "Tax under IRC Section 4980H") if it fails to offer MEC to 95% of its full-time employees and their dependents. However, for 2015 only, the percentage of full-time employees and their dependents that must be offered MEC is 70%.

It should be noted that "dependent" has been defined in the final regulations to include biological children, adopted children, and those children placed for adoption, through the entire calendar month of the child's 26th birthday. The final regulations exclude both foster children and stepchildren, as well as spouses from the definition of dependent for the purposes of Section 4980H.

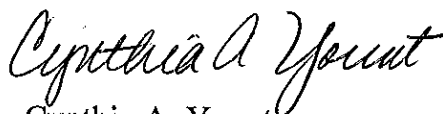
II. REPORTING REQUIREMENTS

The following information, required to be reported for the first time in 2016 for the 2015 tax year, must be tracked throughout 2015:

1. Report to IRS about MEC offered to employees and their dependents;
2. Reporting to IRS on group health coverage offered to full-time employees;
3. Response to Exchange's notice of potential employer tax liability.

Educational organizations are advised to develop and implement effective systems to track the information and to determine the manner in which the information will be reported and the staff responsible for doing so.

Very truly yours,


Cynthia A. Yount

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