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March 18, 2014

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

VIA E-MAIL ONLY

Re: **Affordable Care Act
Guidance 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 Some concerns related to the identification of full-time employees, including special rules for student employees and adjunct faculty.

For purposes of the employer mandate, a full-time employee for any month is a common-law employee employed on average at least 30 hours of service per week (or 130 hours of service per month). In order to avoid penalty taxes under IRC Code Section 4980H, educational organizations must identify the full-time employees who must be offered employer-sponsored coverage. All common-law employees of the educational organization must be taken into account for these purposes, including employees who are also students of the educational organization and adjunct faculty.

I. Student Employees. Under the federal regulations, if a student is in a federally funded work study program, the hours of employment in that program are not counted toward the 30 hours of service for purposes of identifying full-time employees. (See generally Education Code Section 88003 or Section 88076(b) for merit system districts regarding college work study programs.)

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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II. Adjunct Faculty. Pursuant to the preamble to the final regulations, until further guidance is issued, employers of adjunct faculty must use a "reasonable method", consistent with IRC Section 4980H, for crediting hours of service with respect to those employees. One reasonable method credits an adjunct faculty member of an institution of higher education with:

- 2.25 hours of service per week for each hour of teaching or classroom time, including time performing related tasks such as class preparation and grading; plus
- 1.00 hour of service per week for each additional hour outside of the classroom the adjunct faculty member spends performing *required* duties (e.g. office hours, faculty meetings).

Although further guidance may be issued regarding these matters, the method described may be relied upon at least through the end of 2015.

III. Employment Break Periods. The final regulations define an "employment break period" as a period of at least four consecutive weeks (disregarding special unpaid leave²) during which an employee of an educational organization is not credited with hours of service. Employment break periods factor into the determination as to whether an employee is full-time.

1. **Reasonable Expectations at Date of Hire.** If an employer reasonably expects a new employee will be a full-time employee, the employer must offer the employee minimum essential coverage that provides minimum value no later than the first day of the fourth full month following the date of hire. In determining expectations of future hours of service, the educational organization cannot take into account the potential for, or likelihood of an employment break period.
2. **Look-back Measurement Method Averaging.** The status of an employee during a future period ("stability period") may be based upon the employee's hours of service in a prior period ("measurement period"). In order for employees of educational organizations to avoid the adverse

² Under the final regulations, a special unpaid leave is unpaid leave subject to the Family and Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Act of 1994, or on account of jury duty.

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impact of regular "employment break periods" during which no hours of service are performed, educational organizations can either:

- a. determine the employee's average hours of service by excluding any employment break periods occurring during the measurement period and applying that average for the entire measurement period; or
- b. credit hours of service for the employment break period at a rate equal to the average weekly hours of service for weeks that are not part of the employment break period.

No more than 501 hours of service for all employment break periods occurring in a single calendar year have to be taken into account by an educational organization under this averaging rule.

3. Rehire and Break in Service Rules. For the purposes of IRC Section 4980H, an employee who resumes providing service to an educational organization after a period during which the employee was not credited with any hours of service may be treated as having terminated employment and having been rehired.

The educational organization may treat the employee as a new employee upon the resumption of services only if the employee does not have an hour of service for a period that was either:

- a. at least 26 consecutive weeks; or
- b. a shorter period of at least four weeks that exceeds the number of weeks of employment immediately preceding the period during which the employee was not credited with any hours of service.

For example, if the employee works for a period of 12 weeks, then provides no service for a period of 6 weeks, that employee must be treated as a continuing employee when he/she resumes services, and retains his/her most recently determined status as either a full-time employee or not a full-time employee. If, on the other hand, the employee works for a period of 6 weeks, then provides no service for a period of 12 weeks, that employee may be treated as a new employee.

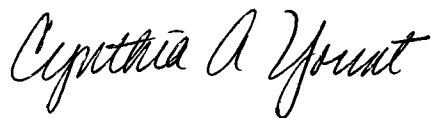
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We hope that this information regarding the final regulations will be helpful. Our office will continue to keep you informed as new guidelines and information specific to educational organizations becomes available. Please do not hesitate to contact the undersigned with any questions or concerns regarding these matters.

Very truly yours,

A handwritten signature in black ink that reads "Cynthia A. Yount". The signature is written in a cursive, flowing style.

Cynthia A. Yount

CAY/dw