

**Oregon Educators Benefit Board
Affordable Care Act (ACA) Bulletin #5**

**Spotlight on Health Care Reform
Prepared for Educational Entities Participating in the OEGB Benefits Program**

In this fifth ACA Bulletin for OEGB-participating entities, we will review the recently-released final regulations for the Shared Responsibility provision of the ACA. In particular, this bulletin will highlight changes from the previous proposed regulations.

On February 10, 2014, the Internal Revenue Service (IRS) issued final regulations implementing the employer shared responsibility provisions (otherwise known as the play-or-pay mandate) under the Patient Protection and Affordable Care Act (ACA). The final regulations provide clarifications and make a number of changes to the proposed regulations which were issued on December 28, 2012. Previous OEGB bulletins provided guidance to OEGB entities based on the December 28, 2012 proposed regulations. These bulletins have been removed from the OEGB website and will be replaced with revised versions reflecting the final regulations.

Clarifications and changes of note in the final guidelines include: (i) an extension of existing transition relief rules for non-calendar year plans for 2015, (ii) transition relief for the determination of applicable large employer status in 2015, (iii) identification of full-time employees, and (iv) determination of hours of service for educational entities.

In this bulletin, we will highlight specific elements of the original proposed regulations along with the clarification or change in the final regulations.

	Proposed Regulations	Final Regulations — Feb 10, 2014
Who is subject to the Shared Responsibility provision?	Applies to employers with 50 or more full-time employee equivalents starting in 2014 (no penalty until 2015).	Applies to employers with 100 or more full-time employee equivalents in 2015. Applies to employers with 50 or more full-time employee equivalents beginning in 2016.
Coverage of Full Time Employees	Employers who are subject to the Shared Responsibility provision will avoid the \$2,000 pay penalty by offering coverage to at least 95% of all full-time employees (FTE) minus the first 30, beginning with the 2015 plan year.	In the 2015 plan year, employers can avoid the \$2,000 pay penalty by offering coverage to at least 70% of all FTEs minus the first 80. For 2015, an employer will be deemed to have offered coverage if coverage is offered by the first payroll period. Beginning with the 2016 plan year, the threshold will return to 95% of all FTEs minus the first 30.
Non-Calendar Year Plans	Employers with non-calendar year plans will not be subject to play or pay penalty until the first day of their 2014 Plan Year. For entities with OEGB benefits, this effective date is October 1, 2014.	Employers with non-calendar year plans will not be subject to play or pay penalty until the first day of their 2015 plan year. For entities with OEGB benefits, this effective date is October 1, 2015
Definition of Dependent	For purposes of the Play or Pay penalties, employers are required to offer coverage to dependents by the 2015 plan year. The definition of dependent includes all natural, adopted, foster, and stepchildren, but excluded spouses.	For purposes of the Play or Pay penalties, employers are required to offer coverage to dependents by the 2016 plan year. The definition of dependent includes all natural and adopted children, but excludes spouses, foster and stepchildren.
Administrative Period	The proposed regulations indicated that an administrative period could be 90 days in length. It was unclear whether the administrative period was literally 90 days or if it could be extended to three month periods which exceeded 90 days.	The final regulations clarified that the administrative period has a literal limit of 90 days. It further clarified that the administrative period could be divided into the period of time before the start of the initial measurement period as well as the period of time after the end of the initial measurement period.

Identifying and Measuring Full Time Employee Status

The Play or Pay mandate requires that large employers offer Minimum Essential Coverage to their full-time employees (and dependent children) or pay a penalty. IRC § 4980H defines the term full-time employee as an employee who is employed on average at least 30 hours of service per week. The final regulations adopt the rule in the proposed regulations that 130 hours of service per calendar month can be treated as the monthly equivalent of at least 30 hours of service per week.

The final regulations also adopt the methods outlined in the proposed regulations for determining the full-time status of an employee with some additional clarifications. We will update the OEGB bulletins on this topic to reflect important clarifications noted as follows:

Look-back measurement method

- Seasonal employees are now defined as those who customarily work **six months or less** in a year. Previous proposed language used a three month or less definition. Final regulations clarified that generally the nature of the work must also be such that the employee typically works during a period that begins at the same time every year (summer or winter).
- The final regulations re-defined the break in service rule by shortening the duration of the break employers or entities can use to treat a rehired individual as a new hire. Employers can now categorize re-hired employees as new hires if his/her break in service is 13 weeks or more. **However, educational entities are still required to use a 26 week time frame as originally provided for in the proposed regulations.** The final regulations also retain the earlier proposed rule that employers may treat the employee as a new hire if the employee is not credited with any hours of service for at least four consecutive weeks and the break period during which an employee is not credited with any hours of service is longer than the employee's period of employment prior to the break.
- Hours of service do not include hours worked as a bona fide volunteer or hours of work performed by students in positions subsidized through federal work study programs.
- **Adjunct Faculty members:** Until further guidance is issued, employers of adjunct faculty may use a reasonable and consistent method of crediting hours of service. The final regulations provided the following example of a reasonable method of crediting adjunct faculty members with hours of work:
 - 2.25 hours of service per week for each hour of teaching or classroom time and, separately, 1 hour of service per week for each additional hour outside the classroom the faculty member spends performing duties he or she is required to perform (e.g., required office hours or attendance at faculty meetings). In other words, in addition to crediting an hour of service for each hour teaching in the classroom, the method would provide an additional 1.25 hour credit for activities such as class preparation and grading.
- Hours of service performed at two different subsidiaries of the same parent company must be combined to determine full-time employee status. For example, Jane Doe is employed by School District A. Jane works part time for two different elementary schools within District A. If both schools are part of the overall School District A, then Jane's hours need to be combined for ACA purposes.
- The final regulations clarify that if an FTE's stability period is longer than the measurement period (e.g., if an employer uses a three month measurement period followed by a six month stability period), the next measurement period must begin on a date during the stability period so there is no break between the end of the first stability period and the beginning of the second stability period.
 - For example, if an entity uses a three month measurement period from January through March, followed by a one month administrative period, the stability period for those employees who averaged 30 hours of service during the measurement period would run from May to October. Under this rule, the next stability period needs to begin in November and run through April of the following year so that there is no break in coverage. Because of this, the measurement period would need to run from July to September, followed by a one month administrative period in October.

This bulletin contains a summary of the changes and clarifications contained in the final regulations of the Shared Responsibility Provision of the ACA. The IRS FAQs related to the final regulations can be found at this website: www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act