

# The Future of Adjunct Teaching at American Colleges and Universities under the Shared Responsibility Provisions of “Obamacare”

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*This article examines the effect that the Affordable Care Act may have on adjunct teaching faculty at universities and colleges across the nation.*

**Keywords:** *Obamacare, Affordable Care Act, Adjunct teaching faculty, tenure track faculty, Carnegie Unit*

## INTRODUCTION

Today, approximately 47% of faculty making up the teaching work force at American colleges and universities are part-time, adjunct faculty (AFT Higher Education, 2010). At community colleges alone, the percentage is much higher. Nearly 70% of the teaching faculty at community colleges is part-time, adjunct. Deployment of part-time faculty began rising in the 1990's and has continued to rise at an astonishing rate.

On June 28, 2012, the United States Supreme Court issued its momentous decision (*National Federation of Independent Business v. Sebelius*, 567 US \_\_\_, 2012), on the Patient Protection and Affordable Care Act (henceforth, the “Affordable Care Act”), commonly known as “Obamacare” (Patient Protection and Affordable Care Act), in which it upheld the Affordable Care Act as a constitutional exercise of Congress’ taxing power. Section 1513 of the Affordable Care Act sets forth the requirement that employers share responsibility for their employees’ health coverage. Section 4980H of the Internal Revenue Code, entitled “Shared Responsibility for Employers Regarding Health Coverage” implements the new law by requiring employers to offer healthcare coverage to their full-time employees or be subject to assessment of a penalty by the Internal Revenue Service (Internal Revenue Service, Internal Revenue Code §4980 H).

The Affordable care Act is problematic for universities and colleges across the nation. Due to rising costs and shrinking budgets, institutions of higher learning have increasingly relied on adjunct teaching faculty to deliver the curriculum (Kezar & Sam, 2010). Adjuncts are usually paid by the course, and only rarely paid by the hour. The problem for administration is in determining how many hours an adjunct is actually working. Under the federal law, employees working over 30 hours are considered full-time, and must be offered affordable health coverage.

The new law is slated to take effect in January, 2014. It is hoped that the federal regulations will set forth a standard that will serve as a measure that colleges and universities can use to determine whether adjunct faculty are serving full-time, thus triggering the requirement to offer benefits or suffer the penalty assessment. Currently, however, the federal law simply puts forth the requirement that institutions of higher learning use a “reasonable method” to determine whether adjuncts are teaching full-time (The Federal Register, 2013).

In the meantime, American colleges and universities are cutting back on adjunct teaching schedules in an effort to avoid the penalty provisions of the Affordable care Act (Greenfield, 2013). This unintended consequence of the new law is making it difficult for adjunct teachers to make ends meet. It is also creating an incentive among adjuncts to misrepresent the hours they work outside of the classroom (Dunn, 2013). The Affordable Care Act was intended to help American workers, but in the case of part-time/adjunct teachers, the new law appears to be hurting more than it helps.

This paper reviews the proposed rules in relevant part, and details the administrative difficulties they pose. While



there is no definitive answer to the dilemma at present, I offer perspectives on the issue of guidance for institutions of higher learning grappling with the adjunct problem.

## THE AFFORDABLE CARE ACT

The Affordable Care Act (the Act) was enacted by the United States Congress on March 23, 2010. Following a lawsuit initiated by twenty-six states, as well as other litigants, the United States Supreme Court upheld the Affordable Care Act as a legitimate exercise of congressional power (National Federation of Independent Business, 2012). Since the Affordable care Act was upheld, the IRS has been engaged in the process of promulgating regulations to carry out the provisions of the Act. Promulgating regulations is carried out in an interactive process involving the Internal Revenue Service and Department of the Treasury. For the limited purposes of this paper, I refer to the regulations as being promulgated by the IRS.

Section 4980H is the part of the new law that mandates shared responsibility for employers that meet the definition of “applicable large employer” as described in the proposed regulations. (Code of Federal Regulations, 26, part 54, section 4980H). As defined in section 4980 H(c)(2), an applicable large employer is an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. A full-time employee is one who is employed at least 30 hours (on average) per week. This calculation is made with respect to any month in the calendar year.

Generally, large employers will be assessed a penalty or payment under Section 4980H in either of the following two circumstances:

1. Under 4980H(a), a payment will be assessed if the employer “fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan and any full-time employee is certified to the employer as having received an applicable premium tax credit or cost sharing reduction”; or
2. Under 4980H(b), a payment will be assessed if the employer “offers its full-time employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan and one or more full-time employees is certified to the employer as having received the applicable premium tax credit or cost-sharing reduction” (See Appendix A). Thus, employers will be assessed a payment if they provide coverage, but that coverage is not affordable or if the coverage does not provide minimum value.

Most colleges and universities are applicable large employers within the meaning of the Affordable Care Act, and are, therefore, subject to the shared responsibility requirements. Shared responsibility will not pose a problem for colleges and universities with respect to tenure track/tenured faculty members, as these employees are generally full-time employees who receive health coverage from the institution. However, the uncertainty about whether adjunct faculty members meet the definition of full-time employees in the regulations is causing a great deal of apprehension for American educational institutions.

The adjunct problem was addressed in comments to the proposed regulations. Specifically, it was noted that educational organizations do not ordinarily track adjunct faculty members’ hours of service, but instead usually pay adjuncts for credits that they teach. The Internal Revenue Service noted:

Until further guidance is issued, employers of employees in positions described in the first paragraph of this section II.B.4 of this preamble (and in other positions that were a similar issues with respect to the crediting of hours of service) must use a reasonable method for crediting hours of service that is consistent with the purposes of section 4980 H. A method of crediting hours would not be reasonable if it took into account only some of the employee’s hours of service with the effect of recharacterizing, as non-fulltime, an employee in a position that traditionally involves more than 30 hours of service per week. For example, it would not be a reasonable method of crediting hours to fail to take into account travel time for a traveling salesperson compensated on a commission basis, or in the case of an instructor, such as an adjunct faculty member, to take into account only classroom or other instruction time and not other hours that are necessary to perform the employee’s duties, such as class preparation time.

## THE ADJUNCT PROBLEM

American colleges and universities employ adjunct faculty to teach courses because it is financially expedient. Since adjuncts are part-time, they are not salaried employees like tenure-track and tenured faculty. Typically, adjuncts are paid by the credit hour (Dunn, 2013). Depending upon the adjunct's level of preparation for teaching, e.g., whether he/she holds a doctoral degree or a master's degree or whether he/she has experience teaching, the institution will pay a set price for each credit hour the adjunct teaches. Course credits are variable, but a typical general education course or business school required course is either 3 or 4 credit hours. Schools often hire one adjunct to teach several courses.

With total institutional debt soaring, colleges and universities have had to rely more heavily on adjuncts in recent years (Greenfield, 2013). According to the National Center for Education Statistics, the percentage of faculty teaching part-time or adjunct at American colleges and universities has increased from 22.2% in 1970 to over 50% in 2011 (National Center, 2012). Adjunct faculty earn roughly 60% less than tenure-track and tenured faculty when salaries are compared on an hourly basis (Kezar & Sam, 2010). Simply put, it is much less expensive to use adjuncts when possible.

Most scholars agree that institutions of higher education began to deploy adjuncts in response to temporary financial stress (Kezar & Sam, 2010). Using adjuncts to teach basic courses, such as general education courses in writing and math, is cost-effective in a number of ways. First, adjuncts are paid significantly less than tenure track/tenured faculty, allowing a school to cover more courses for less money. Also, adjuncts are not generally provided health care or other benefits that tenure track/tenured faculty receive. As enrollments increased in the late 90's, adjuncts could meet rising demand with less expenditure of resources, allowing institutions to maintain tuition at a relatively lower rate (Kezar & Sam, 2010). Second, adjuncts are generally hired in a more streamlined fashion with the dean or other responsible administrator making the decision in his/her sole discretion. The hiring of tenure track faculty takes place in a decentralized hiring process, which can take months to conclude and can be quite costly. Candidates must often be flown in, housed, wined and dined in a ritual of mutual wooing which, it is hoped, will result in a hire. Third, using adjuncts allows for fiscal flexibility. Courses must be scheduled and staffed, but the administrative landscape is unpredictable. Student enrollments may fluctuate, demand for specific courses may decline, and unexpected budgetary constraints may stifle the best laid plans. The use of part-time faculty allows a rapid and seamless response to these issues. These benefits result in effective cost savings for institutions of higher learning (Kezar & Sam, 2010).

The cost savings have been attractive enough to induce institutions to increase reliance on adjuncts, but unexpected benefits flow from using such faculty as well (Kezar & Sam, 2010). For instance, adjuncts are often specialists or experts in their fields, and schools can gain prestige from having renowned part-time faculty on campus. Also, hiring part-time faculty can free tenure track/tenured faculty to pursue research and engage in scholarly activities which are vital to academia.

So, who are part-time/adjunct teachers? Generally speaking, adjuncts are individuals who may be at the end of their careers, either retired or about to retire. They are experts, specialists, and professionals who want to share their experiences. They are aspiring academics who would one day like to have a full-time teaching job. And they are freelancers, making extra money with a part-time gig (Kezar & Sam, 2010). A national survey conducted by Hart Research Associates for AFT Higher Education ("American Academic," 2010), a division of the American Federation of Teachers, reveals that adjuncts are fairly evenly split between men and women at two-year institutions and public four-year institutions. Men represent the majority at private four-year schools. Adjuncts are primarily white, non-Hispanic, and 83% have earned a PhD or a master's degree. Twenty-eight percent of the individuals polled reported that they had been teaching 11 to 20 years at his/her institution, while 57% reported teaching for 10 years or less at his/her institution. Most adjuncts have multiple jobs ("American Academic," 2010).

The survey also reveals that adjuncts teach because they love teaching. Part-time teaching may fit into their lives better than a tenure track position would. They are passionate about their subjects, and while they generally perceive themselves to be underpaid, compensation is not a primary reason for adjunct teaching ("American Academic," 2010). Forty-six percent of part-time faculty earn less than \$15,000 per year. Per course taught, 35% make less than \$2,500 per course, while 42% make more than \$2,500 per course. When it comes to health care, most part-time faculty members do not receive benefits from their employer:



Just 28% of faculty members say their employer at their teaching position provides them with Health Insurance. Among those who are covered, 58% say their employer covers most medical costs (16% say their employer covers all costs), but 34% say their employer only covers half (16 percent) or less (18 percent). Also, most (78 percent) who receive Health Insurance from their employers say their plan covers family members as well. ("American Academic," 2010)

Adjuncts under 50 years of age would prefer full-time teaching positions, while those over age 50 would prefer part-time positions. Sixty-two percent believe that full-time opportunities fall short of their expectations ("American Academic," 2010). Individuals who have taught full-time in the past are even more dissatisfied with opportunities to move to full-time. Seventy-four percent report dissatisfaction in this regard.

The survey also polled adjuncts on what they would like to see improved at their institutions. Forty-seven percent of faculty at four-year institutions saw improving salaries as a distinct priority, while adjuncts at two-year colleges saw greater access to full-time opportunities and health benefits as priorities ("American Academic," 2010). Along gender lines, men were more interested in improving salaries, and women were concerned with access to health benefits.

## THE COMMENTARY ON THE PROPOSED REGULATIONS TO ENFORCE THE AFFORDABLE CARE ACT

The proposed regulations to enforce the shared responsibility provisions of the Affordable Care Act have provoked much commentary. According to an article in *The Chronicle of Higher Education*, more than 500 comments have been collected by the IRS in response to the proposed rules (Dunn, 2013). The American Council on Education (ACE) submitted its comments on March 18, 2013, in which it points out that tenure track/tenured faculty do work and are expected to work more hours outside of the classroom than what is typically expected of adjunct faculty (American Council on Education, 2013). Adjuncts are generally not expected to advise students, nor engage in departmental administration, institutional service, and/or scholarly activity.

American Council on Education (ACE) proposes two options giving educational institutions safe harbor when deploying adjuncts. The first option is to classify adjuncts as full-time employees, thus triggering the shared responsibility provisions of the Act "if the course load they teach meets or exceeds three-quarters of the course load for a full-time, non-tenure-track (NTT) teaching faculty member in that academic department." ACE proposes this comparison because of the noted differences in work expectations for tenure track/tenured faculty. ACE advocates that this is a predictable measure and will fairly reflect actual working hours of adjunct faculty members. In order for an institution to avail itself of this safe harbor, ACE dictates that the institution should have written policies defining adjunct teaching faculty in each academic department in which adjuncts are used.

The second option put forth by ACE is to calculate total hours worked by adjuncts by crediting them with one hour of work outside the classroom for each hour of classroom teaching. ACE says that although this measure could in some cases result in an erroneous calculation of actual hours worked, it "reflects assumptions, practices, and data found at many institutions of higher education."

The New Faculty Majority (NFM) also weighed in on the proposed regulations (Comment to the internal revenue service by the new faculty majority, the national coalition for adjunct in contents and equity, re: shared responsibility for employers regarding health coverage; proposed rule March 18, 2013). NFM is an advocacy group for adjuncts, and so quite understandably, does not view adjuncts as having different, less onerous work expectations than tenure track/tenured faculty. NFM states that—in fact—adjuncts engage in institutional service and scholarly activities, often without formal recognition. Quoting from an article in *The Chronicle of Higher Education*, NFM further asserts that these activities are "expected." NFM proposes that individual campuses determine their own standards for calculating the full-time status of adjuncts, and that the determination of standards be "carried out intentionally, transparently, inclusively, and comprehensively by every institution that employs adjunct faculty" (Jenkins, 2011). Finally, the American Association of University Professors (AAUP) advocates that colleges and universities appreciate the importance of providing health coverage to their employees. In a recent article in *The Chronicle of Higher Education*, AAUP is quoted as saying: "We call on [colleges and universities] to comply with the law and devise fair methods of calculating adjunct faculty hours, methods that fully take into account the many activities in which such faculty members engage"



(Dunn, 2013).

To be sure, American colleges and universities use a great number of adjunct faculty members in their instructional workforces. The number of credits that adjuncts teach varies greatly among individual adjuncts, and for individual adjuncts, who may teach one course one semester and three courses the next. It is also true that adjuncts teach in all disciplines and that depending upon the academic department, adjunct work expectations will vary. Also, depending upon the courses that adjuncts teach, actual work hours outside of the classroom will vary. Adjuncts who teach writing are widely recognized to work more hours than adjuncts who teach in lower level business or humanities courses, for example. As a result of these inevitable differences, there may be no “one size fits all” standard for calculating adjunct hours of service for the purposes of the new law.

Nevertheless, the ambiguity in the current version of the proposed regulations requiring institutions of higher learning to employ a “reasonable standard” to determine adjunct hours is untenable. Without guidance, colleges and universities are worried that they will run afoul of the new rules, thus triggering the penalty provisions. The IRS has said that guidance may be forthcoming, but for the time being, the “reasonable” standard is to be used.

In response to this lack of guidance, institutions are cutting back on the credits adjuncts are teaching on their campuses (Jenkins, 3). Money is a big factor for American colleges and universities. And money is, after all, the driving factor that led to the adjunct explosion across America. It only stands to reason that money will drive colleges and universities to attempt to cut adjunct teaching loads to avoid being assessed payments by the IRS. This doesn’t mean that fewer courses will be taught by adjuncts, although that may happen on individual campuses, only that more adjuncts will be used because each individual adjunct will teach fewer courses.

What does this mean for adjunct teachers? *The Chronicle of Higher Education* reports that adjuncts are beginning to teach courses at different institutions to make ends meet. Whereas an adjunct may have been teaching three courses, nine to twelve hours depending on the institution, now the same person will be teaching one course, perhaps two courses at most, leading to a substantial reduction in his/her already notoriously paltry salary (Ryesky, 2013).

This, added to the general lack of support that adjuncts receive from their institutions, is making life harder for these workers. Adjuncts are often denied adequate working space, resources for development, and other means widely regarded as necessary for tenure track/tenured faculty members. Adjuncts are not accorded the recognition that they deserve for being a vital part of the majority of academic institutions in the United States. The response they are receiving so far from institutions that are understandably concerned about meeting the requirements of the new shared responsibility provisions adds injury to insult.

## CONCLUSION

It is ironic that a law that was intended to make the lives of workers in America better would have the opposite result for a class of workers whose services are a vital component of higher education today. Left to their own devices, American colleges and universities have shown that they will err on the side of caution with respect to calculating adjuncts’ hours of service. Without guidance from the IRS, rather than chance a penalty which they can ill-afford, institutions of higher learning are making the lives of adjunct faculty members more difficult.

At the same time, it is clear that the IRS is limited with respect to available options for guiding American colleges and universities as they navigate the new legal landscape. As has been noted, one option is to simply multiply the number of credit hours an adjunct teaches by some factor. The “Carnegie Unit” sets a standard which counts three hours for every credit hour taught, so that, for every hour an adjunct spends in the classroom, he/she is calculated to actually work three hours. However, educators say that the Carnegie hour is misleading. Some courses take much less time outside the classroom to prepare lectures, grade, etc. While other courses take more than the two additional hours specified by the Carnegie Unit. By all accounts, the three to one ratio does not accurately reflect actual hours worked by many adjunct faculty members. Some commenters recommend a two to one ratio; at least that’s predictable. But again, it will not be an accurate measure in many cases.

The other proffered measure is to compare the credits taught by adjuncts with those taught by tenure track/tenured faculty. This option suffers from the same deficiency. Work expectations for adjuncts do differ. The comparison model



will result in at least as much error as the ratio model.

It may be that NFM's proposal to allow teaching institutions to determine their own standards to calculate adjunct hours of service is best. It is notable that it is the option put forth by the group dedicated to advocacy on behalf of adjunct teachers. Allowing for flexibility in this area may protect both the institutions and the adjuncts. Institutions that develop standards in a transparent manner, taking into account all of the variations in adjunct services on their campuses and applying those standards in an ethical manner, could be spared the harshness of an assessed penalty.

At the same time, allowing institutions to set their own standards could lead to further distortion. *The Chronicle of Higher Education* reports that, in some cases, adjuncts have an incentive to lie about the hours they work so as not to lose their employment (Jenkins, 3). As noted by the article, in one example, a university issued a policy that limited all adjuncts to 29 hours per week. This could lead adjuncts to misrepresent the time they spend outside of the classroom.

There may be no reliable manner for calculating adjunct hours of service. Perhaps the best that can be achieved for all concerned is predictability. Only the IRS can achieve this result. For now, however, in the absence of much needed guidance, the proposed rules are wreaking havoc in the lives of the very workers the new law aims to protect.

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## APPENDIX A

The applicable provision of the Affordable Care Act is reprinted below:

SEC. 1513. SHARED RESPONSIBILITY FOR EMPLOYERS.

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.

“(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—

If—

“(1) any applicable large employer fails to offer to its fulltime employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employersponsored plan (as defined in section 5000A(f)(2)) for any month, and

“(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee, then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.