

**TESTIMONY**

**OF**

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**ON BEHALF OF  
THE COLLEGE AND UNIVERSITY PROFESSIONAL  
ASSOCIATION FOR HUMAN RESOURCES**

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**FOR A HEARING ENTITLED**

**“EXAMINING THE EMPLOYMENT EFFECTIVENESS OF  
THE AFFORDABLE CARE ACT”**

**BEFORE**

**THE JOINT ECONOMIC COMMITTEE**

Chairman Coats, Ranking Member Maloney and Honorable Members of the committee, thank you for the opportunity to appear before you today to discuss the Affordable Care Act and its impact on colleges and universities.

I am the Associate Vice Chancellor for Human Resources at North Carolina State University. I am speaking on behalf of the College and University Professional Association for Human Resources, known as CUPA-HR. CUPA-HR represents more than 1,900 institutions of higher education and more than 18,000 HR professionals and other campus leaders. I am the Chair-elect of CUPA-HR's national Board of Directors and have chaired the Board's committee on public policy for the last two years.

CUPA-HR appreciates and supports the ACA's overarching goal of ensuring that Americans have access to health care coverage. Higher education for the most part is a sector that has historically provided healthcare benefits for its fulltime faculty and staff. So for higher ed, implementation of the ACA did not result in new coverage requirements for its primary population of campus employees. Colleges and universities have encountered new challenges, however, with collateral impact of the ACA's employer mandate on a couple of unanticipated populations in higher ed: specifically part-time professionals and students.

As a sector, higher ed tends to employ a fair number of part-time professionals, ranging from adjunct faculty who teach on a per-course basis to part-time coaches in non-revenue sports. We also provide opportunities for our own students to earn financial support by performing compensated activities on campus. Students whose primary purpose for being on campus is to pursue learning and to seek an education, rather than to earn a living, are just that -- students -- and are not "employees" of the institution.

I would like to share some of the difficulties of having to apply the employer mandate to students, which is the current state of things. Colleges and universities understand the important role employer provided health care plays in ensuring the health and wellbeing of our nation. Our members provide robust benefits to their employees. According to CUPA-HR's 2014 survey: 82% of our members offer employees PPO plan coverage; 36% offer HMO plans; two-thirds offer employees dental and vision benefits; 42% offer coverage to at least some part-time staff; and nearly half provide health coverage for retirees.

Students who work on campus, however, generally do not share the same needs or status as employees, and campuses have not historically offered health coverage or other employee benefits such as retirement contributions or paid vacation days to students as part of the employer-sponsored plans we provide to true employees. Students by their nature have a temporary relationship with their institution, and their primary purpose for being at a college or university is to receive an education, rather than to be employed. Colleges and universities generally view the funds that students

receive for on-campus assignments as a form of financial aid to support the continuation of their degree progress rather than as salary or wages for performing services that primarily benefit the employer.

Even though we don't cover students under our employee healthcare plans, the vast majority of students have access to health coverage through their family's plan, or through a government-regulated student health insurance plan, or SHIP plan, provided by the college or university.

Nonetheless, the ACA does not specifically exclude student workers from the employer mandate, and to date, the Department of Treasury has only provided a limited exemption, for students working as part of formal federal or state work-study programs—an exemption we requested and appreciate.

As result, colleges and universities—which, like other employers, must provide coverage to 95% of their full time employees in 2016—are facing the prospect of offering employee healthcare coverage to any students who may exceed the ACA's eligibility threshold. Offering student workers such coverage would substantially increase administrative burdens, costs, and liabilities to higher education institutions, at the same time that higher ed is under ever-increasing pressure to keep the costs of education as low as possible. While a handful of schools have sizeable endowments, the revenue of the vast majority of colleges and universities must come from only one or two essential sources: either tuition or governmental support. With government support increasingly constrained, significant new costs must be borne by an institution in the form of higher tuition to students. To avoid these burdens, costs and liabilities, many colleges and universities are being forced to cut on-campus work opportunities for students and limit the amount of time that students can work.<sup>1</sup> Unfortunately, we expect more schools will do so as 2016 and the ACA's 95% coverage requirement approaches. Such limits will be particularly impactful on students with limited or no family resources, for whom campus financial opportunities are their primary source of support other than incurring student debt.

Cuts to student work hours and reductions in student opportunities will be particularly drastic in jobs where tracking student work hours is difficult. For example, colleges and universities do not track hours for graduate student research assistants or residence life assistants. When is a grad student, who's conducting research in a lab under the supervision of a faculty member, learning for his or her own – and society's – benefit, vs. 'working' for the university's benefit? When is a dormitory resident advisor 'working' vs. 'hanging out' and getting opportunities to have campus housing and demonstrate mentorship skills? Because calculating hours in these situations is impractical, institutions may err on the side of caution and impose dramatic cuts, which could

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<sup>1</sup> See articles highlighting this trend at <http://www.thecollegefix.com/post/19847/> and <http://news.investors.com/politics-obamacare/090514-669013-obamacare-employer-mandate-a-list-of-cuts-to-work-hours-jobs.htm>.

severely and negatively impact opportunities for students. Another group potentially impacted would be students who receive stipends for engaging in various campus activities. Colleges and universities often provide stipends to students participating in activities such as student government, student publications, drama clubs, bands, debate teams, radio stations, and intramural and interscholastic athletics. Colleges and universities do not track these students' participation as "work" hours -- and the stipends are not considered compensation for work, but rather a manner by which the institution can help students, who might need to otherwise seek paid employment, to participate in these activities. While the U.S. Department of Labor has recognized that a student may receive payment for participation in such activities without creating an "employment relationship,"<sup>2</sup> Treasury has yet to provide such assurances with respect to the ACA. As a result, colleges and universities may conclude they must simply stop providing stipends in these situations.

This is a bad outcome for students; a bad outcome for parents; and a bad outcome for colleges and universities.

Treasury recognized this to some extent, and it exempted work-study students from the ACA employer mandate. But there are many similar students who are subsidized directly by their institutions rather than by a federal or state aid program, although with the same goals in mind: supporting their financial needs and making progress toward degree attainment.

CUPA-HR, the American Council on Education and other higher education associations have approached Treasury with several possible solutions to this problem. We have met with the agency several times since 2013 and sent two letters, one dated [March 18, 2013](#) and the other [June 16, 2013](#) – both of which I have included as part of my written testimony. In the letters, we asked that the agency to issue guidance that excludes from the ACA employer mandate any hours where students are exempt from the requirements of the Fair Labor Standards Act (FLSA) as set forth in [DOL's Field Operations Handbook at sections 10b03\(e\), 10b11, 10b14, 10b18, and 10b24](#). DOL acknowledges in the Handbook the reality that in many cases students worker and the nature of the functions they perform significantly differ from typical employees so much so that they warrant special treatment (e.g., the functions are deemed not to be "work" or the student is deemed not to be an "employee"). By mirroring the DOL Handbook, Treasury would exempt from the employer mandate student employees such as graduate research assistants, resident life assistants and those receiving a stipend for participation in student activities. Treasury itself has recognized the unique nature of such student workers on campus by largely exempting them from employee FICA taxes.

Treasury might also consider another approach: deeming colleges and universities in compliance with ACA if the institution offers those students coverage under an ACA-

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<sup>2</sup> U.S. Department of Labor, Field Operations Handbook, Section 10b03(e).

compliant SHIP plans. According to the federal government, approximately 1.1–1.5 million students receive health coverage under student health plans.<sup>3</sup> The Department of Health and Human Services (HHS) issued final regulations on SHIP plans imposing ACA's coverage mandates to them. Significantly, the rule proposed by HHS designates self-funded student health plans as minimum essential coverage, meaning that a student who is covered by such a plan meets his or her individual mandate under the ACA.

We believe these solutions are within Treasury's authority, and by taking action, the agency could prevent unnecessary negative outcomes for students, parents and universities. I would like to note here that Treasury has responsive to our request to meet and has been willing to engage in thoughtful dialogue on these issues. We wish they would act rapidly with respect to the solutions we have offered. Again, as you consider these solutions please keep in mind the unique role student employment plays in helping students progress toward degree attainment and the fact that the vast majority of students have access to ACA compliant health care coverage through family or student plans.

I want to highlight one more issue with the application of the ACA to SHIP plans—particularly with respect to coverage for graduate students. Many schools provide graduate students with SHIP coverage at no or a greatly reduced cost as part of a graduate assistantship package. In a recent webinar, a well-known benefits consulting firm stated that the IRS had provided informal guidance that this practice is not permitted pursuant to IRS Notice 2013-54 and institutions could face fines of \$36,500 per impacted individual.

In reviewing the Notice, we think that this informal guidance is based on a misperception of the law. Without clarification, however, the informal guidance is causing great concern on campuses because it interferes with longstanding practice intended to enhance access to higher education and lower the cost of graduate education. We reached out just last week to the IRS to seek clarification and hope to hear from them soon.

As mentioned earlier, campuses were also struggling to apply the employer mandate to adjunct faculty, who are typically paid for a specific academic deliverable (preparing and teaching a specific course) rather than by the hour. Colleges and universities do not track work "hours" for any faculty, and doing so is impractical if not impossible.

Along with the American Council on Education and several other higher education associations, in 2013, we approached Treasury about the application of the ACA to adjunct faculty. In the absence of any method for calculating adjunct hours, several institutions had announced they would need to aggressively limit course loads for those adjunct faculty for whom they could not afford to provide coverage.

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<sup>3</sup> See 77 Fed. Reg. 16,453 (issued Mar. 21, 2012).

After several meetings with higher education associations and groups representing adjunct faculty, Treasury created a “safe harbor,” which institutions may rely upon to count adjunct ‘hours’ for ACA purposes. This safe harbor, which allows institutions to calculate 2¼ hours of total work effort for every 1 credit hour taught, is being used by close to 70% of our member institutions, according to a recent survey. Treasury also allowed for other ‘reasonable’ calculation methods. While many colleges and universities continue to limit adjunct course loads to avoid ACA coverage requirements in the face of economic constraints, the limitations they are imposing on course loads are less severe than were being contemplated prior to the creation of the safe harbor.

Higher ed also has significant concerns about the impact on campuses of the ACA’s 40% excise tax on so called “high cost” health plans.

Starting January 1, 2018, the federal government will begin imposing the 40% tax on employer plans that cost more than government-set thresholds—currently \$10,200 for individual coverage, and \$27,500 for family coverage. The tax will apply to every dollar spent above the threshold and will not be tax deductible by the employer.

According to our most recent benefits survey, 10% of our member institutions *already* have plan costs that exceed the 2018 threshold. Given that our survey did not factor in flexible spending account reimbursements, contributions to health saving accounts and similar costs beyond premiums, 10% is an underestimate of the number of immediately-impacted institutions.

Unfortunately in coming years, even more plans and the employees they cover will be impacted by the excise tax. Annual increases to threshold levels are tied to the consumer price index (CPI), even though medical inflation has historically grown much faster than CPI. As a result, the cost of these plans will almost certainly increase much faster than the threshold, and the excise tax will apply to increasing numbers of plans every year. As explained in a report by American Health Policy Institute (AHPI), a nonpartisan think tank, “the inexorable increase in health care costs will eventually cause Chevrolet benefit plans to be taxed as Cadillacs.”

The excise tax is currently scheduled to go into effect in 2018, but many colleges and universities are already having to contemplate the extensive impact it will have on their costs as they negotiate multi-year collective bargaining agreements with unions, for example, and other contracts that reach through 2018.

In the face of this tax, many will be forced to bear additional significant costs imposed by the tax, or significantly reduce health benefits they provide for their employees, or both. This cannot be what Congress intended, so we encourage a reconsideration of the excise tax’s impact.

In closing, I would like to express my gratitude to the members of the committee for your time and attention today, and I hope that bringing some of our most pressing concerns regarding the ACA will help result in workable solutions. I personally thank you for this opportunity to testify. I would be happy to answer any questions you may have.