

reimbursements or other fees each time they respond to a call. Commenters generally expressed concern that volunteer service would be discouraged if volunteer hours were required to be counted when determining whether the individual is a full-time employee for purposes of section 4980H.

In response to these concerns, the final regulations provide that hours of service do not include hours worked as a “bona fide volunteer.” For this purpose, the definition of “bona fide volunteer” is generally based on the definition of that term for purposes of section 457(e)(11)(B)(i), which provides special rules for length of service awards offered to certain volunteer firefighters and emergency medical providers under a municipal deferred compensation plan. For purposes of section 4980H, however, bona fide volunteers are not limited to volunteer firefighters and emergency medical providers. Rather, bona fide volunteers include any volunteer who is an employee of a government entity or an organization described in section 501(c) that is exempt from taxation under section 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

2. Student Employees

Commenters from educational organizations requested that special rules apply for determining the hours of service of employees who are also students of an educational organization. These comments generally fell into two categories. First, commenters expressed concern about the impact of section 4980H on federal work

study programs under which a student receives financial aid in the form of a federally subsidized work assignment. Commenters posited that if educational organizations were required to aggregate hours of service performed by the student employee in the context of the work study program with hours of service performed by the student employee for the educational organization in other capacities (for example, a non-work study position with the campus bookstore) in determining whether the student is a full-time employee for purposes of section 4980H, it could discourage educational organizations from hiring students in other capacities in addition to their work study positions. Second, commenters requested that hours of service performed for an outside employer by students through an internship or externship program sponsored by an educational organization not be counted as hours of service for the outside employer for section 4980H purposes. The commenters suggested that, without such an exception, outside employers would be discouraged from offering internships or externships to students, which could have a detrimental impact on the educational system.

The federal work study program, as a federally subsidized financial aid program, is distinct from traditional employment in that its primary purpose is to advance education. See 34 CFR 675. To avoid having the application of section 4980H interfere with the attainment of that goal, the final regulations provide that hours of service for section 4980H purposes do not include hours of service performed by students in positions subsidized through the federal work study program or a substantially similar program of a State or political subdivision thereof. However, the final regulations do not include a general exception for student employees. All hours of service for which a

student employee of an educational organization (or of an outside employer) is paid or entitled to payment in a capacity other than through the federal work study program (or a State or local government's equivalent) are required to be counted as hours of service for section 4980H purposes.

With respect to internships and externships, services by an intern or extern would not count as hours of service for section 4980H purposes under the general definition of hours of service contained in the regulations to the extent that the student does not receive, and is not entitled to, payment in connection with those hours. However, excluding hours of service for which interns or externs receive, or are entitled to receive, compensation from the employer from the definition of hours of service for section 4980H purposes would be subject to potential misuse through labeling positions as internships or externships to avoid application of section 4980H. The final regulations do not adopt a special rule for student employees working as interns or externs for an outside employer, and, therefore, the general rules apply, including the option to use the look-back measurement method, as appropriate, or the monthly measurement method.

3. Members of Religious Orders

A commenter requested clarification about whether members of religious orders must be treated as full-time employees of their orders for purposes of section 4980H. As noted in section VI.C of this preamble, the Treasury Department and the IRS continue to consider additional rules for the determination of hours of service for purposes of section 4980H with respect to certain categories of employees whose hours of service are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special