DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

January 10, 2014

The Honorable Barbara Mikulski
United States Senate
Washington, DC 20510

Dear Senator Mikulski:

I am writing regarding your interest in how the employer shared responsibility provisions of the Affordable Care Act will apply to volunteer firefighters and volunteer emergency medical personnel. In particular, you have urged the Treasury Department to consider not requiring the volunteer hours of these personnel to be counted in determining an employer's full-time employees or full-time equivalent employees for purposes of the employer shared responsibility rules. We appreciate your efforts and leadership on behalf of the volunteer emergency responder community, and want to assure you that we share your concern that emergency volunteer service be accorded appropriate treatment.

Treasury and the IRS issued proposed regulations providing guidance on the employer shared responsibility provisions under section 4980H of the Internal Revenue Code (Code) in December 2012 and invited public comments. Numerous comments were received from individuals and local fire and EMS departments that rely on volunteers, from the International Association of Fire Chiefs (IAFC), and from Members of Congress. The comments generally suggested that the final employer responsibility rules not count volunteer hours of nominally compensated volunteer firefighters and emergency medical personnel in determining an employer's full-time employees or full-time equivalent employees.

Treasury and the IRS carefully reviewed those comments and spoke with IAFC representatives to gain a better understanding of the specific issues presented by volunteer firefighters and volunteer emergency personnel under the employer responsibility provisions. Treasury and the IRS also reviewed pertinent rules that apply to such volunteer personnel under other laws. These include the statutory provisions applicable to bona fide volunteers for different purposes under Code section 457(e)(11) (relating to deferred compensation plans of state and local governments and tax-exempt organizations) and rules governing the treatment of volunteers for purposes of the wage and hour laws. As a result of that review and further analysis concerning the appropriate treatment of volunteer firefighters and volunteer emergency personnel under section 4980H, the forthcoming final regulations generally will not require volunteer hours of bona fide volunteer firefighters and volunteer emergency medical personnel at governmental entities or tax-exempt organizations to be counted when determining an employer's full-time employees or full-time equivalent employees.

The forthcoming final regulations, which we expect to be issued very shortly, should provide timely guidance for the volunteer emergency responder community. Under the transition relief announced by Treasury in July of 2013, no employer shared responsibility payments will be assessed for 2014; such payments will be assessed only for 2015 and subsequent years (see IRS Notice 2013-45).

I hope this information is helpful. And thank you for the important insights you have provided with this issue. If you have any questions, please contact me, or ask a member of your staff to contact Sandra Salstrom at 202-622-1900.

Sincerely,

Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs