

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## HIPAA Nondiscrimination

### REG-114082-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8931 on page 542 of this Bulletin, the IRS is issuing temporary and final regulations governing the provisions prohibiting discrimination based on a health factor for group health plans. The IRS is issuing the temporary and final regulations at the same time that the Pension and Welfare Benefits Administration of the U.S. Department of Labor and the Health Care Financing Administration of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations governing the provisions prohibiting discrimination based on a health factor for group health plans and issuers of health insurance coverage offered in connection with a group health plan under the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers and group health plans relating to the group health plan nondiscrimination requirements. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by April 9, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-114082-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:M&SP:RU (REG-114082-00), room 5226, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by

selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at:

[http://www.irs.gov/tax\\_regs/regslst.html](http://www.irs.gov/tax_regs/regslst.html).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Russ Weinheimer at 202-622-6080; concerning submissions of comments or requests for a hearing, Sonya Cruse at 202-622-7190 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Paperwork Reduction Act**

The collection of information referenced in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information are in §54.9802-1T (see the temporary regulations published elsewhere in this issue of the Bulletin). The collections of information are required so that individuals denied enrollment in a group health plan based on one or more health factors will be apprised of their right to enroll in the plan without regard to their health. The likely respondents are business or other for-profit institutions, nonprofit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are required of plans that have denied enrollment to individuals based on one or more health factors.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and

Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by April 9, 2001. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information (see the preamble to the temporary regulations published elsewhere in this issue of the Bulletin);
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

#### **Background**

The temporary regulations published in T.D. 8931 add a new §54.9802-1T to the Miscellaneous Excise Tax Regulations.<sup>1</sup> When these proposed regulations are published as final regulations, they will supplement the final regulations in §54.9802-1 published in T.D. 8931. The proposed, temporary, and final regulations

<sup>1</sup> A previous §54.9802-1T was published in the Federal Register on April 8, 1997. By operation of section 7805(e) of the Internal Revenue Code, the previous §54.9802-1T expired on April 8, 2000. Proposed regulations containing the same text as previous §54.9802-1T were also published on April 8, 1997, and final regulations based on those proposed regulations are being published in the Federal Register as §54.9802-1. The new §54.9802-1T being published in T.D. 8931 consists almost entirely of new guidance not contained in the previous §54.9802-1T.

are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

### Special Analyses

This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Operating Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department participated in their development. The proposed regulations, as well as the temporary regulations, have

been developed in coordination with personnel from the U.S. Department of Labor and the U.S. Department of Health and Human Services.

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### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

#### PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 54.9802-1 is amended to read as follows:

*§54.9802-1 Prohibiting discrimination against participants and beneficiaries based on a health factor.*

[The text of the proposed amendments to this section is the same as the text of §54.9802-1T published in T.D. 8931].

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on January 5, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 8, 2001, 66 F.R. 1435)

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