

## **IRS NOTICE 90-58**

### **Continuation of Employer Health Coverage for Activated Reservists and Their Families**

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The calling up of military reservists to active duty during the current crisis in the Mideast has prompted a large number of inquiries about continuing health coverage for reservists and their families. This notice addresses the voluntary maintenance of group health plan coverage by employers and the COBRA continuation coverage requirements in section 4980B of the Internal Revenue Code. Group health plans that are subject to those requirements must give certain individuals an opportunity to continue coverage at their own expense.

#### **May an employer voluntarily maintain coverage?**

Yes. The Internal Revenue Service is aware that many employers will voluntarily maintain full coverage under their group health plans for reservists and their families, with no increase in employee contributions. These plans will not have to offer the reservists or their family members a COBRA election. In addition, employer contributions for the cost of that coverage will continue to be excludible from the gross income of the reservists under section 106 of the Code.

#### **What if an employer does not voluntarily maintain coverage?**

If an employer does not voluntarily maintain coverage for the period contemplated in section 4980B and the group health plan is otherwise subject to the requirements of that section, there is a "qualifying event" for COBRA purposes. In these situations, section 4980B requires that the group

health plan offer the reservist and the reservist's spouse and dependent children (if they are covered under the plan) an election to continue coverage at their own expense. Section 4980B and title I of the Employee Retirement Income Security Act of 1974 (ERISA) requires that those persons be furnished a notice of their COBRA rights.

#### **Is an employer's COBRA obligation affected by military health coverage?**

No. In some cases, section 4980B of the Code allows (but does not require) a cutoff of COBRA continuation coverage when a beneficiary is covered under another group health plan. Questions have thus arisen about whether COBRA continuation coverage can be cut off because a reservist receives health coverage as an active duty member of the uniformed services and a reservist's family member may receive health coverage under CHAMPUS.

"Group health plan" is defined in section 4980B by cross-reference to section 5000(b)(1) of the Code, which defines it in terms of an "employer" and the employer's employees. Section 5000(d), however, provides that for purposes of section 5000, "employer" does not include a Federal or other governmental entity. The military health plans, therefore, are not "group health plans" for purposes of the COBRA cutoff rule in section 4980B.

Accordingly, the Service considers that terminating the COBRA continuation coverage of a reservist or family member on the basis of coverage under the military health plans does not constitute good faith compliance with a reasonable interpretation of the statutory requirements.

#### **Drafting information**

The principal author of this notice is Mark Schwimmer of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice, contact Mr. Schwimmer on (202) 566-4625 (not a toll-free call).