

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 54**

[REG-114494-10]

RIN 1545-BJ45

**Group Health Plans and Health Insurance Issuers Providing Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** Elsewhere in this issue of the **Federal Register**, the IRS is issuing temporary regulations under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) dealing with coverage of dependent children to age 26. The IRS is issuing the temporary regulations at the same time that the Employee Benefits Security Administration of the U.S. Department of Labor and the Office of Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations with respect to group health plans and 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, group health plans, and health insurance issuers providing group health insurance coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by August 11, 2010.**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-114494-10), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG-114494-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-114494-10).**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Karen Levinat 202-622-6080; concerning submissions of comments, *Richard.A.Hurst@irs.counsel.treas.gov*, 202-622-7180 (not toll-free numbers).**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act**

The collection of information contained 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)). 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, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 12, 2010. 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 burdens associated with the proposed collection of information (*see* the preamble to the temporary regulations published elsewhere in this issue of the **Federal Register**);
- 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.

The collection of information is in § 54.9815-2714T(f) (*see* the temporary regulations published elsewhere in this issue of the **Federal Register**). The temporary regulations require that group health plans and group health insurance coverage offer an enrollment opportunity (including written notice of the enrollment opportunity) to certain individuals who did not obtain coverage under a group health plan or group health insurance coverage prior to the effective date of amendments made by the Affordable Care Act to section 2714 of the Public Health Service Act (which is incorporated by reference into section 9815 of the Code). The individuals to

whom the enrollment opportunity must be given are those who were not eligible for dependent coverage of a child below the age of 26 but, after the effective date of section 2714 of the Public Health Service Act, are entitled to be eligible for coverage under a group health plan or group health insurance coverage. The likely respondents are business or other for-profit institutions, and nonprofit institutions. Responses to this collection of information are mandatory.

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.

Books or records relating to a collection of information may 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.

**Background**

The temporary regulations published elsewhere in this issue of the **Federal Register** add § 54.9815-2714T to the Miscellaneous Excise Tax Regulations. The proposed and temporary regulations 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**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. 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 proposed regulation. It is hereby certified that the collection of information contained in this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The temporary regulations require both group health insurance issuers and group health plans to provide a notice of opportunity to enroll to certain individuals who, prior to the effective date of the amendments made to section 2714 of the Public Health Service Act, were not eligible to enroll for dependent coverage of children but

who are eligible after those amendments take effect. Under the temporary regulations, if a health insurance issuer satisfies this notice obligation, it is satisfied not just for the issuer but also for the group health plan. For group health plans maintained by small entities, it is anticipated that the health insurance issuer will satisfy this notice obligation for both the plan and the issuer in almost all cases. For this reason, the information collection requirement will not impose a significant impact on a substantial number of small entities. 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 regulation has been 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) or electronic comments 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 Karen Levin, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. 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.

#### **List of Subjects in 26 CFR Part 54**

Excise taxes, Pensions, Reporting and recordkeeping requirements.

#### **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 is amended by adding an entry in numerical order to read as follows:

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

Section 54.9815–2714 also issued under 26 U.S.C. 9833. \* \* \*

**Par. 2.** Section 54.9815–2714 is added to read as follows:

#### **§ 54.9815–2714 Eligibility of children until at least age 26.**

[The text of proposed § 54.9815–2714 is the same as the text of § 54.9815–2714T published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010–11393 Filed 5–10–10; 4:15 pm]

**BILLING CODE 4830–01–P**