

result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made, in good faith, by the research analyst that may adversely affect the futures commission merchant's or introducing broker's present or prospective trading or clearing activities.

(d) *Clearing activities.*

(1) No futures commission merchant shall permit any affiliated swap dealer or major swap participant to directly or indirectly interfere with, or attempt to influence, the decision of the clearing unit personnel of the futures commission merchant with regard to the provision of clearing services and activities, including but not limited to:

(i) Whether to offer clearing services and activities to customers;

(ii) Whether to accept a particular customer for the purposes of clearing derivatives;

(iii) Whether to submit a transaction to a particular derivatives clearing organization;

(iv) Setting risk tolerance levels for particular customers;

(v) Determining acceptable forms of collateral from particular customers; or

(vi) Setting fees for clearing services.

(2) Each futures commission merchant shall create and maintain an appropriate informational partition between business trading units of an affiliated swap dealer or major swap participant and clearing unit personnel of the futures commission merchant. At a minimum, such informational partitions shall require that:

(i) No employee of a business trading unit of an affiliated swap dealer or major swap participant may review or approve the provision of clearing services and activities by clearing unit personnel of the futures commission merchant, make any determination regarding whether the futures commission merchant accepts clearing customers, or participate in any way with the provision of clearing services and activities by the futures commission merchant;

(ii) No employee of a business trading unit of an affiliated swap dealer or major swap participant shall supervise, control, or influence any employee of a clearing unit of the futures commission merchant; and

(iii) No employee of the business trading unit of an affiliated swap dealer or major swap participant shall influence or control compensation or evaluation of any employee of the clearing unit of the futures commission merchant.

(e) *Undue Influence on Customers.* Each futures commission merchant and introducing broker must adopt and

implement written policies and procedures that mandate the disclosure to its customers of any material incentives and any material conflicts of interest regarding the decision of a customer as to the trade execution and/or clearing of the derivatives transaction.

(f) All records that a futures commission merchant or introducing broker is required to maintain pursuant to this regulation shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission.

Issued in Washington, DC, on November 10, 2010, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

**Statement of Chairman Gary Gensler**

*Implementation of Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers*

I support the proposed rulemakings that establish firewalls to ensure a separation between the research arm, the trading arm and the clearing activities of swap dealers, major swap participants, futures commission merchants and introducing brokers. This rule proposal relates to the conflicts-of-interest provisions of the Dodd-Frank Act that direct swap dealers and major swap participants to have appropriate informational partitions. The proposal builds upon similar protections in the securities markets as mandated in the Sarbanes-Oxley Act. The proposed rules will protect market participants and the public while also promoting the financial integrity of the marketplace.

[FR Doc. 2010-29003 Filed 11-16-10; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 54**

[REG-118412-10]

RIN 1545-BJ50

**Group Health Plans and Health Insurance Coverage Rules Relating to Status as a Grandfathered Health Plan 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:** In the Rules and Regulations section of this issue in the **Federal Register**, the IRS is issuing temporary regulations regarding status as a grandfathered health plan under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) in connection with changes in policies, certificates, or contracts of insurance. The temporary regulations provide guidance to employers, group health plans, and health insurance issuers providing group health insurance coverage. 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 text of the temporary regulations being issued by the IRS serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by December 17, 2010.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-118412-10), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR (REG-118412-10), 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-118412-10).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Karen Levin at 202-622-6080; concerning submissions of comments or to request a hearing, Regina Johnson at 202-622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations published elsewhere in this issue of the **Federal Register** amend § 54.9815-1251T of 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 and these proposed 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 amendment to the temporary regulations adds a new third-party disclosure requirement so that it also applies to a group health plan that is changing health insurance coverage. The group health plan must provide to a succeeding or new health insurance issuer (and the succeeding or new health insurance issuer must require) documentation of plan terms (including benefits, cost sharing, employer contributions, and annual limits) under the prior health insurance coverage sufficient to make a determination whether a change described in § 54.9815–1251T(g)(1) has occurred. The hour and cost burden associated with this requirement is de minimis, because group health plans can satisfy the requirement by providing a copy of the policy or summary plan description to the succeeding or new health insurance issuer. This is not a significant burden for any plan and thus will not have 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 this amendment to the proposed regulations, including the prospective effective date of the rule and how that affects plans with different plan years. 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, Health care, Health insurance, 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 continues to read in part as follows:

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

**Par. 2.** Section 54.9815–1251 as published on June 17, 2010, at 75 FR 34571, is amended by revising paragraphs (a)(1), (a)(3)(ii), (f), and (g)(4) *Example 9* to read as follows:

#### § 54.9815–1251 Preservation of right to maintain existing coverage.

(a) \* \* \* (1) [The text of proposed § 54.9815–1251(a)(1) is the same as the text of § 54.9815–1251T(a)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) \* \* \*

(ii) [The text of proposed § 54.9815–1251(a)(3)(ii) is the same as the text of § 54.9815–1251T(a)(3)(ii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(f) [The text of proposed § 54.9815–1251(f) is the same as the text of

§ 54.9815–1251T(f) published elsewhere in this issue of the **Federal Register**].

(g) \* \* \*

(4) \* \* \*

*Example 9.* [The text of proposed § 54.9815–1251(g)(4) *Example 9* is the same as the text of § 54.9815–1251T(g)(4) *Example 9* published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010–28866 Filed 11–15–10; 4:15 pm]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Part 147

[Docket No. OCIIO–9986–NC]

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2590

### Affordable Care Act; Federal External Review Process; Request for Information

**AGENCY:** Office of Consumer Information and Insurance Oversight, Department of Health and Human Services; Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice; request for information.

**SUMMARY:** This notice is a request for information (RFI) to gain market analysis information in advance of one or more future Requests for Proposals (RFP). On July 23, 2010, the Departments of Health and Human Services, Labor, and the Treasury published interim final regulations regarding, among other things, procedures for external review of health plan denials. The regulations include a provision for a Federal external review process in instances where there is no applicable State process. This RFI solicits information that will enable the Departments of Health and Human Services (HHS) and Labor (DOL) to conduct a market analysis and assist the Departments in planning and developing the Federal external review process. HHS and/or DOL may contract for services required to fulfill the statutory and regulatory requirements of the Federal external review process established under section 2719 of the