

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### **T.D. 9691, page 547.**

Final regulations providing rules on the application of the straddle rules to a debt instrument that is a position in personal property. These regulations are effective on August 27, 2014.

### EXCISE TAX

#### **REG-129507-14, page 561.**

The text of these proposed regulations is the same as the text of Treasury Decision 9690, published elsewhere in this IRB. The proposed and temporary regulations relate to accommodations for certain eligible organizations that have religious objections to coverage of all or a subset of contraceptive services under section 2713 of the Public Health Service Act (PHS Act), added by the Patient Protection and Affordable Care Act and incorporated into the Internal Revenue Code under section 9815, which requires coverage without cost sharing of certain preventive health services by non-grandfathered group health plans and health insurance coverage, including women's preventive health services.

#### **REG-129786-14, page 562.**

This proposed regulation seeks comments on potential changes to the definition of "eligible organization" used in the current final regulations under section 2713 of Public Health Service Act regarding coverage of preventive services, added by the Affordable Care Act and incorporated into the Code in section 9815. These regulations propose to amend the definition of an eligible organization under the current final regulations to include a closely held for-profit entity that has a religious objection to providing coverage for some or all of the contraceptive services otherwise required to be covered and

provide two possible approaches to defining a qualifying closely held for-profit entity.

#### **T.D. 9690, page 548.**

Temporary regulations related to section 2713 of the Public Health Service Act (PHS Act), added by the Patient Protection and Affordable Care Act and incorporated into the Internal Revenue Code under section 9815, which requires coverage without cost sharing of certain preventive health services by non-grandfathered group health plans and health insurance coverage, including women's preventive health services. These temporary regulations amend July 2013 final regulations to provide an alternative process whereby an eligible organization sponsor of a group health plan or an institution of higher education may notify HHS in writing of its religious objection to coverage of all or a subset of contraceptive services, as an alternative to the EBSA Form 700 method of self-certification. These temporary regulations were published jointly with the Departments of Labor and of Health and Human Services.

### ADMINISTRATIVE

#### **Rev. Proc. 2014-52, page 560.**

This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2014.

Finding Lists begin on page ii.  
Index for July through September begins on page iv.



# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

## Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those

reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does NOT ACQUIESCE in the following decisions:

**Dixon v. Commissioner,**<sup>1</sup>  
141 T.C. No. 3 (2013).

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<sup>1</sup>Nonacquiescence relating to whether the Service is obligated to honor an employer’s designation of delinquent employment tax payments toward a specific employee’s income tax liability.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 1092.—Straddles

26 CFR 1.1092(d)–1: Definitions and special rules

### T.D. 9691

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Debt That Is a Position in Personal Property That Is Part of a Straddle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the application of the straddle rules to a debt instrument. The final regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The final regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property.

**DATES:** *Effective Date:* These regulations are effective on August 27, 2014.

*Applicability Dates:* For dates of applicability, see § 1.1092(d)–1(e).

#### FOR FURTHER INFORMATION

**CONTACT:** Mary Brewer, (202) 317-6895 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### BACKGROUND AND EXPLANATION OF PROVISIONS

##### 1. Summary of Prior Notices of Proposed Rule Making and Temporary Regulations

This document contains amendments to 26 CFR Part 1. On January 18, 2001, a notice of proposed rulemaking (REG–105801–00) (the 2001 NPRM) was pub-

lished in the **Federal Register** (66 FR 4746). The 2001 NPRM broadly addressed the application of the straddle rules and section 263(g), and it included proposed regulation § 1.1092(d)–1(d) to clarify the circumstances under which an issuer's position under a debt instrument is treated as a position in personal property that is part of a straddle under section 1092 of the Internal Revenue Code. No public hearing was requested or held. Written and electronic comments responding to the 2001 NPRM were received, and the only commenter that substantively addressed proposed § 1.1092(d)–1(d) urged its adoption.

On September 5, 2013, temporary and final regulations (TD 9635) were published in the **Federal Register** (78 FR 54568). In § 1.1092(d)–1T(d), the temporary regulations adopted the text of proposed § 1.1092(d)–1(d), as published in the 2001 NPRM. As had been proposed in the 2001 NPRM, to make room for a substantive paragraph (d), the 2013 final regulations redesignated as paragraph (e)(1) the section's effective/applicability date provisions, which had formerly been designated as § 1.1092(d)–1(d). The temporary regulations added a new paragraph (e)(2) containing the applicability date that had been proposed in the 2001 NPRM. A notice of proposed rulemaking (REG–111753–12) (the 2013 NPRM) cross-referencing the temporary regulations was published in the same issue of the **Federal Register** (78 FR 54598). No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received.

This Treasury decision adopts the provisions in the 2013 NPRM without substantive change. In addition, this Treasury decision amends the effective/applicability date provisions in § 1.1092(d)–1(e) to provide explicitly the dates for those portions of § 1.1092(d)–1 that were added by a 1993 Treasury decision (TD 8491) as discussed further in section 3 of this preamble.

The corresponding temporary regulations are removed. The remainder of the 2001 NPRM remains proposed.

##### 2. Overview of the Final Regulations

The final regulations provide guidance under section 1092 regarding the circumstances in which an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, part of a straddle.

Section 1092(d)(1) defines "personal property" to mean "personal property of a type that is actively traded." A debt or obligation generally is not property of the debtor or obligor. Nevertheless, if a debt instrument provides for payments that are (or are reasonably expected to be) linked to the value of personal property as so defined, then the obligor on the instrument has a position in the personal property referenced by the debt instrument. Therefore, as was proposed in the 2013 NPRM, § 1.1092(d)–1(d) of the final regulations expressly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle.

##### 3. Dates of Applicability of the Regulations

The final regulations adopt the effective/applicability date set forth in the 2013 NPRM by providing that § 1.1092(d)–1(d) applies to straddles established on or after January 17, 2001 (the date on which the 2001 NPRM was filed with the **Federal Register**). No inference is intended with respect to straddles established prior to January 17, 2001. In appropriate cases, the IRS may take the position under section 1092(d)(2) that an obligation under a debt instrument was part of a straddle prior to the effective/applicability date of § 1.1092(d)–1(d) if the debt instrument functioned economically as an interest in actively traded personal property.

In addition, the final regulations clarify the effective-date paragraph (§ 1.1092(d)–1(e)) to reflect the applicability of provisions in § 1.1092(d)–1 that were originally proposed in 1991 and adopted in 1993. On July 10, 1991, a notice of proposed rulemaking (FI–16–89) (the 1991 NPRM) was published in the **Federal Register** (56 FR 31350). The 1991 NPRM primar-

ily addressed accounting for notional principal contracts but also proposed a new § 1.1092(d)-1, regarding the definition of actively traded personal property for purposes of the straddle rules. Proposed § 1.1092(d)-1(a) clarified the definition of actively traded personal property, and proposed § 1.1092(d)-1(b) enumerated several categories of established financial markets. See 56 FR 31353. The preamble also stated, “Proposed regulation section 1.1092(d)-1 is proposed to be effective for notional principal contracts entered into on or after July 8, 1991.” See 56 FR 31350. (July 8, 1991, was the date on which the 1991 NPRM was filed with the **Federal Register**.)

However, the text of the 1991 proposed regulations contained an effective date only in paragraph (c), which was the portion of the proposed regulations that focused on which notional principal contracts would be treated as actively traded personal property. See proposed § 1.1092(d)-1(c)(2) (“(2) Effective date. This paragraph (c) applies to notional principal contracts entered into on or after July 8, 1991.”).

Final regulations (TD 8491) (the 1993 Treasury decision), which issued § 1.1092(d)-1, were published in the **Federal Register** on October 14, 1993 (58 FR 53125). The 1993 Treasury decision moved the effective date for paragraph (c) to a new paragraph (d), and added an October 14, 1993, effective date for new paragraph (b)(1)(vii). The 1993 Treasury decision, however, like the 1991 NPRM, did not contain explicit effective dates for paragraph (a) or for the portion of paragraph (b) that had appeared in the 1991 NPRM.

Accordingly, these final regulations revise § 1.1092(d)-1(e) to include explicit effective/applicability-date provisions for all paragraphs of § 1.1092(d)-1.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 these regulations, and because the regulation does not

impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

### Drafting Information

The principal author of these regulations is Mary Brewer, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

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### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.1092(d)-1T and by adding an entry in numerical order to read as follows:

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

Section 1.1092(d)-1 also issued under 26 U.S.C. 1092(b)(1). \* \* \*

Par. 2. Section 1.1092(d)-1 is amended by revising paragraphs (d) and (e) to read as follows:

#### § 1.1092(d)-1 Definitions and special rules.

\* \* \* \* \*

(d) *Debt instrument linked to the value of personal property.* If a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer’s obligation under the debt instrument is a position with respect to personal property and may be part of a straddle.

(e) *Effective/applicability dates*—(1) Paragraphs (a) and (b) of this section apply to positions entered into on or after October 14, 1993.

(2) Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

(3) Paragraph (d) of this section applies to straddles established on or after January 17, 2001.

### § 1.1092(d)-1T [Removed]

Par. 3. Section 1.1092(d)-1T is removed.

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved: July 24, 2014

Mark J. Mazur,  
*Assistant Secretary of the Treasury  
(Tax Policy).*

(Filed by the Office of the Federal Register on August 26, 2014, 8:45 a.m., and published in the issue of the Federal Register for August 27, 2014, 79 F.R. 51090)

## Section 9815.—Additional Market Reforms

### T.D. 9690

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

### DEPARTMENT OF LABOR Employee Benefits Security Administration 29 CFR Parts 2510 and 2590

### DEPARTMENT OF HEALTH AND HUMAN SERVICES 45 CFR Parts 147

### Coverage of Certain Preventive Services Under the Affordable Care Act

**AGENCIES:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Interim final rules.

**SUMMARY:** This document contains interim final regulations regarding coverage of certain preventive services under section 2713 of the Public Health Service Act (PHS Act), added by the Patient Protection and Affordable Care Act, as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code. Section 2713 of the PHS Act requires coverage without cost sharing of certain preventive health services by non-grandfathered group health plans and health insurance coverage. Among these services are women's preventive health services, as specified in guidelines supported by the Health Resources and Services Administration (HRSA). As authorized by the current regulations, and consistent with the HRSA Guidelines, group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the otherwise applicable requirement to cover certain contraceptive services. Additionally, under current regulations, accommodations are available with respect to the contraceptive coverage requirement for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), and student health insurance coverage arranged by eligible organizations that are institutions of higher education, that effectively exempt them from this requirement. The regulations establish a mechanism for separately furnishing payments for contraceptive services on behalf of participants and beneficiaries of the group health plans of eligible organizations that avail themselves of an accommodation, and enrollees and dependents of student health coverage arranged by eligible organizations that are institutions of higher education that avail themselves of an accommodation.. These interim final regulations augment current regulations in light of the Supreme Court's interim order in connection with an application for an injunction in *Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014) (*Wheaton* order). These interim final regulations provide an alternative process that an eligible organi-

zation may use to provide notice of its religious objections to providing contraceptive coverage, while preserving participants' and beneficiaries' (and enrollees' and dependents') access to coverage for the full range of Food and Drug Administration (FDA)-approved contraceptives, as prescribed by a health care provider, without cost sharing.

**DATES:** *Effective date:* These interim final regulations are effective on August 27, 2014.

*Comments:* Written comments on these interim final regulations are invited and must be received by October 27, 2014.

**ADDRESSES:** Written comments may be submitted to the Department of Labor as specified below. Any comment that is submitted will be shared with the Department of Health and Human Services and the Department of the Treasury, and will also be made available to the public. **Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments, identified by "Preventive Services," may be submitted by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Mail or Hand Delivery: Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N-5653, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, Attention: Preventive Services.

Comments received will be posted without change to *www.regulations.gov* and available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue N.W., Washington, DC 20210, including any personal information provided.

## **FOR FURTHER INFORMATION CONTACT:**

David Mlawsky, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), at (410) 786-1565; Amy Turner or Beth Baum, Employee Benefits Security Administration (EBSA), Department of Labor, at (202) 693-8335; Karen Levin, Internal Revenue Service (IRS), Department of the Treasury, at (202) 927-9639.

*Customer Service Information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department of Labor's web site (*www.dol.gov/ebsa*). Information from HHS on private health insurance coverage can be found on CMS's web site (*www.cms.gov/ccio*), and information on health care reform can be found at *www.HealthCare.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) was enacted on March 30, 2010. These statutes are collectively known as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The sections of the PHS Act incorporated into ERISA and the Code are sections 2701 through 2728.

Section 2713 of the PHS Act, as added by the Affordable Care Act and incorporated into ERISA and the Code, requires

that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing, including under paragraph (a)(4), benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA). On August 1, 2011, HRSA adopted and released guidelines for women's preventive health services (HRSA Guidelines) based on recommendations of the independent Institute of Medicine. As relevant here, the HRSA Guidelines include all Food and Drug Administration (FDA)-approved contraceptives, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider (collectively, contraceptive services).<sup>1</sup> Except as discussed later in this section, non-grandfathered group health plans and health insurance coverage are required to provide coverage consistent with the HRSA Guidelines without cost sharing for plan years (or, in the individual market, policy years) beginning on or after August 1, 2012.<sup>2</sup>

Interim final regulations implementing section 2713 of the PHS Act were published on July 19, 2010 (75 FR 41726) (2010 interim final regulations). On August 1, 2011, the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) amended the 2010 interim final regulations to provide HRSA with authority to exempt group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with

such plans) from the requirement to cover contraceptive services consistent with the HRSA Guidelines (76 FR 46621) (2011 amended interim final regulations).<sup>3</sup> On the same date, HRSA exercised this authority in the HRSA Guidelines to exempt group health plans established or maintained by these religious employers (and group health insurance coverage provided in connection with such plans) from the HRSA Guidelines with respect to contraceptive services.<sup>4</sup> The 2011 amended interim final regulations specified that, for purposes of this exemption, a religious employer was one that: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a nonprofit organization described in section 6033(a)(1) and (a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any religious order. Final regulations issued on February 10, 2012, adopted the definition of religious employer in the 2011 amended interim final regulations without modification (2012 final regulations).<sup>5</sup>

Contemporaneous with the issuance of the 2012 final regulations, HHS, with the agreement of the Departments of Labor and the Treasury, issued guidance establishing a temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments for group health plans established or maintained by certain nonprofit organizations with religious objections to contraceptive coverage (and group health insurance coverage provided in connection with such plans).<sup>6</sup>

The guidance provided that the temporary enforcement safe harbor would remain in effect until the first plan year beginning on or after August 1, 2013. At the same time, the Departments committed to rulemaking to achieve the goals of providing coverage of recommended preventive services, including contraceptive services, without cost sharing, while simultaneously ensuring that certain additional nonprofit organizations with religious objections to contraceptive coverage would not have to contract, arrange, pay, or refer for such coverage.

On March 21, 2012, the Departments published an advance notice of proposed rulemaking (ANPRM) that described and solicited comments on possible approaches to achieve these goals (77 FR 16501).

On February 6, 2013, following review of the comments on the ANPRM, the Departments published proposed regulations at 78 FR 8456 (proposed regulations). The regulations proposed to simplify and clarify the definition of "religious employer" for purposes of the religious employer exemption. The regulations also proposed accommodations for group health plans established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive coverage (and group health insurance coverage provided in connection with such plans). These organizations were referred to as "eligible organizations."

The regulations proposed that, in the case of an insured group health plan established or maintained by an eligible organization, the health insurance issuer providing group health insurance coverage in connection with the plan would be required to assume sole responsibility for

<sup>1</sup>The HRSA Guidelines exclude services relating to a man's reproductive capacity, such as vasectomies and condoms.

<sup>2</sup>Interim final regulations published by the Departments on July 19, 2010, generally provide that plans and issuers must cover a newly recommended preventive service starting with the first plan year (or, in the individual market, policy year) that begins on or after the date that is one year after the date on which the new recommendation is issued. 26 CFR 54.9815-2713T(b)(1); 29 CFR 2590.715-2713(b)(1); 45 CFR 147.130(b)(1).

<sup>3</sup>The 2011 amended interim final regulations were issued and effective on August 1, 2011, and published in the **Federal Register** on August 3, 2011 (76 FR 46621).

<sup>4</sup>HRSA subsequently amended the HRSA Guidelines to reflect the simplified definition of "religious employer" contained in the July 2013 final regulations, 78 FR 39870 (July 2, 2013) (discussed below), effective August 1, 2013.

<sup>5</sup>The 2012 final regulations were published in the **Federal Register** on February 15, 2012 (77 FR 8725).

<sup>6</sup>Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans, and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code; originally issued on February 10, 2012, and reissued on August 15, 2012 and June 28, 2013; available at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/preventive-services-guidance-6-28-2013.pdf>. The guidance clarified, among other things, that plans that took some action before February 10, 2012, to try, without success, to exclude or limit contraceptive coverage were not precluded from eligibility for the safe harbor. The temporary enforcement safe harbor was also available to student health insurance coverage arranged by nonprofit institutions of higher education with religious objections to contraceptive coverage that met the conditions set forth in the guidance. See Student Health Insurance Coverage, 77 FR 16457 (Mar. 21, 2012).

providing contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. The Departments proposed a comparable accommodation with respect to student health insurance coverage arranged by eligible organizations that are institutions of higher education.

In the case of a self-insured group health plan established or maintained by an eligible organization, the proposed regulations presented potential approaches under which the third party administrator of the plan would provide or arrange for a third party to provide contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. An issuer (or its affiliate) would be able to offset the costs incurred by the third party administrator and the issuer in the course of arranging and providing such coverage by claiming an adjustment in the Federally-facilitated Exchange (FFE) user fee.

The Departments received over 400,000 comments (many of them standardized form letters) in response to the proposed regulations. After consideration of the comments, the Departments published final regulations on July 2, 2013 at 78 FR 39870 (July 2013 final regulations). The July 2013 final regulations simplified and clarified the definition of religious employer for purposes of the religious employer exemption and established accommodations for health coverage established or maintained or arranged by eligible organizations. A contemporaneously re-issued HHS guidance document extended the temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This guidance included a form to be used by an organization during this temporary period to self-certify that its plan qualified for the temporary enforcement safe harbor. In addition, HHS and the Department of Labor (DOL) issued a self-certification form, EBSA Form 700, to be executed by an organization seeking to be treated as an eligible organization for pur-

poses of an accommodation under the July 2013 final regulations. This self-certification form was provided for use with the accommodation under the July 2013 final regulations, after the expiration of the temporary enforcement safe harbor (that is, for plan years beginning on or after January 1, 2014).

On June 30, 2014, the Supreme Court ruled in the case of *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), that, under the Religious Freedom Restoration Act of 1993 (RFRA), the requirement to provide contraceptive coverage could not be applied to the closely held for-profit corporations before the Court because their owners had religious objections to providing such coverage, and because the Government's goal of guaranteeing coverage for contraceptive methods without cost sharing could be achieved in a less restrictive manner by offering such closely held for-profit entities the accommodation the Government already provided to religious nonprofit organizations with religious objections to contraceptive coverage. After describing this accommodation, the Court concluded that the accommodation "does not impinge on the plaintiffs' religious belief that providing insurance coverage for the contraceptives at issue here violates their religion, and it serves HHS' stated interests equally well." 134 S. Ct. at 2782. The Departments are publishing elsewhere in this edition of the **Bulletin** a notice of proposed rulemaking (NPRM) that proposes possible amendments to the definition of the term "eligible organization" to include closely held for-profit entities with religious objections to contraceptive coverage, in light of the *Hobby Lobby* decision.

On July 3, 2014, the Supreme Court issued an interim order in connection with an application for an injunction pending appeal in *Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014), in which the plaintiff challenged under RFRA the requirement in the July 2013 final regulations that an eligible organization invoking the accommodation send EBSA Form 700 to the insurance issuer or third party administrator. The Court's order stated that, "[i]f the [plaintiff] informs the Secretary of Health and Human Services in writing that it is a nonprofit organization

that holds itself out as religious and has religious objections to providing coverage for contraceptive services, the [Departments of Labor, Health and Human Services, and the Treasury] are enjoined from enforcing against the [plaintiff]" certain provisions of the Affordable Care Act and related regulations requiring coverage without cost sharing of certain contraceptive services "pending final disposition of appellate review." 134 S.Ct. at 2807. The order stated that Wheaton College need not use EBSA Form 700 or send a copy of the executed form to its health insurance issuers or third party administrators to meet the condition for this injunctive relief. *Id.* The Court also stated that its interim order neither affected "the ability of the [plaintiff's] employees and students to obtain, without cost, the full range of FDA approved contraceptives," nor precluded the Government from relying on the notice by the plaintiff "to facilitate the provision of full contraceptive coverage under the Act." *Id.* The Court's order further stated that it "should not be construed as an expression of the Court's views on the merits" of the plaintiff's challenge to the accommodations. *Id.*

The Departments are issuing these interim final regulations in light of the Supreme Court's interim order in *Wheaton* concerning notice to the Federal government that an eligible organization has a religious objection to providing contraceptive coverage, as an alternative to the EBSA Form 700 method of self-certification, and to preserve participants' and beneficiaries' (and, in the case of student health insurance coverage, enrollees' and dependents') access to coverage for the full range of FDA-approved contraceptives, as prescribed by a health care provider, without cost sharing.

## II. Overview of the Interim Final Regulations

These interim final regulations amend the Departments' July 2013 final regulations to provide an alternative process for the sponsor of a group health plan or an institution of higher education to provide notice of its religious objection to coverage of all or a subset of contraceptive services, as an alternative to the EBSA Form 700 method of self-certification. These interim final regulations continue to



allow eligible organizations to use EBSA Form 700, as set forth in the July 2013 final regulations and guidance.<sup>7</sup>

The alternative process permitted by these interim final regulations is consistent with the *Wheaton* order. It provides that an eligible organization may notify HHS in writing of its religious objection to coverage of all or a subset of contraceptive services. The notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on sincerely held religious beliefs to providing coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan's third party administrators and health insurance issuers.<sup>8</sup> A model notice to HHS that eligible organizations may, but are not required to, use is available at: <http://www.cms.gov/ccio/resources/Regulations-and-Guidance/index.html#Prevention>. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to HHS.

As with the process established in the July 2013 final regulations, nothing in this alternative notice process requires a government assessment of the sincerity of the religious belief underlying the eligible organization's objection. The notice to HHS, and any subsequent updates, should be sent electronically to: [marketreform@cms.hhs.gov](mailto:marketreform@cms.hhs.gov), or by regular mail to: Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 200 Independence Avenue SW, Washington, D.C. 20201, Room 739H. The content required for the notice represents the minimum information necessary for the Departments to determine which entities are covered by the accommodation, to administer the accommoda-

tion, and to implement the policies in the July 2013 final regulations.

When an eligible organization that establishes or maintains or arranges a self-insured plan subject to ERISA provides such a notice to HHS, DOL (working with HHS) will send a separate notification to each third party administrator of the ERISA plan. DOL's notification will inform each third party administrator of the eligible organization's religious objection to funding or administering some or all contraceptive coverage and will designate the relevant third party administrator(s) as plan administrator under section 3(16) of ERISA for those contraceptive benefits that the third party administrator would otherwise manage. The DOL notification will be an instrument under which the plan is operated and shall supersede any earlier designation. In establishing and implementing this alternative process, DOL is exercising its broad rulemaking authority under Title I of ERISA, which includes the ability to interpret and apply the definition of a plan administrator under ERISA section 3(16)(A).

If an eligible organization that establishes or maintains an insured health plan provides a notice to HHS under this alternative process, HHS will send a separate notification to the plan's health insurance issuer(s) informing the issuer(s) that HHS has received a notice under § 2590.715–2713A(c)(1) and describing the obligations of the issuer(s) under § 2590.715–2713A. Issuers remain responsible for compliance with the statutory and regulatory requirement to provide coverage for contraceptive services to participants and beneficiaries, and to enrollees and dependents of student health plans, notwithstanding that the policyholder is an eligible organization with a religious objection to contraceptive coverage that will not have to contract, arrange, pay, or refer for such coverage.

Other questions have arisen regarding the requirement to provide coverage for contraceptive services without cost sharing and the accommodations for eligible organizations. In what has been

described as the “non-interference provision,” the July 2013 final regulations provided that eligible organizations that establish or maintain self-insured group health plans “must not, directly or indirectly seek to interfere with a third party administrator's arrangements to provide or arrange for separate payments for contraceptive services” and “must not, directly or indirectly, seek to influence a third party administrator's decision to make any such arrangements.” 26 CFR 54.9815–2713A(b)(1)(iii); 29 CFR 2590.715–2713A(b)(1)(iii). The Departments interpret the July 2013 final regulations solely as prohibiting the use of bribery, threats, or other forms of economic coercion in an attempt to prevent a third party administrator from fulfilling its independent legal obligations to provide or arrange separate payments for contraceptive services. Because such conduct is generally unlawful and is prohibited under other state and federal laws, and to reduce unnecessary confusion, these interim final regulations delete the language prohibiting an eligible organization from interfering with or seeking to influence a third party administrator's decision or efforts to provide separate payments for contraceptive services.

### III. Interim Final Regulations and Request for Comments

Section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act authorize the Secretaries of the Treasury, Labor, and HHS (collectively, the Secretaries) to promulgate any interim final rules that they determine are appropriate to carry out the provisions of chapter 100 of the Code, part 7 of subtitle B of title I of ERISA, and part A of title XXVII of the PHS Act, which include PHS Act sections 2701 through 2728 and the incorporation of those sections into ERISA section 715 and Code section 9815.

In addition, under Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), a general notice of proposed rulemaking is not required when

<sup>7</sup>The EBSA Form 700 is available at: <http://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf>. When using the EBSA 700, the self-certification form is provided directly to each third party administrator or issuer of the plan.

<sup>8</sup>Church plans are exempt from ERISA pursuant to ERISA section 4(b)(2). As such, a third party administrator of a self-insured church plan cannot become the plan administrator by operation of 29 CFR 2510.3–16, although such third party administrators may voluntarily provide or arrange separate payments for contraceptive services and seek reimbursement for associated expenses under the process set forth in 45 CFR 156.50.

an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The provisions of the APA that ordinarily require a notice of proposed rulemaking do not apply here because of the specific authority granted by section 9833 of the Code, section 734 of ERISA, and section 2792 of the PHS Act. However, even if these provisions of the APA were applicable, the Secretaries have determined that it would be impracticable and contrary to the public interest to delay putting the provisions in these interim final regulations in place until a full public notice and comment process is completed.

As discussed earlier, the Departments are issuing these interim final regulations in light of the Supreme Court's order in *Wheaton College* concerning notice to the Federal government that an eligible organization has a religious objection to providing contraceptive coverage, as an alternative to the EBSA Form 700, and to preserve participants' and beneficiaries' (and, in the case of student health insurance coverage, enrollees' and dependents') access to coverage for the full range of FDA-approved contraceptive services, as prescribed by a health care provider, without cost sharing. That order was issued and was effective on July 3, 2014.

In order to provide other eligible organizations with an option equivalent to the one the Supreme Court provided to *Wheaton College* on an interim basis, regulations must be published and available to the public as soon as possible. Delaying the availability of the alternative process in order to allow for a full notice and comment period would delay the ability of eligible organizations to avail themselves of this alternative process and could delay women's access to contraceptive coverage without cost sharing, thereby compromising their access to necessary contraceptive services. Issuing interim final regulations provides the public with an opportunity to comment on whether these regulations affording this alternative should be made permanent or subject to modification without delaying the effective date of the regulations.

For the foregoing reasons, the Departments have determined that it would be

impracticable and contrary to the public interest to engage in full notice and comment rulemaking before putting these interim final regulations into effect, and that it is in the public interest to promulgate interim final regulations. For the same reasons, the Departments have determined, consistent with section 553(d) of the APA (5 U.S.C. 553(d)), that there is good cause to make these interim final regulations effective immediately upon publication in the **Federal Register**.

#### **IV. Economic Impact and Paperwork Burden**

##### *A. Executive Orders 12866 and 13563 – Department of Health and Human Services and Department of Labor*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a regulation: (1) having an annual effect on the economy of \$100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any one year), and an "economically significant" regulatory action is subject to review by the Office of Man-

agement and Budget (OMB). These interim final regulations are not likely to have economic impacts of \$100 million or more in any one year, and therefore do not meet the definition of "economically significant" under Executive Order 12866.

##### *1. Need for Regulatory Action*

These interim final regulations amend the Departments' July 2013 final regulations to provide an alternative process for an eligible organization to provide notice of its religious objection to coverage of all or a subset of contraceptive services.

##### *2. Anticipated Effects*

The Departments expect that these interim final regulations will not result in any additional burden on or costs to the affected entities. These interim final regulations do not change the fundamental ability of an eligible organization to exempt itself from contracting, arranging, paying, or referring for contraceptive coverage. Instead, the regulations merely provide alternative means for eligible organizations to provide notice of their religious objection to coverage of all, or a subset of, contraceptive services.

##### *B. Special Analyses – Department of the Treasury*

For purposes of the Department of the Treasury, it has been determined that this rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the APA does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the temporary regulations will not result in any additional costs to affected entities but will provide an alternative means for eligible organizations to provide notice of their religious objection to providing coverage of all, or a subset of, contraceptive services. Pursuant to section 7805(f) of the Code, these temporary regulations

have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### *C. Paperwork Reduction Act – Department of Health and Human Services*

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. These interim final regulations contain an information collection request (ICR) that is subject to review by the Office of Management and Budget (OMB). A description of these provisions is given in the following section with an estimate of the annual burden. Average labor costs (including fringe benefits) used to estimate the costs are calculated using data available from the Bureau of Labor Statistics.

Each organization seeking to be treated as an eligible organization under these interim final regulations must either use the EBSA Form 700 method of self-certification or provide notice to HHS of its religious objection to coverage of all or a subset of contraceptive services. Specifically, these interim final regulations continue to allow eligible organizations to notify an issuer or third party administrator using EBSA Form 700, as set forth in the July 2013 final regulations. In addition, these interim final regulations permit an alternative process, consistent with the Supreme Court's interim order in *Wheaton College*, by which an eligible organization may notify HHS of its religious objection to coverage of all or a subset of contraceptive services. HHS is aware, based on litigation, that there are approximately 122 eligible organizations that would now have the option to provide notice to HHS, rather than provide a self-certification to TPAs and/or issuers.

In order to complete this task, HHS assumes that clerical staff for each eligible organization will gather and enter the necessary information and send the self-certification to the issuer or third party administrator as appropriate, or send the

notice to HHS.<sup>9</sup> HHS assumes that a compensation and benefits manager and inside legal counsel will review the self-certification or notice to HHS and a senior executive would execute it. HHS estimates that an eligible organization would spend approximately 45 minutes (30 minutes of clerical labor at a cost of \$30 per hour, 10 minutes for a compensation and benefits manager at a cost of \$102 per hour, 5 minutes for legal counsel at a cost of \$127, and 5 minutes by a senior executive at a cost of \$121) preparing and sending the self-certification or notice to HHS and filing it to meet the recordkeeping requirement. Therefore, the total annual burden for preparing and providing the information in the self-certification or notice to HHS will require approximately 50 minutes for each eligible organization with an equivalent cost burden of approximately \$53 for a total hour burden of 102 hours with an equivalent cost of \$6,430.

As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the hour burden so each will account for 51 burden hours. HHS estimates that each self-certification or notice to HHS will require \$0.49 in postage and \$0.05 in materials cost (paper and ink) and the total postage and materials cost for each self-certification or notice sent via mail will be \$0.54.

For purposes of this analysis, HHS assumes that all self-certifications or notices to HHS will be mailed. The total cost burden for the self-certifications or notices to HHS is approximately \$66.

As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the cost burden so each will account for \$33 of the cost burden.

#### *D. Paperwork Reduction Act – Department of Labor and Department of the Treasury*

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. In accordance with the requirements of the PRA, the EBSA Form 700 ICR has

been approved by OMB under control number 1210-0150. These interim final regulations amend the ICR by providing an alternative process consistent with the *Wheaton* order, as discussed earlier in this preamble. The Department of Labor submitted an ICR in order to obtain OMB approval under the PRA for the regulatory revision. The request was made under emergency clearance procedures specified in regulations at 5 CFR 1320.13. In response, OMB approved the ICR under control number 1210-0150 through January 31, 2015. A copy of the information collection request may be obtained free of charge on the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201408-1210-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201408-1210-001).

This approval allows respondents temporarily to utilize the additional flexibility these final regulations provide, while the Department seeks public comment on the collection methods—including their utility and burden. Contemporaneously with the publication of these interim final regulations, the Department of Labor published a notice elsewhere in today's issue of the *Bulletin* informing the public of their intention to extend the OMB approval.

Consistent with the analysis in the HHS PRA section above the Department expects that each of the estimated 122 organizations will spend approximately 50 minutes in preparation time and incur \$0.54 mailing cost to satisfy the requirements. The DOL information collections in this rule are found in 29 CFR 2510.3-16 and 2590.715-2713A and are summarized as follows:

*Type of Review:* Revised Collection.

*Agency:* DOL-EBSA

*Title:* Coverage of Certain Preventive Services Under the Affordable Care Act.

*OMB Numbers:* 1210-0150.

*Affected Public:* Private Sector—businesses or other for profits.

*Total Respondents:* 61 (combined with HHS total is 122).

*Total Responses:* 61 (combined with HHS total is 122).

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden Hours:* 51 (combined with HHS total is 102 hours).

<sup>9</sup>For purposes of this analysis, the Department assumes that the same amount of time will be required to prepare the self-certification and the notice to HHS.

*Estimated Total Annual Burden Cost:* \$33 (combined with HHS total is 66).

*E. Regulatory Flexibility Act—Department of Labor and Department of Health and Human Services*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the APA (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Under Section 553(b) of the APA, a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. These interim final regulations are exempt from APA's prior notice and comment requirement because the Departments made a good cause finding that a general notice of proposed rulemaking is not necessary earlier in this preamble. Therefore, the RFA does not apply and the Departments are not required to either certify that the rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

Nevertheless, the Departments carefully considered the likely impact of the rule on small entities in connection with their assessment under Executive Order 12866. The Departments do not expect that these interim final regulations will have a significant economic effect on a substantial number of small entities, because they will not result in any additional costs to affected entities. Instead, the regulations merely provide an alternative means for eligible organizations to provide notice of their religious objection to coverage of all, or a subset of, contraceptive services.

*F. Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these interim final regulations do not include any federal mandate that may

result in expenditures by state, local, or tribal governments, nor do they include any federal mandates that may impose an annual burden of \$100 million, adjusted for inflation, or more on the private sector.<sup>10</sup>

*G. Federalism – Department of Health and Human Services and Department of Labor*

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on states, the relationship between the federal government and states, or the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the regulation.

These interim final regulations do not have any Federalism implications, since they only provide an eligible organization with an alternative process to provide notice of its religious objection to coverage of all or a subset of contraceptive services.

**V. Statutory Authority**

The Department of the Treasury temporary regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1002(16), 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Public Law 111–148, 124 Stat. 119, as amended by Public Law 111–152, 124 Stat. 1029; Sec-

retary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended; and Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, and 1412, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

\* \* \* \* \*

Signed this 20<sup>th</sup> day of August 2014.

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement,  
Internal Revenue Service.*

Mark J. Mazur,  
*Assistant Secretary of the Treasury  
(Tax Policy).*  
Signed this 20<sup>th</sup> day of August 2014.

Phyllis C. Borzi,  
*Assistant Secretary,  
Employee Benefits Security  
Administration,  
Department of Labor.*

Dated: August 19, 2014.

Marilyn Tavenner,  
*Administrator,  
Centers for Medicare & Medicaid Services.*

Approved: August 20, 2014.

Sylvia M. Burwell,  
*Secretary,  
Department of Health and Human Services.*

<sup>10</sup>In 2014, that threshold level is approximately \$141 million.

**DEPARTMENT OF THE  
TREASURY**

**Internal Revenue Service**

Accordingly, 26 CFR part 54 is 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 54.9815-2713A is amended by revising paragraphs (b), (c)(1), and (c)(2)(i) introductory text, and adding paragraph (f), to read as follows:

**§ 54.9815-2713A Accommodations in connection with coverage of preventive health services.**

\* \* \* \* \*

(b) [Reserved]. For further guidance, see § 54.9815-2713AT(b).

(c) *Contraceptive coverage – insured group health plans.* (1) [Reserved]. For further guidance, see § 54.9815-2713AT(c)(1).

(2) \* \* \*

(i) [Reserved]. For further guidance, see § 54.9815-2713AT(c)(2)(i) introductory text.

\* \* \* \* \*

(f) [Reserved]. For further guidance, see § 54.9815-2713AT(f).

Par. 3. Section 54.9815-2713AT is added to read as follows:

**§ 54.9815-2713AT Accommodations in connection with coverage of preventive health services (temporary).**

(a) [Reserved]. For further guidance, see § 54.9815-2713A(a).

(b) *Contraceptive coverage—self-insured group health plans.* (1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis complies for one or more plan years with any requirement under § 54.9815-2713(a)(1)(iv) to provide contraceptive coverage if all of the requirements of this paragraph (b)(1) are satisfied:

(i) The eligible organization or its plan contracts with one or more third party administrators.

(ii) The eligible organization provides either a copy of the self-certification to

each third party administrator or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage of all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to a third party administrator, such self-certification must include notice that obligations of the third party administrator are set forth in 29 CFR 2510.3-16 and this section and under § 54.9815-2713A.

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on sincerely held religious beliefs to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan's third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Labor (working with the Department of Health and Human Services), will send a separate notification to each of the plan's third party administrators informing the third party administrator that the Secretary of Health and Human Services has received a notice under paragraph (b)(1)(ii) of this section and describing the obligations of the third party administrator under 29 CFR 2510.3-16 and this section and under § 54.9815-2713A.

(2) If a third party administrator receives a copy of the self-certification from an eligible organization or a notification from the Department of Labor, as described in paragraph (b)(1)(ii) of this section, and agrees to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, the third party administrator shall provide or ar-

range payments for contraceptive services using one of the following methods—

(i) Provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange user fee for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than a copy of the self-certification from the eligible organization or notification from the Department of Labor described in paragraph (b)(1)(ii) of this section.

(c) *Contraceptive coverage – insured group health plans—*(1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under § 54.9815-2713(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan provides either a copy of the self-certification to each issuer providing coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage for all or a subset of contraceptive services.

(i) When a copy of the self-certification is provided directly to an issuer, the issuer has sole responsibility

for providing such coverage in accordance with § 54.9815–2713. An issuer may not require any further documentation from the eligible organization regarding its status as such.

(ii) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on its sincerely held religious beliefs to coverage of some or all contraceptive services, as applicable (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan’s third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Health and Human Services will send a separate notification to each of the plan’s health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (c)(1) of this section and describing the obligations of the issuer under this section and under § 54.9815–2713A.

(2) *Payments for contraceptive services.* (i) A group health insurance issuer that receives a copy of the self-certification or notification described in paragraph (b)(1)(ii) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under § 54.9815–2713(a)(1)(iv) must—

(ii) [Reserved]. For further guidance, see § 54.9815–2713A(c)(2)(ii).

(d) [Reserved]. For further guidance, see § 54.9815–2713A(d).

(e) [Reserved]. For further guidance, see § 54.9815–2713A(e).

(f) *Expiration date.* This section expires on August 22, 2017 or on such earlier date as may be provided in final reg-

ulations or other action published in the **Federal Register**.

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor amends 29 CFR parts 2510 and 2590 as follows:

#### PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

4. The authority citation for part 2510 is revised to read as follows:

**Authority:** 29 U.S.C. 1002(2), 1002(16), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor’s Order 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457.

5. Revise the heading for part 2510 to read as set forth above.

6. Section 2510.3–16 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

#### § 2510.3–16 Definition of “plan administrator.”

\* \* \* \* \*

(b) In the case of a self-insured group health plan established or maintained by an eligible organization, as defined in § 2590.715–2713A(a) of this chapter, if the eligible organization provides a copy of the self-certification of its objection to administering or funding any contraceptive benefits in accordance with § 2590.715–2713A(b)(1)(ii) of this chapter to a third party administrator, the self-certification shall be an instrument under which the plan is operated, shall be treated as a designation of the third party administrator as the plan administrator under section 3(16) of ERISA for any contracep-

tive services required to be covered under § 2590.715–2713(a)(1)(iv) of this chapter to which the eligible organization objects on religious grounds, and shall supersede any earlier designation. If, instead, the eligible organization notifies the Secretary of Health and Human Services of its objection to administering or funding any contraceptive benefits in accordance with § 2590.715–2713A(b)(1)(ii) of this chapter, the Department of Labor, working with the Department of Health and Human Services, shall separately provide notification to each third party administrator that such third party administrator shall be the plan administrator under section 3(16) of ERISA for any contraceptive services required to be covered under § 2590.715–2713(a)(1)(iv) of this chapter to which the eligible organization objects on religious grounds, with respect to benefits for contraceptive services that the third party administrator would otherwise manage. Such notification from the Department of Labor shall be an instrument under which the plan is operated and shall supersede any earlier designation.

(c) A third party administrator that becomes a plan administrator pursuant to this section shall be responsible for—

(1) Complying with section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13) (as incorporated into section 715 of ERISA) and § 2590.715–2713 of this chapter with respect to coverage of contraceptive services. To the extent the plan contracts with different third party administrators for different classifications of benefits (such as prescription drug benefits versus inpatient and outpatient benefits), each third party administrator is responsible for providing contraceptive coverage that complies with section 2713 of the Public Health Service Act (as incorporated into section 715 of ERISA) and § 2590.715–2713 of this chapter with respect to the classification or classifications of benefits subject to its contract.

(2) Establishing and operating a procedure for determining such claims for contraceptive services in accordance with § 2560.503–1 of this chapter.

(3) Complying with disclosure and other requirements applicable to group health plans under Title I of ERISA with respect to such benefits.

## PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

7. The authority citation for part 2590 is revised to read as follows:

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 12(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Secretary of Labor’s Order 1–2011, 77 FR 1088 (January 9, 2012).

8. Section 2590.715–2713A is amended by revising paragraphs (b), (c)(1), and (c)(2)(i) introductory text to read as follows:

### § 2590.715–2713A Accommodations in connection with coverage of preventive health services.

\* \* \* \* \*

(b) *Contraceptive coverage—self-insured group health plans*—(1) A group health plan established or maintained by an eligible organization that provides benefits on a self-insured basis complies for one or more plan years with any requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if all of the requirements of this paragraph (b)(1) are satisfied:

(i) The eligible organization or its plan contracts with one or more third party administrators.

(ii) The eligible organization provides either a copy of the self-certification to each third party administrator or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage of all or a subset of contraceptive services.

(A) When a copy of the self-certification is provided directly to a third party administrator, such self-certification must include notice that obligations of the third party administrator are set forth in § 2510.3–16 of this chapter and this section.

(B) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on sincerely held reli-

gious beliefs to coverage of some or all contraceptive services (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan’s third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Labor (working with the Department of Health and Human Services), shall send a separate notification to each of the plan’s third party administrators informing the third party administrator that the Secretary of Health and Human Services has received a notice under paragraph (b)(1)(ii) of this section and describing the obligations of the third party administrator under § 2510.3–16 of this chapter and this section.

(2) If a third party administrator receives a copy of the self-certification from an eligible organization or a notification from the Department of Labor, as described in paragraph (b)(1)(ii) of this section, and agrees to enter into or remain in a contractual relationship with the eligible organization or its plan to provide administrative services for the plan, the third party administrator shall provide or arrange payments for contraceptive services using one of the following methods—

(i) Provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries; or

(ii) Arrange for an issuer or other entity to provide payments for contraceptive services for plan participants and beneficiaries without imposing any cost-sharing requirements (such as a copayment, coinsurance, or a deductible), or imposing a premium, fee, or other charge, or any

portion thereof, directly or indirectly, on the eligible organization, the group health plan, or plan participants or beneficiaries.

(3) If a third party administrator provides or arranges payments for contraceptive services in accordance with either paragraph (b)(2)(i) or (ii) of this section, the costs of providing or arranging such payments may be reimbursed through an adjustment to the Federally-facilitated Exchange user fee for a participating issuer pursuant to 45 CFR 156.50(d).

(4) A third party administrator may not require any documentation other than a copy of the self-certification from the eligible organization or notification from the Department of Labor described in paragraph (b)(1)(ii) of this section.

(c) \* \* \* (1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under § 2590.715–2713(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan provides either a copy of the self-certification to each issuer providing coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage for all or a subset of contraceptive services.

(i) When a copy of the self-certification is provided directly to an issuer, the issuer has sole responsibility for providing such coverage in accordance with § 2590.715–2713. An issuer may not require any further documentation from the eligible organization regarding its status as such.

(ii) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation; its objection based on its sincerely held religious beliefs to coverage of some or all contraceptive services, as applicable (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of 45 CFR 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the

name and contact information for any of the plan's third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Health and Human Services will send a separate notification to each of the plan's health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (c)(1) of this section and describing the obligations of the issuer under this section.

(2) \* \* \* (i) A group health insurance issuer that receives a copy of the self-certification or notification described in paragraph (c)(1)(ii) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under § 2590.715–2713(a)(1)(iv) must—

\* \* \* \* \*

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 147 as follows:

### PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

9. The authority citation for part 147 continues to read as follows:

**Authority:** Secs 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

10. Section 147.131 is amended by revising paragraphs (c)(1) and (c)(2)(i) introductory text to read as follows:

#### **§ 147.131 Exemption and accommodations in connection with coverage of preventive health services.**

\* \* \* \* \*

(c) \* \* \* (1) *General rule.* A group health plan established or maintained by an eligible organization that provides benefits through one or more group health insurance issuers complies for one or more plan years with any requirement under § 147.130(a)(1)(iv) to provide contraceptive coverage if the eligible organization or group health plan provides either a copy of the self-certification to each issuer providing coverage in connection with the plan or a notice to the Secretary of Health and Human Services that it is an eligible organization and of its religious objection to coverage for all or a subset of contraceptive services.

(i) When a self-certification is provided directly to an issuer, the issuer has sole responsibility for providing such coverage in accordance with § 147.130. An issuer may not require any further documentation from the eligible organization regarding its status as such.

(ii) When a notice is provided to the Secretary of Health and Human Services, the notice must include the name of the eligible organization and the basis on which it qualifies for an accommodation;

its objection based on its sincerely held religious beliefs to coverage of some or all contraceptive services, as applicable (including an identification of the subset of contraceptive services to which coverage the eligible organization objects, if applicable); the plan name and type (*i.e.*, whether it is a student health insurance plan within the meaning of § 147.145(a) or a church plan within the meaning of ERISA section 3(33)); and the name and contact information for any of the plan's third party administrators and health insurance issuers. If there is a change in any of the information required to be included in the notice, the organization must provide updated information to the Secretary of Health and Human Services. The Department of Health and Human Services will send a separate notification to each of the plan's health insurance issuers informing the issuer that the Secretary of Health and Human Services has received a notice under paragraph (c)(1) of this section and describing the obligations of the issuer under this section.

(2) \* \* \* (i) A group health insurance issuer that receives a copy of the self-certification or notification described in paragraph (c)(1)(ii) of this section with respect to a group health plan established or maintained by an eligible organization in connection with which the issuer would otherwise provide contraceptive coverage under § 147.130(a)(1)(iv) must—

\* \* \* \* \*

(Filed by the Office of the Federal Register on August 22, 2014, 3:30 p.m., and published in the issue of the Federal Register for August 27, 2014, 79 F.R. 51092)



## Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 42; 1.42-14.)

by the Secretary to each qualified state for calendar year 2014 is as follows:

### Rev. Proc. 2014-52

#### SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 2014.

#### SECTION 2. BACKGROUND

Rev. Proc. 92-31, 1992-1 C.B. 775, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92-31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). This revenue procedure publishes these amounts for calendar year 2014.

#### SECTION 3. PROCEDURE

The unused housing credit carryover amount allocated from the National Pool

Qualified State	Amount Allocated
Alabama	45,996
Arizona	63,056
California	364,756
Delaware	8,809
Florida	186,057
Georgia	95,081
Idaho	15,340
Illinois	122,581
Kentucky	41,824
Louisiana	44,014
Maine	12,640
Maryland	56,416
Massachusetts	63,686
Michigan	94,163
Minnesota	51,578
Nebraska	17,780
Nevada	26,550
New Hampshire	12,593
New Jersey	84,682
New York	186,992
North Carolina	93,710
North Dakota	6,884
Ohio	110,103
Oklahoma	36,640
Oregon	37,397
Pennsylvania	121,550
Puerto Rico	34,400

Qualified State	Amount Allocated
Rhode Island	10,006
South Dakota	8,040
Tennessee	61,813
Texas	251,670
Vermont	5,963
Virginia	78,603
Washington	66,337
West Virginia	17,645
Wisconsin	54,645

#### EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar amounts attributable to the National Pool component of a qualified state's housing credit ceiling for calendar year 2014.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Jian H. Grant of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Ms. Grant on (202) 317-4137 (not a toll-free number).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking Coverage of Certain Preventive Services Under the Affordable Care Act

#### REG-129507-14

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: Elsewhere in this issue of the **Bulletin**, the IRS is issuing temporary regulations (TD 9690) under the provisions of the Patient Protection and Affordable Care Act (the Affordable Care Act) that provide an alternative process that an eligible organization may use to provide notice of its religious objections to providing contraceptive 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 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 November 25, 2014

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-129507-14), 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-129507-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave-

nue, NW, Washington DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-129507-14).

#### FOR FURTHER INFORMATION

CONTACT: Concerning the regulations, Karen Levin at 202-317-5500; concerning submissions of comments, Regina Johnson at 202-317-6901 (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 October 27, 2014. 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 **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.

The collection of information is in § 54.9815-2713AT (see the temporary regulations published elsewhere in this issue of the **Bulletin**). The temporary regulations provide an alternative means for eligible organizations to provide notice of their religious objection to HHS, concerning all, or a subset of, contraceptive services. The temporary regulations will not result in any additional costs to affected entities because they merely provide an alternative means for eligible organizations to provide notice of their religious objection to all, or a subset of, contraceptive services.

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 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.

#### Background

Temporary regulations are being published elsewhere in this issue of the **Bulletin**. 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 Exec-

utive 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 will not result in any additional costs to affected entities but will provide an alternative means for eligible organizations to provide notice of their religious objection to all, or a subset of, contraceptive services. 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.

\* \* \* \* \*

### 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 54.9815–2713A is revised to read as follows:

#### § 54.9815–2713A Accommodations in connection with coverage of preventive health services.

[The text of proposed § 54.9815–2713A is the same as the text of § 54.9815–2713AT published elsewhere in this issue of the **Bulletin**].

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on August 22, 2014, 3:30 p.m., and published in the issue of the Federal Register for August 27, 2014, 79 F.R. 51117)

## Notice of Proposed Rulemaking Coverage of Certain Preventive Services Under the Affordable Care Act

### REG-129786-14

**AGENCIES:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Proposed rules.

**SUMMARY:** This document proposes a change to the definition of an eligible organization that can avail itself of an accommodation with respect to coverage of certain preventive services under section 2713 of the Public Health Service Act

(PHS Act), added by the Patient Protection and Affordable Care Act, as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code.

Section 2713 of the PHS Act requires coverage without cost sharing of certain preventive health services by non-grandfathered group health plans and health insurance coverage. Among these services are women's preventive health services, as specified in guidelines supported by the Health Resources and Services Administration (HRSA). As authorized by the current regulations, and consistent with the HRSA Guidelines, group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the otherwise applicable requirement to cover certain contraceptive services. Additionally, under current regulations, accommodations are available with respect to the contraceptive coverage requirement for group health plans established or maintained by eligible organizations (and group health insurance coverage provided in connection with such plans), and student health insurance coverage arranged by eligible organizations that are institutions of higher education, that effectively exempt them from this requirement. The regulations establish a mechanism for separately furnishing payments for contraceptive services on behalf of participants and beneficiaries of the group health plans of eligible organizations that avail themselves of an accommodation, and enrollees and dependents of student health insurance coverage arranged by eligible organizations that are institutions of higher education that avail themselves of an accommodation.

These rules propose and seek comments on potential changes to the definition of "eligible organization" in the Departments' regulations in light of the Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), to ensure that participants and beneficiaries in group health plans (and enrollees and dependents in student health insurance coverage arranged by institutions of higher education) obtain, without additional cost, coverage of the full range of Food and Drug Administration (FDA)

approved contraceptive services, as prescribed by a health care provider, while respecting certain closely held for-profit entities' religion-based objections to contraceptive coverage. These proposed rules also seek comments on any additional steps the government should take to help ensure coverage of the full range of FDA-approved contraceptives, as prescribed by a health care provider, without cost sharing, for participants and beneficiaries in group health plans of such entities (and enrollees and dependents in student health insurance coverage arranged by such entities that are institutions of higher education).

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 21, 2014.

**ADDRESSES:** In commenting, please refer to file code CMS-9940-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on these regulations to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Attention: CMS-9940-P,  
P.O. Box 8010,  
Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Attention: CMS-9940-P,  
Mail Stop C4-26-05,  
7500 Security Boulevard,  
Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to any of the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—  
Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
Room 445-G, Hubert H. Humphrey Building,  
200 Independence Avenue, SW.,  
Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—  
Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
7500 Security Boulevard,  
Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to an address indicated as appropriate for hand or courier delivery may be delayed and received after the close of the comment period.

For information on viewing public comments, see the beginning of the "SUPPLEMENTARY INFORMATION" section.

#### **FOR FURTHER INFORMATION CONTACT:**

David Mlawsky, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS), at (410) 786-1565; Amy Turner or Beth Baum, Employee Benefits Security Administration (EBSA), Department of Labor, at (202) 693-8335; Karen Levin, In-

ternal Revenue Service (IRS), Department of the Treasury, at (202) 927-9639.

*Customer Service Information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the Department of Labor's web site ([www.dol.gov/ebsa](http://www.dol.gov/ebsa)). Information from HHS on private health insurance coverage can be found on CMS's web site ([www.cms.gov/ccio](http://www.cms.gov/ccio)), and information on health care reform can be found at [www.HealthCare.gov](http://www.HealthCare.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period will be available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### **I. Background**

The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) was enacted on March 30, 2010. These statutes are collectively known as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the

group and individual markets. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The sections of the PHS Act incorporated into ERISA and the Code are sections 2701 through 2728.

Section 2713 of the PHS Act, as added by the Affordable Care Act and incorporated into ERISA and the Code, requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing, including under paragraph (a)(4), benefits for certain women's preventive health services as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA). On August 1, 2011, HRSA adopted and released guidelines for women's preventive health services (HRSA Guidelines) based on recommendations of the independent Institute of Medicine. As relevant here, the HRSA Guidelines include all Food and Drug Administration (FDA)-approved contraceptives, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider (collectively, contraceptive services).<sup>1</sup> Except as discussed later in this section, non-grandfathered group health plans and health insurance coverage are required to provide coverage

consistent with the HRSA Guidelines, without cost sharing, for plan years (or, in the individual market, policy years) beginning on or after August 1, 2012.<sup>2</sup>

Interim final regulations implementing section 2713 of the PHS Act were published on July 19, 2010 (75 FR 41726) (2010 interim final regulations). On August 1, 2011, the Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) amended the 2010 interim final regulations to provide HRSA with authority to exempt group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) from the requirement to cover contraceptive services consistent with the HRSA Guidelines (76 FR 46621) (2011 amended interim final regulations).<sup>3</sup> On the same date, HRSA exercised this authority in the HRSA Guidelines to exempt group health plans established or maintained by these religious employers (and group health insurance coverage provided in connection with such plans) from the HRSA Guidelines with respect to contraceptive services.<sup>4</sup> The 2011 amended interim final regulations specified that, for purposes of this exemption, a religious employer was one that: (1) has the inculcation of religious values as its purpose; (2) primarily employs persons who share its religious tenets; (3) primarily serves persons who share its religious tenets; and (4) is a nonprofit organization described in section 6033(a)(1) and (a)(3)(A)(i) or (iii) of the Code. Section 6033(a)(3)(A)(i) and (iii) of the Code refers to churches, their integrated auxiliaries, and conventions or associations of churches, as well as to the exclusively religious activities of any re-

ligious order. Final regulations issued on February 10, 2012, adopted the definition of religious employer in the 2011 amended interim final regulations without modification (2012 final regulations).<sup>5</sup>

Contemporaneous with the issuance of the 2012 final regulations, HHS, with the agreement of the Departments of Labor and the Treasury, issued guidance establishing a temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments for group health plans established or maintained by certain nonprofit organizations with religious objections to contraceptive coverage (and group health insurance coverage provided in connection with such plans).<sup>6</sup> The guidance provided that the temporary enforcement safe harbor would remain in effect until the first plan year beginning on or after August 1, 2013. At the same time, the Departments committed to rulemaking to achieve the goals of providing coverage of recommended preventive services, including contraceptive services, without cost sharing, while simultaneously ensuring that certain additional nonprofit organizations with religious objections to contraceptive coverage would not have to contract, arrange, pay, or refer for such coverage.

On March 21, 2012, the Departments published an advance notice of proposed rulemaking (ANPRM) that described and solicited comments on possible approaches to achieve these goals (77 FR 16501).

On February 6, 2013, following review of the comments on the ANPRM, the Departments published proposed regulations at 78 FR 8456 (proposed regulations). The regulations proposed to simplify and clarify the definition of "religious employer"

<sup>1</sup>The HRSA Guidelines for Women's Preventive Services do not include services relating to a man's reproductive capacity, such as vasectomies and condoms.

<sup>2</sup>Interim final regulations published by the Departments on July 19, 2010, generally provide that plans and issuers must cover a newly recommended preventive service starting with the first plan year (or, in the individual market, policy year) that begins on or after the date that is one year after the date on which the new recommendation is issued. 26 CFR 54.9815-2713T(b)(1); 29 CFR 2590.715-2713(b)(1); 45 CFR 147.130(b)(1).

<sup>3</sup>The 2011 amended interim final regulations were issued and effective on August 1, 2011, and published in the Federal Register on August 3, 2011 (76 FR 46621).

<sup>4</sup>HRSA subsequently amended the HRSA Guidelines to reflect the simplified definition of "religious employer" contained in the July 2013 final regulations. 78 FR 39870 (July 2, 2013) (discussed below), effective August 1, 2013.

<sup>5</sup>The 2012 final regulations were published in the Federal Register on February 15, 2012 (77 FR 8725).

<sup>6</sup>Guidance on the Temporary Enforcement Safe Harbor for Certain Employers, Group Health Plans, and Group Health Insurance Issuers with Respect to the Requirement to Cover Contraceptive Services Without Cost Sharing Under Section 2713 of the Public Health Service Act, Section 715(a)(1) of the Employee Retirement Income Security Act, and Section 9815(a)(1) of the Internal Revenue Code (originally issued on February 10, 2012, and reissued on August 15, 2012 and June 28, 2013), available at: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/preventive-services-guidance-6-28-2013.pdf>. The guidance clarified, among other things, that plans that took some action before February 10, 2012, to try, without success, to exclude or limit contraceptive coverage were not precluded from eligibility for the safe harbor. The temporary enforcement safe harbor was also available to student health insurance coverage arranged by nonprofit institutions of higher education with religious objections to contraceptive coverage that met the conditions set forth in the guidance. See "Student Health Insurance Coverage," 77 FR 16457 (Mar. 21, 2012).

for purposes of the religious employer exemption. The regulations also proposed accommodations for group health plans established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive coverage (and group health insurance coverage provided in connection with such plans). These organizations were referred to as “eligible organizations.”

The regulations proposed that, in the case of an insured group health plan established or maintained by an eligible organization, the health insurance issuer providing group health insurance coverage in connection with the plan would be required to assume sole responsibility for providing contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. The Departments proposed a comparable accommodation with respect to student health insurance coverage arranged by eligible organizations that are institutions of higher education.

In the case of a self-insured group health plan established or maintained by an eligible organization, the proposed regulations presented potential approaches under which the third party administrator of the plan would provide or arrange for a third party to provide contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. An issuer (or its affiliate) would be able to offset the costs incurred by the third party administrator and the issuer in the course of arranging and providing such coverage by claiming an adjustment in the Federally-facilitated Exchange (FFE) user fee.

The Departments received over 400,000 comments (many of them standardized form letters) in response to the proposed regulations. After consideration of the comments, the Departments published final regulations on July 2, 2013 at 78 FR 39870 (July 2013 final regulations). The July 2013 final regulations simplified and clarified the definition of religious employer for purposes of the religious employer exemption and established accommodations for health coverage estab-

lished or maintained or arranged by eligible organizations. A contemporaneously re-issued HHS guidance document extended the temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This guidance included a form to be used by an organization during this temporary period to self-certify that its plan qualified for the temporary enforcement safe harbor. In addition, HHS and the Department of Labor (DOL) issued a self-certification form, EBSA Form 700, to be executed by an organization seeking to be treated as an eligible organization for purposes of an accommodation under the July 2013 final regulations. This self-certification form was provided for use with the accommodation under the July 2013 final regulations, after the expiration of the temporary enforcement safe harbor (that is, for plan years beginning on or after January 1, 2014).

On June 30, 2014, the Supreme Court ruled in the case of *Burwell v. Hobby Lobby Stores, Inc.* that, under the Religious Freedom Restoration Act of 1993 (RFRA), the requirement to provide contraceptive coverage could not be applied to the closely held for-profit corporations before the Court because their owners had religious objections to providing such coverage, and because the Government’s goal of guaranteeing coverage for contraceptive methods without cost sharing could be achieved in a less restrictive manner by offering such closely held for-profit entities the accommodation the Government already provided to religious nonprofit organizations with religious objections to contraceptive coverage. After describing this accommodation, the Court concluded that the accommodation “does not impinge on the plaintiffs’ religious belief that providing insurance coverage for the contraceptives at issue here violates their religion, and it serves HHS’ stated interests equally well.”

On July 3, 2014, the Supreme Court issued an interim order in connection with an application for an injunction pending appeal in *Wheaton College v. Burwell*, 134 S. Ct. 2806 (2014) (the *Wheaton* order), in which Wheaton College challenged under RFRA the requirement in

the July 2013 final regulations that an eligible organization invoking the accommodation send EBSA Form 700 to the insurance issuer or third party administrator. The Court’s order stated that, “[i]f [Wheaton College] informs the Secretary of Health and Human Services in writing that it is a nonprofit organization that holds itself out as religious and has religious objections to providing coverage for contraceptive services, the [Departments of Labor, Health and Human Services, and the Treasury] are enjoined from enforcing against [Wheaton College]” certain provisions of the Affordable Care Act and related regulations requiring coverage without cost sharing of certain contraceptive services “pending final disposition of appellate review.” 134 S. Ct. at 2807. The order stated that Wheaton College need not use EBSA Form 700 or send a copy of the executed form to its health insurance issuers or third party administrators to meet the condition for this injunctive relief. *Id.* The Court also stated that its interim order neither affected “the ability of [Wheaton College’s] employees and students to obtain, without cost, the full range of FDA approved contraceptives,” nor precluded the Government from relying on the notice by Wheaton College “to facilitate the provision of full contraceptive coverage under the Act.” *Id.* The Court’s order further stated that it “should not be construed as an expression of the Court’s views on the merits” of Wheaton College’s challenge to the accommodations. *Id.*

This notice of proposed rulemaking proposes and invites comments on changes to the definition of an eligible organization in the Departments’ regulations in light of the Supreme Court’s decision in *Hobby Lobby*. It also solicits comments on any other steps the Government should take to help ensure that participants and beneficiaries in group health plans or enrollees and dependents in student health insurance coverage arranged by institutions of higher education are able to obtain, without cost, the full range of FDA-approved contraceptives, as prescribed by a health care provider, without cost sharing, if enrolled in a group health plan or insurance coverage sponsored or arranged by a closely held for-profit entity that objects on religious grounds to cov-

ering contraceptive services. Given the importance of this coverage, initiating this proposed rulemaking now allows for public input and a pathway toward helping to ensure access to contraceptive coverage.

The Departments are publishing contemporaneously with this notice of proposed rulemaking interim final regulations in light of the Supreme Court's interim order in connection with the application for an injunction in the pending case of *Wheaton College v. Burwell*. The interim final regulations are published elsewhere in this edition of the *Bulletin*.

## II. Provisions of the Proposed Regulations

As stated above, on June 30, 2014, the Supreme Court ruled in *Burwell v. Hobby Lobby Stores, Inc.* that, under RFRA, the requirement to provide contraceptive coverage could not be applied to certain closely held for-profit organizations. The individual plaintiffs in *Hobby Lobby* and the associated case *Conestoga Wood Specialties Corp. v. Burwell* run closely held businesses that are family-owned and operated and that have adopted statements of mission or purpose to conduct the companies' affairs in accordance with the owners' shared religious beliefs and values. See 134 S. Ct. at 2764–2766.

In light of the Court's decision in *Hobby Lobby*, the Departments propose to amend the definition of an eligible organization under the July 2013 final regulations to include a closely held for-profit entity that has a religious objection to providing coverage for some or all of the contraceptive services otherwise required to be covered. Under these proposed rules, a qualifying closely held for-profit entity that has a religious objection to providing coverage for some or all of the contraceptive services otherwise required to be covered would not be required to contract, arrange, pay or refer for contraceptive coverage; instead, payments for contraceptive services provided to participants and beneficiaries in the eligible organization's plan would be provided separately by an issuer (if the qualifying entity sponsors an insured group health plan, or if the qualifying entity is an institution of higher education that arranges student health insurance coverage) or arranged separately by a third party administrator (if the qual-

ifying entity is self-insured), consistent with the July 2013 final regulations as amended by interim final regulations published in this same edition of the *Bulletin*. This proposed change would extend to participants and beneficiaries in group health plans established or maintained by certain closely held for-profit entities with religious objections to contraceptive coverage, and to enrollees and dependents enrolled in student health insurance coverage arranged by certain closely held for-profit entities that are institutions of higher education with religious objections to contraceptive coverage, the same, separate payments for contraceptive services provided to participants and beneficiaries of group health plans (and enrollees and dependents in student health insurance) established or maintained by certain non-profit religious entities with such objections, while similarly respecting the religious objections of the closely held for-profit entities.

### *Defining a Closely Held For-Profit Entity*

In considering inclusion of certain closely held for-profit entities among the eligible organizations that may avail themselves of the accommodations, the Departments are considering and seek comment on how to define a qualifying closely held for-profit entity. In *Hobby Lobby*, the Supreme Court noted that the companies at issue in the cases were not publicly traded and were owned and controlled by members of a single family and that the companies were operated in accordance with the owners' shared religious beliefs and values. 134 S. Ct. at 2764–2766.

In light of the Supreme Court's decision, the Departments are proposing for comment two possible approaches to defining a qualifying closely held for-profit entity, although the Departments invite comments on other approaches as well. In common understanding, a closely held corporation – a term often used interchangeably with a “close” or “closed” corporation – is a corporation the stock of which is owned by a small number of persons and for which no active trading market exists. See, for example, American Law Institute, Principles of Corporate

Governances section 1.06; Black's Law Dictionary (9th ed. 2009) (“close corporation”); Del. Code Tit. 8, Ch.1, Sub. Ch. 14 (“close corporation”). The examples below are by way of illustration, and the maximum number of shareholders specified in particular examples would not necessarily be borrowed as the standard in this context.

Under the first proposed approach, a qualifying closely held for-profit entity would be an entity where none of the ownership interests in the entity is publicly traded and where the entity has fewer than a specified number of shareholders or owners.

There is precedent in other areas of federal law for limiting the definition of closely held entities in this context to those with a relatively small number of owners. For example, subchapter S treatment under section 1361 of the Code is currently limited to corporations with 100 or fewer shareholders who are generally individuals and has in the past been limited to corporations with 10 or fewer shareholders. Similarly, certain favorable estate tax treatment is limited to businesses with 45 or fewer partners or shareholders under section 6166 of the Code.

Under a second, alternative approach, a qualifying closely held entity would be a for-profit entity in which the ownership interests are not publicly traded, and in which a specified fraction of the ownership interest is concentrated in a limited and specified number of owners. This approach also has precedent in federal law. For example, certain rules governing the taxation of real estate investment trusts, passive activity losses, and certain income from foreign entities are limited to organizations that are more than 50 percent owned by or for not more than five individuals. See, for example, sections 856(h), 542(a)(2), and 469(j)(1) of the Code and regulations under these sections.

These approaches might serve to identify for-profit entities controlled and operated by individual owners who likely have associational ties, are personally identified with the entity, and can be regarded as conducting personal business affairs through the entity. These appear to be the types of entities the Court sought to accommodate in *Hobby Lobby*. There may also be useful definitions or principles in

state laws governing close corporations, or other areas of law.

The Departments invite comments on the appropriate scope of the definition of a qualifying closely held for-profit entity, including but not limited to whether a closely held for-profit entity should be defined with reference to a maximum number of owners (and, if so, what that maximum number should be) or a minimum concentration of ownership (and if so, what that concentration should be) or with reference to additional or other criteria.

It would be helpful for comments to address how the selection of a particular approach can be informed by the purposes of the Affordable Care Act and the contraceptive coverage requirement; the range of business structures in the Nation's economy; background principles of federal and state law applicable to business entities and the relationship of the entities' owners to the entities; other related or analogous areas of the law; experience regarding accommodations of religion and religious beliefs in various contexts and the rationales for the scope and operation of such accommodations; *Hobby Lobby* and other court decisions that shed light on these issues; and any other relevant matters.

*Religious Objection to Providing Coverage for Some or All of the Contraceptive Services Required to be Covered.*

In *Hobby Lobby*, the Supreme Court held that the closely held for-profit corporations at issue in that case could opt not to provide otherwise required contraceptive coverage if doing so runs counter to their owners' sincerely held religious beliefs. These proposed regulations would require that the qualifying closely held for-profit entity's objection, based on its owners' sincerely held religious beliefs, to covering some or all of the contraceptive services otherwise required to be covered, be made in accordance with the entity's applicable rules of governance. As discussed by the Court in *Hobby Lobby*, state corporate law dictates how a corporation may establish its governing structure.<sup>7</sup>

Under the Departments' proposal, valid corporate action (or similar action by a business that is not organized as a

corporation) taken in accordance with the entity's governing structure in accordance with state law, stating its owners' religious objection to providing some or all contraceptive coverage otherwise required to be provided, can serve to establish that a closely held for-profit entity has religious objections to providing such coverage. In determining whether a closely held for-profit entity's decision-making process followed the necessary rules and procedures, the laws of the state in which the entity is incorporated, or, for non-corporate entities, organized, would govern. The Departments invite comments on whether to require documentation of the decision-making process and disclosure of the decision.

The Departments seek comment on this approach to determining that a closely held for-profit entity opposes providing coverage for some or all of the contraceptive services otherwise required to be covered on account of the owners' religious objections.

#### *Other Potential Changes*

The Departments seek comment on other potential changes to the July 2013 final regulations in light of the proposed change to the definition of eligible organization. In particular, the Departments seek comment on applying the approach set forth in the July 2013 final regulations in the context of the expanded definition of eligible organization. The July 2013 final regulations provide for separate payments for contraceptive services for participants and beneficiaries in self-insured group health plans of eligible organizations in a manner that enables these organizations to completely separate themselves from administration and payment for contraceptive coverage. Specifically, the third party administrator must provide or arrange such payments, and can seek reimbursement for such costs (including an allowance for administrative costs and margin) by making an arrangement with a participating issuer – that is, an issuer offering coverage through a Federally-facilitated Exchange (FFE). The participating issuer can receive an adjustment to its FFE user fees to finance such costs.

The Departments seek comment on the likely number of closely held for-profit entities that would seek an accommodation, the number of participants and beneficiaries (or in the case of student health insurance coverage, enrollees and dependents) in the plans of such entities, and the number of issuers and third-party administrators affected by the proposed rules. Finally, the Departments seek comment on whether any other aspects of the accommodations in the July 2013 final regulations, including relevant definitions, should be modified in light of the proposed addition of closely held for-profit entities with religious objections to contraceptive coverage to the definition of eligible organization.

These proposed regulations, if finalized as proposed, would require a small number of conforming changes to cross-references in the regulations. Any such necessary conforming changes would be incorporated into final regulations.

### **III. Response to Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. The Departments will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

### **IV. Economic Impact and Paperwork Burden**

#### *A. Executive Orders 12866 and 13563 – Department of Health and Human Services and Department of Labor*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both

<sup>7</sup>134 S. Ct. at 2774–2775.



costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a regulation: (1) having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year), and an “economically significant” regulatory action is subject to review by the Office of Management and Budget (OMB). The Departments anticipate that these proposed regulations are not likely to have economic impacts of \$100 million or more in any 1 year, and therefore, do not meet the definition of “economically significant” under Executive Order 12866.

### 1. Need for Regulatory Action

The proposed rules would modify the July 2013 final regulations in light of the Supreme Court’s decision in *Hobby Lobby*. That decision held that a closely held for-profit corporation is exempt from the requirement to provide contraceptive coverage if its owners have religious objections to such coverage, because there is a less restrictive means of furthering the law’s interests, namely the accommodation the Government already provided to nonprofit religious organizations with such objections. Contraceptive coverage

is crucial to women’s health and equality for a number of reasons, including but not limited to the psychological toll and compromised financial position, and adverse health consequences, that can result from unplanned or unwanted pregnancies. As documented in a report of the Institute of Medicine, women experiencing an unintended pregnancy may not immediately be aware that they are pregnant, and thus delay prenatal care. They also may not be as motivated to discontinue behaviors that pose pregnancy-related risks (for example, smoking, consumption of alcohol).<sup>8</sup> Studies show a greater risk of preterm birth and low birth weight among unintended pregnancies compared with pregnancies that were planned.<sup>9</sup> Contraceptives also have medical benefits for women who are contraindicated for pregnancy, and there are demonstrated preventive health benefits from contraceptives relating to conditions other than pregnancy.<sup>10</sup> In addition, there are significant cost savings to employers from the coverage of contraceptives.<sup>11</sup> Providing this coverage to participants and beneficiaries affected by the Supreme Court decision is a priority.

### 2. Anticipated Effects

The Departments expect that these proposed regulations would not result in any additional significant burden on or costs to the affected entities.

### B. Special Analyses – Department of the Treasury

For purposes of the Department of the Treasury, it has been determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this proposed rule. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby

certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations merely propose to modify the definition of eligible organization to include certain closely held for-profit entities. This modification, if adopted, would not increase costs to or burdens on the affected organizations. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### C. Paperwork Reduction Act – Department of Health and Human Services

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

The 2013 final regulations require an eligible organization that seeks an accommodation to self-certify that it meets the definition of an eligible organization using

<sup>8</sup>Inst. Of Med., *Clinical Preventive Services for Women: Closing the Gaps*, Wash., D.C.: Nat’l Acad. Press, 2011, at p. 16.

<sup>9</sup>Gipson, J.D. et al., The Effects of Unintended Pregnancy on Infant, Child and Parental Health: A Review of the Literature, *Studies on Family Planning*, 2008, 39(1):18–38.

<sup>10</sup>Inst. Of Med., *Clinical Preventive Services for Women: Closing the Gaps*, Wash., D.C.: Nat’l Acad. Press, 2011, at p. 107.

<sup>11</sup>See discussion at 77 FR 8727.

the EBSA Form 700 and providing it directly to each third party administrator or issuer under the plan that would otherwise arrange for or provide the covered contraceptive services. The interim final regulations being published contemporaneously with these proposed regulations continue to allow such eligible organizations to use EBSA Form 700, as set forth in the 2013 final regulations and guidance. In addition, the interim final regulations permit an alternative process, consistent with the Supreme Court's interim order in *Wheaton College*, under which an eligible organization may notify HHS in writing of its religious objection to coverage of all or a subset of contraceptive services.

These proposed regulations do not change the requirement that an eligible organization that seeks accommodation self-certifies that it meets the definition of an eligible organization, either using the EBSA Form 700 method of self-certification or the alternative notice to HHS process.

HHS is anticipating that 71 for-profit organizations will seek an accommodation. This is based on the number of plaintiffs that are for-profit employers in recent litigation objecting on religious grounds to the provision of contraceptive services. We seek comments on this estimate and welcome any data that may assist us in estimating the number of entities affected by this provision. For each eligible organization it is assumed that, clerical staff will gather and enter the necessary information, send the self-certification or the notice to its issuer(s) or third party administrator(s) or to HHS electronically and retain a copy for recordkeeping, a manager and legal counsel will review it, and a senior executive will execute it. It is estimated that an organization will need approximately 50 minutes (30 minutes of clerical labor at a cost of \$30.00 per hour, 10 minutes for a manager at a cost of \$102 per hour, 5 minutes for legal counsel at a cost of \$127 per hour, and 5 minutes for a senior executive at a cost of \$121 per hour) to execute the self-certification. The certification may be electronically transmitted to the issuer or to HHS at minimal cost, but a cost burden of \$38.34 is estimated for a paper filing calculated with 5 cents per page printing and material costs and 49 cents postage costs. Therefore, the

total one-time burden for preparing and providing the information in the self-certification is estimated to be approximately \$53 for each eligible organization.

Based on this estimate of 71 affected entities and the individual burden estimate of \$53, we estimate the hour burden to be 59.2 hours with an equivalent cost of \$3736 and a paper filing cost burden of \$38.34. As the Department of Labor and the Department of Health and Human Services share jurisdiction they are splitting the hour burden so each will account for 29.6 burden hours and a cost burden of \$19.17. We welcome comments on any aspect of this burden estimate.

If you comment on these information collection and recordkeeping requirements, please submit your comments electronically as specified in the ADDRESSES section of this proposed rule.

Comments must be received on/by October 27, 2014.

#### *D. Paperwork Reduction Act – Department of Labor*

As discussed above, the proposed regulations would revise the definition of eligible organization to include qualifying closely held for-profit entities. This action would amend the EBSA Form 700 information collection request (ICR), which is approved under OMB Control number 1210-NEW to allow qualified closely held for-profit entities to avail themselves of the accommodation by self-certifying that they meet the definition of an eligible organization, either using the EBSA Form 700 method of self-certification or the alternative notice to HHS process under the contemporaneous interim final regulations.

- Consistent with the HHS analysis presented above, DOL estimates that there will be 71 additional entities that would utilize the accommodation. The Departments are soliciting comments for 60 days regarding the likely number of additional entities seeking an accommodation, the number of participants and beneficiaries in the plans of such organizations, and the number of issuers and third party administrators impacted by the proposed regulations. The Departments will submit a copy of these proposed rules to OMB in

accordance with 44 U.S.C. 3507(d) for review of the proposed ICRs. The Departments and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, by permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Employee Benefits Security Administration either by Fax to (202) 395-5806 or by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). A copy of the proposed ICRs may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N-5718, Washington, DC 20210; telephone: (202) 693-8410; Fax: (202) 219-4745 (please note that these numbers are not toll-free numbers); email: [ebssa.opr@dol.gov](mailto:ebssa.opr@dol.gov). Proposed ICRs submitted to OMB also are available at [www.reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

The Departments expect that qualified closely held for-profit entities will spend the same time (and incur the same cost) to prepare and send the EBSA Form 700 or the notification to the Secretary of HHS as other eligible organizations under the existing ICR (approximately 50 minutes in preparation time and \$0.54 mailing costs). The Departments note that persons are not required to respond to, and generally are not subject to any penalty for failing to comply with, an ICR unless the ICR has a valid OMB control number. The paper-

work burden estimates are summarized as follows:

*Type of Review:* Revised Collection.

*Agencies:* Employee Benefits Security Administration, Department of Labor

*Title:* EBSA Form 700.

*OMB Number:* 1210–NEW.

*Affected Public:* Business or other for profit entity.

*Total Respondents:* 71

*Total Responses:* 71

*Frequency of Response:* Once, Variable.

*Estimated Total Annual Burden Hours:* 59 hours (DOL 29.5 hours, HHS 29.5 hours)

*Estimated Total Annual Burden Cost:* \$38 (DOL \$19, HHS \$19)

## V. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, these proposed regulations do not include any federal mandate that may result in expenditures by state, local, or tribal governments, nor do they include any federal mandates that may impose an annual burden of \$100 million, adjusted for inflation, or more on the private sector.<sup>12</sup>

## VI. Federalism – Department of Health and Human Services and Department of Labor

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on states, the relationship between the federal government and states, or the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the regulation.

In the Departments’ view, these proposed regulations have federalism implications, but the federalism implications

are substantially mitigated because, with respect to health insurance issuers, 45 states are either enforcing the requirements related to coverage of specified preventive services (including contraception) without cost sharing pursuant to state law or otherwise are working collaboratively with HHS to ensure that issuers meet these standards. In five states, HHS ensures that issuers comply with these requirements. Therefore, the proposed regulations are not likely to require substantial additional oversight of states by HHS.

In general, section 514 of ERISA provides that state laws are superseded to the extent that they relate to any covered employee benefit plan, and preserves state laws that regulate insurance, banking, or securities. ERISA also prohibits states from regulating a covered plan as an insurance or investment company or bank. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new preemption provision to ERISA (as well as to the PHS Act) narrowly preempting state requirements on group health insurance coverage. States may continue to apply state law requirements but not to the extent that such requirements prevent the application of the federal requirement that group health insurance coverage provided in connection with certain group health plans provide coverage for specified preventive services without cost sharing. HIPAA’s Conference Report states that the conferees intended the narrowest preemption of state laws with regard to health insurance issuers (H.R. Conf. Rep. No. 104–736, 104<sup>th</sup> Cong. 2d Session 205, 1996). State insurance laws that are more stringent than the federal requirement are unlikely to “prevent the application of” the preventive services coverage provision, and therefore are unlikely to be preempted. Accordingly, states have significant latitude to impose requirements on health insurance issuers that are more restrictive than those in federal law.

Guidance conveying this interpretation was published in the **Federal Register** on April 8, 1997 (62 FR 16904) and December 30, 2004 (69 FR 78720), and these proposed regulations implement the pre-

ventive services coverage provision’s minimum standards and do not significantly reduce the discretion given to states under the statutory scheme.

The PHS Act provides that states may enforce the provisions of title XXVII of the PHS Act as they pertain to issuers, but that the Secretary of HHS will enforce any provisions that a state does not have authority to enforce or that a state has failed to substantially enforce. When exercising its responsibility to enforce provisions of the PHS Act, HHS works cooperatively with the state to address the state’s concerns and avoid conflicts with the state’s exercise of its authority. HHS has developed procedures to implement its enforcement responsibilities, and to afford states the maximum opportunity to enforce the PHS Act’s requirements in the first instance. In compliance with Executive Order 13132’s requirement that agencies examine closely any policies that may have federalism implications or limit the policymaking discretion of states, the Departments have engaged in numerous efforts to consult and work cooperatively with affected state and local officials.

In conclusion, throughout the process of developing these proposed regulations, to the extent feasible within the specific preemption provisions of ERISA and the PHS Act, the Departments have attempted to balance states’ interests in regulating health coverage and health insurance issuers, and the rights of those individuals intended to be protected in the PHS Act, ERISA, and the Code.

## VII. Statutory Authority

The Department of the Treasury regulations are adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are adopted pursuant to the authority contained in 29 U.S.C. 1002(16), 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Public Law 104–191, 110 Stat. 1936; sec. 401(b), Public Law 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Public Law 110–343, 122 Stat. 3881; sec.

<sup>12</sup>In 2014, that threshold level is approximately \$141 million.

1001, 1201, and 1562(e), Public Law 111-148, 124 Stat. 119, as amended by Public Law 111-152, 124 Stat. 1029; Secretary of Labor's Order 3-2010, 75 FR 55354 (September 10, 2010).

The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended; and Title I of the Affordable Care Act, sections 1301-1304, 1311-1312, 1321-1322, 1324, 1334, 1342-1343, 1401-1402, and 1412, Pub. L. 111-148, 124 Stat. 119 (42 U.S.C. 18021-18024, 18031-18032, 18041-18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

Signed this 20<sup>th</sup> day of August 2014.

John Dalrymple,  
*Deputy Commissioner for Services and Enforcement, Internal Revenue Service.*

Signed this 20<sup>th</sup> day of August 2014.

Phyllis C. Borzi,  
*Assistant Secretary,  
Employee Benefits  
Security Administration.  
Department of Labor.*

Dated: August 19, 2014.

Marilyn Tavenner,  
*Administrator,  
Centers for Medicare &  
Medicaid Services.*

Approved: August 20, 2014.

Sylvia M. Burwell,  
*Secretary,  
Department of Health and  
Human Services.*

[Billing Codes: 4830-01-P; 4510-029-P; 4120-01-P; 6325-64]

\* \* \* \* \*

## DEPARTMENT OF THE TREASURY Internal Revenue Service

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 54.9815-2713A is amended by revising paragraph (a) to read as follows:

#### § 54.9815-2713A Accommodations in connection with coverage of preventive health services.

(a) *Eligible organizations.* An eligible organization is an organization that meets the criteria of paragraph (a)(1) through (3) of this section.

(1) The organization opposes providing coverage for some or all of any contraceptive items or services required to be covered under § 54.9815-2713(a)(1)(iv) on account of religious objections.

(2)(i) The organization is organized and operates as a nonprofit entity and holds itself out as a religious organization; or

(ii) The organization is organized and operates as a closely held for-profit entity, as defined in paragraph (a)(4) of this section, and the entity's objection to covering some or all of the contraceptive services on account of its owners' sincerely held religious beliefs is made in accordance with the organization's applicable rules of governance, consistent with state law.

(3) The organization must self-certify in the form and manner specified by the Secretary or provide notice to the Secretary of Health and Human Services as described in paragraph (b) or (c) of this section. The organization must make such self-certification or notice available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) or (c) of this section applies. The self-certification or notice must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with

the record retention requirements under section 107 of ERISA.

(4) [Reserved]

\* \* \* \* \*

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as follows:

#### PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

1. The authority citation for part 2590 is revised to read as follows:

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a, 1185b, 1185d, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104-191, 110 Stat. 1936; sec. 401(b), Pub. L. 105-200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110-343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111-148, 124 Stat. 119, as amended by Pub. L. 11-152, 124 Stat. 1029; Secretary of Labor's Order 1-2011, 77 FR 1088 (January 9, 2012).

2. Section 2590.715-2713A is amended by revising paragraph (a) to read as follows:

#### § 2590.715-2713A Accommodations in connection with coverage of preventive health services.

(a) *Eligible organizations.* An eligible organization is an organization that meets the criteria of paragraph (a)(1) through (3) of this section.

(1) The organization opposes providing coverage for some or all of any contraceptive items or services required to be covered under § 2590.715-2713(a)(1)(iv) on account of religious objections.

(2)(i) The organization is organized and operates as a nonprofit entity and holds itself out as a religious organization; or

(ii) The organization is organized and operates as a closely held for-profit entity, as defined in paragraph (a)(4) of this section, and the entity's objection to covering some or all of the contraceptive services on account of its owners' sincerely held religious beliefs is made in accordance with the organization's applicable rules of governance, consistent with state law.

(3) The organization must self-certify in the form and manner specified by the Secretary or provide notice to the Secretary of Health and Human Services as described in paragraph (b) or (c) of this section. The organization must make such self-certification or notice available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (b) or (c) of this section applies. The self-certification or notice must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(4) [Reserved]  
\* \* \* \* \*

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR subtitle A, part 147 as follows:

### PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

1. The authority citation for part 147 continues to read as follows:

**Authority:** Secs 2701 through 2763, 2791, and 2792 of the Public Health Ser-

vice Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

2. Section 147.131 is amended by revising paragraphs (b) and (f) to read as follows:

#### § 147.131 Exemption and accommodation in connection with coverage of preventive health services.

\* \* \* \* \*

(b) *Eligible organizations.* An eligible organization is an organization that meets the criteria of paragraph (b)(1) through (3) of this section.

(1) The organization opposes providing coverage for some or all of any contraceptive items or services required to be covered under § 147.130(a)(1)(iv) on account of religious objections.

(2)(i) The organization is organized and operates as a nonprofit entity and holds itself out as a religious organization; or

(ii) The organization is organized and operates as a closely held for-profit entity, as defined in paragraph (b)(4) of this section, and the entity’s objection to covering some or all of the contraceptive services on account of its owners’ sincerely held religious beliefs is made in accordance with the organization’s applicable rules of governance, consistent with state law.

(3) The organization must self-certify in the form and manner specified by the Secretary or provide notice to the Secre-

tary of Health and Human Services as described in paragraph (c) of this section. The organization must make such self-certification or notice available for examination upon request by the first day of the first plan year to which the accommodation in paragraph (c) of this section applies. The self-certification or notice must be executed by a person authorized to make the certification on behalf of the organization, and must be maintained in a manner consistent with the record retention requirements under section 107 of ERISA.

(4) [Reserved]  
\* \* \* \* \*

(f) *Application to student health insurance coverage.* The provisions of this section apply to student health insurance coverage arranged by an eligible organization that is an institution of higher education as defined in 20 U.S.C. 1002 in a manner comparable to that in which they apply to group health insurance coverage provided in connection with a group health plan established or maintained by an eligible organization that is an employer. In applying this section in the case of student health insurance coverage, a reference to “plan participants and beneficiaries” is a reference to student enrollees and their covered dependents.

(Filed by the Office of the Federal Register on August 22, 2014, 3:30 p.m., and published in the issue of the Federal Register for August 27, 2014, 79 F.R. 51118)

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## Numerical Finding List<sup>1</sup>

Bulletins 2014–27 through 2014–38

### Announcements:

2014-2, 2014-28 I.R.B. 120  
2014-28, 2014-34 I.R.B. 391  
2014-29, 2014-35 I.R.B. 452

### Notices:

2014-40, 2014-27 I.R.B. 100  
2014-41, 2014-27 I.R.B. 97  
2014-42, 2014-34 I.R.B. 387  
2014-43, 2014-31 I.R.B. 249  
2014-44, 2014-32 I.R.B. 270  
2014-45, 2014-34 I.R.B. 388  
2014-46, 2014-36 I.R.B. 520  
2014-47, 2014-36 I.R.B. 522  
2014-48, 2014-36 I.R.B. 523

### Proposed Regulations:

REG-104579-13, 2014-33 I.R.B. 370  
REG-120756-13, 2014-31 I.R.B. 252  
REG-105067-14, 2014-34 I.R.B. 391  
REG-110948-14, 2014-30 I.R.B. 239  
REG-121542-14, 2014-28 I.R.B. 119  
REG-107012-14, 2014-33 I.R.B. 371  
REG-123286-14, 2014-33 I.R.B. 377  
REG-209459-78, 2014-31 I.R.B. 253  
REG-129507-14, 2014-38 I.R.B. 561  
REG-129786-14, 2014-38 I.R.B. 562

### Revenue Procedures:

2014-26, 2014-27 I.R.B. 26  
2014-27, 2014-27 I.R.B. 41  
2014-29, 2014-28 I.R.B. 105  
2014-37, 2014-33 I.R.B. 363  
2014-38, 2014-29 I.R.B. 132  
2014-39, 2014-29 I.R.B. 151  
2014-40, 2014-30 I.R.B. 229  
2014-41, 2014-33 I.R.B. 364  
2014-42, 2014-29 I.R.B. 193  
2014-43, 2014-32 I.R.B. 273  
2014-44, 2014-32 I.R.B. 274  
2014-45, 2014-34 I.R.B. 388  
2014-46, 2014-33 I.R.B. 367  
2014-47, 2014-35 I.R.B. 393  
2014-48, 2014-36 I.R.B. 527  
2014-49, 2014-37 I.R.B. 535  
2014-50, 2014-37 I.R.B. 540  
2014-51, 2014-37 I.R.B. 543  
2014-52, 2014-38 I.R.B. 560

### Revenue Rulings:

2014-14, 2014-27 I.R.B. 12  
2014-19, 2014-32 I.R.B. 266  
2014-20, 2014-28 I.R.B. 101

## Revenue Rulings—Continued:

2014-21, 2014-34 I.R.B. 381  
2014-22, 2014-37 I.R.B. 533  
2014-24, 2014-37 I.R.B. 529

### Treasury Decisions:

9664, 2014-32 I.R.B. 254  
9668, 2014-27 I.R.B. 1  
9669, 2014-28 I.R.B. 103  
9670, 2014-29 I.R.B. 121  
9671, 2014-29 I.R.B. 124  
9672, 2014-30 I.R.B. 196  
9673, 2014-30 I.R.B. 212  
9674, 2014-30 I.R.B. 225  
9675, 2014-31 I.R.B. 242  
9676, 2014-32 I.R.B. 260  
9677, 2014-31 I.R.B. 241  
9678, 2014-32 I.R.B. 262  
9679, 2014-32 I.R.B. 267  
9680, 2014-32 I.R.B. 254  
9681, 2014-33 I.R.B. 340  
9682, 2014-33 I.R.B. 342  
9683, 2014-33 I.R.B. 330  
9684, 2014-33 I.R.B. 345  
9685, 2014-34 I.R.B. 379  
9686, 2014-34 I.R.B. 382  
9687, 2014-36 I.R.B. 486  
9688, 2014-36 I.R.B. 482  
9689, 2014-36 I.R.B. 456  
9690, 2014-38 I.R.B. 548  
9691, 2014-38 I.R.B. 547

<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2014–01 through 2014–26 is in Internal Revenue Bulletin 2014–26, dated June 30, 2014.

## Finding List of Current Actions on Previously Published Items<sup>1</sup>

Bulletins 2014–27 through 2014–38

### Announcements:

#### 2012-11

Supplemented by  
Ann. 2014-2, 2014-28 I.R.B. 120

#### 2013-11

Supplemented by  
Ann. 2014-2, 2014-28 I.R.B. 120

#### 2010-41

Obsoleted by  
Rev. Proc. 2014-43, 2014-32 I.R.B. 273

### Revenue Procedures:

#### 1981-38

Superseded by  
Rev. Proc. 2014-42, 2014-29 I.R.B. 193

#### 93-37

Modified and Superseded by  
Rev. Proc. 2014-43, 2014-32 I.R.B. 273

#### 1981-38

Modified by  
Rev. Proc. 2014-42, 2014-29 I.R.B. 193

#### 2000-12

Superseded by  
Rev. Proc. 2014-39, 2014-29 I.R.B. 151

#### 2002-55

Revoked by  
Rev. Proc. 2014-39, 2014-29 I.R.B. 151

#### 2003-64

Superseded by  
Rev. Proc. 2014-47, 2014-35 I.R.B. 393

#### 2004-21

Superseded by  
Rev. Proc. 2014-47, 2014-35 I.R.B. 393

#### 2005-77

Superseded by  
Rev. Proc. 2014-47, 2014-35 I.R.B. 393

#### 2011-14

Modified by  
Rev. Proc. 2014-48, 2014-36 I.R.B. 527

#### 2011-16

Superseded by  
Rev. Proc. 2014-51, 2014-37 I.R.B. 543

## Revenue Procedures—Continued:

#### 2011-16

Modified by  
Rev. Proc. 2014-51, 2014-37 I.R.B. 543

#### 2012-38

Superseded by  
Rev. Proc. 2014-27, 2014-27 I.R.B. 26

#### 2012-46

Superseded by  
Rev. Proc. 2014-26, 2014-27 I.R.B. 41

#### 2014-4

Amplified by  
Rev. Proc. 2014-40, 2014-30 I.R.B. 229

#### 2014-5

Amplified by  
Rev. Proc. 2014-40, 2014-30 I.R.B. 229

#### 2014-8

Amplified by  
Rev. Proc. 2014-40, 2014-30 I.R.B. 229

#### 2014-9

Amplified by  
Rev. Proc. 2014-40, 2014-30 I.R.B. 229

#### 2014-10

Amplified by  
Rev. Proc. 2014-40, 2014-30 I.R.B. 229

#### 2014-13

Modified by  
Rev. Proc. 2014-38, 2014-29 I.R.B. 132

#### 2014-13

Superseded by  
Rev. Proc. 2014-38, 2014-29 I.R.B. 132

#### 2014-16

Superseded by  
Rev. Proc. 2014-51, 2014-37 I.R.B. 543

#### 2014-16

Modified by  
Rev. Proc. 2014-51, 2014-37 I.R.B. 543

### Revenue Rulings:

#### 2008-40

Modified by  
Rev. Rul. 2014-24, 2014-37 I.R.B. 529

#### 2011-1

Modified by  
Rev. Rul. 2014-24, 2014-37 I.R.B. 529

#### 2012-6

Modified by  
Rev. Rul. 2014-24, 2014-37 I.R.B. 529

## Notices:

#### 2013-11

Modified by  
Notice 2014-48, 2014-36 I.R.B. 523

#### 2013-23

Modified by  
Notice 2014-48, 2014-36 I.R.B. 523

#### 2013-28

Modified by  
Notice 2014-48, 2014-36 I.R.B. 523

#### 2013-29

Modified by  
Notice 2014-46, 2014-36 I.R.B. 520

#### 2013-29

Clarified by  
Notice 2014-46, 2014-36 I.R.B. 520

#### 2013-32

Modified by  
Notice 2014-48, 2014-36 I.R.B. 523

#### 2013-37

Modified by  
Notice 2014-48, 2014-36 I.R.B. 523

#### 2013-51

Obsoleted by  
Notice 2014-42, 2014-34 I.R.B. 387

#### 2013-60

Modified by  
Notice 2014-46, 2014-36 I.R.B. 520

#### 2013-60

Clarified by  
Notice 2014-46, 2014-36 I.R.B. 520

#### 2014-44

Supplemented by  
Notice 2014-45, 2014-34 I.R.B. 388

### Treasury Decisions:

#### 2005-47

Obsoleted by  
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<sup>1</sup>A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2014–01 through 2014–26 is in Internal Revenue Bulletin 2014–26, dated June 30, 2014.



# INDEX

## Internal Revenue Bulletins 2014–27 through 2014–38

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parentheses refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

### Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

## ADMINISTRATIVE

AJCA–Section 6707 and the Penalty for Failure to Furnish Information Regarding Reportable Transactions by Material Advisors (TD 9686) 34, 382

Announcement to Discontinue the Internal Revenue Bulletin Index (Ann 27) 28, 120

Annual Filing Season Program (RP 42) 29, 193

Disclosure to Census Bureau (REG–120756–13) 31, 252

Disclosure to Census Bureau (TD 9677) 31, 241

Information reporting by passport applicants (TD 9679) 32, 267

Low-Income Housing Tax Credit (RP 52) 38, 560

Procedures to void backup withholding (RP 43) 32, 273

### Proposed Regulations:

26 CFR part 301 is amended, section 301.6103(j)(1)–1 is amended, section 301.6103(j)(1)–1T added (REG–120756–13) 31, 252

Regulations Governing Practice Before the Internal Revenue Service (REG–138367–06) (TD 9668) 27, 1

### Regulations:

31 CFR 10.1, revised; 10.3, revised; 10.22, revised; 10.31, revised; 10.35, revised; 10.36, revised; 10.37, revised; 10.52, revised; 10.81, revised; 10.82, revised; 10.91, revised. (TD 9668) 27, 1

26 CFR 301.6109–4, added; 1.6042–4, amended; 1.6043–4, amended; 1.6044–5, amended; 1.6045–2, amended; 1.6045–3, amended; 1.6045–4, amended; 1.6045–5, amended; 1.6049–6, amended; 1.6050A–1, amended; 1.6050E–1, amended; 1.6050N–1, amended; 1.6050P–1, amended; 1.6050S–1, amended; 1.6050S–3, amended (TD 9675) 31, 242

26 CFR part 301 is amended, section 301.6103(j)(1)–1 is amended, section 301.6103(j)(1)–1T added (TD 9677) 31, 241

26 CFR part 301, amended; 26 CFR 301.6039E–1 added (TD 9679) 32, 267

26 CFR 301.6707–1, added; 301.6707–1T, removed; Rev. Proc. 2007–21, sections 4.04, 4.05, and 4.06 superseded; material advisor penalty for failure to furnish information regarding reportable transactions (TD 9686) 34, 382

## ADMINISTRATIVE—Cont.

Substitute Forms Preparation for Certain Information Returns (RP 27) 27, 41

Substitute Forms Preparation for Certain Information Returns (RP 44) 32, 274

Truncated Taxpayer Identification Numbers (TD 9675) 31, 242

## EMPLOYEE PLANS

Group Trusts (RR 24) 37, 529

Individual Retirement Account Rollover Limitations (REG–209459–78) 31, 253

Longevity Annuity Contracts (TD 9673) 30, 212

### Proposed Regulations:

26 CFR 408, Individual Retirement Accounts (REG–209459–78) 31, 253

### Regulations:

26 CFR 54.9815–2708, as amended (TD 9671) 29, 174

26 CFR 1.401(a)(9)–5, amended; 1.401(a)(9)–6, amended; 1.403(b)–6, amended; 1.408–8, amended; 1.408A–6, amended; 1.6047–2, added (TD 9673) 30, 212

Rules relating to 90 day waiting period limitation (TD 9671) 29, 124

Weighted average interest rates

Segment rates for June 2014 (Notice 41) 27, 97

Segment rates for July 2014 (Notice 43) 31, 249

Segment rates for August 2014 (Notice 48) 36, 523

## EMPLOYMENT TAX

Extending religious and family member FICA and FUTA exceptions to disregarded entities; regulations regarding the indoor tanning services excise tax and disregarded entities (TD 9670) 29, 121

Method of accounting for gains and losses on shares in certain money market funds; broker returns with respect to sales of shares in money market funds (REG–107012–14) 33, 371

### Publications:

1223, General Rules and Specifications for Substitute Forms W–2c and W–3c (RP29) 28, 105

4436, General Rules and Specifications for Substitute Form 941 and Schedule B (Form 941), and Schedule R (RP 26) 27, 26

Summons Interview Regulations Under Section 7602 (REG–121542–14) (TD 9669) 28, 103

### Regulations:

26 CFR 301.7602–1 is amended to add new paragraph (b)(3) pertaining to summons interviews. (TD 9669) 28, 103

26 CFR 1.1361–4, amended; 1.1361–4T, removed; 31.3121(b)(3)–1, amended; 31.3121(b)(3)–1T, removed; 31.3127–1, added; 31.3127–1T, removed; 31.3306(c)(5)–1, amended; 31.3306(c)(5)–1T, removed; 301.7701–2, amended; 301.7701–2T, removed; extending religious and family member FICA and FUTA exceptions to disregarded entities; regulations regarding the indoor tanning services excise tax and disregarded entities (TD 9670) 29, 121

26 CFR 1.446–7 added; 1.6045–1 amended; method of accounting for gains and losses on shares in certain money market funds; broker returns with respect to sales of shares in money market funds (REG–107012–14) 33, 371

## ESTATE TAX

Section 2032A.—Valuation of Certain Farm, Etc., Real Property (RR 21) 34, 381

Summons Interview Regulations Under Section 7602 (REG–121542–14) (TD 9669) 28, 103

Regulations:

26 CFR 301.7602–1 is amended to add new paragraph (b)(3) pertaining to summons interviews. (TD 9669) 28, 103

## EXCISE TAX

Alternative process for religious objections to providing contraceptive coverage under section 9815 (REG–129507–14) 38, 561

Alternative process for religious objections to providing contraceptive coverage under section 9815 (TD 9690) 38, 548

Branded Prescription Drug Fee (REG–123286–14) 33, 377

Branded Prescription Drug Fee (TD 9684) 33, 345

Branded Prescription Drug Fee (Notice 42) 34, 387

Definition of “eligible organization” under section 9815, regarding coverage of preventive services, including contraceptive coverage (REG–129786–14) 38, 562

Extending religious and family member FICA and FUTA exceptions to disregarded entities; regulations regarding the indoor tanning services excise tax and disregarded entities (TD 9670) 29, 121

Section 9010 of the ACA; health insurance providers fee (Notice 47) 36, 522

Summons Interview Regulations Under Section 7602 (REG–121542–14) (TD 9669) 28, 103

Proposed Regulations:

26 CFR 54.9815–2713A is revised; accommodations in connection with coverage of preventive health services under section 9815 (REG–129507–14) 38, 561

26 CFR 54.9815–2713A(a) amended; accommodations in connection with coverage of preventive health services under section 9815 (REG–129786–14) 38, 562

Regulations:

26 CFR 301.7602–1 is amended to add new paragraph (b)(3) pertaining to summons interviews. (TD 9669) 28, 103

26 CFR 1.1361–4, amended; 1.1361–4T, removed; 31.3121(b)(3)–1, amended; 31.3121(b)(3)–1T, removed; 31.3127–1, added; 31.3127–1T, removed; 31.3306(c)(5)–1, amended; 31.3306(c)(5)–1T, removed; 301.7701–2, amended; 301.7701–2T, removed; extending religious and family member FICA and FUTA exceptions to disregarded entities; regulations regarding the indoor tanning services excise tax and disregarded entities (TD 9670) 29, 121

26 CFR 54.9815–2708, as amended (TD 9671) 29, 121

26 CFR 51.2(e)(3), amended; (REG–123286–14) 33, 377

26 CFR 54.9815–2713A(b), (c)(1), and (c)(2)(i) introductory text amended; 54.9815–2713A(f) and 54.9815–2713AT added; accommodations in connection with coverage of preventive health services under section 9815 (TD 9690) 38, 548

Rules relating to 90 day waiting period limitation (TD 9671) 29, 121

## EXEMPT ORGANIZATIONS

Streamlined Application for Recognition of Exemption Under Section 501(c)(3) (RP 2014–40) 30, 229

Streamlined process for 501(c)(3) recognition (REG–110948–14) 30, 239

Streamlined process for 501(c)(3) recognition (TD 9674) 30, 225

Regulations:

26 CFR 1.501(c)–1 amended 1. 501(a)–1T added; 1.501(c)(3)–1 amended, 1.501(c)(3)–1T added; and 1.508–1 amended, 1.508–1T added (REG–110948–14)(TD 9674) 30, 225

## GIFT TAX

Summons Interview Regulations Under Section 7602 (REG–121542–14) (TD 9669) 28, 103

Regulations:

26 CFR 301.7602–1 is amended to add new paragraph (b)(3) pertaining to summons interviews (REG–121542–14) (TD 9669) 28, 103

## INCOME TAX

Accounting method change, retail inventory method (RP 48) 36, 527

AJCA–Section 6707 and the Penalty for Failure to Furnish Information Regarding Reportable Transactions by Material Advisors (TD 9686) 34, 382

Allocation and Apportionment of Interest Expense (TD 9676) 32, 260

Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws (TD 9687) 36, 486

Basis of indebtedness of S corporations to their shareholders (TD 9682) 33, 342

Credit for carbon dioxide Sequestration (Notice 40) 27, 100

Debt that is a position in personal property that is part of a straddle (TD 9691) 38, 547

Disciplinary actions involving attorneys, certified public accountants, enrolled agents, and enrolled actuaries, enrolled retirement plan agents, and appraisers (Ann 29) 35, 452

Disclosure to Census Bureau (REG–120756–13) 31, 252

Disclosure to Census Bureau (TD 9677) 31, 241

Dispositions of property subject to depreciation under section 168 (TD 9689) 36, 456

FFI Agreement for Participating FFI and Reporting Model 2 FFI (RP 38) 29, 132

Foreign Earned Income Exclusion (Ann 2014–28) 34, 391

Foreign tax credit guidance under section 901 (m) (Notice 44) 32, 391

Foreign tax credit guidance under section 901 (m) (Notice 45) 34, 270

Information reporting by passport applicants (TD 9679) 32, 267

Interest:

Investment:

Federal short-term, mid-term, and long-term rates for: July 2014 (RR 2014–20) 28, 101

Federal short-term, mid-term, and long-term rates for: August 2014 (RR 19) 32, 266

Federal short-term, mid-term, and long-term rates for: September 2014 (RR 22) 37, 533

## INCOME TAX—Cont.

Money market funds and the wash sale rules (RP 45) 34, 388  
Premium Tax Credit (REG-104579-13) 33, 370  
Premium Tax Credit (RP 37) 33, 363  
Premium Tax Credit (RP 41) 33, 364  
Premium Tax Credit (TD 9683) 33, 330  
Production Tax Credit, Investment Tax Credit, Beginning of Construction (Notice 46) 36, 520  
Proposed Regulations:  
26 CFR part 301 is amended, section 301.6103(j)(1)-1 is amended, section 301.6103(j)(1)-1T added (REG-120756-13) 31, 252  
26 C.F.R. 1.382-3(j)(17), modified; 1.382-3T(j)(17), added, segregation rules for public groups of shareholders (REG-105067-14) 34, 391  
Publications:  
1223, General Rules and Specifications for Substitute Forms W-2c and W-3c (RP 29) 28, 105  
4436, General Rules and Specifications for Substitute Form 941 and Schedule B (Form 941), and Schedule R (RP 26) 27, 26  
Qualified Intermediary (QI) Agreement (RP 39) 29, 151  
Qualified residential rental projects (RP-105272-13) (RP 50) 37, 540  
Regulations:  
31 CFR 10.1, revised; 10.3, revised; 10.22, revised; 10.31, revised; 10.35, revised; 10.36, revised; 10.37, revised; 10.52, revised; 10.81, revised; 10.82, revised; 10.91, revised (TD 9668) 27, 1  
26 CFR 301.7602-1 is amended to add new paragraph (b)(3) pertaining to summons interviews (REG-121542-14) (TD 9669) 28, 103  
26 CFR 1.45R-0, added; 1.45R-1, added; 1.45R-2, added; 1.45R-3, added; 1.45R-4, added; 1.45R-5, added; tax credit for employee health insurance expenses of small employers (TD 9672) 30, 196  
26 CFR 301.6109-4, added; 1.6042-4, amended; 1.6043-4, amended; 1.6044-5, amended; 1.6045-2, amended; 1.6045-3, amended; 1.6045-4, amended; 1.6045-5, amended; 1.6049-6, amended; 1.6050A-1, amended; 1.6050E-1, amended; 1.6050N-1, amended; 1.6050P-1, amended; 1.6050S-1, amended; 1.6050S-3, amended (TD 9675) 31, 242  
26 CFR 1.67-4, amended (TD 9667) 32, 254  
26 CFR part 301 is amended, section 301.6103(j)(1)-1 is amended, section 301.6103(j)(1)-1T added (TD 9677) 31, 241  
26 CFR 1.861-9 amended, 1.861-11 amended; (TD 9676) 32, 260  
26 CFR 1.1092(b)-6, added; 1.1092(b)-6T, removed; 1.1092(b)-3T, amended; (TD 9678) 32, 262  
26 CFR part 301, amended; 26 CFR 301.6039E-1 added (TD 9679) 32, 267  
26 CFR 1.174-2 amended; (TD 9680) 32, 254  
26 CFR 1.36B-2T, 26 CFR 1.36B-3T, 1.36B-4T, added; 26 CFR 1.36B-2, 26 CFR 1.36B-3, 1.36B-4, amended; 26 CFR 1.162(l)-1 and 26 CFR 1.162(l)-1T, added. (REG-104579-13) 33, 370

## INCOME TAX—Cont.

26 CFR 1.195-2, added; 26 CFR 1.708-1, amended; 26 CFR 1.709-1, amended. (TD 9681) 33, 340  
26 CFR 1.1366-2(a), added new paragraph (a)(2) and moved current (a)(2) through (a)(6) to (a)(3) through (a)(7), respectively; basis of indebtedness of S corporations to their shareholders (TD 9682) 33, 342  
26 CFR 1.36B-2T, 26 CFR 1.36B-3T, 1.36B-4T added, 26 CFR 1.36B-2, 26 CFR 1.36B-3, 1.36B-4, amended, 26 CFR 1.162(l)-1 and 26 CFR 1.162(l)-1T added, (TD 9683) 33, 330  
26 C.F.R. 1.382-3(j)(17), modified; 1.382-3T(j)(17), added, segregation rules for public groups of shareholders (TD 9685) 34, 379  
26 CFR 301.6707-1, added; 301.6707-1T, removed; Rev. Proc. 2007-21, sections 4.04, 4.05, and 4.06 superseded; material advisor penalty for failure to furnish information regarding reportable transactions (TD 9686) 34, 382  
26 CFR 301.7623-1, revised; 26 CFR 301.7623-4, added; 26 CFR 301.7623-2, added; 26 CFR 301.6103(h)(4)-1, added 26 CFR 301.7623-3, added; (TD 9687) 36, 486  
26 CFR 1.471-8 amended (TD 9688) 36, 482  
26 CFR 1.168(i)-8 added; 1.165-2, 1.168(i)-0, 1.168(i)-1, 1.168(i)-7, 1.263(a)-3, 1.1016-3 amended; 1.168(i)-0T, 1.168(i)-1T, 1.168(i)-8T removed; dispositions of property subject to depreciation under section 168 (TD 9689) 36, 456  
26 CFR 1.1092(d)-1, amended; 1.1092(d)-1T, removed; debt that is a position in personal property that is part of a straddle (TD 9691) 38, 547  
Regulations Governing Practice Before the Internal Revenue Service (REG-138367-06) (TD 9668) 27, 1  
REIT Distressed Debt (RP 51) 37, 543  
Research and experimental expenditures (TD 9680) 32, 254  
Retail inventory method (TD 9688) 36, 482  
Tax Credit for Employee Health Insurance Expenses of Small Employers (TD 9672) 30, 196  
Temporary relief from certain requirements of § 42 (Rev. Proc. 2014-39) (RP 49) 37, 535  
Truncated Taxpayer Identification Numbers (TD 9675) 31, 242  
Section 67 Limitations on Estates or Trusts; Change of Effective Date (TD 9664) 32, 254  
Section 5000A national average premium for a bronze level of coverage (RP 46) 33, 367  
Segregation rules for public groups of shareholders, (REG-105067-14) 34, 391  
Segregation rules for public groups of shareholders, (TD 9685) 34, 379  
Substitute Forms Preparation for Certain Information Returns (RP 27) 27, 379  
Substitute Forms Preparation for Certain Information Returns (RP 44) 32, 41  
Summons Interview Regulations Under Section 7602 (REG-121542-14) (TD 9669) 28, 274  
Unamortized organization and syndication expenses following a partnership technical termination (TD 9681) 33, 340

## **INCOME TAX—Cont.**

Underpayment and overpayments, quarter beginning: July 1, 2014 (RR 14) 27, 12

Unrealized gain or loss treatment upon establishment of an identified mixed straddle (TD 9678) 32, 262

Withholding Foreign Partnership and Trust Agreements (RP 47) 35, 393

## **SELF-EMPLOYMENT TAX**

Extending religious and family member FICA and FUTA exceptions to disregarded entities; regulations regarding the indoor tanning services excise tax and disregarded entities (TD 9670) 29, 121

Regulations:

26 CFR 1.1361-4, amended; 1.1361-4T, removed; 31.3121(b)(3)-1, amended; 31.3121(b)(3)-1T, removed; 31.3127-1, added; 31.3127-1T, removed; 31.3306(c)(5)-1, amended; 31.3306(c)(5)-1T, removed; 301.7701-2, amended; 301.7701-2T, removed; extending religious and family member FICA and FUTA exceptions to disregarded entities; regulations regarding the indoor tanning services excise tax and disregarded entities (TD 9670) 29, 121

## **SPECIAL ANNOUNCEMENT**

Annual Filing Season Program (RP 42) 29, 193

Procedures to Avoid Backup Withholding (RP 43) 32, 273

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