

cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, March 25, 2008, no one has requested to speak. Therefore, the public hearing scheduled for April 22, 2008, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-141399-07]

RIN 1545-BH13

#### Treatment of Overall Foreign and Domestic Losses; Hearing

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document cancels a public hearing on proposed rulemaking by cross-reference to temporary regulations providing guidance relating to the recapture of overall foreign and domestic losses.

**DATES:** The public hearing, originally scheduled for April 10, 2008, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irs.counsel.treas.gov*.

**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the *Federal Register* on Friday, December 21, 2007 (72 FR 72646), announced that a public hearing was scheduled for April 10, 2008, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 904 of the Internal Revenue Code.

The public comment period for these regulations expired on March 20, 2008. Outlines of topics to be discussed at the hearing were due on March 20, 2008. The notice of proposed rulemaking by

cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, March 21, 2008, no one has requested to speak. Therefore, the public hearing scheduled for April 10, 2008, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

#### 29 CFR Part 403

RIN 1215-AB64

#### Labor Organization Annual Financial Reports

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This document extends the period for comments on the proposed rule published on March 4, 2008 (73 FR 11754). The proposed rule would establish the financial report (Form T-1) required to be filed by labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, as amended, on trusts in which they are interested. The comment period, which was to expire on April 18, 2008, is extended to May 5, 2008.

**DATES:** Comments on the proposed rule published on March 4, 2008 (73 FR 11754) must be received on or before May 5, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 1215-AB64, by any of the following methods:

*Internet*—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. To locate the proposed rule, use key words such as “Labor-Management Standards” or “Labor Organization Annual Financial Reports” to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Mail:* Mailed comments should be sent to: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210.

Because of security precautions, the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

OLMS recommends that you confirm receipt of your mailed comments by contacting (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD).

Only those comments submitted through [www.regulations.gov](http://www.regulations.gov), hand-delivered, or mailed will be accepted.

Comments will be available for public inspection during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at: Kay H. Oshel, U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-1233 (this is not a toll-free number), (800) 877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of March 4, 2008 (73 FR 11754), the Department published a notice of proposed rulemaking that would establish the Form T-1 to be used by labor organizations to file annual financial reports on trusts in which they are interested.

Interested persons were invited to submit comments on or before April 18, 2008, 45 days after the publication of the notice. Based on requests that the Department extend the period for submitting comments, the Department has decided to extend the comment period until May 5, 2008.

The proposed rule, including the proposed Form T-1 and its instructions, is available on the Web site maintained by OLMS at: <http://www.olms.dol.gov>. (Anyone who is unable to access this information on the Internet can obtain the information by contacting the Employment Standards Administration at 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, at: [olms-public@dol.gov](mailto:olms-public@dol.gov) or at (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

Signed at Washington, DC, this 24th day of March, 2008.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

**Don Todd,**

*Deputy Assistant Secretary for Labor-Management Programs.*

[FR Doc. E8-6301 Filed 3-27-08; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DoD-2007-HA-0078; RIN 0720-AB17]

### TRICARE; Relationship Between the TRICARE Program and Employer-Sponsored Group Health Plans

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule implements Section 1097c of Title 10, United States Code. This law prohibits employers from offering incentives to TRICARE-eligible employees to not enroll, or to terminate enrollment, in an employer-offered Group Health Plan (GHP) that is or would be primary to TRICARE. Cafeteria plans that comport with section 125 of the Internal Revenue Code will be permissible so long as the plan treats all employees the same and does not illegally take TRICARE eligibility into account.

**DATES:** Written comments received at the address indicated below by May 27, 2008 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

#### FOR FURTHER INFORMATION CONTACT:

Anne Giese, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA, 22041, telephone (703) 681-0039.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) added Section 1097c to Title 10, United States Code. Section 1097c prohibits employers from offering financial or other incentives to certain TRICARE-eligible employees (essentially retirees and their family members) to not enroll in an employer-offered GHP in the same manner as employers are currently prohibited from offering incentives to Medicare-eligible employees under section 1862(b)(3)(C) of the Social Security Act (42 U.S.C. 1395y(b)(3)(C)). Many employers, including state and local governments, have begun to offer their employees who are TRICARE-eligible a TRICARE supplemental insurance as an incentive not to enroll in the employer's primary GHP. These actions shift thousands of dollars of annual health costs per employee to the Defense Department, draining resources from higher national security priorities. TRICARE, as is Medicare, is a secondary payer to employer-provided health insurance. In all instances where a TRICARE beneficiary is employed by a public or private entity and elects to participate in a GHP, reimbursements for TRICARE claims will be paid as a secondary payer to the TRICARE beneficiary's employer-sponsored GHP. TRICARE is not responsible for paying first as it relates to reimbursements for a TRICARE beneficiary's health care and the coordination of benefits with employer-sponsored GHPs.

An identified employer-sponsored health insurance plan will be the primary payer and TRICARE will be the secondary payer. TRICARE will generally pay no more than the amount it would have paid if there were no employer GHP. As applicable to both the Medicare and TRICARE secondary payer programs, the term "group health plan" means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families. It should be noted that by including any plan of an employer to

provide health care to the employees, this definition is very broad. It should also be noted that Section 1097c also reaches to any other plan that would be primary to TRICARE.

Prohibition on incentives not to enroll in employer-sponsored GHPs is to prevent employers from shifting their responsibility for their employees onto the Federal taxpayers. Certain common employer benefits programs do not constitute improper incentives under the law. For example, supplemental insurance offered under an employer's cafeteria plan which comports with section 125 of the Internal Revenue Code would not be considered improper incentive, as long as it is not a TRICARE-exclusive plan.

A cafeteria plan is defined by the Internal Revenue Code, 26 U.S.C. 125(d), as a written plan under which all participants are employees and the participants may choose among two or more benefits consisting of cash and qualified benefits. Employers who adhere to the requirements of section 125 and offer all employees without regard to TRICARE eligibility a choice between health insurance and cash payment equivalents are not considered in violation of 42 U.S.C. 1395y(b)(3)(C). Therefore, if a TRICARE beneficiary elects the cash payment option as a benefit offered under the employer's cafeteria plan, one which meets section 125 requirements, then the employer would not be in violation of these provisions.

10 U.S.C. 1097c prohibits TRICARE supplemental insurance plans as an option for health coverage under an employer-sponsored GHP to TRICARE-eligible beneficiaries. Such plans cannot be included in cafeteria plans because they are not open to all employees, and constitute an improper incentive targeted only at TRICARE beneficiaries for not enrolling in the employer's main health plan option or options. Section 1097c does not impact TRICARE supplemental insurance plans that are not offered by an employer; but are sold by an insurer and/or beneficiary association working in conjunction with an insurer. Such non-employer-sponsored TRICARE supplemental insurance will continue to be expressly excluded as double coverage under 32 CFR 199.2(b) and 199.8(b)(4)(ii), so that TRICARE is the primary payer and the TRICARE Supplemental plan is the secondary payer. These plans have been sold by beneficiary associations or insurers.

*Cafeteria plans.* Cafeteria plans that comport with section 125 of the Internal Revenue Code are permissible. Additional requirements of any plan