Notice 2015-52

AARP Real Possibilities

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September 25, 2015

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Sent Electronically: Notice.comments@irscounsel.treas.gov

Re: Notice 2015-52

AARP appreciates the opportunity to submit a second set of comments in advance of proposed regulations for the excise tax on high cost employer sponsored health coverage. We continue to closely monitor regulatory developments relating to the excise tax to ensure the implementation of this provision protects the health security of millions of older Americans.

AARP is a nonprofit, nonpartisan organization, with a membership of nearly 38 million Americans age 50 and older that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

As agencies develop proposed regulations that may have a significant impact on cost and coverage, we continue to urge the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) to ensure the excise tax provision is implemented in a manner that does not unfairly penalize employers that employ older workers, or penalize employers that have made the important decision to offer their retirees health coverage.

AARP has long fought to ensure all Americans – especially those age 50 and older – have access to high quality, affordable health insurance options. While we understand that the excise tax was originally targeted at high cost plans, the cost of health insurance is a function of a variety of factors, only one of which may be the generosity of coverage. Other critical factors to consider are:

- the increased health care needs of older workers and retirees;
- geographic variation in health care costs; and
- the demographic population of an employer's insurance pool.

We remain concerned that implementation of the excise tax may prove an unnecessary burden on groups who face higher premiums for reasons including their age, health status or geography.

Age and Gender Adjustment

While we look forward to future proposed regulations which will provide more detail about implementation of the age and gender adjustment, we would like to provide some preliminary comments based on Section VI of the Notice.

The Affordable Care Act (ACA) provides for adjustment to the dollar limit thresholds if the age and gender characteristics of an employer's workforce are different from those of the national workforce, calculated relative to the premium cost of the Blue Cross Blue Shield standard benefit option under the Federal Employees Health Benefits plan. With that understanding, we offer the following comments on items raised in the Notice.

<u>Age and gender data</u>: In calculating the age and gender characteristics of the national workforce, the Notice suggests using the Department of Labor, Bureau of Labor Statistics' Current Population Survey as summarized in Table A-8a. However, this publication does not appear to provide age brackets beyond age 55. IRS should evaluate whether other data sources should be considered, and utilize the source that ensures the most precise presentation of national age and gender characteristics available.

<u>Claims data</u>: The ACA requires that employers' insurance premium costs be calculated relative to the average premium cost of the Federal Employees Health Benefits Plan (FEHBP) Blue Cross Blue Shield standard option. The Notice inquires whether this average cost should be determined by actual FEHBP claims data, or whether instead calculations should rely on national claims data reflecting plans similar to that of the FEHBP standard option. We urge IRS to carefully consider this decision and use the method that would most accurately account for employers' variation in health costs attributable to age and gender, as well as geographic variation in costs. IRS should ensure the data used is credible.

<u>Timing</u>: We encourage IRS to ensure employers receive information they need to calculate their tax liability – including age and gender adjustment tables – in a timely manner, with sufficient time to make needed adjustments in advance of each plan year.

In addition, the Notice seeks comments on whether the age and gender adjustment should take into account the age rating scale adopted for the individual and small group market. It is unclear how such a scale would be applied in this calculation. We discourage limitations that would restrict an employers' ability to accurately calculate the age and gender adjustment for all employees.

Thank you for the opportunity to comment on the second Notice. If you have any questions about these comments, please feel free to contact Andrew Schwab on our Government Affairs staff at (202) 434-3770 or at aschwab@aarp.org.

Sincerely,

David Certner

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Government Affairs