

Health Insurance Provider Fee Exclusion Criteria

OVERVIEW

On February 23rd, the Treasury Department and Internal Revenue Service (IRS) issued guidance (available [here](#)) on the annual fee imposed on health insurance providers, as required by the Affordable Care Act. The aggregate fee amount is \$11.3 billion in 2015 and will generally be applied to health insurance providers based on the ratio of their net premiums compared to all net premiums received in the United States.

In August 2014, the Treasury Department and IRS issued guidance on entities excluded from the fee for 2014. This guidance provides additional information on excluded entities for 2015 and subsequent years.

Alongside this issuance of “temporary and final” guidance, the IRS released the same text as a proposed rule. This parallel approach means that the guidance has the full force of law during the rulemaking process, but that after comments are collected and reviewed the IRS will issue a final rule which may modify the guidance in response to stakeholder feedback. Comments are due by May 27th.

PROVISIONS

As required by law, the following types of entities are excluded from the annual fee:

- Self-insured employers;
- Government entities;
- Any entity that:
 - Is a nonprofit corporation under state law;
 - Has no net earnings that benefit a private shareholder or attempts to influence legislation or a campaign; and
 - Targets more than 80 percent of the gross revenues it receives from governmental programs to low-income, elderly, or disabled populations.
- Any entity that is defined as a voluntary employees’ beneficiary association (VEBA) and is established by an entity (other than an employer or employers) to provide health care benefits.

An entity may use data from the year the fee is applied or the previous year to determine if it meets the exclusion criteria. In either case, the entity must pass the eligibility test for the entire year and must consistently use that method every year to see if it qualifies for exclusion. For example, if an entity elects that the test be applied to 2014 data for the 2015 fee year, it must use 2015 data to test its exclusion eligibility for the 2016 fee year.

Because the fee is due by September 30th in any year, entities that use data from the current year to test their eligibility may not know if they are eligible for an exclusion until after the payment deadline has passed. If an entity uses current year data and determines that it passes the exclusion test, but by the end

of the year realizes that it does ultimately not qualify for exclusion, the entity must then use the previous year as its test year in all subsequent years.

The Treasury Department and IRS is requesting comments on whether there are any circumstances in which an entity should be permitted to change its test year.