

businesses meet its definition of a small business.<sup>1</sup> The applicability of these proposed regulations does not depend on the size of the business, as defined by the Small Business Administration. As described more fully in the preamble to the temporary regulations, published elsewhere in this issue of the **Federal Register**, and in this IRFA, these rules may affect a variety of different businesses.

Because small entities may comply with the requirements under the proposed regulations in different ways, it is difficult to estimate at this time the impact of these proposed regulations, if any, on small businesses. Small entities might, for example, enter into contracts with other entities in order to meet the requirements in the proposed regulations. Due to the lack of knowledge regarding what small entities may decide to do in order to satisfy the requirements and any costs they might incur related to contracts, the Departments seek comment on ways that the proposed regulations will impose additional costs and burdens on small entities and how many would be likely engage in contracts to meet the requirements.

The Treasury Department and the IRS expect to receive more information on the impact on small businesses through comments on these proposed regulations.

### 3. Impact of the Regulations

The proposed regulations require group health plans and health insurance issuers in the group and individual markets to submit certain information about prescription drugs and health care spending to the Departments. The public reports that are required by the proposed regulations could enhance national health transparency and lower prescription drug and health care costs. Consumers could potentially benefit from the required reporting if plans and issuers are able to negotiate lower prescription drug prices and those reductions are passed on to the consumer in the form of reduced out-of-pocket costs and lower premiums. The public reports that are required by the proposed regulations will create certain compliance burdens. The recordkeeping and reporting requirements will increase for plans and issuers subject to the regulations. This includes costs associated with developing, building, and maintaining information technology systems necessary to report the required

data. The maintenance costs for these information technology systems may decrease in succeeding years as plans and issuers (or third parties on their behalf) gain efficiencies and experience in updating, managing, and submitting the required data. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of the preamble to the temporary regulations, published elsewhere in this issue of the **Federal Register**.

### 4. Alternatives Considered

As described in more detail in the Regulatory Impact Analysis of the preamble to the temporary regulations, published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS considered alternatives to the proposed regulations. For example, in providing rules related to the aggregation of data submitted by reporting entities, the Treasury Department and the IRS considered whether to (i) allow reporting entities to submit aggregated data, or (ii) require plans, issuers, and Federal Employees Health Benefits (FEHB) carriers to submit all of the required information on a plan-by-plan basis. As described in section II.C.3 of the preamble to the temporary regulations, published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS, in consultation with DOL, HHS, and OPM, determined that allowing reporting entities to submit aggregated data would be sufficient for purposes of the statutory requirement, without creating or imposing undue burdens on taxpayers.

### 5. Duplicative, Overlapping, or Conflicting Federal Rules

As explained in the preamble to the temporary regulations, published elsewhere in this issue of the **Federal Register**, the proposed regulations would not duplicate, overlap, or conflict with any relevant Federal rules. The Treasury Department and the IRS invite comment from interested members of the public about identifying and avoiding overlapping, duplicative, or conflicting requirements.

### Drafting Information

The principal author of this notice of proposed rulemaking is Christopher Dellana, Office of the Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from OPM, DOL, and HHS.

### List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

### PART 54—PENSION EXCISE TAXES

**Paragraph. 3.** The authority citation for part 54 continues to read as follows:

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

**Par. 4.** Sections 54.9825–1 through 6 are added to read as follows:

[The text of proposed § 54.9825–1 is the same as the text of § 54.9825–1T published elsewhere in this issue of the **Federal Register**].

[The text of proposed § 54.9825–2 is the same as the text of § 54.9825–2T published elsewhere in this issue of the **Federal Register**].

[The text of proposed § 54.9825–3 is the same as the text of § 54.9825–3T published elsewhere in this issue of the **Federal Register**].

[The text of proposed § 54.9825–4 is the same as the text of § 54.9825–4T published elsewhere in this issue of the **Federal Register**].

[The text of proposed § 54.9825–5 is the same as the text of § 54.9825–5T published elsewhere in this issue of the **Federal Register**].

[The text of proposed § 54.9825–6 is the same as the text of § 54.9825–6T published elsewhere in this issue of the **Federal Register**].

**Douglas W. O'Donnell,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 300

[REG–100718–21]

RIN 1545–BQ06

### User Fees Relating to the Enrolled Agent Special Enrollment Examination and the Enrolled Retirement Plan Agent Special Enrollment Examination; Hearing Cancellation

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

<sup>1</sup> US Small Bus. Admin., *2020 Small Business Profile*, <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144214/2020-Small-Business-Economic-Profile-States-Territories.pdf>.

**ACTION:** Cancellation of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed amendments to the regulations on user fees for the special enrollment examinations for enrolled agents and enrolled retirement plan agents.

**DATES:** The public hearing, originally scheduled for Tuesday, November 23, 2021 at 10:00 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Regina Johnson of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317-5177 (not a toll-free number) or at [publichearings@irs.gov](mailto:publichearings@irs.gov).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, September 29, 2021 (86 FR 53893) announced that a public hearing to be held by teleconference was scheduled for Tuesday, November 23, 2021 at 10:00 a.m. The subject of the public hearing is under section 9701 of Title 31 of the United States Code.

The public comment period for these regulations expired on November 15, 2021. The notice of proposed rulemaking and notice of hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be discussed. Requests to speak and outlines were due on November 15, 2021. As of the end of the day on November 15, 2021, no one requested to speak. Therefore, the public hearing scheduled for November 23, 2021 at 10:00 a.m. is cancelled.

**Oluwafunmilayo A. Taylor,**

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

[FR Doc. 2021-25419 Filed 11-22-21; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 16

#### Program Fraud Civil Remedies

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This notice of proposed rulemaking would update the definition of “investigating official” in the Department’s Program Fraud regulations. The definition would be revised to include inspectors general

that have been established since the Program Fraud regulations were implemented.

**DATES:** *Comment due date:* January 7, 2022.

**ADDRESSES:** Please submit comments electronically through the *Federal eRulemaking Portal*: <https://www.regulations.gov>. Comments can be mailed to: Office of the General Counsel, General Law, Ethics & Regulation, 1500 Pennsylvania Avenue NW, Washington, DC 20220, *ATTN:* Program Fraud Proposed Rule. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.

In general, comments received will be posted on <https://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Brian Sonfield, Assistant General Counsel for General Law, Ethics & Regulation at (202) 622-9804.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department promulgated implementing regulations for the Program Fraud Civil Remedies Act of 1986 (Act) (31 U.S.C. 3801 through 3812) on September 17, 1987 (52 FR 35071). The Act generally provides that any person who knowingly submits a false claim or statement to the Federal Government may be liable for an administrative civil penalty for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Act vests authority to investigate allegations of liability under its provisions in an agency’s investigating official. Based upon the results of an investigation, the agency reviewing official determines, with the concurrence of the Attorney General, whether to refer the matter to a presiding officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts other than tax refunds, owed the particular party by the federal government.

The Act grants agency investigating officials authority to require by subpoena the production of

documentary evidence which is “not otherwise reasonably available.” If the case proceeds to hearing, the presiding officer may require the attendance and testimony of witnesses as well as the production of documentary evidence.

The Department of the Treasury adopted implementing regulations at 31 CFR part 16, which designated the Department’s Assistant Secretary for Management as the authority head, designated the Department’s Inspector General as the investigating official, and assigned the role of reviewing official to the General Counsel or designee.

#### This Proposed Rule

This proposed rule would revise the definition of investigating official in § 16.2. Since the regulations were promulgated in 1987, three inspectors general have been established including the Treasury Inspector General for Tax Administration (See Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685), the Special Inspector General for the Troubled Asset Relief Program (See Emergency Economic Stabilization Act of 2008, Pub. L. 110-343, 122 Stat. 3765), and the Special Inspector General for Pandemic Recovery (See Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281). The proposed revision would define investigating official as any Inspector General, including any Special Inspector General, with investigatory authority over programs of the Department of the Treasury.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to updating the definition of investigating official for program fraud investigations in order to reflect current law. Accordingly, this rule, if finalized, will have no direct impacts on small entities. Notwithstanding this certification, the Department invites comments on the