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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9574]

RIN 1545-BK64

Application for Recognition as a 501(c)(29) Organization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations authorizing the IRS to prescribe the procedures by which certain entities may apply to the IRS for recognition of exemption from Federal income tax. These regulations affect qualified nonprofit health insurance issuers, participating in the Consumer Operated and Oriented Plan program established by the Centers for Medicare and Medicaid Services, that seek exemption from federal income tax under the Internal Revenue Code. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE THIS**

**DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see §1.501(c)(29)-1T(c).

FOR FURTHER INFORMATION CONTACT: Amy Franklin or Martin Schäffer, (202)

622-6070 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### **Background**

Section 501(c)(29) of the Internal Revenue Code (Code) provides requirements for tax exemption under section 501(a) for qualified nonprofit health insurance issuers (QNHIs). Section 501(c)(29) was added to the Code by section 1322(h)(1) of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111-148 (March 23, 2010).

Section 1322 of the Affordable Care Act directs the Centers for Medicare and Medicaid Services (CMS) to establish the Consumer Operated and Oriented Plan (CO-OP) program. The purpose of the CO-OP program is to foster the creation of member-governed QNHIs that will operate with a strong consumer focus and offer qualified health plans in the individual and small group markets. CMS will provide loans and repayable grants (collectively, loans) to organizations applying to become QNHIs, to help cover start-up costs and meet any solvency requirements in States in which the organization is licensed to issue qualified health plans. A Funding Opportunity Announcement for the CO-OP program (CFDA Number 93.545), published by CMS on July 28, 2011 (and amended on September 16, 2011), provides that for each loan the appropriate CMS official will issue a Notice of Award and Loan Agreement to the QNHII. In addition, the Chief Executive Officer of the QNHII, or an officer of the QNHII's Board of Directors, must sign and return the Loan Agreement to CMS. On December 13, 2011, CMS issued final regulations implementing the CO-OP program at 76 FR 77392.

The CMS final regulations define a QNHII as an entity that, within specified time frames, satisfies or can reasonably be expected to satisfy the standards in section

1322(c) of the Affordable Care Act and in the CMS final regulations. The entity will constitute a QNHII until such time as CMS determines the entity does not satisfy or cannot reasonably be expected to satisfy these standards. Section 1322(c) of the Affordable Care Act imposes a number of requirements, including that a QNHII be organized as a nonprofit member corporation under State law and that substantially all its activities consist of the issuance of qualified health plans in the individual and small group markets in each State in which it is licensed to issue such plans.

Section 501(c)(29)(A) of the Code provides that a QNHII (within the meaning of section 1322(c) of the Affordable Care Act) which has received a loan or grant under the CO-OP program may be recognized as exempt from taxation under section 501(a), but only for periods for which the organization is in compliance with the requirements of section 1322 of the Affordable Care Act and of any loan or grant agreement with the Secretary of Health and Human Services. Section 501(c)(29)(B) provides that a QNHII will not qualify for tax-exemption unless it meets four additional requirements. First, the QNHII must give notice to the Secretary of the Treasury, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of exemption as an organization described in section 501(c)(29). Second, no part of the QNHII's net earnings may inure to the benefit of any private shareholder or individual, except to the extent permitted by section 1322(c)(4) of the Affordable Care Act (which requires that any profits be used to lower premiums, to improve benefits, or for other programs intended to improve the quality of health care delivered to the organization's members). Third, no substantial part of the QNHII's activities may consist of carrying on propaganda, or otherwise attempting, to influence legislation. Finally, the QNHII may

not participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. As required by section 1322(b)(2)(C)(iii) of the Affordable Care Act, CMS must notify the IRS of any determination of a failure to comply with the CO-OP program standards, including any loan agreement, that may affect a QNHII's tax-exempt status under section 501(c)(29) of the Code.

The IRS issued Notice 2011-23, 2011-13 IRB 588 (March 10, 2011) (see §601.601(d)(2)(ii)(b) of this chapter), which addresses the requirements for tax exemption for QNHIIIs described in section 501(c)(29). The Notice provides guidance on the annual filing requirement for QNHIIIs that intend to apply for recognition of exempt status under section 501(c)(29). The Notice also states that the Treasury Department and the IRS intend to recognize a QNHII that has received a loan or grant under the CO-OP program as exempt effective from the later of the date of its formation or March 23, 2010, provided that the organization's purposes and activities have been consistent with the requirements for exemption since that date. In addition, the Notice states that the IRS intends to issue a revenue procedure explaining how and when a QNHII may apply for recognition of exempt status as an organization described in section 501(c)(29).

Under the authority provided by these temporary regulations, the Treasury Department and the IRS are issuing a revenue procedure regarding the application for recognition of exemption as an organization described in section 501(c)(29). The revenue procedure will provide that a substantially completed application for recognition

of exemption under section 501(c)(29) must include a copy of both the Notice of Award issued by CMS and the fully executed Loan Agreement with CMS.

### **Explanation of Provisions**

Section 501(c)(29)(B)(i) provides that a QNHII which has received a loan through the CO-OP program may be recognized as exempt from taxation under section 501(a) only if, among other things, the QNHII gives notice to the IRS, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as an organization described in section 501(c)(29). These temporary regulations provide that the Commissioner has the authority to prescribe the application procedures that a QNHII seeking such recognition must follow. These temporary regulations expressly authorize the Commissioner to recognize a QNHII as exempt effective as of a date prior to the date of its application, provided that the application is submitted in the manner and within the time prescribed by the Commissioner and the QNHII's prior purposes and activities were consistent with the requirements for exempt status under section 501(c)(29).

### **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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the

**Federal Register.** Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments regarding its impact on small businesses.

### **Drafting Information**

The principal authors of these regulations are Amy Franklin and Martin Schäffer of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), although other persons in the IRS and the Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **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 adding an entry in numerical order to read in part as follows:

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

Section 1.501(c)(29)-1T also issued under 26 U.S.C. 501(c)(29)(B)(i). \* \* \*

Par. 2. Section 1.501(c)(29)-1T is added to read as follows:

#### **§1.501(c)(29)-1T CO-OP Health Insurance Issuers (temporary).**

(a) Organizations must notify the Commissioner that they are applying for recognition of section 501(c)(29) status. An organization will not be treated as described in section 501(c)(29) unless the organization has given notice to the

Commissioner that it is applying for recognition as an organization described in section 501(c)(29) in the manner prescribed by the Commissioner in published guidance.

(b) Effective date of recognition of section 501(c)(29) status. An organization may be recognized as an organization described in section 501(c)(29) as of a date prior to the date of the notice required by paragraph (a) of this section if the notice is given in the manner and within the time prescribed by the Commissioner and the organization's purposes and activities prior to giving such notice were consistent with the requirements for exempt status under section 501(c)(29). However, an organization may not be recognized as an organization described in section 501(c)(29) before the later of its formation or March 23, 2010.

(c) Effective/applicability date. Paragraphs (a) and (b) of this section are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(d) Expiration date. The applicability of this section expires on February 6, 2015.

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.

Approved: January 26, 2012

Emily S. McMahon  
Acting Assistant Secretary of the Treasury.

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