

2. Subpart I is added to read as follows:

**Subpart I—Cross-Subsidization Restrictions on Affiliate Transactions**

Sec.

35.43 Generally.

35.44 Protections against affiliate cross-subsidization.

**Subpart I—Cross-Subsidization Restrictions on Affiliate Transactions**

**§ 35.43 Generally.**

(a) For purposes of this subpart:

(1) *Captive customers* means any wholesale or retail electric energy customers served under cost-based regulation.

(2) *Franchised public utility* means a public utility with a franchised service obligation under state law.

(3) *Market-regulated power sales affiliate* means any power seller affiliate other than a franchised public utility, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are regulated in whole or in part on a market-rate basis.

(4) *Non-utility affiliate* means any affiliate that is not in the power sales or transmission business.

(b) The provisions of this subpart apply to all franchised public utilities with captive customers.

**§ 35.44 Protections against affiliate cross-subsidization.**

(a) *Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act.

(b) *Non-power goods or services.* (1) Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility with captive customers, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate, must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(3) of this section, a franchised public utility with captive customers may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

(3) A franchised public utility with captive customers may not purchase or

receive non-power goods and services from a centralized service company at a price above cost.

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404, 405, and 416**

[Docket No. SSA 2007-0053]

RIN 0960-AG54

**Compassionate Allowances**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** Under titles II and XVI of the Social Security Act (the Act), we pay benefits to individuals who meet our rules for entitlement and have medically determinable physical or mental impairments that are severe enough to meet the definition of disability in the Act. The rules for determining disability can be very complicated, but some individuals have such serious medical conditions that their conditions obviously meet our disability standards. To address these individuals' needs, we strive to provide not only responsive, but also compassionate, public service that ensures the most severely disabled in our society who meet the Act's requirements are awarded benefits quickly. To that end, we are investigating methods of making "compassionate allowances" by quickly identifying individuals with obvious disabilities. The purpose of this notice is to give you an opportunity to send us comments about what standards we should use for compassionate allowances, methods we might use to identify compassionate allowances, and suggestions for how to implement those standards and methods.

**DATES:** To be sure that your comments are considered, we must receive them by October 1, 2007.

**ADDRESSES:** You may give us your comments by: Internet through the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966-2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235-7703. You may also deliver them to the Office of Regulations, Social Security Administration, 960 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

Comments are posted on the Federal eRulemaking Portal, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

**FOR FURTHER INFORMATION CONTACT:**

James Julian, Director, Office of Compassionate Allowances and Listings Improvements, Social Security Administration, 4470 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-4015. For information on eligibility or filing for benefits, call our national toll-free number 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

**Sequential Evaluation Process for Determining Disability**

We use a five-step "sequential evaluation process" to decide whether an individual is disabled, but will stop at any point in the process at which we are able to make a disability determination. At step one, we determine whether an individual is currently engaged in substantial gainful activity. If not, we then move to step two and determine whether the individual has a "severe" impairment or combination of impairments significantly limiting the ability to perform basic work activities. At step three, we compare the individual's impairment(s) to those in the Listing of Impairments in appendix 1 of subpart P of part 404 of our regulations (listing). If the impairment does not meet or equal in severity a listing, at step four, we assess the individual's residual functional capacity to determine if the individual can do any past relevant work. Finally, at step five, we determine whether other work exists in significant numbers that such an individual can perform, considering the individual's residual functional capacity, age, education, and work experience. We use different sequential evaluation processes for children and for individuals already receiving benefits when we determine whether they are still disabled. See §§ 404.1594, 416.924, 416.994, and 416.994a of our regulations.

### Current Examples of Compassionate Allowances

In making disability determinations, we already apply screening methods that identify and assist some of the most obviously disabled individuals. Some of our current screening methods include:

1. *Presumptive Disability/Presumptive Blindness.* Under the Act, an individual, including a child, applying for supplemental security income (SSI) based on disability or blindness, may receive up to 6 months of payments before we make a formal determination of disability or blindness if we determine that he or she is presumptively disabled or blind (PD/PB) and meets all other eligibility requirements. Generally, our field offices are authorized to make a PD/PB finding only for certain impairments that are readily observable or that can be easily confirmed; however, the State agencies that make initial disability determinations for us may make a PD/PB finding in any case where there is a strong likelihood that the claim will be allowed on formal determination.

2. *Terminal Illness.* We expedite the determinations of all disability cases in which there is an indication of a terminal illness (TERI). We may identify a claim as a TERI case when an individual alleges a terminal illness, when there is an allegation or diagnosis of AIDS, when an individual is receiving hospice care, or when medical records indicate that an individual has an impairment that is untreatable.

3. *Quick Disability Determinations (QDD).* Through the QDD process, we screen claims for special assignment within the State agencies so that they may allow the claims quickly, often within less than 10 days. We use a complex computer screening tool at the time an individual files his or her application for disability benefits to identify some cases that are likely to qualify with evidence we can obtain quickly. The screening tool searches the application and other documents for key words in identifying a claim as a likely QDD.

4. *The Listing of Impairments.* As described above, at the third step of the "sequential evaluation process" that we use for determining disability, we consider whether an individual's impairment meets or medically equals the criteria of a listing. When an individual's impairment meets or medically equals the criteria of any listed impairment, we find the individual disabled without considering residual functional capacity, age, education, or work experience.

Examples of some listing-level impairments that qualify for favorable determinations with minimal medical evidence establishing the diagnosis include:

- Hemipelvectomy (sections 1.05D and 101.05D),
- Non-mosaic Down syndrome (sections 10.06 and 110.06),
- Catastrophic congenital anomalies, such as anencephaly and cri du chat (deletion 5p) syndrome (section 110.08),
- Amyotrophic lateral sclerosis (section 11.10),
- Acute leukemia (sections 13.06A and 113.06A),
- Small-cell carcinoma of a lung (section 13.14B),
- Carcinoma (except islet cell carcinoma) of the pancreas (section 13.20A), and
- Major organ transplants, such as heart, liver, or lungs (various sections).

There are also some impairments that qualify for favorable determinations under a listing based solely on objective medical evidence but with criteria for clinical or laboratory findings demonstrating the severity of the impairment. However, this evidence is also generally minimal. For example:

- Impairment of visual acuity (statutory blindness) with remaining vision in the better eye after best correction of 20/200 or less (section 2.02 and 102.02A),
- Cystic fibrosis with specified levels of forced expiratory volume (FEV1) (sections 3.04A and 103.04A),
- Any symptomatic congenital heart disease with cyanosis at rest and a specified hematocrit or arterial oxygen level (sections 4.06A and 104.06A),
- Any chronic renal (kidney) disease requiring chronic hemodialysis or peritoneal dialysis (sections 6.02A and 106.02A), and
- Many inoperable cancers and cancers with distant metastases (various provisions in sections 14.00 and 114.00).

### Examples of Other Compassionate Allowances That We Are Considering

In addition to these methods of identifying compassionate allowances, we are considering the creation of an extensive list of impairments that we can allow quickly with minimal objective medical evidence that is based on clinical signs or laboratory findings or a combination of both. We believe that we could use certain listed impairments, such as those described above, as a starting point for a much longer list of impairments that could be allowed based on established diagnoses alone (supported by objective medical evidence) or based on diagnoses that

have reached certain points in their progression that would be considered disabling. We would not limit, however, the compilation of conditions to those already covered by our listing. We would incorporate any conditions that should be allowed quickly with minimal, but sufficient, objective medical evidence. As such, the list of qualifying conditions would be specific and extensive.

Additionally, although we already have some policies and procedures for identifying the most obviously disabled individuals quickly, we are investigating methods for identifying compassionate allowances by perhaps starting with a specific allegation or through the use of a computer system that is able to search key words included in an electronic disability folder. Because the health care industry is capturing more and more clinical information in structured electronic formats using standardized codesets, we also are interested in your ideas about whether and how we can use that information for identifying compassionate allowances.

Many, although by no means all, of the individuals who would qualify for a compassionate allowance will have impairments that are expected to result in death and need immediate decisions on their claims. It is our hope that compassionate allowances will not only bring faster benefits to individuals in need, but that they will also help to quicken the processing time of those claims that must be processed through our existing procedures.

### Request for Comments

Please provide us with any comments and suggestions you have about new standards and identification methods for compassionate allowances. The following questions raise issues that you may wish to consider. Feel free to raise other questions, thoughts, or comments.

- Do you have any ideas for how we can better identify impairments that can quickly be allowed without going through the entire disability determination process?
- Do you have any ideas for different standards we should be using in our effort to provide compassionate assistance to individuals with the most serious impairments?
- What is the minimum amount of medical evidence we should accept to support a compassionate allowance finding?
- What procedures should we follow in our Social Security field offices, the State agencies, and the Office of Disability Adjudication and Review to identify compassionate allowances?

- How can we best take advantage of clinical information captured electronically using standardized codes to specify the nature of the impairment?

- What do you think about our idea of a more extensive and specific list of impairments based on established diagnoses?

- What should the *general* criteria for inclusion on such a list be?

- What *specific* impairment(s) or kinds of impairments do you believe we should include on such a list, and what specific criteria for inclusion should we use for those impairments (including specific standardized codes if appropriate)?

- How should the rules or procedures for such a list be structured; for example, should we include a list of all of the diagnoses in the regulations, or should we have the list on SSA's Internet site or somewhere else?

- What sources should we consult to create such a list; for example, our Listing of Impairments, the latest edition of the World Health Organization's *International Classification of Diseases* (ICD), and the latest edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM)? Are there individuals and organizations we should also be consulting?

- How should we keep the list up to date?

- We intend to undertake special outreach efforts in order to encourage public discussion regarding potential methods and standards for identifying compassionate allowances, including periodic quarterly hearings. What methods should we use for community outreach, and where should the outreach take place?

We will not respond directly to comments you send us because of this notice. After we consider your comments in response to this notice, we will decide whether and how to revise the rules we use to determine disability. If we propose specific revisions to the rules, we will publish a notice of proposed rulemaking (NPRM) in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

#### List of Subjects

##### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits,

Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

##### 20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance, Public assistance programs, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI).

##### 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 24, 2007.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E7-14686 Filed 7-30-07; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-118719-07]

RIN 1545-BG65

#### Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes changes to the regulations concerning the diversification requirements of section 817(h) of the Internal Revenue Code (Code). The proposed changes would expand the list of holders whose beneficial interests in an investment company, partnership, or trust do not prevent a segregated asset account from looking through to the assets of the investment company, partnership, or trust, to satisfy the requirements of section 817(h). The proposed regulations also would remove the sentence in § 1.817-5(a)(2) that provides that the payment required to remedy an inadvertent diversification failure must be based on the tax that would have been owed by the policyholders if they were treated as receiving the income on the contract. These proposed regulations would affect insurance companies that issue variable contracts and would affect policyholders who purchase such contracts.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 29, 2007.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-118719-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-118719-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-118719-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, James Polfer, at (202) 622-3970 (not a toll-free number). Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, e-mail [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 817(d) defines a variable contract for purposes of part I of subchapter L of the Code (sections 801-818). For a contract to be a variable contract, it must provide for the allocation of all or a part of the amounts received under the contract to an account that, pursuant to state law or regulation, is segregated from the general asset accounts of the issuing insurance company. In addition, for a life insurance contract to be a variable contract, it must qualify as a life insurance contract for Federal income tax purposes, and the amount of the death benefits (or the period of coverage) must be adjusted on the basis of the investment return and the market value of the segregated asset account; for an annuity contract to be a variable contract, it must provide for the payment of annuities, and the amounts paid in, or the amount paid out, must reflect the investment return and the market value of the segregated asset account; for a contract that provides funding of insurance on retired lives to be a variable contract, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the segregated asset account.

Section 817(h)(1) provides that a variable contract that is based on a segregated asset account is not treated as an annuity, endowment, or life insurance contract unless the segregated asset account is adequately diversified in accordance with regulations prescribed by the Secretary. If a