

Cooley

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The Departments of Treasury, Labor and Health and Human Services just released a notice that provides for a delay in requiring compliance with the nondiscrimination rules applicable to non-grandfathered, insured health plans (which came into being as part of health care reform).

Those rules are generally effective for plan years beginning on or after September 23, 2010 (i.e., January 1, 2011 for a calendar year plan). However, per [IRS Notice 2011-1](#), compliance with those rules will not be required until after regulations or other relevant guidance has been issued. No such regulations have been issued to date and may not be issued for some time (given that the notice requests comments on a number of concepts involving the nondiscrimination rules).

What does this mean? It means that there still is not clear guidance on whether the practice of providing health insurance to a former executive or the practice of paying a former executive's COBRA coverage will violate the nondiscrimination rules (resulting in the imposition of a penalty on the employer) if such practice is limited to executive-level or highly-compensated employees. (See our [November 11, 2010 Alert](#) for a more detailed discussion of this topic.)

However, Notice 2011-1 provides that compliance with the nondiscrimination rules (and the imposition/payment of the penalty) will not be required until a specified period after regulations have been issued.

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