



## POLICY & ACTION FROM CONSUMER REPORTS

August 12, 2013

Acting Commissioner Danny Werfel  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044.

**Re: IRS REG–126633–12 Computation of, and Rules Relating to, Medical Loss Ratio**

Submitted via website at <http://www.regulations.gov>

Dear Commissioner Werfel:

Consumers Union, the policy and advocacy division of Consumer Reports, submits these comments regarding the proposed rule, IRS REG–126633–12.

We strongly support the IRS's approach taken here in implementing the Medical Loss Ratio (MLR) requirements as they relate to Blue Cross Blue Shield organizations, and certain other health care organizations, that receive preferred treatment as stock insurance companies under Section 833 of the Internal Revenue Service Code.

The IRS has shown significant flexibility in delaying full implementation of Section 9016 of the Patient Protection and Affordable Care Act (ACA) for taxable years 2010, 2011, 2012 and 2013. We support ending this transitional relief any further delays in fully implementing Section 9016 for the 2014 taxable year and beyond.

### **MLR Numerator**

These regulations correctly do not allow for inclusion of "activities that improve health care quality" in the numerator of the MLR equation because, as noted, unlike section 2718 of the ACA, this is not allowed for in Section 9016. We support this decision.

### **Non-application of Section 833 in Case of an Insufficient MLR**

We also support the decision to uphold the statutory requirement in these regulations that an insurance company loses ALL benefits under Section 833 for the taxable year if they fail to meet the MLR requirement. We understand that insurance companies may have an administrative burden if they cycle back and forth between status as a stock insurance company and no preferred status; however, we see this as an additional incentive to meeting the 85% requirement.

#### **Consumers Union**

##### **Headquarters Office**

101 Truman Avenue  
Yonkers, New York 10703-1057  
(914) 378-2029  
(914) 378-2992 (fax)

##### **Washington Office**

1101 17th Street, NW #500  
Washington, DC 20036  
(202) 462-6262  
(202) 265-9548 (fax)

##### **West Coast Office**

1535 Mission Street  
San Francisco, CA 94103-2512  
(415) 461-6747  
(415) 431-0906 (fax)

##### **South West Office**

506 West 14th Street, Suite A  
Austin, TX 78701  
(512) 477-4431  
(512) 477-8934 (fax)

We understand that some Blue Cross Blue Shield plans (see Health Care Service Corporation comments on proposed regulations IRS REG–126633, August 8, 2013) are requesting administrative remediation relief if a health insurer misses the required 85% under Section 833(c)(5). Consumers Union urges you to reject this proposal and finalize the regulations as proposed. Health insurers under Section 833 should be held to the 85% MLR. Allowing insurers to adjust after the fact with rebates to policyholders, or with a payment to the Department of Health and Human Services or to a State Comprehensive Health Insurance Plan; fails to address consumers' needs for affordable coverage at the time of purchase. Section 833 status is a competitive advantage for insurance companies. As such, there should be no safe harbor for insurers not meeting the 85% MLR standard.

## **Conclusion**

The IRS has allowed for four years of transitional relief for insurance companies subject to Section 9016 of the Affordable Care Act, providing ample time for insurers to adjust business practices to come into accordance with the new law and maintain stock insurance company status. We strongly support this proposed rule and urge the IRS to reject proposals to weaken this rule and create new special protections for Blue Cross Blue Shield plans and certain other health care organizations that currently enjoy a preferred tax status.