Colvin & Card

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Submitted through the Federal eRulemaking Portal

Office of Health Plan Standards
and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210–AB27

Ladies and Gentlemen:

We are pleased to submit this response to the request for comments on the interim final rules implementing sections 101 through 103 of the Genetic Information Nondiscrimination Act of 2008 ("GINA"). The request was published by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the "Departments") in the *Federal Register* on October 7, 2009.

The interim final rules implement provisions of GINA that prohibit group health plans from discriminating on the basis of genetic information. GINA provides that a group health plan may not (1) increase premiums or contributions for a group based on the genetic information of individuals in the group, (2) request or require an individual or family member to undergo a genetic test, or (3) request, require, or purchase genetic information prior to or in connection with enrollment or for underwriting purposes.

Our wellness programs: Caterpillar Inc. is committed to helping our employees lead healthy and productive lives. Our view is that healthy Caterpillar employees are a competitive advantage for us as we compete in the global marketplace. We know that our wellness program is a key resource for improving employee health and curbing medical costs We have offered a wellness program for more than 10 years as part of a comprehensive solution to successfully control health care costs.

Colon cancer screening is a part of our wellness solution. We can identify the person at "average" risk without asking family history. Certain persons are at a much higher risk of developing colon cancer, and a strong family history is the only indication of that higher risk. Our primary care physicians are overwhelmed and do not have the systems to recognize these high-risk persons. We depend on our corporate wellness program to find these high risk persons and offer screening. Many of these persons need colonoscopy well before age 50. As currently written, GINA prohibits Caterpillar from finding these persons.

We agree with the protection offered by GINA, but the published regulations have the perverse effect of **not** allowing us to find those at highest risk. Caterpillar people will likely die of colon cancer because of these regulations.

Impact of the regulation: Most employees need to be encouraged to complete an HRA and to start to participate in a program of healthy living; financial incentives provide a key motivational trigger. The interim final regulation under Title I of GINA would decimate our wellness programs by precluding our ability to provide a financial incentive to individuals who complete an HRA that requests family medical history and to provide rewards to employees for meeting certain health-related goals. If this regulation is allowed to be implemented, completion rates of HRAs will suffer significantly, and participation in wellness programs will plummet.

The regulation will also hamstring our ability to guide employees into disease management programs based on information provided in an HRA.

In conclusion: Wellness, prevention, and disease management programs are one of the few avenues available to us to help control our soaring healthcare costs. Moreover, these are programs that generally are met with enthusiasm by our employees, who are often relieved to be encouraged to lead a healthier lifestyle. Some employees are especially grateful to have completed an HRA and to have found out for the first time that they are at risk for certain diseases and that there are steps they can take to minimize their vulnerability. Making our tasks in this regard more difficult, such as by preventing the use of financial incentives to garner family medical history in an HRA, is an incomprehensible action in view of the dire necessity of holding down medical costs and encouraging individuals to assume more active control of their health.

We appreciate this opportunity to provide comments and would be happy to further discuss our concerns with you.

Sincerely, Calvin Leard