INTERNAL REVENUE
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January 8, 2024

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

Notice 2024-7, page 355.

The IRS temporarily suspended the mailing of certain automated reminder notices for unpaid taxes in February 2022, as announced in IR-2022-31. In 2024, the IRS will resume mailing these notices for taxable years 2021 and earlier. This Notice provides automatic relief to eligible taxpayers from the additions to tax for the failure to pay with respect to certain income tax returns for 2020 and 2021. For eligible taxpayers, these additions to tax will be waived or, to the extent previously assessed or paid, will be abated, refunded, or credited to other outstanding tax liabilities, as appropriate, for the relief period, which begins on the date the IRS issued an initial balance due notice or February 5, 2022, whichever is later, and ends on March 31, 2024.

ADMINISTRATIVE, EMPLOYMENT TAX, INCOME TAX, SPECIAL ANNOUNCEMENT

Announcement 2024-3, page 364.

This announcement announces a Voluntary Disclosure Program for taxpayers to resolve refunds or credits for erroneous Employee Retention Credit claims. The announcement explains taxpayer eligibility criteria, terms, and procedures for taxpayers electing to participate in the Voluntary Disclosure Program. The announcement is intended to provide taxpayers an opportunity to efficiently resolve their civil tax liabilities under this Voluntary Disclosure Program and avoid potential litigation.

EMPLOYEE PLANS

Notice 2024-2, page 316.

This notice provides guidance in the form of questions and answers with respect to certain provisions of the SECURE 2.0 Act of 2022.

Finding Lists begin on page ii.

Notice 2024-3, page 338.

This notice sets forth the 2023 Cumulative List of Changes in Plan Qualification Requirements for Defined Contribution Qualified Pre-approved Plans (2023 Cumulative List). The 2023 Cumulative List will assist pre-approved plan providers applying to the Internal Revenue Service (IRS) for opinion letters for the fourth remedial amendment cycle for defined contribution qualified pre-approved plans (Cycle 4) under the IRS's pre-approved plan program. The 2023 Cumulative List identifies recent changes in the qualification requirements of the Internal Revenue Code that were not taken into account during the first three remedial amendment cycles for defined contribution qualified pre-approved plans and that will be taken into account by the IRS with respect to the form of a plan submitted to the IRS for Cycle 4. The Cycle 4 submission period begins on February 1, 2024, and ends on January 31, 2025.

Notice 2024-4, page 343.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for December 2023 used under § 417(e)(3)(D), the 24-month average segment rates applicable for December 2023, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

Rev. Rul. 2024-1, page 307.

This revenue ruling provides tables of covered compensation under § 401(l)(5)(E) of the Internal Revenue Code and the Income Tax Regulations thereunder, effective January 1, 2024.

EMPLOYEE PLANS, EXCISE TAX

Notice 2024-1, page 314.

This notice provides the indexing factors to be used by group health plans and health insurance issuers to calculate the qualifying payment amount (QPA) for items or services provided on or after January 1, 2024, and before January 1, 2025. The No Surprises Act (NSA) added parallel provisions at Code sections 9816 and 9817, ERISA sections 716 and

717, and PHS Act sections 2799A-1 and 2799A-2. These provisions provide protections against balance-billing for certain out-of-network items or services provided to patients. The QPA is the basis for determining individual cost sharing for items and services covered by the balance-billing protections in the NSA, under certain circumstances. The QPA for a given calendar year is based on information regarding median rates for certain items and services from prior years and is indexed based on changes in the consumer price index. In addition to providing the indexing factor for adjusting 2023 amounts for 2024, the notice also provides cumulative adjustments for prior years and examples of how to apply the percentage increases.

EXCISE TAX, INCOME TAX, SPECIAL ANNOUNCEMENT

Notice 2024-6, page 348.

Notice 2024-6 discusses a method that can be used to qualify for and calculate the sustainable aviation fuel (SAF) credit, the Renewable Fuel Standard (RFS) program, and also discusses other methods. Notice 2024-6 provides RFS safe harbors to qualify for and calculate the SAF credit and also informs the public that the current Greenhouse Gases, Regulated Emissions, and Energy Use in Technologies (GREET) model does not currently meet the applicable requirements to be used for the SAF credit, but federal agencies are working to modify the GREET model so that it does.

EXEMPT ORGANIZATIONS

Announcement 2024-1, page 363.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

INCOME TAX

Notice 2024-5, page 347.

This notice provides a safe harbor regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2024 for purposes of the credit for qualified commercial clean vehicles under § 45W of the Internal Revenue Code. This notice also requests comments regarding additional types or classes of vehicles that should be included in the safe harbor in the future.

Notice 2024-8, page 356.

This notice provides the optional 2024 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate plan. Additionally, this notice provides the maximum fair market value of employer-provided automobiles first made available to employees for personal use in calendar year 2024 for which employers may use the fleet-average valuation rule in § 1.61-21(d)(5)(v) or the vehicle cents-per-mile valuation rule in § 1.61-21(e).

Notice 2024-9, page 358.

The notice of intent to propose regulations concerns the statutorily-required exceptions to the elective payment phaseout for entities that do not satisfy the domestic content requirements of §§ 45, 45Y, 48 and 48E. This notice provides the transitional process by which the IRS will implement the statutorily-required exceptions to the elective payment phaseout for entities that do not satisfy the domestic content requirements of §§ 45, 45Y, 48 and 48E. These transitional procedures only apply to projects that begin construction prior to January 1, 2025. This notice also requests comments to inform the development of the forthcoming proposed regulations that will implement the process by which the statutorily-required exceptions will be provided to these phaseouts if construction begins on or after January 1, 2025.

Notice 2024-11, page 360.

This notice updates Notice 2011-64, 2011-37 I.R.B. 231, which contains the list of treaties that meet the requirements of section 1(h)(11)(C)(i)(II) of the Code. It adds the treaty with Chile, which entered into force on December 19. The list removes the treaties with Russia and Hungary because both have ceased to meet the requirements of section 1(h)(11) after the publication of Notice 2011-64. Notice 2011–64 is amplified and superseded.

REG-118492-23, page 366.

These proposed regulations would provide guidance to qualified manufacturers of new clean vehicles to comply with rules regarding excluded entities, as established by the Inflation Reduction Act of 2022 (IRA). Section 30D(d)(7) excludes from the definition of "new clean vehicle (A) any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or (B) any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern (as so defined). These proposed regulations would provide guidance for qualified manufacturers for how to comply with these rules.

Rev. Rul. 2024-2, page 311.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term tax exempt rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for January 2024.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I

Section 401. — Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(l)-1: Permitted disparity in employer-provided contributions or benefits

Rev. Rul. 2024-1

This revenue ruling provides tables of covered compensation under § 401(l)(5)(E) of the Internal Revenue Code and the Income Tax Regulations thereunder, for the 2024 plan year.

Section 401(l)(5)(E)(i) defines covered compensation with respect to an employee as the average of the contribution and benefit bases in effect under section 230 of the Social Security Act ("Act") for each year in the 35-year period ending with the year in which the employee attains Social Security retirement age.

Section 401(l)(5)(E)(ii) of the Code states that the determination for any year preceding the year in which the employee attains Social Security retirement age shall be made by assuming that there is no increase in covered compensation after the determination year and before the employee attains Social Security retirement age.

Section 1.401(l)-1(c)(34) of the Regulations defines the taxable wage base as the contribution and benefit base under section 230 of the Act.

Section 1.401(l)-1(c)(7)(i) defines covered compensation for an employee as the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the employee attains (or will attain) Social Security retirement age. A 35-year period is used for all individuals regardless of the year of birth of the individual. In determining an employee's covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is assumed to be the same as the taxable wage base in effect as of the beginning of the plan year. An employee's covered compensation for a plan year beginning after the 35-year period applicable under § 1.401(l)-1(c)(7)(i) is the employee's covered compensation for a plan year during which the 35-year period ends. An employee's covered compensation for a plan year beginning before the 35-year period applicable under § 1.401(l)-1(c)(7)(i) is the taxable wage base in effect as of the beginning of the plan year.

Section 1.401(l)-1(c)(7)(ii) provides that, for purposes of determining the amount of an employee's covered compensation under § 1.401(l)-1(c)(7)(i), a plan may use tables, provided by the Commissioner, that are developed by rounding the actual amounts of covered compensation for different years of birth.

For purposes of determining covered compensation for the 2024 year, the taxable wage base is $168,600.

The following tables provide covered compensation for 2024.

ATTACHMENT I

2024 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2024 COVERED COMPENSATION TABLE II
1907	1972	$ 4,488
1908	1973	4,704
1909	1974	5,004
1910	1975	5,316
1911	1976	5,664
1912	1977	6,060
1913	1978	6,480
1914	1979	7,044
1915	1980	7,692
1916	1981	8,460
1917	1982	9,300
1918	1983	10,236
1919	1984	11,232
1920	1985	12,276
1921	1986	13,368
1922	1987	14,520

ATTACHMENT I

2024 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2024 COVERED COMPENSATION TABLE II
1923	1988	15,708
1924	1989	16,968
1925	1990	18,312
1926	1991	19,728
1927	1992	21,192
1928	1993	22,716
1929	1994	24,312
1930	1995	25,920
1931	1996	27,576
1932	1997	29,304
1933	1998	31,128
1934	1999	33,060
1935	2000	35,100
1936	2001	37,212
1937	2002	39,444
1938	2004	43,992
1939	2005	46,344
1940	2006	48,816
1941	2007	51,348
1942	2008	53,952
1943	2009	56,628
1944	2010	59,268
1945	2011	61,884
1946	2012	64,560
1947	2013	67,308
1948	2014	69,996
1949	2015	72,636
1950	2016	75,180
1951	2017	77,880
1952	2018	80,532
1953	2019	83,244
1954	2020	86,052
1955	2022	91,884
1956	2023	95,172
1957	2024	98,616
1958	2025	101,964
1959	2026	105,264
1960	2027	108,492
1961	2028	111,660
1962	2029	114,744
1963	2030	117,816

ATTACHMENT I

2024 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2024 COVERED COMPENSATION TABLE II
1964	2031	120,840
1965	2032	123,792
1966	2033	126,660
1967	2034	129,396
1968	2035	132,036
1969	2036	134,556
1970	2037	136,944
1971	2038	139,284
1972	2039	141,588
1973	2040	143,832
1974	2041	145,956
1975	2042	147,984
1976	2043	149,892
1977	2044	151,656
1978	2045	153,420
1979	2046	155,184
1980	2047	156,864
1981	2048	158,424
1982	2049	159,900
1983	2050	161,340
1984	2051	162,768
1985	2052	163,944
1986	2053	165,096
1987	2054	166,116
1988	2055	167,004
1989	2056	167,736
1990	2057	168,360
1991 and later	2058 and later	168,600

ATTACHMENT II

2024 ROUNDED COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	2024 COVERED COMPENSATION ROUNDED
1937	$ 39,000
1938 – 1939	45,000
1940	48,000
1941	51,000
1942	54,000
1943	57,000
1944	60,000
1945	63,000
1946 – 1947	66,000
1948	69,000
1949	72,000
1950	75,000
1951	78,000
1952	81,000
1953	84,000
1954	87,000
1955	93,000
1956	96,000
1957	99,000
1958	102,000
1959	105,000
1960	108,000
1961	111,000
1962	114,000
1963	117,000
1964	120,000
1965	123,000
1966	126,000
1967	129,000
1968	132,000
1969	135,000
1970 – 1971	138,000
1972	141,000
1973	144,000
1974 – 1975	147,000
1976	150,000
1977 – 1978	153,000
1979 – 1980	156,000
1981 – 1982	159,000
1983 – 1984	162,000
1985 – 1987	165,000
1988 – 1989	168,000
1990 and later	168,600

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Nicholas Fox at 267-466-2192 (not toll-free numbers).

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 1288, 7520, 7702, 7872.)

Rev. Rul. 2024-2

This revenue ruling provides various prescribed rates for federal income tax purposes for January 2024 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Table 6 contains the deemed rate of return for transfers made during calendar year 2024 to pooled income funds described in section 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made. Finally, Table 7 contains the average of the applicable federal mid-term rates (based on annual compounding) for the 60-month period ending December 31, 2023, for purposes of section 7702(f)(11).

REV. RUL. 2024-02 TABLE 1
Applicable Federal Rates (AFR) for January 2024
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	5.00%	4.94%	4.91%	4.89%
110% AFR	5.50%	5.43%	5.39%	5.37%
120% AFR	6.02%	5.93%	5.89%	5.86%
130% AFR	6.52%	6.42%	6.37%	6.34%
		Mid-term		
AFR	4.37%	4.32%	4.30%	4.28%
110% AFR	4.81%	4.75%	4.72%	4.70%
120% AFR	5.25%	5.18%	5.15%	5.12%
130% AFR	5.70%	5.62%	5.58%	5.56%
150% AFR	6.58%	6.48%	6.43%	6.39%
175% AFR	7.70%	7.56%	7.49%	7.44%
		Long-term		
AFR	4.54%	4.49%	4.47%	4.45%
110% AFR	5.00%	4.94%	4.91%	4.89%
120% AFR	5.46%	5.39%	5.35%	5.33%
130% AFR	5.93%	5.84%	5.80%	5.77%

REV. RUL. 2024-02 TABLE 2

Adjusted AFR for January 2024

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.79%	3.75%	3.73%	3.72%
Mid-term adjusted AFR	3.31%	3.28%	3.27%	3.26%
Long-term adjusted AFR	3.44%	3.41%	3.40%	3.39%

REV. RUL. 2024-02 TABLE 3

Rates Under Section 382 for January 2024

Adjusted federal long-term rate for the current month	3.44%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.81%

REV. RUL. 2024-02 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for January 2024

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	8.04%
Appropriate percentage for the 30% present value low-income housing credit	3.44%

REV. RUL. 2024-02 TABLE 5

Rate Under Section 7520 for January 2024

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	5.20%

REV. RUL. 2024-02 TABLE 6

Deemed Rate for Transfers to New Pooled Income Funds During 2024

Deemed rate of return for transfers during 2024 to pooled income funds that have been in existence for less than 3 taxable years	3.8%

REV. RUL. 2024-02 TABLE 7

Average of the Applicable Federal Mid-Term Rates for 2023

For purposes of section 7702(f)(11), the average of the applicable federal mid-term rates (based on annual compounding) for the 60-month period ending December 31, 2023, is 2.12%, rounded to 2%.

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 467.—Certain Payments for the Use of Property or Services

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The applicable federal short-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2024. See Rev. Rul. 2024-02, page 311.

Part III

26 CFR 54.9816-6T: Calculating the qualifying payment amount in 2024

Notice 2024-1

SECTION 1. PURPOSE AND SCOPE

Pursuant to Treas. Reg. § 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c), this notice provides the percentage increase for calculating the qualifying payment amounts (QPAs) for items and services furnished during 2024 for purposes of sections 9816 and 9817 of the Internal Revenue Code (Code), sections 716 and 717 of the Employee Retirement Income Security Act of 1974 (ERISA), and sections 2799A-1 and 2799A-2 of the Public Health Service Act (PHS Act). These provisions, added by the No Surprises Act,[1] provide protections against surprise medical bills in certain circumstances. This notice was drafted in consultation with the Departments of Labor and Health and Human Services. Similar guidance for items and services furnished during 2022 and 2023 was published in Revenue Procedure 2022-11, Notice 2022-11, and Notice 2023-4.[2]

SECTION 2. BACKGROUND

Under § 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c), for an item or service furnished during 2022, plans and issuers must calculate the QPA by increasing the median contracted rate (as determined in accordance with § 54.9816-6T(b), 29 CFR 2590.716-6(b), and 45 CFR 149.140(b))[3,4] for the same or similar item or service under such plan or coverage, on January 31, 2019, by the combined percentage increase as published by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) to reflect the percentage increase in the Consumer Price Index for All Urban Consumers (U.S. city average) (CPI-U) over 2019, the percentage increase over 2020, and the percentage increase over 2021.[5] Pursuant to Revenue Procedure 2022-11, for items and services provided on or after January 1, 2022, and before January 1, 2023, the combined percentage increase to adjust the median contracted rate for the same or similar item or service under such plan or coverage, on January 31, 2019, is 1.0648523983.

Under § 54.9816-6T(c)(2), 29 CFR 2590.716-6(c)(2), and 45 CFR 149.140(c)(2), with respect to a sponsor of a plan or issuer offering group or individual health insurance coverage in a geographic region in which the sponsor or issuer did not offer any group health plan or health insurance coverage in 2019, for the first year in which the group health plan or group or individual health insurance coverage is offered in the region, if the plan or issuer does not have sufficient information to calculate the median of the contracted rates for an item or service provided in the geographic region, the plan or issuer must determine the QPA pursuant to § 54.9816-6T(c)(3)(i), 29 CFR 2590.716-6(c)(3)(i), and 45 CFR 149.140(c)(3)(i) for an item or service furnished in 2022. For each subsequent year the group health plan or group or individual health insurance coverage is offered in the region, the plan or issuer must calculate the QPA by increasing the QPA determined for items or services provided in the immediately preceding year, by the percentage increase in the CPI-U over the preceding year.[6]

Pursuant to § 54.9816-6T(c)(3)(i), 29 CFR 2590.716-6(c)(3)(i), and 45 CFR 149.140(c)(3)(i), for an item or service furnished during 2022, a plan or issuer that does not have sufficient information to calculate the median of the contracted rates in 2019 for the same or similar item or service provided in a geographic region must calculate the QPA by first identifying the rate that is equal to the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2021, determined by the plan or issuer through use of any eligible database, and then increasing that rate by the percentage increase in the CPI-U over 2021. Similarly, in the case of a newly covered item or service furnished during the first coverage year, when a plan or issuer does not have sufficient information to calculate the median of the contracted rates in the first coverage year for the item or service, the plan or issuer must calculate the QPA by using an eligible database to determine the rate that is equal to the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in the year immediately preceding the first coverage year, and then increasing that rate by the percentage increase in the CPI-U over the preceding year.

Under § 54.9816-6T(c)(3)(ii), 29 CFR 2590.716-6(c)(3)(ii), and 45 CFR 149.140(c)(3)(ii), for an item or service furnished in a subsequent year (before the first sufficient information year for the item or service with respect to the plan or

[1] The No Surprises Act was enacted as Title I of Division BB of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020).

[2] Revenue Procedure 2022-11, 2022-3 IRB 449; Notice 2022-11, 2022-14 IRB 939, and Notice 2023-4, 2023-2 IRB 321.

[3] For information on the calculation of QPAs in light of the August 24, 2023 decision in *Texas Medical Association et al. v. United States Department of Health and Human Services et al.*, Case No. 6:22-cv-450-JDK (E.D. Tex.), see FAQs about Consolidated Appropriations Act, 2021 Implementation Part 62 (Oct. 6, 2023), available at https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-62 and https://www.cms.gov/files/document/faqs-part-62.pdf.

[4] The protections against surprise billing additionally apply to health benefits plans offered by carriers under the Federal Employees Health Benefits (FEHB) Act pursuant to 5 U.S.C. 8902(p). Accordingly, the guidance provided in this notice applies to FEHB carriers to the extent consistent with their contracts. See 5 CFR 890.114.

[5] The calculations of the QPAs for anesthesia services, air ambulance services, and certain other items or services furnished during 2022 for which a plan or issuer has sufficient information to calculate the median of the contracted rates in 2019 differ slightly, but all use the same formula for increasing a base rate by the combined percentage increase as published by the Treasury Department and the IRS to reflect the percentage increase in the CPI-U over 2019 and subsequent years. *See* § 54.9816-6T(c)(1)(iii)-(vii), 29 CFR 2590.716-6(c)(1)(iii)-(vii), and 45 CFR 149.140(c)(1)(iii)-(vii).

[6] The calculations of the QPAs for anesthesia services, air ambulance services, and certain other items or services furnished in a subsequent year differ slightly, but all use the same formula for increasing the indexed median contracted rate determined for the item or service in the immediately preceding year by the percentage increase. *See* § 54.9816-6T(c)(2)(ii), 29 CFR 2590.716-6(c)(2)(ii), and 45 CFR 149.140(c)(2)(ii).

coverage), the plan or issuer must calculate the QPA by increasing the QPA determined for the item or service for the year immediately preceding the subsequent year, by the percentage increase in the CPI-U over the preceding year.

The percentage increase in the CPI-U for items and services provided in 2022 over the preceding year is the average CPI-U for 2021 over the average CPI-U for 2020. Pursuant to Notice 2022-11, the percentage increase from 2021 to 2022 is 1.0299772040. The percentage increase in the CPI-U for items and services provided in 2023 over the preceding year is the average CPI-U for 2022 over the average CPI-U for 2021. Pursuant to Notice 2023-4, the percentage increase from 2022 to 2023 is 1.0768582128.

In the case of a plan or issuer that does not have sufficient information to calculate the median of the contracted rates for the same or similar item or service provided in a geographic region and determine the QPA in accordance with the previously described methodology because the item or service is billed under a new service code, for items or services furnished in 2022 (or for newly covered items and services, during the first coverage year for the item or service), the plan or issuer must identify a reasonably related service code that existed in the immediately preceding year and calculate the QPA pursuant to § 54.9816-6T(c)(4)(i), 29 CFR 2590.716-6(c)(4)(i), and 45 CFR 149.140(c)(4)(i).

Under § 54.9816-6T(c)(4)(ii), 29 CFR 2590.716-6(c)(4)(ii), and 45 CFR 149.140(c)(4)(ii), for an item or service furnished in a subsequent year (before the first sufficient information year for the item or service with respect to such plan or coverage or before the first year for which an eligible database has sufficient information to calculate a rate under § 54.9816-6T(c)(3)(i), 29 CFR 2590.716-6(c)(3)(i), and 45 CFR 149.140(c)(3)(i) in the immediately preceding year), the plan or issuer must calculate the QPA by increasing the QPA determined for the item or service for the year immediately preceding the subsequent year, by the percentage increase in the CPI-U over the preceding year.

SECTION 3. GUIDANCE

The percentage increase in the CPI-U over a preceding year is calculated by dividing the average CPI-U for the preceding year by the average CPI-U for the year immediately prior to the preceding year. For this purpose, the average CPI-U for a year is the average of the monthly CPI-Us published by the Bureau of Labor Statistics of the Department of Labor for the 12-month period ending on August 31 of each year, rounded to 10 decimal places. The percentage increase in the CPI-U for items and services provided in 2024 over the preceding year is the average CPI-U for 2023 over the average CPI-U for 2022. Pursuant to this calculation, the percentage increase from 2023 to 2024 is 1.0543149339. Further, pursuant to this notice, plans and issuers may round any resulting QPAs to the nearest dollar.

To calculate the adjusted QPA, the prior year's adjusted QPA is multiplied by the percentage increase for the most recent year. To simplify this calculation, this notice provides cumulative percentage increases. To calculate the adjusted QPA for items and services furnished in 2024, the "base year" QPA is multiplied by the cumulative percentage increase for the year the base QPA originated. A plan or issuer may select their preferred method, but it must be applied consistently. A plan or issuer is not permitted to use one method for certain QPAs and a different method for other QPAs.

BASE YEAR OF QPA ORIGINATION	CUMULATIVE PERCENTAGE INCREASE FOR QPA FROM BASE YEAR TO 2023	PERCENTAGE INCREASE FOR QPA FROM 2023 TO 2024	CUMULATIVE PERCENTAGE INCREASE FOR QPA FROM BASE YEAR TO 2024
2019	1.1466950506	1.0543149339	1.2089777165
2021	1.1091394112	1.0543149339	1.1693822450
2022	1.0768582128	1.0543149339	1.1353476955
2023	1.0000000000	1.0543149339	1.0543149339

.01 Adjusting QPAs based on January 31, 2019 rates.

For QPAs calculated by increasing the median contracted rate for 2019, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for items and services furnished in 2023 and multiplying the 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339). Alternatively, the QPAs for items and services furnished in 2024 may be calculated by increasing the median contracted rate for 2019 by the 2024 cumulative percentage increase for the 2019 base year (1.2089777165).

For example, using the alternative method: An item is furnished in 2024. The median contracted rate for the item on January 31, 2019, was $1,500. The 2024 adjusted QPA for the item can be calculated by multiplying $1,500 x 1.2089777165, resulting in $1,813.[7]

.02 Adjusting QPAs based on 2021 rates.

For items and services furnished in 2022 for which the QPAs were calculated by increasing the median of the in-net-

[7] The 2022 adjusted QPA for the $1,500 item was $1,597 ($1,500 x 1.0648523983). The 2023 adjusted QPA for the item was $1,720 ($1,597 x 1.0768582128). The 2024 adjusted QPA for the item is $1,813 ($1,720 x 1.0543149339).

work allowed amounts for the same or similar item or service provided in the geographic region in 2021, drawn from any eligible database, by the percentage increase from 2021 to 2022, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for the items and services furnished in 2022 and multiplying the 2022 adjusted QPAs by the percentage increase from 2022 to 2023 (1.0768582128) and multiplying the resulting 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339). Alternatively, the QPAs for items and services furnished in 2024 may be calculated by multiplying the 2022 adjusted QPA by the 2024 cumulative percentage increase for the 2021 base year (1.1693822450).

For example, using the alternative method: A newly covered service for which the plan or issuer does not have sufficient information to calculate the median of the contracted rates is furnished in 2022. The median of the in-network allowed amounts for the same or similar service provided in the geographic region in 2021, drawn from any eligible database, was $4,000. The 2024 adjusted QPA for the covered service is $4,678 ($4,000 x 1.1693822450).[8]

.03 Adjusting QPAs based on 2022 rates.

For items and services furnished in 2023 for which the QPAs were calculated by increasing the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2022, drawn from any eligible database, by the percentage increase from 2022 to 2023, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for the items and services furnished in 2023 and multiplying the 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339). Alternatively, the QPAs for items and services furnished in 2024 may be calculated by increasing the median contracted rate for 2022 by the 2024 cumulative percentage increase for the 2022 base year (1.1353476955).

For example, using the alternative method: A newly covered service for which the plan or issuer does not have sufficient information to calculate the median of the contracted rates is furnished in 2023. The median of the in-network allowed amounts for the same or similar service provided in the geographic region in 2022, drawn from an eligible database, was $2,100. The 2024 adjusted QPA for the covered service is $2,384 ($2,100 x 1.1353476955).[9]

The adjustment to the QPAs will be applied similarly for items and services covered by a new plan or new group or individual health insurance coverage that was not offered in a geographic region in a prior year. For items and services first offered by a new plan or new group or individual health insurance coverage in a geographic region in 2023 for which the plan or issuer does not have sufficient information to calculate the median of the contracted rates for the items or services provided in the geographic region, the QPAs are calculated by increasing the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2022, drawn from any eligible database, by the percentage increase from 2022 to 2023 (1.0768582128). For that plan or coverage, the QPAs for items and services furnished in 2024 are determined by taking the QPAs calculated for items and services furnished in 2023 and multiplying the 2023 adjusted QPAs by the percentage increase from 2023 to 2024 (1.0543149339).

.04 Calculating QPAs when 2024 is the first coverage year.

For newly covered items and services furnished in 2024 for which the plan or issuer does not have sufficient information, when 2024 is the first coverage year for the item or service with respect to the plan or coverage, the QPAs for the items and services first furnished in 2024 are determined by multiplying the median of the in-network allowed amounts for the same or similar item or service provided in the geographic region in 2023, drawn from any eligible database, by the percentage increase from 2023 to 2024 (1.0543149339).

For example, using the alternative method: A newly covered service is furnished in 2024. The median of the in-network allowed amounts for the same or similar service provided in the geographic region in 2023, drawn from an eligible database, was $3,000. The 2024 adjusted QPA for the service is $3,163 ($3,000 x 1.0543149339).

SECTION 4. EFFECTIVE DATE

The effective date of this notice is January 1, 2024.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Jason Sandoval of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Jason Sandoval at 202-317-5500 (not a toll-free number).

Miscellaneous Changes Under the SECURE 2.0 Act of 2022

Notice 2024-2

I. PURPOSE

This notice provides guidance in the form of questions and answers with respect to certain provisions of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act). Specifically, this notice addresses issues under the following sections of the SECURE 2.0 Act: section 101 (expanding automatic enrollment in retirement plans), section 102

[8] The 2022 adjusted QPA for the $4,000 service is $4,120 ($4,000 x 1.0299772040). The 2023 adjusted QPA for the service is $4,437 ($4,120 x 1.0768582128). The 2024 adjusted QPA is $4,678 ($4,437 x 1.0543149339).

[9] The 2023 adjusted QPA for the $2,100 service is $2,261 ($2,100 x 1.0768582128). The 2024 adjusted QPA is $2,384 ($2,261 x 1.0543149339).

(modification of credit for small employer pension plan startup costs), section 112 (military spouse retirement plan eligibility credit for small employers), section 113 (small immediate financial incentives for contributing to a plan), section 117 (contribution limit for SIMPLE plans), section 326 (exception to the additional tax on early distributions from qualified plans for individuals with a terminal illness), section 332 (employers allowed to replace SIMPLE retirement accounts with safe harbor 401(k) plans during a year), section 348 (cash balance), section 350 (safe harbor for correction of employee elective deferral failures), section 501 (provisions relating to plan amendments), section 601 (SIMPLE and SEP Roth IRAs), and section 604 (optional treatment of employer contributions or nonelective contributions as Roth contributions).

This notice is not intended to provide comprehensive guidance as to the specific provisions of the SECURE 2.0 Act, but rather is intended to provide guidance on discrete issues to assist in commencing implementation of these provisions. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) continue to analyze the various provisions of the SECURE 2.0 Act and anticipate issuing further guidance, including regulations, as appropriate.

II. PROVISIONS OF THE SECURE 2.0 ACT

TABLE OF CONTENTS:

A. SECTION 101 OF THE SECURE 2.0 ACT

Section 101 of the SECURE 2.0 Act amends the Internal Revenue Code (Code) to add new section 414A. Section 414A(a) generally provides that a cash or deferred arrangement (CODA) will not be treated as a qualified CODA described in section 401(k), and an annuity contract otherwise described in section 403(b) that is purchased under a salary reduction agreement will not be treated as described in section 403(b), unless the CODA or salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b). Section 414A(b) requires the CODA or salary reduction agreement to be an eligible automatic contribution arrangement (as defined in section 414(w)(3)) that provides permissible withdrawals and satisfies certain additional requirements involving default elective contributions and default investments.

Section 414A(c) sets forth several exceptions to the application of section 414A(a). Among other exceptions, section 414A(c)(2)(A)(i) and (ii) provides that section 414A(a) does not apply to any qualified CODA established before the date of the enactment of section 101 of the SECURE 2.0 Act (December 29, 2022) or to any annuity contract purchased under a plan established before the date of the enactment of section 101 of the SECURE 2.0 Act. For purposes of this notice, a qualified CODA or section 403(b) plan that is established before December 29, 2022, is called a pre-enactment qualified CODA or pre-enactment section 403(b) plan.

However, section 414A(c)(2)(B) of the Code provides that, in the case of an employer adopting a plan maintained by more than one employer after the date of the enactment of section 101 of the SECURE 2.0 Act, section 414(c)(2)(A) of the Code does not apply to that employer, and section 414A(a) applies with respect to that employer as if that plan were a single plan.

Section 101(c) of the SECURE 2.0 Act provides that the amendments made by section 101 apply to plan years beginning after December 31, 2024.

Q. A-1: When is a qualified CODA established for purposes of determining whether the qualified CODA is excepted under section 414A(c)(2)(A)(i) of the Code from the requirements related to automatic enrollment (that is, whether the qualified CODA is a pre-enactment qualified CODA)?

A. A-1: For purposes of section 414A(c)(2)(A)(i), a qualified CODA is established on the date plan terms providing for the CODA are adopted initially. This is the case even if the plan terms providing for the CODA are effective after the adoption date. For example, if an employer adopted a plan that included a qualified CODA on October 3, 2022, with an effective date of January 1, 2023, then the qualified CODA would have been established on October 3, 2022 (that is, before December 29, 2022), even though the qualified CODA was not effective until after December 29, 2022.

Q. A-2: If a single employer plan that includes a pre-enactment qualified CODA is merged with another plan that includes a pre-enactment qualified CODA, will the qualified CODA included in the ongoing plan after the merger be treated as a pre-enactment qualified CODA?

A. A-2: Yes. In the case of the merger of two single employer plans, each of which includes a pre-enactment qualified CODA, the treatment of the qualified CODA included in the ongoing plan as a pre-enactment qualified CODA is unaffected by the merger. The result is the same if a single employer plan that includes a pre-enactment qualified CODA is merged with a plan maintained by more than one employer that includes a pre-enactment qualified CODA.

Q. A-3: If a plan that includes a qualified CODA that is not a pre-enactment qualified CODA is merged with a plan that includes a pre-enactment qualified CODA, will the qualified CODA included in the ongoing plan be treated as a pre-enactment qualified CODA after the merger?

A. A-3: Generally, no. However, if, in connection with a transaction described in section 410(b)(6)(C), a single employer plan that includes a qualified CODA that is not a pre-enactment qualified CODA is merged with another single employer plan that includes a pre-enactment qualified CODA, and the plan that includes the pre-enactment qualified CODA is designated as the ongoing plan, then the qualified CODA included in the ongoing plan continues to be treated as a pre-enactment qualified CODA after the merger, provided that the merger occurs by the end of the section 410(b)(6)(C) transition period.

In addition, if a single employer plan that includes a qualified CODA that is not a pre-enactment qualified CODA is merged into a plan maintained by more than one employer that includes a pre-enactment qualified CODA, then the qualified CODA included in the ongoing plan would not be treated as a pre-enactment qualified CODA with respect to that employer. However, in that case, the merger would not affect whether the qualified CODA is treated as a pre-enactment qualified CODA with respect to other employers that participate in the ongoing plan.

Q. A-4: If a plan that includes a qualified CODA is spun-off from a plan that includes a pre-enactment qualified CODA, is the qualified CODA included in the new spun-off plan also treated as a pre-enactment qualified CODA?

A. A-4: Generally, yes. If the plan from which the new plan was spun-off was a single employer plan that included a pre-enactment qualified CODA, then the qualified CODA included in the spun-off plan is also treated as a pre-enactment qualified CODA. However, if the plan from which the new plan was spun-off was a plan maintained by more than one employer that was established before December 29, 2022, then the qualified CODA included in the spun-off plan is treated as a pre-enactment qualified CODA only if the qualified CODA in the plan maintained by more than one employer was treated as a pre-enactment qualified CODA with respect to the employer sponsoring the spun-off plan.

Q. A-5: How do the rules of section 414A(c)(2)(A)(ii) apply to section 403(b) plans?

A. A-5: In general, the rules of section 414A that apply to qualified CODAs also apply to section 403(b) plans. However, under section 414A(c)(2)(A)(ii), a section 403(b) plan is excepted from the requirements of section 414A(a) as a pre-enactment section 403(b) plan if it was established before December 29, 2022, without regard to the date of adoption of plan terms that provide for salary reduction agreements.

Q. A-6: For plan years beginning after December 31, 2024, does section 414A(a) apply to a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B) or to a safe harbor deferral-only plan described in section 403(b)(16)(B) (which were added to the Code by section 121 of the SECURE 2.0 Act, applicable to plan years beginning after December 31, 2023)?

A. A-6: Generally, yes. Unless an exception set forth in section 414A(c) of the Code applies (for example, the exception for a new or small business under section 414A(c)(4)(A) or (B)), section 414A(a) applies to a starter 401(k) deferral-only arrangement or to a safe harbor deferral-only plan for plan years beginning after December 31, 2024. Although section 414A(c) sets forth several exceptions to the application of section 414A(a), section 414A(c) does not include a specific exception for a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B) or for a safe harbor deferral-only plan described in section 403(b)(16)(B). Similarly, sections 401(k)(16) and 403(b)(16) do not provide that a starter 401(k) deferral-only arrangement or a safe harbor deferral-only plan is treated as satisfying the requirements of section 414A.

B. SECTION 102 OF THE SECURE 2.0 ACT

Section 102 of the SECURE 2.0 Act amends section 45E of the Code to provide, for an eligible employer within the meaning of section 408(p)(2)(C)(i)[1]: (1) an increased small employer pension plan startup cost credit for qualifying small employers with no more than 50 employees; (2) a new credit based on matching and nonelective contributions made by qualifying small employers with no more than 100 employees; and (3) revised rules for the disallowance of deductions for certain small employer plan startup costs and matching and nonelective contributions to take into account the new credit based on matching and nonelective contributions.

Section 102(a) of the SECURE 2.0 Act adds new paragraph (e)(4) to section 45E of the Code. Section 45E(e)(4) provides for an increase in the small employer pension plan startup cost credit provided under section 45E(a) (startup costs credit), so that the credit for an eligible employer with no more than 50 employees is increased from 50 percent to 100 percent of the qualified startup costs paid or incurred by the eligible employer (increased startup costs credit). A startup costs credit (including the increased startup costs credit) is available to an eligible employer for a first credit year and each of the two taxable years immediately following the first credit year (together, a 3-year startup costs credit period), as described in section 45E(b) and (d)(3) and is subject to a dollar limitation set forth in section 45E(b). Under section 45E(d)(3), the first credit year is (1) the taxable year that includes the date that the eligible employer plan to which such costs relate becomes effective with respect to the eligible employer, or (2) at the election of the eligible employer, the taxable year preceding the taxable year that the plan becomes effective.

Section 102(b) of the SECURE 2.0 Act adds new section 45E(f) to the Code. Section 45E(f) provides for an additional amount of credit under section 45E based on employer matching and nonelective contributions to an eligible employer plan other than a defined benefit plan (employer contributions credit). Under section 45E(f)(1), an eligible employer is entitled to a credit for a taxable year equal to a specified applicable percentage of aggregate employer contributions (other than any elective deferrals, as defined in section 402(g)(3)) made by the employer during the taxable year to an eligible employer plan (other than a defined benefit plan, as defined in section 414(j)). The amount of the credit under section 45E(f)(1) is limited, under section 45E(f)(2)(A), to no more than $1,000 with respect to any employee. In addition, under section 45E(f)(2)(C), contributions with respect to any employee who receives wages, as

[1] Under section 408(p)(2)(C)(i)(I), an employer is an eligible employer with respect to any taxable year if the employer had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding taxable year. In addition, under section 408(p)(2)(C)(i)(II), an eligible employer that establishes and maintains a plan for one or more years will be treated as an eligible employer for the two years following the last year the employer was an eligible employer (unless the increase in the employer's number of employees was due to an acquisition, disposition, or similar transaction involving the eligible employer).

defined under section 3121(a) (that is, wages for purposes of the Federal Insurance Contributions Act (FICA) (chapter 21 of the Code)), from the employer for the taxable year in excess of $100,000 (indexed for inflation) are excluded from the credit amount calculation for the taxable year. Further, under section 45E(f)(2)(B), the amount determined under section 45E(f)(1) (after applying the section 45E(d)(2)(A) and (C) limitations) is reduced through a credit phase-in formula by 2 percent for each employee of the employer for the preceding taxable year in excess of 50 employees. For purposes of the credit formula in section 45E(f)(1), section 45E(f)(3) provides that the applicable percentage is 100 percent for the first taxable year during which the eligible employer plan is established with respect to the eligible employer (the first employer contributions credit taxable year), 100 percent for the second employer contributions credit taxable year, 75 percent for the third employer contributions credit taxable year, 50 percent for the fourth employer contributions credit taxable year, and 25 percent for the fifth employer contributions credit taxable year (together, a 5-year employer contributions credit period).

Section 102(c) of the SECURE 2.0 Act amends section 45E(e)(2) of the Code with respect to the disallowance of deductions for certain small employer plan startup costs and matching and nonelective contributions to take into account the new credit under section 45E(f), by providing that no deduction is allowed (1) for that portion of the qualified startup costs paid or incurred for the taxable year that is equal to so much of the portion of the credit determined under section 45E(a) as is properly allocable to such costs, and (2) for that portion of the employer contributions by the employer for the taxable year that is equal to so much of the credit increase determined under section 45E(f) as is properly allocable to such contributions.

Section 102(d) of the SECURE 2.0 Act provides that the amendments to section 45E of the Code made by section 102 of the SECURE 2.0 Act apply to taxable years beginning after December 31, 2022.

Q. B-1: Is the employer contributions credit under section 45E(f) of the Code treated as a separate credit that is in addition to the startup costs credit under section 45E(a)?

A. B-1: Yes. For example, an eligible employer might be eligible both for a startup costs credit calculated under section 45E(a) (as limited by the dollar limitation in section 45E(b)), and an additional employer contributions credit calculated under section 45E(f)(1) (as limited by the dollar, wage, and credit phase-in limitations in section 45E(f)(2), but not the dollar limitation in section 45E(b)).

Q. B-2: When is an eligible employer plan treated as being established, for purposes of determining the first (and subsequent) employer contributions credit taxable years during the 5-year employer contributions credit period for which an eligible employer can claim an employer contributions credit under section 45E(f)?

A. B-2: An eligible employer plan is treated as being established, for purposes of determining the first (and subsequent) employer contributions credit taxable years during the 5-year employer contributions credit period for which an eligible employer is permitted to claim an employer contributions credit under section 45E(f), on the date the plan becomes effective with respect to the eligible employer. This determination of the first employer contributions credit taxable year during the 5-year employer contributions credit period is similar to the determination of the taxable year that is the first credit year during the 3-year startup costs credit period under section 45E(a), as defined in section 45E(d)(3), except that an employer is permitted to elect, under section 45E(d)(3)(B), for the first startup costs credit year to be the taxable year preceding the taxable year in which the plan becomes effective with respect to the eligible employer. Thus, an eligible employer may be able to claim both the startup costs credit and the employer contributions credit beginning with the taxable year in which the plan becomes effective with respect to the eligible employer. If an eligible employer elects, for purposes of the startup costs credit, for the taxable year preceding the taxable year in which the plan becomes effective with respect to the eligible employer to be the first startup costs credit year, then the 5-year employer contributions credit period begins with the second taxable year of the 3-year startup costs credit period.

Q. B-3: How does a change in an employer's status as an eligible employer under section 408(p)(2)(C)(i) due to a change in the number of the employer's employees who received at least $5,000 of compensation from the employer for the preceding taxable year affect the employer's eligibility for the employer contributions credit under section 45E(f) for taxable years during the employer's 5-year employer contributions credit period?

A. B-3: An employer is eligible for the employer contributions credit for a taxable year during the employer's 5-year employer contributions credit period only if (1) the employer was an eligible employer under section 408(p)(2)(C)(i)(I) for the first employer contributions credit taxable year during the employer's 5-year employer contributions credit period, and (2) the employer is an eligible employer under section 408(p)(2)(C)(i) for the taxable year with respect to which the employer contributions credit is claimed. Accordingly, if an employer had more than 100 employees for the taxable year preceding the first employer contributions credit taxable year during the employer's 5-year employer contributions credit period, the employer will not become eligible for the employer contributions credit for the first time in a subsequent taxable year, even if the number of employees who received at least $5,000 of compensation from the employer drops to 100 or fewer for a taxable year following the taxable year preceding the first taxable year in the employer's 5-year employer contributions credit period.

Q. B-4: How does a change in an employer's status as an eligible employer under section 408(p)(2)(C)(i) due to a change in the number of the employer's employees who received at least $5,000 of compensation from the employer for a taxable year that precedes a particular taxable year during the employer's 3-year startup costs credit period affect the employer's eligibility for (1) the startup costs credit under section 45E(a) for that particular taxable year or (2) the increased startup costs credit under section 45E(e)(4) for that particular taxable year?

A. B-4: (1) An employer is eligible for the startup costs credit under section

45E(a) (disregarding the increased startup costs credit under section 45E(e)(4)) for a taxable year during the employer's 3-year startup costs credit period only if (a) the employer was an eligible employer under section 408(p)(2)(C)(i)(I) for the first taxable year during the employer's 3-year startup costs credit period, and (b) the employer is an eligible employer under section 408(p)(2)(C)(i) for the taxable year with respect to which the startup costs credit is claimed. Accordingly, if an employer had more than 100 employees for the taxable year preceding the first taxable year during the employer's 3-year startup costs credit period, the employer will not become eligible for the employer contributions credit for the first time in a subsequent taxable year, even if the number of employees who received at least $5,000 of compensation from the employer drops to 100 or fewer for a taxable year following the taxable year preceding the first taxable year during the employer's 3-year startup costs credit period.

(2) An employer is eligible for the increased startup costs credit under section 45E(e)(4) for a taxable year during the employer's 3-year startup costs credit period only if (a) the employer was an eligible employer under section 408(p)(2)(C)(i)(I), applied by substituting "50 employees" for "100 employees," for the first taxable year during the employer's 3-year startup costs credit period, and (b) the employer is an eligible employer under section 408(p)(2)(C)(i), applied by substituting "50 employees" for "100 employees," for the taxable year with respect to which the startup costs credit is claimed. Accordingly, if an employer had more than 50 employees for the taxable year immediately preceding the first taxable year during the employer's 3-year startup costs credit period, the employer will not become eligible for the increased startup costs credit under section 45E(e)(4) for the first time in a subsequent taxable year, even if the number of employees who received at least $5,000 of compensation from the employer drops to 50 or fewer for a taxable year following the taxable year preceding the first taxable year during the employer's 3-year startup costs credit period.

Q. B-5: Is it possible for an employer that was eligible for the startup costs credit under section 45E(a) for a taxable year that began on or before December 31, 2022, to be eligible for the increased startup costs credit under section 45E(e)(4) or the employer contributions credit under section 45E(f) for a taxable year that begins after December 31, 2022?

A. B-5: Yes. However, an employer that was eligible for the startup costs credit under section 45E(a) for a taxable year that began on or before December 31, 2022, can be eligible for the increased startup costs credit under section 45E(e)(4) or the employer contributions credit under section 45E(f) for a taxable year that begins after December 31, 2022, only if there is a taxable year during the employer's applicable 3- or 5-year credit period that begins after December 31, 2022. For example, for an eligible employer with a calendar year taxable year that maintains a plan that became effective on January 1, 2021: (1) the 5-year employer contributions credit period began with the eligible employer's 2021 taxable year and ends with the employer's 2025 taxable year; and (2) for the three employer contributions credit taxable years in the 5-year employer contributions credit period that begin after December 31, 2022, it is possible, if the employer meets the eligibility requirements described in Q&A B-3 of this notice, for the employer to be eligible for an employer contributions credit equal to the applicable percentage of aggregate employer contributions set forth in section 45E(f)(1) (75 percent for the 2023 taxable year, 50 percent for the 2024 taxable year, and 25 percent for the 2025 taxable year).

Q. B-6: Is an eligible employer permitted to take into account, for purposes of determining the employer contributions credit under section 45E(f) for a taxable year, contributions to an individual who does not have wages as defined in section 3121(a) in excess of the $100,000 (indexed for inflation) wage limitation set forth in section 45E(f)(2)(C) for the taxable year, even if the individual has earned income that is not wages as defined in section 3121(a) for the taxable year in excess of the $100,000 amount or the individual is a state or local government employee with remuneration in excess of the $100,000 amount whose services are excluded from employment under section 3121(b)(7)?

A. B-6: Yes. The $100,000 (indexed for inflation) wage limitation set forth in section 45E(f)(2)(C), under which no contributions with respect to any individual who receives wages from the employer for a taxable year in excess of $100,000 (indexed for inflation) may be taken into account for purposes of determining employer contributions credits for the taxable year, only applies with respect to an individual who has wages as defined in section 3121(a) that are in excess of the wage limitation for the taxable year. Accordingly, contributions with respect to an individual who does not have any wages as defined in section 3121(a) for a taxable year because the individual is self-employed (including a partner) or because the individual is a state or local government employee whose services are excluded from employment under section 3121(b)(7) (and, thus, does not have wages as defined in section 3121(a)) may be taken into account for purposes of determining employer contributions credits for the taxable year, even if the individual has earned income or remuneration from a state or local government in excess of the $100,000 wage limitation.

Q. B-7: In which taxable year of an eligible employer is a matching or nonelective contribution made by the employer to an eligible employer plan taken into account for purposes of the employer contributions credit under section 45E(f)?

A. B-7: A matching or nonelective contribution made by an eligible employer to an eligible employer plan is taken into account for purposes of the employer contributions credit for the same taxable year that a deduction under section 404(a) would apply with respect to the contribution. Thus, an employer is deemed to have made a matching or nonelective contribution on the last day of the preceding taxable year if the contribution is on account of that taxable year and is not made later than the time prescribed by law for filing the return for that taxable year (including extensions thereof). *See* section 404(a)(6).

C. SECTION 112 OF THE SECURE 2.0 ACT

Section 112 of the SECURE 2.0 Act amends the Code to add new section 45AA, which provides a military spouse retirement plan eligibility credit for small employers (section 45AA credit). This

new credit provides a business credit under section 38 of the Code for an eligible employer that provides for participation and benefits to a military spouse under an eligible defined contribution plan or plans of the employer (as defined under section 45AA(e)) within two months after the military spouse's date of hire by the employer.

Section 45AA(a) provides that the section 45AA credit for the taxable year is equal to the sum of (1) $200 with respect to each military spouse who is an employee of the employer and who participates in an eligible defined contribution plan of the employer at any time during the taxable year, plus (2) so much of the contributions made by the employer (other than an elective deferral as defined in section 402(g)(3)) to all eligible defined contribution plans with respect to the employee during the taxable year as do not exceed $300.

Section 45AA(b) provides that, for purposes of the section 45AA credit, a military spouse is only taken into account for the taxable year which includes the date on which the spouse began participating in the eligible defined contribution plan of the employer and the two succeeding taxable years (3-year credit period).

Section 45AA(c) provides that the term "eligible small employer" means an eligible employer as defined in section 408(p)(2)(C)(i)(I), which requires that an employer have had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding taxable year.

Section 45AA(d) defines a military spouse as any individual who is married (within the meaning of section 7703 as of the first date that the employee is employed by the employer) to an individual who is a member of the uniformed services (as defined in section 101(a)(5) of title 10, United States Code) serving on active duty. For purposes of the credit, an employer may rely on an employee's certification that the employee's spouse is a member of the uniformed services if the certification provides the name, rank, and service branch of the spouse. However, section 45AA(d)(2) of the Code provides that a military spouse does not include any individual who is a highly compensated employee of the employer (within the meaning of section 414(q)).

Section 45AA(e) defines an eligible defined contribution plan as any defined contribution plan (as defined in section 414(i)) of the eligible small employer if, under the terms of the plan, (1) military spouses employed by the employer are eligible to participate in the plan not later than the date which is two months after the date on which the military spouse begins employment with the employer, and (2) military spouses who are eligible to participate in the plan (A) are immediately eligible to receive an amount of employer contributions under the plan which is not less than the amount of contributions that a similarly situated participant who is not a military spouse would be eligible to receive under the plan after two years of service, and (B) immediately have a nonforfeitable right to the employee's accrued benefit derived from employer contributions under the plan.

Section 45AA(f) provides that all persons treated as a single employer under section 414(b), (c), (m), or (o) will be treated as one employer for purposes of section 45AA.

Section 112(e) of the SECURE 2.0 Act provides that the section 45AA credit applies to taxable years of the employer beginning after December 29, 2022.

Q. C-1: May an employer claim the section 45AA credit with respect to a military spouse for any taxable year of the employer within the 3-year credit period for which the employer does not meet the requirements of section 408(p)(2)(C)(i)(I) of the Code?

A. C-1: No. Section 45AA(c) specifies that the employer must meet the requirements of section 408(p)(2)(C)(i)(I) to be eligible for the section 45AA credit for a taxable year. For example, if an employer had no more than 100 employees who received at least $5,000 of compensation from the employer for the taxable year preceding the 2024 taxable year but more than 100 such employees for the taxable year preceding both the employer's 2023 and 2025 taxable years, with respect to a military spouse whose 3-year credit period begins in the employer's 2023 taxable year and ends in the employer's 2025 taxable year, the employer is eligible for the section 45AA credit only for the employer's 2024 taxable year.

Q. C-2: May an eligible small employer claim the section 45AA credit with respect to a military spouse who participated in a defined contribution plan of the employer before the employer amends the plan to become an eligible defined contribution plan, or adopts another plan that is an eligible defined contribution plan in which the military spouse participates?

A. C-2: Yes. If an employer amends the plan (or adopts another plan) to become an eligible defined contribution plan, the employer is eligible for the section 45AA credit for the employer's taxable year that includes the later of the date on which the plan or amendment becomes effective and the date on which the military spouse began participating in the plan after it was amended (or adopted) to become an eligible defined contribution plan and any of the 2 succeeding taxable years during which the military spouse participates in the plan for any period (3-year credit period). A military spouse's 3-year credit period begins from the first date that the military spouse participates in any eligible defined contribution plan of the employer. For example, for an eligible small employer that uses the calendar year as the employer's taxable year and that amends a defined contribution plan, effective January 1, 2024, to provide the benefits enumerated in section 45AA(e) to all military spouses employed by the employer, with respect to a military spouse who began participating in the plan on June 15, 2020 (and who has not participated in any other eligible defined contribution plans of the employer), the employer may claim a section 45AA credit (of the applicable amount) for any of the employer's 2024, 2025, or 2026 taxable years during which the military spouse participates in the plan for any period.

Q. C-3: May an eligible small employer claim the section 45AA credit with respect to a military spouse whose 3-year credit period described in Q&A C-2 of this notice began during a taxable year of the employer beginning on or before December 29, 2022?

A. C-3: Yes. The employer is eligible for the section 45AA credit for any taxable year of the employer beginning after December 29, 2022 that remains within the military spouse's 3-year credit period, as described in Q&A C-2 of this notice. For

example, for an eligible small employer that uses the calendar year as the employer's taxable year and that adopted a defined contribution plan that provides the benefits enumerated in section 45AA(e) to all employees employed by the employer and that became effective as of January 1, 2021, with respect to a military spouse who began participating in the plan within 2 months of the spouse's date of hire by the employer on June 15, 2022, the employer may claim a section 45AA credit (of the applicable amount) for any of the employer's 2023 and 2024 taxable years during which the spouse participates in the plan for any period.

D. SECTION 113 OF THE SECURE 2.0 ACT

Section 401(k)(4)(A), prior to amendment by section 113(a) of the SECURE 2.0 Act, provided that "a cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m) of the Code) made by reason of such an election." This provision is commonly referred to as the contingent benefit rule.

Section 403(b)(12)(A) describes nondiscrimination requirements that apply to section 403(b) plans under which employees participate pursuant to salary reduction agreements. Section 403(b)(12)(A)(ii), which is commonly referred to as the universal availability requirement, provides that a section 403(b) plan will satisfy the applicable nondiscrimination requirements if all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

Section 1.403(b)-5(b)(2) provides that an employee is not treated as being permitted to have section 403(b) elective deferrals contributed on the employee's behalf unless the employee is provided an effective opportunity that satisfies the requirements of that paragraph. An effective opportunity is not considered to exist if there are any other rights or benefits (other than matching contributions or other rights or benefits listed in § 1.401(k)-1(e)(6)(i)) that are conditioned (directly or indirectly) upon the participant making or failing to make a cash or deferred election with respect to a contribution to a section 403(b) contract.

Section 113(a) of the SECURE 2.0 Act amended section 401(k)(4)(A) of the Code to provide that a *de minimis* financial incentive (not paid for with plan assets) provided to employees who elect to have the employer make contributions under the arrangement in lieu of receiving cash will not violate the contingent benefit rule of section 401(k)(4)(A).

Section 113(b) of the SECURE 2.0 Act amended section 403(b)(12)(A) of the Code to provide that a plan does not fail to satisfy section 403(b)(12)(A)(ii) solely by reason of offering a *de minimis* financial incentive (not derived from plan assets) to employees to elect to have the employer make contributions pursuant to a salary reduction agreement.

Section 113(c) of the SECURE 2.0 Act amended section 4975(d) of the Code to add a new paragraph (24) under which the provision of a *de minimis* financial incentive described in section 401(k)(4)(A) is exempted from the tax on prohibited transactions. As a conforming change, section 113(d) of the SECURE 2.0 Act amended section 408(b) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA), to add a new paragraph (21) under which the provision of a *de minimis* financial incentive described in either section 401(k)(4)(A) or 403(b)(12)(A) of the Code is exempted from the ERISA prohibited transaction rules.

Section 113 of the SECURE 2.0 Act did not specify what would constitute a *de minimis* financial incentive described in section 401(k)(4)(A) or 403(b)(12)(A)(ii) of the Code. However, legislative history mentions gift cards in small amounts as an example of a *de minimis* financial incentive an employer might offer to boost employee participation in workplace retirement plans (*see* H. Rept. 117-283, Part 1 (117 Cong. 2d Sess.) at 86).

Section 113 of the SECURE 2.0 Act is effective for plan years beginning after December 29, 2022.

Q. D-1: Is there a limit on the value of a financial incentive for the incentive to be a *de minimis* financial incentive described in section 401(k)(4)(A) of the Code?

A. D-1: A financial incentive is a *de minimis* financial incentive described in section 401(k)(4)(A) only if it does not exceed $250 in value.

Q. D-2: Does the exception to the contingent benefit rule that is described in section 401(k)(4)(A) for a *de minimis* financial incentive provided to employees who elect to have the employer make contributions under a CODA apply to an employee for whom an election to defer is already in effect?

A. D-2: A *de minimis* financial incentive is described in section 401(k)(4)(A) only if it is offered to employees for whom no election to defer under the CODA is already in effect. Thus, for example, if an employer announces on February 1, 2024, that any employee for whom an election to defer under a CODA is not in effect on that date and who, within the next 90 days, makes an election to defer, will receive a $200 gift card, then the gift card is a *de minimis* financial incentive that does not cause the CODA to fail to be a qualified CODA on account of the contingent benefit rule of section 401(k)(4)(A). A financial incentive does not fail to be a *de minimis* financial incentive described in section 401(k)(4)(A) merely because the incentive is provided in the form of installments that are contingent on the employee's continuing to defer (even if those installments are paid over more than one plan year). Thus, if the employer in the preceding example provides a $100 gift card (instead of providing a $200 gift card) with a promise to provide an additional $100 gift card a year later, but only if the employee continues to defer at that later date, then the $200 total amount of gift cards is still a de minimis financial incentive within the meaning of section 401(k)(4)(A).

Q. D-3: Can a matching contribution within the meaning of section 401(m)(4) be a *de minimis* financial incentive described in section 401(k)(4)(A)?

A. D-3: No. A matching contribution cannot be a *de minimis* financial incentive described in section 401(k)(4)(A).

Q. D-4: Is the provision of a *de minimis* financial incentive described in section 401(k)(4)(A) subject to the rules under the Code that apply with respect to a plan contribution?

A. D-4: No. A *de minimis* financial incentive described in section 401(k)(4)(A) is not subject to the Code rules that apply to a plan contribution, including the qualification requirements of section 401(a) and the deductibility timing rules of section 404(a).

Q. D-5: What is an employee's tax treatment with respect to a *de minimis* financial incentive described in section 401(k)(4)(A) that is provided by an employer?

A. D-5: If an employer provides a *de minimis* financial incentive described in section 401(k)(4)(A) to an employee, that incentive constitutes remuneration that is includible in the employee's gross income and wages and is subject to applicable withholding and reporting requirements for employment tax purposes, unless the provision of the *de minimis* financial incentive satisfies an exception under the Code. For example, the $200 gift card described in Q&A D-2 of this notice is not excludable from the employee's gross income as a *de minimis* fringe benefit within the meaning of section 132(e) and § 1.132-6(c) because, as a cash equivalent, it is not eligible for that exclusion (and therefore the gift card is includible in the employee's gross income and wages and is a taxable fringe benefit for employment tax and reporting purposes unless another exception applies).

Q. D-6: Do the rules of Q&A D-1 through Q&A D-5 of this notice apply with respect to a *de minimis* financial incentive described in section 403(b)(12)(A) of the Code that is offered to employees to elect to have the employer make contributions to a section 403(b) plan on their behalf pursuant to a salary reduction agreement?

A. D-6: Yes. The statutory provisions that apply with respect to a *de minimis* financial incentive described in section 403(b)(12)(A) are generally the same as the statutory provisions that apply with respect to a *de minimis* financial incentive described in section 401(k)(4)(A). Accordingly, the rules of Q&A D-1 through Q&A D-5 of this part D of this notice also apply with respect to a *de minimis* financial incentive described in section 403(b)(12)(A).

E. SECTION 117 OF THE SECURE 2.0 ACT

A SIMPLE IRA plan under section 408(p) or a SIMPLE 401(k) plan under section 401(k)(11) is a plan under which employees may elect to have salary reduction contributions (or elective contributions, in the case of a SIMPLE 401(k) plan) made on their behalf, and which may only be sponsored by an eligible employer defined in section 408(p)(2)(C)(i) (that is, generally, an employer who has 100 or fewer employees who received at least $5,000 of compensation from the employer for the preceding year). Under a SIMPLE IRA plan or SIMPLE 401(k) plan, the employer generally is required to make either (1) a matching contribution equal to the employee's salary reduction contributions or elective contributions that do not exceed 3 percent of the employee's compensation or (2) a nonelective contribution of 2 percent of the employee's compensation (regardless of whether the employee elects to make contributions). Section 116 of the SECURE 2.0 Act amends sections 408(p) and 401(k)(11) of the Code to permit the employer to make additional nonelective contributions (up to 10 percent of compensation of each employee eligible to participate, but initially limited to $5,000 with respect to each employee). Under section 408(p)(2)(D), an employer generally cannot make contributions to a SIMPLE IRA plan or a SIMPLE 401(k) plan for a year if the employer maintained another qualified plan with respect to which contributions were made or benefits accrued for the period beginning with the year that the SIMPLE IRA plan or SIMPLE 401(k) plan was established and ending with the current year.

Notice 98-4, 1998-1 CB 269, provides guidance regarding SIMPLE IRA plans, such as guidance on the determination of the number of employees who received at least $5,000 of compensation for the preceding year and the required notifications to employees.

Section 117 of the SECURE 2.0 Act amends sections 408(p), 401(k)(11), and 414(v) of the Code to increase both the annual salary reduction contribution/elective contribution limit and the limit on additional catch-up contributions beginning at age 50 for a SIMPLE IRA plan or a SIMPLE 401(k) plan for certain eligible employers. For some of those eligible employers, the increased limits apply automatically; while other of those eligible employers must make an election for the increased limits to apply and must also make additional employer contributions. The increased limits are 110 percent of the otherwise applicable limits for 2024.[2]

Section 117(h) of the SECURE 2.0 Act provides that the amendments made by section 117 of the SECURE 2.0 Act apply for taxable years beginning after December 31, 2023.

Q. E-1: For which eligible employers do the increased limits under section 117 of the SECURE 2.0 Act apply?

A. E-1: The increased limits under section 117 of the SECURE 2.0 Act apply to an eligible employer described in section 408(p)(2)(E)(iv)[3] of the Code. An eligible employer is described in section 408(p)(2)(E)(iv) if, during the 3-taxable year period preceding the first year that the employer maintained the SIMPLE IRA plan or SIMPLE 401(k) plan, the employer (including any member of the employer's controlled group or any predecessor of the employer or any member) has not established or maintained a qualified plan under section 401(a), a section 403(a) annuity plan, or a section 403(b) plan under which contributions were made or benefits were accrued for substantially the same employees as are eligible to participate in the SIMPLE IRA plan or SIMPLE 401(k) plan.

Q. E-2: What are the differences in how the increased limits apply to eligible

[2] The annual salary reduction contribution/elective contribution limit for a SIMPLE IRA plan or SIMPLE 401(k) plan for 2023 is $15,500 and the limit on additional catch-up contributions beginning at age 50 for 2023 is $3,500.

[3] Section 408(p)(2)(E)(i)(I) and (II) refer to "an eligible employer described in clause (iii)." There is no description of an eligible employer in clause (iii), but there is a description of eligible employer in clause (iv).

employers described in section 408(p)(2)(E)(iv) depending on the number of employees of the employer?

A. E-2: The increased limits apply automatically in the case of an eligible employer described in section 408(p)(2)(E)(iv) that has no more than 25 employees who received at least $5,000 of compensation for the preceding calendar year. For an employer that has more than 25 employees who received at least $5,000 of compensation for the preceding year, the increased limits apply only if the employer makes an election for the increased limits to apply. If the employer makes an election for the increased limits to apply, the employer must provide higher matching or nonelective contributions, as described in Q&A E-5 of this notice.

Q. E-3: How are the number of employees who received at least $5,000 of compensation for the preceding year determined?

A. E-3: The rules set forth in Q&A B-1 of Notice 98-4 apply for purposes of calculating the number of employees. Thus, all employees employed at any time during the calendar year are taken into account, regardless of whether they are eligible to participate in the SIMPLE IRA plan or SIMPLE 401(k) plan (including employees excludable under the rules of section 410(b)(3) or who have not met the plan's minimum eligibility requirements, as well as self-employed individuals described in section 401(c)(1) who received earned income from the employer during the year).

For purposes of determining whether an employer has no more than 25 employees who received at least $5,000 of compensation for the preceding year, there generally is a 2-year grace period. Thus, if an employer that has no more than 25 employees increases the number of employees to more than 25, the employer will still be treated as having 25 employees for two years following the last year the employer had no more than 25 employees (unless the increase in the employer's number of employees was due to an acquisition, disposition, or similar transaction involving the eligible employer).

Q. E-4: How does an employer reflect the increased limits?

A. E-4: An employer that must make an election to apply the increased limits must take formal written action to make an election to reflect the increased limits and should maintain documentation of the election in the plan's records. An employer (including employers for whom the increased limits apply automatically) must reflect the increased limits in the plan terms (*see* section II.J. of this notice regarding plan amendment deadlines) and must notify employees of the increased limits (*see* Q&A E-6 of this notice).

Q. E-5: If an employer makes an election to apply the increased limits, what other contributions must be made?

A. E-5: If an employer makes an election under Q&A E-4 of this notice to apply the increased limits, the employer must make matching contributions equal to the employee's salary reduction contributions or elective contributions that do not exceed 4 percent (increased from 3 percent) of the employee's compensation or make a nonelective contribution of 3 percent (increased from 2 percent) of the employee's compensation (regardless of whether the employee elects to make contributions).

Q. E-6: Who must an employer notify of the increased limits?

A. E-6: The employer must notify employees of the increased limits. The notice must be included in the annual employer notification that informs employees of the opportunity to enter into a salary reduction agreement or to modify a prior agreement. In the case of an employer for whom the increased limits apply pursuant to an election, the employer also must notify employees of the increased matching contribution or increased nonelective contribution. The employer should also (1) notify the SIMPLE IRA plan's or SIMPLE 401(k) plan's financial institution and payroll provider of the increased limits, and (2) keep records of all actions concerning the increased limits. However, the employer does not need to notify the IRS of the election to apply the increased limits.

Q. E-7: What is the deadline for an employer to make the election to apply the increased limits for a year?

A. E-7: An employer election to apply the increased limits for a calendar year must be made before the employer provides the annual notice to each employee of the employee's opportunity to enter into a salary reduction agreement or to modify a prior agreement for that calendar year, as provided in Q&A G-1 of Notice 98-4.

Q. E-8: For how long is an employer election to apply the increased limits effective?

A. E-8: An employer's election to apply the increased limits is effective until it is revoked by the employer. The employer must take formal written action to revoke the election before the employer provides the annual notice to each employee of the employee's opportunity to enter into a salary reduction agreement or to modify a prior agreement for the next calendar year. The employer should maintain documentation of the revocation in the plan's records.

If an employer revokes a prior election to apply the increased limits, the employer must also amend the plan terms to reflect the revocation (*see* section II.J. of this notice regarding plan amendment deadlines) and notify employees of the applicable limits (*see* generally Q&A E-6 of this notice).

F. SECTION 326 OF THE SECURE 2.0 ACT

Section 72(t)(1) generally imposes a 10 percent additional tax on any distribution from a qualified retirement plan within the meaning of section 4974(c), unless the distribution qualifies for one of the exceptions listed in section 72(t)(2). Section 326 of the SECURE 2.0 Act amended section 72(t)(2) of the Code to add a new exception to the 10 percent additional tax for any distribution made to a terminally ill individual.

Section 72(t)(2)(L) permits an employee[4] who is a terminally ill individual to receive a distribution (terminally ill in-

[4] Section 72(t)(5) provides that, for purposes of section 72(t), the term "employee" includes any participant, and in the case of an individual retirement plan, an individual for whose benefit such plan was established.

dividual distribution) on or after the date on which the employee has been certified by a physician as having a terminal illness. Section 72(t)(2)(L)(ii) provides that the term "terminally ill individual" has the same meaning given that term under section 101(g)(4)(A), except that "84 months" is substituted for "24 months."

Section 72(t)(2)(L)(iii) provides that, in order to be considered a terminally ill individual, an employee must furnish sufficient evidence to the plan administrator in the form and manner as the Secretary of the Treasury (Secretary) may require. A terminally ill individual distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1). Section 72(t)(2)(L)(iv) provides that a terminally ill individual distribution may be repaid following rules similar to repayment of qualified birth or adoption distributions in section 72(t)(2)(H)(v).

The amendment made to section 72(t)(2) by section 326 of the SECURE 2.0 Act applies to terminally ill individual distributions made after December 29, 2022.

The Treasury Department and the IRS intend to issue regulations under section 72(t) of the Code, including providing guidance on exceptions under section 72(t)(2) as added by the SECURE 2.0 Act (such as the exception to the 10 percent additional tax for an eligible distribution to a domestic abuse victim).

Questions and Answers Relating to Terminally Ill Individual Distributions

Q. F-1: What is a terminally ill individual distribution?

A. F-1: The term "terminally ill individual distribution" means any distribution from a qualified retirement plan to an employee (as defined in section 72(t)(5)) who is a terminally ill individual (within the meaning of Q&A F-4 of this notice) that is made on or after the date on which the employee has been certified by a physician as having a terminal illness. The certification must satisfy the content requirements in Q&A F-6 of this notice.

Q. F-2: Which types of plans are eligible to permit a terminally ill individual distribution?

A. F-2: Unlike qualified birth or adoption distributions in section 72(t)(2)(H), which uses the term "applicable eligible retirement plan" described in section 72(t)(2)(H)(vi)(I), section 72(t)(2)(L) does not include a special definition of retirement plan. Section 72(t)(1) provides that the 10 percent additional tax applies to any amount received from a qualified retirement plan within the meaning of section 4974(c). Therefore, for purposes of section 72(t)(2)(L), a terminally ill individual distribution may be made from a qualified retirement plan as defined in section 4974(c), which is defined as a section 401(a) qualified plan (including a defined benefit plan), section 403(a) annuity plan, section 403(b) annuity contract, or an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b).[5] Note that, for purposes of section 72(t)(2)(L), an eligible deferred compensation plan that is maintained by an eligible employer described in section 457(e)(1)(A) is not eligible to permit a terminally ill individual distribution because it is not a qualified retirement plan as defined in section 4974(c).

Q. F-3: Is a terminally ill individual distribution subject to the 10 percent additional tax under section 72(t)?

A. F-3: No. Although a terminally ill individual distribution is includible in gross income, it is not subject to the 10 percent additional tax under section 72(t)(1).

Q. F-4: Who is a terminally ill individual for purposes of the exception to the 10 percent additional tax under section 72(t)(2)(L)?

A. F-4: Section 72(t)(2)(L)(ii) provides that the term "terminally ill individual" has the same meaning as the term under section 101(g)(4)(A), except that "84 months" is substituted for "24 months." Thus, for purposes of the exception to the 10 percent additional tax under section 72(t)(2)(L), a terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or less after the date of the certification.

Q. F-5: In determining who is a terminally ill individual, how is the term "physician" defined for purposes of section 72(t)(2)(L)?

A. F-5: The definition of terminally ill individual under section 72(t)(2)(L) is derived, in part, from the definition of terminally ill individual under section 101(g)(4)(A). For purposes of section 72(t)(2)(L), a physician capable of making a certification is a physician defined in section 101(g)(4)(D), which has the same meaning as the term used in section 1861(r)(1) of the Social Security Act (42 USC 1395x(r)(1)). Thus, for purposes of section 72(t)(2)(L) of the Code, the term "physician" generally means a doctor of medicine or osteopathy that is legally authorized to practice medicine and surgery by the State in which the doctor performs such function or action.[6]

Q. F-6: For purposes of section 72(t)(2)(L), what must be included in a certification of terminal illness from a physician?

A. F-6: A certification of terminal illness from a physician must include the following:

(1) A statement that the individual's illness or physical condition can be reasonably expected to result in death in 84 months or less after the date of certification;

(2) A narrative description of the evidence that was used to support the statement of illness or physical condition (as described in this F-6 (1));

(3) The name and contact information of the physician making the statement;

(4) The date the physician examined the individual or reviewed the evidence provided by the individual, and the date that the certification is signed by the physician; and

(5) The signature of the physician making the statement, and an attestation from the physician that, by signing the form, the physician confirms that the physician composed the narrative description based on the physician's examination of the individual or the physician's review of the evidence provided by the individual.

[5] For purposes of this notice, the term "IRA" includes both an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).

[6] The definition of "State" for purposes of 42 USC 1395x(r)(1) is in 42 USC 410(h), which provides that the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

As provided in Q&A F-13 of this notice, for purposes of section 72(t)(2)(L)(iii), it is not sufficient evidence for an employee who is a physician to certify the physician's own terminal illness.

Q. F-7: May a certification be made after an employee receives a terminally ill individual distribution?

A. F-7: No. For a distribution to be a terminally ill individual distribution, for purposes of section 72(t)(2)(L) and Q&A F-1 of this notice, the distribution must be made on or after the date a physician makes the certification that the employee has a terminal illness.

Q. F-8: Is there a limit on the amount received as a terminally ill individual distribution?

A. F-8: In general, there is no limit on the amount that an employee is permitted to receive as a terminally ill individual distribution. However, see Q&A F-15 of this notice for rules on when an employee may elect to treat an otherwise permissible in-service distribution as a terminally ill individual distribution.

Q. F-9: May an employee recontribute a terminally ill individual distribution to a qualified retirement plan?

A. F-9: Yes. An employee may recontribute any portion of a terminally ill individual distribution (up to the entire amount of the terminally ill individual distribution) to a qualified retirement plan in which the employee is a beneficiary and to which a rollover can be made under sections 402(c), 403(a)(4), 403(b)(8), or 408(d)(3), as applicable. Rules similar to recontributions of qualified birth or adoption distributions in section 72(t)(2)(H)(v) apply for purposes of terminally ill individual distributions.[7]

Questions and Answers Relating to Qualified Retirement Plans Permitting Terminally Ill Individual Distributions

Q. F-10: Is a qualified retirement plan required to permit terminally ill individual distributions under section 72(t)(2)(L)?

A. F-10: No. It is optional for a qualified retirement plan, including an IRA, to permit terminally ill individual distributions pursuant to section 72(t)(2)(L). Plan amendments adopted to permit terminally ill individual distributions are discretionary amendments for purposes of the plan amendment rules discussed in section II.J. of this notice. To the extent that a qualified retirement plan does not permit terminally ill individual distributions, the employee is permitted to treat an otherwise permissible in-service distribution as a terminally ill individual distribution. *See* Q&A F-15 of this notice.

Q. F-11: If an employer chooses to amend its qualified retirement plan to permit terminally ill individual distributions, what is the deadline for adopting that amendment?

A. F-11: For information relating to the deadline for adopting plan amendments, see section II.J. of this notice.

Q. F-12: Do terminally ill individual distributions from a qualified retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), and 403(b)(11)?

A. F-12: No. Section 72(t)(2)(L) provides an exception to the 10 percent additional tax but does not provide an exception from the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), and 403(b)(11). Therefore, for a plan that is subject to the distribution restriction requirements under sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), and 403(b)(11) to permit a terminally ill individual distribution to an employee and not violate the distribution restriction requirements, the employee must otherwise be eligible for a permissible in-service distribution. Thus, for example, a section 401(k) plan may distribute a terminally ill individual distribution to an employee who is otherwise eligible for a permissible in-service distribution and meets the requirements of that permissible in-service distribution, such as a hardship distribution or a disability distribution, without violating the distribution restriction requirements under section 401(k)(2)(B)(i). However, for the hardship distribution or disability distribution to also meet the requirements of a terminally ill individual distribution, the distribution must also meet the applicable requirements in this notice for a terminally ill individual distribution, including the content requirement for the certification described in Q&A F-6 of this notice, the timing requirement for the certification described in Q&A F-7 of this notice, and the documentation requirement described in Q&A F-13 of this notice.

Q. F-13: In order for an employee to be a terminally ill individual for purposes of section 72(t)(2)(L), what documentation is required to be provided to a plan administrator under section 72(t)(2)(L)(iii)?

A. F-13: An employee must furnish to the plan administrator a physician's certification that certifies that the employee is a terminally ill individual. A physician's certification is sufficient evidence that an employee is a terminally ill individual. However, for purposes of section 72(t)(2)(L)(iii), it is not sufficient evidence for an employee who is a physician to certify the physician's own terminal illness.

Although the certification must meet the requirements of Q&A F-6 of this notice, as well as this Q&A, it does not need to include the underlying documentation upon which the certification is based. However, the employee should retain both the underlying documentation and a copy of the certification for the employee's tax records (as required by section 6001).

A plan administrator for purposes of section 72(t)(2)(L)(iii) is a plan administrator as defined in section 414(g), or an IRA trustee, custodian, or issuer. However, see Q&A F-15 of this notice for rules relating to when a qualified retirement plan does not permit terminally ill individual distributions.

Q. F-14: May a plan administrator rely on a self-certification of an employee that the employee is terminally ill?

A. F-14: No. For a qualified retirement plan that permits terminally ill individual distributions, section 72(t)(2)(L)(i) requires that an employee must be certified by a physician as having a terminal illness. As provided in section 72(t)(2)(L)(iii), an employee generally will not be considered terminally ill unless the employee provides sufficient evidence of the

[7] Section 311 of the SECURE 2.0 Act amends section 72(t)(2)(H)(v)(I) of the Code to require that an individual who receives a qualified birth or adoption distribution may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, recontribute the qualified birth or adoption distribution to an applicable eligible retirement plan. Section 311 of the SECURE 2.0 Act is generally effective for qualified birth or adoption distributions made after December 29, 2022.

terminal illness to the plan administrator. The only documentation required to be provided to the plan administrator is the certification from a physician that meets the requirements of Q&As F-6 and F-13 of this notice.

Q. F-15: If a qualified retirement plan does not permit terminally ill individual distributions, may an employee treat an otherwise permissible in-service distribution as a terminally ill individual distribution?

A. F-15: Yes. If a qualified retirement plan does not permit terminally ill individual distributions and an employee receives an otherwise permissible in-service distribution that meets the requirements of both the permissible in-service distribution and a terminally ill individual distribution, the employee may treat the distribution as a terminally ill individual distribution on the employee's federal income tax return. As part of the employee's tax return, the employee will claim on Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, that the distribution is a terminally ill individual distribution, in accordance with form's instructions. The employee must retain the physician's certification that meets the requirements of Q&A F-6 and F-13 of this notice in the employee's tax files (as required by section 6001) in case the IRS later requests the certification. The terminally ill individual distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1). If the employee decides to recontribute the amount to a qualified retirement plan, the employee may recontribute the amount to an IRA.

For example, on May 15, 2024, Participant B, age 50, goes to the doctor and gets a certification of terminal illness that meets the requirements of Q&A F-6 of this notice. Participant B's plan, a section 401(k) plan, does not permit terminally ill individual distributions but does permit hardship distributions. On June 10, 2024, Participant B applies for a hardship distribution in the amount of $15,000. When Participant B files his tax return, Participant B indicates on Form 5329 that the distribution is excepted from the 10 percent additional tax as a terminally ill individual distribution under section 72(t)(2)(L). Participant B retains the physician's certification, dated May 15, 2024, with Participant B's files as part of Participant B's tax returns for tax year 2024. Participant B does not owe the additional $1,500 (representing the 10 percent additional tax of the amount includible in gross income). Unlike a hardship distribution, Participant B may also recontribute the $15,000 to an IRA following rules similar to qualified birth or adoption distributions.

G. SECTION 332 OF THE SECURE 2.0 ACT

Under section 408(p)(2)(D), an employer that maintains a SIMPLE IRA plan for a calendar year generally is not permitted to maintain another plan, contract, pension, or trust described in section 219(g)(5)(A) or (B) to which contributions were made or benefits were accrued for service in the year. Also, prior to amendment by section 332 of the SECURE 2.0 Act, section 408(d)(3)(G) of the Code provided that if section 72(t)(6) applied to a distribution (that is, the distribution is from a SIMPLE IRA within the first two years of an individual's participation in the SIMPLE IRA plan), then the individual could only roll over the distribution to another eligible retirement plan if the other eligible retirement plan was a SIMPLE IRA.

Section 332(a) of the SECURE 2.0 Act amended section 408(p) of the Code by adding paragraph (11). Section 408(p)(11)(A) permits an employer to elect (in such form and manner as the Secretary may prescribe), at any time during a year, to terminate the qualified salary reduction arrangement under a SIMPLE IRA plan if the employer establishes and maintains a safe harbor section 401(k) plan to replace the terminated arrangement.

Section 408(p)(11)(B) provides a combined limit on the total of the salary reduction contributions under the terminated arrangement and elective contributions under the safe harbor section 401(k) plan for the transition year described in section 408(p)(11)(C) (that is, the period beginning after the termination date and ending on the last day of the calendar year during which the termination occurs). Under this limit, the total of those contributions must not exceed the time-weighted average of the limits that apply, on a full year basis, to a SIMPLE IRA plan (after the application of the catch-up provisions of section 414(v)) and a section 401(k) plan.

Section 332(b) of the SECURE 2.0 Act adds section 72(t)(6)(B) to the Code and amends section 408(d)(3)(G). Under the addition and amendment, the limitation on rollovers of a distribution from a SIMPLE IRA does not apply if an employer terminates the qualified salary reduction arrangement of a SIMPLE IRA plan and establishes a section 401(k) plan or section 403(b) plan, provided that the amount is paid in a rollover contribution described in section 408(d)(3) into a qualified trust under section 401(k) (but only if such contribution is subsequently subject to the rules of section 401(k)(2)(B)) or an annuity contract described in section 403(b) (but only if such contribution is subsequently subject to the rules of section 403(b)(12).[8]

Section 401(k)(12)(D) generally requires a CODA that is intended to satisfy the requirements of section 401(k)(12) to provide an annual notice to each eligible employee that is sufficiently accurate and comprehensive to apprise the employee of the employee's rights and obligations under the CODA. A similar notice requirement applies under section 401(k)(13)(E) to a CODA that is intended to satisfy the requirements of section 401(k)(13). Under section 401(k)(16)(B)(iii), a CODA that is intended to satisfy the notice requirements of section 401(k)(16) must satisfy the requirements of section 401(k)(13)(E).

Section 1.401(k)-3(d)(2)(ii) lists certain information that generally must be described in a notice for the notice to be considered sufficiently accurate and comprehensive under section 401(k)(12)(D) of the Code and subject to the additional information requirements under § 1.401(k)-3(k)(4)(ii) and under section 401(k)(13)(E) of the Code.

[8] It should be noted that section 72(t)(6)(B) refers to section 403(b)(12). However, unlike section 401(k)(2)(B), section 403(b)(12) does not include distribution limitations. Instead, section 403(b)(11) includes distribution limitations that are comparable to section 401(k)(2)(B).

Section 332(c) of the SECURE 2.0 Act provides that amendments made by section 332 apply to plan years beginning after December 31, 2023.

Q. G-1: How does an employer terminate a SIMPLE IRA plan?

A. G-1: An employer terminates a SIMPLE IRA plan by taking formal written action that specifies the date as of which the plan is terminated (termination date).

Q. G-2: If an employer terminates a SIMPLE IRA plan, when do the contributions under the plan cease?

A. G-2: If an employer terminates a SIMPLE IRA plan, then no salary reduction contributions may be made under the plan with respect to compensation that would be paid after the termination date. However, the employer must make employer matching contributions under the plan attributable to salary reduction contributions or nonelective contributions, based on the employees' compensation earned through the termination date of the SIMPLE IRA plan.

Q. G-3: Who must the employer notify of the termination of a SIMPLE IRA plan?

A. G-3: The employer must notify employees of the termination of a SIMPLE IRA plan at least 30 days before the termination date. The notification must specify that no salary reduction contributions will be made to the plan with respect to compensation that would be paid after the termination date. The notice must also include a statement that employees will receive matching contributions attributable to salary reduction contributions or nonelective contributions based on the employees' compensation through the termination date of the SIMPLE IRA plan. The employer should also (1) notify the SIMPLE IRA plan's financial institution and the employer's payroll provider that the employer will cease making any SIMPLE IRA contributions, and (2) keep records of all actions concerning the termination of the SIMPLE IRA plan. However, the employer does not need to notify the IRS that the SIMPLE IRA plan has been terminated.

Q. G-4: If a participant takes a distribution from a terminated SIMPLE IRA plan within the first two years of participation under the plan, under what circumstances can that distribution be rolled over to another eligible retirement plan that is not a SIMPLE IRA?

A. G-4: If a participant takes a distribution from a terminated SIMPLE IRA plan within the first two years of participation under the plan, the distribution may be rolled over to an eligible retirement plan that is not a SIMPLE IRA only if the amount is rolled over to either: (1) a section 401(k) plan that is subject to the distribution limits of section 401(k)(2)(B) of the Code; or (2) a section 403(b) plan that is subject to the distribution limits of section 403(b)(11).

Q. G-5: Is the establishment of a safe harbor section 408(k) plan under section 408(p)(11) an exception to the rule in section 408(p)(2)(D)?

A. G-5: Yes. The rule under section 408(p)(11) that permits an employer to terminate a SIMPLE IRA plan and replace it with a section 401(k) safe harbor plan is an exception to the section 408(p)(2)(D) prohibition on an employer maintaining both a SIMPLE IRA plan and another plan, contract, pension, or trust described in section 219(g)(5)(A) or (B) in the same calendar year.

Q. G-6: When a SIMPLE IRA plan is replaced by a safe harbor section 401(k) plan mid-year, how are the elective contribution limits determined under the safe harbor section 401(k) plan?

A. G-6: When a SIMPLE IRA plan is replaced by the safe harbor section 401(k) plan mid-year, the total amount that may be contributed as salary reduction contributions under the terminated SIMPLE IRA plan and as elective contributions under the safe harbor section 401(k) plan may not exceed the weighted average of the salary reduction contribution and elective contribution limits for each of those plans (weighted by how many of the 365 days in the transition year each plan was in effect). Thus, the total amount that may be contributed as elective contributions to the safe harbor section 401(k) plan is equal to-

(1) The annual limit on salary reduction contributions under a SIMPLE IRA plan for the year (taking into account catch-up contributions described in section 414(v)), multiplied by a fraction equal to the number of days the SIMPLE IRA plan was in effect for that year divided by 365, plus

(2) The annual limit on elective contributions under a section 401(k) plan for the year, under section 402(g), multiplied by a fraction equal to the number of days the safe harbor plan was in effect for that year divided by 365, minus

(3) Any salary reduction contributions under the SIMPLE IRA plan for the year.

Q. G-7: If an employer elects during a year to terminate a qualified salary reduction arrangement under section 408(p)(2), and the employer establishes and maintains a safe harbor section 401(k) plan to replace the terminated arrangement, must the notice required under section 401(k)(12)(D), (13)(E), or (16)(B)(iii) for the year the safe harbor plan is established describe the limit on contributions to the safe harbor section 401(k) plan for the transition year pursuant to section 408(p)(11)(B)?

A. G-7: Yes. Under § 1.401(k)-3(d)(2)(ii)(D), a notice must accurately describe the type and amount of compensation that may be deferred under the plan for the notice to satisfy the requirements of section 401(k)(12)(D), (13)(E), or (16)(B)(iii) of the Code. Accordingly, the notice required under section 401(k)(12)(D), (13)(E), or (16)(B)(iii) for the transition year must describe the limit on contributions to the safe harbor section 401(k) plan for that year pursuant to section 408(p)(11)(B).

H. SECTION 348 OF THE SECURE 2.0 ACT

Under section 411(a), for a defined benefit plan to be qualified under section 401(a), it must satisfy the accrual requirements of section 411(b)(1). Section 411(b)(1)(A), (B), and (C) provide three alternative methods of demonstrating that the plan satisfies the accrual requirements, each of which limits the extent to which accruals under a defined benefit plan can be provided at a greater rate later in a participant's career (commonly referred to as backloading). Under each of these alternative methods, all relevant factors used to compute benefits are treated as remaining constant as of the current year for all years after the current year.

Section 348(a) of the SECURE 2.0 Act, which is titled "Cash Balance," amends section 411(b) of the Code to add paragraph (6), effective for plan years beginning after December 29, 2022. Section 411(b)(6) provides a special rule for applying the anti-backloading rules of

section 411(b)(1)(A), (B), and (C) for applicable defined benefit plans, as defined in section 411(a)(13)(C). Under section 411(b)(6), for purposes of applying the rules of section 411(b)(1) in the case of an applicable defined benefit plan that provides variable interest crediting rates, the interest crediting rate that is treated as in effect and as the projected interest crediting rate is a reasonable projection of that variable interest crediting rate, not to exceed 6 percent. Section 348(b) of the SECURE 2.0 Act amends ERISA by adding corresponding provisions to ERISA section 204(b)(6).

Section 411(a)(13)(C)(i) of the Code defines the term "applicable defined benefit plan" as a defined benefit plan under which the accrued benefit (or any portion of the accrued benefit) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. Under section 411(a)(13)(C)(ii), the Secretary is instructed to issue regulations that include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) that has an effect similar to an applicable defined benefit plan.

Under section 411(b)(1)(H), a defined benefit plan does not satisfy the requirements of section 411(b)(1) if, under the plan, the employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age. Under section 411(b)(5)(B)(i)(I), an applicable defined benefit plan is treated as violating section 411(b)(1)(H) if any interest credit (or an equivalent amount) for any plan year is at a rate that is greater than a market rate of return.

Section 1.411(b)-1 provides rules for the application of section 411(b)(1)(A), (B), and (C) of the Code. Under that section, the rules generally providing that all relevant factors used to compute benefits are treated as remaining constant for all future years under the three alternative methods are interpreted as meaning that the factors are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years. Section 1.411(b)-1(b)(2)(ii)(G) (relating to the 133 1/3 percent rule) provides that a plan that determines any portion of the participant's accrued benefit pursuant to a statutory hybrid benefit formula[9] that utilizes an interest crediting rate described in § 1.411(b)(5)-1(d) that is a variable rate that was less than zero for the prior plan year is not treated as failing to satisfy the requirements of § 1.411(b)-1(b)(2) for the current plan year merely because the plan assumes for purposes of § 1.411(b)-1(b)(2) that the variable rate is zero for the current plan year and all future plan years.

Section 1.411(b)(5)-1(d)(1)(i) provides that a statutory hybrid plan[10] satisfies the requirements of section 411(b)(1)(H) of the Code only if, for any plan year, the interest crediting rate with respect to benefits determined under a statutory hybrid benefit formula is not greater than a market rate of return. Under § 1.411(b)(5)-1(d)(1), an interest crediting rate is not in excess of a market rate of return only if the interest crediting rate is described in § 1.411(b)(5)-1(d)(3) through (5) (or is a rate that can never be in excess of one of those rates). Section 1.411(b)(5)-1(d)(3) provides for interest rates that are based on long-term investment grade corporate bonds. Section 1.411(b)(5)-1(d)(4) provides for interest rates that are: (1) based on Treasury bonds, (2) based on changes in the cost of living, (3) based on short and mid-term investment grade corporate bonds, or (4) a fixed 6 percent. Section 1.411(b)(5)-1(d)(5) provides for investment-based interest crediting rates that are not greater than a market rate of return.

Section 1.411(b)(5)-1(d)(6) provides rules for determining whether a plan with an interest crediting rate that is equal to the greater of two or more interest crediting rates provides an effective interest crediting rate in excess of a market rate of return. Under those rules, an interest crediting rate based on investment-grade corporate bonds under § 1.411(b)(5)-1(d)(3) or (d)(4)(iv) may be combined with an annual floor of 4 percent and an interest crediting rate based on Treasury bonds or a cost-of-living index under § 1.411(b)(5)-1(d)(4)(ii) or (iii) may be combined with an annual floor of 5 percent. If the interest crediting rate is an investment-based rate, it is not permitted to be combined with any annual floor (but may be combined with a cumulative floor described in § 1.411(b)(5)-1(d)(6)(iii)).

Section 1.411(b)(5)-1(e)(3) provides that the right to future interest credits determined in the manner specified under the plan and not conditioned on future service is a factor that is used to determine the participant's accrued benefit, for purposes of section 411(d)(6). Thus, to the extent that benefits have accrued under the terms of a statutory hybrid plan that entitle the participant to future interest credits, an amendment to the plan to change the interest crediting rate must satisfy section 411(d)(6) if the revised rate under any circumstances could result in interest credits that are smaller as of any date after the applicable amendment date than the interest credits that would be provided without regard to the amendment.

Section 411(d)(6) provides generally that a plan is treated as not satisfying the requirements of section 411 if a plan amendment decreases the accrued benefit of a participant. For this purpose, a plan amendment that eliminates or reduces an early retirement benefit or retirement-type subsidy, or eliminates an optional form of benefit, with respect to benefits attributable to service before the amendment, generally is treated as reducing a participant's accrued benefit.

As described in section II.J. of this notice, section 501 of the SECURE 2.0 Act sets forth provisions with respect to plan amendments adopted pursuant to a provision of the SECURE 2.0 Act or the regulations thereunder, including a provision specifying that, except as provided by the Secretary (or the Secretary's delegate), a retirement plan will not violate section 411(d)(6) of the Code because of an amendment made to the plan that is made pursuant to the SECURE 2.0 Act.

[9] The term "statutory hybrid benefit formula" is defined in § 1.411(a)(13)-1(d)(4) to encompass the formulas used under applicable defined benefit plans described in section 411(a)(13)(C)(i) or (ii).

[10] The term "statutory hybrid plan" is defined in § 1.411(a)(13)-1(d)(5) as a defined benefit plan that contains a statutory hybrid benefit formula.

Q. H-1: What is the effect of the enactment of section 348 of the SECURE 2.0 Act for a cash balance plan[11]?

A. H-1: For a cash balance plan that provides for pay credits to participants that increase with a participant's age or service and provides for a variable interest crediting rate, the effect of the enactment of section 348 of the SECURE 2.0 Act is that the plan no longer risks violating the accrual requirements of section 411(b)(1) of the Code if that interest crediting rate falls below a certain point. To prevent such a violation prior to the enactment of section 348 of the SECURE 2.0 Act, a plan of this type had to provide for a fixed annual minimum interest crediting rate as part of its interest crediting rate. With the enactment of section 348 of the SECURE 2.0 Act, the fixed annual minimum interest crediting rate is no longer needed to avoid a violation of section 411(b)(1) of the Code for this type of plan.

Q. H-2: Under what circumstances is an amendment to a cash balance plan made pursuant to section 348 of the SECURE 2.0 Act?

A. H-2: An amendment to a cash balance plan is made pursuant to section 348 of the SECURE 2.0 Act (and is therefore eligible for the treatment in section 501 of the SECURE 2.0 Act) only if: (1) the plan is currently providing for principal credits that increase with a participant's age or service, and the amendment is to change the plan's interest crediting rate, or (2) the plan is implementing such a pattern of principal credits as part of the amendment.

Q. H-3: Does the exception from section 411(d)(6) of the Code for certain amendments that is provided under section 501 of the SECURE 2.0 Act apply to an amendment that reduces a participant's accumulated benefit?

A. H-3: No, the exception from section 411(d)(6) of the Code under section 501 of the SECURE 2.0 Act does not apply to an amendment that reduces a participant's accumulated benefit determined as of the end of the interest crediting period that includes the applicable amendment date (as defined in § 1.411(d)-3(g)(4)) for the amendment. Thus, the exception from section 411(d)(6) of the Code applies with respect to an amendment that affects interest credits for interest crediting periods beginning after the later of the effective date of the amendment or the date the amendment is adopted, but not interest credits for interest crediting periods beginning before the later of the effective date of the amendment or the date the amendment is adopted.

Q. H-4: For which amendments affecting future interest crediting rates that are made pursuant to section 348 of the SECURE 2.0 Act does the exception from section 411(d)(6) of the Code apply?

A. H-4: The exception from section 411(d)(6) of the Code provided under section 501 of the SECURE 2.0 Act applies to a plan amendment affecting future interest crediting rates that is made pursuant to section 348 of the SECURE 2.0 Act only if: (1) the plan's interest crediting rate prior to the amendment is the greater of a fixed annual minimum rate or an interest rate described in § 1.411(b)(5)-1(d)(3) or (4), and the amendment either (a) reduces or eliminates the fixed minimum interest crediting rate while retaining the underlying interest rate described in § 1.411(b)(5)-1(d)(3) or (4), or (b) changes the interest crediting rate to an investment-based rate described in § 1.411(b)(5)-1(d)(5); or (2) the plan's interest crediting rate prior to the amendment is a permitted fixed rate described in § 1.411(b)(5)-1(d)(4)(v), and the amendment changes the interest crediting rate to any permitted variable rate, subject to a limitation that the amount by which the new variable interest crediting rate is less than the maximum variable interest crediting rate of the same type must not exceed the amount by which the pre-amendment fixed interest crediting rate was less than the maximum fixed interest crediting rate of 6 percent.

Q. H-5: Does the enactment of section 348 of the SECURE 2.0 Act have an impact on a statutory hybrid plan that is not a cash balance plan?

A. H-5: The Treasury Department and the IRS expect that a sponsor of a statutory hybrid plan that is not a cash balance plan will have no reason to apply section 411(b)(6) of the Code as added by section 348 of the SECURE 2.0 Act; accordingly, no amendment to the plan would be made pursuant to section 348 of the SECURE 2.0 Act.

I. SECTION 350 OF THE SECURE 2.0 ACT

Section 350(a) of the SECURE 2.0 Act adds new section 414(cc) to the Code. Section 414(cc) provides that, if certain conditions are satisfied, a plan or arrangement will not fail to be treated as described in section 401(a), 403(b), 408, or 457(b) solely by reason of a corrected reasonable administrative error made (1) in implementing an automatic enrollment or automatic escalation feature with respect to an eligible employee (or an affirmative election made by an eligible employee covered by such a feature), or (2) by failing to afford an eligible employee the opportunity to make an affirmative election because the employee was improperly excluded from the plan (implementation error).

Section 414(cc)(2)(B)(i) specifies that the date by which an implementation error with respect to elective deferrals must be corrected is the earlier of (1) the date of the first payment of compensation made by the employer to the employee on or after the last day of the 9½-month period after the end of the plan year during which the error with respect to the employee first occurred, or (2) in the case of an employee who notifies the plan sponsor of the error, the date of the first payment of compensation made by the employer to the employee on or after the last day of the month following the month in which the notification was made.

Section 414(cc)(2)(B)(ii) provides that, in the case of an employee who would have been entitled to additional matching contributions had any missed elective deferrals been made, the plan sponsor must make a corrective allocation of matching contributions to which the employee would have been entitled (adjusted to account for earnings) had the missed elective deferrals been made, and that the ad-

[11] For purposes of this notice, a cash balance plan is a plan with a lump sum-based benefit formula (as defined in § 1.411(a)(13)-1(d)(3)) under which the accumulated benefit (within the meaning of § 1.411(a)(13)-1(d)(2)) for a participant is the current balance of a hypothetical account.

ditional matching contributions must be allocated not later than the deadline for allocating corrective matching contributions specified by the Secretary in regulations, or other guidance of general applicability.

Section 414(cc)(2)(B)(iii) through (v) provides that the implementation error must be corrected for all similarly situated participants in a nondiscriminatory manner and that notice of the error that satisfies regulations or other guidance prescribed by the Secretary must be given to employees affected by the error within 45 days after the date on which correct deferrals begin.

Section 414(cc)(2) also provides that the correction described in section 414(cc)(2) may occur before or after the participant has terminated employment and may occur without regard to whether the error is identified by the Secretary.

Section 414(cc)(3) provides that if the requirements in section 414(cc)(2) are satisfied, an employer is not required to provide employees affected by the error with the missed amount of elective deferrals resulting from the error through a qualified nonelective contribution, or otherwise.

Section 414(cc)(4) provides that the Secretary will, by regulations or other guidance of general applicability, prescribe (i) the deadline for making a corrective allocation of matching contributions, (ii) the content of the required notice to affected employees, (iii) the manner in which the amount of the corrective matching allocation is determined, (iv) the manner of adjustment to account for earnings on matching contributions, and (v) such other rules as are necessary to carry out the purposes of the subsection.

Section 350(b) of the SECURE 2.0 Act provides that section 414(cc) of the Code applies with respect to any errors for which the date referred to in section 414(cc) is after December 31, 2023, and that, prior to the application of any regulations or other guidance prescribed under section 414(cc), taxpayers may rely upon their reasonable good faith interpretations of the provisions of section 414(cc).

Q. I-1: For purposes of determining the effective date of section 414(cc) with respect to an implementation error in accordance with section 350(b) of the SECURE 2.0 Act, what is "the date referred to in section 414(cc)"?

A. I-1: For purposes of determining the effective date of section 414(cc) of the Code with respect to an implementation error in accordance with section 350(b) of the SECURE 2.0 Act, "the date referred to in section 414(cc)" is the date by which an employer must implement correct deferrals in accordance with section 414(cc)(2)(B)(i) of the Code (or, with respect to a terminated employee, the date by which they would have been implemented but for the termination of employment). This date is the earlier of (1) the date of the first payment of compensation made by the employer to the employee on or after the last day of the 9½-month period after the end of the plan year during which an implementation error with respect to the employee first occurred, or (2) in the case of an employee who notifies the plan sponsor of the error, the date of the first payment of compensation made by the employer to the employee on or after the last day of the month following the month in which the notification was made. Accordingly, the effective date with respect to an implementation error may vary depending on, for example, the date the error occurs, the date compensation is paid, whether the employee notifies the plan sponsor of the error, and whether the plan year is a fiscal year or calendar year.

For example, Employer X sponsors a calendar year 401(k) plan that includes an automatic contribution enrollment feature. On January 1, 2023, Employer X fails to automatically enroll an eligible employee due to an implementation error. The employee does not inform Employer X of the error. Under section 414(cc)(2)(B), Employer X has until the date of the first payment of compensation made by the employer to the employee on or after October 15, 2024 (the last day of the 9½-month period after the end of the 2023 plan year) to begin corrected elective deferrals for the eligible employee. The date of the first payment of compensation made to the employee after October 15, 2024, is October 18, 2024. Because October 18, 2024, is after December 31, 2023, section 414(cc) applies with respect to the error that occurred on January 1, 2023.

Q. I-2. How may a plan sponsor correct, pursuant to section 414(cc), an implementation error to which section 414(cc) is applicable?

A. I-2. In general, the sponsor of a plan to which section 414(cc) applies may correct, pursuant to section 414(cc), an implementation error by following the safe harbor correction method set forth in Appendix A, section .05(8), of Rev. Proc. 2021-30, 2021-31 IRB 172, for failures related to automatic contribution features in a section 401(k) plan or a section 403(b) plan. However, see Q&A I-4 of this notice for rules regarding the deadline for making the allocation of matching contributions with respect to missed elective deferrals.

Q. I-3. Is section 414(cc) available for correcting an implementation error with respect to an individual even if the individual terminates employment before corrected deferrals would otherwise have begun?

A. I-3. Yes. In general, the sponsor of a plan to which section 414(cc) applies is permitted to correct an implementation error with respect to both active and terminated employees, by following, as described in Q&A I-2 of this notice, the correction method set forth in Appendix A, section .05(8), of Rev. Proc. 2021-30, for failures related to automatic contribution features in a section 401(k) plan or a section 403(b) plan, including by satisfying the notice requirement set forth in Appendix A, section .05(8)(c). However, the notice provided to a terminated employee is not required to include the following information set forth in Appendix A, section .05(8)(c): (1) a statement that appropriate amounts have begun to be deducted from compensation and contributed to the plan (or that appropriate deductions and contributions will begin shortly), or (2) an explanation that the affected terminated employee may elect an increased deferral percentage to make up for the missed deferral opportunity.

Q. I-4. If an individual affected by an implementation error would have been entitled to additional matching contributions had missed elective deferrals been made, what is the deadline for making a corrective allocation of matching contributions with respect to the missed elective deferrals?

A. I-4. A corrective allocation of matching contributions (adjusted for earnings) must be made within a reasonable period, as determined applying all relevant facts

and circumstances, after the date on which the correct elective deferrals begin (or, with respect to a terminated employee, would have begun but for the termination of employment). A corrective allocation of matching contributions that is made by the last day of the sixth month following the month in which correct elective deferrals begin (or, with respect to a terminated employee, would have begun but for the termination of employment) will be treated as having been made within a reasonable period.

In addition, with respect to an automatic contribution error that begins on or before December 31, 2023, as described in the safe harbor correction method of Appendix A, section .05(8) of Rev. Proc. 2021-30, for failures related to automatic contribution features in a section 401(k) plan or a section 403(b) plan, a corrective allocation of matching contributions made by the end of the third plan year following the year in which the error occurred will be treated as having been made within a reasonable period.

J. SECTION 501 OF THE SECURE 2.0 ACT

Section 501 of the SECURE 2.0 Act provides, in general, that a retirement plan or annuity contract will be treated as being operated in accordance with the terms of the plan during a specified period (as described in paragraph (3) of this section II.J) and, except as provided by the Secretary of the Treasury (or the Secretary's delegate), a retirement plan will not fail to satisfy the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA,[12] by reason of a plan amendment made pursuant to any amendment made by the SECURE 2.0 Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor (or a delegate of either such Secretary) under the SECURE 2.0 Act, provided that:

(1) the amendment is adopted no later than the last day of the first plan year beginning on or after January 1, 2025, or, for an applicable collectively bargained plan (a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 29, 2022), or for a governmental plan (within the meaning of section 414(d) of the Code), the last day of the first plan year beginning on or after January 1, 2027, or such later date as the Secretary may prescribe (the section 501 date);

(2) the amendment applies retroactively to the effective date of the SECURE 2.0 Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE 2.0 Act or the regulations thereunder, the effective date specified by the plan); and

(3) the plan or contract is operated as if the amendment were in effect during the period beginning on the effective date of the SECURE 2.0 Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE 2.0 Act or the regulations thereunder, the effective date specified by the plan or contract) and ending on the section 501 date or, if earlier, the date the amendment is adopted.

Section 501(c) of the SECURE 2.0 Act modifies section 601(b)(1) of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534, known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), sections 2202(c)(2)(A) and 2203(c)(2)(B)(i) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),[13] and section 302(d)(2)(A) of Title III of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, to extend plan amendment deadlines with respect to these sections to coordinate with the plan amendment deadlines under section 501 of the SECURE 2.0 Act, as applicable.[14]

Rev. Proc. 2022-40

Rev. Proc. 2022-40, 2022-47 IRB 487,[15] sets forth plan amendment deadlines for qualified plans and section 403(b) plans that apply except as otherwise provided by statute or in regulations or other guidance published in the Internal Revenue Bulletin. For example, for an individually designed qualified plan that is not a governmental plan (within the meaning of section 414(d) of the Code), the plan amendment deadline for a disqualifying provision with respect to a change in qualification requirements is the last day of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements appears, and the plan amendment deadline for a discretionary amendment is the end of the plan year in which the plan amendment is operationally put into effect. Rev. Proc. 2020-40 sets forth similar plan amendment deadlines for section 403(b) form defects first occurring after June 30, 2020, and for discretionary amendments made to section 403(b) plans with respect to plan years beginning on

[12] As described in section II.H of this notice, section 411(d)(6) generally prohibits plan amendments that decrease accrued benefits. Section 204(g) of ERISA provides parallel rules to the rules of section 411(d)(6) of the Code. The Secretary has interpretive authority over section 204(g) of ERISA pursuant to Reorganization Plan No. 4 of 1978, 5 U.S.C. App.

[13] Section 2202 of the CARES Act is modified by section 280 of the COVID-related Tax Relief Act of 2020, which was enacted as Subtitle B, Title II, Division N, of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020). References in section II.J of this notice to section 2202 of the CARES Act are to section 2202 of the CARES Act as modified. Notice 2020-51, 2020-29 IRB 73, which sets forth guidance relating to a waiver of 2020 required minimum distributions under section 2203 of the CARES Act, provides that an IRA does not have to be amended to reflect the waiver and provides a sample amendment for defined contribution plans that plan sponsors may adopt to implement section 401(a)(9)(I) of the Code. The notice provides that, although employers may adopt amendments pursuant to section 2203 of the CARES Act other than those provided in the sample amendment, the Treasury Department and the IRS are exercising their authority under section 2203(c) of the CARES Act to deny Code section 411(d)(6) relief for a plan amendment that eliminates an optional form of benefit.

[14] Section G of Notice 2020-68, 2020-38 IRB 567, extended the deadline to amend a plan to reflect section 104 of Division M of the Further Consolidated Appropriations Act, 2020, known as the Bipartisan American Miners Act of 2019 (Miners Act), to coordinate with the plan amendment deadlines provided in section 601 of the SECURE Act.

[15] See Part III of Rev. Proc. 2016-37, 2016-29 IRB 136, as modified by Rev. Proc. 2017-41, 2017-29 IRB 92, Rev. Proc. 2018-21, 2018-14 IRB 467, Rev. Proc. 2018-42, 2018-36 IRB 424, Rev. Proc. 2020-10, 2020-2 IRB 295, Notice 2020-35, 2020-25 IRB 948, Rev. Proc. 2020-40, 2020-38 IRB 575, and Rev. Proc. 2021-38, 2021-38 IRB 425, with respect to qualified pre-approved plans, and Part III of Rev. Proc. 2019-39, 2019-42 IRB, 945, as modified by Notice 2020-35, Rev. Proc. 2020-40, and Rev. Proc. 2021-37, 2021-38 IRB 385, with respect to section 403(b) pre-approved plans. The Treasury Department and the IRS anticipate updating the provisions of Part III of Rev. Proc. 2016-37 and Part III of Rev. Proc. 2019-39 in future guidance relating to qualified pre-approved plans and section 403(b) pre-approved plans, respectively.

or after January 1, 2020. Although Rev. Proc. 2020-40 provides plan amendment deadlines, it does not provide relief from the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of ERISA, if applicable, for amendments adopted by those deadlines.

Eligible governmental plans

Section 457(b) of the Code provides, generally, that a section 457(b) plan maintained by an employer described in section 457(e)(1)(A) (an eligible governmental plan) that is administered in a manner that is inconsistent with the requirements of section 457(b) is not treated as an eligible governmental plan as of the first plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the employer corrects the inconsistency before the first day of such plan year.

IRAs

Under section 408(a), an IRA that is an individual retirement account is a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, provided that the written instrument creating the trust meets certain requirements. Under section 408(b), an IRA that is an individual retirement annuity is an annuity contract or endowment contract that is issued by an insurance company and that meets certain requirements.

Q. J-1: When must a retirement plan be amended to reflect the applicable provisions of the SECURE Act, section 104 of the Miners Act, section 2202 or 2203 of the CARES Act, section 302 of the Relief Act, and the SECURE 2.0 Act (collectively, the Acts), or any regulations thereunder?

A. J-1: The deadlines to amend an eligible retirement plan (including an IRA or annuity contract) for the applicable provisions of the Acts, or any regulations thereunder, which apply to both required and discretionary plan amendments,[16] are hereby extended as follows:

(a) *Qualified plans*

In general, the deadline to amend a qualified plan: (1) that is not a governmental plan within the meaning of section 414(d) of the Code or an applicable collectively bargained plan is December 31, 2026; (2) that is an applicable collectively bargained plan is December 31, 2028; or (3) that is a governmental plan within the meaning of section 414(d) is December 31, 2029.[17] See section II. H. of this notice relating to section 348 of the SECURE 2.0 Act for guidance that (1) addresses which cash balance plan amendments are made "pursuant to" section 348 of the SECURE 2.0 Act for purposes of applying section 501, and (2) sets forth the extent of anti-cutback relief for those plan amendments changing the interest crediting rate under the plan.

A sponsor of a qualified plan may amend its plan, in accordance with Rev. Proc. 2022-40, to reflect the Acts, or any regulations thereunder, after the dates set forth in the preceding paragraph. However, amendments made after the dates set forth in the preceding paragraph are not entitled, under Rev. Proc. 2022-40, to the anti-cutback relief from the requirements of section 411(d)(6) of the Code or section 204(g) of ERISA provided by section 501 of the SECURE 2.0 Act.

(b) *Section 403(b) plans*

In general, the deadline to amend a section 403(b) plan: (1) that is not maintained by a public school, as described in section 403(b)(1)(A)(ii) of the Code, is December 31, 2026; (2) that is an applicable collectively bargained plan of a tax-exempt organization described in section 501(c)(3) is December 31, 2028; or (3) that is maintained by a public school, as described in section 403(b)(1)(A)(ii), is December 31, 2029.

A sponsor of a section 403(b) plan may be entitled to amend its plan, in accordance with Rev. Proc. 2022-40, to reflect the Acts, as applicable, or any regulations thereunder, after the dates set forth in the preceding paragraph. Amendments to a section 403(b) plan that is subject to ERISA that are made after the dates set forth in the preceding paragraph are not entitled, under Rev. Proc. 2022-40, to the anti-cutback relief from the requirements of section 204(g) of ERISA provided by section 501 of the SECURE 2.0 Act.

(c) *Eligible governmental plans*

The deadline to amend an eligible governmental plan is the later of (1) December 31, 2029, or (2) if applicable, the first day of the first plan year beginning more than 180 days after the date of notification by the Secretary that the plan was administered in a manner that is inconsistent with the requirements of section 457(b) of the Code.

(d) *IRAs*

The deadline to amend the trust governing an IRA that is an individual retirement account or the contract issued by an insurance company with respect to an IRA that is an individual retirement annuity is December 31, 2026, or such later date as the Secretary prescribes in guidance.

In the case of a deemed IRA described in section 408(q), the deadline to amend the deemed IRA provisions is the deadline applicable to the plan under which the deemed IRA is established.

K. SECTION 601 OF THE SECURE 2.0 ACT

Section 601 of the SECURE 2.0 Act amends certain provisions of the Code to permit an employee who participates in a SIMPLE IRA plan or simplified employee pension (SEP) arrangement to designate a Roth IRA as the IRA to which contributions under the plan or arrangement are made.

Section 601(a) of the SECURE 2.0 Act amends section 408A of the Code by striking subsection (f). Prior to the deletion, section 408A(f) provided that (1) a SEP or SIMPLE IRA account could not be designated as a Roth IRA, and (2) contributions to any such SEP or SIMPLE IRA account would not be taken into account

[16] With respect to pre-approved plans, the extended plan amendment deadlines apply to both interim (required) and discretionary amendments. It is anticipated that the cumulative list for the fourth remedial amendment cycle for pre-approved defined contribution plans (pre-approved plans for which the opinion letter application submission window falls between February 1, 2024, and January 31, 2025) will include certain provisions of the Acts. Accordingly, it is anticipated that the pre-approved defined contribution plans submitted for that cycle will need to include provisions that reflect the applicable provisions of the Acts.

[17] It is anticipated that this date will accommodate the needs of states without annual legislative sessions, which will not be required to amend their plans before 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after 2023 (the year in which this notice is published).

for purposes of the Roth IRA contribution limit of section 408A(c)(2)(B).

Section 601(b)(1) of the SECURE 2.0 Act amends section 408(k) of the Code by adding a new paragraph (section 408(k)(7)) that provides that a Roth IRA will not be treated as a SEP unless the employee elects for the Roth IRA to be so treated (at such time and in such manner as the Secretary may provide).

Section 601(c) of the SECURE 2.0 Act similarly amends section 408(p) of the Code by adding a new paragraph (section 408(p)(12)) that provides that a Roth IRA will not be treated as a simple retirement account unless the employee elects for the Roth IRA to be so treated (at such time and in such manner as the Secretary may provide).

Added by section 601(b) of the SECURE 2.0 Act, new subsection 402(h)(1)(C) of the Code provides that any contribution under a SEP which is made to a Roth IRA is not excludable from the employee's gross income. Section 402(k) provides that rules similar to the rules in section 402(h)(1) applies to contributions under a SIMPLE IRA plan. Therefore, any contribution under a SIMPLE IRA which is made to a Roth IRA is not excludable from the employee's gross income.

Section 601(e) of the SECURE 2.0 Act provides that these amendments apply to taxable years beginning after December 31, 2022.

Q. K-1: Is an employer required to offer an employee an election to designate a Roth IRA as the IRA to which SIMPLE IRA plan or SEP arrangement contributions are made (Roth contribution election)?

A. K-1: No. The employer is not required to offer an employee a Roth contribution election.

Q. K-2: If an employer offers a Roth contribution election, when may an employee make the election?

A. K-2: For a SIMPLE IRA plan, the employer must offer employees the same effective opportunity to make a Roth contribution election as the employees have to enter into a salary reduction agreement under the plan, the minimum requirements of which are provided in section 408(p)(5) of the Code, as described in Notice 98-4.

For a SEP arrangement with a Salary Reduction SEP (SARSEP) component, the employer must offer employees the same effective opportunity to make a Roth contribution election as the employees have to enter into a salary reduction agreement under the SARSEP arrangement.

For a SEP arrangement without a SARSEP component, the employer must offer employees an effective opportunity, as described in § 1.401(k)-1(e)(2)(ii), to elect that a SEP contribution is to be made to a Roth IRA.

In all cases, an election to have a contribution made to a Roth IRA must be made before the contribution is made.

Q. K-3: May an employer make SIMPLE IRA plan or SEP arrangement contributions to a Roth IRA without an employee's prior Roth contribution election, for example, under the terms of an automatic enrollment arrangement?

A. K-3: No. An employer can make contributions to a Roth IRA under a SIMPLE IRA plan or SEP arrangement only if the employee has affirmatively elected that contributions under the plan or arrangement are to be made to a Roth IRA.

Q. K-4: In which taxable year is a Roth IRA contribution includible in the employee's income?

A. K-4: A salary reduction contribution made to a Roth IRA is includible in the employee's gross income for the taxable year that includes the date on which the employee would otherwise have received the salary reduction contribution as wages or salary if the employee had not elected for the amount to be contributed to the SIMPLE IRA plan or SEP arrangement.

An employer matching or nonelective contribution made to a Roth IRA is includible in the employee's gross income for the taxable year that includes the date on which the contribution is made to the Roth IRA. The preceding sentence applies even if the employer matching contribution or nonelective contribution is treated as if it were made for the prior taxable year of the employer, as described in section 404(h)(1)(B) or (m)(2)(B).

Q. K-5: How is a contribution to a Roth IRA under a SIMPLE IRA plan or SEP arrangement reported?

A. K-5: The employer must report salary reduction contributions made to a Roth IRA on Form W-2, *Wage and Tax Statement*, Box 12, using Code F (for a SARSEP) or Code S (for a SIMPLE IRA), and include the same amount in Boxes 1,3, and 5.

The employer must report employer matching and nonelective contributions made to a Roth IRA on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.*, in the same manner as the reporting that would have applied if (1) there were no after-tax contributions made to any of the employee's IRAs, and (2) the matching or nonelective contributions were made to an IRA that was not a Roth IRA and then immediately converted to a Roth IRA. Thus, the contributions must be reported using Form 1099-R, for the year in which the contributions are made to the employee's Roth IRA, with the total reported in boxes 1 and 2a of Form 1099-R, using code 2 or 7 in box 7, and the IRA/SEP/SIMPLE checkbox in box 7 checked.

Q. K-6: Which amounts contributed to a Roth IRA under a SIMPLE IRA plan or SEP arrangement are subject to income tax withholding, FICA and the Federal Unemployment Tax Act (FUTA) (chapter 23 of the Code)?

A. K-6: The salary reduction contributions contributed to a Roth IRA under a SIMPLE IRA plan or SEP arrangement are subject to income tax withholding, FICA, and FUTA taxes.

Matching contributions and nonelective contributions that are made to an IRA under a SIMPLE IRA plan or SEP arrangement are excluded from wages under section 3401(a). Similarly, matching contributions and nonelective contributions that are made to a Roth IRA under a SIMPLE IRA plan or SEP arrangement are excluded from wages under section 3401(a). Accordingly, these matching contributions and nonelective contributions are not wages, as defined in section 3401(a), for purposes of federal income tax withholding under section 3402. However, an employee on whose behalf either type of contribution is made may need to increase the employee's withholding or make estimated tax payments to avoid an underpayment penalty.

Matching contributions and nonelective contributions that are made to an IRA under a SIMPLE IRA plan or SEP arrangement are excluded from wages under section 3121(a)(5)(C) and (H). Similarly, matching contributions and nonelective contributions that are made to a Roth

IRA under a SIMPLE IRA plan or SEP arrangement are excluded from wages under section 3121(a)(5)(C) and (H) (and those contributions are not added back into wages under section 3121(v)(1)(A)). Accordingly, those contributions are not wages, as defined in section 3121(a), for purposes of FICA.

Matching and nonelective contributions that are made to an IRA under a SIMPLE IRA plan or SEP arrangement also are excluded from wages under section 3306(b)(5)(C) and (H). Similarly, matching contributions and nonelective contributions that are made to a Roth IRA under a SIMPLE IRA plan or SEP arrangement are excluded from wages under section 3306(b)(5)(C) and (H). Accordingly, those contributions are not wages, as defined in section 3306(b), for purposes of FUTA.

Q. K-7: How may an employer make SIMPLE IRA plan or SEP arrangement contributions to a Roth IRA prior to the amendment of IRS forms and Listings of Required Modifications?

A. K-7: An employer using any of Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution*, Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution*, Form 5305-SEP, *Simplified Employee Pension—Retirement Accounts Contribution Agreement*, Form 5305A-SEP, *Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement*, or a prototype plan document approved by the IRS, may continue to use (or begin to use) the form or document without amendment, until the IRS issues new forms or provides new guidance on prototype plan documents.

Q. K-8: What is the effect of the deletion of section 408A(f)(2) on the Roth IRA contribution limit in section 408A(c)(2)(B)?

A. K-8: The deletion of section 408A(f)(2) will be addressed in future guidance.

L. SECTION 604 OF THE SECURE 2.0 ACT

Prior to amendment by section 604 of the SECURE 2.0 Act, section 402A of the Code generally permitted an applicable retirement plan (that is, a qualified plan under section 401(a), a section 403(b) plan, or a section 457(b) plan maintained by an employer described in section 457(e)(1)(A) (an eligible governmental plan)) to include a qualified Roth contribution program as defined in section 402A(b)(1). Prior to that amendment, a qualified Roth contribution program was a program under which an employee could elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee was otherwise eligible to make under the applicable retirement plan. These contributions have been referred to as designated Roth contributions; however, for purposes of this notice, they are referred to as designated Roth elective contributions.

Prior to amendment by section 604 of the SECURE 2.0 Act, section 402A(a) of the Code provided that if an applicable retirement plan includes a qualified Roth contribution program, then (1) any designated Roth elective contribution made by an employee pursuant to the program is treated as an elective deferral for purposes of chapter 1 of the Code, except that the contribution "shall not be excludable from gross income," and (2) the plan (and any arrangement that is part of the plan) is not treated as failing to satisfy any requirement of chapter 1 of the Code solely by reason of including the program.

Section 604(a) of the SECURE 2.0 Act amends section 402A(a) of the Code to redesignate section 402A(a)(2) as section 402A(a)(4) and to add the following as section 402A(a)(2) and (3): "(2) any designated Roth contribution which pursuant to the program is made by the employer on the employee's behalf on account of the employee's contribution, elective deferral, or (subject to the requirements of section 401(m)(13)) qualified student loan payment shall be treated as a matching contribution for purposes of this chapter, except that such contribution shall not be excludable from gross income," and "(3) any designated Roth contribution which pursuant to the program is made by the employer on the employee's behalf and which is a nonelective contribution shall be nonforfeitable and shall not be excludable from gross income..."

Section 604(b) of the SECURE 2.0 Act makes a conforming change to the definition of a "qualified Roth contribution program" under section 402A(b)(1) of the Code. As amended, a "qualified Roth contribution program" means a program under which an employee may elect to make, or to have made on the employee's behalf, designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make, or of matching contributions or nonelective contributions that may otherwise be made on the employee's behalf, under the applicable retirement plan.

Section 604(c) of the SECURE 2.0 Act amends the definition of a "designated Roth contribution" under section 402A(c)(1) of the Code to mean any elective deferral, matching contribution, or nonelective contribution that is excludable from gross income of an employee without regard to section 402A, and that the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable. For purposes of this notice, matching contributions and nonelective contributions that an employee designates as Roth contributions are referred to as designated Roth matching contributions and designated Roth nonelective contributions.

Section 604(d) of the SECURE 2.0 Act adds section 402A(f)(3) of the Code, which defines "matching contribution" for purposes of section 402A to mean any matching contribution described in section 401(m)(4)(A), and any contribution to an eligible governmental plan on behalf of an employee and on account of the employee's elective deferral under the plan, but only if the contribution is nonforfeitable at the time received.

Section 604(e) of the SECURE 2.0 Act provides that the amendments made by section 604 apply to contributions made after December 29, 2022.

Q. L-1: Do rules similar to the rules of § 1.401(k)-1(f) apply to designated Roth matching contributions and designated Roth nonelective contributions?

A. L-1: Yes. Rules similar to the rules for designated Roth elective contributions under § 1.401(k)-1(f) (other than § 1.401(k)-1(f)(4)(i) and (6)) apply to designated Roth matching contributions and designated Roth nonelective contributions. For example, similar to the rules under § 1.401(k)-1(f)(1) that apply to desig-

nated Roth elective contributions: (1) any designation of a matching contribution or nonelective contribution as a Roth contribution must be made by the employee no later than the time that the contribution is allocated to the employee's account and must be irrevocable, and (2) designated Roth matching contributions and designated Roth nonelective contributions are subject to inclusion treatment and separate accounting rules. In addition, to the extent a plan permits an employee to designate matching contributions or nonelective contributions as Roth contributions, an employee must have an effective opportunity to make (or change) that designation at least once during each plan year.

Q. L-2: If an employee designates a matching contribution or nonelective contribution as a Roth contribution, for which taxable year is that designated Roth matching contribution or designated Roth nonelective contribution includible in the individual's gross income?

A. L-2: A designated Roth matching contribution or designated Roth nonelective contribution is includible in an individual's gross income for the taxable year in which the contribution is allocated to the individual's account. The preceding sentence applies even if the designated Roth matching contribution or designated Roth nonelective contribution is deemed to have been made on the last day of the prior taxable year of the employer under section 404(a)(6) of the Code.

Q. L-3: May an employee designate a matching contribution or nonelective contribution as a Roth contribution if the employee is not fully vested in that type of contribution at the time the contribution is allocated to the employee's account?

A. L-3: No. Under section 402A(f)(3), a matching contribution may be designated as a Roth contribution only if the employee is fully vested in matching contributions at the time the contribution is allocated to the employee's account. Similarly, under section 402A(a)(3), a nonelective contribution may be designated as a Roth contribution only if the employee is fully vested in nonelective contributions at the time the contribution is allocated to the employee's account. For example, if at the time a matching contribution is allocated to the employee's account, the employee is only partially vested in the portion of the employee's account balance attributable to matching contributions, then the employee may not designate any part of that matching contribution as a Roth contribution.

Q. L-4: If matching contributions or nonelective contributions under an applicable retirement plan are subject to a vesting schedule, will the plan fail to satisfy section 401(a)(4) (if applicable) merely because the plan provides that an employee may designate a matching contribution or nonelective contribution as a Roth contribution only if the employee is fully vested in that type of contribution at the time the contribution is allocated to the employee's account?

A. L-4: Under § 1.401(a)(4)-4(e)(3)(i), the term "other right or feature" generally means any right or feature applicable to employees under the plan, except as provided in § 1.401(a)(4)-4(e)(3)(ii). Because there is no applicable exception under § 1.401(a)(4)-4(e)(3)(ii), an employee's right under a plan to designate a matching contribution or nonelective contribution that may otherwise be made on the employee's behalf under the plan as a Roth contribution is an "other right or feature" for purposes of § 1.401(a)(4)-4(e)(3).

However, pursuant to the authority in § 1.401(a)(4)-1(d) to issue additional guidance that is necessary or appropriate in applying the nondiscrimination requirements of section 401(a)(4) of the Code, a plan will not be treated as failing to satisfy section 401(a)(4) merely because the plan provides that an employee may designate a matching contribution or nonelective contribution as a Roth contribution only if the employee is fully vested in that type of contribution at the time the contribution is allocated to the employee's account (even if the right to make that designation is not currently available to a group of employees that would satisfy section 410(b) without regard to the average benefit percentage test of § 1.410(b)-5)).

Q. L-5: Are designated Roth matching contributions or designated Roth nonelective contributions included in wages, as defined in section 3401(a) of the Code, for purposes of federal income tax withholding under section 3402?

A. L-5: No. Matching contributions and nonelective contributions that are made to a qualified plan under section 401(a) (including a section 401(k) plan), a section 403(b) plan, or an eligible governmental plan are excluded from wages under section 3401(a). Similarly, designated Roth matching contributions and designated Roth nonelective contributions that are made to a qualified plan under section 401(a), a section 403(b) plan, or an eligible governmental plan are excluded from wages under section 3401(a). Accordingly, designated Roth matching contributions and designated Roth nonelective contributions are not wages, as defined in section 3401(a), for purposes of federal income tax withholding under section 3402. However, an employee who designates a matching contribution or nonelective contribution as a Roth contribution may need to increase the employee's withholding or make estimated tax payments to avoid an underpayment penalty.

Q. L-6: Are designated Roth matching contributions or designated Roth nonelective contributions that are contributed to a qualified plan under section 401(a) or to a section 403(b) plan included in wages, as defined in section 3121(a), for purposes of FICA, or as defined in section 3306(b), for purposes of FUTA?

A. L-6: No. Matching contributions and nonelective contributions that are contributed to a qualified plan under section 401(a) or to a section 403(b) plan are excluded from wages under section 3121(a)(5)(A) and (D). Similarly, designated Roth matching contributions and designated Roth nonelective contributions that are contributed to a qualified plan under section 401(a) or to a section 403(b) plan are excluded from wages under section 3121(a)(5)(A) and (D) (and those contributions are not added back to wages under section 3121(v)(1)(A)). Accordingly, those contributions are not wages, as defined in section 3121(a), for purposes of FICA.

Matching and nonelective contributions that are contributed to a qualified plan under section 401(a) or to a section 403(b) plan also are excluded from wages under section 3306(b)(5)(A) and (D). Similarly, designated Roth matching contributions and designated Roth nonelective contributions that are contributed to a qualified plan under section 401(a) or to a section 403(b) plan are excluded from

wages under section 3306(b)(5)(A) and (D). Accordingly, those contributions are not wages, as defined in section 3306(b), for purposes of FUTA.

Q. L-7: Are designated Roth nonelective contributions that are contributed to an eligible governmental plan (including amounts that would be treated as matching contributions under section 401(m) if the plan were a qualified plan) included in wages, as defined in section 3121(a), for purposes of FICA?

A. L-7: Section 3121(a) defines wages as all remuneration for employment, unless specifically excluded. Section 3121(v)(2) includes special timing rules that apply in determining when amounts deferred under an eligible governmental plan (including employers' contributions) are required to be taken into account. Under these sections, an amount deferred under an eligible governmental plan is required to be taken into account for purposes of social security and Medicare taxes as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Because designated Roth nonelective contributions that are contributed to an eligible governmental plan (including amounts that would be treated as matching contributions under section 401(m) if the plan were a qualified plan) must be fully vested at the time the contribution is allocated to a participant's account, these contributions are subject to social security and Medicare taxes at that time. However, FICA tax applies to employees of state and local governments only if they are subject to social security or Medicare tax under section 3121(b)(7)(E) (relating to agreements entered into pursuant to section 218 of the Social Security Act) or another provision of the Code, such as section 3121(b)(7)(F) (relating to state and local government employees who are not members of a state or local retirement system), or section 3121(u) (relating to Medicare). *See also* Notice 2003-20, 2003-1 CB 894.

Q. L-8: Are designated Roth nonelective contributions that are contributed to an eligible governmental plan (including amounts that would be treated as matching contributions under section 401(m) if the plan were a qualified plan) included in wages, as defined in section 3306(b), for purposes of FUTA?

A. L-8: Section 3306(c)(7) generally provides a FUTA exemption for service performed in the employ of a state or any political subdivision thereof or any instrumentality of any one or more of the foregoing. In accordance with this provision, designated Roth nonelective contributions that are contributed to an eligible governmental plan (including amounts that would be treated as matching contributions under section 401(m) if the plan were a qualified plan) are excluded from wages under section 3306(c)(7). Accordingly, those contributions are not wages, as defined in section 3306(b), for purposes of FUTA. *See also* Notice 2003-20.

Q. L-9: If designated Roth matching contributions or designated Roth nonelective contributions are allocated to an individual's account in a taxable year, what reporting obligations apply to those contributions?

A. L-9: The reporting obligations that apply to a designated Roth matching contribution or designated Roth nonelective contribution are the same as if: (1) the contribution had been the only contribution made to an individual's account under the plan, and (2) the contribution, upon allocation to that account, had been directly rolled over to a designated Roth account in the plan as an in-plan Roth rollover. Thus, designated Roth matching contributions and designated Roth nonelective contributions to a qualified plan under section 401(a) or to a section 403(b) plan must be reported using Form 1099-R for the year in which the contributions are allocated to the individual's account. The total amount of designated Roth matching contributions and designated Roth nonelective contributions that are allocated in that year are reported in boxes 1 and 2a of Form 1099-R, and code "G" is used in box 7.

The same reporting applies to designated Roth nonelective contributions that are contributed to an eligible governmental plan (including amounts that would be treated as matching contributions under section 401(m) if the plan were a qualified plan).

Q. L-10: If a plan uses a safe harbor definition of compensation under § 1.415(c)-2(d)(3) or (4) for purposes of section 415 of the Code, are designated Roth matching contributions or designated Roth nonelective contributions included in that safe harbor definition of compensation?

A. L-10: No. In general, the safe harbor definition of compensation under § 1.415(c)-2(d)(3) includes wages within the meaning of section 3401(a) of the Code (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). However, as described in Q&A L-5 of this notice, designated Roth matching contributions and designated Roth nonelective contributions are not included in wages within the meaning of section 3401(a) (nor would those contributions have been included in wages but for an election to have those contributions made as Roth contributions).

Similarly, the safe harbor definition of compensation under § 1.415(c)-2(d)(4) generally includes amounts that are compensation under § 1.415(c)-2(d)(3), plus all other payments of compensation to an employee by his employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3), and 6052 of the Code. However, designated Roth matching contributions and designated Roth nonelective contributions are not payments of compensation to an employee by his employer for which the employer is required to furnish the employee a written statement under sections 6041(d), 6051(a)(3), and 6052.

Q. L-11: If an applicable retirement plan includes a qualified Roth contribution program, which types of designated Roth contributions must an employee be permitted to elect to make, or have made on the employee's behalf, under the program?

A. L-11: Pursuant to section 402A(b)(1), a qualified Roth contribution program may, but is not required, to include every type of designated Roth contribution. Thus, an employee generally may be permitted to designate an elective contribution as a Roth contribution without being permitted to designate a matching contribution or nonelective contribution as a Roth contribution. Similarly, an employee generally may be permitted to designate a matching contribution or nonelective

contribution (or both) as a Roth contribution without being permitted to designate an elective contribution as a Roth contribution. However, the right to make designated Roth contributions is a right or feature subject to the requirements of section 401(a)(4). *See* § 1.401(k)-1(a)(4)(iv)(B) and Q&A L-4 of this notice.

Further, under sections 402(c)(8)(B) and 402A(c)(3)(A) of the Code, if any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), that portion is permitted to be rolled over only to another designated Roth account or to a Roth IRA. For purposes of sections 402(c)(8)(B) and 402A(c)(3)(A), the term "designated Roth account" includes a separate account that is established for designated Roth matching contributions or designated Roth nonelective contributions. Similarly, section 402A(c)(4)(B) requires an applicable retirement plan to include a qualified Roth contribution program in order for the plan to permit employees to make in-plan Roth rollovers. For purposes of section 402A(c)(4)(B), a qualified Roth contribution program includes a program under which an employee may designate a matching contribution or nonelective contribution as a Roth contribution, even if the employee is not permitted to designate an elective contribution as a Roth contribution.

III. REQUEST FOR COMMENTS

The Treasury Department and the IRS invite comments and suggestions regarding the matters discussed in this notice. In particular, the Treasury Department and the IRS request comments on:

- Section 113 of the SECURE 2.0 Act with respect to a *de minimis* financial incentive that is provided by a party other than the employer; and
- Section 348 of the SECURE 2.0 Act with respect to whether there are situations under which a plan with a statutory hybrid benefit formula within the meaning of § 1.411(a)(13)-1(d)(4) that is not described in Q&A H-2 of this notice would be amended pursuant to section 348 of the SECURE 2.0 Act, as described in section II.H of this notice.

Comments should be submitted in writing on or before February 20, 2024 and should include a reference to Notice 2024-2. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS Notice 2024-2" in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2024-2), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

IV. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3507) under control number 1545-2317. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are section II.E, section II.F, and section II.G of this notice. The information collection requirements in section II.E and section II.G of this notice are accounted for in OMB Control Number 1545-1502. The information collection requirements in section II.F will be submitted to OMB for review and approval in accordance with 5 CFR 1320.13.

Q&A F-1 of this notice provides that a "terminally ill individual distribution" is any distribution from a qualified retirement plan to an employee who is a terminally ill individual that is made on or after the date on which the employee has been certified by a physician as having a terminal illness. A certification of terminal illness must meet the content requirement for the certification described in Q&A F-6 of this notice, the timing requirement for the certification described in Q&A F-7 of this notice, and the documentation requirement described in Q&A F-13 of this notice.

The collection of information is required to obtain a benefit. The likely respondents are individual taxpayers who are requesting terminally ill distributions from a qualified retirement plan.

Estimated total annual reporting burden: 125 hours.

Estimated average annual burden per respondent: .25 hours.

Estimated number of respondents: 500.

Estimated frequency of responses: 1.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

V. DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, please contact Mr. Morgan at (202) 317-6700 (not a toll-free number).

2023 Cumulative List of Changes in Plan Qualification Requirements for Defined Contribution Qualified Pre-approved Plans

Notice 2024-3

I. PURPOSE

This notice sets forth the 2023 Cumulative List of Changes in Plan Qualification Requirements for Defined Contribution Qualified Pre-approved Plans (2023 Cumulative List). The 2023 Cumulative List will assist providers applying to the Internal Revenue Service (IRS) for opinion letters for the fourth remedial amendment cycle for defined contribution qualified pre-approved plans (Cycle 4) under the IRS's pre-approved plan program. Cycle 4 began on February 1, 2023. The 2023 Cumulative List identifies recent

changes in the qualification requirements of the Internal Revenue Code (Code) that were not taken into account during the first three remedial amendment cycles for defined contribution qualified pre-approved plans and that will be taken into account by the IRS with respect to the form of a plan submitted to the IRS for Cycle 4. The Cycle 4 submission period begins on February 1, 2024, and ends on January 31, 2025.

II. BACKGROUND

Under Rev. Proc. 2023-37, 2023-51 IRB 1491, every pre-approved plan has a recurring remedial amendment cycle, and a provider of a pre-approved plan may apply for a new opinion letter for the plan for each remedial amendment cycle. Further, defined contribution qualified pre-approved plans, defined benefit qualified pre-approved plans, and section 403(b) pre-approved plans all have separate remedial amendment cycles. Part III of Rev. Proc. 2023-37 sets forth the procedures for a provider to apply for a Cycle 4 opinion letter for a defined contribution qualified pre-approved plan as well as the scope of reliance provided by a Cycle 4 opinion letter to adopting employers of a provider's defined contribution pre-approved plan.

Pursuant to section 17 of Rev. Proc. 2023-37, the IRS publishes a cumulative list for each remedial amendment cycle to identify the recent changes in the qualification requirements that will be taken into account with respect to the form of a pre-approved plan submitted to the IRS for that remedial amendment cycle.[1] A change in the qualification requirements includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin, without regard to whether the change is required to be reflected in plan terms or relates to an optional provision that a provider could choose to reflect in plan terms as a discretionary amendment.

III. APPLICATION OF THE 2023 CUMULATIVE LIST

The 2023 Cumulative List sets forth, in section V of this notice, specific items the IRS has identified for review in determining whether the form of a defined contribution qualified pre-approved plan that has been submitted to the IRS for a Cycle 4 opinion letter has been properly updated since the plan was submitted for a Cycle 3 opinion letter.[2]

Generally, the IRS will consider only the items on the 2023 Cumulative List in determining whether to issue a Cycle 4 opinion letter with respect to a pre-approved plan. However, if a plan has not been previously reviewed and is submitted for Cycle 4 (or has been amended with respect to previously approved language), the IRS will also review the plan for items on earlier Cumulative Lists[3] as well as for any other applicable qualification requirements that were considered by the IRS in issuing opinion letters prior to the implementation of Cumulative Lists.

The list of changes in section V of this notice does not extend the deadline by which a plan must be amended to comply with any change in the qualification requirements applicable to the plan. The general deadline for timely adoption of an interim or discretionary amendment is provided in section 7 of Rev. Proc. 2023-37. However, see section IV of this notice regarding the extended plan amendment deadline applicable to interim and discretionary amendments adopted to reflect a provision of the SECURE 2.0 Act of 2022, enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022) (SECURE 2.0 Act).

IV. CHANGES IN QUALIFICATION REQUIREMENTS UNDER THE SECURE 2.0 ACT

The SECURE 2.0 Act made several changes to plan qualification requirements. The IRS will review a defined contribution qualified pre-approved plan document that is submitted for Cycle 4 only for those changes in qualification requirements made pursuant to the SECURE 2.0 Act that are listed in section V of this notice.[4] Providers of pre-approved plans should not include in plan documents submitted with their Cycle 4 opinion letter applications terms reflecting SECURE 2.0 Act provisions that are not listed in section V. However, providers of pre-approved plans need to comply with applicable requirements relating to timely adoption of interim or discretionary amendments to reflect changes in qualification requirements made by SECURE 2.0 Act provisions, whether or not they are listed in section V. Generally, the deadline for adopting any required plan amendment made pursuant to the SECURE 2.0 Act is December 31, 2026. This deadline, provided in Q&A J-1 of Notice 2024-2, 2024-2 IRB 316, 333 (January 8, 2024) will apply with respect to interim amendments made pursuant to the SECURE 2.0 Act, rather than the general deadline for timely adoption of interim amendments set forth in section 7.01(1)(a) of Rev. Proc. 2023-37. The deadline for discretionary amendments made pursuant to the SECURE 2.0 Act generally is also December 31, 2026 (as provided in Q&A J-1 of Notice 2024-2), or, if later, the deadline for the timely adoption of discretionary amendments set forth in section 7.01(1)(b) of Rev. Proc. 2023-37, if applicable (depending on the year in which the operation of the plan is changed to reflect a SECURE 2.0 Act provision permitting an optional change).

[1] In order to be qualified, a defined contribution pre-approved plan must comply in operation with all applicable qualification requirements, not only those on the 2023 Cumulative List. To assist plan providers in achieving operational compliance, the IRS provides an Operational Compliance List on its website that is updated periodically to identify changes in qualification requirements that are effective during a calendar year. For the current Operational Compliance List, see https://www.irs.gov/retirement-plans/operational-compliance-list.

[2] Consistent with previous Cumulative Lists, the 2023 Cumulative List does not include routine, ministerial guidance (such as guidance that is typically issued annually to announce a cost-of-living adjustment to a qualified plan contribution limit).

[3] For the items on earlier Cumulative Lists for defined contribution qualified pre-approved plans, see the 2017 Cumulative List, Notice 2017-37, 2017-29 IRB 89, the 2010 Cumulative List, Notice 2010-90, 2010-52 IRB 909, and the 2004 Cumulative List, Notice 2004-84, 2004-2 CB 1030.

[4] The IRS has included on this 2023 Cumulative List each SECURE 2.0 Act provision applicable to the form of a defined contribution qualified pre-approved plan that the IRS believes may be appropriately reflected by plan providers in plan documents submitted for Cycle 4 either because: (1) no interpretive guidance is needed for a plan provider to draft plan language with respect to the provision, or (2) the IRS has issued sufficient interpretive guidance prior to publication of this list for a plan provider to draft plan language with respect to the provision.

V. 2023 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION QUALIFIED PRE-APPROVED PLANS

1. Section 401(a):

a. *Required Minimum Distributions (Section 401(a)(9))*

i. *Required beginning date*

- Section 114 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019) (FCAA 2020), amends section 401(a)(9)(C)(i)(I) of the Code to increase the age with respect to which the required beginning date for required minimum distributions (RMDs) is determined from age 70½ to age 72 for employees born on or after July 1, 1949, but before January 1, 1951.
- Section 107 of the SECURE 2.0 Act amends section 401(a)(9)(C) of the Code to increase the age with respect to which the required beginning date for RMDs is determined from age 72 to age 73, for employees born on or after January 1, 1951.[5]

ii. *Waiver of 2020 RMD*

- Section 2203(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, 134 Stat. 281 (2020), adds new section 401(a)(9)(I) of the Code to provide for a temporary waiver of RMDs from defined contribution plans for calendar year 2020.
- Notice 2020-51, 2020-29 IRB 73, provides guidance relating to the waiver of RMDs from defined contribution plans for calendar year 2020.

iii. *Miscellaneous*

- Section 401 of the SECURE Act amends section 401(a)(9) of the Code to provide new RMD rules for designated beneficiaries.
- Proposed regulations under section 401(a)(9) that were published on February 24, 2022 (87 FR 10504), would provide guidance relating to RMDs from defined contribution plans that reflects the amendments made to section 401(a)(9) by sections 114 and 401 of the SECURE Act. These regulations are proposed to apply only on or after the date of publication of final regulations. The proposed regulations provide that, until the final regulations are published, an employer may rely on a good faith, reasonable interpretation of the amendments made by sections 114 and 401 of the SECURE Act to which the final regulations relate. Compliance with the proposed regulations is considered reliance on a good faith, reasonable interpretation of the amendments made by sections 114 and 401 of the SECURE Act to which the final regulations relate.
- Section 202(a)(1) and (2) of the SECURE 2.0 Act eliminates the percentage limitation and increases the dollar limitation (from $125,000 to $200,000, subject to future adjustments for inflation) with respect to the amount of an employee's interest under a defined contribution plan which may be used to pay premiums with respect to a qualifying longevity annuity contract.

b. *Certain Involuntary Distributions (Sections 401(a)(31)(B) and 411(a)(11))*

- Section 304 of the SECURE 2.0 Act permits a plan to increase its involuntary cashout limit up to $7,000 (increased from $5,000).

c. *Distributions During Working Retirement (Section 401(a)(36))*

- Section 104 of the Bipartisan American Miners Act of 2019 (Miners Act), enacted on December 20, 2019, as Division M of the FCAA 2020, amended section 401(a)(36) of the Code to lower the minimum age at which a pension plan (including a money purchase pension plan) may make a distribution to an employee who is not separated from employment at the time of the distribution. The minimum age is lowered from age 62 to age 59½.
- Notice 2020-68, 2020-38 IRB 567, provides guidance with respect to section 104 of the Miners Act.

d. *Miscellaneous Distributions and Recontributions*

- Section 109 of the SECURE Act provides that defined contribution plans may permit certain transfers and distributions of lifetime income investment options in cases in which the investment options are no longer authorized to be held as investment options under the plan.
- Section 113 of the SECURE Act amends the Code to add section 72(t)(2)(H), which permits an individual to receive a distribution from an applicable eligible retirement plan of up to $5,000 without application of the 10% additional tax if the distribution meets the requirements to be a qualified birth or adoption distribution. An individual generally may recontribute a qualified birth or adoption distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover may be made.
- Notice 2020-68 provides guidance with respect to the SECURE Act, including section 113 of the SECURE Act.
- Section 115 of the SECURE 2.0 Act amends the Code to

[5] Section 107 of the SECURE 2.0 Act includes a provision increasing the age with respect to which the required beginning date is determined to age 75. This increase will not affect the timing of RMDs until after the beginning of a new remedial amendment cycle for defined contribution qualified pre-approved plans. Accordingly, the IRS will not review plan documents submitted for Cycle 4 for that provision.

add section 72(t)(2)(I), which permits an individual to receive a distribution from an applicable eligible retirement plan of up to $1,000 without application of the 10% additional tax if the distribution meets the requirements to be an emergency personal expense distribution. An individual generally may, during the 3-year period beginning on the day after receipt of an emergency personal expense distribution, recontribute the distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover may be made.

- Section 311 of the SECURE 2.0 Act amends section 72(t)(2)(H)(v)(I) of the Code (as added by section 113 of the SECURE Act) to restrict the permitted period for recontribution of qualified birth or adoption distributions to three years for qualified birth or adoption distributions made after December 29, 2022. Qualified birth or adoption distributions made prior to that date may be recontributed any time prior to January 1, 2026.
- Section 314 of the SECURE 2.0 Act amends the Code to add section 72(t)(2)(K), which permits an individual to receive a distribution from an applicable eligible retirement plan of up to $10,000 (to be adjusted for inflation) without application of the 10% additional tax if the distribution is an eligible distribution to a domestic abuse victim. An individual generally may, during the 3-year period beginning on the day after receipt of an eligible distribution, recontribute the distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover may be made.

e. *Forfeitures*

- Proposed regulations under section 401 of the Code that were published on February 27, 2023 (88 FR 12282), would provide rules relating to the use of forfeitures in qualified retirement plans. The proposed regulations are proposed to apply only to plan years that begin on or after January 1, 2024, but, prior to the applicability date of final regulations, taxpayers may rely on the proposed regulations.

f. *Witnessing of Spousal Consent*

- Proposed regulations under section 401 of the Code that were published on December 30, 2022 (87 FR 80501), would provide an alternative to in-person witnessing of spousal consents required to be witnessed by a notary public or a plan representative and would clarify that certain special rules for the use of an electronic medium for participant elections also apply to spousal consents. The regulations are proposed to apply on the date that is six months after the publication of final regulations, but, prior to the applicability date of final regulations, taxpayers may rely on the proposed regulations.[6]

2. ***Section 401(b)***:

- Section 317 of the SECURE 2.0 Act amends section 401(b)(2) of the Code to provide that, in the case of an individual who owns the entire interest in an unincorporated trade or business and who is the only employee of such trade or business, any elective deferrals (as defined in section 402(g)(3)) under a qualified cash or deferred arrangement that has been adopted retroactively pursuant to section 401(b)(2), which are made by such individual before the time for filing the individual's tax return (determined without regard to any extensions) for the taxable year ending after or with the end of the plan's first plan year, will be treated as having been made before the end of such first plan year.

3. ***Section 401(k) and 401(m)***:

a. *Hardship Distributions*

- Section 41113 of the Bipartisan Budget Act of 2018 (BBA), Pub. L. 115-123, 132 Stat. 64 (2018), in part, directs the Secretary of the Treasury (Secretary) to modify Treas. Reg. § 1.401(k)-1(d)(3)(iv)(E) to delete the 6-month prohibition on contributions after a hardship distribution and to make any other modifications necessary to carry out the purposes of section 401(k)(2)(B)(i)(IV) of the Code. (See the final regulations described in the third bullet of this section.)
- Section 41114 of the BBA amends section 401(k) of the Code to (1) modify the hardship distribution rules to expand the sources of hardship distributions to include qualified nonelective contributions, qualified matching contributions, and earnings on those contributions and on elective contributions, and (2) provide that a distribution from a plan is not treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan.
- Final regulations under section 401(k) that were published on September 23, 2019 (TD 9875, 84 FR 49651), amend the rules relating to hardship distributions from 401(k) plans to reflect statutory changes, including changes made by the BBA.[7]

[6] The IRS expects that most plans will not need to be amended to reflect these proposed regulations relating to the witnessing of spousal consent, as most plans will not include language that contradicts these proposed regulations.

[7] Proposed regulations under section 401(k) were published in the Federal Register on November 14, 2018 (83 FR 56763). Under the proposed regulations, the changes to the hardship distribution rules made by the BBA generally apply to distributions made in plan years beginning after December 31, 2018. However, the prohibition on suspending an employee's elective contributions and employee contributions as a condition of obtaining a hardship distribution may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year. In addition, the revised list of safe harbor expenses for which distributions are deemed to be made on account of an immediate and heavy financial need may be applied to distributions made on or after a date that is as early as January 1, 2018.

b. *Definitions of Qualified Nonelective Contributions and Qualified Matching Contributions*
   - Final regulations under section 401(k) and (m) that were published on July 20, 2018 (TD 9835, 83 FR 34469), amend the definitions of qualified nonelective contributions (QNECs) and qualified matching contributions (QMACs) to provide that QNECs and QMACs must satisfy applicable nonforfeitability and distribution requirements at the time they are allocated to participants' accounts, but need not meet these requirements when they are contributed to the plan.[8]

c. *Safe Harbor Plans*
   - Section 102 of the SECURE Act amends section 401(k)(13)(C)(iii) of the Code to increase the 10% cap on automatic elective contributions under a qualified automatic contribution arrangement to 15% (for periods following the initial period of automatic elective contributions described in section 401(k)(13)(C)(iii)(I)).
   - Section 103 of the SECURE Act amends section 401(k) of the Code to (1) eliminate certain safe harbor notice requirements for plans that provide for safe harbor nonelective contributions and (2) add new provisions for the retroactive adoption of safe harbor status for those plans.
   - Notice 2020-52, 2020-29 IRB 79, clarifies the requirements that apply to a mid-year amendment to a safe harbor section 401(k) or 401(m) plan that reduces only contributions made on behalf of highly compensated employees. It also provides temporary coronavirus-related relief (which requires that specified plan language be adopted as a condition of obtaining the relief) from certain requirements that would otherwise apply to a mid-year amendment adopted between March 13, 2020, and August 31, 2020, to reduce or suspend safe harbor contributions to a safe harbor section 401(k) or 401(m) plan.
   - Notice 2020-86, 2020-53 IRB 1786, provides guidance with respect to sections 102 and 103 of the SECURE Act.
   - Section 121(a) of the SECURE 2.0 Act adds new section 401(k)(16) to the Code to provide that an eligible employer may establish a "starter 401(k) deferral-only arrangement" pursuant to the requirements of section 401(k)(16).
   - Section 401(a)(1) of the SECURE 2.0 Act amends section 401(m)(12) of the Code to provide that a safe harbor automatic contribution arrangement under section 401(m)(12) must meet the notice requirements under section 401(k)(13)(E).

d. *Long-term, Part-time Employees*
   - Section 112 of the SECURE Act and sections 125 and 401(a)(2) of the SECURE 2.0 Act amend section 401(k)(2)(D) of the Code and add new section 401(k)(15) to the Code to provide that a qualified cash or deferred arrangement may not require an employee meeting the minimum age requirement to complete, for eligibility purposes, a period of service that extends beyond the close of the earlier of: (i) the period permitted under section 410(a)(1) (disregarding section 410(a)(1)(B)(i)); or (ii) subject to section 401(k)(15), the first period of three consecutive 12-month periods (or, for plan years beginning after December 31, 2024, the first period of two consecutive 12-month periods) during each of which the employee has completed at least 500 hours of service. For purposes of determining an employee's eligibility to participate on account of clause (ii) in the preceding sentence, or for purposes of determining the vesting service of an employee who is eligible to participate solely on account of clause (ii), 12-month periods beginning before January 1, 2021, are not taken into account.
   - Proposed regulations under section 401(k) that were published on November 27, 2023 (88 FR 82796), would provide guidance relating to long-term, part-time employees that reflect the amendments made to section 401(k) by section 112 of the SECURE Act and sections 125 and 401 of the SECURE 2.0 Act. These regulations are proposed to apply only to plan years that begin on or after January 1, 2024, but, prior to the applicability date of final regulations, taxpayers may rely on the proposed regulations.

e. *SIMPLE 401(k) Plans*
   - Section 116 of the SECURE 2.0 Act amends sections 408(p) and 401(k) of the Code to permit an employer to make additional nonelective contributions for a year (beyond the 2% nonelective contribution permitted in lieu of the otherwise required matching contribution) of a uniform percentage of compensation up to a specified amount for each employee who is eligible to participate in the employer's SIMPLE 401(k) plan and who has at least $5,000 of compensation from the employer for the year.
   - Section 117 of the SECURE 2.0 Act permits eligible employers to allow eligible employees to contribute up to a specified amount of additional elective contributions and catch-up contributions to SIMPLE 401(k) plans.
   - Notice 2024-2, in section II.E, provides guidance with respect to section 117 of the SECURE 2.0 Act.

[8] Proposed regulations under section 401(k) and (m) were published in the Federal Register on January 18, 2017 (82 FR 5477), and were permitted to be relied upon until the issuance of the final regulations listed here.

4. ***Sections 402 and 402A***:
   - Section 41104 of the BBA adds section 6343(f) of the Code to hold an individual harmless in the case of a wrongful levy upon an eligible retirement plan. The eligible retirement plan may permit the contribution of any property or money returned to the individual as a result of the wrongful levy, and such contribution will be treated as a rollover under section 402(c) or section 402A(c)(3), as applicable.
   - Proposed regulations under section 402(c) that were published on February 24, 2022 (87 FR 10504), amend the rules relating to eligible rollover distributions from defined contribution plans. These regulations are proposed to apply only to taxable years beginning on or after the publication of final regulations, but taxpayers may choose to rely on the proposed regulations from the date of their publication.
   - Section 604 of the SECURE 2.0 Act amends section 402A of the Code to allow a qualified plan to permit an employee to elect to designate nonforfeitable employer matching or nonelective contributions as Roth contributions.
   - Notice 2024-2, in section II.L, provides guidance with respect to section 604 of the SECURE 2.0 Act.
5. ***Section 402(l)***:
   - Section 328 of the SECURE 2.0 Act amends section 402(l)(5)(A) of the Code to permit governmental plans to make direct distributions to certain eligible retired public safety officers of amounts necessary to pay for qualified health insurance premiums, provided the participant includes an attestation as to the necessity of the distribution along with the participant's tax return for the taxable year of the distribution.
6. ***Section 411***:
   - Section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021 (CAA 2021), Pub. L. 116-260, 134 Stat. 1182 (2020), provides temporary guidance relating to partial plan terminations.[9]
7. ***Section 413***:
   - Section 101(a) of the SECURE Act adds section 413(e) of the Code, which creates a statutory exception to the unified plan rule for certain types of multiple employer plans (MEPs) that include defined contribution qualified plans.
   - Proposed regulations under section 413(e) were published on March 28, 2022 (87 FR 17225). These regulations are proposed to apply only on or after the date of publication of final regulations. The proposed regulations provide that, pursuant to section 413(e)(4)(B), until the final regulations are published, an employer or pooled plan provider may rely on a good faith, reasonable interpretation of the provisions of section 413(e) to which the final regulations relate. Compliance with the proposed regulations is considered reliance on a good faith, reasonable interpretation of the provisions of section 413(e) to which the final regulations relate.
8. ***Section 414(p)***:
   - Section 339 of the SECURE 2.0 Act amends the definition of "domestic relations order" in section 414(p)(1)(B) of the Code to include a domestic relations order issued pursuant to an Indian tribal domestic relations law.
9. ***Section 414(v)***:
   - Section 109 of the SECURE 2.0 Act amends section 414(v) of the Code to increase the annual limit on catch-up contributions, beginning with the 2025 taxable year, for individuals between ages 60 and 63. For non-SIMPLE plans, the increased limit is the greater of $10,000 or 150% of the regular catch-up limit for 2024, indexed for inflation. For SIMPLE plans, the increased limit is the greater of $5,000 or 150% of the regular catch-up limit for 2025, indexed for inflation.
10. ***Section 415***:
    - Section 116 of the SECURE Act amends section 415(c) of the Code to treat difficulty of care payments that are excluded from gross income as compensation for determining retirement contribution limitations.
    - Notice 2020-68 provides guidance with respect to the SECURE Act, including section 116 of the SECURE Act.
11. ***Section 416***:
    - Section 121(c)(3) of the SECURE 2.0 Act revises section 416(g)(4)(H) of the Code to provide that a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B) shall not be treated as a top-heavy plan.
    - Section 310 of the SECURE 2.0 Act adds new section 416(c)(2)(C) to the Code, under which employees not meeting the age or service requirements of section 410(a)(1) (without regard to subparagraph (B) thereof) may be excluded from consideration in determining whether a plan meets the top-heavy minimum benefit requirements in section 416(c)(2)(A) and (B).
12. ***Disaster-related Rules***:
    - Section 502 of the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. 115-63, 131 Stat. 1168 (2017), as amended by section 20201 of the BBA, provides special disaster-related rules for use of retirement funds.

[9] The IRS expects that most plans will not need to be amended to reflect section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, as most plans will not include language that contradicts section 209.

- Section 11028 of the Tax Cuts and Jobs Act of 2017, Pub. L. 115-97, 131 Stat. 2054 (2017), provides special disaster-related rules for use of retirement funds.
- Section 20101 of the BBA provides special disaster-related rules for use of retirement funds.
- Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the FCAA 2020, provides special disaster-related rules for use of retirement funds.
- Section 2202 of the CARES Act, as modified by section 280 of Division N of the CAA 2021, provides special rules for coronavirus-related distributions and plan loans made to qualified individuals.
- Notice 2020-50, 2020-28 IRB 35, provides guidance relating to the application of section 2202 of the CARES Act for qualified individuals and eligible retirement plans.
- Section 302 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides special disaster-related rules for use of retirement funds.
- Section 331 of the SECURE 2.0 Act provides permanent special rules governing plan distributions, recontributions, and loans to participants affected by qualified federally declared major disasters.

VI. DRAFTING INFORMATION

The principal author of this notice is Jessica Weinberger of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Employee Plans at (513) 975-6319 (not a toll-free number).

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2024-4

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from November 2023 data is in Table 2023-11 at the end of this notice. The spot first, second, and third segment rates for the month of November 2023 are, respectively, 5.50, 5.76, and 5.83.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For this purpose, any 25-year average segment rate that is less than 5% is deemed to be 5%. The 25-year average segment rates for plan years beginning in 2022, 2023 and 2024 were published in Notice 2021-54, 2021-41 I.R.B. 457, Notice 2022-40, 2022-40 I.R.B. 266, and Notice 2023-66, 2023-40 I.R.B. 992, respectively. The applicable minimum and maximum percentages are 95% and 105% for plan years beginning in 2022, 2023 and 2024.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for December 2023 without adjustment for the 25-year average segment rate limits are as follows:

24-Month Average Segment Rates Without 25-Year Average Adjustment

Applicable Month	First Segment	Second Segment	Third Segment
December 2023	4.21	4.86	4.87

[1] Pursuant to § 433(h)(3)(A), the third segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code. The 24-month averages applicable for December 2023, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2022	December 2023	4.75	5.18	5.92
2023	December 2023	4.75	5.00	5.74
2024	December 2023	4.75	4.87	5.59

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for November 2023 is 4.66 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2053 determined each day through November 8, 2023 and the yield on the 30-year Treasury bond maturing in November 2053 determined each day for the balance of the month. For plan years beginning in December 2023, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

Treasury Weighted Average Rates

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
December 2023	3.08	2.77 to 3.23

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for November 2023 are as follows:

Minimum Present Value Segment Rates

Month	First Segment	Second Segment	Third Segment
November 2023	5.50	5.76	5.83

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Tony Montanaro at 626-927-1475 (not toll-free numbers).

Table 2023-11
Monthly Yield Curve for November 2023
Derived from November 2023 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	5.78	20.5	5.87	40.5	5.83	60.5	5.82	80.5	5.81
1.0	5.68	21.0	5.86	41.0	5.83	61.0	5.82	81.0	5.81
1.5	5.60	21.5	5.86	41.5	5.83	61.5	5.82	81.5	5.81
2.0	5.52	22.0	5.86	42.0	5.83	62.0	5.82	82.0	5.81
2.5	5.47	22.5	5.86	42.5	5.83	62.5	5.82	82.5	5.81
3.0	5.42	23.0	5.85	43.0	5.83	63.0	5.82	83.0	5.81
3.5	5.40	23.5	5.85	43.5	5.83	63.5	5.82	83.5	5.81
4.0	5.38	24.0	5.85	44.0	5.83	64.0	5.82	84.0	5.81
4.5	5.38	24.5	5.85	44.5	5.82	64.5	5.82	84.5	5.81
5.0	5.39	25.0	5.85	45.0	5.82	65.0	5.82	85.0	5.81
5.5	5.41	25.5	5.85	45.5	5.82	65.5	5.82	85.5	5.81
6.0	5.44	26.0	5.84	46.0	5.82	66.0	5.82	86.0	5.81
6.5	5.47	26.5	5.84	46.5	5.82	66.5	5.82	86.5	5.81
7.0	5.51	27.0	5.84	47.0	5.82	67.0	5.82	87.0	5.81
7.5	5.55	27.5	5.84	47.5	5.82	67.5	5.82	87.5	5.81
8.0	5.58	28.0	5.84	48.0	5.82	68.0	5.82	88.0	5.81
8.5	5.62	28.5	5.84	48.5	5.82	68.5	5.82	88.5	5.81
9.0	5.66	29.0	5.84	49.0	5.82	69.0	5.82	89.0	5.81
9.5	5.69	29.5	5.84	49.5	5.82	69.5	5.82	89.5	5.81
10.0	5.72	30.0	5.84	50.0	5.82	70.0	5.82	90.0	5.81
10.5	5.75	30.5	5.84	50.5	5.82	70.5	5.82	90.5	5.81
11.0	5.77	31.0	5.84	51.0	5.82	71.0	5.82	91.0	5.81
11.5	5.79	31.5	5.83	51.5	5.82	71.5	5.82	91.5	5.81
12.0	5.81	32.0	5.83	52.0	5.82	72.0	5.82	92.0	5.81
12.5	5.83	32.5	5.83	52.5	5.82	72.5	5.82	92.5	5.81
13.0	5.84	33.0	5.83	53.0	5.82	73.0	5.82	93.0	5.81
13.5	5.85	33.5	5.83	53.5	5.82	73.5	5.82	93.5	5.81
14.0	5.86	34.0	5.83	54.0	5.82	74.0	5.82	94.0	5.81
14.5	5.87	34.5	5.83	54.5	5.82	74.5	5.81	94.5	5.81
15.0	5.87	35.0	5.83	55.0	5.82	75.0	5.81	95.0	5.81
15.5	5.88	35.5	5.83	55.5	5.82	75.5	5.81	95.5	5.81
16.0	5.88	36.0	5.83	56.0	5.82	76.0	5.81	96.0	5.81
16.5	5.88	36.5	5.83	56.5	5.82	76.5	5.81	96.5	5.81
17.0	5.88	37.0	5.83	57.0	5.82	77.0	5.81	97.0	5.81
17.5	5.88	37.5	5.83	57.5	5.82	77.5	5.81	97.5	5.81
18.0	5.88	38.0	5.83	58.0	5.82	78.0	5.81	98.0	5.81
18.5	5.88	38.5	5.83	58.5	5.82	78.5	5.81	98.5	5.81
19.0	5.87	39.0	5.83	59.0	5.82	79.0	5.81	99.0	5.81
19.5	5.87	39.5	5.83	59.5	5.82	79.5	5.81	99.5	5.81
20.0	5.87	40.0	5.83	60.0	5.82	80.0	5.81	100.0	5.81

Section 45W Commercial Clean Vehicles and Incremental Cost for 2024

Notice 2024-5

SECTION 1. PURPOSE

This notice provides a safe harbor regarding the incremental cost of certain qualified commercial clean vehicles placed in service in calendar year 2024 for purposes of the credit for qualified commercial clean vehicles under § 45W of the Internal Revenue Code (Code).[1] This notice also requests comments regarding additional types or classes of vehicles that should be included in the safe harbor in the future.

SECTION 2. BACKGROUND

Section 13403(a) of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022, added § 45W to the Code to allow a credit for qualified commercial clean vehicles (§ 45W credit), which is effective for vehicles acquired after December 31, 2022, and before January 1, 2033.

For purposes of § 38, § 45W(a) allows a taxpayer a § 45W credit for the purchase of each qualified commercial clean vehicle, as defined in § 45W(c), placed in service by the taxpayer during the taxable year. The amount of the § 45W credit for each qualified commercial clean vehicle is the *lesser* of (1) 30 percent of the taxpayer's basis in the vehicle in the case of a vehicle not powered by a gasoline or diesel internal combustion engine (15 percent in any other case), or (2) the incremental cost of the vehicle. See § 45W(b)(1). Under § 45W(b)(4), the maximum credit allowed is $7,500 in the case of a qualified commercial clean vehicle that has a gross vehicle weight rating of less than 14,000 pounds, and $40,000 for all other vehicles.

Section 45W(b)(2) provides that the incremental cost of a qualified commercial clean vehicle is the excess of the purchase price of such vehicle over the price of a comparable vehicle. A comparable vehicle with respect to any qualified commercial clean vehicle is any vehicle that is powered solely by a gasoline or diesel internal combustion engine and is comparable in size and use to such qualified commercial clean vehicle. See § 45W(b)(3).

A *qualified commercial clean vehicle* under § 45W(c) means (1) a street vehicle and (2) mobile machinery as defined in § 4053(8). For purposes of § 45W(c), a *street vehicle* is a vehicle that is: (a) treated as a motor vehicle for purposes of title II of the Clean Air Act; (b) manufactured primarily for use on public streets, roads, and highways; and (c) not a vehicle operated exclusively on a rail or rails.

On December 29, 2022, the Internal Revenue Service (IRS) released Notice 2023-9, 2023-3 I.R.B. 402 (January 17, 2023), which provides a safe harbor regarding the incremental cost of certain qualified commercial clean vehicles for purposes of the §45W credit for qualified commercial clean vehicles placed in service in calendar year 2023, based on an incremental cost analysis by the U.S. Department of Energy (DOE) across classes of street vehicles conducted in December 2022 (DOE Analysis).[2] The DOE Analysis modeled the costs of representative electric vehicles, which include street electric vehicles, and comparable street internal combustion engine vehicles. For this purpose, *street electric vehicles* include battery electric, plug-in hybrid electric, fuel cell electric cars, SUVs, minivans, and pickup trucks.

The DOE has amended the DOE Analysis in December 2023 to incorporate minor modifications. The minor modifications did not change the results of the analysis conducted in December 2022. For qualified commercial clean vehicles placed in service in calendar year 2024, the Department of the Treasury (Treasury Department) and the IRS have concluded it is appropriate for the IRS to rely on the DOE Analysis, as amended.[3]

Results of the DOE Analysis show that the modeled incremental cost of all street electric vehicles, other than compact car PHEVs,[4] that have a gross vehicle weight rating of less than 14,000 pounds will be greater than $7,500.

SECTION 3. SAFE HARBOR

The DOE Analysis calculated the incremental cost for compact car PHEVs, which include minicompact and subcompact cars, to be less than $7,500. For compact car PHEVs, the modeled incremental cost is $7,000. The IRS will accept a taxpayer's use of the modeled incremental cost published in the DOE Analysis to calculate the § 45W credit amount for compact car PHEVs placed in service during calendar year 2024.

In addition, the DOE Analysis provided an incremental cost analysis of current costs for several representative classes of street electric vehicles with a gross vehicle weight rating of 14,000 pounds or more. The IRS will accept a taxpayer's use of the incremental cost published in the DOE Analysis for the appropriate class of street electric vehicle to calculate the § 45W credit amount for clean vehicles placed in service during calendar year 2024.

For all street electric vehicles (other than compact, including minicompact and subcompact, car PHEVs) with a gross vehicle weight rating of less than 14,000 pounds, the results of the DOE Analysis lead the Treasury Department and the IRS to conclude that incremental cost will not limit the available § 45W credit amount for such vehicles placed in service in cal-

[1] Unless otherwise specified, all "Section" or "§" references are to sections of the Code.

[2] U.S. Department of Energy, "2022 Incremental Purchase Cost Methodology and Results for Clean Vehicles," December 2022, available at *https://www.energy.gov/sites/default/files/2022-12/2022.12.23%202022%20Incremental%20Purchase%20Cost%20Methodology%20and%20Results%20for%20Clean%20Vehicles.pdf.*

[3] U.S. Department of Energy, "Incremental Purchase Cost Methodology and Results for Clean Vehicles," originally published December 2022 and amended December 2023, available at *https://www.energy.gov/sites/default/files/2023-12/2023.12.18%20Incremental%20Purchase%20Cost%20Methodology%20and%20Results%20for%20Clean%20Vehicles%20pub%2012-2022%20amd%2012-2023%20Final_2.pdf.*

[4] Compact cars are defined as those with an interior volume index of less than 110 cubic feet, and for the purpose of the DOE analysis also include minicompact cars, subcompact cars, and compact cars as described in 40 CFR 600.315-08(a)(1)(ii), (iii), and (iv). PHEVs are defined as commercial clean vehicles that use a gasoline or diesel internal combustion engine and are propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 7 kilowatt hours (15 kilowatt hours in the case of a vehicle with a gross vehicle weight rating of 14,000 pounds or more) and are capable of being recharged from an external source of electricity. See § 45W(b)(1) and (c).

endar year 2024. Accordingly, the IRS will accept a taxpayer's use of $7,500 as the incremental cost for all street electric vehicles (other than compact, including minicompact and subcompact, car PHEVs) with a gross vehicle weight rating of less than 14,000 pounds to calculate the § 45W credit amount for vehicles placed in service during calendar year 2024.

SECTION 4. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments regarding additional classes or types of vehicles that should be considered for future safe harbors, in addition to the safe harbor described in this notice. In particular, the Treasury Department and the IRS request comments on classes or types of vehicles that are not adequately represented by the existing classes or types of vehicles listed in the DOE Analysis.

Written comments should be submitted by February 18, 2024. The subject line for the comments should include a reference to Notice 2024-5. Comments may be submitted electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2023-0061 in the search field on the regulations.gov homepage to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-5), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to the IRS's public docket on *https://www.regulations.gov*.

SECTION 5. EFFECT ON OTHER DOCUMENTS

This notice amplifies Notice 2023-9 by applying the safe harbor provisions that applied to vehicles placed in service in calendar year 2023 to vehicles placed in service in calendar year 2024.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice contact Chief Counsel on (202) 317-5254 (not a toll-free number).

Sustainable Aviation Fuel Credit; Lifecycle Greenhouse Gas Emissions Reduction Percentage and Certification of Sustainability Requirements Related to the Clean Air Act; Safe Harbors

Notice 2024-6

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) provided initial guidance on December 19, 2022, regarding the sustainable aviation fuel (SAF) credits in Notice 2023-6, 2023-2 I.R.B. 328. Such credits are collectively referred to as a "SAF credit" or the "SAF credits." This notice provides additional guidance with respect to the SAF credits under §§ 40B and 6426(k) of the Internal Revenue Code.[1]

Section 2 of this notice provides relevant background and an overview. Section 3 of this notice provides safe harbors for calculating the lifecycle greenhouse gas emissions reduction percentage under § 40B(e)(2) and for certifying the related requirements under § 40B(f)(2)(A) (sustainability requirements). Section 4 of this notice describes Appendix A of this notice, which contains a Model Certificate for SAF Synthetic Blending Component and supersedes Appendix B of Notice 2023-6. A certificate is required under section 6.04(2) of Notice 2023-6 in order to make a claim with respect to a SAF qualified mixture under § 34(a)(3), 40B, 6426(k), or 6427(e)(1). Section 5 of this notice explains that the existing Greenhouse gases, Regulated Emissions, and Energy use in Transportation (GREET) model of the Argonne National Laboratory (ANL-GREET model)[2] is a methodology that does not satisfy the requirements to calculate the emissions reduction percentage under § 40B(e)(2). To date, no GREET-based model has been identified as satisfying the applicable requirements.[3]

Finally, section 6 of this notice announces that the Department of Energy (DOE) is collaborating with other federal agencies to develop a modified version of the GREET model that would satisfy the requirements of § 40B(e)(2) (§ 40B(e)(2) GREET model). The agencies developing the § 40B(e)(2) GREET model currently anticipate it to be released in early 2024.

SECTION 2. BACKGROUND AND OVERVIEW

.01 *Applicable law generally*. Section 13203 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022, added § 40B and amended §§ 38(b), 40A, 87, 4101(a), 6426, and 6427(e)(1), to establish the SAF credits, effective for certain fuel mixtures containing SAF sold or used after December 31, 2022. The SAF credit is equal to the product of (1) the number of gallons of SAF in a qualified mixture and (2) the sum of (A) $1.25 and (B) the "applicable supplementary amount" with respect to such SAF. In general, the applicable supplementary

[1] Unless otherwise specified, all references to "section" or "§" are references to sections of the Internal Revenue Code.

[2] The "ANL-GREET model" refers to the following lifecycle analysis model: Wang, Michael, et al. (2022). Greenhouse gases, Regulated Emissions, and Energy use in Technologies Model ® (2022 Excel). Computer Software. USDOE Office of Energy Efficiency and Renewable Energy (EERE). 10 Oct. 2022. Web. *https://www.osti.gov/doecode/biblio/80997*.

[3] Letter from Joseph Goffman, Principal Deputy Assistant Administrator for the Office of Air and Radiation, U.S. Environmental Protection Agency, to Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of Treasury (December 13, 2023) (EPA Letter), available at *https://home.treasury.gov/system/files/136/Final-EPA-letter-to-UST-on-SAF-signed.pdf*.

amount increases the $1.25 base credit by $0.01 for each percentage point by which the emissions reduction percentage of the SAF exceeds 50 percent, for a maximum increase of $0.50. *See* §§ 40B(b) and 6426(k).

Among a number of requirements, under § 40B(d)(1)(D) and (e), SAF must be certified to have a lifecycle greenhouse gas emissions reduction percentage of at least 50 percent. Section 40B(e) defines the term "lifecycle greenhouse gas emissions reduction percentage" (emissions reduction percentage) to mean, with respect to any sustainable aviation fuel, the percentage reduction in lifecycle greenhouse gas emissions achieved by such fuel, as compared with petroleum-based jet fuel, as defined in accordance with (1) the most recent Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) that has been adopted by the International Civil Aviation Organization (ICAO) with the agreement of the United States or (2) any similar methodology that satisfies the criteria under § 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H), as in effect on August 16, 2022) (CAA).

Section 40B(f)(2)(A) requires a producer or importer of SAF to provide certification (in the form and manner prescribed by the Secretary of the Treasury or her delegate (Secretary)) from an unrelated party demonstrating compliance with (i) any general requirements, supply chain traceability requirements, and information transmission requirements established under CORSIA as described in § 40B(e)(1), or (ii) in the case of any similar methodology established under § 40B(e)(2), requirements similar to the sustainability requirements described in § 40B(f)(2)(A)(i). Section 40B(f)(2)(B) requires SAF producers or importers to provide such other information with respect to such fuel as the Secretary may require for purposes of carrying out § 40B.

.02 *Notice 2023-6*. Notice 2023-6 provides guidance on the SAF credits and related credit and payment rules under §§ 34(a)(3), 38, 87, and 6427(e)(1). Notice 2023-6 also provides guidance related to the registration requirements under § 4101 for persons producing or importing SAF. For definitions of terms used in this notice and procedures for claiming a SAF credit, *see* Notice 2023-6.

Sections 4.04 and 5.01(4) of Notice 2023-6 include CORSIA-based safe harbors for determining the emissions reduction percentage under § 40B(e)(1) and for providing an unrelated party certification of sustainability requirements under § 40B(f)(2)(A)(i). However, Notice 2023-6 does not provide guidance regarding the calculation of the emissions reduction percentage under § 40B(e)(2) or the associated unrelated party certification of sustainability requirements under § 40B(f)(2)(A)(ii).

.03 *Sections 3 through 6 of this notice*. The Treasury Department and the IRS developed the guidance set forth in sections 3 through 5 of this notice, in consultation with the Environmental Protection Agency (EPA) and other agencies, to provide safe harbors for using the EPA's Renewable Fuel Standard (RFS) program to calculate the emissions reduction percentage under § 40B(e)(2) and RFS guidance to certify related sustainability requirements under § 40B(f)(2)(A)(ii), and to address other models. Section 6 of this notice announces the § 40B(e)(2) GREET model is expected in early 2024.

SECTION 3. LIFECYCLE GREENHOUSE GAS EMISSIONS REDUCTION PERCENTAGE UNDER § 40B(e)(2) AND CERTIFICATION OF SUSTAINABILITY REQUIREMENTS UNDER § 40B(f)(2)(A)(ii); RENEWABLE FUEL STANDARD PROGRAM; SAFE HARBORS

.01 *Calculating the lifecycle greenhouse gas emissions reduction percentage under § 40B(e)(2)*.

(1) *Renewable Fuel Standard program*. Section 40B(e)(2) provides that the emissions reduction percentage may be calculated in accordance with any methodology similar to the most recent CORSIA that satisfies the criteria under § 211(o)(1)(H) of the CAA (CAA § 211(o)(1)(H) criteria). Section 211(o)(1)(H) of the CAA defines the term "lifecycle greenhouse gas emissions" to mean "the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the [EPA] Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential." Section 211(o)(2)(A) of the CAA, as added by § 1501(a)(2) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1067 (2005) and amended by § 202(a)(1) of the Energy Independence and Security Act of 2007, Public Law 110-140, 121 Stat. 1492, 1521-22 (2007), requires the Administrator of the EPA to promulgate regulations implementing the statutory requirements of the RFS program, which include requirements related to greenhouse gas emissions reduction thresholds for renewable fuels. Regulations for the RFS program are codified under 40 CFR Part 80: Regulation of Fuels and Fuel Additives. Under the RFS program, the EPA evaluates a biofuel's lifecycle greenhouse gas emissions to determine whether a particular fuel meets a 20-percent, a 50-percent, or a 60-percent emissions reduction from a gasoline or diesel fuel baseline, as applicable.[4] *See* 42 U.S.C. 7545(o)(1)(B) – (E); 40 CFR 80.2.

The EPA's methodology for determining lifecycle greenhouse gas emissions under the RFS program was specifically designed to satisfy the statutory definition in § 211(o)(1)(H) of the CAA. The methodology employed by the RFS program, consistent with that definition, is similar to the CORSIA methodology as both are methodologies that evaluate the "full fuel lifecycle, including all stages of fuel and

[4] Although § 40B(e) requires use of a petroleum-based jet fuel baseline, the Treasury Department and the IRS conclude that it is reasonable to use the RFS program's diesel fuel baseline for purposes of the safe harbor in section 3.01(2) of this notice because the differences are small compared to the inherent lack of precision with respect to lifecycle greenhouse gas emissions calculations.

feedstock production" through to the end use of the finished fuel.[5]

(2) *Safe harbor based on certain RFS program determinations*. With respect to any SAF qualified mixture produced under ASTM International (ASTM) D7566, the IRS will accept an emissions reduction percentage of the SAF synthetic blending component for a jet fuel that qualifies as renewable fuel under the RFS program. Rows F, G, H, L, M, and P in Table 1 to 40 CFR 80.1426 list the generally applicable fuel pathways and the D-codes under the RFS program for jet fuel, which are available at *https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel#generally*.

Specifically, a SAF synthetic blending component that has generated biomass-based diesel (D-code 4) or advanced biofuel (D-code 5) renewable identification numbers (RINs) under the RFS program that have been validated under a quality assurance plan (QAP) will be assigned a 50-percent emissions reduction percentage. *See* 40 CFR 80.2. A SAF synthetic blending component that has generated valid cellulosic biofuel (D-code 3) or cellulosic diesel (D-code 7) RINs under the RFS program that have been validated under a QAP will be assigned a 60-percent emissions reduction percentage. *See* 40 CFR 80.2 and 80.1425(g).

The EPA has also made facility-specific determinations for renewable jet fuel pathways under the RFS program, which are available at *https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel#completed*. The IRS will also accept the emissions reduction percentage for a SAF synthetic blending component for a jet fuel that has generated a D-code 3, 4, 5, or 7 RIN and that has been validated under a QAP pursuant to these approved facility-specific pathways.

(3) *Emissions reduction percentages other than 50 percent or 60 percent described in the safe harbor will not be accepted*. For some fuel pathways, the EPA has published specific lifecycle analysis point estimates (or a range of estimates) to support its determinations under the RFS program. Those estimates are only used to determine whether a particular fuel meets either the 50-percent threshold or the 60-percent threshold under the RFS program. Using those point estimates to calculate an emissions reduction percentage beyond 50 percent or 60 percent would extend those estimates beyond their intended uses. Therefore, the IRS will not accept those point estimates (or range of estimates) for the safe harbor provided in section 3.01(2) of this notice.

(4) *Example for calculating the amount of the SAF credit using the RFS safe harbor in section 3.01(2) of this notice*. A blender used 100,000 gallons of a SAF synthetic blending component to produce a SAF qualified mixture. The SAF synthetic blending component has generated cellulosic diesel (D-code 7) RINs under a pathway that qualifies under the RFS program, and these RINs were validated under a QAP. The final rule that added the pathway to the list of approved renewable fuel production pathways in the RFS regulations states that the jet fuel's emissions reduction percentage compared to the baseline is 64 percent. However, for purposes of calculating the applicable supplementary amount, the emissions reduction percentage will be deemed to be 60 percent under the safe harbor described in section 3.01(2) of this notice, which corresponds to the emissions reduction threshold the fuel was required to meet to qualify as cellulosic diesel and thus generate D-code 7 RINs.

The per-gallon amount of the SAF credit with respect to the SAF qualified mixture described above is calculated by adding $1.25 and the applicable supplementary amount, if any, with respect to the SAF synthetic blending component used to produce the SAF qualified mixture. Here, the SAF synthetic blending component qualifies for the applicable supplementary amount because the emissions reduction percentage is deemed to be 60 percent. The applicable supplementary amount is calculated by subtracting 50 from the emissions reduction percentage (60), and then multiplying by the applicable rate ($0.01): (60 – 50) × $0.01 = $0.10 per gallon.

The total amount of the SAF credit is calculated as follows: 100,000 gallons × ($1.25 + $0.10) = $135,000.00.

.02 *Unrelated party certification of sustainability requirements under § 40B(f)(2)(A)(ii); RFS Q-RIN safe harbor*. In the case of a methodology established under § 40B(e)(2) (relating to the CAA), § 40B(f)(2)(A)(ii) provides that no SAF credit is allowed with respect to any SAF unless the producer or importer of such fuel provides certification from an unrelated party demonstrating compliance with requirements similar to the requirements described in § 40B(f)(2)(A)(i) (relating to the CORSIA methodology). *See also* § 6426(k)(3). A Q-RIN is a RIN verified by a registered independent third-party auditor using a QAP that has been approved under 40 CFR 80.1469(c) following the audit process described in 40 CFR 80.1472. *See generally* 40 CFR Part 80: Subpart M. A Q-RIN signifies that the fuel has been produced pursuant to an EPA-approved pathway that the EPA has determined meets the specified lifecycle greenhouse gas emissions reduction threshold requirement.

With respect to any SAF qualified mixture produced under ASTM D7566, the IRS will consider a producer of a SAF synthetic blending component to meet the certification of sustainability requirements of § 40B(f)(2)(A)(ii) if the SAF synthetic blending component has generated a Q-RIN with an eligible D-code. For this purpose, an eligible D-Code means that a D-code 3, 4, 5, or 7 RIN was generated for the SAF synthetic blending component and the RIN has been verified under a QAP.

To demonstrate compliance with § 40B(f)(2)(A)(ii), the registered producer of the SAF synthetic blending component must record a valid Q-RIN or Q-RINs on the Certificate for SAF Synthetic Blending Component required under section 4 of this notice and sections 6.04(2) and 7.02 of Notice 2023-6 for the particular volume of fuel to which the certificate relates.

SECTION 4. CERTIFICATE FOR SAF SYNTHETIC BLENDING COMPONENT

Appendix B of Notice 2023-6 contains a Model Certificate for SAF Syn-

[5] EPA Letter, available at *https://home.treasury.gov/system/files/136/Final-EPA-letter-to-UST-on-SAF-signed.pdf*.

thetic Blending Component. Appendix A of this notice supersedes the model certificate in Appendix B of Notice 2023-6. For claims filed after December 15, 2023, claimants must submit with their claim a Certificate for SAF Synthetic Blending Component in substantially the same form as the model certificate in Appendix A of this notice.

SECTION 5. ANL-GREET

There are different methodologies that may be used to calculate lifecycle greenhouse gas emissions, such as those established by CORSIA and RFS. A widely used model for calculating an emissions reduction percentage is the GREET model. There are several existing GREET-based models such as CA-GREET used by the California Air Resources Board for the California Low Carbon Fuel Standard, and ICAO-GREET used by CORSIA,[6] but the core version is the ANL-GREET model developed by Argonne National Laboratory, with DOE support, in 1994. The ANL-GREET model is updated annually and produces a lifecycle greenhouse gas emissions value that is comparable to the lifecycle greenhouse gas emissions of petroleum-based fuels, including jet fuel.

Section 40B(e)(2) allows the emissions reduction percentage to be determined in accordance with a methodology that is "similar" to CORSIA and satisfies the CAA § 211(o)(1)(H) criteria. The EPA has previously determined, in the context of the RFS program in which it has interpreted and implemented § 211(o)(1)(H) of the CAA, that the 2010 version of the ANL-GREET model by itself is not sufficient to calculate lifecycle greenhouse gas emissions. The EPA has further advised that, as relevant to § 40B(e)(2), the only current methodology that it has determined satisfies the CAA § 211(o)(1)(H) criteria is the methodology, modeling, and analysis the EPA developed in 2010 for the RFS program and applied in subsequent RFS rulemakings.[7] Based on those consultations, the Treasury Department and the IRS conclude that the ANL-GREET model and other existing GREET-based models do not satisfy the applicable requirements.

SECTION 6. § 40B(e)(2) GREET MODEL

The DOE is collaborating with other federal agencies to develop the §40B(e)(2) GREET model to calculate the emissions reduction percentage under § 40B(e)(2). The collaborating agencies anticipate that the § 40B(e)(2) GREET model will be available in early 2024, and will satisfy the statutory requirements of § 40B(e)(2). After the § 40B(e)(2) GREET model is released, and subject to any further guidance from the Treasury Department and the IRS, it is anticipated that taxpayers will be able to use the § 40B(e)(2) GREET model to calculate the emissions reduction percentage for SAF sold or used after December 31, 2022, and prior to January 1, 2025. A registration applicant using the § 40B(e)(2) GREET model would also need to meet all statutory requirements under § 40B, including registration, sustainability, traceability, and unrelated party certification.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Appendix B of Notice 2023-6 is superseded by Appendix A of this notice.

SECTION 8. PAPERWORK REDUCTION ACT

Sections 3 and 4 of this notice set forth a collection of information to be provided to the IRS to determine whether a claimant qualifies for a SAF credit. Any third-party disclosure burden associated with this notice is accounted for in the Office of Management and Budget (OMB) Control Number 1545-1835 that is associated with Form 637, *Application for Registration (For Certain Excise Tax Activities)*. This notice does not substantially alter any previously accounted for information collection requirements within OMB Control Number 1545-1835 and does not create new collection requirements not already approved by the OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

SECTION 9. DRAFTING INFORMATION

The principal authors of this notice are Camille Edwards Bennehoff and Jennifer Golden of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

[6] Other existing GREET-based models include, but are not limited to, Washington GREET and Oregon GREET.
[7] EPA Letter, available at *https://home.treasury.gov/system/files/136/Final-EPA-letter-to-UST-on-SAF-signed.pdf*.

Appendix A – Model Certificate for SAF Synthetic Blending Component

CERTIFICATE FOR SAF SYNTHETIC BLENDING COMPONENT

Certificate Identification Number: _____

(To support a claim related to sustainable aviation fuel (SAF)
under the Internal Revenue Code (Code))

Note: In the case of a claimant that is also the producer or importer of the SAF synthetic blending component, the information required on lines 2, 4, and 10 of the model certificate is not applicable and those lines do not need to be completed.

The undersigned producer or importer of a SAF synthetic blending component (Producer) hereby certifies the following under penalties of perjury:

1. Producer's name, address, and employer identification number (EIN).

_____

_____

_____

2. Name, address, and EIN of person buying the SAF synthetic blending component from Producer.

_____

_____

_____

3. Name and address of the unrelated party certifying compliance with the general requirements, supply chain traceability requirements, and information transmission requirements established under the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) or similar requirements for methodologies established under section 211(o)(1)(H) of the Clean Air Act (42 U.S.C. 7545(o)(1)(H)).

_____

_____

_____

4. Date and location of sale to buyer.

_____

5. This certificate applies to _____ gallons of a SAF synthetic blending component.

6. Producer certifies that the SAF synthetic blending component to which this certificate relates:

   (A) Meets the requirements of an ASTM International (ASTM) D7566 Annex (the certificate of analysis reference number demonstrating conformance with such standard is _____, dated _____);

   (B) Is not derived from co-processing an applicable material (monoglycerides, diglycerides, triglycerides, free fatty acids, or fatty acid esters) or materials derived from an applicable material with a feedstock that is not biomass (as defined in section 45K(c)(3) of the Code);

(C) Is not derived from palm fatty acid distillates or petroleum; and

(D) Has been certified in accordance with section 40B(e) of the Code as having a lifecycle greenhouse gas emissions reduction percentage of at least 50 percent.

7. The lifecycle greenhouse gas emissions reduction percentage of the SAF synthetic blending component to which this certificate relates is _____. (This percent must be rounded down to the nearest whole percent.)

(Check one)

_____ The lifecycle greenhouse gas emissions reduction percentage is calculated from the "Default Life Cycle Emissions Values for CORSIA Eligible Fuels" in the most recently published version by the International Civil Aviation Organization (ICAO).

_____ The lifecycle greenhouse gas emissions reduction percentage is calculated from the "CORSIA Methodology for Calculating Actual Life Cycle Emission Values" in the most recently published version by the ICAO.

_____ The lifecycle greenhouse gas emissions reduction percentage is deemed to be 50% because the fuel is biomass-based diesel (D-code 4) or advanced biofuel (D-code 5) under the Renewable Fuel Standard program for which a Q-RIN was generated.

_____ The lifecycle greenhouse gas emissions reduction percentage is deemed to be 60% because the fuel is cellulosic biofuel (D-code 3) or cellulosic diesel (D-code 7) under the Renewable Fuel Standard program for which a Q-RIN was generated.

_____ The lifecycle greenhouse gas emissions reduction percentage is calculated according to a methodology that satisfies the requirements of section 40B(e) of the Code. Describe method: _____
_____

_____

_____

8. The applicable supplementary amount with respect to the SAF synthetic blending component to which this certificate relates is _____. In no event can the applicable supplementary amount exceed $0.50.

9. This certificate applies to the following sale:

_____ Invoice or delivery ticket number

_____ Total number of gallons of the SAF synthetic blending component sold under that invoice or delivery ticket number (including SAF synthetic blending component not covered by this certificate)

_____ Total number of certificates issued for that invoice or delivery ticket number

10. Name, address, and EIN of reseller to whom certificate is issued (only in the case of certificates reissued to a reseller after the return of the original certificate).

_____

_____

_____

11. _____ Original Certificate Identification Number (only in the case of certificates reissued to a reseller after return of the original certificate).

12. Producer is registered as a sustainable aviation fuel (activity letter SA) producer or importer with registration number _____. Producer's registration has not been suspended or revoked by the Internal Revenue Service.

13. Q-RIN or Q-RINs (only in the case where the lifecycle greenhouse gas emissions reduction percentage is deemed because of the fuel's qualification under the Renewable Fuel Standard program).

_____

Producer understands that the fraudulent use of this certificate may subject Producer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____
Printed or typed name of person signing this certificate

_____
Title of person signing

_____

Signature and date signed

Relief from Additions to Tax for Certain Taxpayers' Failure to Timely Pay Income Tax for Taxable Years 2020 and 2021

Notice 2024-7

SECTION I. PURPOSE

This notice provides relief for certain taxpayers from additions to tax for the failure to pay income tax with respect to certain income tax returns for taxable years 2020 and 2021. These additions to tax for the failure to pay income tax will be waived or, to the extent previously assessed or paid, will be abated, refunded, or credited to other outstanding tax liabilities, as described in section III of this notice. Section III.D of this notice describes situations in which the relief provided in this notice does not apply.

SECTION II. BACKGROUND

Section 6651(a)(2) of the Internal Revenue Code (Code)[1] generally imposes an addition to the tax owed by a taxpayer for the failure to pay the amount shown as tax on a return required to be filed by the taxpayer, on or before the date prescribed for payment of such tax, including any extension of time for payment. Section 6651(a)(3) generally imposes an addition to the tax owed by the taxpayer for the failure to pay the amount required to be shown on a return that is not so shown within 21 calendar days from the date of notice and demand or 10 business days if the amount in the notice and demand is $100,000 or greater. Sections 6651(a)(2) and 6651(a)(3) apply to returns required to be filed under the authority of any provision of subchapter A of chapter 61 of the Code, (for example, §§ 6012 through 6017 requiring the filing of income tax returns) and do not apply to information returns required to be filed or furnished under part III of such subchapter (that is, §§ 6031 through 6056 of the Code). Sections 6651(a)(2) and 6651(a)(3) do not apply if the taxpayer can show that the failure to pay the tax shown or required to be shown on the return is due to reasonable cause and not due to willful neglect.

When a taxpayer does not fully pay a tax liability, the Internal Revenue Service (IRS) sends an initial balance due notice, which includes Notices CP14 and CP161.[2] An initial balance due notice informs the taxpayer of the amount of tax owed and instructs the taxpayer how to pay the tax liability. If the taxpayer does not pay the tax liability after receiving the initial notice, the IRS normally sends the taxpayer certain automated reminder notices.

On March 13, 2020, the President of the United States declared a national emergency in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic.[3] The same day, the President also issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (Emergency Declaration).[4] The Emergency Declaration instructed the Secretary of the Treasury "to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a)." In response, the Department of the Treasury (Treasury Department) and the IRS issued a series of notices and other guidance to provide relief to affected taxpayers.

On February 9, 2022, the IRS announced in IRS News Release IR-2022-31 (IR-2022-31) the temporary suspension of the mailing of certain automated reminder notices. The IRS did not suspend the mailing of initial balance due notices. The additions to tax for the failure to pay taxes owed under §§ 6651(a)(2) and 6651(a)(3) continued to accrue for taxpayers who did not fully pay their balance due.

The IRS will fully resume issuing automated reminder notices in calendar year 2024 for balances due for taxable years 2021 and earlier, thereby resuming the normal notice process for these taxable years. The Treasury Department and the IRS have determined that the relief described in section III of this notice will help certain taxpayers, who were not sent reminder notices during the temporary suspension of certain automated reminder notices, meet their Federal tax obligations.

SECTION III. GRANT OF RELIEF

Taxpayers described in section III.A of this notice (eligible taxpayers) who have filed tax returns specified in section III.B of this notice (eligible returns) will have the accrual of additions to tax for the failure to pay taxes owed for taxable year 2020 or 2021 waived for the relief period described in section III.C (relief period) or, to the extent previously assessed or paid, will have such additions to tax automatically abated, refunded, or credited to other outstanding tax liabilities, as appropriate, for the relief period. There is no need for taxpayers to request this relief. The IRS will issue a notice to each eligible taxpayer that reflects the updated amount owed and any refund or credit resulting from the automatic abatement. The relief granted in this notice applies to additions to tax under §§ 6651(a)(2) and 6651(a)(3) for the failure to pay taxes owed, but does not apply to any amount of interest that accrues as a result of any underpayment.

A. *Eligible Taxpayers*

The relief granted in this notice is available only to eligible taxpayers for accruals of additions to tax under §§ 6651(a)(2) and 6651(a)(3) for the failure to pay during the relief period. An "eligible taxpayer" is any taxpayer:

- Whose assessed income tax for taxable year 2020 or 2021, as of

[1] Unless otherwise specified, all "Section" or "§" references are to sections of the Code.

[2] Notice CP14, *Notice of Tax Due and Demand for Payment, Balance Due $5 or More, No Math Error*, is issued to a taxpayer who owes money on unpaid taxes, states the amount of tax owed, including interest and penalties, and requests payment within 21 days. Notice CP161, *Balance Due – Request for Payment or Notice of Unpaid Balance*, is issued to a taxpayer who has an unpaid balance due, and explains how the IRS calculated the amount due, and states the taxpayer should contact the IRS within 10 days if the taxpayer believes the IRS has made a mistake or to contact the IRS to make a payment arrangement.

[3] Proclamation 9994, 85 F.R. 15337 (March 18, 2020).

[4] March 13, 2020, letter from the President to Secretaries of the Departments of Homeland Security, the Treasury, and Health and Human Services and the Administrator of the Federal Emergency Management Agency, available at https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/.

December 7, 2023, is less than $100,000, excluding any applicable additions to tax, penalties, or interest;
- Who was issued an initial balance due notice (including, but not limited to Notice CP14 or Notice CP161) on or before December 7, 2023, for taxable year 2020 or 2021; and
- Who is otherwise liable during the relief period for accruals of additions to tax for the failure to pay under § 6651(a)(2) or 6651(a)(3) with respect to an eligible return for taxable year 2020 or 2021.

B. *Eligible Returns*

The relief granted in this notice is available only to eligible taxpayers who have filed an eligible return. An "eligible return" is one of the following income tax returns:

1. *Income Tax Returns of Individuals*:

- Form 1040, *U.S. Individual Income Tax Return*
- Form 1040-C, *U.S. Departing Alien Income Tax Return*
- Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*
- Form 1040-PR, *Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia*
- Form 1040-SR, *U.S. Tax Return for Seniors*
- Form 1040-SS, *U.S. Self-Employment Tax Return*

2. *Income Tax Returns of Trusts, Estates, Certain Taxable Corporations, and Certain Tax-Exempt Organizations*:

- Form 1120, *U.S. Corporation Income Tax Return*
- Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*
- Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*
- Form 1120-FSC, *U.S. Income Tax Return of Foreign Sales Corporation*
- Form 1120-H, *U.S. Income Tax Return for Homeowners Associations*
- Form 1120-L, *U.S. Life Insurance Company Income Tax Return*
- Form 1120-ND, *Return for Nuclear Decommissioning Funds and Certain Related Persons*
- Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*
- Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*
- Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*
- Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*
- Form 1120-S, *U.S. Income Tax Return for an S Corporation*
- Form 1120-SF, *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*
- Form 1041, *U.S. Income Tax Return for Estates and Trusts*
- Form 1041-N, *U.S. Income Tax Return for Electing Alaska Native Settlement Trusts*
- Form 1041-QFT, *U.S. Income Tax Return for Qualified Funeral Trusts*
- Form 990-T, *Exempt Organization Business Income Tax Return*

C. *Relief Period*

For purposes of the relief granted in this notice, the "relief period" is the period that begins on the date the IRS issued an initial balance due notice to the eligible taxpayer, or February 5, 2022, whichever is later, and ends on March 31, 2024. Eligible taxpayers will remain liable for any addition to tax for the failure to pay tax that accrued before or after the relief period. Eligible taxpayers will also remain liable for interest that accrues during the relief period as a result of any underpayment of tax for taxable year 2020 or 2021.

D. *Exceptions to Relief*

The relief described in this notice does not apply to any addition to tax, penalty, or interest that is not specifically listed in the grant of relief under section III of this notice. In addition, the relief described in section III of this notice is not available with respect to any return for which the penalty for fraudulent failure to file under § 6651(f) or the penalty for fraud under § 6663 applies. The relief described in section III of this notice also does not apply to any addition to tax for the failure to pay in an offer in compromise under § 7122 that is accepted by the IRS because acceptance of the offer conclusively settles all of the liabilities in the offer under § 301.7122-1(e)(5) of the Procedure and Administration Regulations (26 CFR part 301). Finally, the relief described in section III of this notice does not apply to any addition to tax for the failure to pay that is settled in a closing agreement under § 7121 or finally determined in a judicial proceeding.

SECTION IV. DRAFTING INFORMATION

The principal author of this notice is Jamie Song of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Jamie Song at (202) 317-6845 (not a toll-free number).

2024 Standard Mileage Rates

Notice 2024-08

SECTION 1. PURPOSE

This notice provides the optional 2024 standard mileage rates for taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This notice also provides the amount taxpayers must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate (FAVR) plan. Additionally, this notice provides the maximum fair market value (FMV) of employer-provided automobiles first made available to employees for personal use in calendar year 2024 for which employers may use the fleet-average val-

uation rule in § 1.61-21(d)(5)(v) or the vehicle cents-per-mile valuation rule in § 1.61-21(e).[1]

SECTION 2. BACKGROUND

Rev. Proc. 2019-46, 2019-49 I.R.B. 1301, provides rules for computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes, and for substantiating, under § 274(d) and § 1.274-5, the amount of ordinary and necessary business expenses of local transportation or travel away from home. Taxpayers using the standard mileage rates must comply with Rev. Proc. 2019-46. However, a taxpayer is not required to use the substantiation methods described in Rev. Proc. 2019-46, but instead may substantiate using actual allowable expense amounts if the taxpayer maintains adequate records or other sufficient evidence.

An independent contractor conducts an annual study for the Internal Revenue Service of the fixed and variable costs of operating an automobile to determine the standard mileage rates for business, medical, and moving use reflected in this notice. The standard mileage rate for charitable use is set by § 170(i).

Longstanding regulations under § 61 provide special valuation rules for employer-provided automobiles. The amount that must be included in the employee's income and wages for the personal use of an employer-provided automobile generally is determined by reference to the automobile's FMV. If an employer chooses to use a special valuation rule, the special value is treated as the FMV of the benefit for income tax and employment tax purposes. Section 1.61-21(b)(4). Two such special valuation rules, the fleet-average valuation rule and the vehicle cents-per-mile valuation rule, are set forth in § 1.61-21(d)(5)(v) and § 1.61-21(e), respectively. These two special valuation rules are subject to limitations, including that they may be used only in connection with automobiles having values that do not exceed a maximum amount set forth in the regulations.

SECTION 3. STANDARD MILEAGE RATES

The standard mileage rate for transportation or travel expenses is 67 cents per mile for all miles of business use (business standard mileage rate). See section 4 of Rev. Proc. 2019-46. However, § 11045 of Public Law 115-97, 131. Stat. 2054 (December 22, 2017), commonly known as the Tax Cuts and Jobs Act (TCJA) suspends all miscellaneous itemized deductions that are subject to the two-percent of adjusted gross income floor under § 67, including unreimbursed employee travel expenses, for taxable years beginning after December 31, 2017, and before January 1, 2026. Thus, the business standard mileage rate provided in this notice cannot be used to claim an itemized deduction for unreimbursed employee travel expenses during the suspension. Notwithstanding the foregoing suspension of miscellaneous itemized deductions, deductions for expenses that are deductible in determining adjusted gross income are not suspended. For example, members of a reserve component of the Armed Forces of the United States (Armed Forces), state or local government officials paid on a fee basis, and certain performing artists are entitled to deduct unreimbursed employee travel expenses as an adjustment to total income on line 12 of Schedule 1 of Form 1040 (2023), *U.S. Individual Income Tax Return*, not as an itemized deduction on Schedule A of Form 1040 (2023), and therefore may continue to use the business standard mileage rate.

The standard mileage rate is 14 cents per mile for use of an automobile in rendering gratuitous services to a charitable organization under § 170. See section 5 of Rev. Proc. 2019-46.

The standard mileage rate is 21 cents per mile for use of an automobile: (1) for medical care described in § 213; or (2) as part of a move for which the expenses are deductible under § 217(g). See section 5 of Rev. Proc. 2019-46. Section 11049 of the TCJA suspends the deduction for moving expenses for taxable years beginning after December 31, 2017, and before January 1, 2026. However, the suspension does not apply to members of the Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station. Thus, except for taxpayers to whom § 217(g) applies, the standard mileage rate provided in this notice is not applicable for the use of an automobile as part of a move occurring during the suspension.

SECTION 4. BASIS REDUCTION AMOUNT

For automobiles a taxpayer uses for business purposes, the portion of the business standard mileage rate treated as depreciation is 27 cents per mile for 2020, 26 cents per mile for 2021, 26 cents per mile for 2022, 28 cents per mile for 2023, and 30 cents per mile for 2024. See section 4.04 of Rev. Proc. 2019-46.

SECTION 5. MAXIMUM STANDARD AUTOMOBILE COST

For purposes of computing the allowance under a FAVR plan, the standard automobile cost may not exceed $62,000 for automobiles (including trucks and vans). See section 6.02(6) of Rev. Proc. 2019-46.

SECTION 6. MAXIMUM VALUE OF EMPLOYER-PROVIDED AUTOMOBILES

For purposes of the fleet-average valuation rule in § 1.61-21(d)(5)(v) and the vehicle cents-per-mile valuation rule in § 1.61-21(e), the maximum FMV of automobiles (including trucks and vans) first made available to employees in calendar year 2024 is $62,000.

SECTION 7. EFFECTIVE DATE

This notice is effective for: (1) deductible transportation expenses paid or incurred on or after January 1, 2024; (2) mileage allowances or reimbursements paid to a charitable volunteer or a member of the Armed Forces to whom § 217(g) applies: (a) on or after January 1, 2024, and

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (Code) or the Income Tax Regulations (26 CFR part 1).

(b) for transportation expenses the charitable volunteer or such member of the Armed Forces pays or incurs on or after January 1, 2024; and (3) for purposes of the maximum FMV of employer-provided automobiles for which employers may use the fleet-average valuation rule in § 1.61-21(d)(5)(v) or the vehicle cents-per-mile rule in § 1.61-21(e), automobiles first made available to employees for personal use on or after January 1, 2024.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Notice 2023-03 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Christian Lagorio of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information on this notice regarding the use of an employee-provided automobile, contact Mr. Lagorio at (202) 317-7005 (not a toll-free number). For further information on this notice regarding the use of an employer-provided automobile, contact Stephanie Caden of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), at (202) 317-4774 (not a toll-free number).

Statutory Exceptions to Phaseout Reducing Elective Payment Amounts for Applicable Entities if Domestic Content Requirements are Not Satisfied

Notice 2024-9

SECTION 1. PURPOSE

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations (forthcoming proposed regulations) addressing the process by which the Secretary of the Treasury or her delegate (Secretary) will implement the statutorily-required exceptions to the phaseouts under §§ 45(b)(10), 45Y(g)(12), 48(a)(13), and 48E(d)(5) of the Internal Revenue Code (Code).[1] Such phaseouts apply to credits determined under § 45, 45Y, 48, or 48E with respect to property placed in service by an applicable entity, as defined in § 6417(d)(1)(A) (Applicable Entity), making an elective payment election under § 6417 with respect to such credits if the property does not satisfy the domestic content requirements under those provisions of the Code (Statutory Elective Payment Phaseouts). If the Statutory Elective Payment Phaseouts apply, the amount of an elective payment received by an Applicable Entity making an election under § 6417 with respect to such property is reduced.

This notice provides transitional procedures for taxpayers to claim the statutory exceptions to the application of the Statutory Elective Payment Phaseouts for Applicable Entities making an election under § 6417 with respect to Applicable Credit Property (that is, qualified facilities under §§ 45 and 45Y, energy projects under § 48, or qualified investments in qualified facilities or energy storage technologies under § 48E), but only if the construction of the Applicable Credit Property begins before January 1, 2025. The Treasury Department and the IRS will treat an attestation, described in section 5.02, provided by an Applicable Entity, as establishing that one or both statutory exceptions to the application of the Statutory Elective Payment Phaseouts are met with respect to Applicable Credit Property the construction of which begins before January 1, 2025. This notice also requests comments to inform the development of the forthcoming proposed regulations regarding the process by which the statutorily-required exceptions will be provided to the Statutory Elective Payment Phaseouts for Applicable Entities making an election under § 6417 with respect to Applicable Credit Property the construction of which begins on or after January 1, 2025.

SECTION 2. BACKGROUND

.01 *Domestic Content Bonus Credit Amounts and Steel, Iron, or Manufactured Products*. Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amends §§ 45 and 48, in part, to provide rules that taxpayers must satisfy to receive bonus credit amounts for satisfying domestic content requirements with respect to steel, iron, and manufactured products with respect to qualified facilities and energy projects placed in service after December 31, 2022. The IRA also adds new § 45Y and new § 48E, which provide similar rules for domestic content bonus credit amounts with respect to qualified facilities, and qualified investments in qualified facilities or energy storage technologies, placed in service after December 31, 2024. On May 12, 2023, the Treasury Department and the IRS released Notice 2023-38, 2023-22 I.R.B. 872, which states that the Treasury Department and the IRS intend to propose regulations to address the application of the rules that taxpayers must satisfy to qualify for the domestic content bonus credit amounts under §§ 45, 45Y, 48, and 48E. Taxpayers may rely on Notice 2023-38 for the domestic content bonus credit requirements for any qualified facility, energy project, or qualified investment with respect to a qualified facility or energy storage technology the construction of which begins before the date that is 90 days after the date of publication of the forthcoming proposed regulations on the domestic content bonus credit requirements in the *Federal Register*.

.02 *Statutory Elective Payment Phaseouts and Exceptions*. Section 45(b)(10), as amended by the IRA, provides the Statutory Elective Payment Phaseouts with respect to the credit determined under § 45 (§ 45 credit). Section 45(b)(10)(A) provides that in the case of a taxpayer making an election under § 6417 with respect to a § 45 credit, the amount of such credit will be replaced with the value of such credit (determined without regard to § 45(b)(10)), multiplied by the applicable percentage. Section 45(b)(10)(B) provides

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code.

that in the case of any qualified facility (1) that satisfies the requirements under § 45(b)(9)(B) (that is, the domestic content bonus credit requirements as set forth in Notice 2023-38 or other forthcoming guidance), or (2) with a maximum net output of less than 1 megawatt (as measured in alternating current), the applicable percentage is 100 percent. Section 45(b)(10)(C) states that subject to the exceptions in § 45(b)(10)(D), for any qualified facility that is not described in § 45(b)(10)(B), the applicable percentage is (1) 100 percent if construction of such facility begins before January 1, 2024, and (2) 90 percent if construction of such facility begins in calendar year 2024.

Section 45(b)(10)(D)(i) directs the Secretary to provide exceptions to the requirements under § 45(b)(10) if: (1) the inclusion of steel, iron, or manufactured products that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent (Increased Cost Exception), or (2) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (Non-Availability Exception). Section 45(b)(10)(D)(ii) provides that in any case in which the Secretary provides an exception pursuant to § 45(b)(10)(D)(i), the applicable percentage is 100 percent. The Increased Cost Exception and the Non-Availability Exception are collectively referred to as the Domestic Content Exceptions in this notice.

Section 48(a)(13), as amended by the IRA, and §§ 45Y(g)(12) and 48E(d)(5), as added by the IRA, provide the Statutory Elective Payment Phaseout rules and Domestic Content Exceptions for credits determined under those Code sections, which are similar to the rules and exceptions provided under § 45(b)(10).[2]

SECTION 3. REQUEST FOR COMMENTS

On October 5, 2022, the Treasury Department and the IRS released Notice 2022-51, 2022-43 I.R.B. 331, requesting comments on aspects of the increased credit amount provisions enacted by the IRA, including comments regarding the Statutory Elective Payment Phaseouts under §§ 45, 45Y, 48, and 48E. The Treasury Department and the IRS now request additional comments to inform the development of the forthcoming proposed regulations. In addition to general comments, the Treasury Department and the IRS request comments that address the following specific questions:

(1) For purposes of the Increased Cost Exception, what factors should be considered in defining the term "overall costs of construction"? For purposes of the Non-Availability Exception, what factors should be considered in defining the terms "sufficient and reasonably available quantities" or "satisfactory quality"?

(a) Are there existing factors or procedures under other federal programs with different statutory requirements, such as under the Federal Transit Administration's Buy America requirements or the Build America Buy America Act, that Treasury and the IRS should consider in providing guidance on the Increased Cost Exception and the Non-Availability Exception?

(b) Are there factors or procedures under other federal programs that should *not apply* for the purpose of the Increased Cost Exception and the Non-Availability Exception, including for reasons related to different statutory requirements and administrative feasibility?

(c) Are there alternative approaches that could be adopted by the Secretary to allow domestic manufacturers to identify the availability of domestic steel, iron, or manufactured products that may be relevant to the Domestic Content Exceptions?

(2) What documentation or other substantiation should be required of Applicable Entities to qualify for the Increased Cost Exception?

(3) What documentation or other substantiation should be required of Applicable Entities to establish that relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality to qualify for the Non-Availability Exception?

(4) For purposes of the Non-Availability Exception, what factors should be considered "relevant" in defining the term "relevant steel, iron, or manufactured products"?

(5) How, if at all, should both the Increased Cost Exception and Non-Availability Exception take into account that not all manufactured products must be mined, produced, or manufactured in the United States in order to meet the domestic content bonus credit requirements?

(6) What steps should be taken, if any, in implementing the Domestic Content Exceptions to reduce the burden on Applicable Entities? For example, how can the Secretary identify certain steel, iron, or manufactured products that are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality and what process and criteria could be used?

(7) How many Applicable Credit Properties are expected to be affected by the phaseout of elective payments each year but for the exceptions process, and what are relevant characteristics of such facilities, projects, or technologies (for example, size or other factors) to consider in developing an exceptions process?

(8) What solicitation processes are used by Applicable Entities with respect to qualified facilities or energy projects that have a maximum net output of 1 megawatt or greater and how might this affect their ability to source domestic products or determine these products would qualify for the Non-Availability Exception or Increased Cost Exception? Do these solicitation processes provide cost, product origin, and/or product availability information? If Applicable Entities use a request for proposal (RFP) or similar solicitation process with respect to qualified facilities or energy projects that have a maximum net output of 1 megawatt or greater:

(a) Is it common for a respondent's proposal to specify whether the steel, iron, or manufactured products that are appli-

[2] For purposes of §§ 45Y(g)(12) and 48E(d)(5), the applicable percentages are the same as §§ 45 and 48 for qualified facilities or qualified investments with respect to a qualified facility or energy storage technology that begin construction in 2024 or earlier, but the applicable percentage decreases to 85 percent for construction beginning in 2025, and to 0 percent for construction beginning after 2025.

cable project components are produced in the United States?

(b) What is the range of cost information provided in the proposal and is it auditable?

(c) Besides bids that are submitted in response to an RFP, could Applicable Entities provide other documentation or information to demonstrate that the applicable project components are not produced in the United States, or are not produced sufficiently or satisfactorily in the United States, or that including applicable project components produced in the United States increases costs by at least a specified percentage?

(d) Who is involved in the procurement process? Do developers or installers contracted through the RFP handle the procurement process for Applicable Entities?

SECTION 4. SUBMISSION OF COMMENTS

Written comments should be submitted by February 26, 2024. The subject line for the comments should include a reference to Notice 2024-9. Comments may be submitted electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2023-0062 in the search field on the regulations.gov homepage to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-9), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to the IRS's public docket on regulations.gov.

SECTION 5. TRANSITION PROCESS FOR CLAIMING THE STATUTORY EXCEPTION TO THE ELECTIVE PAYMENT PHASEOUTS

.01 *Exception for Eligible Construction*. If an Applicable Entity provides an attestation described in section 5.02 of this notice with respect to an Applicable Credit Property the construction of which begins before January 1, 2025 (Eligible Construction), the Treasury Department and the IRS will treat the attestation as establishing that a Domestic Content Exception is met with respect to such Applicable Credit Property.

.02 *Attestation*. An attestation is described in this section 5.02 if an Applicable Entity attests, under penalties of perjury, that it has reviewed the requirements for the Increased Cost Exception and the Non-Availability Exception provided under §§ 45(b)(10)(D), 48(a)(13), 45Y(g)(12)(D), or 48E(d)(5), as applicable, and has made a good faith determination that the qualified facility, energy project, or qualified investment with respect to a qualified facility or energy storage technology, as applicable, qualifies for either the Increased Cost Exception or the Non-Availability Exception, or both. The attestation described in this section 5.02 must be signed by a person with the legal authority to bind the Applicable Entity in federal tax matters and must be attached to a Form 8835, *Renewable Electricity Product Credit*; Form 3468, *Investment Credit*; or other applicable form required to be filed by the Applicable Entity to make an elective payment election under § 6417.

.03 *Recordkeeping*. An Applicable Entity providing an attestation described in section 5.02 of this notice must meet the general recordkeeping requirements under § 6001 and the regulations thereunder to substantiate its attestation.

SECTION 6. PAPERWORK REDUCTION ACT

Any collection burden associated with this notice is accounted for in Office of Management and Budget (OMB) control numbers 1545-0123 and 1545-0047. The collection of information (the attestation detailed in section 5 of this notice) is associated with the IRA-related changes to Form 3468 and Form 8835 and is approved, and will continue to be approved, under OMB control numbers 1545-0123 and 1545-0047. The IRS will use this attestation to allow exceptions to the phaseout of elective payments. This notice does not alter any previously approved information collection requirements and does not create new collection requirements not already approved by OMB.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

United States Income Tax Treaties That Meet the Requirements of Section 1(h)(11)(C)(i)(II)

Notice 2024-11

SECTION 1. SUMMARY

Under section 1(h)(11), a dividend paid to an individual shareholder from either a domestic corporation or a "qualified foreign corporation" generally is subject to tax at the reduced rates applicable to certain capital gains. A qualified foreign corporation includes certain foreign corporations that are eligible for benefits of a comprehensive income tax treaty with the United States that the Secretary determines is satisfactory for purposes of this provision and that includes an exchange of information program. This notice updates the list of treaties that meet the requirements of section 1(h)(11)(C)(i)(II). It adds the treaty with Chile, which entered into force on December 19, 2023. The list no longer includes the treaties with Russia and Hungary because both have ceased to meet the requirements of section 1(h)(11) after the publication of Notice 2011-64.

SECTION 2. ANALYSIS

Section 1(h)(1) of the Internal Revenue Code (the Code) generally provides that a taxpayer's "net capital gain" for any taxable year will be subject to a maximum tax rate of 20 percent (or 15 percent in the case of certain taxpayers). See also section

1411 (imposing a 3.8 percent tax on certain taxpayers' net investment income).

Section 1(h)(11) provides that net capital gain for purposes of section 1(h) means net capital gain (determined without regard to section 1(h)(11)) increased by "qualified dividend income." Qualified dividend income means dividends received during the taxable year from domestic corporations and "qualified foreign corporations." Section 1(h)(11)(B)(i). Subject to certain exceptions, a qualified foreign corporation is any foreign corporation that is either (i) incorporated in a possession of the United States, or (ii) eligible for benefits of a comprehensive income tax treaty with the United States that the Secretary determines is satisfactory for purposes of this provision and that includes an exchange of information program (the treaty test). Section 1(h)(11)(C)(i).

A foreign corporation that does not satisfy either of these two tests is treated as a qualified foreign corporation with respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States. Section 1(h)(11)(C)(ii). See Notice 2003-71, 2003-2 C.B. 922, for the definition, for taxable years beginning on or after January 1, 2003, of "readily tradable on an established securities market in the United States."

A qualified foreign corporation does not include any foreign corporation that for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297). Section 1(h)(11)(C)(iii). A dividend from a qualified foreign corporation is also subject to the other limitations in section 1(h)(11). For example, a shareholder receiving a dividend from a qualified foreign corporation must satisfy the holding period requirements of section 1(h)(11)(B)(iii).

The appendix to this notice provides the current list of U.S. income tax treaties that meet the requirements of section 1(h)(11)(C)(i)(II). The list has been updated to include the treaty with Chile, which entered into force on December 19, 2023, and to remove two treaties that have ceased to meet the requirements of section 1(h)(11)(C)(i)(II) since the publication of Notice 2011-64: the treaty with Hungary and the treaty with Russia.

The treaty between Hungary and the United States (the Hungary treaty) terminated on January 8, 2023. Consequently, the Hungary treaty has ceased to meet the requirements of section 1(h)(11)(C)(i)(II).

On April 5, 2022, a Department of the Treasury (Treasury) spokesperson announced that the IRS paused assistance to Russian tax authorities through exchange of information under the treaty between Russia and the United States (the Russia treaty). Therefore, the Russia treaty does not have an exchange of information program as required by section 1(h)(11)(C)(i)(II).

Three other U.S. income tax treaties still in effect do not meet the requirements of section 1(h)(11)(C)(i)(II). They are the U.S.-U.S.S.R. income tax treaty (which was signed on June 20, 1973, and currently applies to certain former Soviet Republics), and the tax treaties with Bermuda and the Netherlands Antilles.

Treasury and the IRS intend to continue to update this list, as appropriate. Situations that may result in changes to the list include the entry into force of new income tax treaties and the amendment or renegotiation of existing tax treaties. Further, Treasury and the IRS continue to study the operation of each U.S. income tax treaty, including the implications of any change in the domestic laws of the treaty partner, to ensure that the treaty accomplishes its intended objectives and continues to be satisfactory for purposes of this provision.

SECTION 3. EFFECTIVE DATE

This notice is effective with respect to Chile for dividends paid on or after December 19, 2023. This notice is effective with respect to Hungary for dividends paid on or after January 8, 2023. This notice is effective with respect to Russia for dividends paid on or after January 1, 2023.

This notice is effective with respect to Bulgaria for dividends paid on or after December 15, 2008. This notice is effective with respect to Malta for dividends paid on or after November 23, 2010.

This notice is effective with respect to Bangladesh for dividends paid on or after August 7, 2006. This notice is effective with respect to Barbados for dividends paid on or after December 20, 2004. This notice is effective with respect to Sri Lanka for dividends paid on or after July 12, 2004. This notice is effective with respect to all other U.S. income tax treaties listed in the Appendix for taxable years beginning after December 31, 2002.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2011-64 is amplified and superseded.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Sarah Stein of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Sarah Stein at (202) 317-4917 (not a toll-free number).

APPENDIX
U.S. INCOME TAX TREATIES SATISFYING THE REQUIREMENTS OF SECTION 1(h)(11)(C)(i)(II)

Australia
Austria
Bangladesh
Bulgaria
Barbados
Belgium
Canada
Chile
China
Cyprus
Czech Republic
Denmark
Egypt
Estonia
Finland
France
Germany
Greece
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kazakhstan
Korea
Latvia
Lithuania
Luxembourg
Malta
Mexico
Morocco
Netherlands
New Zealand
Norway
Pakistan
Philippines
Poland
Portugal
Romania
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Thailand
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Kingdom
Venezuela

Part IV

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2024-1

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The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on January 08, 2024 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
MASTERS COMMISSION INTERNATIONAL NETWORKS INC.	01/01/2018	HUNTSVILLE, AL
AMBAZONIA FOUNDATION	01/01/2019	OWINGS MILLS, MD
INKSTER SENIOR SERVICES INC	01/07/2020	INKSTER, MI

Employee Retention Credit Voluntary Disclosure Program

Announcement 2024-3

Section 1. Purpose and Scope

The Internal Revenue Service (IRS) announces a Voluntary Disclosure Program for employers (participants) to resolve erroneous claims for credit or refund involving the Employee Retention Credit (ERC). The ERC is a refundable tax credit intended for businesses and tax-exempt organizations that continued paying employees during the COVID-19 pandemic if their operations were fully or partially suspended due to a government order, they experienced the required decline in gross receipts, or they were a recovery startup business during the relevant eligibility periods.

The IRS has concerns about scams and potential fraud regarding ERC claims given false and misleading public advertisements and scams taking advantage of taxpayers. Those that filed for and erroneously received the ERC face enforcement action from the IRS and are subject to assessment and collection procedures. The IRS believes that it would prevail in any litigation to recover credits or refunds of erroneous ERC claims and that the imposition of appropriate penalties and interest would be upheld by a court. For efficient tax administration reasons, however, the IRS is offering employers an opportunity to resolve their civil tax liabilities under this Voluntary Disclosure Program and avoid potential civil litigation, penalties, and interest.

This Voluntary Disclosure Program includes the settlement of the ERC for purposes of a participant's employment tax obligations by eliminating their eligibility for the ERC while allowing a participant to retain 20% of the claimed ERC amount. Additionally, because the ERC reduces the income tax expense for qualified wages under rules similar to section 280C of the Internal Revenue Code (Code), this Voluntary Disclosure Program also resolves the issue of the corresponding adjustment to income tax expense for participants, which include common law employers who used a third-party payer to claim the ERC on their behalf.

Section 2. Eligibility

Any participant that has claimed the ERC and has received a credit or refund is eligible to participate in this Voluntary Disclosure Program, provided that:

(1) The participant is not under criminal investigation and they have not been notified that the IRS intends to commence a criminal investigation;
(2) The IRS has not received information from a third party alerting the IRS to the participant's noncompliance, nor has the IRS acquired information directly related to the noncompliance from an enforcement action;
(3) The participant is not under an employment tax examination by the IRS for any tax period(s) for which the taxpayer is applying for this Voluntary Disclosure Program; and
(4) The participant has not previously received notice and demand for repayment of all or part of the claimed ERC.

A participant that claimed the ERC using a third-party payer (such as an agent under section 3504 of the Code, a professional employer organization, or a certified professional employer organization) that claimed the ERC for the participant on an employment tax return filed under the third-party payer's own employer identification number (EIN) rather than the EIN of the participant, may participate in this Voluntary Disclosure Program, but the third-party payer must submit the application described in Section 4 of this announcement on the participant's behalf.

Section 3. Terms of ERC Voluntary Disclosure Program

The terms of this ERC Voluntary Disclosure Program are as follows:

(1) Employment Tax Adjustments – The participant is not eligible for, or entitled to, any ERC, including both the refundable and non-refundable portions, for the tax period(s) at issue.
(2) The participant will remit back to the Department of the Treasury 80% of the claimed ERC, including both the refundable and non-refundable portions.
(3) The participant will not be required to repay any overpayment interest received. If the participant makes full payment of 80% of the claimed ERC prior to executing the closing agreement, no underpayment interest will apply. If the IRS approves a request for an installment agreement, interest may apply from the agreement date.
(4) Income Tax Effects – Because the settlement eliminates a participant's eligibility for and/or entitlement to all of the claimed ERC, participants are not required to reduce wage expense with respect to any of the previously claimed ERC. Consequently, if they had not previously reduced wage expense by any of the claimed ERC, participants need not file amended returns or Administrative Adjustment Requests (AARs) to reduce wage expense. Correspondingly, if they had previously reduced wage expense by any of the claimed ERC, participants should not reduce wage expense by any of the claimed ERC if they file an amended return or AAR adjusting the previous reduction to wage expense. Pursuant to the settlement, a participant has no income with respect to the resolution of the employment tax obligation by remittance of payment of only 80% of the claimed ERC, including both the refundable and non-refundable portions.
(5) Preparer/Advisor Information – If a return preparer or advisor assisted or advised the participant with any portion of the claim for credit or refund, the participant will provide the name, address, and phone number of the preparer(s) or advisor(s) who assisted with the claim for credit or refund and a description of services provided by the preparer or advisor.
(6) Application of Penalties – The IRS will not assert civil penalties related to the underpayment of employment

tax attributable to the claimed ERC against a participant of this Voluntary Disclosure Program under Announcement 2024-3 that remits full payment of 80% of the claimed ERC prior to executing the closing agreement.

(7) The participant will execute a closing agreement, as more fully described in Section 4(3).

Section 4. Procedures for Participants in the ERC Voluntary Disclosure Program

(1) Form 15434, *Application for Employee Retention Credit Voluntary Disclosure Program*

Participants in this Voluntary Disclosure Program must notify the IRS of their election by completing and submitting Form 15434, *Application for Employee Retention Credit Voluntary Disclosure Program*, on or before 11:59 pm local time on March 22, 2024. Participants must submit Form 15434 and any required attachments electronically via the Document Upload Tool at irs.gov/DUT.

Form 15434 must be prepared under penalties of perjury and:

(a) Include the taxpayer's name, taxpayer identification number, current address, and daytime telephone number. If a practitioner will represent the taxpayer, the practitioner must provide a completed Form 2848, *Power of Attorney and Declaration of Representative*;

(b) Identify the tax period(s) for which the ERC was claimed, the form on which the ERC was claimed, and the full amount of the ERC claimed, including both the amounts that were refundable and non-refundable;

(c) If the tax period(s) for which the ERC was claimed include any tax period ending in 2020, a completed, signed ERC Voluntary Disclosure Program Form SS-10, *Consent to Extend the Time to Assess Employment Taxes,* for the 2020 Tax Period(s), is required to be submitted with Form 15434. The ERC Voluntary Disclosure Program Form SS-10 is available at https://www.irs.gov/pub/irs-utl/form-ss10-2020-ercvd.pdf;

(d) If the ERC was claimed by a third-party payer on behalf of the participant, as described in Section 2, the third-party payer must attach a copy of the relevant pages of the Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, that was attached to each Form 941, *Employer's Quarterly Federal Tax Return*, on which the third-party payer claimed the ERC for the participant; and

(e) If a return preparer or advisor assisted with the claim for credit or refund, include the name, address, and phone number of the preparer(s) and advisor(s) who assisted with the claim for credit or refund and a description of services provided by the preparer or advisor.

(2) Payment

Form 15434 will help a participant calculate how much they will be required to pay to the Department of the Treasury under the terms of the ERC Voluntary Disclosure Program.

A participant must use the Electronic Federal Tax Payment System (EFTPS) to submit an online payment(s). Payment should be made separately for each tax period upon submission of Form 15434. For each EFTPS payment, select the category "Advanced Payment." Participants should not make a single, lump-sum payment for multiple tax periods to ensure such payments are accurately credited to the correct tax period. Full payment of the liabilities under this Voluntary Disclosure Program should be made by the date the closing agreement described in subsection (3) is executed by the participant. Participants who are unable to remit full payment of the 80% of claimed ERC may be considered for an installment agreement, pending approval.

(3) Closing Agreement

After receiving the requested information, the IRS will prepare a closing agreement under section 7121 of the Code in accordance with the terms of the settlement.

The IRS will mail the closing agreement to the participant who must sign and return it to the IRS within 10 days of the date of mailing by the IRS. The IRS may grant an extension for good cause to participants who request additional time within the 10-day period. Full payment of the liabilities under this Voluntary Disclosure Program should be made by the date the closing agreement is executed by the participant.

As discussed in Section 4(2), participants who are unable to remit full payment of the liabilities under this Voluntary Disclosure Program may be considered for an installment agreement, pending approval.

(4) Other Matters

(a) Denial of a participant's request to participate in this Voluntary Disclosure Program is not subject to judicial review or administrative appeal.

(b) Execution of a closing agreement under this Voluntary Disclosure Program does not preclude the IRS from investigating any associated criminal conduct or recommending prosecution for violation of any criminal statute, and does not provide any immunity from prosecution.

CONTACT INFORMATION

The principal author of this announcement is Michael Franklin of the Office of the Associate Chief Counsel (Procedure and Administration). If you need help completing Form 15434, have questions on the status of your ERC Voluntary Disclosure Program application, or have other ERC Voluntary Disclosure Program related questions, contact the ERC Voluntary Disclosure hotline at 414-231-2222 (not a toll-free number).

Notice of Proposed Rulemaking

Section 30D Excluded Entities

REG-118492-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding the excluded entity provisions with respect to the clean vehicle credit as amended by the Inflation Reduction Act of 2022. The proposed regulations would also provide clarity on definitions with respect to new clean vehicles eligible for the clean vehicle credit. The proposed regulations would affect qualified manufacturers of new clean vehicles and taxpayers who purchase and place in service new clean vehicles.

DATES: Written or electronic comments and requests for a public hearing must be received by January 18, 2023. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-118492-23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-118492-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number); concerning submissions of comments and requests for a public hearing, call Vivian Hayes (202) 317-6901 (not a toll-free number) or send an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. ***Overview***

Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended section 30D of the Internal Revenue Code (Code). Section 30D provides a credit (section 30D credit) against the tax imposed by chapter 1 of the Code (chapter 1) with respect to each new clean vehicle that a taxpayer purchases and places in service. The section 30D credit is determined and allowable with respect to the taxable year in which the taxpayer places the new clean vehicle in service.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 30D. These proposed regulations supplement a notice of proposed rulemaking (REG-120080-22) published in the **Federal Register** (88 FR 23370) on April 17, 2023 (April 2023 proposed regulations) that contains initial proposed regulations under section 30D as amended by the IRA, as well as a notice of proposed rulemaking (REG-113064-23) published in the **Federal Register** (88 FR 70310) on October 10, 2023 (October 2023 proposed regulations) that contains initial and additional proposed regulations under sections 25E, 30D, and 6213 of the Code. This notice of proposed rulemaking does not address written comments that were submitted in response to the April 2023 proposed regulations or the October 2023 proposed regulations. Any comments received in response to this notice of proposed rulemaking will be addressed in the Treasury Decision adopting these regulations as final regulations.

II. ***Section 30D***

Section 30D was enacted by section 205(a) of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110-343, 122 Stat. 3765, 3835 (October 3, 2008), to provide a credit for purchasing and placing in service new qualified plug-in electric drive motor vehicles. Section 30D has been amended several times since its enactment, most recently by section 13401 of the IRA. In general, the amendments made by section 13401 of the IRA to section 30D apply to vehicles placed in service after December 31, 2022, except as provided in section 13401(k)(2) through (5) of the IRA.

Effective beginning on April 18, 2023, section 30D(b) provides a maximum credit of $7,500 per new clean vehicle, consisting of $3,750 if certain critical minerals requirements are met and $3,750 if certain battery components requirements are met. These requirements are described in section 30D(e)(1) and (2), respectively, and the preamble to the April 2023 proposed regulations.

The amount of the section 30D credit is treated as a personal credit or a general business credit depending on the character of the vehicle. In general, under section 30D(c)(2), the section 30D credit is treated as a nonrefundable personal credit allowable under subpart A of part IV of subchapter A of chapter 1. However, under section 30D(c)(1), so much of the credit that would be allowed under section 30D(a) that is attributable to property that is of a character subject to an allowance for depreciation is treated as a current year general business credit under section 38(b) and not allowed under section 30D(a). Section 38(b)(30) lists as a current year business credit the portion of the section 30D credit to which section 30D(c)(1) applies. The IRA did not amend section 30D(c)(1) or (2).

The IRA amended section 30D(d) regarding the definition of a new clean vehicle. Section 30D(d)(1) defines "new clean vehicle" as a motor vehicle that satisfies the following eight requirements set forth in section 30D(d)(1)(A) through (H) of the Code:

- the original use of the motor vehicle must commence with the taxpayer;

- the motor vehicle must be acquired for use or lease by the taxpayer and not for resale;
- the motor vehicle must be made by a qualified manufacturer;
- the motor vehicle must be treated as a motor vehicle for purposes of title II of the Clean Air Act;
- the motor vehicle must have a gross vehicle weight rating of less than 14,000 pounds;
- the motor vehicle must be propelled to a significant extent by an electric motor which draws electricity from a battery that has a capacity of not less than 7 kilowatt hours, and is capable of being recharged from an external source of electricity;
- the final assembly of the motor vehicle must occur within North America; and
- the person who sells any vehicle to the taxpayer must furnish a report to the taxpayer and to the Secretary of the Treasury or her delegate (Secretary) containing certain specifically enumerated items.

Section 30D(d)(3) defines "qualified manufacturer" as any manufacturer (within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 *et seq*.)) that enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) providing vehicle identification numbers and such other information related to each vehicle manufactured by such manufacturer as the Secretary may require.

Section 30D(d)(7) excludes from the definition of "new clean vehicle" any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle were extracted, processed, or recycled by a foreign entity of concern (as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5))), or any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern (as so defined).

No section 30D credit is allowed with respect to a vehicle placed in service after December 31, 2032.

III. *Prior Guidance*

A. *Notice 2022-46*

On October 5, 2022, the Treasury Department and the IRS published Notice 2022-46, 2022-43 I.R.B. 302. The notice requested general comments on issues arising under sections 25E and 30D, as well as specific comments concerning: (1) definitions; (2) critical minerals and battery components; (3) foreign entities of concern; (4) recordkeeping and reporting; (5) eligible entities; (6) elections to transfer and advance payments; and (7) recapture. The Treasury Department and the IRS received 884 comments from industry participants, environmental groups, individual consumers, and other stakeholders. The Treasury Department and the IRS appreciate the commenters' interest and engagement on these issues. These comments have been carefully considered in the preparation of the proposed regulations.

B. *Revenue Procedure 2022-42*

On December 12, 2022, the Treasury Department and the IRS published Revenue Procedure 2022-42, 2022-52 I.R.B. 565, providing guidance for qualified manufacturers to enter into written agreements with the IRS, as required in sections 30D, 25E, and 45W, and to report certain information regarding vehicles produced by such manufacturers that may be eligible for credits under these sections. In addition, Revenue Procedure 2022-42 provides the procedures for sellers of new clean vehicles or previously-owned clean vehicles to report certain information to the IRS and the purchasers of such clean vehicles.

C. *April 2023 Proposed Regulations*

On April 17, 2023, the Treasury Department and the IRS published the April 2023 proposed regulations in the **Federal Register**, which provides proposed definitions for certain terms related to section 30D; proposed rules regarding personal and business use and other special rules; and additional proposed rules related to the critical mineral and battery component requirements.

D. *Revenue Procedure 2023-33*

On October 6, 2023, the Treasury Department and the IRS released Revenue Procedure 2023-33, which was published on October 23, 2023, in Internal Revenue Bulletin 2023-43, to provide guidance for taxpayers electing to transfer credits under section 25E or 30D and for eligible entities receiving advance payments of credits under sections 30D and 25E. This revenue procedure sets forth the procedures under sections 30D(g) and 25E(f) for the transfer of the previously-owned clean vehicle credit and the new clean vehicle credit from the taxpayer to an eligible entity, including the procedures for dealer registration with the IRS, the procedures for the revocation and suspension of that registration, and the establishment of an advance payment program to eligible entities. In addition, this revenue procedure superseded sections 5.01 and 6.03 of Revenue Procedure 2022-42, providing new information for the time and manner of submission of seller reports, respectively. This revenue procedure also superseded sections 6.01 and 6.02 of Revenue Procedure 2022-42, providing updated information on submission of written agreements by manufacturers to the IRS to be considered qualified manufacturers, as well as the method of submission of monthly reports by qualified manufacturers.

E. *October 2023 Proposed Regulations*

On October 10, 2023, the Treasury Department and the IRS published the October 2023 proposed regulations in the **Federal Register**, which provide guidance for elections to transfer clean vehicle credits under sections 30D(g) and 25E(f). The proposed regulations provide guidance for taxpayers intending to transfer the previously-owned clean vehicle credit and the new clean vehicle credit to dealers who are entities eligible to receive advance payments of either credit. The proposed

regulations also provide guidance for dealers to become eligible entities to receive advance payments of previously-owned clean vehicle credits or clean vehicle credits. The proposed regulations also provide guidance for recapturing the credit under sections 30D and 25E. Finally, proposed §1.6213-2 defines the term "omission of a correct vehicle identification number" (VIN) for purposes of section 6213, under which, in part, the IRS is authorized to make a summary assessment when there has been an omission of a correct VIN on a taxpayer's return when claiming or electing to transfer a credit under section 25E or 30D.

IV. ***Department of Energy Guidance***

Concurrently with the release of these proposed regulations, the Department of Energy (DOE) is releasing proposed guidance in the **Federal Register**, which provides proposed interpretations of certain terms used in the definition of "foreign entity of concern" (FEOC) set forth in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (IIJA), 42 U.S.C. 18741(a)(5), and as cross-referenced in section 30D(d)(7). Section 40207(a)(5) of the IIJA defines FEOC to include foreign entities covered by specific designations, inclusions, and allegations by Federal agencies as described in section 40207(a)(5)(A), (B), and (D), as well as foreign entities "owned by, controlled by, or subject to the jurisdiction or direction of a government" of a covered nation under section 40207(a)(5)(C). Covered nations are defined in 10 U.S.C. 4872(d)(2) as the People's Republic of China, the Russian Federation, the Democratic People's Republic of Korea, and the Islamic Republic of Iran as of the date of publication of these proposed regulations. Finally, section 40207(a)(5)(E) of the IIJA provides that a FEOC includes a foreign entity that the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, determines is engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

The DOE proposed guidance provides an interpretation of section 40207(a)(5)(C) of the IIJA. In particular, the DOE proposed guidance provides definitions for the terms "government of a foreign country," "foreign entity," "subject to the jurisdiction," and "owned by, controlled by, or subject to the direction of.". In general, an entity incorporated in, headquartered in, or performing the relevant activities in a covered nation would be classified as a FEOC. For purposes of these rules, an entity would be "owned by, controlled by, or subject to the direction" of another entity if 25 percent or more of the entity's board seats, voting rights, or equity interest are cumulatively held by such other entity. In addition, licensing agreements or other contractual agreements may also create control. Finally, "government of a foreign country" would be defined to include subnational governments and certain current or former senior foreign political figures.

Explanation of Provisions

I. ***Section 1.30D-2 Definitions***

Proposed §1.30D-2(a) is revised to clarify that all definitions in the section apply for purposes of section 30D and the section 30D regulations, including any guidance thereunder. Proposed §1.30D-2(f) is revised to include in the definition of "section 30D regulations" the provisions of proposed §1.30D-5 as set forth in the October 2023 proposed regulations and proposed §1.30D-6 as set forth in these proposed regulations. Proposed §1.30D-2(k) would provide, consistent with section 30D(d)(3), that "manufacturer" means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements provided in section 30D(d)(3) must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards set by EPA under the Clean Air Act (42 U.S.C. 7521 et seq.) for the subject vehicle.

Proposed §1.30D-2(l) would provide that a qualified manufacturer means a manufacturer that meets the requirements described in section 30D(d)(3). A qualified manufacturer would not include any manufacturer whose qualified manufacturer status has been terminated by the IRS. The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D and the regulations and guidance thereunder, including with respect to the periodic written reports described in section 30D(d)(3) and proposed §1.30D-2(m) and any attestations, documentation, or certifications described in proposed §1.30D-3(e) and proposed §1.30D-6(d), at the time and in the manner provided in the Internal Revenue Bulletin.

Proposed §1.30D-2(m) would provide that a "new clean vehicle" means a vehicle that meets the requirements described in section 30D(d). A new clean vehicle would not include any vehicle for which the qualified manufacturer does any of the following: (1) fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the VIN of such vehicle and certifying compliance with the requirements of section 30D(d); (2) provides incorrect information with respect to the periodic written report for such vehicle; (3) fails to update its periodic written report in the event of a material change with respect to such vehicle; or, (4) for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer fails to meet the requirements of proposed §1.30D-6(d). For purposes of section 30D(d)(6), the term "new clean vehicle" includes any new qualified fuel cell motor vehicle (as defined in section 30B(b)(3)) which meets the requirements under section 30D(d)(1)(G) and (H). The Treasury Department and the IRS request comment on whether, in the interest of sound tax administration and to provide additional transparency to taxpayers, it would be feasible and helpful for tax administration if qualified manufacturers were to encode eligibility for section 30D through a particular calendar year into the VIN using an alphanumeric combination.

II. ***Section 1.30D-3 Provisions***

Proposed §1.30D-3(d) would provide rules regarding excluded entities by reference to proposed §1.30D-6.

Proposed §1.30D-3(e) would provide for an upfront review of conformance

with the critical minerals requirement and battery components requirement. Specifically, proposed §1.30D-3(e) would provide that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, will review the attestations, certifications, and documentations.

III. *Excluded entities*

A. *Definitions*

The proposed regulations would provide definitions for terms relevant to the excluded entity provision. To the extent many of these terms were defined in the April 2023 proposed regulations, these proposed regulations would provide the same definitions for such terms as is provided in proposed §1.30D-3(c). The Treasury Department and the IRS intend that terms relevant to both the critical mineral and battery component requirements described in proposed §1.30D-3 and the excluded entity restrictions described in these proposed regulations are interpreted consistently.

1. Applicable critical mineral

Proposed §1.30D-6(a)(1) would define "applicable critical mineral" as an applicable critical mineral as defined in section 45X(c)(6). Guidance regarding the definition of applicable critical minerals, including the applicable critical minerals that are used in electric vehicle batteries to facilitate the electrochemical processes necessary for energy storage, would be provided in forthcoming proposed regulations under section 45X.

2. Assembly

Proposed §1.30D-6(a)(2) would define "assembly" as, with respect to battery components, the process of combining battery components into battery cells and battery modules.

3. Battery

Proposed §1.30D-6(a)(3) would define "battery" as, for purposes of a new clean vehicle, a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

4. Battery cell

Proposed §1.30D-6(a)(4) would define "battery cell" as a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

5. Battery cell production facility

Proposed §1.30D-6(a)(5) would define "battery cell production facility" as a facility in which battery cells are manufactured or assembled.

6. Battery component

Proposed §1.30D-6(a)(6) would define "battery component" as a component that forms part of a battery and that is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Proposed §1.30D-6(a)(6) would specify that battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

7. Compliant-battery ledger

Proposed §1.30D-6(a)(7) would define "compliant-battery ledger," for a qualified manufacturer for a calendar year, as a ledger that tracks the number of available FEOC-compliant batteries for such calendar year. A compliant-battery ledger is established under the rules of proposed §1.30D-6(d), described in part III.D. of this Explanation of Provisions.

8. Constituent materials

Proposed §1.30D-6(a)(8) would define "constituent materials" as materials that contain applicable critical minerals and that are employed directly in the manufacturing of battery components. Proposed §1.30D-6(a)(8) would specify that constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

9. Extraction

Proposed §1.30D-6(a)(9) would define "extraction" to mean the activities performed to harvest minerals or natural resources from the ground or a body of water. Extraction would include, but would not be limited to, operating equipment to harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction would conclude when activities are performed to convert raw mined or harvested products or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction would include the physical processes involved in refining. Extraction would not include the chemical and thermal processes involved in refining.

10. Foreign entity of concern

Proposed §1.30D-6(a)(10) would define "foreign entity of concern (FEOC)" to have the same meaning as defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) and guidance promulgated thereunder by the DOE.

11. FEOC-compliant

Proposed §1.30D-6(a)(11) would define "FEOC-compliant" to mean in compliance with the applicable excluded entity requirement under section 30D(d)(7). In particular, the proposed regulation would provide definitions of FEOC-compliant with respect to a battery component (other than a battery cell), applicable critical mineral, battery cell, or battery. This definition would treat battery cells separately from other battery components because battery cells contain applicable critical minerals (and associated constituent materials) as well as other battery components. Thus, the applicable rules under section 30D(d)(7) must be satisfied for such critical minerals and such components contained in the battery cell as well as the battery cell itself. A battery component (other than a battery cell), with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it is not manufactured or assembled by a FEOC. An applicable critical mineral, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not extracted, processed, or recycled by a FEOC. As described in part III.C.4. of this Explanation of Provisions, in general, the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6). A battery cell, with respect to a new clean vehicle placed in service after December 31, 2023, and before January 1, 2025, is FEOC compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components. A battery cell, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components and applicable critical minerals. A battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells.

12. Manufacturing

Proposed §1.30D-6(a)(12) would define "manufacturing" to mean, with respect to a battery component, the industrial and chemical steps taken to produce a battery component.

13. Non-traceable battery materials

Proposed §1.30D-6(a)(13)(i) would define "non-traceable battery materials" to mean specifically identified low-value battery materials that may originate from multiple sources and are often commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials Proposed §1.30D-6(a)(13)(ii), which is reserved, would contain the specific list of identified non-traceable battery materials. Low-value battery materials are those that, like the exemplar materials listed below, have low value compared to the total value of the battery. Where battery materials make up only a very small percentage of the value of the battery as a whole, many industry participants, prior to the passage of the IRA, had little reason to trace the source of these materials. As a result, unlike with higher value battery materials, tracing the source of these low value materials is not immediately feasible, which makes it in turn not feasible for qualified manufacturers to provide the necessary assurance to the IRS that their materials are FEOC-compliant.

The Treasury Department and the IRS, after extensive consultation with the Department of Energy, are considering whether the following applicable critical minerals (and associated constituent materials) may be designated as identified non-traceable battery materials: applicable critical minerals contained in electrolyte salts, electrode binders, and electrolyte additives. These exemplar materials each account for less than two percent of the value of applicable critical minerals in the battery, and the Treasury Department and the IRS understand that industry tracing of these particular applicable critical mineral production processes is uncommon and third-party standards for doing so are underdeveloped. Other materials for inclusion could include, for example, other low-value electrode active materials that are also subject to the traceability difficulties described in part III.A.13. of this Explanation of Provisions. As discussed further below, the Treasury Department and the IRS request comment on: (1) whether other applicable critical minerals (and associated constituent materials) should be designated as identified non-traceable battery materials for the same reasons, and (2) whether an approach other than the proposed list of non-traceable battery materials would better address the traceability issues discussed here. As discussed in part III.B.2. of this Explanation of Provisions, some stakeholders have suggested that the Treasury Department and the IRS adopt a de minimis exception to the excluded entity restrictions based on value, weight, mass, or other considerations. In response to these comments, the Treasury Department and the IRS have proposed a transition rule that would temporarily exclude a specific list of identified non-traceable battery materials from the due diligence requirements of the qualified manufacturers.

The Treasury Department and the IRS request comments on the best approach to addressing low-value battery materials for which tracing to their source is not immediately feasible. The Treasury Department and the IRS request comment on whether the proposed approach is a sound method of accounting for non-traceable battery materials, and whether other criteria should be used to distinguish between traceable and non-traceable battery materials. In particular, the Treasury Department and the IRS request comments that explain whether and why certain battery materials are prohibitively difficult to trace at this time given current supply chains and current broadly available tools and practices for supply-chain tracing in the battery sector, and that explain how the supply chain may be limited by any such difficulty. The Treasury Department and the IRS also request comments explaining how the state of supply chains and tools and practices for supply-chain tracing are expected to evolve in the coming months and years for battery materials that are prohibitively difficult to trace at present. The Treasury Department and the IRS further request comments explaining the state of recordkeeping that is

currently used in the industry to trace supply chains, what kind of recordkeeping requirements would facilitate better tracing of supply chains in the coming months and years, how to encourage manufacturers to adopt appropriate tracing systems as soon as practicable, and how these rules incentivize further shifting of supply chains in a manner that will strengthen our energy security, national security, and domestic manufacturing.

In addition, the Treasury Department and the IRS request comment on whether the listed materials are appropriately characterized as non-traceable battery materials. The Treasury Department and the IRS further request comment on whether any other applicable critical minerals, including associated constituent materials, would also be appropriately characterized as non-traceable battery materials because they meet the required criteria. The Treasury Department and the IRS further request comment on whether other criteria should be applied to determine what qualifies as non-traceable battery materials, and what applicable critical minerals, including associated constituent materials, would be appropriately characterized as such materials under the suggested criteria. Finally, the Treasury Department and the IRS seek comment describing alternative approaches to addressing the challenges posed by low-value battery materials that are not currently feasible to trace to their origins.

14. Processing

Proposed §1.30D-6(a)(14) would define "processing" to mean the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

15. Recycling

Proposed §1.30D-6(a)(15) would define "recycling" to mean the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

B. *Due diligence and transition rule for non-traceable battery materials*

1. Due diligence

Proposed §1.30D-6(b)(1) would provide that the qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. This due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enable the qualified manufacturer to know with reasonable certainty the provenance of applicable critical minerals, constituent materials, and battery components. Such tracing standards may include international battery passport certifications and enhanced battery material and component tracking and labeling. Proposed §1.30D-6(b)(1) would specify that reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after due diligence that such supplier attestation or certification is incorrect.

The due diligence must be conducted by the qualified manufacturer prior to its determination of any information to establish a compliant-battery ledger described in proposed §1.30D-6(d), and on an on-going basis. A battery is not considered FEOC-compliant unless the qualified manufacturer has conducted such due diligence with respect to all such components and applicable critical minerals of the battery and provided required attestations or certifications described in part III.D. of this Explanation of Provisions.

2. Transition rule for non-traceable battery materials

Proposed §1.30D-6(b)(2) would provide that for any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement may be satisfied by excluding identified non-traceable battery materials (and associated constituent materials), as defined in proposed §1.30D-6(a)(13)(ii). In addition, as described in part III.C.3. of this Explanation of Provisions, identified non-traceable battery materials (and associated constituent materials) may be excluded from the determination of whether a battery cell is FEOC-compliant. To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in part III.D. of this Explanation of Provisions demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect and all materials must be fully traced through the entire electric vehicle battery supply chain.

As described in part III.A.13. of this Explanation of Provisions, the Treasury Department and the IRS understand, after extensive consultation with the Department of Energy, that industry has not developed standards or systems for tracing certain low-value materials with precision. This inability to trace is exacerbated by the practice of commingling such materials within the materials processing supply chain. To address this issue, some stakeholders have suggested that the Treasury Department and the IRS adopt a de minimis exception to the excluded entity restrictions based on value, weight, mass, or other considerations. The Treasury Department and the IRS understand the tracing concerns in light of current standards and systems. However, these standards and systems may develop to allow for improved tracing in the future.

The Treasury Department and the IRS therefore recognize the potential need for a transition rule to enable determination of FEOC compliance while detailed tracing practices are being developed to allow for full sourcing and tracing of applicable critical mineral supply chains. The transition rule in proposed §1.30D-6(b)(2) and (c)(3)(iii) is one option that the Treasury Department and the IRS are considering for such a rule. The Treasury Department and the IRS also are considering and seeking comment on possible alternative ap-

proaches for a transition rule that would address low-value materials that cannot be traced under current industry standards and that would be responsive to rapidly changing industry practices regarding specific materials or overall battery composition, or no transition rule at all.

This transition rule in proposed §1.30D-6(b)(2) is proposed to phase out for any new clean vehicles for which the manufacturer is required to provide a periodic written report after December 31, 2026. The Treasury Department and the IRS request comments on the need for and design of this transition rule, including data or other objective information to support such comments.

The Treasury Department and IRS also request comment on whether the challenges identified in this Explanation of Provisions related to traceability of low-value materials should instead be addressed through an alternative approach. The Treasury Department and the IRS request comment on whether a transition rule that adopts an alternative to the approach of listing materials would better achieve the Treasury Department's and IRS's stated goals and the challenges posed by low-value materials that are not currently feasible to trace. The Treasury Department and the IRS specifically request comment describing alternative approaches to providing a transition rule that accounts for low-value materials that cannot be traced under current industry standards and that is responsive to rapidly changing industry practice, if commenters believe a different approach could better achieve the Treasury Department's and IRS's stated goals. Such alternative approaches, which might include ones that use principle-based criteria instead of the listing of specific non-traceable battery materials in a final regulation, should be narrowly tailored to address the traceability challenges identified, enable effective administration by the IRS, and phase-out on a schedule consistent with the reasonable development of industry standards.

C. Excluded entity restriction

1. In general

Proposed §1.30D-6(c)(1) would provide that in the case of any new clean vehicle placed in service after December 31, 2023, the batteries from which the electric motor of such vehicle draws electricity must be FEOC-compliant. A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles.

The proposed regulation would provide that the determination that a battery is FEOC-compliant is made as follows: First, the qualified manufacturer makes a determination of whether battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant, in accordance with rules for the determination of FEOC-compliant battery components and applicable critical minerals, which are described in part III.C.4. of this Explanation of Provisions. Next, the FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with rules for the determination of FEOC compliant-battery cells, described in part III.C.3. of this Explanation of Provisions. Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance the rules for a temporary allocation-based determination for applicable critical minerals and associated constituent materials, described in part III.C.3.a of this Explanation of Provisions. Finally, the battery components, including battery cells, are physically tracked to specific batteries, in accordance with the rules for the determination of FEOC-compliant batteries described in part II.C.2 of this Explanation of Provisions.

2. Determination of FEOC-compliant batteries

Proposed §1.30D-6(c)(2) would provide that the determination that a battery is FEOC-compliant must be made by physically tracking FEOC-compliant battery components, including battery cells, to such battery. With respect to battery cells, a serial number or other identification system must be used to physically track FEOC-compliant battery cells to such batteries.

3. Determination of FEOC-compliant battery cell

Proposed §1.30D-6(c)(3)(i) would provide that, except as described in part III.C.3.a. of this Explanation of Provisions, the determination that a battery cell contains FEOC-compliant battery components and FEOC-compliant applicable critical minerals and their associated constituent materials must be made by physically tracking FEOC-compliant battery components to specific battery cells and by physically tracking the mass of FEOC-compliant applicable critical minerals and associated constituent materials to specific battery cells.

a. **Temporary allocation-based determination for applicable critical materials and associated constituent materials of a battery cell**

Proposed §1.30D-6(c)(3)(ii)(A) would provide that the determination that a battery cell is a FEOC-compliant battery cell may be made through an allocation of available mass of applicable critical minerals and associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of the mass of applicable critical minerals (and associated constituent materials) to specific battery cells. This allocation-based determination is an exception to the general rule, requiring specific tracking, of proposed §1.30D-6(c)(3)(ii)(A). As provided in proposed §1.30D-6(c)(3)(ii)(F), the Treasury Department and the IRS propose that this exception would be a temporary rule for any new clean vehicle for which the qualified manufacturer provides a periodic written report before January 1, 2027.

After extensive consultation with the DOE, the Treasury Department and the IRS understand that certain applicable critical minerals (and associated constituent materials) are commingled prior to delivery to or at the battery cell production facility. Thus, while the qualified manufacturer and its suppliers can trace such minerals through the entire electric vehicle battery supply chain to determine FEOC-compliance, the manufacturer and suppliers cannot physically track specific

mass of minerals to specific battery cells or batteries. As a result, the qualified manufacturer cannot determine which battery cells or batteries are FEOC-compliant, absent an allocation-based determination.

The Treasury Department and the IRS anticipate that industry accounting practices may adapt to compliance regimes that require physical supply chain tracking in the future, whether through the acquisition of wholly-compliant supply, the separation of currently-commingled supply chains, the development of physical tracking systems, or some combination thereof. Accordingly, this exception is proposed to phase out for any new clean vehicle for which the qualified manufacturer provides a periodic written report after December 31, 2026. The Treasury Department and the IRS request comments on the need for, design, and duration of this temporary rule, including data or other objective information to support such comments. The Treasury Department and the IRS also request comment on whether industry practices are likely to develop that allow for physical tracking before December 31, 2032, and, if not, whether allocation-based accounting should be included as a permanent compliance approach, rather than as a temporary transition rule.

Proposed §1.30D-6(c)(3)(ii)(B) would provide that the temporary allocation-based determination rules are limited to applicable critical minerals and associated constituent materials that are incorporated into a battery cell or its battery components. Battery components must be physically tracked.

Proposed §1.30D-6(c)(3)(ii)(C) would provide that any allocation with respect to the mass of an applicable critical mineral must be made within the type of constituent materials (such as powders of cathode active materials, powders of anode active materials, or foils) in which such mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials with which such applicable critical mineral is not associated, and an allocation of mass of an applicable critical mineral may not be made from one type of constituent material to another. Proposed §1.30D-6(c)(3)(ii)(C) also provides an example illustrating this rule.

Proposed §1.30D-6(c)(3)(ii)(D) would provide that any allocation with respect to applicable critical minerals and their associated constituent materials must be allocated within one or more specific battery cell product lines of the battery cell production facility, such that a particular mass of constituent material is not treated as fungible across different battery chemistries and designs.

Proposed §1.30D-6(c)(3)(ii)(E) would provide that if a qualified manufacturer uses the allocation-based determination rules described in this part III.C.3.a., the quantity of FEOC-compliant battery cells that can result from this allocation may not exceed the number of battery cells for which there is enough FEOC-compliant quantity of every applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates all of applicable critical mineral A, that is 20 percent FEOC-compliant, and all of applicable critical mineral B, that is 60 percent FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line may be FEOC-compliant.

Proposed §1.30D-6(c)(3)(ii)(F) would provide that the rules of proposed §1.30D-6(c)(3)(ii) do not apply with respect to any new clean vehicle for which the qualified manufacturer provides a periodic written report after December 31, 2026.

b. **Transition rule for non-traceable battery materials**

Proposed §1.30D-6(c)(3)(iii) would provide that for new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under proposed §1.30D-6(c)(3) may be satisfied by excluding non-traceable battery materials, and their associated constituent materials. To use this transition rule, which is further discussed in part III.B. of this Explanation of Provisions, qualified manufacturers must submit a report during the up-front review process described in proposed §1.30D-6(d)(2)(ii).

4. Determination of FEOC-compliant battery components and applicable critical minerals

Proposed §1.30D-6(c)(4) would provide that the determination that battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be made prior to any determination under proposed §1.30D-6(c)(2) and (3). In general, the determination of whether an applicable critical mineral is FEOC-compliant would take into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6)), such as nickel sulphate that is used in production of a nickel-manganese-cobalt cathode active powder. A constituent material would be associated with an applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a form not listed in section 45X(c)(6). However, an applicable critical mineral would be disregarded for purposes of the determination under proposed §1.30D-6(c)(4) if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery, such as certain solvents used in electrode production.

With respect to recycling, applicable critical minerals and associated constituent materials that are recycled would be subject to the determination of whether such mineral is FEOC-compliant if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process. Thus, for example, an applicable critical mineral derived from recyclable material that was recycled by an entity that is not a FEOC would be FEOC-compliant even if

such mineral may have been extracted by a FEOC prior to its inclusion in the recyclable material.

Whether an entity is a FEOC is determined as of the time of the entity's performance of the relevant activity, which for applicable critical minerals is the time of extraction, processing, or recycling, and for battery components is the time of manufacturing or assembly. The determination of whether an applicable critical mineral is FEOC-compliant is determined at the end of processing or recycling of the applicable critical mineral into a constituent material, taking into account all applicable steps prior to final processing or recycling. Thus, for example, an applicable critical mineral that is not extracted by a FEOC but is processed by a FEOC is not FEOC-compliant.

Proposed §1.30D-6(c)(4)(iv) provides examples regarding determinations of FEOC-compliant battery components and applicable critical minerals.

5. Third-party manufacturers or suppliers.

Proposed §1.30D-6(c)(5) would provide that the determinations under proposed §1.30D-6(c)(2) through (4) may be made by a third-party manufacturer or supplier that operates a battery cell production facility provided that the manufacturer or supplier performs the due diligence described in proposed §1.30D-6 and provides the qualified manufacturer of the new clean vehicle information sufficient to establish a basis for the determinations under proposed §1.30D-6(c)(2) through (4). In addition, the manufacturer or supplier must be contractually required to provide such information to the qualified manufacturer of the new clean vehicle and must be contractually required to inform the qualified manufacturer of any changes in the supply chain that affect determinations of FEOC compliance. In the case of multiple third-party manufacturers or suppliers (such as if a manufacturer contracts with a battery manufacturer, who, in turn, contracts with a manufacturer or supplier who operates a battery cell production facility), the due diligence and information requirements must be satisfied by each such manufacturer or supplier either directly to the qualified manufacturer or indirectly through contractual relationships.

D. *Compliant-battery ledger*

1. In general

Proposed §1.30D-6(d)(1) would provide that for new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must determine and provide information to the IRS to establish a compliant-battery ledger for each calendar year, as described in proposed §1.30D-6(d)(2)(i) and (ii). One compliant-battery ledger may be established for all vehicles for a calendar year, or there may be separate ledgers for specific models or classes of vehicles.

2. Determination of number of batteries

Proposed §1.30D-6(d)(2)(i) would provide that, to establish a compliant-battery ledger for a calendar year, the qualified manufacturer must determine the number of batteries, with respect to new clean vehicles (as described in section 30D(d) and proposed §1.30D-2(m)) for which the qualified manufacturer anticipates providing a periodic written report during the calendar year, that it knows or reasonably anticipates will be FEOC-compliant, pursuant to the requirements of proposed §1.30D-6(b) and (c). The determination would be based on the battery components and applicable critical minerals (and associated constituent materials) that are procured or contracted for the calendar year and that are known or reasonably anticipated to be FEOC-compliant battery components or FEOC-compliant applicable critical minerals, as applicable.

Proposed §1.30D-6(d)(2)(ii) would provide a process for upfront review of the number of batteries described in the preceding paragraph. Specifically, the proposed rule would provide that the qualified manufacturer must attest to the number of FEOC-compliant batteries determined under proposed §1.30D-6(d)(2)(i) and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with proposed §1.30D-6(b) and (c), at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, would review the attestations, certifications, and documentation. Once the IRS has determined that the qualified manufacturer has provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number will be the initial balance in the compliant-battery ledger.

Proposed §1.30D-6(d)(2)(iii) would provide rules for decreasing or increasing the balance of the compliant-battery ledger. Specifically, once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year, and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis in the manner provided in the Internal Revenue Bulletin.

The decrease described in the previous paragraph may decrease the compliant-battery ledger below zero, creating a negative balance in the compliant-battery ledger. In addition, if any such decrease is determined subsequent to the calendar year to which it relates, the decrease will be taken into account in the year in which the change is discovered. The remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple compliant-battery ledgers with negative balances, any negative balance would first be included in the compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year,

the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

3. Tracking FEOC-compliant batteries

Proposed §1.30D-6(d)(3) would provide that the compliant-battery ledger for a calendar year must be updated to track the number of available FEOC-compliant batteries of the qualified manufacturer, by reducing the balance of the ledger as the qualified manufacturer submits periodic written reports reporting the VINs of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner provided in the Internal Revenue Bulletin. If the balance of the compliant-battery ledger for a calendar year of the qualified manufacturer is zero or less than zero, the qualified manufacturer would not be able to submit additional periodic written reports with respect to section 30D.

4. Reconciliation of battery estimates

Proposed §1.30D-6(d)(4) would provide that, after the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of FEOC-compliant batteries of the qualified manufacturer for such calendar year, including with respect to any changes described in paragraph (d)(3)(iii), at the time and in the manner provided in the Internal Revenue Bulletin.

E. ***Rule for 2024***

Proposed §1.30D-6(e) would provide rules for new clean vehicles placed in service in 2024. This rule may apply to new clean vehicles for which the qualified manufacturer submits a periodic written report in 2024 as well as new clean vehicles for which a qualified manufacturer submitted a periodic written report in 2023. Thus, for example, a vehicle that was anticipated to be placed in service in 2023 that remains unsold at the end of 2023 is subject to these rules if placed in service in 2024.

Specifically, proposed §1.30D-6(e)(1) would provide that, for new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in such vehicles satisfy the requirements of section 30D(d)(7)(B) and whether batteries contained in the vehicle are FEOC-compliant under the rules of proposed §1.30D-6(b) and (c). The qualified manufacturer would be required to make an attestation with respect to such determinations at the time and in the manner provided in the Internal Revenue Bulletin.

However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before the date that is 30 days after the date these regulations are finalized, provided that the qualified manufacturer has determined that its supply chain of battery components with respect to such vehicles contains only FEOC-compliant battery components: (i) for purposes of the determination of FEOC-compliant batteries and FEOC-compliant battery cells described in parts III.C.2 and III.C.3. of this Explanation of Provisions, the determination of which battery cells or batteries, as applicable, contain FEOC-compliant battery components may be determined without physical tracking; (ii) for purposes of the determination of FEOC-compliant batteries, the determination of which batteries contain FEOC-compliant battery cells may be determined without physical tracking (and without the use of a serial number or other identification system); and (iii) for purposes of the determination that a vehicle contains a FEOC-compliant battery and therefore is a new clean vehicle, as described in part III.C.1. of this Explanation of Provisions, the determination of which vehicles contain FEOC-compliant batteries may be determined without physical tracking (and without the use of a serial number or other identification system).

Under proposed §1.30D-6(e)(2), the determination that a qualified manufacturer's supply chain of battery components contains only FEOC-compliant batteries may be made with respect to specific models or classes of vehicles.

F. ***Inaccurate attestations, certifications or documentation***

1. In general

Proposed §1.30D-6(f)(1) would provide that if the IRS determines, with analytical assistance from the DOE and after review of the attestations, certifications, and documentation described in part III.D. of this Explanation of Provisions, that a qualified manufacturer provided inaccurate attestations, certifications, or documentation, the IRS may take certain actions against the qualified manufacturer, depending on the severity of the inaccuracy. Such actions would affect new clean vehicles and qualified manufacturers on a prospective basis.

2. Inadvertence

Proposed §1.30D-6(f)(2) would provide that if the IRS determines that the attestations, certifications, or documentation for a new clean vehicle contain errors due to inadvertence, the following may be required: The qualified manufacturer may cure the errors identified, including by a decrease in the compliant-battery ledger of the qualified manufacturer. However, if the errors are not cured, in the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirements of section 30D(d), such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit. If the errors are not cured, in the case of a new clean vehicle that has not been placed in service and for which the qualified manufacturer has not submitted a periodic written report, the qualified manufacturer may not submit a periodic written report certifying compliance with the requirements of section 30D(d). Finally, if the errors are not cured, in the case of a new clean vehicle that has been placed in service, the IRS may require a decrease to the compliant-battery ledger.

3. Intentional disregard or fraud

Proposed §1.30D-6(f)(3) would provide guidance for cases of intentional disregard or fraud. Specifically, the proposed

regulations would provide that if the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, and documentation requirements or reported information fraudulently or with intentional disregard, the IRS may determine that all vehicles of the qualified manufacturer that have not been placed in service are no longer considered new clean vehicles eligible for the section 30D credit. In addition, the IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the manufacturer's status as a qualified manufacturer. The manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the Internal Revenue Bulletin.

G. *Examples*

Proposed §1.30D-6(g) would provide examples illustrating the application of the proposed rules regarding excluded entities. Example 1 would provide a general set of facts and analysis. Example 2 would provide an example illustrating the rules for third-party suppliers. Example 3 would provide an example illustrating the general rules for applicable critical minerals. Example 4 would provide a comprehensive example with specified battery components and applicable critical minerals (and associated constituent materials).

VI. *Severability*

Proposed §1.30D-6(h) would provide that if any provision in this proposed rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Proposed Applicability Dates

Consistent with the April 2023 proposed regulations, previously proposed §1.30D-2(a) through (h) are proposed to apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. Newly proposed §1.30D-2(j) through (m) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

Consistent with the April 2023 proposed regulations, previously proposed §1.30D-3(a) through (c) and (f) are proposed to apply to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023. Newly proposed §1.30D-3(d) and (e) are proposed to apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.

Section 30D(d)(7) provides that the excluded entity provisions apply to vehicles placed in service after December 31, 2023, for battery components, and after December 31, 2024, for applicable critical minerals. Accordingly proposed §1.30D-6 is proposed to apply to new clean vehicles placed in service after December 31, 2023.

Taxpayers may rely on these proposed regulations for vehicles placed in service prior to the date final regulations are published in the **Federal Register**, provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

Effect on Other Documents

This notice of proposed rulemaking modifies proposed §§1.30D-2 and 1.30D-3 of the April 2023 proposed regulations.

Special Analyses

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

For purposes of the PRA, the reporting burden associated with the collection of information in proposed §1.30D-6 regarding excluded entities will be reflected in the PRA Submissions associated with OMB control number 1545-2311. OMB Control Number 1545–2137 covers Form 8936 and Form 8936-A regarding clean vehicle credits, including the new requirement in section 30D(f)(9) to include on the taxpayer's return for the taxable year the VIN of the vehicle for which the section 30D credit is claimed. Revenue Procedure 2022-42 describes the procedural requirements for qualified manufacturers to make periodic written reports to the IRS to provide information related to each vehicle manufactured by such manufacturer that is eligible for the section 30D credit as required in section 30D(d)(3), including the critical mineral and battery component attestation or certification requirements in section 30D(e)(1)(A) and (2)(A). In addition, Revenue Procedure 2022-42 also provides the procedures for sellers of new clean vehicles to report information required by section 30D(d)(1)(H) for vehicles to be eligible for the section 30D credit. The collections of information contained in Revenue Procedure 2022-42 are described in that document and were submitted to the Office of Management and Budget in accordance with the PRA under control number 1545-2137.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

The proposed regulations affect qualified manufacturers that must determine their compliance with the excluded entity requirements in order to certify that their new clean vehicles placed in service after December 31, 2023, qualify for the section 30D credit.

While the tracking and reporting of compliance with the excluded entity requirements is likely to involve significant administrative costs, according to public filings, every qualified manufacturer had total revenues above $1 billion in 2022. There are a total of 11 qualified manufacturers that have indicated that they manufacture vehicles currently eligible for the section 30D credit. Pursuant to Revenue Procedure 2022–42, Revenue Procedure 2023-33, and following the publication of these proposed regulations, qualified manufacturers will also have to certify that their vehicles comply with the excluded entity requirement and contain batteries that are FEOC-compliant. The proposed regulations provide definitions and general rules for this purposes. Accordingly, the Treasury Department and the IRS intend that the proposed rules provide clarity for qualified manufacturers for consistent application of the excluded entity requirements. The Treasury Department and the IRS have determined that qualified manufacturers do not meet the applicable definition of small entity. Accordingly, the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC, 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal author of these proposed regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department, the DOE, and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order for §1.30D-6 to read in part as follows:

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

Section 1.30D-6 also issued under 26 U.S.C. 30D.

* * * * *

Par. 2. Section 1.30D-0, as proposed to be added at 88 FR 23370 (April 17, 2023) and proposed to be amended at 88 FR 70310 (October 10, 2023), is amended by:

a. Adding paragraphs (k), (l), and (m) under §1.30D-2;

b. Revising paragraphs (e) and (f) under §1.30D-3;

c. Adding paragraph (g) under §1.30D-3; and

d. Adding an entry in numerical order for §1.30D-6.

The additions and revisions read as follows:

§1.30D-0 Table of contents.

* * * * *

Par. 3. Section 1.30D-2, as proposed to be added at 88 FR 23370 (April 17, 2023) and proposed to be amended at 88 FR 70310 (October 10, 2023), is amended by revising paragraphs (a), (f), and (i) and adding paragraphs (k), (l), and (m) to read as follows:

§1.30D-2 Definitions for purposes of section 30D.

(a) *In general.* The definitions in this section apply for purposes of section 30D of the Internal Revenue Code (Code) and the section 30D regulations.
* * * * *

(f) *Section 30D regulations*. *Section 30D regulations* means §1.30D–1, this section, and §§1.30D–3 through 1.30D–6.
* * * * *

(i) *Applicability date*. Paragraphs (a) through (h) of this section apply to new clean vehicles placed in service on or after January 1, 2023, for taxable years ending after April 17, 2023. Paragraphs (j) through (m) of this section apply for new clean vehicles placed in service on or after January 1, 2024, for taxable years ending after December 31, 2023.
* * * * *

(k) *Manufacturer*. A *manufacturer* means any manufacturer within the meaning of the regulations prescribed by the Administrator of the Environmental Protection Agency (EPA) for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.) and as defined in 42 U.S.C. 7550(1). If multiple manufacturers are involved in the production of a vehicle, the requirements provided in section 30D(d)(3) must be met by the manufacturer who satisfies the reporting requirements of the greenhouse gas emissions standards set by the EPA under the Clean Air Act (42 U.S.C. 7521 et seq.) for the subject vehicle.

(l) *Qualified manufacturer*. A *qualified manufacturer* means a manufacturer that meets the requirements described in section 30D(d)(3). The term qualified manufacturer does not include any manufacturer whose qualified manufacturer status has been terminated by the

Internal Revenue Service (IRS). The IRS may terminate qualified manufacturer status for fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D, the section 30D regulations, or any guidance under section 30D, including with respect to the periodic written reports described in section 30D(d)(3) and §1.30D-2(m) and any attestations, documentation, or certifications described in §1.30D-3(e) and §1.30D-6(d), at the time and in the manner provided in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter). *See* §1.30D-6(f) for additional rules regarding inaccurate determinations and documentation.

(m) *New clean vehicle.* A new clean vehicle means a vehicle that meets the requirements described in section 30D(d). A vehicle does not meet the requirements of section 30D(d) if—

(1) The qualified manufacturer fails to provide a periodic written report for such vehicle prior to the vehicle being placed in service, reporting the vehicle identification number (VIN) of such vehicle and certifying compliance with the requirement of section 30D(d);

(2) The qualified manufacturer provides incorrect information with respect to the periodic written report for such vehicle;

(3) The qualified manufacturer fails to update its periodic written report in the event of a material change with respect to such vehicle; or

(4) For new clean vehicles placed in service after December 31, 2024, the qualified manufacturer fails to meet the requirements of §1.30D-6(d).

Par. 4. Section 1.30D-3, as proposed to be added at 88 FR 23370 (April 17, 2023), is amended by:

a. Revising paragraph (d);
b Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);
c. Adding new paragraph (e); and
d. Revising newly redesignated paragraph (g).

The revisions and addition read as follows:

§1.30D-3 Critical mineral and battery component requirements.

* * * * *

(d) *Excluded entities*. For rules regarding excluded entities, *see* §1.30D-6.

(e) *Upfront review of battery component and applicable critical minerals requirements.* For new clean vehicles anticipated to be placed in service after December 31, 2024, the qualified manufacturer must provide attestations, certifications and documentation demonstrating compliance with the requirements of section 30D(e), at the time and in the manner provided in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(a) of this chapter). The IRS, with analytical assistance from the Department of Energy, will review the attestations, certifications, and documentations.

* * * * *

(g) *Applicability date*. Paragraphs (a) through (c) and (f) of this section apply to new clean vehicles placed in service after April 17, 2023, for taxable years ending after April 17, 2023. Paragraphs (d) and (e) of this section apply to new clean vehicles placed in service on or after January 1, 2024, for taxable years beginning after December 31, 2023.

Par. 5. Section 1.30D-6 is added to read as follows:

§1.30D-6 Excluded entities.

(a) *Definitions*. This paragraph (a) provides definitions that apply for purposes of section 30D(d)(7) of the Internal Revenue Code (Code) and this section.

(1) *Applicable critical mineral*. *Applicable critical mineral* means an applicable critical mineral as defined in section 45X(c)(6) of the Code.

(2) *Assembly. Assembly*, with respect to battery components, means the process of combining battery components into battery cells and battery modules.

(3) *Battery. Battery*, for purposes of a new clean vehicle, means a collection of one or more battery modules, each of which has two or more electrically configured battery cells in series or parallel, to create voltage or current. The term battery does not include items such as thermal management systems or other parts of a battery cell or module that do not directly contribute to the electrochemical storage of energy within the battery, such as battery cell cases, cans, or pouches.

(4) *Battery cell. Battery cell* means a combination of battery components (other than battery cells) capable of electrochemically storing energy from which the electric motor of a new clean vehicle draws electricity.

(5) *Battery cell production facility*. *Battery cell production facility* means a facility in which battery cells are manufactured or assembled.

(6) *Battery component*. *Battery component* means a component that forms part of a battery and that is manufactured or assembled from one or more components or constituent materials that are combined through industrial, chemical, and physical assembly steps. Battery components may include, but are not limited to, a cathode electrode, anode electrode, solid metal electrode, separator, liquid electrolyte, solid state electrolyte, battery cell, and battery module. Constituent materials are not a type of battery component, although constituent materials may be manufactured or assembled into battery components. Some battery components may be made entirely of inputs that do not contain constituent materials.

(7) *Compliant-battery ledger*. A compliant-battery ledger, for a qualified manufacturer for a calendar year, is a ledger established under the rules of paragraph (d) of this section that tracks the number of available FEOC-compliant batteries for such calendar year.

(8) *Constituent materials*. *Constituent materials* means materials that contain applicable critical minerals and that are employed directly in the manufacturing of battery components. Constituent materials may include, but are not limited to, powders of cathode active materials, powders of anode active materials, foils, metals for solid electrodes, binders, electrolyte salts, and electrolyte additives, as required for a battery cell.

(9) *Extraction*. *Extraction* means the activities performed to harvest minerals or natural resources from the ground or a body of water. Extraction includes, but is not limited to, operating equipment to harvest minerals or natural resources from mines and wells, or to extract minerals or natural resources from the waste or residue of prior extraction. Extraction concludes when activities are performed to convert raw mined or harvested prod-

ucts or raw well effluent to substances that can be readily transported or stored for direct use in critical mineral processing. Extraction includes the physical processes involved in refining. Extraction does not include the chemical and thermal processes involved in refining.

(10) *Foreign entity of concern*. *Foreign entity of concern* (FEOC) has the meaning provided in section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) and guidance promulgated thereunder by the Department of Energy (DOE).

(11) *FEOC-compliant*. *FEOC-compliant* means in compliance with the applicable excluded entity requirement under section 30D(d)(7). In particular--

(i) A battery component (other than a battery cell), with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it is not manufactured or assembled by a FEOC;

(ii) An applicable critical mineral, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not extracted, processed, or recycled by a FEOC;

(iii) A battery cell, with respect to a new clean vehicle placed in service after December 31, 2023, and before January 1, 2025, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components;

(iv) A battery cell, with respect to a new clean vehicle placed in service after December 31, 2024, is FEOC-compliant if it is not manufactured or assembled by a FEOC and it contains only FEOC-compliant battery components and FEOC-compliant applicable critical minerals; and

(v) A battery, with respect to a new clean vehicle placed in service after December 31, 2023, is FEOC-compliant if it contains only FEOC-compliant battery components (other than battery cells) and FEOC-compliant battery cells (as described in paragraph (a)(11)(iii) or (iv) of this section, as applicable).

(12) *Manufacturing*. *Manufacturing*, with respect to a battery component, means the industrial and chemical steps taken to produce a battery component.

(13) *Non-traceable battery materials*—(i) *In general. Non-traceable battery materials* mean specifically identified, low-value battery materials that originate from multiple sources and are commingled during refining, processing, or other production processes by suppliers to such a degree that the qualified manufacturer cannot, due to current industry practice, feasibly determine and attest to the origin of such battery materials. For this purpose, low-value battery materials are those that have low value compared to the total value of the battery.

(ii) [Reserved].

(14) *Processing. Processing* means the non-physical processes involved in the refining of non-recycled substances or materials, including the treating, baking, and coating processes used to convert such substances and materials into constituent materials. Processing includes the chemical or thermal processes involved in refining. Processing does not include the physical processes involved in refining.

(15) *Recycling. Recycling* means the series of activities during which recyclable materials containing critical minerals are transformed into specification-grade commodities and consumed in lieu of virgin materials to create new constituent materials; such activities result in new constituent materials contained in the battery from which the electric motor of a new clean vehicle draws electricity.

(b) *Due diligence*—(1) *In general.* The qualified manufacturer must conduct due diligence with respect to all battery components and applicable critical minerals (and associated constituent materials) that are relevant to determining whether such components or minerals are FEOC-compliant. Such due diligence must comply with standards of tracing for battery materials available in the industry at the time of the attestation or certification that enable the manufacturer to know with reasonable certainty the provenance of applicable critical minerals, constituent materials, and battery components. Reasonable reliance on a supplier attestation or certification will be considered due diligence if the qualified manufacturer does not know or have reason to know after its due diligence that such supplier attestation or certification is incorrect. Due diligence must be conducted by the qualified manufacturer prior to its determining information necessary to establish any compliant-battery ledger under paragraph (d) of this section, and on an ongoing basis.

(2) *Transition rule for non-traceable battery materials*. For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the due diligence requirement of paragraph (b)(1) of this section may be satisfied by excluding identified non-traceable battery materials. To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect.

(c) *Excluded entity restriction*—(1) *In general.* In the case of any new clean vehicle placed in service after December 31, 2023, the batteries from which the electric motor of such vehicle draws electricity must be FEOC-compliant. A serial number or other identification system must be used to physically track FEOC-compliant batteries to specific new clean vehicles. The determination that a battery is FEOC-compliant is made as follows:

(i) *Step 1*. First, the qualified manufacturer determines whether battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant, in accordance with paragraph (c)(4) of this section.

(ii) *Step 2*. Next, the FEOC-compliant battery components and FEOC-compliant applicable critical minerals (and associated constituent materials) are physically tracked to specific battery cells, in accordance with paragraph (c)(3)(i) of this section. Alternatively, FEOC-compliant applicable critical minerals and associated constituent materials (but not battery components) may be allocated to battery cells, without physical tracking, in accordance with paragraph (c)(3)(ii) of this section. In addition, the determination under paragraph (c)(4) of this section may be made by applying the transition rule for non-traceable battery materials, in accordance with paragraph (c)(3)(iii) of this section.

(iii) *Step 3*. Finally, the battery components, including battery cells, are physically tracked to specific batteries, in

accordance with paragraph (c)(2) of this section.

(2) *Determination of FEOC-compliant batteries*. The determination that a battery is FEOC-compliant must be made by physically tracking FEOC-compliant battery components (including battery cells) to such battery. With respect to battery cells, a serial number or other identification system must be used to physically track FEOC-compliant battery cells to such batteries.

(3) *Determination of FEOC-compliant battery cell*—(i) *In general*. Except as provided in paragraph (c)(3)(ii) of this section, the determination that a battery cell contains FEOC-compliant battery components and FEOC-compliant applicable critical minerals and their associated constituent materials must be made by physically tracking FEOC-compliant battery components to specific batteries cells and by physically tracking the mass of FEOC-compliant applicable critical minerals and their associated constituent materials to specific batteries cells.

(ii) *Temporary allocation-based determination for applicable critical materials and associated constituent materials of a battery cell*—(A) *In general*. The determination that a battery cell is a FEOC-compliant battery cell may be based on an allocation of available mass, produced or contracted for, of applicable critical minerals and their associated constituent materials to specific battery cells manufactured or assembled in a battery cell production facility, without the physical tracking of mass of applicable critical minerals and associated constituent materials to specific battery cells.

(B) *Allocation limited to applicable critical minerals in the battery cell*. The rules of this paragraph (c)(3)(ii) are limited to applicable critical minerals and their associated constituent materials that are incorporated into a battery cell or its battery components. Battery components must be physically tracked.

(C) *Separate allocation for each class of constituent materials*. Any allocation under this paragraph (c)(3)(ii) with respect to the mass of an applicable critical mineral must be made within the type of associated constituent materials (such as powders of cathode active materials, powders of anode active materials, or foils) in which such mineral is contained. Masses of an applicable critical mineral may not be aggregated across constituent materials with which such applicable critical mineral is not associated, and an allocation of a mass of an applicable critical mineral may not be made from one type of constituent material to another. For example, assume that M, a qualified manufacturer, operates a battery cell production facility. M manufactures a line of battery cells that contains applicable critical mineral Z contained in constituent material 1 and applicable critical mineral Z contained in constituent material 2. With respect to constituent material 1, M procures 20,000,000 kilograms (kg) of applicable critical mineral Z for the battery cell production facility, of which 4,000,000 kg are FEOC-compliant and 16,000,000 kg are not FEOC-compliant. With respect to constituent material 2, M procures another 15,000,000 kg of applicable critical mineral Z for the battery cell production facility, of which 7,500,000 kg are FEOC-compliant and 7,500,000 kg are not FEOC-compliant. M determines which battery cells are FEOC-compliant through an allocation-based determination with respect to battery cells manufactured or assembled in the battery cell production facility. Under this paragraph (c)(3)(ii)(C), any allocation with respect to the mass of applicable critical mineral Z must be made within the type of constituent materials in which such mineral is contained. Thus, M may not aggregate the 4,000,000 kg mass of FEOC-compliant applicable critical mineral Z contained in constituent material 1 with the 7,500,000 kg mass of FEOC-compliant applicable critical mineral Z contained in constituent material 2, and allocations may not be made from constituent material 1 to constituent material 2. As a result, overall FEOC compliance is constrained by the 20 percent of constituent material 1 that is FEOC-compliant due to having 4,000,000 kg of applicable critical mineral Z, even though 33 percent (7,500,000 + 4,000,000)/(20,000,000 + 15,000,000) of the total mass of critical mineral Z is compliant.

(D) *Allocation within each product line of battery cells*. Any allocation under this paragraph (c)(3)(ii) with respect to applicable critical minerals and their associated constituent materials must be allocated within one or more specific battery cell product lines of the battery cell production facility.

(E) *Limitation on number of FEOC-compliant battery cells*. If a qualified manufacturer uses an allocation-based determination described in this paragraph (c)(3)(ii), the number of FEOC-compliant battery cells that can be produced from such allocation may not exceed the total number of battery cells for which there is enough of every FEOC-compliant applicable critical mineral. That number will necessarily be limited by the applicable critical mineral that has the lowest percentage of FEOC-compliant supply. For example, if a qualified manufacturer allocates applicable critical mineral A, which is 20 percent FEOC-compliant and applicable critical mineral B, which is 60 percent FEOC-compliant, to a battery cell product line, no more than 20 percent of the battery cells in that battery cell product line will be treated as FEOC-compliant.

(F) *Termination of temporary allocation-based determination.* The rules of this paragraph (c)(3)(ii) do not apply with respect to any new clean vehicle for which the qualified manufacturer is required to provide a periodic written report after December 31, 2026.

(iii) *Transition rule for non-traceable battery materials*. For any new clean vehicles for which the qualified manufacturer provides a periodic written report before January 1, 2027, the determination of whether a battery cell is FEOC-compliant under this paragraph (c)(3) may be satisfied by excluding identified non-traceable battery materials (and associated constituent materials). To use this transition rule, qualified manufacturers must submit a report during the up-front review process described in paragraph (d)(2)(ii) of this section demonstrating how the qualified manufacturer will comply with the excluded entity restrictions once the transition rule is no longer in effect.

(4) *Determination of FEOC-compliant battery components and applicable critical minerals*—(i) *In general.* The determination of whether battery components and applicable critical minerals (and their associated constituent materials) are FEOC-compliant must be made prior to any determination under paragraphs (c)(2) and (3) of this section.

(ii) *Applicable critical minerals*—(A) *In general*. Except as provided in paragraph (c)(4)(ii)(D) of this section, the determination of whether an applicable critical mineral is FEOC-compliant takes into account each step of extraction, processing, or recycling through the step in which such mineral is processed or recycled into a constituent material, even if the mineral is not in a form listed in section 45X(c)(6) at every step.

(B) *Associated constituent materials.* A constituent material is associated with an applicable critical mineral if the applicable critical mineral has been processed or recycled into a constituent material, even if that processing or recycling transformed the mineral into a form not listed in section 45X(c)(6).

(C) *Exception for applicable critical minerals not contained in the battery.* An applicable critical mineral is disregarded for purposes of the determination under this paragraph (c)(4) if it is fully consumed in the production of the constituent material or battery component and no longer remains in any form in the battery.

(D) *Recycling*. An applicable critical mineral and associated constituent material that is recycled is subject to the determination under this paragraph (c)(4) if the recyclable material contains an applicable critical mineral, contains material that was transformed from an applicable critical mineral, or if the recyclable material is used to produce an applicable critical mineral at any point during the recycling process. The determination of whether an applicable critical mineral or associated constituent material that is incorporated into a battery via recycling is FEOC-compliant takes into account only activities that occurred during the recycling process.

(iii) *Timing of determination of FEOC-compliant status.* Whether an entity is a FEOC is determined as of the time of the entity's performance of the relevant activity, which for applicable critical minerals is the time of extraction, processing, or recycling, and for battery components is the time of manufacturing or assembly. The determination of whether an applicable critical mineral is FEOC-compliant is determined at the end of processing or recycling of the applicable critical mineral into a constituent material, taking into account all applicable steps through and including final processing or recycling.

(iv) *Examples.* The following examples illustrate the rules under this paragraph (c)(4):

(A) *Example 1: Timing of FEOC compliance determination*. Mineral X, an applicable critical mineral, was not extracted by a FEOC but was later processed by a FEOC. Mineral X is not FEOC-compliant because one step of the extraction and processing was performed by a FEOC. Any battery containing Mineral X is not FEOC-compliant.

(B) *Example 2: Form of applicable critical mineral*. Mineral Y is extracted by a FEOC and is intended to be incorporated into the battery of an electric vehicle. Mineral Y is not in a form listed in section 45X(c)(6) at the time of such extraction, but subsequently it is refined into an applicable critical mineral form listed in section 45X(c)(6) by an entity that is not a FEOC. Mineral Y is not FEOC-compliant pursuant to this paragraph (c)(4) because it was extracted by a FEOC, regardless of its form at the time of extraction. Any battery containing Mineral Y is not FEOC-compliant.

(C) *Example 3: Recycling of applicable critical mineral*. Mineral Z, an applicable critical mineral in a form listed in section 45X(c)(6), was processed by a FEOC in a prior production process. Mineral Z subsequently was derived from recyclable material in a form not listed in section 45X(c)(6). Mineral Z was recycled by an entity that is not a FEOC. Mineral Z is subject to a determination of whether it is FEOC-compliant at the end of the recycling process, because it was at one time an applicable critical mineral. Mineral Z is FEOC-compliant pursuant to this paragraph (c)(4) because it was not recycled by a FEOC.

(5) *Third-party manufacturers or suppliers.* The determinations under paragraphs (c)(2) through (4) of this section may be made by a third-party manufacturer or supplier that operates a battery cell production facility provided that:

(i) The third-party manufacturer or supplier performs the due diligence described in paragraph (b) of this section;

(ii) The third-party manufacturer or supplier provides the qualified manufacturer of the new clean vehicle information sufficient to establish a basis for the determinations under paragraphs (c)(2) through (4) of this section, including information related to the due diligence described in paragraph (c)(5)(i) of this section;

(iii) The third-party manufacturer or supplier is contractually required to provide the information in paragraph (c)(5)(ii) of this section to the qualified manufacturer and is contractually required to inform the qualified manufacturer of any change in the supply chain that affects the determinations of FEOC compliance under paragraph (c)(2) and (4) of this section; and

(iv) If there are multiple third-party manufacturers or suppliers (such as a case in which a qualified manufacturer contracts with a battery manufacturer, who, in turn, contracts with a battery cell manufacturer or supplier who operates a battery cell production facility), the due diligence and information requirements of this paragraph (c) must be satisfied by each such manufacturer or supplier either directly to the qualified manufacturer or indirectly through contractual relationships.

(d) *Compliant-battery ledger*—(1) *In general.* For new clean vehicles placed in service after December 31, 2024, the qualified manufacturer must determine and provide information to the IRS to establish a compliant-battery ledger for each calendar year, as described in paragraphs (d)(2)(i) and (ii) of this section. One compliant-battery ledger may be established for all vehicles for a calendar year, or there may be separate ledgers for specific models or classes of vehicles to account for different battery cell chemistries or differing quantities of cells in each battery.

(2) *Determination of number of batteries*—(i) *In general.* To establish a compliant-battery ledger for a calendar year, the qualified manufacturer must determine the number of batteries, with respect to new clean vehicles (as described in section 30D(d) and §1.30D-2(m)) for which the qualified manufacturer anticipates providing a periodic written report during the calendar year, that it knows or reasonably anticipates will be FEOC-compliant, pursuant to the requirements of paragraphs (b) and (c) of this section. The determination is based on the battery components and applicable critical minerals (and associated constituent materials) that are procured or contracted for the calendar year and that are known or reasonably anticipated to be FEOC-compliant battery components or FEOC-compliant applicable critical minerals, as applicable.

(ii) *Upfront review.* The qualified manufacturer must attest to the number of FEOC-compliant batteries determined under paragraph (d)(2)(i) of this section and provide the basis for the determination, including attestations, certifications and documentation demonstrating compliance with paragraphs (b) and (c) of this section,

at the time and in the manner provided in the Internal Revenue Bulletin. The IRS, with analytical assistance from the DOE, will review the attestations, certifications, and documentation. Once the IRS determines that the qualified manufacturer provided the required attestations, certifications, and documentation, the IRS will approve or reject the determined number of FEOC-compliant batteries. The IRS may approve the determined number in whole or part. The approved number is the initial balance in the compliant-battery ledger.

(iii) *Decrease or increase to compliant-battery ledger*—(A) Once the compliant-battery ledger is established with respect to a calendar year, the qualified manufacturer must determine and take into account any decrease in the number of FEOC-compliant batteries for such calendar year, and any of the prior three calendar years for which the qualified manufacturer had a compliant-battery ledger, within 30 days of discovery. In addition, the qualified manufacturer may determine and take into account any increase in the number of FEOC-compliant batteries. Such determinations, and any supporting attestations, certifications, and documentation, must be provided on a periodic basis, in accordance with paragraph (d)(2)(ii) of this section and the manner provided in the Internal Revenue Bulletin.

(B) The decrease described in paragraph (d)(2)(iii)(A) of this section may decrease the compliant-battery ledger below zero, creating a negative balance in the compliant-battery ledger.

(C) If any decrease described in paragraph (d)(2)(iii)(A) of this section is determined subsequent to the calendar year to which it relates, the decrease must be taken into account in the year in which the change is discovered.

(D) Any remaining balance in the compliant-battery ledger at the end of the calendar year, whether positive or negative, will be included in the compliant-battery ledger for the subsequent calendar year. If a qualified manufacturer has multiple compliant-negative battery accounts, any negative balance will first be included in the compliant-battery ledger for the same model or class of vehicles for the subsequent calendar year. However, if there is no ledger for the same model or class of vehicles in the subsequent calendar year, the IRS can account for such negative balance in the ledger of a different model or class of vehicles of the qualified manufacturer.

(3) *Tracking FEOC-compliant batteries*. The compliant-battery ledger for a calendar year must be updated to track the qualified manufacturer's available FEOC-compliant batteries, by reducing the balance in the ledger as the qualified manufacturer submits periodic written reports reporting the vehicle identification numbers (VINs) of new clean vehicles as eligible for the credit under section 30D, at the time and in the manner provided in the Internal Revenue Bulletin. If the balance in the compliant-battery ledger of the qualified manufacturer for a calendar year is zero or less than zero, the qualified manufacturer may not submit additional periodic written reports with respect to section 30D until the number of available FEOC-compliant batteries is increased as described in paragraph (d)(2)(iii)(A) of this section.

(4) *Reconciliation of battery estimates*. After the end of any calendar year for which a compliant-battery ledger is established, the IRS may require a qualified manufacturer to provide attestations, certifications, and documentation to support the accuracy of the number of the qualified manufacturer's FEOC-compliant batteries for such calendar year, including with respect to any changes described in paragraph (d)(2)(iii) of this section, at the time and in the manner provided in the Internal Revenue Bulletin.

(e) *Rule for 2024*--(1) *In general*. For new clean vehicles that are placed in service after December 31, 2023, and prior to January 1, 2025, the qualified manufacturer must determine whether the battery components contained in vehicles satisfy the requirements of section 30D(d)(7)(B) and whether batteries contained in the vehicle are FEOC-compliant under the rules of paragraphs (b) and (c) of this section. The qualified manufacturer must make an attestation with respect to such determinations at the time and in the manner provided in the Internal Revenue Bulletin. However, for any new clean vehicles for which the qualified manufacturer provides a periodic written report before the date that is 30 days after the date these regulations are finalized, provided that the qualified manufacturer has determined that its supply chains of each battery component with respect such vehicles contain only FEOC-compliant battery components:

(i) For purposes of paragraphs (c)(2) and (3) of this section, the determination of which battery cells or batteries, as applicable, contain FEOC-compliant battery components may be determined without physical tracking;

(ii) For purposes of paragraph (c)(2) of this section, the determination of which batteries contain FEOC-compliant battery cells may be determined without physical tracking (and without the use of a serial number or other identification system); and

(iii) For purposes of paragraph (c)(1) of this section, the determination of which vehicles contain FEOC-compliant batteries may be determined, without physical tracking (and without the use of a serial number or other identification system).

(2) *Determination.* The determination that a qualified manufacturer's supply chains of each battery component contain only FEOC-compliant battery components may be made with respect to specific models or classes of vehicles.

(f) *Inaccurate attestations, certifications or documentation*—(1) *In general*. If the IRS determines, with analytical assistance from the DOE and after review of the attestations, certification and documentation described in paragraph (d) of this section, that a qualified manufacturer has provided attestations, certifications, or documentation that contain inaccurate information, it may take appropriate action as described in paragraphs (f)(2) and (3) of this section. Such action would affect vehicles and qualified manufacturers on a prospective basis.

(2) *Inadvertence.* If the IRS determines that the attestations, certifications or documentation for a specific new clean vehicle contain errors due to inadvertence, the following may be required:

(i) The qualified manufacturer may cure the errors identified, including by a decrease in the compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(ii) If the errors are not cured, in the case of a new clean vehicle that has not been placed in service but for which the qualified manufacturer has submitted a periodic written report certifying compliance with the requirement of section 30D(d), such vehicle is no longer considered a new clean vehicle eligible for the section 30D credit.

(iii) If the errors are not cured, in the case of a new clean vehicle that has not been placed in service and for which the qualified manufacturer has not submitted a periodic written report certifying compliance with the requirement of section 30D(d), the qualified manufacturer may not submit such periodic written report.

(iv) If the errors are not cured, in the case of a new clean vehicle that has been placed in service, the IRS may require a decrease in the qualified manufacturer's compliant-battery ledger as described in paragraph (d)(2)(iii) of this section. If the qualified manufacturer has multiple compliant-battery ledgers, the IRS may determine which ledger is to be decreased.

(3) *Intentional disregard or fraud.* If the IRS determines that a qualified manufacturer intentionally disregarded attestation, certification, or documentation requirements or reported information fraudulently or with intentional disregard, the following may be required:

(i) All vehicles of the qualified manufacturer that have not been placed in service may no longer be considered new clean vehicles eligible for the section 30D credit.

(ii) The IRS may terminate the written agreement between the IRS and the manufacturer, thereby terminating the manufacturer's status as a qualified manufacturer as described in §1.30D-2(l). The manufacturer would be required to submit a new written agreement to reestablish qualified manufacturer status at the time and in the manner provided in the Internal Revenue Bulletin.

(g) *Examples*. The following examples illustrate the rules under paragraphs (b) through (d) of this section:

(1) *Example 1: In general*—(i) *Facts*. M is a manufacturer of new clean vehicles and batteries. M also manufactures or assembles battery cells at its own battery cell production facility. M manufactures a line of new clean vehicles that it anticipates will be placed in service in calendar year 2025. Each vehicle contains one battery, and each battery contains 1,000 battery cells. All battery cells are produced at the same battery cell production facility. The battery cells are not manufactured or assembled by a FEOC. Each battery cell contains 10 mass of battery component A. M has procured or is under contract to procure 10,000,000 mass of battery component A for the battery cell production facility, of which 6,000,000 mass is from supplier 1 and 4,000,000 mass is from supplier 2.

(ii) *Analysis*. (A) Under paragraph (b) of this section, M must conduct due diligence on all battery components and applicable critical minerals (and associated constituent materials) that are contained in the battery to determine whether such components or minerals are FEOC-compliant.

(B) Under paragraph (c)(4) of this section, M must first determine whether the battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant. From its due diligence, M determines that, of the 10,000,000 mass of battery component A, the 6,000,000 mass from supplier 1 is FEOC-compliant while the 4,000,000 mass from supplier 2 is not FEOC-compliant. M determines that all other battery components and applicable critical minerals (and associated constituent materials) of the battery cell are FEOC-compliant, that the battery cell is not manufactured or assembled by a FEOC, and that all battery components (excluding components of the battery cell) of the battery are FEOC-compliant.

(C) Under paragraph (c)(3) of this section, M must determine which battery cells are FEOC-compliant through the physical tracking of the 6,000,000 mass of FEOC-compliant battery component A to determine which 600,000 (6,000,000/10) battery cells are FEOC-compliant. Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 600,000 FEOC-compliant battery cells to 600 (600,000/1,000) specific batteries.

(D) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 600 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 600 FEOC-compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, approves the number, a compliant-battery ledger is established with a balance of 600 FEOC-compliant batteries.

(E) M manufactures 100 vehicles that it anticipates will be placed in service in 2025, for which it provides periodic written reports providing the VINs of the vehicles and indicating that such vehicles qualify for the section 30D credit. Under paragraph (d)(3) of this section, the compliant-battery ledger is updated to track the number of FEOC-compliant batteries. The number of batteries contained in the compliant-battery ledger is reduced from 600 to 500. Assuming all of the other requirements of section 30D and the regulations thereunder are met, the 100 vehicles are new clean vehicles that qualify for purposes of section 30D.

(2) Example *2: Rules for third-party suppliers*—(i) *Facts*. The facts are the same as example 1, except that M contracts with BM, a battery manufacturer, for the provision of batteries, and BM contracts with BCS, a battery cell supplier that operates a battery cell production facility, for the provision of battery cells.

(ii) *Analysis*. Under paragraph (c)(5) of this section, BCS may make the determination in paragraphs (c)(2) through (4) of this section, provided that M, BM and BCS perform due diligence as described in paragraph (b) of this section. In addition, BM and BCS must provide M with information sufficient to establish a basis for the determinations under paragraphs (c)(2) through (4) of this section, including information related to due diligence. Finally, BM and BCS must be contractually required to provide the required information to M, and must also be required to inform the qualified manufacturer of any change in supply chains that affects the determinations of FEOC compliance under paragraphs (c)(2) and (4) of this section. The contractual requirement may be satisfied if BM and BCS each have the contractual obligation to M. Alternatively, it may be satisfied if BCS has a contractual obligation to BM and BM, in turn, has a contractual obligation to M.

(3) Example *3: Applicable critical minerals*—(i) *Facts*. The facts are the same as example 1. In addition, each battery cell contains 20 kilograms (kgs) of applicable critical mineral Z contained in a constituent material. M has procured or is under contract to 20,000,000 kgs of Z for the battery cell production facility, of which 4,000,000 kgs are from supplier 3 and 16,000,000 kgs are from supplier 4.

(ii) *Analysis*. The analysis is the same as in example 1. In addition, from its due diligence, M determines that of the 20,000,000 kg of applicable critical mineral Z, the 4,000,000 kg from supplier 3 is FEOC-compliant while the 16,000,000 kg from supplier 4 is not FEOC-compliant. Under paragraph (c)(3) of this section, M may determine which battery cells are FEOC-compliant through the physical tracking of the 4,000,000 kg of FEOC-compliant applicable critical mineral Z to 200,000 (4,000,000/20) of the battery cells that also contain battery component A, in order to determine which 200,000 battery cells are FEOC-compliant. Alternatively, M may determine which 200,000 battery cells are FEOC-compliant through an allocation of applicable critical mineral Z (but not battery component A) to battery cells, without physical tracking, under paragraph (c)(3)(ii) of this section. Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 200,000 FEOC-compliant battery cells to 200 (200,000/1,000) specific batteries.

(4) *Example 4: Comprehensive example*—(i) *Facts*. M is a manufacturer of new clean vehicles and batteries. M also manufactures or assembles battery cells at its own battery cell production facility. M manufactures a line of new clean vehicles. Each vehicle contains one battery. All battery cells are produced at the same battery cell production facility. The battery cells are not manufactured or assembled by a FEOC. Each battery contains 1,000 NMC 811 battery cells. M anticipates manufacturing 1,000,000 such battery cells for a line of new clean vehicles

that it anticipates will be placed in service in calendar year 2025.

(A) Each battery cell contains 1 cathode electrode, 1 anode electrode, 1 separator, and 1 liquid electrolyte. Thus, M procures 1,000,000 of each battery component for the battery cell production facility.

(B) In addition, each NMC 811 cathode incorporates cathode active material (a constituent material) produced using 2.5 kg of applicable critical minerals, consisting of 0.5 kg of lithium hydroxide, 1.6 kg of nickel sulfate, 0.2 kg of cobalt sulfate, and 0.2 kg of manganese sulfate. Thus, M procures 2,500 metric tons (2.5 kg * 1,000,000 / 1,000) of applicable critical minerals for the battery cell production facility, resulting in purchase agreements for 500 metric tons of lithium, 1,600 metric tons of nickel, 200 metric tons of cobalt, and 200 metric tons of manganese.

(ii) *Analysis*. (A) Under §1.30D-6(b), M must conduct due diligence on all battery components and applicable critical minerals (and associated constituent materials) that are contained in the battery to determine whether such components or minerals are FEOC-compliant.

(B) Under paragraph (c)(4) of this section, M must first determine whether the battery components and applicable critical minerals (and associated constituent materials) are FEOC-compliant. From its due diligence M determines that, of the cathode electrodes, 600,000 are not manufactured by a FEOC and are therefore FEOC-compliant; 400,000 are manufactured by a FEOC and are therefore non-compliant. Of the critical minerals that M has procured, M determines that 250 metric tons of lithium hydroxide, 1,200 metric tons of nickel sulfate, and all of the cobalt sulfate and manganese sulfate are FEOC-compliant. All other battery components and applicable critical minerals of the battery cells are FEOC-compliant.

(C) Under paragraph (c)(3) of this section, M must determine which battery cells are FEOC-compliant through the physical tracking of battery components. M may determine which battery cells are FEOC-compliant through the physical tracking of applicable critical minerals. Alternatively, M may determine which battery cells are FEOC-compliant through an allocation of applicable critical minerals (and associated constituent materials) but not battery components.

(D) Under an allocation-based determination, M has procured 500 metric tons of lithium hydroxide incorporated into a constituent material for the battery cell production facility, of which 50 percent (250 / 500 metric tons) is FEOC-compliant. M has procured 1,600 metric tons of nickel sulfate incorporated into a constituent material for the battery cell production facility, of which 75 percent (1,200 / 1,600 metric tons) is FEOC-compliant. Since the lithium hydroxide is the least compliant applicable critical mineral or component, M allocates the FEOC-compliant lithium hydroxide mass to 50 percent or 500,000 (50 percent * 1,000,000) of the total battery cells, and to battery cells that contain FEOC-compliant cathode electrodes and have been allocated FEOC-compliant nickel sulfate. Under paragraph (c)(2)(ii)(E) of this section, the quantity of FEOC-compliant battery cells is limited by the applicable critical mineral (lithium hydroxide) that has the lowest percentage (50 percent) of FEOC-compliant supply.

(E) Under paragraph (c)(2) of this section, M must use a serial number or other identification system to track the 500,000 FEOC-compliant battery cells to 500 (500,000/1,000) specific batteries.

(F) Under paragraph (d)(1) of this section, a compliant-battery ledger must be established for calendar year 2025. For purposes of paragraph (d)(2)(i) of this section, M determines that it will manufacture 500 batteries for calendar year 2025 that are FEOC-compliant. Under paragraph (d)(2)(ii) of this section, M attests to the 500 FEOC-compliant batteries and provides the basis for the determination, including attestations, certifications, and documentation demonstrating compliance with paragraphs (b) and (c) of this section. Once the IRS, with analytical assistance from the DOE, has approved the number, a compliant-battery ledger is established with a balance of 500 FEOC-compliant batteries.

(h) *Severability*. The provisions of this section are separate and severable from one another. If any provision of this section is stayed or determined to be invalid, it is the agency's intention that the remaining provisions will continue in effect.

(i) *Applicability date*. This section applies to new clean vehicles placed in service after December 31, 2023.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

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Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

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