INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2023–49
December 4, 2023

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

Rev. Rul. 2023-22, page 1301.

Interest rates: underpayments and overpayments. The rates for interest determined under Section 6621 of the code for the calendar quarter beginning January 1, 2024, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 5.5 percent.

EMPLOYEE PLANS

Notice 2023-76, page 1320.

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

EXCISE TAX, EXEMPT ORGANIZATIONS

REG-142338-07, page 1363.

This document contains proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund (DAF), and on the agreement of certain fund managers to the making of such distributions. The proposed regulations provide guidance regarding DAFs and taxable distributions. The proposed regulations generally apply to certain organizations, including community foundations and other charitable organizations, that maintain one or more DAFs, and to other persons involved with the DAFs, including donors, donor-advisors, related persons, and certain fund managers.

EXEMPT ORGANIZATIONS

Announcement 2023-34, page 1385.

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).

EMPLOYEE PLANS

REG-112916-23, page 1323.

This document contains proposed regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a Federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis. The proposed regulations would provide guidance regarding this statutory disallowance rule, including definitions, appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, the three statutory exceptions to the statutory disallowance rule, and related reporting requirements. In addition, the proposed regulations would provide reporting requirements for partners and S corporation shareholders that receive a distributive share or pro rata share of any noncash charitable contribution made by a partnership or S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property)

Finding Lists begin on page ii.

REG-128276-12, page 1362.

The Department of the Treasury and the IRS are reopening the comment period for REG-128276-12, published in the Federal Register on December 8, 2016, relating to the determination and recognition of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit.

Rev. Rul. 2023-21, page 1299.

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 December 2023.

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

Rev. Rul. 2023-21

This revenue ruling provides various prescribed rates for federal income tax purposes for December 2023 (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%. Finally, 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.

REV. RUL. 2023-21 TABLE 1
Applicable Federal Rates (AFR) for December 2023
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	5.26%	5.19%	5.16%	5.13%
110% AFR	5.79%	5.71%	5.67%	5.64%
120% AFR	6.33%	6.23%	6.18%	6.15%
130% AFR	6.86%	6.75%	6.69%	6.66%
		Mid-term		
AFR	4.82%	4.76%	4.73%	4.71%
110% AFR	5.31%	5.24%	5.21%	5.18%
120% AFR	5.79%	5.71%	5.67%	5.64%
130% AFR	6.29%	6.19%	6.14%	6.11%
150% AFR	7.27%	7.14%	7.08%	7.04%
175% AFR	8.50%	8.33%	8.25%	8.19%
		Long-term		
AFR	5.03%	4.97%	4.94%	4.92%
110% AFR	5.54%	5.47%	5.43%	5.41%
120% AFR	6.05%	5.96%	5.92%	5.89%
130% AFR	6.56%	6.46%	6.41%	6.37%

REV. RUL. 2023-21 TABLE 2
Adjusted AFR for December 2023
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.98%	3.94%	3.92%	3.91%
Mid-term adjusted AFR	3.64%	3.61%	3.59%	3.58%
Long-term adjusted AFR	3.81%	3.77%	3.75%	3.74%

REV. RUL. 2023-21 TABLE 3 Rates Under Section 382 for December 2023	
Adjusted federal long-term rate for the current month	3.81%
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. 2023-21 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for December 2023	
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	8.15%
Appropriate percentage for the 30% present value low-income housing credit	3.49%

REV. RUL. 2023-21 TABLE 5 Rate Under Section 7520 for December 2023	
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	5.80%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2023. See Rev. Rul. 2023-21, page 1299.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of December 2023. See Rev. Rul. 2023-21, page 1299.

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 December 2023. See Rev. Rul. 2023-21, page 1299.

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

Rev. Rul. 2023-22

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during October 2023 is the rate published in Revenue Ruling 2023-20, 2023-45 IRB 1221, to take effect beginning November 1, 2023. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of October 2023 is 5 percent. Accordingly, an overpayment rate of 8 percent (7 percent in the case of a corporation) and an underpayment rate of 8 percent are established for the calendar quarter beginning January 1, 2024. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning January 1, 2024, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2024, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Sections 6654(a)(1) and 6655(a)(1) provide that the underpayment rate established under section 6621 applies in determining the addition to tax under sections 6654 and 6655 for failure to pay estimated tax for any taxable year. Thus, the 8 percent rate also applies to estimated tax underpayments for the first calendar quarter beginning January 1, 2024. Pursuant to section 6621(b)(2)(B), in determining the addition to tax under section 6654 for any taxable year for an individual, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. In addition, pursuant to section 6603(d)(4), the rate of interest on section 6603 deposits is 5 percent for the first calendar quarter in 2024.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent and 10 percent are published in Tables 64, 67, 69 and 73 of Rev. Proc. 95-17, 1995-1 C.B. 618, 621, 623, and 627.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue ruling, contact Mr. Conrad at (202) 317-6844 (not a toll-free number).

APPENDIX A

365 Day Year					
0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815

42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year					
0.5% Compound Rate 184 Days					
Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317

43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 - PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE			
Before Jul. 1, 1975	6%	Table	2,	pg.	557
Jul. 1, 1975–Jan. 31, 1976	9%	Table	4,	pg.	559
Feb. 1, 1976–Jan. 31, 1978	7%	Table	3,	pg.	558
Feb. 1, 1978–Jan. 31, 1980	6%	Table	2,	pg.	557
Feb. 1, 1980–Jan. 31, 1982	12%	Table	5,	pg.	560
Feb. 1, 1982–Dec. 31, 1982	20%	Table	6,	pg.	560
Jan. 1, 1983–Jun. 30, 1983	16%	Table	37,	pg.	591
Jul. 1, 1983–Dec. 31, 1983	11%	Table	27,	pg.	581
Jan. 1, 1984–Jun. 30, 1984	11%	Table	75,	pg.	629
Jul. 1, 1984–Dec. 31, 1984	11%	Table	75,	pg.	629
Jan. 1, 1985–Dec. 31, 1985	13%	Table	31,	pg.	585
Jul. 1, 1985–Dec. 31, 1985	11%	Table	27,	pg.	581
Jan. 1, 1986–Jun. 30, 1986	10%	Table	25,	pg.	579
Jul. 1, 1986–Dec. 31, 1986	9%	Table	23,	pg.	577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – Dec. 31, 1998

		OVERPAYMENTS 1995-1 C.B.			UNDERPAYMENTS 1995-1 C.B. RATE	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987–Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987–Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987–Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987–Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988–Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988–Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988–Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988–Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989–Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989–Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989–Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989–Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990–Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990–Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990–Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990–Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991–Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991–Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991–Sep. 30, 1991	9%	23	577	10%	25	579

Oct. 1, 1991–Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992–Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992–Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992–Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992–Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993–Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993–Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993–Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993–Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994–Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994–Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994–Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994–Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995–Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995–Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995–Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995–Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996–Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996–Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996–Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996–Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997–Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997–Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997–Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997–Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998–Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998–Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998–Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998–Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 - PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

		1995-1 C.B.	
	RATE	TABLE	PAGE
Jan. 1, 1999–Mar. 31, 1999	7%	19	573
Apr. 1, 1999–Jun. 30, 1999	8%	21	575
Jul. 1, 1999–Sep. 30, 1999	8%	21	575
Oct. 1, 1999–Dec. 31, 1999	8%	21	575
Jan. 1, 2000–Mar. 31, 2000	8%	69	623
Apr. 1, 2000–Jun. 30, 2000	9%	71	625
Jul. 1, 2000–Sep. 30, 2000	9%	71	625
Oct. 1, 2000–Dec. 31, 2000	9%	71	625
Jan. 1, 2001–Mar. 31, 2001	9%	23	577
Apr. 1, 2001–Jun. 30, 2001	8%	21	575
Jul. 1, 2001–Sep. 30, 2001	7%	19	573
Oct. 1, 2001–Dec. 31, 2001	7%	19	573
Jan. 1, 2002–Mar. 31, 2002	6%	17	571
Apr. 1, 2002–Jun. 30, 2002	6%	17	571
Jul. 1, 2002–Sep. 30, 2002	6%	17	571
Oct. 1, 2002–Dec. 31, 2002	6%	17	571
Jan. 1, 2003–Mar. 31, 2003	5%	15	569
Apr. 1, 2003–Jun. 30, 2003	5%	15	569
Jul. 1, 2003–Sep. 30, 2003	5%	15	569
Oct. 1, 2003–Dec. 31, 2003	4%	13	567
Jan. 1, 2004–Mar. 31, 2004	4%	61	615
Apr. 1, 2004–Jun. 30, 2004	5%	63	617
Jul. 1, 2004–Sep. 30, 2004	4%	61	615
Oct. 1, 2004–Dec. 31, 2004	5%	63	617
Jan. 1, 2005–Mar. 31, 2005	5%	15	569
Apr. 1, 2005–Jun. 30, 2005	6%	17	571
Jul. 1, 2005–Sep. 30, 2005	6%	17	571
Oct. 1, 2005–Dec. 31, 2005	7%	19	573
Jan. 1, 2006–Mar. 31, 2006	7%	19	573
Apr. 1, 2006–Jun. 30, 2006	7%	19	573
Jul. 1, 2006–Sep. 30, 2006	8%	21	575
Oct. 1, 2006–Dec. 31, 2006	8%	21	575
Jan. 1, 2007–Mar. 31, 2007	8%	21	575
Apr. 1, 2007–Jun. 30, 2007	8%	21	575
Jul. 1, 2007–Sep. 30, 2007	8%	21	575
Oct. 1, 2007–Dec. 31, 2007	8%	21	575
Jan. 1, 2008–Mar. 31, 2008	7%	67	621
Apr. 1, 2008–Jun. 30, 2008	6%	65	619
Jul. 1, 2008–Sep. 30, 2008	5%	63	617
Oct. 1, 2008–Dec. 31, 2008	6%	65	619
Jan. 1, 2009–Mar. 31, 2009	5%	15	569

Apr. 1, 2009–Jun. 30, 2009	4%	13	567
Jul. 1, 2009–Sep. 30, 2009	4%	13	567
Oct. 1, 2009–Dec. 31, 2009	4%	13	567
Jan. 1, 2010–Mar. 31, 2010	4%	13	567
Apr. 1, 2010–Jun. 30, 2010	4%	13	567
Jul. 1, 2010–Sep. 30, 2010	4%	13	567
Oct. 1, 2010–Dec. 31, 2010	4%	13	567
Jan. 1, 2011–Mar. 31, 2011	3%	11	565
Apr. 1, 2011–Jun. 30, 2011	4%	13	567
Jul. 1, 2011–Sep. 30, 2011	4%	13	567
Oct. 1, 2011–Dec. 31, 2011	3%	11	565
Jan. 1, 2012–Mar. 31, 2012	3%	59	613
Apr. 1, 2012–Jun. 30, 2012	3%	59	613
Jul. 1, 2012–Sep. 30, 2012	3%	59	613
Oct. 1, 2012–Dec. 31, 2012	3%	59	613
Jan. 1, 2013–Mar. 31, 2013	3%	11	565
Apr. 1, 2013–Jun. 30, 2013	3%	11	565
Jul. 1, 2013–Sep. 30, 2013	3%	11	565
Oct. 1, 2013–Dec. 31, 2013	3%	11	565
Jan. 1, 2014–Mar. 31, 2014	3%	11	565
Apr. 1, 2014–Jun. 30, 2014	3%	11	565
Jul. 1, 2014–Sep. 30, 2014	3%	11	565
Oct. 1, 2014–Dec. 31, 2014	3%	11	565
Jan. 1, 2015–Mar. 31, 2015	3%	11	565
Apr. 1, 2015–Jun. 30, 2015	3%	11	565
Jul. 1, 2015–Sep. 30, 2015	3%	11	565
Oct. 1, 2015–Dec. 31, 2015	3%	11	565
Jan. 1, 2016–Mar. 31, 2016	3%	59	613
Apr. 1, 2016–Jun. 30, 2016	4%	61	615
Jul. 1, 2016–Sep. 30, 2016	4%	61	615
Oct. 1, 2016–Dec. 31, 2016	4%	61	615
Jan. 1, 2017–Mar. 31, 2017	4%	13	567
Apr. 1, 2017–Jun. 30, 2017	4%	13	567
Jul. 1, 2017–Sep. 30, 2017	4%	13	567
Oct. 1, 2017–Dec. 31, 2017	4%	13	567
Jan. 1, 2018–Mar. 31, 2018	4%	13	567
Apr. 1, 2018–Jun. 30, 2018	5%	15	569
Jul. 1, 2018–Sep. 30, 2018	5%	15	569
Oct. 1, 2018–Dec. 31, 2018	5%	15	569
Jan. 1, 2019–Mar. 31, 2019	6%	17	571
Apr. 1, 2019–Jun. 30, 2019	6%	17	571
Jul. 1, 2019–Sep. 30, 2019	5%	15	569
Oct. 1, 2019–Dec. 31, 2019	5%	15	569
Jan. 1, 2020–Mar. 31, 2020	5%	63	617
Apr. 1, 2020–Jun. 30, 2020	5%	63	617

Jul. 1, 2020–Sep. 30, 2020	3%	59	613
Oct. 1, 2020–Dec. 31, 2020	3%	59	613
Jan. 1, 2021–Mar. 31, 2021	3%	11	565
Apr. 1, 2021–Jun. 30, 2021	3%	11	565
Jul. 1, 2021–Sep. 30, 2021	3%	11	565
Oct. 1, 2021–Dec. 31, 2021	3%	11	565
Jan. 1, 2022–Mar. 31, 2022	3%	11	565
Apr. 1, 2022–Jun. 30, 2022	4%	13	567
Jul. 1, 2022–Sep. 30, 2022	5%	15	569
Oct. 1, 2022–Dec. 31, 2022	6%	17	571
Jan. 1, 2023–Mar. 31, 2023	7%	19	573
Apr. 1, 2023–Jun. 30, 2023	7%	19	573
Jul. 1, 2023–Sep. 30, 2023	7%	19	573
Oct. 1, 2023–Dec. 31, 2023	8%	21	575
Jan. 1, 2024–Mar. 31, 2024	8%	69	623

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 - PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995-1 C.B.			1995-1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999–Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999–Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999–Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999–Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000–Mar. 30, 2000	7%	67	621	8%	69	623
Apr. 1, 2000–Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000–Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000–Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001–Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001–Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001–Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001–Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002–Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002–Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002–Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002–Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003–Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003–Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003–Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003–Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004–Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004–Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004–Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004–Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005–Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005–Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005–Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005–Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006–Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006–Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006–Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006–Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007–Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007–Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007–Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007–Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008–Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008–Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008–Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008–Dec. 31, 2008	5%	63	617	6%	65	619

Jan. 1, 2009–Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009–Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009–Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009–Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010–Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010–Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010–Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010–Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011–Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011–Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011–Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011–Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012–Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012–Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012–Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012–Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013–Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013–Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013–Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013–Dec. 31, 2013	2%	9	563	3%	11	565
Jan. 1, 2014–Mar. 31, 2014	2%	9	563	3%	11	565
Apr. 1, 2014–Jun. 30, 2014	2%	9	563	3%	11	565
Jul. 1, 2014–Sep. 30, 2014	2%	9	563	3%	11	565
Oct. 1, 2014–Dec. 31, 2014	2%	9	563	3%	11	565
Jan. 1, 2015–Mar. 31, 2015	2%	9	563	3%	11	565
Apr. 1, 2015–Jun. 30, 2015	2%	9	563	3%	11	565
Jul. 1, 2015–Sep. 30, 2015	2%	9	563	3%	11	565
Oct. 1, 2015–Dec. 31, 2015	2%	9	563	3%	11	565
Jan. 1, 2016–Mar. 31, 2016	2%	57	611	3%	59	613
Apr. 1, 2016–Jun. 30, 2016	3%	59	613	4%	61	615
Jul. 1, 2016–Sep. 30, 2016	3%	59	613	4%	61	615
Oct. 1, 2016–Dec. 31, 2016	3%	59	613	4%	61	615
Jan. 1, 2017–Mar. 31, 2017	3%	11	565	4%	13	567
Apr. 1, 2017–Jun. 30, 2017	3%	11	565	4%	13	567
Jul. 1, 2017–Sep. 30, 2017	3%	11	565	4%	13	567
Oct. 1, 2017–Dec. 31, 2017	3%	11	565	4%	13	567
Jan. 1, 2018–Mar. 31, 2018	3%	11	565	4%	13	567
Apr. 1, 2018–Jun. 30, 2018	4%	13	567	5%	15	569
Jul. 1, 2018–Sep. 30, 2018	4%	13	567	5%	15	569
Oct. 1, 2018–Dec. 31, 2018	4%	13	567	5%	15	569
Jan. 1, 2019–Mar. 31, 2019	5%	15	569	6%	17	571
Apr. 1, 2019–Jun. 30, 2019	5%	15	569	6%	17	571
Jul. 1, 2019–Sep. 30, 2019	4%	13	567	5%	15	569
Oct. 1, 2019–Dec. 31, 2019	4%	13	567	5%	15	569
Jan. 1, 2020–Mar. 31, 2020	4%	61	615	5%	63	617

Apr. 1, 2020–Jun. 30, 2020	4%	61	615	5%	63	617
Jul. 1, 2020–Sep. 30, 2020	2%	57	611	3%	59	613
Oct. 1, 2020–Dec. 31, 2020	2%	57	611	3%	59	613
Jan. 1, 2021–Mar. 31, 2021	2%	9	563	3%	11	565
Apr. 1, 2021–Jun. 30, 2021	2%	9	563	3%	11	565
Jul. 1, 2021–Sep. 30, 2021	2%	9	563	3%	11	565
Oct. 1, 2021–Dec. 31, 2021	2%	9	563	3%	11	565
Jan. 1, 2022–Mar. 31, 2022	2%	9	563	3%	11	565
Apr. 1, 2022–Jun. 30, 2022	3%	11	565	4%	13	567
Jul. 1, 2022–Sep. 30, 2022	4%	13	567	5%	15	569
Oct. 1, 2022–Dec. 31, 2022	5%	15	569	6%	17	571
Jan. 1, 2023–Mar. 31, 2023	6%	17	571	7%	19	573
Apr. 1, 2023–Jun. 30, 2023	6%	17	571	7%	19	573
Jul. 1, 2023–Sep. 30, 2023	6%	17	571	7%	19	573
Oct. 1, 2023–Dec. 31, 2023	7%	19	573	8%	21	575
Jan. 1, 2024–Mar. 31, 2024	7%	67	621	8%	69	623

TABLE OF INTEREST RATES
FOR LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 - PRESENT

		1995-1 C.B.	
	RATE	TABLE	PG
Jan. 1, 1991–Mar. 31, 1991	13%	31	585
Apr. 1, 1991–Jun. 30, 1991	12%	29	583
Jul. 1, 1991–Sep. 30, 1991	12%	29	583
Oct. 1, 1991–Dec. 31, 1991	12%	29	583
Jan. 1, 1992–Mar. 31, 1992	11%	75	629
Apr. 1, 1992–Jun. 30, 1992	10%	73	627
Jul. 1, 1992–Sep. 30, 1992	10%	73	627
Oct. 1, 1992–Dec. 31, 1992	9%	71	625
Jan. 1, 1993–Mar. 31, 1993	9%	23	577
Apr. 1, 1993–Jun. 30, 1993	9%	23	577
Jul. 1, 1993–Sep. 30, 1993	9%	23	577
Oct. 1, 1993–Dec. 31, 1993	9%	23	577
Jan. 1, 1994–Mar. 31, 1994	9%	23	577
Apr. 1, 1994–Jun. 30, 1994	9%	23	577
Jul. 1, 1994–Sep. 30, 1994	10%	25	579
Oct. 1, 1994–Dec. 31, 1994	11%	27	581
Jan. 1, 1995–Jun. 30, 1995	11%	27	581
Apr. 1, 1995–Jun. 30, 1995	12%	29	583
Jul. 1, 1995–Sep. 30, 1995	11%	27	581
Oct. 1, 1995–Dec. 31, 1995	11%	27	581
Jan. 1, 1996–Mar. 31, 1996	11%	75	629
Apr. 1, 1996–Jun. 30, 1996	10%	73	627
Jul. 1, 1996–Sep. 30, 1996	11%	75	629
Oct. 1, 1996–Dec. 31, 1996	11%	75	629
Jan. 1, 1997–Mar. 31, 1997	11%	27	581
Apr. 1, 1997–Jun. 30, 1997	11%	27	581
Jul. 1, 1997–Sep. 30, 1997	11%	27	581
Oct. 1, 1997–Dec. 31, 1997	11%	27	581
Jan. 1, 1998–Mar. 31, 1998	11%	27	581
Apr. 1, 1998–Jun. 30, 1998	10%	25	579
Jul. 1, 1998–Sep. 30, 1998	10%	25	579
Oct. 1, 1998–Dec. 31, 1998	10%	25	579
Jan. 1, 1999–Mar. 31, 1999	9%	23	577
Apr. 1, 1999–Jun. 30, 1999	10%	25	579
Jul. 1, 1999–Sep. 30, 1999	10%	25	579
Oct. 1, 1999–Dec. 31, 1999	10%	25	579
Jan. 1, 2000–Mar. 31, 2000	10%	73	627
Apr. 1, 2000–Jun. 30, 2000	11%	75	629
Jul. 1, 2000–Sep. 30, 2000	11%	75	629
Oct. 1, 2000–Dec. 31, 2000	11%	75	629
Jan. 1, 2001–Mar. 31, 2001	11%	27	581

Apr. 1, 2001–Jun. 30, 2001	10%	25	579
Jul. 1, 2001–Sep. 30, 2001	9%	23	577
Oct. 1, 2001–Dec. 31, 2001	9%	23	577
Jan. 1, 2002–Mar. 31, 2002	8%	21	575
Apr. 1, 2002–Sep. 30, 2002	8%	21	575
Jul. 1, 2002–Sep. 30, 2002	8%	21	575
Oct. 1, 2002–Dec. 31, 2002	8%	21	575
Jan. 1, 2003–Mar. 31, 2003	7%	19	573
Apr. 1, 2003–Jun. 30, 2003	7%	19	573
Jul. 1, 2003–Sep. 30, 2003	7%	19	573
Oct. 1, 2003–Dec. 31, 2003	6%	17	571
Jan. 1, 2004–Mar. 31, 2004	6%	65	619
Apr. 1, 2004–Jun. 30, 2004	7%	67	621
Jul. 1, 2004–Sep. 30, 2004	6%	65	619
Oct. 1, 2004–Dec. 31, 2004	7%	67	621
Jan. 1, 2005–Mar. 31, 2005	7%	19	573
Apr. 1, 2005–Jun. 30, 2005	8%	21	575
Jul. 1, 2005–Sep. 30, 2005	8%	21	575
Oct. 1, 2005–Dec. 31, 2005	9%	23	577
Jan. 1, 2006–Mar. 31, 2006	9%	23	577
Apr. 1, 2006–Jun. 30, 2006	9%	23	577
Jul. 1, 2006–Sep. 30, 2006	10%	25	579
Oct. 1, 2006–Dec. 31, 2006	10%	25	579
Jan. 1, 2007–Mar. 31, 2007	10%	25	579
Apr. 1, 2007–Jun. 30, 2007	10%	25	579
Jul. 1, 2007–Sep. 30, 2007	10%	25	579
Oct. 1, 2007–Dec. 31, 2007	10%	25	579
Jan. 1, 2008–Mar. 31, 2008	9%	71	625
Apr. 1, 2008–Sep. 30, 2008	8%	69	623
Jul. 1, 2008–Sep. 30, 2008	7%	67	621
Oct. 1, 2008–Dec. 31, 2008	8%	69	623
Jan. 1, 2009–Mar. 31, 2009	7%	19	573
Apr. 1, 2009–Jun. 30, 2009	6%	17	571
Jul. 1, 2009–Sep. 30, 2009	6%	17	571
Oct. 1, 2009–Dec. 31, 2009	6%	17	571
Jan. 1, 2010–Mar. 31, 2010	6%	17	571
Apr. 1, 2010–Jun. 30, 2010	6%	17	571
Jul. 1, 2010–Sep. 30, 2010	6%	17	571
Oct. 1, 2010–Dec. 31, 2010	6%	17	571
Jan. 1, 2011-Mar. 31, 2011	5%	15	569
Apr. 1, 2011–Jun. 30, 2011	6%	17	571
Jul. 1, 2011–Sep. 30, 2011	6%	17	571
Oct. 1, 2011–Dec. 31, 2011	5%	15	569
Jan. 1, 2012–Mar. 31, 2012	5%	63	617
Apr. 1, 2012–Jun. 30, 2012	5%	63	617
Jul. 1, 2012–Sep. 30, 2012	5%	63	617

Oct. 1, 2012–Dec. 31, 2012	5%	63	617
Jan. 1, 2013–Mar. 31, 2013	5%	15	569
Apr. 1, 2013–Jun. 30, 2013	5%	15	569
Jul. 1, 2013–Sep. 30, 2013	5%	15	569
Oct. 1, 2013–Dec. 31, 2013	5%	15	569
Jan. 1, 2014–Mar. 31, 2014	5%	15	569
Apr. 1, 2014–Jun. 30, 2014	5%	15	569
Jul. 1, 2014–Sep. 30, 2014	5%	15	569
Oct. 1, 2014–Dec. 31, 2014	5%	15	569
Jan. 1, 2015–Mar. 31, 2015	5%	15	569
Apr. 1, 2015–Jun. 30, 2015	5%	15	569
Jul. 1, 2015–Sep. 30, 2015	5%	15	569
Oct. 1, 2015–Dec. 31, 2015	5%	15	569
Jan. 1, 2016–Mar. 31, 2016	5%	63	617
Apr. 1, 2016–Jun. 30, 2016	6%	65	619
Jul. 1, 2016–Sep. 30, 2016	6%	65	619
Oct. 1, 2016–Dec. 31, 2016	6%	65	619
Jan. 1, 2017–Mar. 31, 2017	6%	17	571
Apr. 1, 2017–Jun. 30, 2017	6%	17	571
Jul. 1, 2017–Sep. 30, 2017	6%	17	571
Oct. 1, 2017–Dec. 31, 2017	6%	17	571
Jan. 1, 2018–Mar. 31, 2018	6%	17	571
Apr. 1, 2018–Jun. 30, 2018	7%	19	573
Jul. 1, 2018–Sep. 30, 2018	7%	19	573
Oct. 1, 2018–Dec. 31, 2018	7%	19	573
Jan. 1, 2019–Mar. 31, 2019	8%	21	575
Apr. 1, 2019–Jun. 30, 2019	8%	21	575
Jul. 1, 2019–Sep. 30, 2019	7%	19	573
Oct. 1, 2019–Dec. 31, 2019	7%	19	573
Jan. 1, 2020–Mar. 31, 2020	7%	67	621
Apr. 1, 2020–Jun. 30, 2020	7%	67	621
Jul. 1, 2020–Sep. 30, 2020	5%	63	617
Oct. 1, 2020–Dec. 31, 2020	5%	63	617
Jan. 1, 2021–Mar. 31, 2021	5%	15	569
Apr. 1, 2021–Jun. 30, 2021	5%	15	569
Jul. 1, 2021–Sep. 30, 2021	5%	15	569
Oct. 1, 2021–Dec. 31, 2021	5%	15	569
Jan. 1, 2022–Mar. 31, 2022	5%	15	569
Apr. 1, 2022–Jun. 30, 2022	6%	17	571
Jul. 1, 2022–Sep. 30, 2022	7%	19	573
Oct. 1, 2022–Dec. 31, 2022	8%	21	575
Jan. 1, 2023–Mar. 31, 2023	9%	23	577
Apr. 1, 2023-Jun. 30, 2023	9%	23	577
Jul. 1, 2023–Sep. 30, 2023	9%	23	577
Oct. 1, 2023–Dec. 31, 2023	10%	25	579
Jan. 1, 2024–Mar. 31, 2024	10%	73	627

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000
FROM JANUARY 1, 1995 – PRESENT

		1995-1 C.B.	
	RATE	TABLE	PG
Jan. 1, 1995–Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995–Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995–Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995–Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996–Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996–Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996–Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996–Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997–Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997–Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997–Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997–Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998–Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998–Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998–Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998–Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999–Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999–Sep. 30, 1999	5.5%	16	570
Jul. 1, 1999–Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999–Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000–Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000–Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000–Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000–Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001–Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001–Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001–Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001–Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002–Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002–Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002–Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002–Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003–Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003–Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003–Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003–Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004–Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004–Jun. 30, 2004	2.5%	58	612

Jul. 1, 2004–Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004–Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005–Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005–Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005–Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005–Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006–Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006–Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006–Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006–Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007–Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007–Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007–Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007–Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008–Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008–Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008–Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008–Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009–Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009–Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009–Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009–Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010–Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010–Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010–Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010–Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011–Mar. 31, 2011	0.5%*		
Apr. 1, 2011–Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011–Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011–Dec. 31, 2011	0.5%*		
Jan. 1, 2012–Mar. 31, 2012	0.5%*		
Apr. 1, 2012–Jun. 30, 2012	0.5%*		
Jul. 1, 2012–Sep. 30, 2012	0.5%*		
Oct. 1, 2012–Dec. 31, 2012	0.5%*		
Jan. 1, 2013–Mar. 31, 2013	0.5%*		
Apr. 1, 2013–Jun. 30, 2013	0.5%*		
Jul. 1, 2013–Sep. 30, 2013	0.5%*		
Oct. 1, 2013–Dec. 31, 2013	0.5%*		
Jan. 1, 2014–Mar. 31, 2014	0.5%*		
Apr. 1, 2014–Jun. 30, 2014	0.5%*		
Jul. 1, 2014–Sep. 30, 2014	0.5%*		
Oct. 1, 2014–Dec. 31, 2014	0.5%*		

Jan. 1, 2015–Mar. 31, 2015	0.5%*		
Apr. 1, 2015–Jun. 30, 2015	0.5%*		
Jul. 1, 2015–Sep. 30, 2015	0.5%*		
Oct. 1, 2015–Dec. 31, 2015	0.5%*		
Jan. 1, 2016–Mar. 31, 2016	0.5%*		
Apr. 1, 2016–Jun. 30, 2016	1.5%	56	610
Jul. 1, 2016–Sep. 30, 2016	1.5%	56	610
Oct. 1, 2016–Dec. 31, 2016	1.5%	56	610
Jan. 1, 2017–Mar. 31, 2017	1.5%	8	562
Apr. 1, 2017–Jun. 30, 2017	1.5%	8	562
Jul. 1, 2017–Sep. 30, 2017	1.5%	8	562
Oct. 1, 2017–Dec. 31, 2017	1.5%	8	562
Jan. 1, 2018–Mar. 31, 2018	1.5%	8	562
Apr. 1, 2018–Jun. 30, 2018	2.5%	10	564
Jul. 1, 2018–Sep. 30, 2018	2.5%	10	564
Oct. 1, 2018–Dec. 31, 2018	2.5%	10	564
Jan. 1, 2019–Mar. 31, 2019	3.5%	12	566
Apr. 1, 2019–Jun. 30, 2019	3.5%	12	566
Jul. 1, 2019–Sep. 30, 2019	2.5%	10	564
Oct. 1, 2019–Dec. 31, 2019	2.5%	10	564
Jan. 1, 2020–Mar. 31, 2020	2.5%	58	612
Apr. 1, 2020–Jun. 30, 2020	2.5%	58	612
Jul. 1, 2020–Sep. 30, 2020	0.5%*		
Oct. 1, 2020–Dec. 31, 2020	0.5%*		
Jan. 1, 2021–Mar. 31, 2021	0.5%*		
Apr. 1, 2021–Jun. 30, 2021	0.5%*		
Jul. 1, 2021–Sep. 30, 2021	0.5%*		
Oct. 1, 2021–Dec. 31, 2021	0.5%*		
Jan. 1, 2022–Mar. 31, 2022	0.5%*		
Apr. 1, 2022–Jun. 30, 2022	1.5%	8	562
Jul. 1, 2022–Sep. 30, 2022	2.5%	10	564
Oct. 1, 2022–Dec. 31, 2022	3.5%	12	566
Jan. 1, 2023–Mar. 31, 2023	4.5%	14	568
Apr. 1, 2023–Jun. 30, 2023	4.5%	14	568
Jul. 1, 2023–Sep. 30, 2023	4.5%	14	568
Oct. 1, 2023–Dec. 31, 2023	5.5%	16	570
Jan. 1, 2024–Mar. 31, 2024	5.5%	64	618

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent published in Appendix A of this Revenue Ruling.

Part III

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

Notice 2023-76

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 October 2023 data is in Table 2023-10 at the end of this notice. The spot first, second, and third segment rates for the month of October 2023 are, respectively, 5.77, 6.14, and 6.19.

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 November 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
November 2023	4.02	4.73	4.75

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 November 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	November 2023	4.75	5.18	5.92
2023	November 2023	4.75	5.00	5.74
2024	November 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

[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)).

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 October 2023 is 4.94 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. For plan years beginning in November 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%**
November 2023	3.00	2.70 to 3.15

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 October 2023 are as follows:

Minimum Present Value Segment Rates			
Month	**First Segment**	**Second Segment**	**Third Segment**
October 2023	5.77	6.14	6.19

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 2023-10
Monthly Yield Curve for October 2023
Derived from September 2023 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	5.86	20.5	6.24	40.5	6.18	60.5	6.16	80.5	6.16
1.0	5.83	21.0	6.24	41.0	6.18	61.0	6.16	81.0	6.16
1.5	5.80	21.5	6.23	41.5	6.18	61.5	6.16	81.5	6.16
2.0	5.78	22.0	6.23	42.0	6.18	62.0	6.16	82.0	6.16
2.5	5.75	22.5	6.23	42.5	6.18	62.5	6.16	82.5	6.16
3.0	5.74	23.0	6.22	43.0	6.18	63.0	6.16	83.0	6.16
3.5	5.73	23.5	6.22	43.5	6.18	63.5	6.16	83.5	6.16
4.0	5.73	24.0	6.22	44.0	6.18	64.0	6.16	84.0	6.16
4.5	5.74	24.5	6.21	44.5	6.18	64.5	6.16	84.5	6.16
5.0	5.76	25.0	6.21	45.0	6.17	65.0	6.16	85.0	6.15
5.5	5.78	25.5	6.21	45.5	6.17	65.5	6.16	85.5	6.15
6.0	5.81	26.0	6.21	46.0	6.17	66.0	6.16	86.0	6.15
6.5	5.85	26.5	6.21	46.5	6.17	66.5	6.16	86.5	6.15
7.0	5.89	27.0	6.20	47.0	6.17	67.0	6.16	87.0	6.15
7.5	5.93	27.5	6.20	47.5	6.17	67.5	6.16	87.5	6.15
8.0	5.97	28.0	6.20	48.0	6.17	68.0	6.16	88.0	6.15
8.5	6.01	28.5	6.20	48.5	6.17	68.5	6.16	88.5	6.15
9.0	6.05	29.0	6.20	49.0	6.17	69.0	6.16	89.0	6.15
9.5	6.08	29.5	6.20	49.5	6.17	69.5	6.16	89.5	6.15
10.0	6.11	30.0	6.20	50.0	6.17	70.0	6.16	90.0	6.15
10.5	6.14	30.5	6.19	50.5	6.17	70.5	6.16	90.5	6.15
11.0	6.16	31.0	6.19	51.0	6.17	71.0	6.16	91.0	6.15
11.5	6.19	31.5	6.19	51.5	6.17	71.5	6.16	91.5	6.15
12.0	6.20	32.0	6.19	52.0	6.17	72.0	6.16	92.0	6.15
12.5	6.22	32.5	6.19	52.5	6.17	72.5	6.16	92.5	6.15
13.0	6.23	33.0	6.19	53.0	6.17	73.0	6.16	93.0	6.15
13.5	6.24	33.5	6.19	53.5	6.17	73.5	6.16	93.5	6.15
14.0	6.25	34.0	6.19	54.0	6.17	74.0	6.16	94.0	6.15
14.5	6.26	34.5	6.19	54.5	6.17	74.5	6.16	94.5	6.15
15.0	6.26	35.0	6.19	55.0	6.17	75.0	6.16	95.0	6.15
15.5	6.26	35.5	6.19	55.5	6.17	75.5	6.16	95.5	6.15
16.0	6.26	36.0	6.19	56.0	6.17	76.0	6.16	96.0	6.15
16.5	6.26	36.5	6.18	56.5	6.17	76.5	6.16	96.5	6.15
17.0	6.26	37.0	6.18	57.0	6.17	77.0	6.16	97.0	6.15
17.5	6.26	37.5	6.18	57.5	6.17	77.5	6.16	97.5	6.15
18.0	6.26	38.0	6.18	58.0	6.17	78.0	6.16	98.0	6.15
18.5	6.25	38.5	6.18	58.5	6.17	78.5	6.16	98.5	6.15
19.0	6.25	39.0	6.18	59.0	6.16	79.0	6.16	99.0	6.15
19.5	6.25	39.5	6.18	59.5	6.16	79.5	6.16	99.5	6.15
20.0	6.24	40.0	6.18	60.0	6.16	80.0	6.16	100.0	6.15

Part IV

Notice of Proposed Rulemaking

Statutory Disallowance of Deductions for Certain Qualified Conservation Contributions Made by Partnerships and S Corporations

REG-112916-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a Federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis. The proposed regulations would provide guidance regarding this statutory disallowance rule, including definitions, appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, the three statutory exceptions to the statutory disallowance rule, and related reporting requirements. In addition, the proposed regulations would provide reporting requirements for partners and S corporation shareholders that receive a distributive share or pro rata share of any noncash charitable contribution made by a partnership or S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property). These proposed regulations would affect partnerships and S corporations that claim qualified conservation contributions, and partners and S corporation shareholders that receive a distributive share or pro rata share, as applicable, of a noncash charitable contribution. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 20, 2023. The public hearing on these proposed regulations is scheduled to be held on January 3, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 20, 2023. If no outlines are received by December 20, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on December 29, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5 p.m. on December 28, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-112916-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted, whether electronically or on paper, to the IRS's public docket. Requests for a public hearing must be submitted as prescribed in the "Comments and Public Hearing" section.

Send paper submissions to: CC:PA:01:PR (REG-112916-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under §§1.170A-14, 1.706-3, and 1.706-4, contact Benjamin Weaver at (202) 317-6850 (not a toll-free number); concerning the proposed regulations under §1.170A-16 and issues regarding section 170 other than section 170(h)(7), contact Elizabeth Boone at (202) 317-5100 and Hannah Kim at (202) 317-7003 (not toll-free numbers); and concerning submissions of comments and requests for a public hearing, contact Vivian Hayes at (202) 317-6901 (not a toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

I. *Overview*

This document contains proposed regulations that would amend the Income Tax Regulations (26 CFR part 1) under sections 170 and 706 of the Internal Revenue Code (Code) to implement the provisions of section 605(a) and (b) of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459, 5393 (December 29, 2022), which apply to contributions of property made after December 29, 2022.

II. *Charitable Contribution Deductions*

Section 170(a) provides, subject to certain limitations and requirements, a deduction for any charitable contribution, as defined in section 170(c), of cash or other property the payment of which is made within the taxable year. Section 170(f) disallows charitable contribution deductions in certain cases and provides special rules. Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property that consists of less than the taxpayer's entire interest in such property, a deduction will be allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if such interest had been transferred in trust. Section 170(f)(3)(B)(iii) provides that section 170(f)(3)(A) does not apply to a qualified conservation contribution (discussed in part III of this Background section).

Section 170(f)(11) requires a qualified appraisal and other documentation for a

charitable contribution deduction to be allowed with respect to certain contributions of property. Section 170(f)(11) also includes special rules for contributions of property other than cash (noncash charitable contributions) of more than $5,000 and for noncash charitable contributions of more than $500,000. In addition, section 170(f)(11)(H) provides that the Secretary of the Treasury or her delegate (Secretary) may prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 170(f)(11). Section 6001 provides that every person liable for any tax imposed by title 26, United States Code (title 26) must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. In addition, section 6011 provides, in part, that, whenever required by regulations prescribed by the Secretary, any person made liable for any tax imposed by title 26 must make a return or statement according to the forms and regulations prescribed by the Secretary and include therein the information required by such forms or regulations. Under the authority of sections 170(f)(11)(H), 6001, and 6011, existing regulations under §1.170A-16 provide substantiation and reporting requirements that must be satisfied for a deduction to be allowed under section 170 with respect to noncash charitable contributions.

III. *Qualified Conservation Contributions*

Section 170(h)(1) provides that, in general, for purposes of section 170(f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution (1) of a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes. Section 170(h)(2) defines the term "qualified real property interest," section 170(h)(3) defines the term "qualified organization," section 170(h)(4) defines the term "conservation purpose," and section 170(h)(5) defines the term "exclusively for conservation purposes." In general, a qualified conservation contribution may include a contribution of a conservation easement.

The existing regulations under §1.170A-14 provide rules for qualified conservation contributions described in section 170(h). Consistent with section 170(f)(3), §1.170A-14(a) provides that a deduction under section 170 generally is not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust. However, by reason of section 170(f)(3)(B)(iii), a deduction may be allowed for the value of a qualified conservation contribution if the requirements of §1.170A-14 are met. To be eligible for a deduction under §1.170A-14, the conservation purpose of the contribution must be protected in perpetuity. *See* §1.170A-14(a) and (g).

IV. *Syndicated Conservation Easement Transactions*

On December 23, 2016, the Treasury Department and the IRS released Notice 2017-10, 2017-4 I.R.B. 544, which identified transactions that are the same as or substantially similar to certain syndicated conservation easement transactions as "listed transactions" under §1.6011-4 subject to certain disclosure and list maintenance requirements. Notice 2017-10 explains that the Treasury Department and the IRS are aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amounts invested. In addition, Notice 2017-10 provides that a transaction is a listed transaction if (1) an investor receives promotional materials that offer a prospective investor in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the amount of the investor's investment, (2) the investor purchases an interest directly or indirectly (through one or more tiers of pass-through entities) in the pass-through entity that holds real property, (3) the pass-through entity contributes a conservation easement and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution to the investor, and (4) the investor reports on the investor's Federal income tax return a charitable contribution deduction with respect to the conservation easement.

Congress continued to be concerned about abusive syndicated conservation easement transactions even after Notice 2017-10 was issued, and the transactions were the subject of an investigation by the U.S. Senate Committee on Finance, which issued a report on August 25, 2020. S. Committee on Finance, Comm. Print 116-44, *Syndicated Conservation-Easement Transactions*, 116th Cong., 2nd Sess. (2020) (Committee Report). The Committee Report found that the syndicated conservation easement transactions examined were nothing more than retail tax shelters allowing taxpayers to buy tax deductions at the end of any given tax year. *Id*. at 3. The Committee Report further stated that these tax deductions could be purchased with no economic risk. *Id*. As such, the Finance Committee concluded that further action was necessary to preserve the integrity of the conservation easement tax deduction despite ongoing efforts to combat this abuse such as the issuance of Notice 2017-10 and IRS enforcement action. *Id*. at 4.

In a separate report accompanying an earlier proposal for amending section 170(h), in legislation proposed as the "Enhancing American Retirement Now Act," the Committee on Finance recognized charitable deductions for the donation of conservation easements as an important tool and incentive to protect the environment and historic structures. S. Rep. No. 117-142 on S. 4808, at 218, 117th Cong., 2nd Sess. (2022). Citing its findings from the 2020 Committee Report, the Committee noted, however, that abusive tax shelter transactions put the conservation easement tax deduction at risk. The Committee ultimately found it appropriate to take legislative action to protect the integrity of the conservation easement tax deduction for easement donations with a legitimate conservation purpose. *Id*.

On December 8, 2022, the Treasury Department and the IRS published in the *Federal Register* (87 FR 75185) a notice of proposed rulemaking (REG-106134-22) identifying syndicated conservation easement transactions and substantially similar transactions as listed transactions (listing NPRM). The definition of a syndicated conservation easement transaction in proposed §1.6011-9 of the listing NPRM is similar to the definition in Notice 2017-10. The purpose of the listing NPRM was to eliminate any confusion

and ensure consistent enforcement of Federal tax laws throughout the nation in light of certain judicial decisions holding that, under the Administrative Procedure Act, 5 U.S.C. chapter 5, subchapter II, listed transactions may be identified only after following notice and comment procedures. *See*, *e.g.*, *Mann Construction, Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022), and *Green Valley Investors, LLC, et al. v. Commissioner*, 159 T.C. No. 5 (2022). The Treasury Department and the IRS are in the process of considering the comments received and finalizing the listing NPRM.

V. *Section 605 of the SECURE 2.0 Act*

Section 170(h)(7) was added to the Code by section 605(a)(1) of the SECURE 2.0 Act. Section 170(h)(7)(A) states that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership (Disallowance Rule). Thus, a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes is not a qualified conservation contribution if the Disallowance Rule applies. Section 170(h)(7)(F) provides that the rules of section 170(h)(7) "apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships" except as the Secretary may otherwise provide.

Section 170(h)(7)(B) defines the terms "relevant basis" and "modified basis," section 170(h)(7)(C), (D), and (E) provide three exceptions to the Disallowance Rule, and section 170(h)(7)(G) provides a specific grant of regulatory authority to the Secretary to issue regulations or other guidance as the Secretary determines are necessary or appropriate to carry out the purposes of the Disallowance Rule, including reporting requirements and rules to prevent the avoidance of the Disallowance Rule.

Section 605(a)(2) of the SECURE 2.0 Act modifies certain penalty provisions in sections 6662, 6664, and 6751 of the Code to provide special rules for charitable contribution deductions disallowed by section 170(h)(7). Section 605(a)(3) of the SECURE 2.0 Act provides that any charitable contribution for which a deduction was disallowed under section 170(h)(7) is treated, for purposes of the period of limitations on assessment and collection of tax in section 6501 of the Code and the period of limitations on making adjustments in section 6235 of the Code, as a transaction specifically identified by the Secretary as a tax-avoidance transaction.

Section 605(b) of the SECURE 2.0 Act added section 170(f)(19) to the Code, which provides that, in the case of a partnership or S corporation claiming a qualified conservation contribution for the preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C)) in an amount that exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis (as defined in section 170(h)(7)), no deduction under section 170 is allowed unless, as provided in section 170(f)(19)(A)(i) and (ii), the partnership or S corporation includes on its return for the taxable year a statement that such contribution was made and any other information as the Secretary may require. A contribution to preserve a certified historic structure is one of the three exceptions to the Disallowance Rule.

Section 605(c) of the SECURE 2.0 Act provides that the amendments made by section 605 of the SECURE 2.0 Act apply to contributions made after December 29, 2022, and that no inference is intended as to the appropriate treatment of contributions made in taxable years ending on or before that date, or as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7).

VI. Overview of the Disallowance Rule

The Disallowance Rule provides that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership. If such a contribution is not treated as a qualified conservation contribution, then the general rule under section 170(f)(3)(A) disallowing a charitable contribution deduction under section 170 for a contribution of a partial interest in property applies. Thus, if the Disallowance Rule applies, any amount of deduction under section 170 for a qualified conservation contribution is disallowed.

Section 170(h)(7)(B)(i) provides that, for purposes of section 170(h)(7), the term "relevant basis" means, with respect to any partner, the portion of such partner's modified basis in the partnership that is allocable (under rules similar to the rules of section 755 of the Code for allocating certain special basis adjustments to partnership property) to the portion of the real property with respect to which the contribution described in section 170(h)(7)(A) is made. Section 170(h)(7)(B)(ii) provides that, for purposes of section 170(h)(7), the term "modified basis" means, with respect to any partner, such partner's adjusted basis in the partnership as determined (1) immediately before the contribution described in section 170(h)(7)(A), (2) without regard to the treatment of partnership liabilities in section 752, and (3) by the partnership after taking into account these first two adjustments and such other adjustments as the Secretary may provide.

Section 170(h)(7) contains three exceptions to the Disallowance Rule. First, section 170(h)(7)(C) provides that the Disallowance Rule does not apply to any contribution made at least three years after the latest of (1) the last date on which the partnership that made such contribution acquired any portion of the real property with respect to which such contribution is made, (2) the last date on which any partner in the partnership that made such contribution acquired any interest in such partnership, and (3) if the interest in the partnership that made such contribution is held through one or more partnerships, the last date on which any such partnership acquired any interest in any other such partnership, and the last date on which any partner in any such partnership acquired any interest in such partnership.

Second, section 170(h)(7)(D)(i) provides that the Disallowance Rule does not apply to any contribution made by any partnership if substantially all of the partnership interests in such partnership are held, directly or indirectly, by an individual and

members of the family of such individual. Section 170(h)(7)(D)(ii) provides that, for purposes of section 170(h)(7)(D), the term "members of the family" means, with respect to any individual (I) the spouse of such individual, and (II) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code for purposes of determining whether an individual is a qualifying relative.

Third, section 170(h)(7)(E) provides that the Disallowance Rule does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)).

Section 170(h)(7)(F) provides that, except as may be otherwise provided by the Secretary, the rules of section 170(h)(7) apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships.

Section 170(h)(7)(G) authorizes the Secretary to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 170(h)(7), including regulations or other guidance (1) to require reporting, including reporting related to tiered partnerships and the modified basis of partners, and (2) to prevent the avoidance of the purposes of section 170(h)(7).

Explanation of Provisions

I. *Overview*

These proposed regulations would address several requirements added by section 605 of the SECURE 2.0 Act and make several related clarifying changes to the existing regulations applicable to qualified charitable contributions. First, these proposed regulations would make changes to existing §1.170A-14, including modifying paragraph (a) to reference the Disallowance Rule and adding new paragraphs (j) through (n) to §1.170A-14 to provide guidance on the application of the Disallowance Rule to partnerships and S corporations, the computation of relevant basis and modified basis, including in tiered structures, and the three statutory exceptions to the Disallowance Rule.

These proposed regulations would provide specific rules for partnerships and S corporations, but do not specifically address other types of pass-through entities. The Treasury Department and the IRS continue to study whether specific rules are needed for other types of pass-through entities and request comments on the application of section 170(f)(19) and (h)(7) to pass-through entities other than partnerships and S corporations. The Treasury Department and the IRS intend to issue future guidance on other issues relating to section 605 of SECURE 2.0 Act, including additional guidance relating to the three statutory exceptions to the Disallowance Rule.

Second, these proposed regulations would make changes to the reporting requirements in §1.170A-16 to address substantiation of charitable contribution deductions as well as to implement section 170(f)(19)(A)(i). The Treasury Department and the IRS intend to issue future guidance addressing section 170(f)(19)(A)(ii).

Finally, these proposed regulations propose new language in §§1.706-3 and 1.706-4 to facilitate the operation of the Disallowance Rule in the case of a qualified conservation contribution made by a partnership.

II. *Clarifying Change to §1.170A-14(a)*

The second sentence of existing §1.170A-14(a) provides that a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of §1.170A-14 are met. Because the Disallowance Rule provided in section 170(h)(7) is proposed to be contained in §1.170A-14(j) through (n), proposed §1.170A-14(a) would amend this sentence to provide that a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of §1.170A-14 are met and the contribution is not a disallowed qualified conservation contribution within the meaning of proposed §1.170A-14(j).

III. *Disallowance Rule and Its Exceptions*

Proposed §1.170A-14(j) would provide guidance on the general applicability of the Disallowance Rule to partnerships and S corporations. Proposed §1.170A-14(j)(3) would provide definitions. Consistent with section 170(h)(7)(B), proposed §1.170A-14(k) would provide that the term "relevant basis" means, with respect to any ultimate member (as defined in proposed §1.170A-14(j)(3)(x)), the portion of such ultimate member's modified basis (as determined under proposed §1.170A-14(l)) that is allocable (under the rules of proposed §1.170A-14(m)) to the portion of the real property with respect to which the qualified conservation contribution is made. Proposed §1.170A-14(l) would provide guidance on the determination of modified basis. Proposed §1.170A-14(m) would provide guidance on the allocation of modified basis to the portion of the real property with respect to which the qualified conservation contribution was made. Proposed §1.170A-14(m)(6) would impose recordkeeping requirements for substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis by the due date, including extensions, of the partnership's or S corporation's Federal income tax return. Proposed §1.170A-14(n) would provide guidance on the three statutory exceptions to the Disallowance Rule.

A. *General Disallowance Rule for Partnerships and S Corporations*

Consistent with section 170(h)(7)(A), proposed §1.170A-14(j)(1) would provide that proposed §1.170A-14(j) applies the rules of section 170(h)(7), which disallow a deduction under the Code and §1.170A-14 for certain qualified conservation contributions, as defined in section 170(h)(1) and §1.170A-14, made by, or allocated to, partnerships or S corporations if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, as determined by proposed §1.170A-14(j) through (m). Proposed §1.170A-14(j)(3)(vii) would define a contribution for which a deduction is disallowed by §1.170A-14(j) as a "disallowed qualified conservation contribution." Proposed §1.170A-14(j)(2)(i) would provide that, except as provided in proposed §1.170A-14(n), a qualified conservation contribution by a contributing partnership

or a contributing S corporation is a disallowed qualified conservation contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership's or contributing S corporation's ultimate member's relevant basis as determined under proposed §1.170A-14(j) through (m).

Proposed §1.170A-14(j)(2)(ii) would provide that, except as provided in proposed §1.170A-14(n), an allocated portion of a contribution received by an upper-tier partnership or upper-tier S corporation is a disallowed qualified conservation contribution if either the contribution is a disallowed qualified conservation contribution with respect to the partnership that allocated the allocated portion to the upper-tier partnership or upper-tier S corporation, or such allocated portion exceeds 2.5 times the sum of each of that upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis as determined under proposed §1.170A-14(j) through (m). Thus, if a contribution is a disallowed qualified conservation contribution with respect to a partnership, then the contribution is a disallowed qualified conservation contribution with respect to any upper-tier partnership or upper-tier S corporation owning a direct or indirect interest in that partnership. On the other hand, if a contribution is not a disallowed qualified conservation contribution with respect to a partnership, then the rules of proposed §1.170A-14(j) through (m) must be applied to the next tier of upper-tier partnerships and upper-tier S corporations (which own a direct interest in the partnership) to determine if the Disallowance Rule applies to those upper-tier partnerships and upper-tier S corporations. In other words, the test of §1.170A-14(j) through (m) must be applied at each tier unless and until the test is failed at one tier, in which case that portion of the contribution will be a disallowed qualified conservation contribution to that tier and any subsequent tiers.

B. *Definitions*

Proposed §1.170A-14(j)(3) would contain definitions, including definitions of terms, including "contributing partnership," "contributing S corporation," "ultimate member," "allocated portion," "upper-tier partnership," and "upper-tier S corporation."

1. *Allocated portion*

Proposed §1.170A-14(j)(3)(i) would provide that, in the case of an upper-tier partnership or upper-tier S corporation that receives, directly or indirectly, a distributive share of a qualified conservation contribution, the phrase "allocated portion" means the amount of such distributive share.

2. *Amount of qualified conservation contribution*

Proposed §1.170A-14(j)(3)(ii) would provide that the amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. It would also provide that, if the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of §1.170A-14 must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and §1.170A-14.

3. *Contributing partnership*

The Disallowance Rule applies to a partnership or S corporation that makes a qualified conservation contribution, as well as a partnership or S corporation that is allocated a distributive share of a qualified conservation contribution of another partnership. For clarity, proposed §1.170A-14(j)(3)(iii) would provide that the term "contributing partnership" means a partnership that makes a qualified conservation contribution.

4. *Contributing S corporation*

Proposed §1.170A-14(j)(3)(iv) would provide that the term "contributing S corporation" means an S corporation that makes a qualified conservation contribution.

5. *Direct interest*

Proposed §1.170A-14(j)(3)(v) would provide that the term "direct interest" refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as defined in section 1361(b)(3) of the Code, or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation, non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the direct interest in the partnership or S corporation, as applicable, would be considered to be held by the C corporation, non-grantor trust, or estate; the C corporation's shareholders, trust beneficiaries, and estate beneficiaries would not be considered to hold any interest in the partnership or S corporation, as applicable, for purposes of proposed §1.170A-14(j) through (n).

6. *Directly*

Proposed §1.170A-14(j)(3)(vi) would provide that an ownership interest is held "directly" if it is not held through one or more upper-tier partnerships or upper-tier S corporations. Similarly, a distributive share or pro rata share of a qualified conservation contribution would be received "directly" if it does not pass through one or more upper-tier partnerships or upper-tier S corporations.

7. *Disallowed qualified conservation contribution*

Proposed §1.170A-14(j)(3)(vii) would provide that the term "disallowed qualified conservation contribution" means a qualified conservation contribution or allocated portion for which no deduction is allowed pursuant to section 170(h)(7) and proposed §1.170A-14(j).

8. *Indirect interest*

Proposed §1.170A-14(j)(3)(viii) would provide that the term "indirect interest" refers to an ownership interest in a

contributing partnership, contributing S corporation, upper-tier partnership, or upper-tier S corporation held through an upper-tier S corporation or one or more upper-tier partnerships.

9. *Indirectly*

Proposed §1.170A-14(j)(3)(ix) would provide that an ownership interest is held "indirectly" if it is held through one or more upper-tier partnerships or upper-tier S corporations. Similarly, a distributive share or pro rata share of a qualified conservation contribution would be received "indirectly" if it passes through one or more upper-tier partnerships or upper-tier S corporations.

10. *Ultimate Member*

Proposed §1.170A-14(j)(3)(x) would provide that the term "ultimate member" means, with respect to any partnership or S corporation, any partner (that is not itself a partnership or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members would either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Proposed §1.170A-14(j)(3)(x) would provide that upper-tier S corporations and upper-tier partnerships themselves are not considered ultimate members.

Several considerations played a role in the decision of the Treasury Department and the IRS to propose this rule that looks to the relevant basis of the ultimate members for determining whether a qualified conservation contribution will be disallowed. Although section 170(h)(7)(A) provides that the Disallowance Rule applies in tiered structures, the statutory language does not explicitly explain whether the determination of relevant basis is made with respect to partners (who may themselves be pass-through entities) and S corporation shareholders holding a direct interest in the contributing partnership or contributing S corporation, or whether the determination of relevant basis is made with respect to the ultimate members. The Disallowance Rule is meant to compare the amount of a claimed qualified conservation contribution with the equity investment made by those persons expected to claim a deduction with respect to such contribution. Because it is the ultimate members, such as individuals, estates, and C corporations (that is, non-pass-through entities), who ultimately claim a deduction for a qualified conservation contribution, the proposed regulations would require that the determination of relevant basis be made with respect to those ultimate partners and S corporation shareholders. For example, assume a contributing partnership has two partners: (1) an upper-tier S corporation, which has two individual shareholders, and (2) an upper-tier partnership, which has three partners—a C corporation, an estate, and an individual. Under these proposed regulations, relevant basis would be computed with respect to the three individuals, C corporation, and estate, and not with respect to the upper-tier S corporation or upper-tier partnership. The proposed regulations would refer to these persons as the "ultimate members." In the case of a tiered arrangement, the use of the term "partner" to refer to such ultimate members might be confusing or inaccurate because such persons may not be partners of the contributing partnership, and in fact, may not be partners at all, if they are shareholders of an upper-tier S corporation that is itself a partner in the contributing partnership. As such, the proposed regulations use the term "member."

The Treasury Department and the IRS considered alternatives to the ultimate member rule. One possible approach would be to determine the application of the Disallowance Rule with respect to the contributing partnership by looking only to the relevant bases of the contributing partnership's direct partners. In the example in which a contributing partnership has two partners, an upper-tier S corporation and an upper-tier partnership, the direct partners would be the upper-tier S corporation and the upper-tier partnership. The modified basis (and thus, relevant basis) of the upper-tier S corporation or upper-tier partnership could include basis attributable to shareholders or partners of the upper-tier entity that will not be expected to claim the deduction. For example, this might be the case because the contributing partnership allocates all of the qualified conservation contribution to the upper-tier S corporation. Because the Disallowance Rule is meant to compare the amount of a claimed qualified conservation contribution with the equity investment made by those persons expected to claim a deduction with respect to such contribution, it is more consistent with the purposes of the Disallowance Rule to compute relevant basis only using the basis of those persons who are expected to claim a deduction with respect to the contribution.

Additionally, in the example earlier, if the contributing partnership's qualified conservation contribution was not disallowed by the Disallowance Rule, the upper-tier S corporation and the upper-tier partnership would each be required to determine the application of the Disallowance Rule by looking to their direct owners. Because section 170(h)(7)(B)(i) requires that relevant basis be traced to the portion of the real property with respect to which the contribution is made, the upper-tier S corporation's and upper-tier partnership's determinations would necessarily involve computations by both the upper-tier entity and the contributing partnership. Thus, in many cases, computing relevant basis only with respect to direct partners would not simplify the computations required to apply the Disallowance Rule, because it would still be necessary to carry the computations through each tier.

These proposed regulations would provide numerous examples to determine who is an ultimate member. Comments are requested on the definition of ultimate member, and whether additional examples for specific situations would be helpful.

11. *Upper-tier partnership*

Proposed §1.170A-14(j)(3)(xi) would provide that the term "upper-tier partnership" means a partnership that receives an allocated portion.

Where appropriate, the proposed regulations would provide separate rules for contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations. The Treasury

Department and the IRS are aware that sometimes different naming conventions are used to refer to tiered partnership arrangements. For example, some may refer to the contributing partnership as the "property partnership" or "top-tier partnership," and in fact the IRS has used that naming convention in some correspondence. That naming convention is not inherently wrong, as different practitioners refer to the "bottom" and "top" of a tiered structure differently. However, the regulations under subchapter K of chapter 1 of the Code generally would refer to the contributing partnership as the lower-tier partnership, and to a partnership that owns an interest in the contributing partnership (either directly or indirectly) as an upper-tier partnership. Accordingly, in a tiered partnership ownership structure, these proposed regulations reflect a naming convention under which the contributing partnership would be the "lower-tier partnership," and a partnership receiving a distributive share of a qualified conservation contribution from the contributing partnership would be an "upper-tier partnership."

12. *Upper-Tier S Corporation*

Proposed §1.170A-14(j)(3)(xii) would provide that the term "upper-tier S corporation" means an S corporation that receives an allocated portion.

C. *Effect of the Disallowance Rule*

As noted previously, section 170(h)(7)(A) applies the Disallowance Rule to both contributing partnerships and upper-tier partnerships. Section 170(h)(7) does not explicitly address what effect the application of the Disallowance Rule to one partnership or S corporation in a tiered structure has on the other partnerships or S corporations in the tiered structure. These proposed regulations would provide that if the Disallowance Rule applies to a partnership or S corporation, then the qualified conservation contribution is a disallowed qualified conservation contribution to that entity as well as to any person receiving a distributive share or pro rata share, directly or indirectly, of that entity's disallowed qualified conservation contribution; however, the disallowance would not affect the qualified conservation contribution with respect to any lower-tier entities. In other words, if the application of the Disallowance Rule with respect to an upper-tier partnership or upper-tier S corporation results in a disallowed qualified conservation contribution, that would affect Federal income tax consequences up the chain of tiers, but not down the chain of tiers, so, for example, the contributing partnership would not be affected.

The Treasury Department and the IRS considered other approaches, such as always re-testing the application of the Disallowance Rule to an upper-tier partnership's or upper-tier S corporation's allocated portion, even when the contribution is a disallowed qualified conservation contribution with respect to the lower-tier partnership. Under this approach, if the allocated portion does not exceed 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis, the allocated portion would be a qualified conservation contribution and not disallowed to the upper-tier partnership's non-pass-through partners or the upper-tier S corporation's shareholders, even though the contribution was a disallowed qualified conservation contribution to the non-pass-through partners of the lower-tier partnership. Allowing re-testing of contributions that have already failed the Disallowance Rule would be inconsistent with the purposes of the Disallowance Rule because it would inappropriately encourage the creation of tiered structures to allow some ultimate members to avoid the Disallowance Rule. These proposed regulations are intended to prevent avoidance of the purposes of section 170(h)(7) and ensure disallowance of deductions attributable to disallowed qualified conservation contributions. The Treasury Department and the IRS request comments on the application of the Disallowance Rule in tiered structures.

Under the authority of section 170(h)(7)(G)(ii) to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7), proposed §1.170A-14(j)(4)(i) would provide that, if a contributing partnership's or contributing S corporation's qualified conservation contribution is a disallowed qualified conservation contribution, then: (1) any upper-tier partnership's or upper-tier S corporation's allocated portion of such contribution is a disallowed qualified conservation contribution, regardless of whether such allocated portion exceeds 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and (2) no person (whether holding a direct or indirect interest in such contributing partnership or contributing S corporation) may claim a deduction under any provision of the Code with respect to any amount of such disallowed qualified conservation contribution, regardless of whether that person's distributive share or pro rata share of the disallowed qualified conservation contribution exceeds 2.5 times its relevant basis. The reference to "any provision of the Code" is necessary to prevent taxpayer attempts to avoid the Disallowance Rule by claiming a deduction with respect to any amount of a qualified conservation contribution under a provision of the Code other than section 170 in cases in which no deduction is allowable under section 170 by reason of section 170(h)(7). For example, this proposed rule would disallow a deduction under section 642(c) of the Code for a trust that is a partner in a partnership with respect to a distributive share of a disallowed qualified conservation contribution from the partnership.

Proposed §1.170A-14(j)(4)(ii) would provide that if a contributing partnership's or contributing S corporation's qualified conservation contribution is not a disallowed qualified conservation contribution, then: (1) the distributive share or pro rata share of any ultimate member holding a direct interest in the contributing partnership or contributing S corporation is not a disallowed qualified conservation contribution; and (2) any upper-tier partnership or upper-tier S corporation that receives an allocated portion of such qualified conservation contribution must separately apply the rules of section 170(h)(7) and proposed §1.170A-14(j) through (m) to determine whether that upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution.

Proposed §1.170A-14(j)(4)(iii) would provide that, if an upper-tier partnership's

or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution, then: (1) any subsequent upper-tier partnership's or upper-tier S corporation's allocated portion of such allocated portion would be a disallowed qualified conservation contribution, regardless of whether the subsequent upper-tier partnership's or upper-tier S corporation's allocated portion exceeds 2.5 times the sum of each of the subsequent upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and (2) no person (whether holding a direct or indirect interest in that upper-tier partnership or upper-tier S corporation) would be able to claim a deduction under any provision of the Code with respect to any amount of that upper-tier partnership's or upper-tier S corporation's allocated portion, regardless of whether that person's distributive share or pro rata share of the allocated portion exceeds 2.5 times its relevant basis. Similar to proposed §1.170A-14(j)(4)(i), proposed §1.170A-14(j)(4)(iii) would be issued under the authority of section 170(h)(7)(G)(ii) to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7). However, this proposed rule would not affect the application of proposed §1.170A-14(j) through (m) to another partner of the contributing partnership; for example, if the qualified conservation contribution is not a disallowed qualified conservation contribution with respect to the contributing partnership, then the distributive share of such contribution of an ultimate member holding a direct interest in the contributing partnership is not a disallowed qualified conservation contribution, notwithstanding that the qualified conservation contribution is a disallowed qualified conservation contribution with respect to one or more upper-tier partnerships or upper-tier S corporations.

Proposed §1.170A-14(j)(4)(iv) would provide that, if an upper-tier partnership's or upper-tier S corporation's allocated portion is not a disallowed qualified conservation contribution, then: (1) the distributive share or pro rata share of such allocated portion of any ultimate member holding a direct interest in the upper-tier partnership or upper-tier S corporation is not a disallowed qualified conservation contribution; and (2) any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of such allocated portion must separately apply the rules of section 170(h)(7) and proposed §1.170A-14(j) through (m) to determine whether that subsequent upper-tier partnership's or upper-tier S corporation's allocated portion is treated as a disallowed qualified conservation contribution.

The proposed regulations contain examples illustrating the rules with respect to tiers of entities. The Treasury Department and the IRS request comments on whether additional examples would be helpful.

D. *No inference*

The Treasury Department and the IRS are aware that, even though section 605(c)(2) of the SECURE 2.0 Act plainly states that no inference is intended as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7), some practitioners have taken the position that section 170(h)(7) operates as a "safe harbor." According to these practitioners, a qualified conservation contribution that is not disallowed by the Disallowance Rule is somehow immune to a challenge on other grounds, including failure to comply with other rules under section 170 and overvaluation of the contribution. Such a position is baseless and contradicted by the statutory language.

To clarify this issue, proposed §1.170A-14(j)(5) would provide that there is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation contribution is compliant with section 170, any other section of the Code, the regulations, or any other guidance thereunder. It would also provide that compliance with section 170(h)(7) and proposed §1.170A-14(j) through (n) is not a safe harbor for purposes of any other provision of law, including the other requirements of section 170 and the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the requirements of section 170 and the overvaluation of the contribution; for example, failure to properly execute Form 8283, *Noncash Charitable Contributions*, violation of the partnership anti-abuse rule of §1.701-2, lack of economic substance, or other rules or judicial doctrines. In addition, compliance with proposed §1.170A-14(j) through (n) would not preclude the application of any penalty, including penalties for valuation misstatement, negligence, and fraud. Proposed §1.170A-14(j)(5) would also provide that taxpayers who engage in such transactions may be required to disclose under §1.6011-4 the transactions as listed transactions.

E. *Determination of Relevant Basis*

Consistent with section 170(h)(7)(B)(i), proposed §1.170A-14(k) would provide that, for purposes of §1.170A-14, the term "relevant basis" means, with respect to any ultimate member, the portion of such ultimate member's modified basis (as defined in proposed §1.170A-14(l)) that is allocable (under the rules of proposed §1.170A-14(m)) to the portion of the real property with respect to which the qualified conservation contribution is made.

1. *Modified Basis*

Proposed §1.170A-14(l)(1) would provide that, in the case of an ultimate member holding a direct interest in a partnership, the ultimate member's modified basis is determined by such partnership immediately before the qualified conservation contribution is made in the manner described in §1.170A-14(l)(2). In the case of an ultimate member holding a direct interest in an S corporation, the ultimate member's modified basis would be determined by such S corporation in the manner described in §1.170A-14(l)(3).

a. *Modified basis of ultimate members that are partners*

Consistent with section 170(h)(7)(B)(ii), the proposed regulations would provide rules that are designed to determine a partner's modified basis immediately prior to the qualified conservation contribution. Without additional guidance under section 706, there may be situations in which the contribution is allocated to partners that did not hold an interest at the time of the

qualified conservation contribution. Such partners would not have any bases in their partnership interests immediately before the contribution, and thus, without additional rules, their modified bases and relevant bases would be zero. As discussed later in this preamble, these proposed regulations would contain rules under section 706 that would treat a qualified conservation contribution as an extraordinary item under §1.706-4(e) that must be allocated only to partners holding an interest in the partnership at the time of the contribution. Proposed rules under §1.706-3 would ensure that only partners holding an interest in an upper-tier partnership at the time of the contribution would receive a distributive share of an allocated portion. Thus, all ultimate members who are partners would be partners at the time of day the contribution is made. In other words, for a partner to be an ultimate member, the partner must have been a partner at the time of day the contribution is made and must have been allocated a distributive share of that contribution. These proposed rules are intended to facilitate the computation of modified basis immediately before the contribution, consistent with section 170(h)(7)(B)(ii)(I).

The proposed regulations would provide a process for determining a partner's modified basis. Proposed §1.170A-14(l)(2)(i) would provide that, for purposes of §1.170A-14, the term "modified basis" means, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed §1.170A-14(l)(2)(ii) through (v). However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year, then the term "modified basis" would mean such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner with adjustments as determined under proposed §1.170A-14(l)(2)(ii) through (v). The Treasury Department and the IRS considered alternatives to this rule, including simply requiring that "adjusted basis" be computed immediately prior to the contribution. However, adjusted basis is typically computed as of the beginning of a taxable year, and it may be unclear to taxpayers how to compute adjusted basis as of another time during the year. Current regulations generally do not require partners to compute their adjusted bases in their partnership interests as of the time events, such as the making of a qualified conservation contribution, occur. Accordingly, these proposed regulations would start with a calculation of adjusted basis that partners are familiar with computing, and then make adjustments to arrive at an amount that reflects the partner's modified basis immediately before the contribution.

Proposed §1.170A-14(l)(2)(ii) through (v) would provide four adjustments that must be made to a partner's adjusted basis to arrive at modified basis. These adjustments would be required to be made in the order in which they are listed. First, proposed §1.170A-14(l)(2)(ii) would provide that the computation of modified basis must start with the ultimate member's adjusted basis under proposed §1.170A-14(l)(2)(i) and then reflect an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 722 of the Code.

Second, proposed §1.170A-14(l)(2)(iii) would provide that the amount determined under proposed §1.170A-14(l)(2)(ii) must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. For example, if a calendar-year partnership makes a qualified conservation contribution at 9:17 a.m. on November 19 of Year 1, then the hypothetical distributive share would be required to be made based on the partnership items attributable to the period between the beginning of the day on January 1 Year 1 and 9:16 a.m. on November 19 Year 1. In making this determination, the partnership would be required to apply the rules of §1.706-4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. Proposed §1.170A-14(l)(2)(iii) would provide that the partnership cannot apply any convention in §1.706-4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. Proposed §1.170A-14(l)(2)(iii) would clarify that this hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. Proposed §1.170A-14(l)(2)(iii) would also make clear that proposed §1.170A-14(l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares for the taxable year in which the qualified conservation contribution is made or otherwise. *See* section 706(d) and the regulations thereunder for the permissible methods that may be used in the determination of the partners' distributive shares for a partnership taxable year in which there is a variation in a partner's interest in the partnership. As described later this preamble, proposed §§1.706-3(a) and 1.706-4(e)(2)(ix) would provide special rules for the allocation of qualified conservation contributions.

The Treasury Department and the IRS considered using the partners' actual distributive shares, determined as of the time of the contribution. In the case of a partnership using the proration method, however, such an approach would result in the partners' modified bases reflecting a portion of partnership items earned or incurred by the partnership after the time of the contribution, and thus would be inconsistent with the requirement in section 170(h)(7)(B)(ii)(I) that partners'

modified bases be determined immediately before the contribution. The Treasury Department and the IRS request comments on the approach taken in the proposed regulations to determine the partners' distributive shares of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made.

Third, proposed §1.170A-14(l)(2)(iv) would provide that the amount determined under proposed §1.170A-14(l)(2)(iii) must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

Fourth, consistent with section 170(h)(7)(B)(ii)(II), proposed §1.170A-14(l)(2)(v) would provide that the amount determined under proposed §1.170A-14(l)(2)(iv) must be reduced by the full amount of the ultimate member's share of §1.752-1 liabilities of any partnership (including a lower-tier partnership). The remaining amount would be such ultimate member's modified basis. Thus, under the proposed regulations, an ultimate member's modified basis may be less than zero. Under the formulas for the determination of relevant basis discussed later in this preamble, a negative modified basis will result in a negative relevant basis. Because the application of the Disallowance Rule is based on the sum of each ultimate member's relevant basis, if one ultimate member's relevant basis is negative, it will be added to all other ultimate members' relevant bases, and the sum may be a positive or negative number.

b. *Modified basis of ultimate members that are shareholders in an S corporation*

Unlike the rules for partnerships discussed previously, S corporations do not have extraordinary items that must be allocated only to shareholders as of the time of day the item occurs. Instead, section 1377 of the Code and existing §1.1377-1 generally require pro rata allocations. Section 1.1377-1(a) provides that each shareholder's pro rata share of any S corporation item described in section 1366(a) of the Code for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. If a shareholder disposes of its entire interest in an S corporation, §1.1377-1(b) allows the S corporation to make a terminating election, under which the S corporation will determine the terminating shareholder's share as though the S corporation's taxable year closed on the day of the termination. However, there is no extraordinary item rule for S corporations similar to §1.706-4(e). As such, it may be the case that an S corporation allocates a portion of a qualified conservation contribution to someone that was not a shareholder at the time of the contribution, but that shareholder would still be treated as an ultimate member because the shareholder received a pro rata share of the qualified conservation contribution.

As described previously, the rules for determining a partner's modified basis start with the partner's adjusted basis at the start of the partnership's taxable year and work forward to determine modified basis immediately before the contribution. However, the Treasury Department and the IRS are concerned that such an approach is not appropriate for S corporation shareholders, as it could be unnecessarily burdensome and, in some cases, impossible to determine each shareholder's modified basis immediately prior to the qualified conservation contribution (because some ultimate members may not be shareholders at the time of the contribution). To provide an administrable standard consistent with the purposes of section 170(h)(7), these proposed regulations would require the computation of an S corporation shareholder's modified basis under an approach that is similar in purpose to the approach for partners but different in application.

Proposed §1.170A-14(l)(3)(i) would provide that, for purposes of §1.170A-14, the term "modified basis" means, with respect to any ultimate member that is a shareholder of either a contributing S corporation or an upper-tier S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed §1.170A-14(l)(3)(ii) and (iii). However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term "modified basis" would mean such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation with adjustments as determined under proposed §1.170A-14(l)(3)(ii) and (iii).

The Treasury Department and the IRS considered several alternatives to this rule. One method would be to require a determination of a portion of modified basis for every day during the S corporation's taxable year, because S corporations generally allocate the contribution on a pro rata basis among the shareholders on each day of the taxable year. These proposed regulations do not take that approach because the Treasury Department and the IRS are concerned that such an approach, although technically accurate and consistent with the purposes of section 170(h)(7), would be too burdensome for taxpayers and difficult for the IRS to administer. The Treasury Department and the IRS also considered using the shareholders' adjusted bases as of the beginning of the S corporation's taxable year (rather than as of the end of the year). However, because qualified conservation contributions are typically made in the second half of the year, especially in syndicated transactions, the Treasury Department and the IRS determined that such an approach would be less accurate than using the shareholders' adjusted bases as of the end of the year (or a shareholder's adjusted basis immediately prior to the transaction that terminated their interest in the S corporation).

Proposed §1.170A-14(l)(3)(i) would also clarify that modified basis does not include the ultimate member's adjusted

basis of any indebtedness of the S corporation to the ultimate member.[1]

Proposed §1.170A-14(l)(3)(ii) and (iii) would provide two adjustments that must be made to arrive at modified basis. These adjustments would be required to be made in the order in which they are listed. First, proposed §1.170A-14(l)(3)(ii) would provide that the computation of modified basis must start with the ultimate member's adjusted basis under proposed §1.170A-14(l)(3)(i) and then must reflect an increase for the extent to which the adjusted basis reflects a reduction as a result of the qualified conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution would not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution. This adjustment in proposed §1.170A-14(l)(3)(ii) would be made because it would not be appropriate or consistent with section 170(h)(7)(B)(ii)(I) for modified basis, and thus relevant basis, to reflect a reduction for the very contribution that is being analyzed under the Disallowance Rule as such an approach might result in deductions being inappropriately disallowed by the Disallowance Rule.

Second, proposed §1.170A-14(l)(3)(iii) would provide that the amount determined under proposed §1.170A-14(l)(3)(ii) must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount would be such ultimate member's modified basis. Inappropriate double counting of relevant basis might occur unless the proposed regulations provide this rule. For example, assume individual A owns a portion of the outstanding shares of an S corporation. In early July, A sells all its shares to B. In December, the S corporation makes a qualified conservation contribution. Absent a terminating election under §1.1377-1(b), the S corporation would allocate some of the qualified conservation contribution to each of A and B. Unless A's and B's modified bases (and thus, their relevant bases) are adjusted to reflect that each was a shareholder for approximately half of the year, the S corporation's computation of the sum of each of its ultimate member's relevant basis would be inappropriately overstated. The Treasury Department and the IRS request comments on whether there are certain situations in which the divisor should be less than the full number of days in the S corporation's taxable year. In particular, the Treasury Department and the IRS request comments on whether, and how, elections under §§1.1368-1(g)(2) and 1.1377-1(b) should result in the divisor being less than the full number of days in the S corporation's taxable year. It would be particularly helpful for commenters to address situations in which elections under §§1.1368-1(g)(2) and 1.1377-1(b) affect some, but not all, of the shareholders.

Section 170(h)(7)(B)(ii)(III) provides authority for the Secretary to provide for other adjustments in the computation of modified basis. The Treasury Department and the IRS request comments on whether any additional adjustments to arrive at modified basis would be appropriate.

The proposed regulations also contain examples illustrating the determination of modified basis. Comments are requested on whether it would be helpful to add examples with other factual scenarios.

2. *Allocation of Modified Basis and Determination of Relevant Basis*

Proposed §1.170A-14(m) would provide rules for determining the portion of an ultimate member's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is the final step in the determination of relevant basis. Section 170(h)(7)(B)(i) provides that the allocation is made under rules similar to the rules of section 755. Section 755 provides rules for allocating special basis adjustments to partnership property resulting from partnership distributions or transfers of partnership interests, such as adjustments under section 734(b) of the Code and adjustments under section 743(b) of the Code.

Section 755(a) generally provides that any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) is allocated (1) in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties, or (2) in any other manner permitted by regulations. The regulations under section 755 provide rules for performing these allocations. Those rules can be complex and involve several different methods for allocating basis adjustments among the partnership's properties, including:

(1) Allocating in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties. *See* §1.755-1(b)(2)(i) and (b)(3).

(2) Allocating in proportion to the transferee's share of the amount that would be realized by the partnership upon the hypothetical sale of each property. *See* §1.755-1(b)(5)(iii)(A).

(3) Allocating in proportion to the fair market values of the partnership's properties. *See* §1.755-1(c)(2)(i).

(4) Allocating in proportion to the partnership's adjusted bases in its properties. *See* §1.755-1(c)(2)(ii).

(5) Allocating in proportion to the partner's share of the adjusted bases in the partnership's properties. *See* §1.755-1(b)(5)(iii)(B).

In considering which of these allocation rules would be most appropriate to determine relevant basis, the Treasury Department and the IRS considered the

[1] As described previously, section 170(h)(7)(B)(ii)(II) provides that the determination of modified basis is to be made without regard to section 752. However, the Code does not contain a rule substantially similar to section 752 for S corporations. Unlike a partner's basis in the partner's interest in the partnership, an S corporation shareholder's basis in stock of the S corporation does not include any share of the S corporation's liabilities. Under section 1367(b)(2)(A) of the Code and §1.1367-2(b), if an S corporation shareholder's pro rata share of the S corporation's losses, deductions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions exceed the shareholder's stock basis, then these items may reduce the shareholder's basis in indebtedness owed to them by the S corporation (but not below zero). Under section 1367(b)(2)(B) and §1.1367-2(c), if the basis in indebtedness has been so reduced, then any future net increase must be applied to restore such reduction in indebtedness basis before any of it may be used to increase the shareholder's basis in its stock of the S corporation.

special basis adjustment and loss limitation rules for charitable contributions. Those rules look to a partner's or shareholder's share of the partnership's or S corporation's basis in the contributed property.

Generally, section 705(a)(2) provides that the adjusted basis of a partner's interest in a partnership is decreased (but not below zero) by distributions by the partnership and by the sum of the partner's distributive share for the taxable year and prior taxable years of (1) losses of the partnership, and (2) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account. Generally, when a partnership makes a charitable contribution, the partners are not required to reduce their adjusted bases in their partnership interests by the fair market value of the contribution. Instead, Revenue Ruling 96-11, 1996-1 C.B. 140, provides that after a partnership makes a charitable contribution of property, the basis of each partner's interest in the partnership is decreased (but not below zero) by the partner's share of the partnership's basis in the property contributed. Revenue Ruling 96-11 explains that reducing the partners' bases in their partnership interests by their respective shares of the permanent decrease in the partnership's basis in its properties preserves the intended benefit of providing a deduction (in circumstances not under section 170(e)) for the fair market value of appreciated property without recognition of the appreciation. In contrast, reducing the partners' bases in their partnership interests by the fair market value of the contributed property would subsequently cause the partners to recognize gain (or a reduced loss), for example, upon a disposition of their partnership interests, attributable to the unrecognized appreciation in the contributed property at the time of the contribution.

The partnership loss limitation rules in section 704(d) of the Code have a similar rule for charitable contributions. Generally, section 704(d)(1) provides that a partner's distributive share of partnership loss is allowed only to the extent such partner's adjusted basis in its partnership interest at the end of the partnership year in which such loss occurred. Section 704(d)(3)(A) provides, in part, that in determining the amount of any loss under section 704(d)(1), the partner's distributive share of charitable contributions as defined in section 170(c) must be taken into account. However, section 704(d)(3)(B) provides that, in the case of a charitable contribution of property whose fair market value exceeds its adjusted basis, section 704(d)(3)(A) does not apply to the extent of the partner's distributive share of such excess.

The rules for S corporations also look to the shareholder's share of the S corporation's basis in the contributed property. Section 1367(a)(2)(B) of the Code provides that the basis of each shareholder's stock is reduced by the items of loss and deduction described in section 1366(a)(1)(A). However, the second sentence of section 1367(a)(2) provides that the decrease in basis under section 1367(a)(2)(B) by reason of a charitable contribution (as defined in section 170(c)) of property is the amount equal to the shareholder's pro rata share of the adjusted basis of such property.[2]

Generally, section 1366(d)(1) provides that the aggregate amount of losses and deductions taken into account by a shareholder under section 1366(a) for any taxable year cannot exceed the sum of (1) the adjusted basis of the shareholder's stock in the S corporation, and (2) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder. However, section 1366(d)(4) provides that, in the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, section 1366(d)(1) does not apply to the extent of the excess (if any) of (1) the shareholder's pro rata share of such contribution, over (2) the shareholder's pro rata share of the adjusted basis of such property. *See also* Rev. Rul. 2008-16, 2008-1 C.B. 585.

Therefore, generally partnerships and S corporations making charitable contributions are already required to track each partner's and shareholder's share of the entity's basis in the contributed property. And as noted previously, in certain circumstances the rules under section 755 also look to the partner's share of the partnership's basis in its properties. Accordingly, as described in this section of the preamble, these proposed regulations would require the allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made to be based on the ultimate member's share of the entity's bases in its properties. This provides an administrable standard consistent with the purposes of section 170(h)(7).

The Treasury Department and the IRS considered alternatives to this rule. In particular, the Treasury Department and the IRS considered simply cross-referencing the rules under section 755. Under that alternative approach, the amount of each partner's modified basis would be treated for purposes of the computation of relevant basis as a special basis adjustment under section 734(b) or section 743(b); relevant basis would be the portion of modified basis that would be allocated under the rules of section 755 to the portion of the real property with respect to which the contribution was made. Such an approach would be less consistent with the purposes of the Disallowance Rule. As noted previously, basis allocations under section 755 are sometimes made in a way to reduce or eliminate built-in gain or loss in partnership property. The relevant basis rule of section 170(h)(7) is designed to determine the portion of a partner's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is a broader and, generally, different concept than determining the partner's share of built-in gain or loss in that property. The approach in the proposed regulations is similar to the rules of section 755 and consistent with the rule of section 170(h)(7)(B)(i). The Treasury Department and the IRS request comments on whether another acceptable allocation approach would be easier or more administrable.

Proposed §1.170A-14(m)(1) would provide that the allocation of an ultimate member's modified basis to the portion of the real property with respect to which

[2] Whether a qualified conservation contribution is a disallowed qualified conservation contribution has no effect on the application of sections 705 and 1367 to the contribution. These basis reductions remain required regardless of whether a qualified conservation contribution is a disallowed qualified conservation contribution.

the qualified conservation contribution is made must be made in accordance with proposed §1.170A-14(m). Rules for allocating an ultimate member's modified basis in a contributing partnership would be provided in proposed §1.170A-14(m)(2). Rules for allocating an ultimate member's modified basis in a contributing S corporation would be provided in proposed §1.170A-14(m)(3). Rules for allocating an ultimate member's modified basis in an upper-tier partnership would be provided in proposed §1.170A-14(m)(4). Rules for allocating an ultimate member's modified basis in an upper-tier S corporation would be provided in proposed §1.170A-14(m)(5). Records would be required to be kept in accordance with proposed §1.170A-14(m)(6).

a. *Determination of relevant basis for an ultimate member holding a direct interest in a contributing partnership*

Proposed §1.170A-14(m)(2)(i) through (iii) would provide a narrative rule applicable in the case of an ultimate member holding a direct interest in a contributing partnership and would provide that a contributing partnership must determine each such ultimate member's relevant basis as provided therein. Relevant basis would equal each ultimate member's modified basis as determined under proposed §1.170A-14(l)(2) multiplied by a fraction (1) the numerator of which is the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under proposed §1.170A-14(m)(2)(ii); and (2) the denominator of which is the ultimate member's portion of the adjusted basis in all the contributing partnership's properties as determined under proposed §1.170A-14(m)(2)(iii).

The Treasury Department and the IRS note that this numerator determines the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, which is what is required by the statute, but may be different than the ultimate member's share of the contributing partnership's adjusted basis in the contributed property. As noted previously, section 704(d) and Revenue Ruling 96-11 require a partner's basis in its interest in the partnership to be decreased (but not below zero) by the partner's share of the partnership's basis in the contributed property. For example, assume a partnership owns 100 acres of real property, and grants a conservation easement that is a qualified conservation contribution on 60 of those acres. Assume the partnership's adjusted basis in the 100 acres is $100,000, its adjusted basis in the 60 acres is $60,000, and its adjusted basis in the conservation easement itself is $45,000. Section 705(a)(2)(B) and Revenue Ruling 96-11 would require each partner's basis in its interest in the partnership to be decreased (but not below zero) by the partner's share of the partnership's $45,000 basis in the easement. On the other hand, the computation of each ultimate member's relevant basis would look to the ultimate member's share of the partnership's $60,000 basis in the 60 acres (the portion of the real property with respect to which the qualified conservation contribution was made). As described in the following paragraphs, these proposed regulations would provide computational rules for determining an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made. The Treasury Department and the IRS request comments on whether these computations generally align with the methods used by partnerships to determine each partner's share of the partnership's basis in the contributed property for purposes of sections 704(d) and 705(a)(2)(B) and Revenue Ruling 96-11. In terms of the example in this paragraph, the Treasury Department and the IRS request comments on whether the rules in the proposed regulations for determining each ultimate member's share of the partnership's $60,000 basis in the 60 acres align with the way in which the partnership would determine each partner's share of the partnership's $45,000 basis in the conservation easement for purposes of applying sections 704(d) and 705(a)(2)(B) and Revenue Ruling 96-11.

Proposed §1.170A-14(m)(2)(ii) would provide that, for purposes of proposed §1.170A-14(m), an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made multiplied by a fraction (1) the numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and (2) the denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

The Treasury Department and the IRS considered several alternatives to this rule, including determining the ultimate member's share of the contributing partnership's adjusted basis in the property based on the ultimate member's share of gain, loss, and cash distributions attributable to the property. However, there may be situations in which the allocation of a qualified conservation contribution does not match the partners' shares of gain, loss, or cash distributions with respect to the property. Accordingly, the Treasury Department and the IRS determined that such an approach would be less accurate. In addition, the proposed rule would be less burdensome for taxpayers and more easily administrable for the IRS because it would be based on the partnership's actual allocation of the contribution, rather than on a hypothetical sale of the property.

Proposed §1.170A-14(m)(2)(iii) would provide that, for purposes of proposed §1.170A-14(m), an ultimate member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of: (1) the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under proposed §1.170A-14(m)(2)(ii), plus (2) the ultimate member's portion of the adjusted basis in all the contributing partnership's properties other than the portion of the real property with respect to which the qualified conservation contribution is made. Proposed §1.170A-14(m)(2)(iii) would provide that, to determine the ultimate member's share of the adjusted basis in all the contributing partnership's

properties, the contributing partnership must apportion among its partners in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

The Treasury Department and the IRS considered alternatives to this rule, including determining the ultimate member's portion of the partnership's adjusted basis in all its properties in accordance with §1.743-1(d), which provides for the determination of a transferee partner's share of the partnership's adjusted basis of its property for purposes of computing special basis adjustments under section 743(b). The Treasury Department and the IRS also considered determining the ultimate member's portion of the partnership's adjusted basis in all its properties in proportion to the ultimate member's share of the built-in gain in each of the partnership's properties. The Treasury Department and the IRS determined that these approaches would be more complex and could reach results that are less accurate for purposes of the Disallowance Rule. In particular, as previously mentioned, the partnership's allocation of the qualified conservation contribution might differ from the way that the partnership would allocate gain and loss and make cash distributions with respect to the contributed property. Moreover, these approaches would require the partnership to obtain a valuation of each of its properties at the time of the qualified conservation contribution. The Treasury Department and the IRS also considered an approach under which each ultimate member's portion of the partnership's adjusted basis in all its properties would be determined in proportion to the ultimate member's share of the qualified conservation contribution. Although such an approach would be simpler than using the partners' interests in the partnership, it would be less accurate. The Treasury Department and the IRS also considered an approach based on section 704(b) capital accounts. However, not all partnerships use the section 704(b) capital account safe harbor, and such an approach would also require a revaluation of partnership properties as of the time of the contribution. The Treasury Department and the IRS also considered a rule based on how the partnership would allocate depreciation from the properties, similar to the rule in §1.199A-2(a)(3)(ii). However, such a rule would not address property that is not depreciable. The Treasury Department and the IRS request comments on these proposed rules and alternatives.

Proposed §1.170A-14(m)(2)(iv) would provide a formulaic version of the narrative rules in proposed §1.170A-14(m)(2)(i) through (iii).

b. *Determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation*

Proposed §1.170A-14(m)(3)(i) would provide a narrative rule for the determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation. It would provide that a contributing S corporation must determine each such ultimate member's relevant basis as provided therein. Relevant basis would equal each ultimate member's modified basis as determined under proposed §1.170A-14(l)(3) multiplied by a fraction (1) the numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made; and (2) the denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made). The Treasury Department and the IRS request comments on whether this rule is sufficiently clear, and whether additional rules are needed regarding the time at which the pro rata portions of bases are determined. For example, the regulations could provide that these determinations are made as of the time of the qualified conservation contribution; however, in the event that an ultimate member is not a shareholder at that time, it would be unclear when the determination is to be made.

Proposed §1.170A-14(m)(3)(ii) would provide a formulaic version of the narrative rules in proposed §1.170A-14(m)(3)(i).

c. *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier partnership*

Proposed §1.170A-14(m)(4) would provide rules for determining the relevant basis of an ultimate member holding a direct interest in an upper-tier partnership. Proposed §1.170A-14(m)(4)(i) would provide that each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis. For simplicity, proposed §1.170A-14(m)(4) would describe a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. Proposed §1.170A-14(m)(4)(i) would provide that, in a situation involving more tiers, each partnership must apply the rules and principles of proposed §1.170A-14(m)(4) iteratively to determine relevant basis. In a tiered structure, the determination of relevant basis should reflect the basis of the ultimate members that intend to claim a portion of the deduction and thus, cannot be done without computations at the level of each entity. The Treasury Department and the IRS request comments on whether, and how, these rules can be simplified, and whether any additional rules are necessary to prevent the avoidance of the Disallowance Rule in tiered structures.

Proposed §1.170A-14(m)(4)(ii)(A) would provide a narrative rule for the upper-tier partnership. It would provide that the upper-tier partnership must determine the portion of each ultimate

member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that would be the contributing partnership). This proposed regulation would require this determination to be made in accordance with the principles of proposed §1.170A-14(m)(2), and the formula provided in proposed §1.170A-14(m)(4)(ii)(B). In other words, the formula provided in proposed §1.170A-14(m)(4)(ii)(B) would be similar to the formula provided in proposed §1.170A-14(m)(2)(iv), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed §1.170A-14(m)(4)(ii)(B) would determine the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in proposed §1.170A-14(m)(4)(iii), the contributing partnership then would be required to use the amount determined as the result of the formula in proposed §1.170A-14(m)(4)(ii)(B) in another set of computations that would determine the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed §1.170A-14(m)(4)(ii)(B) would provide that the rule of proposed §1.170A-14(m)(4)(ii) is also expressed in the following formula:[3]

$$G = M \times (U \div (J + U))$$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

M = Modified basis as determined under proposed §1.170A-14(l).

J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership), determined by apportioning among the partners of the upper-tier partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the upper-tier partnership's interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: $H \times (B \div K)$.

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

B = Ultimate member's distributive share of the qualified conservation contribution.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

After this formula is computed, then the contributing partnership must perform computations using the amount determined for item "G" to determine relevant basis. Proposed §1.170A-14(m)(4)(iii)(A) would provide a narrative rule for the contributing partnership to complete this second step. It would provide that the contributing partnership must determine the portion of the amount determined under proposed §1.170A-14(m)(4)(ii) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. The proposed regulations would require this determination to be made in accordance with the principles of proposed §1.170A-14(m)(2), and the formula provided in proposed §1.170A-14(m)(4)(iii)(B).

Proposed §1.170A-14(m)(4)(iii)(B) would provide that the rule of proposed §1.170A-14(m)(4)(iii) is also expressed in the following formula:

$$R = G \times (V \div (L + V))$$

Where:

R = Relevant basis.

G = Amount determined with respect to item G as described previously under proposed §1.170A-14(m)(4)(ii)(B).

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (K \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

d. *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation*

Proposed §1.170A-14(m)(5) would provide rules for determining relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation. Proposed §1.170A-14(m)(5)(i) would provide that each such ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier

[3] Under the order of operations for mathematical computations, operations contained in parenthesis (such as the addition of J and U) are performed before the rest of the equation.

partnerships would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis. For simplicity, proposed §1.170A-14(m)(5) would describe a situation in which there are two tiers – a contributing partnership and an upper-tier S corporation. Proposed §1.170A-14(m)(5)(i) would provide that, in a situation involving more tiers, each partnership and the upper-tier S corporation must apply the rules and principles of proposed §1.170A-14(m) iteratively to determine relevant basis.

Proposed §1.170A-14(m)(5)(ii)(A) would provide a narrative rule for the upper-tier S corporation. It would provide that the upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that would be the contributing partnership). The proposed regulations would require this determination to be made in accordance with the principles of proposed §1.170A-14(m)(3), and the formula provided in proposed §1.170A-14(m)(5)(ii)(B). In other words, the formula provided in proposed §1.170A-14(m)(5)(ii)(B) would be similar to the formula provided in proposed §1.170A-14(m)(3)(ii), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed §1.170A-14(m)(5)(ii)(B) would determine the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in proposed §1.170A-14(m)(5)(iii), the contributing partnership then would be required to use the amount determined as the result of the formula in proposed §1.170A-14(m)(5)(ii)(B) in another set of computations that would determine the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed §1.170A-14(m)(5)(ii)(B) would provide that the rule of proposed §1.170A-14(m)(5)(ii) is also expressed in the following formula:

$$N = M \times (P \div Q)$$

Where:

N = Portion of the ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the contributing partnership.

M = Modified basis as determined under proposed §1.170A-14(l).

P = Ultimate member's pro rata portion of the upper-tier S corporation's adjusted basis in its interest in the contributing partnership.

Q = Ultimate member's pro rata portion of the adjusted basis in all the upper-tier S corporation's properties (including the upper-tier S corporation's interest in the contributing partnership).

After this formula is computed, then the contributing partnership must perform computations using the amount determined for item "N" to determine relevant basis. Proposed §1.170A-14(m)(5)(iii)(A) would provide a narrative rule for the contributing partnership to compute this second step. It would provide that the contributing partnership must determine the portion of the amount determined under proposed §1.170A-14(m)(5)(ii) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. The proposed regulations would require this determination to be made in accordance with the principles of proposed §1.170A-14(m)(2), and the formula provided in proposed §1.170A-14(m)(5)(iii)(B).

Proposed §1.170A-14(m)(5)(iii)(B) would provide that the rule of proposed §1.170A-14(m)(5)(iii) is also expressed in the following formula:

$$R = N \times (W \div (S + W))$$

Where:

R = Relevant basis.

N = Amount determined with respect to item N as described previously under proposed §1.170A-14(m)(5)(ii)(B).

S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

W = Upper-tier S corporation's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (Y \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

Y = Upper-tier S corporation's distributive share of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

The proposed regulations would provide examples illustrating these rules. The Treasury Department and the IRS request comments on the determination of relevant basis.

3. *Recordkeeping Requirements*

Proposed §1.170A-14(m)(6) would provide that contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must each maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. It would also provide that these statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in proposed §1.170A-14(n)(2) (contributions outside a three-year holding period) or (n)(3) (family pass-through

entities). However, these statements must be maintained with respect to contributions that meet the exception in proposed §1.170A-14(n)(4) for certified historic structures because section 170(f)(19) imposes special reporting requirements for such contributions if they exceed 2.5 times the sum of relevant basis.

F. *Exceptions to the Disallowance Rule*

Consistent with section 170(h)(7)(C), (D), and (E), the rules in proposed §1.170A-14(n) would provide definitions and additional guidance relating to the three exceptions to the Disallowance Rule. It would also provide that there is no presumption that such a contribution otherwise is compliant with section 170, any other section of the Code, or the regulations or any other guidance thereunder; being described in proposed §1.170A-14(n) is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution; such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the other requirements of section 170 and overvaluation of the contribution; and taxpayers who engage in such transactions may be required to disclose under §1.6011-4 the transactions as listed transactions.

1. *Exception for Contributions Outside Three-Year Holding Period*

Consistent with section 170(h)(7)(C), proposed §1.170A-14(n)(2)(i) would provide that §1.170A-14(j) does not apply to any qualified conservation contribution by a contributing partnership or contributing S corporation that is made at least three years after the latest of (1) the last date on which the contributing partnership or contributing S corporation acquired any portion of the real property with respect to which such qualified conservation contribution is made, (2) the last date on which any partner in the contributing partnership or shareholder in the contributing S corporation acquired any interest in such partnership or S corporation, and (3) if the interest in the contributing partnership is held through one or more upper-tier partnerships or upper-tier S corporations (A) the last date on which any such upper-tier partnership or upper-tier S corporation acquired any interest in the contributing partnership or any other such upper-tier partnership, and (B) the last date on which any partner or shareholder in any such upper-tier partnership or upper-tier S corporation acquired any interest in such upper-tier partnership or upper-tier S corporation.

Neither section 605 of SECURE 2.0 Act nor section 170 defines the phrase "acquired any interest." An acquisition of an interest in a partnership can occur in several ways, including by inheritance, purchase from an existing partner, in a section 721 exchange with the partnership, in exchange for the provision of services, or as a distribution from an upper-tier partnership. An existing partner can also acquire additional interests in the partnership. In addition, one partner's complete or partial disposition of an interest in the partnership can be economically similar to the acquisition of an interest in the partnership by the remaining partners. For example, if a partnership makes a distribution that reduces one partner's interest in the profits or losses of the partnership, the remaining partners' interests, in the aggregate, may increase in the same manner as if they had acquired additional interests in the partnership.

The rules under section 706(c) and (d) address partnership allocations in situations involving variations in partners' interests attributable to acquisitions and dispositions. Section 1.706-4(a)(1) provides rules for determining the partners' distributive shares of partnership items when a partner's interest in a partnership varies during the taxable year as a result of the disposition of a partial or entire interest in a partnership as described in §1.706-1(c)(2) and (3),[4] or with respect to a partner whose interest in a partnership is reduced as described in §1.706-1(c)(3), including by the entry of a new partner, collectively referred to as a "variation." Generally, a variation includes any acquisition, partial disposition, or complete disposition of an interest in the partnership. However, §1.706-4(b)(1) provides that the rules in §1.706-4(a)(3) do not preclude changes in the allocations of the distributive share of items described in section 702(a) among contemporaneous partners, provided that any variation in a partner's interest is not attributable to a contribution of money or property by a partner to the partnership or a distribution of money or property by the partnership to a partner, and the allocations resulting from the modification satisfy the requirements in section 704(b) and the regulations thereunder. Generally, partnerships are familiar with the rules under §1.706-4 because they must apply such rules in computing allocations whenever there is an acquisition or disposition of a partner's interest during the taxable year.

The definition of "variation" in §1.706-4 would provide an administrable standard consistent with the purposes of section 170(h)(7)(C). Accordingly, proposed §1.170A-14(n)(2)(ii) would provide that, for purposes of §1.170A-14(n)(2), an acquisition of any interest in a partnership is any "variation" within the meaning of that term in §1.706-4(a)(1); however, a variation would not include a change in allocations that satisfies the requirements of §1.706-4(b)(1). The Treasury Department and the IRS considered alternatives to this rule, including defining acquisition as any acquisition by purchase, contribution, or gift. However, because certain other transactions such as redemptions and abandonments may reach results that are substantively similar to an acquisition by purchase, contribution, or gift, the Treasury Department and the IRS determined that the variation rules of §1.706-4 would be more appropriate in this context.

Proposed §1.170A-14(n)(2)(iii) would define an acquisition of any interest in an S corporation as any transfer, issuance, redemption, or other disposition of stock in the S corporation; however, an acquisition would not include any issuance or redemption involving all shareholders that does not affect the proportionate ownership of any shareholder (for example, a stock split). The Treasury Department and the IRS considered alternatives to

[4] Section 1.706-1(c)(2) provides in part that a partnership taxable year closes with respect to a partner who sells or exchanges the partner's entire interest in the partnership, with respect to a partner whose entire interest in the partnership is liquidated, and with respect to a partner who dies. Section 1.706-1(c)(3) provides that if a partner sells or exchanges a part of the partner's interest in a partnership, or if the interest of a partner is reduced, the partnership taxable year continues to its normal end.

this rule, including defining acquisition as any acquisition by purchase, contribution, or gift. However, because certain other transactions such as redemptions and abandonments may reach results that are substantively similar to an acquisition by purchase, contribution, or gift, the Treasury Department and the IRS determined that the proposed rule would be more appropriate in this context.

Proposed §1.170A-14(n)(2)(iv) would provide that, if the contributing partnership or contributing S corporation does not satisfy the requirements of proposed §1.170A-14(n)(2), then proposed §1.170A-14(n)(2) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed §1.170A-14(n)(2) if the person had been the one to make the qualified conservation contribution. The Treasury Department and the IRS considered alternatives to this rule, such as allowing upper-tier partnerships and upper-tier S corporations to apply the three-year-holding-period exception even if the contributing partnership failed to satisfy the exception. Such an approach, however, would be inconsistent with section 170(h)(7)(C), which explicitly applies the holding period requirements to the contributing partnership.

The proposed regulations contain two examples illustrating these rules. The Treasury Department and the IRS request comments on whether any additional rules or examples should be provided for the three-year holding period exception.

2. *Exception for Family Pass-Through Entities*

As mentioned earlier, section 170(h)(7)(D)(i) provides the Disallowance Rule does not apply to any contribution made by any partnership if substantially all of the partnership interests in such partnership are held, directly or indirectly, by an individual and members of the family of such individual. The Treasury Department and the IRS are aware that the meaning of the term "substantially all" in section 170(h)(7)(D)(i) may not be clear and that such ambiguity could impair taxpayers' ability to determine whether they qualify for the family pass-through entity exception. For purposes of applying different provisions of the Code that also use that term, various Income Tax Regulations define the term "substantially all" as comprising different percentages, including: 70 percent (§1.1400Z2(d)-2(d)(4)); 80 percent (§§1.41-2(d)(2), 1.41-4(a)(6)); 85 percent (§§1.45D-1(c)(5), 1.72(e)-1T, Q&A 3; 1.528-4(b) and (c)); 90 percent (§§1.103-8(a)(1)(i), 1.103-16(c), 1.731-2(c)(3)(i); 1.1400Z2(d)-2(d)(3)); and 95 percent (§§1.448-1T(e)(4)(i) and (e)(5)(i), 1.460-6(d)(4)(i)(D)(*1*)). It is appropriate to select a percentage at the higher end of this range to carry out the purpose of section 170(h)(7) of preventing abusive syndications of qualified conservation contributions. Accordingly, the Treasury Department and the IRS propose to define "substantially all" for purposes of section 170(h)(7)(D)(i) and §1.170A-14(n)(3)(i) as 90 percent of the interests in the contributing partnership or contributing S corporation that meets the requirements of proposed §1.170A-14(n)(3).

Thus, proposed §1.170A-14(n)(3)(i) would provide that §1.170A-14(j) does not apply with respect to any qualified conservation contribution made by a contributing partnership or contributing S corporation if at least 90 percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual, and the contributing partnership or contributing S corporation meets the requirements of proposed §1.170A-14(n)(3).

The Treasury Department and the IRS are also aware that it may be unclear what "interests" in the contributing partnership or contributing S corporation are to be taken into account for purposes of the family pass-through entity exception. Generally, the Code characterizes interests in a partnership as comprising the "capital interests" in the partnership and the "profits interests" in the partnership. *See*, for example, section 707(b) of the Code. The Treasury Department and the IRS propose limiting the family pass-through entity exception to situations in which an individual and the family members of such individual own at least 90 percent of both the capital and profits interests in the contributing partnership. Doing so would help to ensure that the family pass-through entity exception does not apply in situations in which persons outside an individual's family own a substantial economic interest in the partnership. Accordingly, proposed §1.170A-14(n)(3)(ii)(A) would provide that, in the case of a contributing partnership, at least 90 percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual.

A similar rule is proposed for S corporations. Section 1361(b)(1)(D) requires that an S corporation have only one class of stock. However, section 1361(c)(4) provides that differences in voting rights alone do not create a second class of stock. The Treasury Department and the IRS propose limiting the family pass-through entity exception in the case of S corporations to situations in which the individual and the family of such individual own stock in the contributing S corporation possessing at least 90 percent of the total voting power and at least 90 percent of the total value of the outstanding stock of the contributing S corporation. Doing so would help to ensure that the family pass-through exception does not apply in situations in which persons outside an individual's family own a substantial economic interest in the S corporation. Accordingly, proposed §1.170A-14(n)(3)(ii)(B) would provide that, in the case of a contributing S corporation, at least 90 percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the total value and at least 90 percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

The Treasury Department and the IRS request comments on whether these definitions of "substantially all of the interests" in the contributing partnership or

contributing S corporation are appropriate and sufficient to ensure the intended application of the family pass-through entity exception.

Consistent with section 170(h)(7)(D)(ii), proposed §1.170A-14(n)(3)(iii) would provide that, for purposes of §1.170A-14(n)(3), the term "members of the family" means, with respect to any individual (1) the spouse of such individual, and (2) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G). Under these proposed regulations, members of the family would be limited to individuals. The Treasury Department and the IRS request comments on whether certain estates or trusts should be treated as members of the family for purposes of this rule. The Treasury Department and the IRS note that, under existing §1.1361-1(e)(3)(ii), certain estates and trusts of deceased members of the family are treated as members of the family for purposes of the limitation on the number of shareholders in an S corporation.

As described earlier in this preamble, the Disallowance Rule and its exceptions in section 170(h)(7) are generally mechanical. However, Congress recognized that additional guidance may be needed to prevent situations in which those mechanical rules are used to avoid the purposes of the Disallowance Rule. As mentioned previously, section 170(h)(7)(G)(ii) provides the Secretary with authority to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7). Accordingly, these proposed regulations would provide two anti-abuse rules designed to ensure that the family pass-through entity exception in proposed §1.170A-14(n)(3) is not used inappropriately to circumvent the Disallowance Rule.

First, the Treasury Department and the IRS propose to limit the family pass-through entity exception to situations in which an individual and members of that individual's family have held the requisite ownership interest in the property for at least one year prior to the contribution. The need for such a rule is the concern that, in the absence of a requirement that the members of the family hold the contributed property for a certain period of time before the contribution, promoters could structure transactions to inappropriately take advantage of tacked holding periods under section 1223 of the Code together with the family pass-through entity exception. Due to the operation of section 170(e), most contributions that exceed 2.5 times the sum of relevant basis would be expected to be of long-term capital gain property because, in those situations, the amount of the contribution would not be limited to the donor's basis. Transactions in which a family is relying on a tacked-holding period under section 1223 from another owner outside the family to claim a contribution in excess of 2.5 times the sum of relevant basis raise serious concerns that the family pass-through entity exception is being used inappropriately to circumvent the Disallowance Rule. Accordingly, proposed §1.170A-14(n)(3)(iv)(A) would provide that the exception in proposed §1.170A-14(n)(3) does not apply unless at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. The proposed rules would clarify that the members of the family during that year need not be the same members of the family that own an interest at the time of the qualified conservation contribution; however, at least one individual must own an interest for the entire year, and at least 90 percent of the interests in the property must be owned, directly or indirectly, during that year by that individual and members of the family with respect to that individual. The proposed regulations contain an example illustrating the application of this rule.

Second, proposed §1.170A-14(n)(3)(iv)(B) would provide that the exception in proposed §1.170A-14(n)(3) does not apply unless at least 90 percent of the qualified conservation contribution is allocated to the individual and all members of the individual's family who own at least 90 percent of all the interests in the contributing partnership or contributing S corporation. The Treasury Department and the IRS are concerned that, without such a rule, contributing partnerships or contributing S corporations might be structured to meet the family pass-through exception, but the qualified conservation contribution would be allocated disproportionately to persons that are not members of the family.

Proposed §1.170A-14(n)(3)(v) would provide that, in the case of tiered pass-through entities, the family pass-through exception is available only if the contributing partnership or contributing S corporation satisfies the requirements of §1.170A-14(n)(3). If the contributing partnership or contributing S corporation satisfies the requirements of proposed §1.170A-14(n)(3), then any upper-tier partnership or upper-tier S corporation need not apply §1.170A-14(j) through (n) to its allocated portion of such contribution. If the contributing partnership or contributing S corporation does not satisfy the requirements of proposed §1.170A-14(n)(3), then the exception in §1.170A-14(n)(3) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed §1.170A-14(n)(3) if the person had been the one to make the contribution. The Treasury Department and the IRS considered alternatives to this rule, such as allowing upper-tier partnerships and upper-tier S corporations to apply the family pass-through entity exception even if the contributing partnership failed to satisfy the exception. Such an approach, however, would be inconsistent with section 170(h)(7)(D), which explicitly applies the substantially-all requirement to the contributing partnership or contributing S corporation.

3. *Exception for Contributions to Preserve Certified Historic Structures*

Consistent with section 170(h)(7)(E), proposed §1.170A-14(n)(4) would provide that proposed §1.170A-14(j) does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). Proposed §1.170A-14(n)(4) would also contain a cross-reference to the special reporting

requirements in proposed §1.170A-16(f)(6) for a contribution that meets the certified historic structure exception.

IV. *Reporting Requirements*

Existing §1.170A-16 imposes substantiation and reporting requirements for noncash charitable contributions. Subject to certain exceptions, §1.170A-16 requires the donor to file Form 8283, *Noncash Charitable Contributions*, in the case of a noncash charitable contribution exceeding $500. Specifically, existing §1.170A-16(c) generally requires the donor to complete Form 8283 (Section A) in the case of a noncash charitable contribution of more than $500 but not more than $5,000. Existing §1.170A-16(d) generally requires the donor to complete Form 8283 (Section A or Section B, or both, as applicable) in the case of a noncash charitable contribution of more than $5,000. Existing §1.170A-16(e) applies to noncash charitable contributions of more than $500,000 and generally requires the donor to complete Form 8283 (Section A or Section B, or both, as applicable). Consistent with section 170(f)(11)(D), §1.170A-16(e) requires a donor of a noncash contribution of more than $500,000 to attach an appraisal to the return on which the deduction is claimed. Existing §1.170A-16(f) provides additional substantiation rules, including rules for donors that are partnerships or S corporations.

A. *Requirement that Numbers be Entered in Sections A and B of Form 8283*

Existing §1.170A-16(c)(3) and (d)(3) define a completed Form 8283 (Section A) and Form 8283 (Section B), respectively. To further clarify reporting requirements for donated property, proposed §1.170A-16(c)(3)(v) and (d)(3)(ix) would add a requirement that, if a box in Section A or Section B of the Form 8283 (respectively) requests insertion of a number, the taxpayer must include the number in the box or attach a statement explaining why the taxpayer cannot include the number in the box. Taxpayers that do not include numbers where required or engage in a practice to obfuscate or otherwise defeat the requirement to include a number in the box, could be subject to heightened scrutiny and a denial of the deduction for failure to provide the requested information on the Form 8283.

The Treasury Department and the IRS believe that this rule regarding specific reporting of numerical amounts is reasonable and necessary because the IRS has observed a pronounced increase in taxpayers filing a Form 8283 that does not contain any numbers and instead refers the IRS to an attachment. Often, the attachment includes nonresponsive information, such as "available upon request," is entirely blank, or otherwise does not provide the information required by Form 8283. Other times, the attachment includes multiple numbers for different boxes, leaving the IRS to surmise which of the included numbers is appropriate for a particular box. These actions are to the detriment of fair and effective tax administration. Accordingly, the proposed regulations state that Sections A and B of Form 8283, including any attachments thereto, may not include nonresponsive information, such as "available upon request," "provided upon request," or any other nonresponsive information other than the information requested. Including any nonresponsive language may result in a presumption that Form 8283 is incomplete.

While many taxpayers understandably want to attach a statement to the Form 8283 to verify their calculations and provide appropriate supplemental information, having the numerical information in the appropriate box on Sections A and B of Form 8283 is critical to the IRS's ability to ensure the integrity of each filing, as IRS systems are programmed to match a partner's or shareholder's information to the appropriate contributing partnership's or contributing S corporation's information. Moreover, information requested on Sections A and B of Form 8283 is information that the partnership or S corporation should already have and is already required to provide to the partner or shareholder, as appropriate. *See* §1.170A-16(f)(4).

B. *Clarification of Reporting of Certain Qualified Conservation Contributions made by a Partnership or S Corporation*

Existing §1.170A-16(d)(3) defines a completed Form 8283 (Section B) required to substantiate charitable contributions of more than $5,000. To ensure that taxpayers claiming qualified conservation contributions properly comply with section 170(f)(19) and (h)(7), which require a partnership or S corporation to calculate the sum of the relevant basis of the partnership's or S corporation's partners or shareholders, the IRS must have relevant basis reporting from both the contributing partnership or contributing S corporation and each partner or shareholder receiving an allocation of the contribution (which will be ultimate members, upper-tier partnerships, or upper-tier S corporations). Accordingly, these proposed regulations would insert a new paragraph, proposed §1.170A-16(d)(3)(viii).[5]

The new paragraph would provide that, for certain qualified conservation contributions made by a partnership or S corporation, the sum of each ultimate member's relevant bases, computed in accordance with §1.170A-14(j) through (m), must be reported on the Form 8283 (Section B) in order for the Form 8283 (Section B) to be considered complete.

This new requirement applies to contributions described in section 170(h)(7)(E) and §1.170A-14(n)(4) (for contributions to preserve certified historic structures), regardless of whether they are also described in section 170(h)(7)(C) and §1.170A-14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and §1.170A-14(n)(3) (for contributions made by certain family partnerships or S corporations). While contributions by partnerships or S corporations to preserve historic structures are excepted from the Disallowance Rule of section 170(h)(7), they are potentially subject to section 170(f)(19), which applies when the amount of the contribution exceeds 2.5 times of the relevant bases. The Treasury Department and the IRS request comments on whether any adjustments to relevant basis are warranted in the case of a contribution to preserve a historic structure.

This new requirement also would apply for any other qualified conservation contribution by a partnership or S corporation, provided that the contribution is not described in section 170(h)(7)(C) and §1.170A-14(n)(2) (for contributions made outside of the three-year

holding period) and/or section 170(h)(7)(D) and §1.170A-14(n)(3) (for contributions made by certain family partnerships or S corporations). If the contribution is disallowed by section 170(h)(7) and proposed §1.170A-14(j), then the Treasury Department and the IRS expect that the contribution will not be reported to the IRS on Form 8283 because no deduction can be taken.

C. *Clarification of Reporting of Noncash Charitable Contributions over $500 made by a Partnership or S Corporation*

Existing §1.170A-16(d)(6) refers to existing §1.170A-16(f) for additional substantiation rules. Existing §1.170A-16(f)(4) provides special substantiation rules for partner and S corporation shareholders.

Existing §1.170A-16(f)(4)(i) provides that, if the donor is a partnership or S corporation, the donor must provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation of a charitable contribution under section 170 for the property described in the Form 8283. Similarly, existing §1.170A-16(f)(4)(i) provides that a recipient partner or shareholder that is a partnership or S corporation must provide a copy of the completed Form 8283 to each of its partners or shareholders who receives an allocation of a charitable contribution under section 170 for the property described in Form 8283.

Existing §1.170A-16(f)(4)(ii) provides that a partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution under section 170 for property to which §1.170A-16(c), (d), or (e) applies[5] must attach a copy of the partnership's or S corporation's completed Form 8283 to the return on which the deduction is claimed.

In pass-through and tiered entity structures, the IRS regularly observes partners and shareholders providing incomplete information to substantiate their charitable contribution deductions. For example, an ultimate member might complete a Form 8283 that contains the necessary information from the Form K-1 received from the contributing partnership, contributing S corporation, or an upper-tier partnership or upper-tier S corporation. However, often, the ultimate member fails to provide a copy of the appropriate partnership's or S corporation's Form 8283 and the Form K-1. In accordance with the authority granted by section 170(h)(7)(G) to "prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance … to require reporting, including reporting related to tiered partnerships and the modified basis of partners," these proposed regulations would revise paragraph §1.170A-16(f)(4).

Proposed §1.170A-16(f)(4)(i) would retain the requirement that a donor that is a partnership or S corporation provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation. That paragraph also would retain the requirement that a partnership or corporation that receives an allocation of a charitable contribution under section 170 must provide a copy of the donor's Form 8283 to its partners or shareholders who receive an allocation of the deduction, but would clarify that this reporting is required through any additional tiers.

Proposed §1.170A-16(f)(4)(ii) would retain the rule that a partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution to which §1.170A-16(c), (d), or (e) applies must attach the donor partnership's or S corporation's Form 8283 to the return on which the deduction is claimed. A clarifying requirement is added that the partner or shareholder must also attach a copy of any additional Forms 8283 that they must receive as provided in proposed §1.170A-16(f)(4)(iii)(A).

Proposed §1.170A-16(f)(4)(iii)(A) would provide that a partner of a partnership or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for property to which §1.170A-16(c), (d), or (e) applies must complete their own Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In addition, a partner that is itself a partnership or S corporation must complete its own Form 8283 and provide a copy of that Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed in addition to the copy of donor's Form 8283 as well as other Forms 8283 that the partner or shareholder received. This new requirement would apply to all noncash charitable contributions over $500 made by a partnership or S corporation, not just those for conservation easements.

Proposed §1.170A-16(f)(4)(iii)(B) would provide that, if the contribution was a qualified conservation contribution, an ultimate member's separate Form 8283 must include the ultimate member's own relevant basis. An upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant bases. However, the requirements that an ultimate member provide their own relevant basis and that an upper-tier partnership or upper-tier S corporation include the sum of its ultimate member's relevant bases do not apply to contributions described in section 170(h)(7)(C) and §1.170A-14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and §1.170A-14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and §1.170A-14(n)(4) (for contributions to preserve certified historic structures), in which case proposed paragraph §1.170A-16(f)(4)(iii)(B) does apply. The Form 8283 instructions will be revised accordingly.

D. *Additional Reporting Required by Section 170(f)(19)*

To ensure proper reporting under section 170(f)(19), the proposed regulations would add new §1.170A-16(f)(6). Specifically, proposed §1.170A-16(f)(6)(i) would provide that, in the case of any contribution described in section 170(h)(4)(C) and proposed §1.170A-16(f)(6)

[5] In other words, a charitable contribution of more than $500 but not more than $5,000, §1.170A-16(c), a charitable contribution of more than $5,000, §1.170A-16(d), or noncash charitable contributions of more than $500,000, §1.170A-16(e).

(ii) (relating to the preservation of certified historic structures), pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless each partnership or S corporation (1) includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion and (2) provides such information about the contribution as the Secretary may require in guidance, forms, or instructions. The reference to "any other provision of the Code under which deductions are allowable to pass-through entities" is included under the authority of section 170(f)(19)(C) to apply these rules to S corporations and other pass-through entities in the same manner as such rules apply to partnerships and their partners, and is necessary to prevent such pass-through entities and their owners from claiming a deduction under a different provision of the Code other than section 170, such as section 642(c), unless the statutory and regulatory requirements of section 170(f)(19) are met.

Proposed §1.170A-16(f)(6)(ii) describes (using terms defined in proposed §1.170A-14(j)(3)) the contributions to which proposed §1.170A-16(f)(6) would apply, namely any qualified conservation contribution (as defined in section 170(h)(1) and proposed §1.170A-14) for which: (1) the conservation purpose of which is preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C)); (2) that is either made by a contributing partnership or contributing S corporation, or that is an allocated portion of an upper-tier partnership or upper-tier S corporation; and (3) the amount of such contribution or such allocated portion exceeds 2.5 times the sum of each ultimate member's relevant basis (as defined in proposed §1.170A-14(j) through (m)).

Proposed §1.170A-16(f)(6)(iii) would provide that a partnership or S corporation satisfies the requirement to have made a statement that it made such a contribution or received such allocated portion and to provide such information about the contribution as the Secretary may require by filing Form 8283 (including information about relevant basis) in accordance with section 170, the regulations under section 170 (including those proposed in this notice of proposed rulemaking), and the instructions to Form 8283.

V. *Section 706 Regulations*

The general mechanism of section 170(h)(7) with respect to partnerships is to compare the amount of the partnership's contribution (or its distributive share of a contribution made by another partnership) to 2.5 times the sum of each of its partner's relevant basis. Relevant basis is based on modified basis, which is based on the partner's adjusted basis in its partnership interest immediately before the contribution. Without additional rules, there may be situations in which the contribution is allocated to partners that did not hold an interest at the time of the qualified conservation contribution. Such partners would not have any adjusted basis in their partnership interests immediately before the contribution, and thus, without additional rules, their relevant basis would be zero. Therefore, rules are needed to align the computation of relevant basis (which is generally required to be computed immediately before the computation) with the allocation of the contribution among the partners.

Generally, section 706 and §1.706-4 of the existing regulations provide rules for determining a partner's distributive share of partnership items when a partner's interest in the partnership varies during the taxable year. For example, assume a partner holding a 25 percent interest in a calendar-year partnership sells its 25 percent interest on July 1. Under section 706 and §1.706-4, the partnership would not allocate the selling partner 25 percent of all items of income for the year because the selling partner had no interest in the partnership for the final half of the year. Instead, the partnership would follow the rules of §1.706-4 to ensure that the allocations properly reflect the sale of the partner's interest. Generally, the rules of §1.706-4 allow partnerships to use either a proration method or an interim closing of the books method (interim closing method).[6] In the example, a partnership using the proration method generally would allocate the selling partner 12.5 percent (reflecting the fact that the selling partner held a 25 percent interest in the partnership for half of the year) of every item of the partnership for the full year, regardless of whether the partnership incurred the item in the first or second half of the year. Alternatively, a partnership using the interim closing method generally would allocate the selling partner 25 percent of every item occurring in the first half of the year.

Section 1.706-4 provides an exception to these rules for certain "extraordinary items," which must be allocated in accordance with the partners' interests in the item at the time of day the extraordinary item occurred. Section 1.706-4(e)(2) provides a list of these extraordinary items. In particular, §1.706-4(e)(2)(i) and (ii) provide that an extraordinary item includes any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 of the Code (determined without the application of any other rules of law) and any item from the disposition or abandonment (other than in the ordinary course of business) of property used in a trade or business as defined in section 1231(b) of the Code (determined without the application of any holding period requirement). Section 1.706-4(e)(3) provides a "small item exception" under which certain items in the list in §1.706-4(e)(2) nevertheless are not extraordinary items if they fall below certain thresholds.

Proposed §1.706-4(e)(2)(ix) would provide that an extraordinary item includes any qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of §1.170A-14(j)(3)(vii)). The proposed amendments to existing §1.706-4(e)(3) contained in these proposed regulations would provide that the small item exception does not apply to any qualified conservation contribution. These rules are

[6] The rules of §1.706-4 also require the use of conventions to determine the date on which variations are deemed to occur. Discussion of these conventions is beyond the scope of this preamble.

designed to ensure that modified basis can be computed immediately before the contribution, as directed in section 170(h)(7). The Treasury Department and the IRS considered alternatives to this rule. However, many, and perhaps most, qualified conservation contributions are already considered extraordinary items under existing §1.706-4(e)(2)(i) or (ii). The proposed rule, however, provides clarity and uniformity regarding the application of the extraordinary item rule to qualified conservation contributions and facilitates the computation of a partner's modified basis immediately before the contribution as directed by the statute.

Section 706(d)(3) provides rules for an upper-tier partnership's allocation of items to its partners attributable to an interest in a lower-tier partnership. It provides that if, during any taxable year of the upper-tier partnership there is a change in any partner's interest in the upper-tier partnership, then (except to the extent provided in regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership must be determined by assigning the appropriate portion (determined by applying principles similar to the principles of section 706(d)(2)(C) and (D)) of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day. The Treasury Department and the IRS are concerned that, even if a lower-tier partnership's qualified conservation contribution is treated as an extraordinary item with respect to the lower-tier partnership, an upper-tier partnership might nevertheless attempt to rely on section 706(d)(3) and allocate its share of the contribution to partners that were not partners on the date of contribution. To facilitate the computation of a partner's relevant basis immediately before the contribution, proposed §1.706-3(a) would provide that, for purposes of section 706(d)(3), in the case of a qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of §1.170A-14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under §1.706-4. The Treasury Department and the IRS request comments on whether these rules are necessary and sufficient to ensure the appropriate operation of the Disallowance Rule.

Proposed Applicability Dates

Section 605(c) of the SECURE 2.0 Act provides that the amendments made by section 605 of the SECURE 2.0 Act apply to contributions made after December 29, 2022. Pursuant to section 7805(b)(2) of the Code, regulations issued under section 170(f)(19) and (h)(7) within 18 months of the December 29, 2022, date of enactment of section 605 of the SECURE 2.0 Act are permitted to apply to periods ending before the dates provided under section 7805(b)(1). Accordingly, the proposed regulations under §§1.170A-14(j) through (n), 1.706-3, and 1.706-4 are proposed to apply to contributions made after December 29, 2022.

To align the reporting requirements under §1.170A-16 with the publication of the revised Form 8283 and its instructions, the proposed regulations under §1.170A-16 are proposed to apply to contributions made in taxable years ending on or after November 20, 2023.

Special Analyses

I. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) 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. 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 control number.

The collection of information contained in these proposed regulations is reflected in the collection of information for Form 8283 and Schedule K-1 for Forms 1065, U.S. Return of Partnership Income, and 1120-S, U.S. Income Tax Return for an S corporation, that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-0074 and 1545-0123. The estimated burden for taxpayers filing Form 8283 under OMB control number 1545-0074 is nineteen minutes for recordkeeping, twenty-nine minutes for learning about the law or the form, one hour and four minutes for preparing the form, and thirty-four minutes for copying, assembling, and sending the form to the IRS.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Form 8283 and Schedule K-1 for Forms 1065 and 1120-S. The requirement to maintain records to substantiate information on Form 8283 and Schedule K-1 for Forms 1065 and 1120-S is already contained in the burden associated with the control number for the forms and remains unchanged.

II. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This rule would affect partnerships and S corporations that claim qualified conservation contributions, and partners and S corporation shareholders that receive a distributive share or pro rata share of a noncash charitable contribution. Although data is not readily available about the number of small entities that are potentially affected by this rule, it is possible that a substantial number of small entities may be affected.

The impact of these proposed regulations can be described in the following four categories.

First, proposed §1.170A-14(j) through (n) would provide guidance in applying

section 170(h)(7), including providing definitions, formulas for the required calculations, and examples to help ensure the effective application of section 170(h)(7), and proposed §§1.706-3 and 1.706-4(e)(2)(ix) would provide special rules for allocating qualified conservation contributions. Even assuming that these provisions affect a substantial number of small entities, they will not have a significant economic impact. Section 170(h)(7) is self-executing and imposes the burden of calculating relevant basis and applying the Disallowance Rule. Because these proposed regulations are focused on providing definitional and computational guidance related to section 170(h)(7), their economic impact is expected to be minimal.

Second, proposed §1.170A-16(d)(3)(viii) would require the Form 8283 filed by contributing partnerships and contributing S corporations to include the sum of each ultimate member's relevant basis. The existing regulations under §1.170A-16 already requires these entities to file Form 8283. Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because it simply requires contributing partnerships and contributing S corporations to put a small amount of additional information, which section 170(h)(7) and (f)(19) requires them to determine, on a form they are already required to file.

Third, proposed §1.170A-16(f)(6) would require a partnership or S corporation to file a completed Form 8283 to be considered to satisfy the requirements of section 170(f)(19)(A)(i). Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because it simply requires contributing partnerships and contributing S corporations to put a small amount of additional information on a form they are already required to file.

Fourth, proposed §1.170A-16(f)(4)(iii) would require all partners and shareholders of S corporations who receive an allocation of a noncash charitable contribution to file a separate Form 8283. Many of these partners and shareholders will be individuals, not small entities. However, even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact. The partnership or S corporation will provide the partner or shareholder with all, or substantially all, of the information to be reported on the separate Form 8283; this information will be contained either on the partnership's or S corporation's Form 8283 or the Schedule K-1 issued to the partner or shareholder. Accordingly, in most cases partners and shareholders will simply be transcribing information provided to them onto the separate Form 8283.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

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 its impact on small business.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandate 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). These proposed regulations do 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. These proposed regulations do not have federalism implications and do not impose substantial, direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. This proposed rule does not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

VI. *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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and any paper comments submitted, will be made available at *https://www.regulations.gov* or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

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.

A public hearing has been scheduled for January 3, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, unless no outlines are received by December 20, 2023. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by December 20, 2023, as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. If no outline of the topics to be discussed at the hearing is received by December 20, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the *Federal Register*. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (*https://www.regulations.gov*) under the title of Supporting & Related Material. Copies of the agenda will also be available by emailing a request to *publichearings@irs.gov* . Please put "REG-112916-23 Agenda Request" in the subject line of the email.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-112916-23 and the language "TESTIFY In Person." For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-112916-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-112916-23 and the language "TESTIFY Telephonically." For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-112916-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-112916-23 and the language "ATTEND In Person." For example, the subject line may say: Request to ATTEND Hearing In Person for REG-112916-23. Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-112916-23 and the language "ATTEND Hearing Telephonically." For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-112916-23. Requests to attend the public hearing must be received by 5 p.m. ET on December 29, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by December 28, 2023.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are 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 authors of these proposed are Elizabeth Boone and Hannah Kim, Office of the Associate Chief Counsel (Income Tax & Accounting), IRS, and Benjamin Weaver, Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the Treasury Department 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 part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by:

1. Adding an entry for §1.170A-14 in numerical order;
2. Revising the entry for §1.170A-16;
3. Adding an entry for §1.706-3 in numerical order; and
4. Revising the entry for § 1.706-4.

The additions and revisions read as follows:

Authority: 26 U.S.C. 7805 * * *

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Section 1.170A-14 also issued under 26 U.S.C. 170(f)(11) and 170(h)(7).

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Section 1.170A-16 also issued under 26 U.S.C. 170(f)(11), 170(f)(19), 170(h)(7)(G), 6001, and 6011.

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Section 1.706-3 also issued under 26 U.S.C. 170(h)(7)(G).

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Section 1.706-4 also issued under 26 U.S.C. 170(h)(7)(G).

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Par. 2. Section 1.170A-14 is amended by:

1. Revising paragraph (a);

2. Redesignating paragraph (j) as paragraph (o) and adding new paragraph (j);

3. Adding paragraphs (k) through (n); and

4. Revising newly designated paragraph (o).

The additions and revisions read as follows:

§1.170A-14 Qualified conservation contributions.

(a) *Qualified conservation contributions*. A deduction under section 170 of the Internal Revenue Code (Code) is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (*see* §1.170A–6 relating to charitable contributions in trust and §1.170A–7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met and the contribution is not a disallowed qualified conservation contribution within the meaning of paragraph (j) of this section. A *qualified conservation contribution* is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under section 170(h) and this section, the conservation purpose must be protected in perpetuity.

* * * * *

(j) *Disallowance of certain deductions for contributions by partnerships and S corporations that exceed 2.5 times the sum of relevant bases*—(1) *In general*. This paragraph (j) applies the rules of section 170(h)(7), which disallow a deduction for certain qualified conservation contributions, as defined in section 170(h)(1) and this section, made by, or allocated to, partnerships or S corporations (as defined in section 1361(a)(1) of the Code) if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, as determined by this paragraph (j) and paragraphs (k) through (m) of this section (Disallowance Rule). *See* paragraph (n) of this section for certain exceptions. *See* paragraph (j)(3) of this section for definitions of terms used in this paragraph (j) and paragraphs (k) through (n) of this section.

(2) *Application*—(i) *Contributing partnerships and contributing S corporations*. Except as provided in paragraph (n) of this section, a qualified conservation contribution by a contributing partnership or a contributing S corporation is a disallowed qualified conservation contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership's or contributing S corporation's ultimate member's relevant basis as determined under this paragraph (j) and paragraphs (k) through (m) of this section.

(ii) *Upper-tier partnerships and upper-tier S corporations*. Except as provided in paragraph (n) of this section, an allocated portion received by an upper-tier partnership or upper-tier S corporation is a disallowed qualified conservation contribution if either the contribution is a disallowed qualified conservation contribution with respect to the partnership that allocated the allocated portion to the upper-tier partnership or upper-tier S corporation, or such allocated portion exceeds 2.5 times the sum of each of that upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis as determined under this paragraph (j) and paragraphs (k) through (m) of this section.

(3) *Definitions*. The following definitions apply for purposes of this paragraph (j) and paragraphs (k) through (n) of this section:

(i) *Allocated portion*. In the case of an upper-tier partnership or upper-tier S corporation that receives, directly or indirectly, a distributive share of a qualified conservation contribution, the phrase *allocated portion* means the amount of such distributive share.

(ii) *Amount of qualified conservation contribution*. The amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. If the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of this section must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and this section.

(iii) *Contributing partnership.* The term *contributing partnership* means a partnership that makes a qualified conservation contribution.

(iv) *Contributing S corporation.* The term *contributing S corporation* means an S corporation that makes a qualified conservation contribution.

(v) *Direct interest*. The term *direct interest* refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as defined in section 1361(b)(3), or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation (as defined in section 1361(a)(2)), non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the *direct interest* in the partnership or S corporation, as applicable, is held by the C corporation, non-grantor trust, or estate; the C corporation's shareholders, trust beneficiaries, and estate beneficiaries are not considered to hold any interest in the partnership or S corporation, as applicable, for purposes of this paragraph (j) and paragraphs (k) through (n) of this section.

(vi) *Directly.* An ownership interest is held *directly* if it is not held through one or more upper-tier partnerships or upper-tier S corporations. A distributive share or pro rata share of a qualified conservation contribution is received *directly* if it does not pass through one or more upper-tier partnerships or upper-tier S corporations.

(vii) *Disallowed qualified conservation contribution*. The term *disallowed qualified conservation contribution* means a qualified conservation contribution or allocated portion for which no deduction is allowed pursuant to section 170(h)(7) and this paragraph (j).

(viii) *Indirect interest*. The term *indirect interest* refers to an ownership interest in a contributing partnership, contributing S corporation, upper-tier partnership, or upper-tier S corporation held through an upper-tier S corporation or one or more upper-tier partnerships.

(ix) *Indirectly*. An ownership interest is held *indirectly* if it is held through one or more upper-tier partnerships or upper-tier S corporations. A distributive share or pro rata share of a qualified conservation contribution is received *indirectly* if it passes through one or more upper-tier partnerships or upper-tier S corporations.

(x) *Ultimate member.* The term *ultimate member* means, with respect to any partnership or S corporation, any partner (that is not itself a partnership or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members will either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Upper-tier S corporations and upper-tier partnerships themselves are not considered ultimate members.

(xi) *Upper-tier partnership.* The term *upper-tier partnership* means a partnership that receives an allocated portion.

(xii) *Upper-tier S corporation*. The term *upper-tier S corporation* means an S corporation that receives an allocated portion.

(4) *Effect of Disallowance Rule*—(i) *If the Disallowance Rule applies to a contributing partnership or contributing S corporation*. If a contributing partnership's or contributing S corporation's qualified conservation contribution is a disallowed qualified conservation contribution under this paragraph (j), then:

(A) Any upper-tier partnership's or upper-tier S corporation's allocated portion of such contribution is a disallowed qualified conservation contribution, regardless of whether such allocated portion exceeds 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and

(B) No person (whether holding a direct or indirect interest in such contributing partnership or contributing S corporation) may claim a deduction under any provision of the Code with respect to any amount of such disallowed qualified conservation contribution, regardless of whether that person's distributive share or pro rata share of the disallowed qualified conservation contribution exceeds 2.5 times its relevant basis.

(ii) *If the Disallowance Rule does not apply to a contributing partnership or contributing S corporation*. If a contributing partnership's or contributing S corporation's qualified conservation contribution is not a disallowed qualified conservation contribution under this paragraph (j), then:

(A) The distributive share or pro rata share of any ultimate member holding a direct interest in the contributing partnership or contributing S corporation is not a disallowed qualified conservation contribution; and

(B) Any upper-tier partnership or upper-tier S corporation that receives an allocated portion of such qualified conservation contribution must separately apply the rules of section 170(h)(7) and this paragraph (j) and paragraphs (k) through (m) of this section to determine whether that upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution.

(iii) *If the Disallowance Rule applies to an upper-tier partnership or an upper-tier S corporation.* If an upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution under this paragraph (j), then:

(A) Any subsequent upper-tier partnership's or upper-tier S corporation's allocated portion of such allocated portion is a disallowed qualified conservation contribution, regardless of whether the subsequent upper-tier partnership's or upper-tier S corporation's allocated portion exceeds 2.5 times the sum of each of subsequent upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and

(B) No person holding a direct or indirect interest in that upper-tier partnership or upper-tier S corporation may claim a deduction under any provision of the Code with respect to any amount of that upper-tier partnership's or upper-tier S corporation's allocated portion, regardless of whether that person's distributive share or pro rata share of the allocated portion exceeds 2.5 times its relevant basis. However, this does not affect the application of this paragraph (j) and paragraphs (k) through (m) of this section to another partner of the contributing partnership; for example, if the qualified conservation contribution is not a disallowed qualified conservation contribution with respect to the contributing partnership, then the distributive share of such contribution of an ultimate member holding a direct interest in the contributing partnership is not a disallowed qualified conservation contribution, notwithstanding that the qualified conservation contribution is a disallowed qualified conservation contribution with respect to one or more upper-tier partnerships or upper-tier S corporations.

(iv) *If the Disallowance Rule does not apply to an upper-tier partnership or upper-tier S corporation*. If an upper-tier partnership's or upper-tier S corporation's allocated portion is not a disallowed qualified conservation contribution under this paragraph (j), then:

(A) The distributive share or pro rata share of such allocated portion of any ultimate member holding a direct interest in the upper-tier partnership or upper-tier S corporation is not a disallowed qualified conservation contribution; and

(B) Any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of such allocated portion must separately apply the rules of section 170(h)(7) and this paragraph (j) and paragraphs (k) through (m) of this section to determine whether that subsequent upper-tier partnership's or upper-tier S corporation's allocated portion is treated as a disallowed qualified conservation contribution.

(5) *No inference*. There is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation contribution as defined in paragraph (j)(3)(vii) of this section is compliant with section 170, any other section of the Code, the regulations, or any other guidance. Compliance with section 170(h)(7) and this paragraph (j) and paragraphs (k) through (n) of this section is not a safe

harbor for purposes of any other provision of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the other requirements of section 170 and overvaluation of the contribution. In addition, taxpayers who engage in such transactions may be required to disclose under §1.6011-4 the transactions as listed transactions.

(6) *Examples*. The following examples illustrate the rules of this paragraph (j). For these three examples in this paragraph (j)(6), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code, and that the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*: *Disallowed qualified conservation contribution*—(A) *Facts*. A, an individual, and B, a C corporation, form AB Partnership, a partnership for Federal income tax purposes. AB Partnership acquires real property. Two years later, AB Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. AB Partnership allocates the contribution equally to A and B. A's relevant basis is $30X, and B's relevant basis is $8X.

(B) *Analysis*. A and B are the ultimate members of AB Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. The claimed amount of AB Partnership's qualified conservation contribution is $100X, which exceeds 2.5 times the sum of A's and B's relevant bases, which is $95X ($95X = 2.5 x (A's $30X relevant basis + B's $8X relevant basis)). Therefore, AB Partnership's contribution is a disallowed qualified conservation contribution. No person may claim any deduction with respect to this contribution, even though A's $50X distributive share of the contribution does not exceed 2.5 times A's $30X relevant basis.

(ii) *Example 2: Not a disallowed qualified conservation contribution*—(A) *Facts*. Individuals C and D form CD Partnership, a partnership for Federal income tax purposes. CD Partnership acquires real property. Two years later, CD Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. CD Partnership allocates the contribution $5X to C and $95X to D. C's relevant basis is $6X, and D's relevant basis is $34X.

(B) *Analysis*. C and D are the ultimate members of CD Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. The claimed amount of CD Partnership's qualified conservation contribution is $100X, which does not exceed 2.5 times the sum of C's and D's relevant bases, which is also $100X ($100X = 2.5 x (C's $6X relevant basis + D's $34X relevant basis)). Therefore, CD Partnership's contribution is not a disallowed qualified conservation contribution (that is, not disallowed by section 170(h)(7) and this paragraph (j)) with respect to CD Partnership, C, or D, even though D's $95X distributive share of the contribution exceeds 2.5 times D's $34X relevant basis.

(iii) *Example 3*: *Tiered partnerships*—(A) *Facts*. Individuals E and F form UTP Partnership, a partnership for Federal income tax purposes. UTP Partnership and G, a C corporation, form LTP Partnership, a partnership for Federal income tax purposes. LTP Partnership acquires real property. Two years later, LTP Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. LTP Partnership allocates the contribution $5X to G and $95X to UTP Partnership. UTP Partnership allocates its $95X portion of the contribution $45X to E and $50X to F. G's relevant basis is $10X, E's relevant basis is $11X, and F's relevant basis is $21X.

(B) *Analysis for LTP Partnership*. The ultimate members of LTP Partnership are G, E, and F because they each receive a distributive share of the qualified conservation contribution and are not a partnership or S corporation. Because UTP Partnership is a partnership, it is not an ultimate member of LTP Partnership, even though it receives a distributive share of the qualified conservation contribution. The amount of LTP Partnership's qualified conservation contribution is $100X, which does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which is $105X ($105X = 2.5 x (G's $10X relevant basis + E's $11X relevant basis + F's $21X relevant basis)). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and this paragraph (j)) with respect to LTP Partnership and G.

(C) *Analysis for UTP Partnership*. Because UTP Partnership receives an allocated portion, UTP Partnership must apply this paragraph (j) and paragraphs (k) through (m) of this section to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are E and F because they each receive a distributive share of UTP Partnership's allocated portion and are not partnerships or S corporations. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is $95X, which exceeds 2.5 times the sum of E's and F's relevant bases, which is $80X ($80X = 2.5 x (E's $11X relevant basis + F's $21X relevant basis)). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is a disallowed qualified conservation contribution with respect to UTP Partnership, E, and F. No partner of UTP Partnership may claim any deduction with respect to this contribution, even though F's $50X distributive share of the contribution does not exceed 2.5 times F's $21X relevant basis. This does not affect the determination that G's distributive share of the contribution is not a disallowed qualified conservation contribution.

(k) *Determination of relevant basis*. For purposes of this section, the term *relevant basis* means, with respect to any ultimate member, the portion of such ultimate member's modified basis (as determined under paragraph (l) of this section) that is allocable (under the rules of paragraph (m) of this section) to the portion of the real property with respect to which the qualified conservation contribution is made.

(l) *Determination of modified basis*—(1) *In general*. In the case of an ultimate member holding a direct interest in a partnership, the ultimate member's modified basis is determined by such partnership immediately before the qualified conservation contribution is made in the manner described in paragraph (l)(2) of this section. In the case of an ultimate member holding a direct interest in an S corporation, the ultimate member's modified basis is determined by such S corporation in the manner described in paragraph (l)(3) of this section.

(2) *Partners in partnerships*—(i) *Computation.* For purposes of this section, the term *modified basis* means, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, with adjustments as determined under paragraphs (l)(2)(ii) through (v) of this section. However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, then the term *modified basis* means such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner, with adjustments as determined under paragraphs (l)(2)(ii) through (v) of this section. The adjustments under paragraphs (l)(2)(ii) through (v) of this section must be made in the order in which they are listed.

(ii) *Step 1*. First, the computation of modified basis must start with the ultimate member's adjusted basis under paragraph (l)(2)(i) of this section and then reflect an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified

conservation contribution is made as provided in section 722 of the Code.

(iii) *Step 2.* Second, the amount determined under paragraph (l)(2)(ii) of this section must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. In making this determination, the partnership must apply the rules of §1.706-4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. The partnership cannot apply any convention in §1.706-4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. This hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. This paragraph (l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares of partnership items of income, gain, loss, deduction, and credit for the taxable year in which the qualified conservation contribution is made or otherwise. *See* §1.706-4 for applicable rules for the determination of a partner's distributive share when a partner's interest varies during a partnership taxable year.

(iv) *Step 3.* Third, the amount determined under paragraph (l)(2)(iii) of this section must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

(v) *Step 4.* Fourth, the amount determined under paragraph (l)(2)(iv) of this section must be reduced by the full amount of the ultimate member's share of §1.752-1 liabilities of any partnership (including a lower-tier partnership). The remaining amount is such ultimate member's modified basis. Thus, an ultimate member's modified basis may be less than zero.

(3) *S corporation shareholder*—(i) *Computation*. For purposes of this section, the term *modified basis* means, with respect to any ultimate member that is a shareholder of either a contributing S corporation or an upper-tier S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term *modified basis* means such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. Modified basis does not include the ultimate member's adjusted basis of any indebtedness of the S corporation to the ultimate member. The adjustments under paragraphs (l)(3)(ii) and (iii) of this section must be made in the order in which they are listed.

(ii) *Step 1.* First, the computation of modified basis must start with the ultimate member's adjusted basis under paragraph (l)(3)(i) of this section, and then reflect an increase for the extent to which the ultimate member's adjusted basis reflects a reduction as a result of the qualified conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution does not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution.

(iii) *Step 2.* Second, the amount determined under paragraph (l)(3)(ii) of this section must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount is such ultimate member's modified basis.

(4) *Examples*. The following examples illustrate the provisions of this paragraph (l). For the three examples in this paragraph (l)(4), assume that the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*—(A) *Facts*. AB Partnership is a calendar-year partnership for Federal income tax purposes whose partners are A and B, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. Several years ago, B contributed property to AB Partnership subject to a §1.752-1 liability. At the beginning of AB Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), A's adjusted basis in its interest in AB Partnership is $19X, and B's adjusted basis in its interest in AB Partnership is $17X. At 10:01 a.m. on August 29, 2024, AB Partnership makes a qualified conservation contribution. On August 29, 2024, the amount of the §1.752-1 liability is $10X and is allocated under the rules of section 752 to A. During 2024, there were no variations in any partner's interests in AB Partnership within the meaning of section 706. During 2024, AB Partnership earned $8X of ordinary income and sustained ($4X) of capital loss in the ordinary course of its business, both of which are allocated equally to A and B. Within 2024, AB Partnership earned $6X of ordinary income, and sustained ($4X) of capital loss between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and AB Partnership earned $2X of ordinary income, and sustained $0X of capital loss between 10:01 a.m. on August 29, 2024, and the end of the day on December 31, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of §1.706-4(e)(2). In April 2024, AB Partnership distributed $1X cash to A. In November 2024, B contributed $2X cash to AB Partnership.

(B) *Analysis*. The ultimate members of AB Partnership are A and B because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine A's and B's modified bases, AB Partnership must start with A's and B's adjusted bases in the AB Partnership as of the beginning of the first day of the taxable year of AB Partnership and then make the adjustments required under paragraphs (l)(2)(ii) through (v) of this section. Accordingly, the computation of A's beginning modified basis begins with $19X, and the computation of B's modified basis begins with $17X. First, those amounts must be increased by any contributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Because there were none, after this step, the computation of A's modified basis remains at $19X and the computation of B's modified basis remains at $17X. Then these amounts must be adjusted as provided in section 705 by A's and B's hypothetical distributive share of AB Partnership's items attributable to the portion of the year between the beginning of the day on January

1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computations of A's and B's modified bases will each reflect an increase for their hypothetical $3X distributive share of the $6X ordinary income that AB Partnership earned between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and a decrease for their hypothetical ($2X) distributive share of the ($4X) capital loss that AB Partnership incurred between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Therefore, after this step, the computation of A's modified basis reflects an increase from $19X to $20X, and the computation of B's modified basis reflects an increase from $17X to $18X. Next, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computation of A's modified basis reflects a reduction from $20X to $19X. B did not receive any distribution, so the computation of B's modified basis remains at $18X. Finally, the full amount of A's and B's shares of §1.752-1 liabilities must be subtracted. Thus, the computation of A's modified basis reflects a reduction from $19X to $9X, which is A's modified basis. B's modified basis is $18X.

(ii) *Example 2*—(A) *Facts*. CD Partnership, a partnership for Federal income tax purposes, is a calendar-year partnership using the calendar day convention under §1.706-4 whose partners on January 1, 2024, are C and D, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. On March 15, 2024, C sells its interest to E, a C corporation. At 1:15 p.m. on September 15, 2024, CD Partnership makes a qualified conservation contribution. On September 21, 2024, D sells its interest to F, an individual. During 2024, CD Partnership earned $8X of ordinary income and sustained ($14X) of ordinary loss. Within 2024, CD Partnership earned all $8X of ordinary income in November and December, and sustained all ($14X) of ordinary loss in April through August. In May 2024, D contributed $6X cash to CD Partnership, and E contributed property with a fair market value of $6X and basis of $3X. D and E are equal partners during the period in which they are both partners. CD Partnership made no distributions during 2024. CD Partnership had no §1.752-1 liabilities during 2024. In accordance with §1.706-4(e)(2)(ix), CD Partnership treats its qualified conservation contribution as an extraordinary item allocable only to D and E, its partners at 1:15 p.m. on September 15, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of §1.706-4(e)(2). CD Partnership uses the proration method under §1.706-4 to allocate its items among C, D, E, and F. Under the proration method, CD Partnership allocates each C, D, E, and F a distributive share of a portion of both the $8X ordinary income and the ($14X) ordinary loss. D's adjusted basis in its interest in CD Partnership at the beginning of CD Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), is $8X. E's adjusted basis in its interest in CD Partnership immediately after E acquires C's interest in CD Partnership is $6X.

(B) *Analysis*. The ultimate members of CD Partnership are D and E because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine D's and E's modified bases, CD Partnership must start with D's and E's adjusted bases in CD Partnership as of the beginning of the day on January 1, 2024, and then make the adjustments required under paragraphs (l)(2)(ii) through (v) of this section. However, because E was not a partner as of the beginning of the day on January 1, 2024, CD Partnership must start with E's adjusted basis immediately after E's purchase of C's interest in CD Partnership. Accordingly, the computation of D's modified basis begins with $8X, and the computation of E's modified basis begins with $6X. Then, these amounts must be increased by any contributions made by D or E, respectively, to CD Partnership between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Therefore, the computation of D's modified basis reflects an increase from $8X to $14X (for D's $6X contribution of cash to CD Partnership in May 2024), and the computation of E's modified basis reflects an increase from $6X to $9X (for E's contribution of property to CD Partnership with a basis of $3X in May 2024). Next, these amounts must be adjusted as provided in section 705 by D's and E's hypothetical distributive share of CD Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. CD Partnership must perform the analysis using an interim closing method to a hypothetical variation at 1:14 p.m. on September 15, 2024, immediately prior to the qualified conservation contribution. The computation of D's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the beginning of the day on January 1, 2024, through 1:14 p.m. on September 15, 2024. The computation of E's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the end of the day on March 15, 2024, through 1:14 p.m. on September 15, 2024. For purposes of this paragraph (l)(4)(ii)(B) (*Example 2*), it does not matter that CD Partnership actually used the proration method to allocate its 2024 income. Instead, under this hypothetical calculation of the distributive share, the computation of D's and E's modified bases will each reflect a reduction for their 50 percent share of the ($14X) ordinary loss. Because none of CD Partnership's $8X of ordinary income was earned between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024, neither D's nor E's modified basis will reflect an increase for any amount of that income. Thus, after this step, the computation of D's modified basis reflects a reduction from $14X to $7X, and the computation of E's modified basis reflects a reduction from $9X to $2X. Then, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Because there were none, after this step, the computation of D's modified basis remains at $7X, and the computation of E's modified basis remains at $2X. Finally, the full amount of D's and E's shares of §1.752-1 liabilities must be subtracted. Because there were none, D's modified basis is $7X, and E's modified basis is $2X.

(iii) *Example 3*—(A) *Facts*. HI Inc. is a calendar-year S corporation whose shareholders on January 1, 2024, are H and I, each of whom owns 50 percent of the shares. On May 1, 2024, H sells all of its stock to J. In June 2024, HI Inc. contributes a conservation easement that is a qualified conservation contribution on 400 acres of real property. HI Inc.'s adjusted basis in the conservation easement is $12X (which is different from HI Inc.'s adjusted basis in the 400 acres and also may be different from the value of the conservation easement). On July 1, 2024, I sells all of its stock to K. Under §1.1377-1, HI Inc. allocates its qualified conservation contribution 1/6 to H, 1/4 to I, 1/3 to J, and 1/4 to K. Pursuant to the second sentence of section 1367(a)(2)(B), as a result of the qualified conservation contribution, H's adjusted basis in its shares is reduced by $2X, I's adjusted basis in its shares is reduced by $3X, J's adjusted basis in its shares is reduced by $4X, and K's adjusted basis in its shares is reduced by $3X. At the end of HI Inc.'s 2024 taxable year (the end of the day on December 31, 2024), J's adjusted basis in its shares is $15X and K's adjusted basis in its shares is $11X. Immediately prior to H's sale to J, H's adjusted basis in its shares was $8X. Immediately prior to I's sale to K, I's adjusted basis in its shares was $7X. Whether H, I, J, or K have adjusted basis in indebtedness of HI Inc., has no effect on the computation of their modified bases. H is an estate of a deceased shareholder, and I, J, and K are individuals that are not nonresident aliens.

(B) *Analysis*. The ultimate members of HI Inc. are H, I, J, and K, because they each receive a pro rata share of the qualified conservation contribution and are not partnerships or S corporations. To determine H's, I's, J's, and K's modified bases, HI Inc. must begin with each shareholder's adjusted basis in its shares as of the end of the day on December 31, 2024 (the end of the S corporation's taxable year in which it made the qualified conservation contribution). However, because H and I were not shareholders as of the end of the day on December 31, 2024, HI Inc. must begin with H's adjusted basis immediately before H's sale to J, and I's adjusted basis immediately before I's sale to K. Accordingly, the computation of H's modified basis begins with $8X, the computation of I's modified basis begins with $7X, the computation of J's modified basis begins with $15X, and the computation of K's modified basis begins with $11K. Next, HI Inc. must increase these amounts by the extent the adjusted bases were reduced as a result of the qualified conservation contribution. Accordingly, the computation of H's modified basis reflects an increase from $8X to $10X, the computation of I's modified basis reflects an increase from $7X to $10X, the computation of J's modified basis reflects an increase from $15X to $19X, and the computation of K's modified basis reflects an increase from $11X to $14X. Finally, HI Inc. must multiply each of these amounts by the number of days during 2024 in which each ultimate member was a shareholder, and divide by 366 (the total number of days in HI Inc.'s 2024 taxable year). H was a shareholder for 122 days. Thus, H's modified basis is $3.33X ($10X x 122/366). I was a shareholder for 183 days. Thus, I's modified basis is $5X ($10X x 183/366). J was a shareholder for 244 days. Thus, J's modified basis is $12.67X ($19X x 244/366). K was

a shareholder for 183 days. Thus, K's is $7X ($14X x 183/366).

(m) *Allocation of modified basis*—(1) *In general*. An allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made must be made in accordance with this paragraph (m). Rules for allocating an ultimate member's modified basis in a contributing partnership are provided in paragraph (m)(2) of this section. Rules for allocating an ultimate member's modified basis in a contributing S corporation are provided in paragraph (m)(3) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier partnership are provided in paragraph (m)(4) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier S corporation are provided in paragraph (m)(5) of this section. Records must be kept in accordance with paragraph (m)(6) of this section.

(2) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing partnership*—(i) *Narrative rule*. This paragraph (m)(2) applies in the case of an ultimate member holding a direct interest in a contributing partnership and provides that a contributing partnership must determine each such ultimate member's relevant basis as provided in this paragraph (m)(2). Relevant basis equals each ultimate member's modified basis as determined under paragraph (l)(2) of this section multiplied by a fraction –

(A) The numerator of which is the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(ii) of this section; and

(B) The denominator of which is the ultimate member's portion of the adjusted basis in all the contributing partnership's properties as determined under paragraph (m)(2)(iii) of this section.

(ii) *Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made*. For purposes of this paragraph (m)(2), an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made (determined as of the time of day of the contribution) multiplied by a fraction –

(A) The numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and

(B) The denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

(iii) *Ultimate member's portion of the adjusted basis in all the contributing partnership's properties.* For purposes of this paragraph (m)(2), an ultimate member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of:

(A) The ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(ii) of this section; plus

(B) The ultimate member's portion of the adjusted basis in all the contributing partnership's properties other than the portion of the real property with respect to which the qualified conservation contribution is made. To determine the ultimate member's portion of the adjusted basis in all the contributing partnership's properties, the contributing partnership must apportion among its partners in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

(iv) *Formulaic rule*. The rule of this paragraph (m)(2) is also expressed in the following formula:

Figure 1 to Paragraph (m)(2)(iv)

$$R = M \times (T \div (D + T))$$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

B = Ultimate member's distributive share of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(3) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation*—(i) *Narrative rule*. This paragraph (m)(3) applies in the case of an ultimate member holding a direct interest in a contributing S corporation and provides that a contributing S corporation must determine each such ultimate member's relevant basis as provided in this paragraph (m)(3). Relevant basis equals each ultimate member's modified basis as determined under paragraph (l)(3) of this section multiplied by a fraction –

(A) The numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property

with respect to which the qualified conservation contribution is made; and

(B) The denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(ii) *Formulaic rule*. The rule of this paragraph (m)(3) is also expressed in the following formula:

Figure 2 to Paragraph (m)(3)(ii)
$R = M \times (E \div F)$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(4) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier partnership*—(i) *In general*. This paragraph (m)(4) applies in the case of an ultimate member holding a direct interest in an upper-tier partnership. Each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(4) describes a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. In a situation involving more tiers, each partnership must apply the rules and principles of this paragraph (m)(4) iteratively to determine relevant basis.

(ii) *Upper-tier partnership*—(A) *Narrative rule*. The upper-tier partnership must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that will be the contributing partnership). This determination must be done in accordance with the principles of paragraph (m)(2) of this section, and the formula provided in paragraph (m)(4)(ii)(B) of this section. In other words, the formula provided in paragraph (m)(4)(ii)(B) is similar to the formula provided in paragraph (m)(2)(iv) of this section, except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in paragraph (m)(4)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in paragraph (m)(4)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(4)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

(B) *Formulaic rule*. The rule of this paragraph (m)(4)(ii) is also expressed in the following formula:

Figure 3 to Paragraph (m)(4)(ii)(B)
$G = M \times (U \div (J + U))$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

M = Modified basis as determined under paragraph (l) of this section.

J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership), determined by apportioning among the partners of the upper-tier partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the upper-tier partnership's interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: $H \times (B \div K)$.

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

B = Ultimate member's distributive share of the qualified conservation contribution.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

(iii) *Contributing partnership*—(A) *Narrative rule*. After completion of the computations under paragraph (m)(4)(ii) of this section, the contributing partnership must determine the portion of the amount determined under item G (see paragraph (m)(4)(ii)(B) of this section) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of paragraph (m)(2) of this section, and the formula provided in paragraph (m)(4)(iii)(B) of this section.

(B) *Formulaic rule*. The rule of this paragraph (m)(4)(iii) is also expressed in the following formula:

Figure 5 to Paragraph (m)(4)(iii)(B)
$R = G \times (V \div (L + V))$

Where:

R = Relevant basis.

G = Amount determined with respect to item G as described under paragraph (m)(4)(ii)(B) of this section.

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect

to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (K \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(5) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation*—(i) *In general*. This paragraph (m)(5) applies in the case of an ultimate member holding a direct interest in an upper-tier S corporation. Each such ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier partnerships must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(5) describes a situation in which there are two tiers—a contributing partnership and an upper-tier S corporation. In a situation involving more tiers, each partnership and the upper-tier S corporation must apply the rules and principles of this paragraph (m) iteratively to determine relevant basis.

(ii) *Upper-tier S corporation*—(A) *Narrative rule*. The upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that will be the contributing partnership). This determination must be done in accordance with the principles of paragraph (m)(3) of this section, and the formula provided in paragraph (m)(5)(ii)(B) of this section. In other words, the formula provided in paragraph (m)(5)(ii)(B) is similar to the formula provided in paragraph (m)(3)(ii) of this section, except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in paragraph (m)(5)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in paragraph (m)(5)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(5)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

(B) *Formulaic rule*. The rule of this paragraph (m)(5)(ii) is also expressed in the following formula:

Figure 6 to Paragraph (m)(5)(ii)(B)

$N = M \times (P \div Q)$

Where:

N = Portion of the ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the contributing partnership.

M = Modified basis as determined under paragraph (l) of this section.

P = Ultimate member's pro rata portion of the upper-tier S corporation's adjusted basis in its interest in the contributing partnership.

Q = Ultimate member's pro rata portion of the adjusted basis in all the upper-tier S corporation's properties (including the upper-tier S corporation's adjusted basis in its interest in the contributing partnership).

(iii) *Contributing partnership*—(A) *Narrative rule*. After completion of the computations under paragraph (m)(5)(ii) of this section, the contributing partnership must determine the portion of the amount determined under item N (see paragraph (m)(5)(ii)(B) of this section) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of paragraph (m)(2) of this section, and the formula provided in paragraph (m)(5)(iii)(B) of this section.

(B) *Formulaic rule*. The rule of this paragraph (m)(5)(iii) is also expressed in the following formula:

Figure 7 to Paragraph (m)(5)(iii)(B)

$R = N \times (W \div (S + W))$

Where:

R = Relevant basis.

N = Amount determined with respect to item N as described under paragraph (m)(5)(ii)(B) of this section.

S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

W = Upper-tier S corporation's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (Y \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

Y = Upper-tier S corporation's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(6) *Recordkeeping requirements.* Contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. *See* §1.6001-1. These statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in paragraph (n)(2) or (3) of this section.

(7) *Examples.* The following examples illustrate the provisions of this paragraph (m). For the three examples in this paragraph (m)(7), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code and the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*—(A) *Facts*. YZ Partnership is a partnership for Federal income tax purposes whose partners are individuals Y and Z. YZ Partnership owns 100 acres of real property with an adjusted basis of $10X. YZ Partnership makes a qualified conservation contribution on 60 acres of the property. YZ Partnership claims a contribution of $18X, which it allocates $12X to Y and $6X to Z. YZ Partnership's adjusted basis in the 60 acres is $6X, and its adjusted basis in all of its other properties (including its $4X basis in the 40 acres on which a qualified conservation contribution was not made) is $18X. Y's modified basis is $8X. Y's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined in accordance with Y's interest in YZ Partnership is $4X. Z's modified basis is $12X. Z's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined in accordance with Z's interest in YZ Partnership is $14X.

(B) *General analysis*. Y and Z are the ultimate members of YZ Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Figure 8 to Paragraph (m)(7)(i)(B)

$R = M \times (T \div (D + T))$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

D = Ultimate member's portion of the adjusted basis in all of the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

B = Ultimate member's distributive share of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(C) *Y's relevant basis*. With respect to Y:

(*1*) M = $8X.

(*2*) D = $4X.

(*3*) A = $6X.

(*4*) B = $12X.

(*5*) C = $18X.

(*6*) Thus, T is $4X = $6X × ($12X ÷ $18X).

(*7*) Accordingly, Y's relevant basis is $4X = $8X × ($4X ÷ ($4X + $4X)).

(D) *Z's relevant basis*. With respect to Z:

(*1*) M = $12X.

(*2*) D = $14X.

(*3*) A = $6X.

(*4*) B = $6X.

(*5*) C = $18X.

(*6*) Thus, T is $2X = $6X × ($6X ÷ $18X).

(*7*) Accordingly, Z's relevant basis is $1.5X = $12X × ($2X ÷ ($14X + $2X)).

(E) *Sum of relevant bases*. The amount of YZ Partnership's claimed contribution is $18X, which exceeds 2.5 times the sum of Y's and Z's relevant bases, which is $13.75X ($13.75X = 2.5 x (Y's relevant basis of $4X + Z's relevant basis of $1.5X)). Accordingly, YZ Partnership's contribution is a disallowed qualified conservation contribution. No person may claim any deduction with respect to this contribution.

(ii) *Example 2*—(A) *Facts*. CD Inc. is an S corporation with shareholders C and D, each of whom is an individual that is not a nonresident alien. C owns one third of the outstanding stock in CD Inc., and D owns the remaining two thirds. CD Inc. owns 100 acres of real property with an adjusted basis of $10X. CD Inc. makes a qualified conservation contribution on 60 acres of the property. CD Inc. claims a contribution of $9X, which it allocates $3X to C and $6X to D. CD Inc.'s adjusted basis in the 60 acres is $6X, and its adjusted basis in all its properties (including its $6X basis in the 60 acres) is $24X. C's modified basis in CD Inc. is $8X. D's modified basis in CD Inc. is $12X.

(B) G*eneral analysis*. C and D are the ultimate members of CD Inc. because they each receive a pro rata share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Figure 9 to Paragraph (m)(7)(ii)(B)

$R = M \times (E \div F)$

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(C) *C's relevant basis*. With respect to C:

(*1*) M = $8X.

(*2*) E = $2X (1/3 of $6X).

(*3*) F = $8X (1/3 of $24X).

(*4*) Thus, C's relevant basis is $2X = $8X × ($2X ÷ $8X).

(D) *D's relevant basis*. With respect to D:

(*1*) M = $12X.

(*2*) E = $4X (2/3 of $6X).

(*3*) F = $16X (2/3 of $24X).

(*4*) Thus, D's relevant basis is $3X = $12X × ($4X ÷ $16X).

(E) *Sum of relevant bases.* The amount of CD Inc.'s claimed qualified conservation contribution is $9X, which does not exceed 2.5 times the sum of C's and D's relevant bases, which is $12.50 ($12.50X = 2.5 x (C's relevant basis of $2X + D's relevant basis of $3X)). Accordingly, CD Inc.'s contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(iii) *Example 3*—(A) *Facts*. LTP Partnership is a partnership for Federal income tax purposes whose partners are individual E and UTP Partnership, a partnership for Federal income tax purposes. UTP Partnership's partners are C corporations P and Q. LTP Partnership owns 300 acres of real property. LTP Partnership makes a qualified conservation contribution on all 300 acres. LTP Partnership claims a qualified conservation contribution of $22X, which it allocates $2X to E and $20X to UTP Partnership. UTP Partnership allocates its $20X share of the qualified conservation contribution $6X to P and $14X to Q. LTP Partnership's basis in the 300 acres is $18X, and its adjusted basis in all of its other properties is $12X. E's modified basis in LTP Partnership is $4X. E's portion of LTP Partnership's adjusted basis in all partnership property (other than the 300 acres) as determined in accordance with E's interest in LTP Partnership is $4.36X. UTP Partnership's portion of LTP Partnership's adjusted basis in all partnership property (other than the 300 acres) as determined in accordance with UTP Partnership's interest in LTP Partnership is $7.64X. UTP Partnership's adjusted basis in its interest in LTP Partnership is $19, and its adjusted basis in all other properties is $6X. P's modified basis in UTP Partnership is $12X. P's portion of UTP Partnership's adjusted basis in all partnership property (other than the interest in LTP Partnership) as determined in accordance with P's interest in UTP Partnership is $3.6X. Q's modified basis in UTP Partnership is $8X. Q's portion of UTP Partnership's adjusted basis of all partnership property (other than the interest in LTP Partnership) as determined in accordance with Q's interest in UTP Partnership is $2.4X.

(B) *Analysis: partner E*. (*1*) The ultimate members of LTP Partnership are E, P, and Q because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Because E holds a direct interest in LTP Partnership, E's relevant basis must be determined in accordance with the following formula:

Figure 10 to Paragraph (m)(7)(iii)(B)(*1*)
R = M × (T ÷ (D + T))

Where:

R = Relevant basis.

M = Modified basis as determined under paragraph (l) of this section.

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (B ÷ C).

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

B = Ultimate member's distributive share of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(*2*) With respect to E:

(*i*) M = $4X.

(*ii*) D = $4.36X.

(*iii*) A = $18X.

(*iv*) B = $2X.

(*v*) C = $22X.

(*vi*) Thus, T is $1.64X = $18X × ($2X ÷ $22X).

(*vii*) Accordingly, E's relevant basis is $1.09X = $4X × ($1.64X ÷ ($4.36X + $1.64X)).

(C) *Analysis: General rule for UTP Partnership.* Because P and Q hold interests in an upper-tier partnership, UTP Partnership must first determine the portions of P's and Q's modified bases that are allocable to UTP Partnership's interest in LTP Partnership. This is to be done according to the following formula:

Figure 11 to Paragraph (m)(7)(iii)(C)
G = M × (U ÷ (J + U))

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

M = Modified basis as determined under paragraph (l) of this section.

J = Ultimate member's portion of adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership).

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: H × (B ÷ K).

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

B = Ultimate member's distributive share of the qualified conservation contribution.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

(D) *Analysis: Step 1 for P*. With respect to P:

(*1*) M = $12X.

(*2*) J = $3.6X.

(*3*) H = $19X.

(*4*) B = $6X.

(*5*) K = $20X.

(*6*) Thus, U is $5.70X = $19X × ($6X ÷ $20X).

(*7*) Accordingly, the portion of P's modified basis that is allocable to UTP Partnership's interest in LTP Partnership is $7.35X = $12X × ($5.70X ÷ ($3.60X + $5.70X)).

(E) *Analysis: Step 1 for Q*. With respect to Q:

(*1*) M = $8X.

(*2*) J = $2.4X.

(*3*) H = $19X.

(*4*) B = $14X.

(*5*) K = $20X.

(*6*) Thus, U is $13.30X = $19X × ($14X ÷ $20X).

(*7*) Accordingly, the portion of Q's modified basis that is allocable to UTP Partnership's interest in LTP Partnership is $6.78X = $8X × ($13.30X ÷ ($2.40X + $13.30X)).

(F) *Analysis: General rule for LTP Partnership.* Next, LTP Partnership must determine P's and Q's relevant bases, which equals the portions of the amounts determined under paragraphs (m)(7)(iii)(D) and (E) of this section (*Example 3*) that are allocable to the portion of the real property with respect to which the qualified conservation contribution was made. This must be done according to the following formula:

Figure 12 to Paragraph (m)(7)(iii)(F)
R = G × (V ÷ (L + V))

Where:

R = Relevant basis.

G = Amount determined with respect to item G under paragraph (m)(4)(ii)(B) of this section.

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (K ÷ C).

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(G) *Analysis: Step 2 for P.* With respect to P:

(*1*) G = $7.35X.

(*2*) L = $7.64X.

(*3*) A = $18X.

(*4*) K = $20X.

(*5*) C = $22X.

(*6*) Thus, V is $16.36X = $18X × ($20X ÷ $22X).

(*7*) Accordingly, P's relevant basis is $5.01X = $7.35X × ($16.36X ÷ ($7.64X + $16.36X)).

(H) *Analysis: Step 2 for Q*. With respect to Q:

(*1*) G = $6.78X.

(*2*) L = $7.64X.

(*3*) A = $18X.

(*4*) K = $20X.

(*5*) C = $22X.

(*6*) Thus, V is $16.36X = $18X × ($20X ÷ $22X).

(*7*) Accordingly, Q's relevant basis is $4.62X = $6.78X × ($16.36X ÷ ($7.64X + $16.36X)).

(I) *Analysis: Computation of 2.5 times sum of relevant bases*. The ultimate members of LTP Partnership are E, P, and Q. The amount of LTP Partnership's qualified conservation contribution is $22X. This does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which totals $26.80 ($26.80 = 2.5 x (E's relevant basis of 1.09X + P's relevant basis of $5.01X + Q's relevant basis of $4.62X)). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section). Because UTP Partnership receives an allocated portion, it must apply paragraphs (j) through (l) of this section and this paragraph (m) to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are P and Q. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is $20X. This does not exceed 2.5 times the sum of P's and Q's relevant bases, which is $24.08X ($24.08X = 2.5 x (P's relevant basis of $5.01X + Q's relevant basis of $4.62X)). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(n) *Exceptions*—(1) *In general*. Paragraph (j) of this section does not apply to any qualified conservation contribution that satisfies one or more of the three exceptions in this paragraph (n). However, as provided in paragraph (j)(5) of this section, there is no presumption that such a contribution is compliant with section 170, any other section of the Code, or the regulations in this part or any other guidance. Being described in this paragraph (n) is not a safe harbor for purposes of any other provision

of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy other requirements of section 170 and overvaluation of the contribution. In addition, taxpayers who engage in such transactions may be required to disclose under §1.6011-4 the transactions as listed transactions.

(2) *Exception for contributions outside three-year holding period*—(i) *In general.* Paragraph (j) of this section does not apply to any qualified conservation contribution by a contributing partnership or contributing S corporation made at least three years after the latest of—

(A) The last date on which the contributing partnership or contributing S corporation acquired any portion of the real property with respect to which such qualified conservation contribution is made;

(B) The last date on which any partner in the contributing partnership or shareholder in the contributing S corporation acquired any interest in such partnership or S corporation; and

(C) If the interest in the contributing partnership is held through one or more upper-tier partnerships or upper-tier S corporations—

(*1*) The last date on which any such upper-tier partnership or upper-tier S corporation acquired any interest in the contributing partnership or any other upper-tier partnership; and

(*2*) The last date on which any partner or shareholder in any such upper-tier partnership or upper-tier S corporation acquired any interest in such upper-tier partnership or upper-tier S corporation.

(ii) *Acquisition of partnership interest*. For purposes of this paragraph (n)(2), an acquisition of any interest in a partnership is any *variation* within the meaning of that term in §1.706-4(a)(1); however, a variation does not include a change in allocations that satisfies the requirements of §1.706-4(b)(1).

(iii) *Acquisition of interest in an S corporation.* For purposes of this paragraph (n)(2), an acquisition of any interest in an S corporation is any transfer, issuance, redemption, or other disposition of stock in the S corporation; however, an acquisition does not include any issuance or redemption involving all shareholders that does not affect the proportionate ownership of any shareholder.

(iv) *Exception is determined at the level of the contributing partnership or contributing S corporation*. If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(2), then this paragraph (n)(2) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(2) if the person had been the one to make the qualified conservation contribution.

(v) *Example*s. The following examples illustrate the provisions of this paragraph (n)(2). For the two examples in this paragraph (n)(2)(v), assume that the exceptions in paragraphs (n)(3) and (4) of this section do not apply.

(A) *Example 1*—(*1*) *Facts*. ABC Partnership is a partnership for Federal income tax purposes. Since 2015, ABC Partnership's partners have been A, an individual, and BC Inc., an S corporation. Since 2015, BC Inc.'s shareholders have been B and C, each of whom is an individual that is not a nonresident alien. On December 27, 2024, ABC partnership acquires real property. On August 29, 2025, BC Inc. redeems half of B's shares in BC Inc. On December 28, 2027, ABC Partnership makes a qualified conservation contribution.

(*2*) *Analysis*. Pursuant to paragraph (n)(2)(iii) of this section, BC Inc.'s redemption of some of B's shares is treated as an acquisition of an interest in BC Inc. for purposes of this paragraph (n)(2). Accordingly, ABC Partnership's contribution occurred less than three years after the latest acquisition of an interest in a partnership or S corporation that held an interest in ABC Partnership, the contributing partnership. Therefore, ABC Partnership's contribution fails to satisfy the requirements of this paragraph (n)(2) and must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution.

(B) *Example 2*—(*1*) *Facts*. LTP partnership is a partnership for Federal income tax purposes. Since 2017, LTP Partnership's partners have been UTP Partnership, a partnership for Federal income tax purposes, and FG Inc., an S corporation. Since 2018, UTP Partnership's partners have been individuals D and E, and there has been no variation in their ownership. Since 2019, FG Inc.'s shareholders have been F and G, each of whom is an individual that is not a nonresident alien. On March 15, 2024, LTP Partnership acquires real property. On September 15, 2026, D dies and D's interest in UTP Partnership passes to D's estate. On March 18, 2027, LTP Partnership makes a qualified conservation contribution. LTP Partnership allocates all of the qualified conservation contribution to FG Inc.

(*2*) *Analysis*. Pursuant to paragraph (n)(2)(ii) of this section, the transfer of D's interest in UTP Partnership to D's estate is treated as an acquisition of an interest in UTP Partnership for purposes of paragraph (n)(2) of this section. Accordingly, LTP Partnership's contribution occurred less than three years after the latest acquisition of an interest in a partnership or S corporation that held an interest in LTP Partnership, the contributing partnership. Therefore, LTP Partnership's contribution fails to satisfy the requirement of this paragraph (n)(2). Pursuant to paragraph (n)(2)(iv) of this section, FG Inc. cannot avail itself of this paragraph (n)(2) with respect to its allocated portion of LTP Partnership's contribution. Accordingly, FG Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether its allocated portion is a disallowed qualified conservation contribution.

(3) *Exception for family partnerships and S corporations*—(i) *General rule*. Paragraph (j) of this section does not apply with respect to any qualified conservation contribution made by a contributing partnership or contributing S corporation if at least 90 percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual, and the contributing partnership or contributing S corporation meets the requirements of this paragraph (n)(3).

(ii) *Ninety percent of the interests*—(A) *Family partnerships*. In the case of a contributing partnership, at least 90 percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual.

(B) *Family S corporations*. In the case of a contributing S corporation, at least 90 percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the total value and at least 90 percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

(iii) *Members of the family*. For purposes of this paragraph (n)(3), the term

members of the family means, with respect to any individual—

(A) The spouse of such individual; and

(B) Any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code.

(iv) *Anti-abuse rules*—(A) *Holding period*. This paragraph (n)(3) does not apply unless at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. The members of the family during that year need not be the same members of the family that own an interest at the time of the qualified conservation contribution; however, at least one individual must own an interest for the entire year, and at least 90 percent of the interests in the property must be owned, directly or indirectly, during that year by that individual and members of that individual's family.

(B) *Allocations*. This paragraph (n)(3) does not apply unless at least 90 percent of the qualified conservation contribution is allocated to the individual and all members of the family who own at least 90 percent of the interests in the contributing partnership or contributing S corporation under paragraph (n)(3)(ii) of this section.

(v) *Exception is determined at the level of the contributing partnership or contributing S corporation*. If the contributing partnership or contributing S corporation satisfies the requirements of this paragraph (n)(3), then any upper-tier partnership or upper-tier S corporation need not apply paragraphs (j) through (m) of this section and this paragraph (n) to its allocated portions of such contribution. If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(3), then the exception in this paragraph (n)(3) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(3) if the person had been the one to make the contribution.

(vi) *Examples*. The following examples illustrate the provisions of this paragraph (n)(3). For the two examples in this paragraph (n)(3)(vi), assume that the exceptions in paragraphs (n)(2) and (4) of this section do not apply.

(A) *Example 1*—(*1*) *Facts*. Individual A and A's sibling B acquire real property on July 5, 2024. On September 14, 2024, B transfers its interest in the real property to B's child C. On February 21, 2025, A and C transfer their interests in the real property to AC Partnership, a partnership for Federal income tax purposes whose only partners are A and C. On March 18, 2025, A's stepfather D becomes a partner in AC Partnership in exchange for a capital contribution. On September 15, 2025, AC Partnership makes a qualified conservation contribution on the real property. AC Partnership never had any partners other than A, C, and D.

(*2*) *Analysis*. B, C, and D qualify as members of the family with respect to A. Accordingly, as of the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits of AC Partnership were owned by an individual and members of that individual's family. In addition, at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly and indirectly, by A and members of A's family for at least one year prior to the date of the contribution. Moreover, at least 90 percent of the contribution is allocated to A and members of A's family. Accordingly, the requirements of this paragraph (n)(3) are satisfied, and the Disallowance Rule in section 170(h)(7)(A) and paragraph (j) of this section does not apply.

(B) *Example 2*—(*1*) *Facts*. LTP Partnership is a partnership for Federal income tax purposes whose partners are EF Inc., an S corporation, and UTP Partnership, a partnership for Federal income tax purposes. EF Inc. and UTP Partnership each hold a 50 percent interest in the profits and capital of LTP Partnership. The shareholders of EF Inc. are E and E's sibling F. The partners of UTP Partnership are G and G's child H. E and F are not related to G and H. LTP Partnership has held real property since 2019. On July 5, 2024, LTP Partnership distributes half of the acres of its real property to EF Inc., and the remaining acres to UTP Partnership. On October 21, 2024, EF Inc., makes a qualified conservation contribution on the real property it received from LTP Partnership.

(*2*) *Analysis*. F qualifies as a member of the family with respect to E. Accordingly, as of the time of EF Inc.'s qualified conservation contribution, EF Inc. was owned at least 90 percent by an individual and members of that individual's family. In addition, at least 90 percent of EF Inc's qualified conservation contribution is allocated to E and members of E's family. However, E and members of E's family failed to own at least 90 percent of the property with respect to which the qualified conservation contribution was made for at least one year prior to the date of the contribution. In particular, G and H (who are not members of the family with respect to E or F) indirectly owned a 50 percent interest in the property until July 5, 2024. Accordingly, the requirements of this paragraph (n)(3) are not satisfied. EF Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution.

(4) *Exception for contributions to preserve certified historic structures*. Paragraph (j) of this section does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). *See* §1.170A-16(f)(6) for special reporting requirements for a contribution that meets the exception in this paragraph (n)(4).

(o) *Applicability dates*—(1) *In general*. Except as provided in paragraphs (g)(4)(ii), (i), and (o)(2) of this section, paragraphs (a) through (i) of this section apply only to contributions made on or after December 18, 1980. Paragraphs (j) through (n) of this section apply to contributions made after December 29, 2022.

(2) *Exception*. Paragraph (h)(4)(ii) of this section applies on and after June 1, 2023.

Par. 3. Section 1.170A-16 is amended by:

1. In paragraph (c)(3)(iv)(F), adding the word "and" at the end of the paragraph;

2. In paragraph (c)(3)(iv)(G), removing the language "and" at the end of the paragraph;

3. Redesignating paragraph (c)(3)(v) as paragraph (c)(3)(vi) and adding new paragraph (c)(3)(v);

4. In paragraph (d)(3)(vii), removing the language "and" at the end of the paragraph;

5. Redesignating paragraph (d)(3)(viii) as paragraph (d)(3)(x) and adding new paragraph (d)(3)(viii);

6. Adding paragraph (d)(3)(ix);

7. Revising paragraph (f)(4);

8. Adding paragraph (f)(6);

9. Revising paragraph (g).

The additions and revisions read as follows:

§1.170A-16 Substantiation and reporting requirements for noncash charitable contributions.

* * * * *

(c) * * *

(3) * * *

(v) Where a number can be inserted into any box on Form 8283 (Section A), the number inserted in the box on Form 8283 (Section A). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (c)(3)(v) precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 (Section A) and including an attached statement explaining any additional information regarding the number. Taxpayers may not respond to a request for information on Form 8283 (Section A) with nonresponsive responses, for example, by indicating that the requested information is *available upon request* or will be *provided upon request*. The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section A) may be treated by the IRS as being an incomplete filing of Form 8283; and

* * * * *

(d) * * *

(3) * * *

(viii) In the case of a partnership or S corporation that makes a qualified conservation contribution, the sum of each ultimate member's relevant bases, computed in accordance with §1.170A-14(j) through (m), but only:

(A) For contributions described in section 170(h)(7)(E) and §1.170A-14(n)(4) (for contributions to preserve certified historic structures), regardless of whether they are also described in section 170(h)(7)(C) and §1.170A-14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and §1.170A-14(n)(3) (for contributions made by certain family partnerships or S corporations); and

(B) For all contributions not described in section 170(h)(7)(E) and §1.170A-14(n)(4), provided they are not described in section 170(h)(7)(C) and §1.170A-14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and §1.170A-14(n)(3) (for contributions made by certain family partnerships or S corporations);

(ix) Where a number can be inserted into any box on Form 8283 (Section B), the number inserted in the box on Form 8283 (Section B). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (d)(3)(ix) precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 (Section B) and including an attached statement explaining any additional information regarding the number. Taxpayers may not respond to a request for information on Form 8283 (Section B) with nonresponsive responses, for example, by indicating that the requested information is *available upon request* or will be *provided upon request*. The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section B) may be treated by the IRS as being an incomplete filing of Form 8283; and

* * * * *

(f) * * *

(4) *Partners and S corporation shareholders*—(i) *Form 8283 (Section A or Section B) must be provided to partners and S corporation shareholders.* If the donor is a partnership or an S corporation, the donor must provide a copy of its completed Form 8283 (Section A or Section B) to every partner or shareholder who receives an allocation of a charitable contribution under section 170 for the property described in Form 8283 (Section A or Section B). Similarly, a recipient partner that is a partnership or S corporation must provide a copy of the donor's completed Form 8283 (Section A or Section B) to each of its partners or shareholders who receives an allocation of the charitable contribution, and so on through any additional tiers.

(ii) *Partners and S corporation shareholders must attach Forms 8283 (Section A or Section B) to return.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution under section 170 for property to which paragraph (c), (d), or (e) of this section applies must attach to the return on which the contribution is claimed a copy of each Form 8283 that must be provided to them under paragraph (f)(4)(i) or (iii) of this section.

(iii) *Partners and S corporation shareholders must file separate Forms 8283 and provide copies to any partners*—(A) *In general*. Subject to paragraph (f)(4)(iii)(B) of this section, every partner of a partnership (including a partner that is itself a partnership or S corporation) or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for which paragraph (c), (d), or (e) of this section applies must complete a separate Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In the case of a partner that is itself a partnership or S corporation, that partnership or S corporation must provide a copy of its completed separate Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed, in addition to the copy of each Form 8283 that the partner or shareholder is required to attach pursuant to paragraph (f)(4)(ii) of this section.

(B) *Conservation contributions.* The terms defined in §1.170A-14(j)(3) apply for purposes of this paragraph (f)(4)(iii)(B). In the case of a qualified conservation contribution that is made by a partnership or S corporation, an ultimate member's separate Form 8283 must include their own relevant basis. An upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant bases (as computed in accordance with §1.170A-14(j) through (m)). This paragraph (f)(4)(iii)(B) does not apply to contributions described in section 170(h)(7)(C) and §1.170A-14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and §1.170A-14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and §1.170A-14(n)(4) (for contributions to preserve certified historic structures), in which case this paragraph (f)(4)(iii)(B) does apply.

* * * * *

(6) *Conservation contributions by pass-through entities preserving certified historic structures*—(i) *In general*. The terms defined in §1.170A-14(j)(3) apply for purposes of this paragraph (f)(6). For any contribution described in paragraph

(f)(6)(ii) of this section, pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless the contributing partnership, the contributing S corporation, the upper-tier partnership, or the upper-tier S corporation, respectively—

(A) Includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion, as described in paragraph (f)(6)(iii) of this section; and

(B) Provides such information about the contribution as the Secretary may require in guidance, forms, or instructions.

(ii) *Contributions to which this paragraph (f)(6) applies*. This paragraph (f)(6) applies to any qualified conservation contribution (as defined in section 170(h)(1) and §1.170A-14):

(A) The conservation purpose of which is preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C));

(B) That is either made by a contributing partnership or contributing S corporation (as defined in §1.170A-14(j)(3)(iv)), or that is an allocated portion (as defined in §1.170A-14(j)(3)(i)) of an upper-tier partnership (as defined in §1.170A-14(j)(3)(xi)) or upper-tier S corporation (as defined in §1.170A-14(j)(3)(xii)); and

(C) The amount of such contribution (as defined in §1.170A-14(j)(3)(ii)) or such allocated portion (as defined in §1.170A-14(j)(3)(i)) exceeds 2.5 times the sum of each ultimate member's relevant basis (as defined in §1.170A-14(j) through (m)).

(iii) *Required information*. A partnership or S corporation satisfies the requirements of section 170(f)(19)(A) and paragraph (f)(6)(i) of this section by filing a completed Form 8283, including information about relevant basis, in accordance with section 170, the regulations under section 170, and the instructions to Form 8283.

(g) *Applicability dates*—(1) *In general*. Except as provided in paragraph (g)(2) of this section, this section applies to contributions made after July 30, 2018.

(2) *Certain paragraphs*. Paragraphs (c)(3)(vi), (d)(3)(viii) and (x), and (f)(4) and (6) of this section apply to taxable years ending on or after November 20, 2023.

Par. 4. Section 1.706-0 is amended by revising the entry for §1.706-3 to read as follows:

§1.706-0 Table of contents.

* * * * *

§1.706–3 Items attributable to interest in lower-tier partnership.

(a) Conservation contributions.

(b) Applicability date.

* * * * *

Par. 5. Section 1.706-3 is revised to read as follows:

§1.706-3 Items attributable to interest in lower-tier partnership.

(a) *Conservation contributions*. For purposes of section 706(d)(3), in the case of a qualified conservation contribution (as defined in section 170(h)(1) and §1.170A-14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of §1.170A-14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under §1.706-4.

(b) *Applicability date*. Paragraph (a) of this section applies to qualified conservation contributions made after December 29, 2022.

Par. 6. Section 1.706-4 is amended by:

1. Redesignating paragraphs (e)(2)(ix) through (xi) as paragraphs (e)(2)(x) through (xii), respectively, and adding new paragraph (e)(2)(ix);

2. Adding the word "and" at the end of newly redesignated paragraph (e)(2)(xi); and

3. Revising paragraphs (e)(3) and (g).

The addition and revisions read as follows:

§1.706-4 Determination of distributive share when a partner's interest varies.

* * * * *

(e) * * *

(2) * * *

(ix) Any qualified conservation contribution (as defined in section 170(h)(1) and §1.170A-14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of §1.170A-14(j)(3)(vii));

* * * * *

(3) *Small item exception*. A partnership may treat an item described in paragraph (e)(2) of this section (except for an item described in paragraph (e)(2)(ix) of this section) as other than an extraordinary item for purposes of this paragraph (e) if, for the partnership's taxable year the total of all items in the particular class of extraordinary items (as enumerated in paragraphs (e)(2)(i) through (xii) of this section, for example, all tort or similar liabilities, but in no event counting an extraordinary item more than once) is less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and the total amount of the extraordinary items from all classes of extraordinary items amounting to less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such extraordinary items as positive amounts.

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies for partnership taxable years that begin on or after August 3, 2015.

(2) *Paragraph (c)(3) of this section*. The rules of paragraph (c)(3) of this section apply for taxable years of partnerships other than existing publicly traded

partnerships that begin on or after August 3, 2015. For purposes of this paragraph (g)(2), an existing publicly traded partnership is a partnership described in section 7704(b) that was formed prior to April 14, 2009. For purposes of this paragraph (g)(2), the termination of a publicly traded partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits in a taxable year beginning on or before December 31, 2017, is disregarded in determining whether the publicly traded partnership is an existing publicly traded partnership.

(3) *Paragraph (e)(2)(ix) of this section*. Paragraph (e)(2)(ix) of this section applies to qualified conservation contributions made after December 29, 2022.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register November 17, 2023, 8:45 a.m., and published in the issue of the Federal Register for November 20, 2023, 88 FR 80910)

Notice of Proposed Rulemaking

Recognition and Deferral of Section 987 Gain or Loss; Comment Period Reopening

REG-128276-12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of the Treasury and the IRS are reopening the comment period for REG-128276-12, published in the **Federal Register** on December 8, 2016, relating to the determination and recognition of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit.

DATES: The comment period for REG-128276-12 (81 FR 88882, December 8, 2016) (the "2016 proposed regulations") is reopened, and additional written or electronic comments and requests for a public hearing must be received by February 12, 2024.

ADDRESSES: Commenters are strongly encouraged to submit additional public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-128276-12) 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 (the "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-128276-12), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jack Zhou at (202) 317-6938; concerning submissions of comments, requests for a public hearing, or access to a public hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or by e-mail to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: On December 8, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-128276-12, 81 FR 88882, December 8, 2016) (the "2016 proposed regulations") in the **Federal Register**. The 2016 proposed regulations cross-reference temporary regulations in Treasury Decision 9795 (81 FR 88854, December 8, 2016) (the "temporary regulations"), which provided rules under section 987 of the Internal Revenue Code relating to the determination and recognition of taxable income or loss and foreign currency gain or loss with respect to a qualified business unit. On May 13, 2019, the Treasury Department and the IRS published Treasury Decision 9857 (84 FR 20790, May 13, 2019), which finalized parts of the 2016 proposed regulations and withdrew one section of the temporary regulations. The temporary regulations that were not finalized or withdrawn expired on December 6, 2019. A notice of proposed rulemaking published in this issue of the **Federal Register** contains new proposed regulations under section 987 and withdraws parts of the 2016 proposed regulations. The parts of the 2016 proposed regulations that remain outstanding include: (1) rules regarding the treatment of section 988 transactions of a section 987 QBU (*see* §§1.987-1, 1.987-3, and 1.988-1 of the 2016 proposed regulations); (2) rules regarding QBUs with the U.S. dollar as their functional currency (*see* §§1.987-1 and 1.987-6 of the 2016 proposed regulations); (3) rules regarding the translation of income used to pay creditable foreign income taxes (*see* §1.987-3 of the 2016 proposed regulations); and (4) rules requiring the deferral of certain section 988 loss that arises with respect to related-party loans (*see* §1.988-2 of the 2016 proposed regulations).

The Treasury Department and the IRS are considering finalizing these parts of the 2016 proposed regulations and, therefore, are reopening the comment period for 90 days. Comments that were previously submitted in accordance with the 2016 proposed regulations will be considered and do not need to be resubmitted.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING: Before the parts of the 2016 proposed regulations that remain outstanding are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this Notice in the "Addresses" section. 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 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**.

Oluwafunmilayo A. Taylor
Section Chief,
Publications and Regulations Section,
Associate Chief Counsel,
(Procedure and Administration).

(Filed by the Office of the Federal Register November 9, 2023, 4:15 p.m., and published in the issue of the Federal Register for November 14, 2023, 88 FR 77921)

Notice of Proposed Rulemaking

Taxes on Taxable Distributions from Donor Advised Funds under Section 4966

REG-142338-07

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice of proposed rulemaking

SUMMARY: This document contains proposed regulations regarding excise taxes on taxable distributions made by a sponsoring organization from a donor advised fund (DAF), and on the agreement of certain fund managers to the making of such distributions. The proposed regulations would provide guidance regarding DAFs and taxable distributions. The proposed regulations generally would apply to certain organizations, including community foundations and other charitable organizations, that maintain one or more DAFs, and to other persons involved with the DAFs, including donors, donor-advisors, related persons, and certain fund managers.

DATES: Written or electronic comments and requests for a public hearing must be received by January 16, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–142338-07) 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 comment received to its public docket, whether submitted electronically or in hard copy. Send paper submissions to: CC:PA:01:PR (REG–142338-07), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ward L. Thomas at (202) 317-5800 (not a toll-free number); concerning submission of comments and requests for a public hearing, contact Vivian Hayes by email at *publichearings@irs.gov* (preferred) or by phone at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

I. *Overview*

Some charitable organizations (including community foundations) establish accounts to which donors may contribute and thereafter provide nonbinding advice or recommendations with regard to distributions from the account or the investment of assets in the account. Such accounts are commonly referred to as "donor advised funds" or "DAFs." Sections 1231-1235 of the Pension Protection Act of 2006 (PPA), Public Law 109-280, 120 Stat. 780, 1094-1102 (August 17, 2006), enacted various amendments to the Internal Revenue Code (Code) regarding DAFs. Among these, section 1232 of the PPA amended section 4958 of the Code to add special rules relating to excess benefit transactions with DAFs; section 1231(b) of the PPA added section 4967 to the Code, which imposes an excise tax on prohibited benefits resulting from distributions from DAFs; and section 1231(a) of the PPA added section 4966 of the Code, which imposes excise taxes on taxable distributions made by sponsoring organizations from a DAF, and on the agreement of certain fund managers to the making of such distributions. This notice of proposed rulemaking contains proposed amendments to 26 CFR Part 53 (Foundation and Similar Excise Taxes) under section 4966 (proposed regulations).

II. *Statutory Provisions*

A. *Section 4958*

Section 4958 imposes an excise tax on any "excess benefit transaction," which is defined generally under section 4958(c)(1) as any transaction in which an economic benefit is provided, the value of which exceeds the value of any consideration received, by an applicable tax-exempt organization (including a section 501(c)(3) sponsoring organization of a DAF) directly or indirectly to or for the use of a disqualified person with respect to a transaction.[1] This excise tax under section 4958 is paid by the disqualified person with respect to the transaction. A separate excise tax, paid by organization managers, is imposed on the participation of any organization manager in the transaction, knowing that it is an excess benefit transaction, unless such participation is not willful and is due to reasonable cause.

Section 1232 of the PPA amended section 4958 to provide that, with respect to any transaction that involves a DAF, a disqualified person includes (1) any donor with respect to the DAF, (2) any donor-advisor with respect to the DAF, and (3) any member of the family, or any 35-percent controlled entity of a donor or donor-advisor or member of their families with respect to the DAF, each, a "related

[1] For this purpose, a disqualified person is defined under section 4958(f) as a person who was, at any time during the five-year period ending on the date of the transaction, in a position to exercise substantial influence over the affairs of the organization, and certain related persons, with special rules for DAFs and section 509(a)(3) organizations.

person," and to provide that any grant, loan, compensation, or other similar payment from the DAF to such disqualified person is an excess benefit transaction. For purposes of this special rule for transactions involving DAFs, the excess benefit includes the entire amount of the grant, loan, compensation, or other similar payment. The PPA also amended section 4958 to treat as a disqualified person with respect to a transaction involving a sponsoring organization an investment advisor (or a family member or a 35-percent controlled entity of such person).

B. *Section 4966*

1. *DAFs*

Section 4966(d)(2)(A) defines a "DAF" generally as a fund or account (1) that is separately identified by reference to contributions of a donor or donors, (2) that is owned and controlled by a sponsoring organization, and (3) with respect to which a donor (or any person appointed or designated by the donor, namely, a donor-advisor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor.

Section 4966(d)(2)(B)(i) states that a DAF does not include a fund or account that makes distributions only to a single identified organization or governmental entity. Section 4966(d)(2)(B)(ii) states that a DAF does not include a fund or account with respect to which a donor or a donor-advisor provides advice regarding grants to individuals for travel, study, or similar purposes if (1) the donor's, or the donor-advisor's, advisory privileges are exercised exclusively in the donor's or donor-advisor's capacity as a member of a committee all the members of which are appointed by the sponsoring organization, (2) no combination of donor(s), donor-advisor(s), or persons related to such persons directly or indirectly control the committee, and (3) all grants are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the sponsoring organization's board of directors, and the procedure is designed to ensure that the grants meet the requirements of section 4945(g)(1), (2), or (3).

Section 4966(d)(2)(C) authorizes the Secretary of the Treasury or her delegate (Secretary) to exempt a fund or account from treatment as a DAF if it (1) is advised by a committee not directly or indirectly controlled by the donor or any donor-advisor (and any related parties), or (2) benefits a single identified charitable purpose.

2. *Sponsoring Organizations*

Section 4966(d)(1) defines a "sponsoring organization" as an organization described in section 170(c) (including a foreign organization that otherwise would be described in section 170(c)(2)), other than a private foundation (as defined in section 509(a)) or a governmental entity (as defined in section 170(c)(1)), that maintains one or more DAFs.

3. *Excise Tax on Taxable Distributions*

Section 4966(a)(1) imposes a 20 percent excise tax on each taxable distribution, payable by the sponsoring organization with respect to the DAF. Section 4966(c)(1) defines a "taxable distribution" as including any distribution from a DAF to any natural person. Section 4966(c)(1) also defines a taxable distribution as including a distribution from a DAF to any other person if (1) the distribution is for any purpose other than a purpose specified in section 170(c)(2)(B),[2] or (2) the sponsoring organization does not exercise expenditure responsibility with respect to the distribution in accordance with section 4945(h).

Section 4966(c)(2) provides that a taxable distribution, however, does not include a distribution from a DAF to (1) any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), (2) the sponsoring organization of such DAF, or (3) any other DAF. Section 4966(d)(4) defines a "disqualified supporting organization" as (1) a Type III supporting organization that is not functionally integrated and (2) any other supporting organization if the donor or any donor-advisor (and any related parties) with respect to a DAF directly or indirectly controls a supported organization of the supporting organization.

4. *Excise Tax on Agreement of Fund Manager*

Section 4966(a)(2) imposes a five percent excise tax on the agreement of a fund manager to the making of a taxable distribution knowing that it is a taxable distribution, payable by any fund manager who agreed to the making of the distribution. Section 4966(d)(3) defines a "fund manager" with respect to any sponsoring organization as (1) an officer, director, or trustee of such sponsoring organization (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the sponsoring organization), and (2) with respect to any act (or failure to act), the employees of the sponsoring organization having authority or responsibility with respect to each act (or failure to act).

Section 4966(b) provides that, if more than one fund manager is liable under section 4966(a)(2), then all such persons are jointly and severally liable with respect to the distribution; however, the maximum amount of tax imposed by section 4966(a)(2) with respect to any one taxable distribution is $10,000.

C. *Section 4967*

The PPA also added section 4967, which imposes an excise tax on the advice that a donor, donor-advisor, or related person provides regarding a distribution from a DAF that results in such person or any other donor, donor-advisor, or related person receiving, directly or indirectly, a more than incidental benefit. This excise tax is paid by any donor, donor-advisor, or related person who advises the sponsoring organization as to the distribution or who receives the prohibited benefit. A separate excise tax, paid by the fund manager, is

[2] Section 170(c)(2)(B) defines charitable contributions to include contributions to certain organizations for the following purposes: religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of the organization's activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

imposed on the agreement of any fund manager of the sponsoring organization to the making of the distribution, knowing that it would confer a prohibited benefit. Section 4967(b) provides that, with respect to any distribution, no tax can be imposed under section 4967 if a tax has been imposed under section 4958.

III. *Administrative Guidance*

In December 2006, the Treasury Department and the IRS issued Notice 2006-109, *2006-2 C.B. 1121,* to provide interim guidance on certain requirements enacted by the PPA, including those that affect DAFs.[3] Notice 2006-109 also requested comments regarding the notice and suggestions for future guidance.

In February 2007, the Treasury Department and the IRS issued Notice 2007-21, 2007-1 C.B. 611, requesting comments in connection with a study conducted by the Treasury Department and the IRS on the organization and operation of DAFs and supporting organizations, as required by section 1226 of the PPA.

In December 2017, the Treasury Department and the IRS issued Notice 2017-73, 2017-51 I.R.B. 562, describing approaches being considered to address certain issues regarding DAFs and requesting comments on those approaches. In particular, Notice 2017-73 stated, among other things, that the Treasury Department and the IRS are considering developing proposed regulations under section 4967 that would, if finalized, provide that (1) certain distributions from a DAF that pay for the purchase of tickets that enable a donor, donor-advisor, or related person under section 4958(f)(7) to attend or participate in a charity-sponsored event result in a more than incidental benefit to such person under section 4967, and (2) certain distributions from a DAF that the distributee charity treats as fulfilling a pledge made by a donor, donor-advisor, or related person, do not result in a more than incidental benefit under section 4967 if certain requirements are met.

In response to these three notices, the Treasury Department and the IRS received 118 comments, 74 of which concerned DAFs and taxable distributions.[4] After consideration of the comments received, the Treasury Department and the IRS are proposing these regulations regarding the excise taxes payable by sponsoring organizations of DAFs and fund managers on taxable distributions under section 4966. The major areas of comment relating to section 4966 are discussed in the Explanation of Provisions.

Explanation of Provisions

1. Definition of Donor Advised Fund

In accordance with section 4966(d)(2)(A), the proposed regulations would define a DAF generally as a fund or account (1) that is separately identified by reference to contributions of a donor or donors, (2) that is owned and controlled by a sponsoring organization, and (3) with respect to which at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor. Unless otherwise excepted, a fund or account that meets all three prongs of the definition would be a DAF.

A sponsoring organization is proposed to be defined in accordance with section 4966(d)(1) as any organization that (1) is described in section 170(c) (other than a governmental unit described in section 170(c)(1)), without the requirement under section 170(c)(2)(A) that it be created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (2) is not a private foundation; and (3) maintains one or more DAFs.

A. *Separate Identification by Reference to Contributions of a Donor or Donors*

Section 4966(d)(2)(A)(i) states that a DAF must be separately identified by reference to contributions of a donor or donors. In general, the proposed regulations would provide that a fund or account is separately identified by reference to contributions of a donor or donors if the sponsoring organization maintains a formal record of contributions to the fund or account relating to a donor or donors. A formal record exists regardless of whether the sponsoring organization commingles the assets attributed to the fund or account with other assets of the sponsoring organization, as long as the sponsoring organization tracks contributions of a donor or donors to the fund or account. A contribution would be defined as any gift, bequest, or similar payment or transfer, whether in cash or in-kind, to or for the use of a sponsoring organization.

If the sponsoring organization does not maintain a formal record of contributions to a fund or account, then whether a fund or account is separately identified would be based on all the facts and circumstances.

The proposed regulations would provide that facts and circumstances that are relevant in determining that a fund or account is separately identified by reference to contributions of a donor or donors include: (1) the fund or account balance reflects items such as contributions, dividends, interest, distributions, administrative expenses, and gains and losses (realized or unrealized); (2) the fund or account is named after one or more donors, donor-advisors, or related persons (as defined by proposed §53.4966-1(j));[5]

[3] For example, section 5.01 of Notice 2006-109 excludes from the definition of a DAF an employer-sponsored disaster relief fund that meets certain requirements. To be excluded, the fund must: (1) serve a single identified charitable purpose, which is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3); (2) serve a large or indefinite class, i.e., a charitable class; (3) select recipients of grants based on objective determinations of need; (4) select recipients of grants using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous; (5) make no payment from the fund to or for the benefit of any director, officer, or trustee of the sponsoring organization of the fund or for the benefit of any member of the fund's selection committee; and (6) maintain adequate records that demonstrate the recipients' needs for the disaster relief assistance.

[4] The Treasury Department and the IRS anticipate that the other comments will be considered in the development of future guidance under other Code sections.

[5] Section 53.4966-1(j) of the proposed regulations defines "related person," by reference to section 4958(f)(7)(B) and (C), as any family member (as defined in section 4958(f)(4)) or any 35-percent controlled entity (as defined in section 4958(f)(3) with appropriate substituted language).

(3) the sponsoring organization refers to the fund or account as a DAF; (4) the sponsoring organization has an agreement or understanding with one or more donors or donor-advisors that such fund or account is a DAF; (5) one or more donors or donor-advisors regularly receive a fund or account statement from the sponsoring organization; and (6) the sponsoring organization generally solicits advice from the donor(s) or donor-advisor(s) before making distributions from the fund or account. The Treasury Department and the IRS request comments on these and any additional factors that would be relevant in determining whether a fund or account is separately identified by reference to contributions of a donor or donors.

Several commenters asked that funds or accounts funded by certain types of organizations, such as public charities, private foundations, or governmental entities, be excluded from the definition of a DAF. The proposed regulations define a donor generally as any person described in section 7701(a)(1) that contributes to a fund or account of a sponsoring organization. However, the proposed regulations would explicitly exclude from the definition of donor (1) any public charity described in section 509(a)(1), (2), or (3) (other than a disqualified supporting organization) and (2) any governmental unit described in section 170(c)(1). A fund or account that is separately identified by reference to contributions solely from either of these types of entities would not be treated as separately identified by reference to contributions from a donor and thus would not be a DAF.[6] Because private foundations and disqualified supporting organizations could use a DAF to circumvent the payout and other requirements that are applicable to those organizations, the proposed regulations would not exclude private foundations or disqualified supporting organizations from the definition of donor.

B. *Advisory Privileges*

Under section 4966(d)(2)(A)(iii), for a fund or account to constitute a DAF, (1) at least one donor or donor-advisor must have, or reasonably expect to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account, and (2) such advisory privileges must arise by reason of (in other words, because of) the donor's status as a donor. The proposed regulations generally would provide that the existence of such advisory privileges depends on the facts and circumstances, including the conduct (and any agreement or understanding) of both the donor(s) or donor-advisor(s) and the sponsoring organization. A donor (or donor-advisor) may have, or reasonably expect to have, advisory privileges even in the absence of the actual provision of advice. Advisory privileges would include those arising from service on an advisory committee. The proposed regulations also would presume that advisory privileges of a donor or donor-advisor arise by reason of the donor's status as a donor, except where specifically provided otherwise.

Commenters recommended that, for advisory privileges to exist, advice must include a specified amount and a named recipient. Commenters also suggested that, in the absence of written evidence, advisory privileges should not be inferred unless there are at least three separate successive occasions where the sponsoring organization accepts the donor's advice. Commenters further requested that a sponsoring organization's proposal to distribute a certain amount to a certain distributee, subject to the donor's approval, be viewed as the donor's exercise of the advisory privilege only if the donor approves the proposal.

The Treasury Department and the IRS believe that the commenters' recommendations would define advisory privileges too narrowly. Instead, the proposed regulations would provide that the presence of any of the following four facts is sufficient to establish that a donor or donor-advisor has advisory privileges by reason of the donor's status as a donor, regardless of whether they are exercised: (1) the sponsoring organization allows a donor or donor-advisor to provide nonbinding recommendations regarding distributions from, or regarding the investment of assets held in, a fund or account; (2) a written agreement states that a donor or donor-advisor has advisory privileges; (3) a written document or any marketing material of the sponsoring organization made available to a donor or donor-advisor indicates that a donor or donor-advisor may provide advice to the sponsoring organization regarding the distribution or investment of amounts held by a sponsoring organization (for example, a pre-approved list of investment options or distributees that the sponsoring organization provides to a donor or donor-advisor); or (4) the sponsoring organization generally solicits its advice from a donor or donor-advisor regarding the distribution or investment of amounts held in a fund or account.

However, the proposed regulations would also provide four special rules relating to advisory privileges. First, if at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to a fund or account or any portion of a fund or account, then advisory privileges by reason of the donor's status as a donor exist with respect to that fund or account even if there are multiple donors to the fund or account.

Second, there would be special rules for advisory privileges arising from service on an advisory committee, as discussed in section 1.D of this Explanation of Provisions of this preamble.

Third, advice provided solely in a person's capacity as an officer, director, employee (or in a similar capacity) of a sponsoring organization would not by itself give rise to advisory privileges by reason of a donor's status as a donor. However, if, by reason of the person's contribution to a fund or account, an officer, director, or employee of the sponsoring organization is allowed to advise on how to distribute or invest amounts in the fund or account, the person would be considered to have advisory privileges by reason of the donor's status as a donor with respect to that fund or account.

Lastly, unless the special rule for officers, directors, and employees of a sponsoring organization applies, if a donor to

[6] Because public charities and governmental units are not treated as donors, it also follows that if only they have advisory privileges with respect to a fund, the fund would not be a DAF even if there are other donors. *See* §53.4966-3(e)(4) *(Example 4)* of these proposed regulations.

a fund or account is the sole person with advisory privileges with respect to a fund or account, the advisory privileges would be deemed to be by reason of the donor's status as a donor. This bright-line rule would provide clarity and enhance administrability. The Treasury Department and the IRS request comments regarding whether there are additional circumstances in which application of the bright-line rule is not warranted.

Commenters asked that guidance clarify that advisory privileges do not include certain legally enforceable rights of the donor with respect to a contribution. If a restriction is placed on a gift at the time the gift is made and there is no provision for subsequent discretion regarding the restriction, then the restriction should not give rise to advisory privileges. For example, a donor's mere earmarking of a donation (at the time of donation) for a particular fund or program of the recipient charity, without more, does not create an advisory privilege. Whether the terms of a gift agreement create a DAF depends on the restrictions set forth in the agreement. The Treasury Department and the IRS request comments on the circumstances in which a gift agreement or advisory rights retained by a donor could create a DAF.

C. *Donor-Advisor*

Consistent with section 4966(d)(2)(A)(iii), the proposed regulations would define donor-advisor as a person appointed or designated by a donor to have advisory privileges regarding the distribution or investment of assets held in a fund or account of a sponsoring organization. If a donor-advisor delegates any of the donor-advisor's advisory privileges to another person, that person also would be a donor-advisor. No particular form of appointment or designation would be necessary under the proposed regulations.

A donor-advisor generally would include a person suggested or recommended by a donor to have advisory privileges if the sponsoring organization provides such privileges. However, this rule would not apply if (1) the donor recommends an investment advisor who is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the DAF, as described in this section 1.C of this Explanation of Provisions of this preamble, or (2) the donor recommends a person to serve on a committee of the sponsoring organization that advises as to distributions or investments of amounts in a fund or account if the recommendation is based on objective criteria related to the expertise of the member in the particular field of interest or purpose of the fund or account, the committee consists of three or more individuals and a majority of the committee is not recommended by the donor or donor-advisor, and the recommended person is not a related person with respect to the recommending donor or donor-advisor, as discussed in section 1.D of this Explanation of Provisions of this preamble.

The proposed regulations include three special rules with respect to donor-advisors. First, a person (other than a person or governmental unit excepted from status as a donor) who establishes a fund or account and advises as to the distribution or investment of amounts in that fund or account would be treated as a donor-advisor with respect to that fund or account, regardless of whether the person contributes to the fund or account. For example, if a person establishes a memorial or fundraising fund to which the person does not contribute, but does provide advice regarding distributions from the fund, the person would be considered a donor-advisor. The donors to the fund have implicitly designated the advisor to have advisory privileges.

Second, an investment advisor described in section 4958(f)(8)(B)[7] that manages the investment of, or provides investment advice with respect to, both assets maintained in a DAF and the personal assets of a donor to that DAF (personal investment advisor) would be a donor-advisor with respect to the DAF while serving in that dual capacity, regardless of whether the donor appointed, designated, or recommended the personal investment advisor. However, recognizing that a personal investment advisor may more generally advise the sponsoring organization, the proposed regulations would provide that a personal investment advisor will not be considered a donor-advisor if the personal investment advisor is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the DAF. For example, if an investment advisor contracts with a sponsoring organization to provide services to all of its 1,000 DAFs, and the sponsoring organization reasonably charges the investment advisor's fees uniformly to all of those DAFs, the investment advisor would properly be viewed as providing services to the sponsoring organization as a whole.

The Treasury Department and the IRS request comments on additional circumstances that would indicate that a personal investment advisor is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the DAF, as well as additional circumstances in which a personal investment advisor should not be considered a donor-advisor.

One commenter suggested that an investment advisor recommended by a donor to the sponsoring organization should not be treated as a donor-advisor if the investment advisor is regulated by State and Federal agencies, because agency oversight makes it unlikely that the investment advisor would manipulate the assets of the DAF for personal gain. The commenter stated that an investment advisor that was considered a donor-advisor could not receive compensation from a DAF because that would be an excess benefit transaction under section 4958(c)(2).

While the commenter believes that it is unlikely that a regulated investment advisor would manipulate the assets of the DAF for personal gain, the Treasury Department and the IRS view the close relationship between a donor and his or her personal investment advisor as giving the donor influence over investment decisions with respect to assets held in the DAF comparable to that of a donor-advisor.

[7] Section 4958(f)(8)(B) defines investment advisor, with respect to any sponsoring organization, as any person (other than an employee of such organization) compensated by the organization for managing the investment of, or providing investment advice with respect to, assets maintained in DAFs owned by the organization.

Moreover, the Treasury Department and the IRS are concerned about potential conflicts of interest. Specifically, sponsoring organizations may allow the appointment of a donor's personal investment advisor as an advisor regarding the investment of DAF funds in order to encourage investment advisors to promote their clients' giving through a DAF, rather than directly to a public charity (other than the sponsoring organization). In fact, a counter-incentive may be created for both donors and their personal investment advisors to not advise distributions out of their DAFs to operating charities. Another significant concern is that a more than incidental benefit may occur if the investment advisor charges the donor a reduced fee for managing the donor's personal assets because the investment advisor also manages the assets the donor contributed to the DAF.

The Treasury Department and the IRS agree that a personal investment advisor that is considered a donor-advisor would be subject to the excess benefit transaction rules of section 4958(c)(2) if he or she received a grant, loan, compensation, or similar payment from the DAF.

Third, advisory committee members recommended by a donor and appointed by the sponsoring organization would be donor-advisors, except as discussed in section 1.D of this Explanation of Provisions of this preamble.

D. *Advisory Committees*

The Treasury Department and the IRS generally would regard service on a committee of a sponsoring organization that advises as to distributions from or investments of assets of a fund or account as a form of advisory privilege with respect to that fund or account in determining whether the fund is a DAF, even though the sponsoring organization controls the selection of committee members consistent with its ownership and control of the fund or account in accordance with section 4966(d)(2)(A)(ii). Recognizing that a fund or account, including a multiple-donor fund, as discussed in section 1.E of this Explanation of Provisions of this preamble, may sometimes be advised by an advisory committee that includes one or more donors, donor-advisors, related persons, or persons recommended by donors or donor-advisors to serve on the advisory committee, the proposed regulations would provide two special rules relating to advisory privileges arising from service on an advisory committee. Under these two special rules, a fund or account could be advised by a committee that may include one or more donors, donor-advisors, related persons, or persons recommended by donors or donor-advisors, without being a DAF.

First, when a sponsoring organization appoints a donor, donor-advisor, or related person to serve on an advisory committee, the donor, donor-advisor, or related person generally would have advisory privileges by reason of the donor's status as a donor. However, the proposed regulations would provide that a sponsoring organization's appointment of a donor, donor-advisor, or related person to be on a committee that advises as to distributions or investments of amounts in the fund or account will not be deemed to result in advisory privileges by reason of the donor's status as a donor if (1) the appointment is based on objective criteria related to the expertise of the appointee in the particular field of interest or purpose of the fund or account; (2) the committee consists of three or more individuals, not more than one-third of whom are related persons with respect to any of the others; and (3) the appointee is not a significant contributor to the fund or account, taking into account contributions by related persons with respect to the appointee,[8] at the time of appointment. If an appointee or related person is not a significant contributor to a fund or account at the time of appointment but becomes one shortly afterwards, the IRS may find that the person has advisory privileges based on the facts and circumstances. The Treasury Department and the IRS request comments on what constitutes a significant contributor for purposes of this exception.

Second, when a donor (or donor-advisor) recommends someone to serve on an advisory committee advising as to the distribution or investment of funds in the fund or account, that person would be considered a donor-advisor if the sponsoring organization appoints the recommended person to serve on the advisory committee. However, the proposed regulations would allow a donor (or donor-advisor) to recommend a person to serve as a member of an advisory committee of the sponsoring organization for the fund or account and not be considered to be a donor-advisor if (1) the recommendation is based on objective criteria related to the expertise of the member in the particular field of interest or purpose of the fund or account; (2) the committee consists of three or more individuals, and a majority of the committee is not recommended by the donor or donor-advisor; and (3) the recommended person is not a related person with respect to the recommending donor or donor-advisor.

The Treasury Department and the IRS request comments on the proposed advisory committee exceptions, including additional circumstances in which advisory privileges arising from advisory committees should not result in the creation of a DAF.

E. *Multiple-Donor Funds or Accounts*

Several commenters suggested excepting a fund or account to which multiple unrelated donors contributed from the definition of DAF. Commenters expressed concern that failing to provide an exception would affect charitable giving practices encouraged by alumni organizations or professional associations, as well as discourage the use of funds or accounts to incubate potential public charities. One commenter suggested that imposing various conditions, including that the fund or account have at least three unrelated donors; that the donations be aggregated into a single consolidated account balance; that no written or oral understanding exists that donors have advisory privileges corresponding to the amounts they donated to the fund or account; and that no single donor or group of related donors

[8] For example, if a donor is a significant contributor, a family member who is appointed to the committee also is considered a significant contributor, regardless of whether the family member actually contributed to the fund.

gave more than 35 percent of all donations, would prevent the vast majority of potential abuses of multiple-donor fund status while allowing most giving circles and giving pools maintained at public charities to avoid DAF status. Other commenters suggested that, without various safeguards, an exception for multiple-donor funds or accounts may permit abuses.

The Treasury Department and the IRS anticipate that, in most circumstances, a multiple-donor fund or account would be separately identified by reference to contributions of a specific donor or donors. However, even if separately identified, a multiple-donor fund or account would not be a DAF if no donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor. Furthermore, section 4966(d)(2)(B) and the proposed regulations include several special rules that may permit a multiple-donor fund or account to be excepted from definition as a DAF even if it doesn't meet one of the exceptions discussed in section 2 of this Explanation of Provisions of this preamble (such as funds or accounts making distributions only to a single identified organization or funds or accounts making certain grants to individuals for travel, study, or other similar purposes).

First, as indicated in section 1.A. of this Explanation of Provisions of this preamble, the proposed regulations would exclude certain entities from the definition of "donor." Specifically, the proposed regulations would define donor to exclude any public charity described in section 509(a)(1), (2), or (3) (other than a disqualified supporting organization) and (2) any governmental unit described in section 170(c)(1). If a fund or account has multiple donors but only a public charity or governmental unit has the right to exercise advisory privileges, then no donor, as defined by the proposed regulations, would have advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor. Thus, the fund or account would not be a DAF.

Second, as discussed in section 1.D of this Explanation of Provisions of this preamble, the proposed regulations would provide two special rules relating to advisory privileges arising from service on an advisory committee. These two rules would allow certain multiple-donor funds or accounts to be advised by a committee that may include one or more donors, donor-advisors, related persons, or persons recommended by donors or donor-advisors, without being a DAF.

The Treasury Department and the IRS request comments on whether and in what circumstances additional types of exceptions are warranted to allow multiple-donor funds or accounts to be excluded from the definition of DAF. The Treasury Department and the IRS are particularly interested in comments addressing how any exception for multiple-donor funds or accounts can be crafted to prevent circumvention of the provisions of section 4966 while still being administrable for both sponsoring organizations and the IRS.

2. Exceptions to the Definition of Donor Advised Fund

Consistent with section 4966(d)(2)(B), the proposed regulations generally would provide that a DAF does not include any fund or account that makes (1) distributions only to a single identified organization, or (2) certain grants to individuals for travel, study, or other similar purposes. These exceptions are discussed in sections 2.A. and 2.B. of this Explanation of Provisions of this preamble.

In addition, under section 4966(d)(2)(C), the Secretary has discretionary authority to exempt a fund or account from the definition of DAF if the fund or account is advised by a committee not directly or indirectly controlled by the donor or donor-advisor (and any related parties[9]) or if the fund or account benefits a single identified charitable purpose. The proposed regulations would provide two exceptions to the definition of DAF under this discretionary authority: (1) an exception for disaster relief funds consistent with the exception originally set forth in Notice 2006-109, with some modifications, and (2) an exception for certain scholarship funds whose committee is nominated by a section 501(c)(4) organization with a broad-based membership.

The Treasury Department and the IRS request comments on whether other funds should be excepted from the definition of DAF using the authority under section 4966(d)(2)(C) and what, if any, restrictions should apply to ensure that the intent of section 4966 is achieved.

A. *Single Identified Organization Exception*

Section 4966(d)(2)(B)(i) states that a fund or account that makes distributions only to a single identified organization or governmental entity is not a DAF. Several commenters suggested that a single identified organization should include an organization that is not described in section 501(c)(3), including a for-profit business and an organization described in section 501(c)(4), so long as the distributions to the organization or business are made for a charitable purpose described in section 170(c)(2)(B). The proposed regulations would provide that a fund or account will not be considered a DAF if, along with meeting the other requirements discussed in this section 2.A, it is established to make (and actually does make) distributions solely to a single identified organization that is either: (1) an organization described in sections 170(c)(2) and 509(a)(1), (2), or (3) (other than a disqualified supporting organization), or (2) a governmental entity described in section 170(c)(1) if the distribution is made exclusively for public purposes. The Treasury Department and the IRS are concerned that expanding the exception to include other types of organizations may allow circumvention of other tax provisions, such as the private foundation and charitable contribution deduction rules. Thus, the exception would not apply if the single identified organization is a private foundation, disqualified

[9] Section 4966 does not define the term "related parties" and otherwise uses the term "persons." Furthermore, another provision applicable to donor advised funds, section 4958, defines certain "persons" in connection with a DAF for purposes of excess benefit transactions. For consistency and administrability across the provisions applicable to DAFs, the proposed regulations use the term "related persons" rather than "related parties" and define "related persons" as those persons described in section 4958(f)(7)(B) and (C).

supporting organization, foreign organization, or non-charitable organization.

If the single identified organization loses its exempt status or ceases operating, the proposed regulations would provide rules similar to the rules found in §1.509(a)-4(d)(4)(i)(*a*) (allowing a supporting organization to substitute a new supported organization). A sponsoring organization would be permitted to substitute another single identified organization if the substitution is conditioned upon the occurrence of a loss of exemption, substantial failure or abandonment of operations, or a dissolution or reorganization that results in the named single identified organization ceasing to exist, and the event is beyond the direct or indirect control of donor(s), donor-advisor(s), or related persons.

Commenters suggested that the exception for a fund or account that makes distributions to a single identified organization should encompass distributions made to support that organization's activities and that a fund restricted to a specific charitable project should be considered a fund or account that makes distributions to a single identified organization. Commenters suggested that a fund should therefore be able to support the programs or activities of a single identified organization by making distributions to individuals directly (as long as the distributions are limited to those within the charitable class served by that single identified organization), or by receiving, holding and disbursing funds for a specific project or program conducted by the single identified organization, including making distributions to third parties for goods, services, and incidental grant-making limited to a particular project or program. For example, commenters suggested that the exception should apply to a scholarship fund that a donor establishes at a university and that provides scholarships and other grants solely to students at that university whom the donor has a role in selecting.

Under the proposed regulations, the sponsoring organization would be permitted to make distributions to the single identified organization for the single identified organization's activities (and only activities other than administering DAFs or grant-making) and, thus, to make distributions to fund a specific charitable project (other than administering DAFs or grant making) of the single identified organization. However, the sponsoring organization could not make distributions directly to third parties on behalf of the single identified organization, such as by making distributions to third parties for goods, services, or incidental grant-making for a particular project or program, because the statute requires that the fund or account make distributions only to the single identified organization.

Because a fund or account that falls within the single identified organization exception is not subject to the rules applicable to DAFs, the proposed regulations would provide that distributions to the single identified organization may not be used to administer DAFs or to make grants. In addition, the proposed regulations would provide that a fund or account will not be treated as making distributions only to a single identified organization if (1) a donor, donor-advisor, or related person has or reasonably expects to have, the ability to advise regarding distributions from the single identified organization to other individuals or entities, or (2) a distribution from the fund or account will provide, directly or indirectly, a more than incidental benefit (within the meaning of section 4967) to a donor, donor-advisor, or related person with respect to the fund or account. Thus, for example, if a donor establishes a fund to make distributions only to a single public charity, and the donor is on the Board of the public charity, then the fund would not be able to meet this exception because the donor has the ability to advise some or all of the distributions from the public charity to other entities.

Recognizing that a sponsoring organization may lack direct knowledge regarding the activities of the donor, donor-advisor, or related person with regard to the single identified organization, however, the proposed regulations would allow a sponsoring organization to rely on a certification from the donor that (1) no donor, donor-advisor, or related person has or reasonably expects to have, the ability to advise regarding distributions from the single identified organization to other individuals or entities, and (2) no distribution from the fund or account will provide, directly or indirectly, a more than incidental benefit (within the meaning of section 4967) to a donor, donor-advisor, or related person with respect to the fund or account, as long as the sponsoring organization lacks knowledge to the contrary.

The Treasury Department and the IRS request comments on whether additional guidance is needed on situations in which a fund or account is established at a public charity and the written agreement establishing the fund or account provides that the contributed amounts can only be used to support programs within that public charity, but the donor retains advisory privileges with respect to the public charity's use or investment of some or all of the funds. Section 4966(c)(2)(B) excepts from the definition of "taxable distribution" any distribution from a DAF to the sponsoring organization of the DAF; accordingly, any fund or account established at a public charity that is used to support operating programs of the public charity (rather than to make distributions to third parties) would not have any taxable distributions, if the fund or account were a DAF. For example, a donor who established a fund or account at a university could advise that contributions previously made to the fund or account be distributed to the university's scholarship program. However, if the donor were to want to have a role in advising on the selection of scholarship recipients then, to avoid a taxable distribution, the donor's involvement would need to meet the exception provided in section 4966(d)(2)(B)(ii) (discussed in section 2.B. of this Explanation of Provisions of this preamble).

B. *Statutory Scholarship Exception*

Under section 4966(d)(2)(B)(ii) the term "donor advised fund" does not include a fund or account that exclusively makes grants for travel, study, or other similar purposes, provided certain requirements are met. Consistent with section 4966(d)(2)(B)(ii), the proposed regulations would provide that, under this exception from the definition of a DAF, a donor or donor-advisor may provide advice as to which individuals receive grants for travel, study, or other similar purposes from a fund or account if (1) the person provides the advice exclusively in the person's capacity as a member of the

selection committee; (2) all the members of the selection committee are appointed by the sponsoring organization; (3) no combination of donor(s), donor-advisor(s), or related persons controls, directly or indirectly, the committee; and (4) all grants from the fund or account are awarded on an objective and nondiscriminatory basis pursuant to a written procedure approved in advance by the board of directors of the sponsoring organization and the procedure is designed to ensure that all grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g) and the regulations thereunder. The requirements in the regulations under section 4945(g) include the requirements that the group from which grantees are selected will ordinarily be sufficiently large to constitute a charitable class; that the members of the selection committee will not be in a position to derive a private benefit if certain potential grantees are selected over others; and that the sponsoring organization will maintain adequate records regarding the identification and selection of individual grantees. If a fund or account satisfies the requirements of the exception, a sponsoring organization may award a scholarship from the fund or account to an individual without subjecting the sponsoring organization or its fund managers to excise taxes under section 4966.

The proposed regulations would provide that whether a combination of donor(s), donor-advisor(s), or related persons controls, directly or indirectly, the selection committee is determined by looking to the substance, rather than the form, of any arrangement. Direct control would exist if donor(s), donor-advisor(s), or related persons, either alone or together, (1) can require the committee to take or refrain from taking any action; (2) control 50 percent or more of the total voting power of the committee; or (3) have the right to exercise veto power over the committee's decisions. Whether indirect control exists is determined by the facts and circumstances, including the nature of any relationships among members of the selection committee and with any donor, donor-advisor, or related person. For example, a committee would be "indirectly controlled" by a combination of donor(s), donor-advisor(s), or related persons if a majority of the selection committee is currently engaged by the donor, donor-advisor, or any related person in any employment or fiduciary capacity, whether as an employee or independent contractor, or recommended by a donor or donor-advisor and appointed to the selection committee based on other than objective criteria regarding the person's expertise, or a combination thereof.

One commenter recommended that a sponsoring organization be permitted to set reasonable uniform procedures for appointing members to selection committees, taking into account the size of the sponsoring organization, the number of grants from the scholarship fund, and other relevant facts and circumstances, rather than requiring action by the entire board. The proposed regulations would provide that, in appointing the members of the selection committee, a sponsoring organization may act through its board of directors, trustees, or other governing body, a committee appointed by its governing body, or an appropriate officer of the sponsoring organization.

The Treasury Department and the IRS are concerned that some employers may seek to use this statutory scholarship exception to grant employer-related scholarships in a manner that would otherwise not be considered a scholarship or fellowship grant subject to the provisions of section 117(a), or that would otherwise be a taxable expenditure under section 4945, by having a sponsoring organization administer their scholarship programs. *See*, *e.g.*, Rev. Proc. 76-47, 1976-2 C.B. 670, and Rev. Proc. 80-39, 1980-2 C.B. 772. The Treasury Department and the IRS request comments on whether additional guidance is needed to prevent avoidance of the employer-related scholarship rules or to address any potential private benefit arising from employer-related scholarship programs.

C. *Exception for Certain Scholarship Funds Established by Certain Section 501(c)(4) Organizations*

Several commenters asked for guidance relating to a scholarship fund of a sponsoring organization that receives contributions from a tax-exempt membership organization, such as a section 501(c)(4) social welfare organization. The commenters stated that, for example, Rotary Club scholarship funds are often established at community foundations and that these scholarship funds do not fit within the statutory scholarship committee exception provided by section 4966(d)(2)(B)(ii) because members of the section 501(c)(4) organization who may be donors to the fund comprise a majority of the scholarship selection committee. These commenters asked that the proposed regulations provide an additional exception allowing members of a section 501(c)(4) organization who are otherwise unrelated to one another to control the scholarship selection committee, particularly since it is difficult to find non-members willing to serve on the committee. The commenters noted that requiring Rotary Clubs to form a section 501(c)(3) organization to make distributions for Rotary scholarships would be an inefficient use of charitable resources and that sponsoring organizations can provide expertise on objective and charitable standards for selecting scholarship recipients.

The proposed regulations would provide an exception to the definition of DAF for a fund or account established by a broad-based membership organization described in section 501(c)(4) if six conditions are met. The conditions would substantially mirror the conditions in the statutory scholarship exception, except that donors may control the committee.

First, the fund or account's single identified charitable purpose must be to make grants to individuals for scholarships described in section 4945(g)(1).

Second, the selection of recipients of scholarships from the fund or account must be made by a selection committee the members of which are nominated by the section 501(c)(4) organization and approved in writing by the sponsoring organization. This requirement would allow the section 501(c)(4) organization to have input on the members of the selection committee, but would leave the final decision to the sponsoring organization that owns and controls the assets of the fund or account.

Third, the fund or account must serve a charitable class.

Fourth, like the statutory scholarship exception, recipients of grants from

the fund or account must be selected on an objective and nondiscriminatory basis, pursuant to a written procedure, approved in advance by the sponsoring organization's board of directors, that is designed to ensure that all the grants meet the requirements of section 4945(g)(1) and the regulations under section 4945 (other than advance approval by the IRS).

Fifth, no distribution may be made from the fund or account to (1) any director, officer, or trustee of the sponsoring organization of the fund, (2) any member of the fund's selection committee, (3) any member, honorary member, or employee of the section 501(c)(4) organization, or (4) any person related to anyone described in (1), (2), or (3).

Finally, the fund or account must maintain adequate records that demonstrate the recipients were selected on an objective and nondiscriminatory basis.

The Treasury Department and the IRS are concerned that not requiring the section 501(c)(4) organization to have a broad-based membership could allow a small group of persons to set up a section 501(c)(4) organization and use a fund or account at a sponsoring organization to grant scholarships to their selected recipients with tax-deductible contributions, circumventing the DAF rules. Given this concern, the Treasury Department and the IRS request comments on how to identify a broad-based membership organization described in section 501(c)(4), including factors such as the organization's number of members, criteria for selecting members, membership rights, and geographic coverage.

The Treasury Department and the IRS also request comments on whether and under what circumstances other organizations, such as section 501(c)(5) and 501(c)(6) organizations, use similar types of committee-advised scholarship funds and whether the exception should be extended to those organizations, recognizing that section 501(c)(4) organizations are formed to promote social welfare whereas section 501(c)(5) and section 501(c)(6) organizations are formed to further different purposes.

D. *Disaster Relief Exception*

Several commenters asked that the proposed regulations provide, consistent with Notice 2006-109, that an employer-sponsored disaster relief fund is not a DAF. Commenters also recommended that the exception be extended to disaster relief funds outside of the employment context and that the exception be extended to emergency hardship situations outside of the disaster relief context.

Since the determination of the existence of a qualified disaster under section 139 is not controlled by the sponsoring organization or the fund or account's advisory committee, the proposed regulations would exempt a non-employment based disaster relief fund. Thus, the proposed regulations would provide that both an employer-sponsored disaster relief fund and a disaster relief fund outside of the employment context are not DAFs, as long as the requirements of section 139 are met. In contrast, since the determination of the existence of an emergency hardship is controlled by the sponsoring organization or the fund or account's advisory committee, the proposed regulations would not extend the exception to emergency hardship funds.

To meet the disaster relief exception in the proposed regulations, six conditions must be met. The conditions substantially mirror the provisions in Notice 2006-109 (and the special rules generally for charitable assistance in qualified disasters) and the provisions of the statutory scholarship exception and the exception for certain scholarship funds established by section 501(c)(4) organizations.

First, the fund or account's single identified charitable purpose must be to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3).

Second, the fund or account must serve a charitable class.

Third, recipients of grants from the fund or account must be made by a selection committee not controlled by donors, donor-advisors, or related persons and for which all the members are appointed by the sponsoring organization. Alternatively, if the fund or account gives preference or priority to employees (or their family members) of an employer to receive grants, the majority of the selection committee must consist of persons who are not in a position to exercise substantial influence over the affairs of the employer (or adequate substitute procedures exist to ensure that any benefit to the employer is incidental and tenuous).

Fourth, the selection committee must select grant recipients based on objective and nondiscriminatory determinations of need pursuant to a written procedure approved in advance by the board of directors of the sponsoring organization.

Fifth, no distribution from the fund or account may result in more than an incidental benefit to (1) any director, officer, or trustee of the sponsoring organization of the fund or account; (2) any member of the fund or account's selection committee; or (3) any person related to a director, officer, or trustee of the sponsoring organization or a member of the selection committee.

Lastly, the sponsoring organization must maintain records that (1) demonstrate the need of the recipients for the disaster relief assistance provided, and (2) satisfy the requirements of section 6033(b)(14).[10]

3. Taxable Distributions

Section 4966(c)(1) defines a taxable distribution as any distribution from a DAF to (1) any natural person, or (2) any other person unless the distribution is for a purpose specified in section 170(c)(2)(B) and the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with section 4945(h).

Section 4966(c)(2) excepts from the term "taxable distribution" any distribution from a DAF to (1) any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), (2) the sponsoring organization of the DAF, or (3) any other DAF. The Treasury Department and the IRS expect that most distributions from DAFs are to organizations described in section 170(b)(1)(A) (but not to disqualified supporting

[10] Section 6033(b)(14), added in 2008, requires every section 501(c)(3) organization required to file an annual information return to furnish annually such information as the Secretary may require with respect to disaster relief activities.

organizations) and thus are not taxable distributions.

The proposed regulations incorporate the statutory definition of taxable distribution. In addition, the proposed regulations would set forth an anti-abuse rule providing that, if a series of distributions through intermediary distributees undertaken pursuant to a plan achieves a result that is inconsistent with the purposes of section 4966, the distributions are treated as a single distribution for purposes of section 4966. For example, if a donor advises a distribution, that the sponsoring organization subsequently makes, from a DAF to Charity X and the donor or the sponsoring organization arranges for Charity X to use the funds to make distributions to an individual recommended by the donor, the distribution would be a taxable distribution from the sponsoring organization to an individual.

Several commenters recommended that the term "distribution" be narrowly defined to include only a gratuitous transfer. These commenters requested that a purchase of goods or services by a sponsoring organization using funds from a DAF for charitable activity or fundraising would not be considered a distribution. One commenter asked that the term "distribution" be defined the same as the term "grant" in section 4945 and that it not include payments from a sponsoring organization using funds from a DAF to vendors for goods or services or employee compensation.

The proposed regulations do not adopt these suggestions and would construe the term "distribution" broadly. In particular, the proposed regulations would provide that the term "distribution" generally means any grant, payment, disbursement, or transfer, whether in cash or in kind, from a DAF. In addition, the proposed regulations would provide that any use of DAF assets that results in a more than incidental benefit to a donor, donor-advisor, or related person is a deemed distribution and thus generally would be a taxable distribution. The Treasury Department and the IRS note that distributions resulting in a more than incidental benefit to a donor, donor-advisor, or related person may also result in tax under section 4967. *See* Notice 2017-73, 2017-51 I.R.B. 562.

However, the proposed regulations would provide that (1) investments and (2) reasonable investment and grant-related fees generally are not distributions under this definition (unless they result in a more than incidental benefit as noted above).

Investments generally would not be treated as distributions under the proposed regulations because they typically merely reflect a change from one form of property to another. The Treasury Department and the IRS would consider investments for this purpose as including both debt and equity instruments held for the purpose of obtaining income or funds, including investments made partly for charitable purposes as described in Notice 2015-62, 2015-39 I.R.B. 411. However, an investment would not, for example, include a zero-interest loan, as there is no purpose of, or provision for, obtaining income or funds from the zero-interest loan. The Treasury Department and the IRS anticipate that a zero-interest loan would be a distribution under the proposed regulations and, unless made to a section 170(b)(1)(A) organization other than a disqualified supporting organization, would require expenditure responsibility by the sponsoring organization in order not to be a taxable distribution. The Treasury Department and the IRS request comments on how to further distinguish distributions from investments.

Reasonable investment and grant-related fees paid from DAF assets generally would not be considered distributions; however, an unreasonable grant-related or investment fee would be a deemed distribution and, thus, would be a taxable distribution. The Treasury Department and the IRS expect that whether a fee is reasonable would be determined by all the facts and circumstances. For example, an expense charged uniformly or ratably across all DAFs generally would be considered a reasonable fee and not a distribution. In addition, an expense charged solely to a particular DAF (such as an expense arising from an expenditure responsibility grant from the fund) may be reasonable, depending on the facts and circumstances. However, the proposed regulations would provide that an expense charged solely to a particular DAF that is paid, directly or indirectly, to a donor, donor-advisor, or related person with respect to the DAF, is a deemed distribution subject to sections 4966, 4958, and/or 4967.

A. *Distributions to Section 170(b)(1)(A) Organizations*

Section 4966(c)(2)(A) provides that a distribution to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization) is not a taxable distribution. Similar to existing guidance under §53.4945-5(a)(4), the proposed regulations w*ould* provide several categories of organizations treated as described in section 170(b)(1)(A) for purposes of section 4966(c)(2)(A).

First, an organization would be considered an organization described in section 170(b)(1)(A) if it is described in both sections 170(b)(1)(A) and 170(c)(2) (other than a disqualified supporting organization), without the requirement under section 170(c)(2)(A) that it be created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States. Thus, for example, a taxable organization that operates a for-profit school would not be treated as described in section 170(b)(1)(A) because the organization would not be described in section 170(c)(2).

Second, an organization that is a governmental unit described in section 170(b)(1)(A)(v) and 170(c)(1) (or an agency or instrumentality thereof, including an organization described in section 511(a)(2)(B)) would be considered an organization described in section 170(b)(1)(A), as long as the distribution to it is made for exclusively public purposes.

Third, a foreign government (or an agency or instrumentality thereof), or an international organization designated as such by Executive Order under 22 U.S.C. 288 would be treated as an organization described in section 170(b)(1)(A), as long as the distribution to it is made exclusively for purposes described in section 170(c)(2)(B).

One commenter asked that guidance expressly provide that DAFs may make grants to foreign organizations based on the same equivalency determinations that private foundations use for purposes

of determining whether a foreign organization is the equivalent of a domestic public charity. The proposed regulations would adopt this suggestion. Consistent with Rev. Proc. 2017-53, 2017–40 I.R.B. 263 (providing guidelines for equivalency determinations by, among others, sponsoring organizations of DAFs), the proposed regulations would provide that, prior to the distribution, a sponsoring organization may make a good faith determination that a foreign organization is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) using procedures similar to those procedures permitted for private foundation grantors under §53.4945-5(a)(5). Those procedures provide that a determination will ordinarily be a good faith determination if it is based on current written advice from a qualified practitioner and the organization reasonably relied in good faith on the written advice. If a sponsoring organization makes a good faith determination that a foreign organization is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization), the sponsoring organization would not need to exercise expenditure responsibility with respect to a distribution to that organization.

B. *Disqualified Supporting Organizations*

Section 4966(d)(4)(A)(i) defines any Type III non-functionally integrated supporting organization as a disqualified supporting organization with respect to any distribution.[11] Section 4966(d)(4)(A)(ii)(I) disqualifies any other type of supporting organization if the donor or any donor-advisor (and any related parties)[12] directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of the supporting organization. The Treasury Department and the IRS request comments on whether other entities should be included in the definition of disqualified supporting organization, using the authority under section 4966(d)(4)(A)(ii)(II) to designate other supporting organizations as disqualified, because a distribution to such organization is inappropriate if expenditure responsibility is not exercised to ensure the distribution is for a purpose specified in section 170(c)(2)(B).

C. *Distributions to Non-Section 170(b)(1)(A) Organizations or to Disqualified Supporting Organizations*

Under section 4966(c)(1)(B), a distribution to any entity not described in section 170(b)(1)(A), or to a disqualified supporting organization, will be a taxable distribution unless (1) the distribution is for a purpose specified in section 170(c)(2)(B) (generally, is for a charitable purpose), and (2) the sponsoring organization exercises expenditure responsibility with respect to the distribution in accordance with section 4945(h).

i. *Non-Charitable Purposes*

The proposed regulations would provide that purposes described in section 170(c)(2)(B) are treated as such whether or not carried out by an organization described in section 170(c). However, a distribution to be used for an activity prohibited under section 501(c)(3), or for an activity that would cause loss of tax exemption if it were a substantial part of a section 501(c)(3) organization's total activities, is not for a purpose specified in section 170(c)(2)(B). Thus, a distribution used for political campaign intervention activity or attempts to influence legislation would be considered to be for a purpose not specified in section 170(c)(2)(B)[13] and, thus, if made directly or to an entity not described in section 170(b)(1)(A), or to a disqualified supporting organization, would be a taxable distribution.

The proposed regulations would also include a requirement, similar to the requirement in §53.4945-6(c)(2), that a grant to an organization (other than one that is described in section 501(c)(3) and not in section 509(a)(4)) will not be considered to be for a purpose specified in section 170(c)(2)(B) unless the grantee agrees to separately account for grant funds (either by separately accounting for grant funds on its books or by segregating the grant funds). (Such grant funds must also be used for charitable purposes, consistent with the expenditure responsibility rules discussed in section 3.C.ii of this Explanation of Provisions of this preamble.)

ii. *Expenditure Responsibility*

Section 4966(c)(1)(B)(ii) requires sponsoring organizations to exercise expenditure responsibility in accordance with section 4945(h) for certain distributions. Thus, the proposed regulations cross-reference the section 4945(h) expenditure responsibility regulations applicable to private foundations, with one modification. In lieu of the requirements found in §53.4945-5(b)(3)(iv)(c) and (b)(4)(iv)(c) (pertaining to the recipient's permitted use of the funds), the distributee would be required to agree not to: (1) make a grant to an organization that does not comply with the expenditure responsibility requirements, (2) make a grant to a natural person, or (3) make a grant, loan, compensation, or other similar payment (as described in section 4958(c)(2)) to a donor, donor-advisor, or related person with respect to the DAF from which the distribution that is the subject of the agreement is made. For purposes of these rules pertaining to the secondary use of distributions, the definition of "grant" set forth in §53.4945-4(a)(2) would apply, rather than the broader definition of "distribution" found in proposed §53.4966-1(e). If the definition of "distribution" found in proposed §53.4966-1(e) applied, distributees would be required to exercise expenditure responsibility in the purchase of goods and services, which is not intended under the proposed rule.

The Treasury Department and the IRS request comments on this modification to the expenditure responsibility rules and whether additional guidance is needed.

4. Taxes on Taxable Distributions

Consistent with section 4966(a)(1), the proposed regulations would provide that an excise tax equal to 20 percent of

[11] In defining a disqualified supporting organization, the proposed regulations use the definitions of supporting organization types under the section 509(a)(3) regulations.

[12] *See* note 7.

[13] The Treasury Department and the IRS also note that allowing distributions from a DAF for lobbying or political campaign activity would contravene the charitable contribution deduction rules and private foundation restrictions.

the amount of the taxable distribution is imposed on each taxable distribution from a DAF. This excise tax is paid by the sponsoring organization of the DAF. The provisions of proposed §53.4966-2 are generally similar to those of §53.4958-1 and other chapter 42 excise tax regulations relating to the calculation of the tax on the organization and its managers.

In addition, consistent with section 4966(a)(2), the proposed regulations would provide that each fund manager who knowingly agrees to the making of a taxable distribution is liable for an excise tax equal to five percent of the amount of the taxable distribution, up to a maximum of $10,000 for any one taxable distribution. If more than one fund manager is liable for the excise tax, all such persons would be jointly and severally liable for that tax. The proposed regulations, consistent with section 4966(d)(3), would define a fund manager as (1) an officer, director, or trustee of the sponsoring organization, or any individual with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, regardless of title, and (2) with respect to any act (or failure to act), the employee having authority or responsibility (either individually or as a member of a collective body) for such act (or failure to act). An example of a failure to act by a fund manager resulting in a taxable distribution would be a failure to exercise expenditure responsibility if required.

The proposed regulations would provide that the agreement of any fund manager to the making of a taxable distribution consists of any manifestation of approval of the distribution that is sufficient to constitute an exercise of the fund manager's authority to approve, or authority to exercise discretion in recommending approval of, the making of the distribution by the sponsoring organization, whether or not it is the final or decisive act on behalf of the sponsoring organization.

A fund manager generally would be considered to have agreed to the making of a distribution with knowledge that it is a taxable distribution only if the manager (1) is in fact aware that it is a taxable distribution; or (2) has knowledge of facts sufficient to determine that, based on those facts, the distribution would be a taxable distribution and negligently fails to make reasonable attempts to ascertain whether the distribution is a taxable distribution. A fund manager generally would not be considered to have negligently failed to make reasonable attempts to ascertain whether a distribution is a taxable distribution if the distribution is made to an organization listed as an organization described in section 170(b)(1)(A) (other than a supporting organization) on the IRS's search tool, Tax Exempt Organization Search (Pub 78 data) (or if, with respect to a supporting organization, it gathers information to determine that the organization is not a disqualified supporting organization).

The Treasury Department and the IRS request comments on whether guidance is needed regarding a fund manager's reliance on professional advice.

Proposed Applicability Date

These regulations are proposed to be applicable to taxable years ending after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. A taxpayer may rely on these proposed regulations for taxable years ending before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

The guidance these proposed regulations would provide with respect to disaster relief funds generally would be consistent with the guidance provided in section 5.01 of Notice 2006-109. However, in certain instances these proposed regulations would modify the guidance provided in Section 5.01 of Notice 2006-109. For taxable years ending before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**, taxpayers may rely on the guidance provided in section 5.01 of Notice 2006–109 or, alternatively, on these proposed regulations, including for periods prior to November 14, 2023.

Special Analyses

I. *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.

II. *Paperwork Reduction Act*

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 16, 2024.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in these proposed regulations are as follows. Section 53.4966-4(a)(4)(ii) allows a sponsoring organization to rely on a certification from the donor that all distributions satisfy the special rules relating to the single identified organization exception. Section 53.4966-4(b), (c), and (d) require

an organization with a fund excepted from the definition of a DAF to maintain records regarding recipients and the selection process for recipients. Section 53.4966-4(c) also requires the organization to approve in writing the selection committee whose members are nominated by a section 501(c)(4) organization. Section 53.4966-5(c) allows a sponsoring organization to avoid a taxable distribution to certain foreign organization distributees if it makes a good faith determination regarding their tax-exempt status. Section 53.4966-5(a)(1)(ii)(B) requires a sponsoring organization to exercise expenditure responsibility with respect to certain distributions.

The expected recordkeepers are sponsoring organizations of DAFs described in section 4966(d)(1), other organizations described in section 4966(d)(1)(A) and (B) that maintain funds excepted from the definition of a DAF under section 4966(d)(2)(B) or (C) (and certain donors to funds described in section 4966(d)(2)(B)(i)), foreign organization distributees that are the subject of equivalency determinations by sponsoring organizations, and recipients of expenditure responsibility distributions.

Estimated number of recordkeepers: 13,961.

Estimated average annual burden per recordkeeper: 3 hours, 47 minutes.

Estimated total annual recordkeeping burden: 52,874 hours.

Estimated annual frequency of responses: occasional.

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.

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 26 U.S.C. 6103.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations will not impact a substantial number of small entities. Based on IRS Statistics of Income data for 2019, there are 1,365,744 active nonprofit charitable organizations, of which 1,624 self-identified as sponsoring organizations of donor advised funds (DAFs). Another 82 organizations reported no DAFs but one or more funds similar to DAFs, for a total of 1,706 organizations reporting DAFs or funds similar to DAFs. Any economic impact stems from the collection of information under §§53.4966-4(a)(4)(ii); 53.4966-4(c)(2), (4), and (6); 53.4966-4(d)(4) and (6); and 53.4966-5(a)(1)(ii)(B) and (c)(2). The universe of sponsoring organizations that would be affected by the collection of information under §§53.4966-4(a)(4)(ii); 53.4966-4(c)(2), (4), and (6); 53.4966-4(d)(4) and (6); and 53.4966-5(a)(1)(ii)(B) and (c)(2) is a small subset of all sponsoring organizations, since those provisions apply to limited exceptions to DAF status, to foreign organizations determined to be the equivalent of a U.S. public charity, or to organizations receiving distributions for which expenditure responsibility is exercised. Thus, the number of organizations that will be affected by the collection of information under §§53.4966-4(a)(4)(ii); 53.4966-4(c)(2), (4), and (6); 53.4966-4(d)(4) and (6); and 53.4966-5(a)(1)(ii)(B) and (c)(2) will not be substantial. In 2019, of the 1,365,744 active nonprofit charitable organizations, 1,706 organizations reported 988,718 DAFs and 72,144 non-DAF funds similar to DAFs. We estimate that of the 72,144 non-DAF funds reported for 2019, 1.5 percent or 1082 will be section 501(c)(4) scholarship funds subject to the collection of information in §53.4966-4(c)(2), (4), and (6), and that these funds will be maintained by a significantly small subset of the 1,706 total organizations reporting DAFs or funds similar to DAFs. In 2019, 0.3 percent of the 1,365,744 active nonprofit charitable organizations reported disaster relief preparedness as their primary mission. Thus, we estimate that 0.3 percent or five of the 1,706 organizations may sponsor disaster relief funds subject to the collection of information in §53.4966-4(d)(4) and (6). Any costs incurred in meeting the collections of information applicable to section 501(c)(4) scholarship funds and disaster relief funds would be considerably less than the costs incurred in establishing and running a separate section 501(c)(3) organization, which would be the alternative means of providing the same benefits through a nonprofit charitable organization. In addition, based on IRS Statistics of Income data for 2019, of the 1,624 self-identified sponsoring organizations, an estimated 446 organizations made grants to foreign organizations pursuant to equivalency determinations subject to the collection in §53.4966-5(c)(2). An indeterminate number of foreign organizations receiving grants from the 446 grant-making organizations also would be subject to the collection of information in §53.4966-5(c)(2). The provisions of §53.4966-5(c)(2) relieve both sponsoring organizations and foreign organizations of the statutory expenditure responsibility requirements under section 4966(c)(1)(B)(ii) that would otherwise apply to grants to foreign organizations and that most organizations prefer to avoid. Based on the 2019 annual returns of private foundations, we estimate that very few sponsoring organizations make grants requiring expenditure responsibility. For these reasons, pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6), the Secretary hereby certifies that this rule will not have significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact this rule may have on small entities.

Pursuant to section 7805(f) of the Code, this proposed rule has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small entities.

IV. *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 in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $190 million. The proposed regulations do not propose any rule that would 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.

V. *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. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, and specifically request comments on the clarity of the proposed rules and how they can be made easier to understand, as well as on the proposed transition relief, including whether and in what circumstances additional transition guidance or relief may be necessary. All 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 that timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place of the 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

Announcement 2023-16, Notices 2006-109, 2007-21, 2015-62, and 2017-73, and Revenue Procedures 76-47, 80-39, and 2017-53 are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

Drafting Information

The principal author of these regulations is Ward L. Thomas, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 53 as follows:

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 53.4966-0 through 53.4966-6 are added to read as follows:

Sec.

* * * * *

53.4966-0 Outline of regulations.

53.4966-1 Definitions.

53.4966-2 Taxes on taxable distributions.

53.4966-3 Definition of donor advised fund.

53.4966-4 Exceptions to the definition of donor advised fund.

53.4966-5 Taxable distributions.

53.4966-6 Applicability date.

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§53.4966-0 Outline of regulations.

This section lists the paragraphs in §§53.4966-1 through 53.4966-6.

§53.4966-1 Definitions.

(a) In general.
(b) Contribution.
(c) Disqualified supporting organization.
(d) Distributee.
(e) Distribution.
(1) In general.
(2) Deemed distribution.
(f) Donor.
(g) Donor advised fund.
(h) Donor-advisor.
(1) In general.
(2) Person who establishes fund or account.
(3) Personal investment advisors.
(i) In general.
(ii) Exception.
(4) Donor-recommended advisory committee member.
(i) Fund manager.
(1) In general.
(2) Delegation of authority.
(j) Related persons.
(k) Section 4966 regulations.
(l) Sponsoring organization.
(m) Taxable distribution.

§53.4966-2 Taxes on taxable distributions.

(a) In general.
(b) Taxes paid by the sponsoring organization.
(c) Taxes paid by fund managers.
(1) In general.
(2) Agreement.
(3) Knowledge.
(4) Joint and several liability.
(5) Limit on liability for managers.

§53.4966-3 Definition of donor advised fund.

(a) In general.
(b) Separate identification by reference to contributions of a donor or donors.
(1) In general.
(2) Facts and circumstances tending to show that a fund or account is separately identified.
(3) Commingling.
(c) Advisory privileges.
(1) In general.
(i) Facts and circumstances.
(ii) Application to entire fund or account.
(iii) Donor, donor-advisor, or related person appointed to an advisory committee.
(A) In general.
(B) Exception.
(iv) Officers, etc. of sponsoring organization.
(v) Deemed advisory privileges.
(2) Facts sufficient to find advisory privileges.
(d) Substance over form.
(e) Examples.

§53.4966-4 Exceptions to the definition of donor advised fund.

(a) Funds or accounts that make distributions only to a single identified organization.
(1) In general.
(2) Single identified organization.
(3) Distributions to a single identified organization.
(4) Special rules.
(i) In general.
(ii) Certifications.
(5) Substitution for specified organization.
(6) Examples.
(b) Certain funds or accounts that grant scholarships.
(1) In general.
(2) Control of committee.
(i) In general.
(ii) Direct control.
(iii) Indirect control.
(3) Appointing members of the selection committee.
(4) Examples.
(c) Certain scholarship funds established by certain section 501(c)(4) organizations.
(d) Certain disaster relief funds.

§53.4966-5 Taxable distributions.

(a) Taxable distributions.
(1) In general.
(2) Non-taxable distributions.
(3) Special rule.
(b) Distribution for purpose not specified in section 170(c)(2)(B).
(1) In general.
(2) Grants to noncharitable organizations.
(c) Organizations described in section 170(b)(1)(A).
(1) In general.
(2) Certain foreign organizations.
(d) Expenditure responsibility.
(1) In general.
(2) Special rules.
(i) Non-applicability of certain Code provisions.
(ii) Substituted terms.
(iii) Additional modifications.

§53.4966-6 Applicability date.

§53.4966-1 Definitions.

(a) *In general*. The definitions in paragraphs (b) through (m) of this section apply for purposes of section 4966 of the Internal Revenue Code (Code) and the section 4966 regulations.

(b) *Contribution*. The term *contribution* means any gift, bequest, or similar payment or transfer, whether in cash or in-kind, to or for the use of a sponsoring organization.

(c) *Disqualified supporting organization*. With respect to any distribution, the term *disqualified supporting organization* means—

(1) Any Type III supporting organization, as defined in section 4943(f)(5)(A) of the Code and the regulations under section 509(a)(3) of the Code, that is not a functionally integrated Type III supporting organization, as defined in section 4943(f)(5)(B) and the regulations under section 509(a)(3) (*see* §1.509(a)-4(i) of this chapter); and

(2) Any other supporting organization described in section 509(a)(3) if a donor or donor-advisor with respect to the donor advised fund (either alone or together with related persons) directly or indirectly controls a supported organization (as defined in section 509(f)(3)) of the supporting organization. For purposes of this paragraph (c), a supported organization will be considered controlled by a donor or donor-advisor with respect to the donor advised fund if that donor or donor-advisor, either alone or by aggregating votes or positions of authority with related persons, may require the supported organization to perform any act that significantly affects its operations or may prevent the supported organization from performing any such act. The supported organization will be considered to be controlled directly or indirectly by a donor or donor-advisor with respect to the donor advised fund, either alone or together with related persons, if the voting power of such persons is 50 percent or more of the total voting power of the governing body of such supported organization or if one or more of such persons have the right to exercise veto power over the actions of the governing body of the supported organization. However, all pertinent facts and circumstances will be taken into consideration in determining whether one or more persons do in fact directly or indirectly control the supported organization.

(d) *Distributee*. The term *distributee* means any person, governmental entity, or donor advised fund receiving a distribution.

(e) *Distribution*—(1) *In general*. The term *distribution* means any grant, payment, disbursement, or transfer, whether in cash or in kind, from a donor advised fund. Except as provided in paragraph (e)(2) of this section, investments and reasonable investment or grant-related fees are not considered distributions.

(2) *Deemed distribution*. A distribution includes any use of donor advised fund assets that results in a more than incidental benefit (within the meaning of section 4967) to a donor, donor-advisor, or related person. In addition, a distribution includes an expense charged solely to a particular donor advised fund that is paid, directly or indirectly, to a donor, donor-advisor, or related person with respect to the donor advised fund.

(f) *Donor*. The term *donor* means any person described in section 7701(a)(1) of the Code that makes a contribution to a fund or account of a sponsoring

organization, other than a contributor that is a governmental unit described in section 170(c)(1) of the Code or an organization described in section 509(a)(1), (2), or (3) that is not a disqualified supporting organization.

(g) *Donor advised fund*. *See* §53.4966-3 for the definition of donor advised fund. *See* §53.4966-4 for exceptions to the definition of donor advised fund.

(h) *Donor-advisor*—(1) *In general*. The term *donor-advisor* means a person appointed or designated by a donor to have advisory privileges regarding the distribution or investment of assets held in a fund or account of a sponsoring organization. If a donor-advisor delegates any of the donor-advisor's advisory privileges to another person, or appoints or designates another donor-advisor, that person is also a donor-advisor. No particular form of appointment or designation is necessary. Except as provided in paragraphs (h)(3)(ii) and (h)(4) of this section, a donor-advisor includes a person recommended by a donor or donor-advisor to have advisory privileges if the sponsoring organization provides such privileges.

(2) *Person who establishes fund or account*. A person (other than a person or governmental unit excepted from status as a donor under paragraph (f) of this section) who establishes a fund or account and advises as to the distribution or investment of amounts in that fund or account will be treated as a donor-advisor with respect to that fund or account, regardless of whether the person contributes to the fund or account.

(3) *Personal investment advisors*—(i) *In general*. An investment advisor defined in section 4958(f)(8)(B) of the Code who manages the investment of, or provides investment advice with respect to, both the assets maintained in a donor advised fund and the personal assets of a donor to that donor advised fund (personal investment advisor) will be treated as a donor-advisor with respect to the donor advised fund while serving in that dual capacity regardless of whether the donor appointed, designated, or recommended the personal investment advisor.

(ii) *Exception*. A personal investment advisor is not considered a donor-advisor if the personal investment advisor is properly viewed as providing services to the sponsoring organization as a whole, rather than providing services to the donor advised fund.

(4) *Donor-recommended advisory committee member*. A person recommended by a donor or donor-advisor and appointed by the sponsoring organization to serve as a member of a committee of the sponsoring organization that advises as to distributions or investments of amounts in a fund or account is a donor-advisor unless—

(i) The recommendation is based on objective criteria related to the expertise of the member in the particular field of interest or purpose of the fund or account;

(ii) The committee consists of three or more individuals, and a majority of the committee is not recommended by the donor or donor-advisor; and

(iii) The recommended person is not a related person with respect to the recommending donor or donor-advisor.

(i) *Fund manager*—(1) *In general*. The term *fund manager* means, with respect to any sponsoring organization—

(i) An officer, director, or trustee of the sponsoring organization or any person having authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization; or

(ii) With respect to any act (or failure to act) resulting in a taxable distribution, the employee who has final authority or responsibility (either individually or as a member of a collective body) for the act (or failure to act).

(2) *Delegation of authority*. A person has authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization within the meaning of paragraph (i)(1)(i) of this section if, with respect to an act (or failure to act) resulting in a taxable distribution, he or she has been delegated final authority or responsibility with respect to the act by an officer, director, or trustee of the sponsoring organization or by the governing body of the sponsoring organization. For example, an investment manager is a fund manager with respect to a taxable distribution if the sponsoring organization's governing body delegated to the investment manager the final authority to make certain investment decisions and, in the exercise of that authority, the manager committed the sponsoring organization to making a taxable distribution. To be considered to have authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization within the meaning of paragraph (i)(1)(i) of this section, a person need not be an employee of the sponsoring organization. A person does not have authority or responsibility similar to that exercised by an officer, director, or trustee of a sponsoring organization within the meaning of paragraph (i)(1)(i) of this section if the person is merely implementing a decision made by a superior.

(j) *Related persons*. With respect to any individual, the term *related person* means a family member of the individual (as defined in section 4958(f)(4)). With respect to any person or persons, the term *related person* also means a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting *such person or persons or their family members* for *persons described in subparagraph (A) or (B) of paragraph (1)* in section 4958(f)(3)(A)(i)). *See* section 4958(f)(7)(B) and (C).

(k) *Section 4966 regulations*. The term *section 4966 regulations* means this section and §§53.4966-2 through 53.4966-6.

(l) *Sponsoring organization*. The term *sponsoring organization* means any organization that—

(1) Is described in section 170 (other than a governmental unit described in section 170(c)(1)), without the requirement under section 170(c)(2)(A) that it be created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(2) Is not a private foundation (as defined in section 509(a) and the regulations under section 509(a)); and

(3) Maintains one or more donor advised funds.

(m) *Taxable distribution*. *See* §53.4966-5 for the definition of taxable distribution.

§53.4966-2 Taxes on taxable distributions.

(a) *In general*. Section 4966 of the Internal Revenue Code imposes two excise taxes with respect to taxable distributions from a donor advised fund.

Paragraph (b) of this section describes the excise tax under section 4966(a)(1) imposed on a sponsoring organization of a donor advised fund. Paragraph (c) of this section describes the excise tax under section 4966(a)(2) imposed on a fund manager who knowingly agrees to a taxable distribution.

(b) *Taxes paid by the sponsoring organization*. For each taxable distribution, the excise tax imposed by section 4966(a)(1) is equal to 20 percent of the amount of the taxable distribution from a donor advised fund. The tax imposed by section 4966(a)(1) (20-percent section 4966 tax) is paid by the sponsoring organization of the donor advised fund.

(c) *Taxes paid by fund managers*—(1) *In general*. For each taxable distribution with respect to which section 4966(a)(1) imposes an excise tax, the excise tax imposed by section 4966(a)(2) is equal to five percent of the amount of the taxable distribution on the agreement of any fund manager who agreed to the making of the taxable distribution with knowledge that it is a taxable distribution as described in paragraph (c)(3) of this section. The tax imposed by section 4966(a)(2) (five-percent section 4966 tax) is paid by the fund manager or managers who agreed to the making of the taxable distribution.

(2) *Agreement*. The agreement of any fund manager to the making of a taxable distribution consists of any manifestation of approval of the distribution that is sufficient to constitute an exercise of the fund manager's authority to approve, or to exercise discretion in recommending approval of, the making of the distribution by the sponsoring organization, whether or not the manifestation of approval is the final or decisive approval on behalf of the sponsoring organization.

(3) *Knowledge*. For purposes of section 4966(a)(2), a fund manager agrees to the making of a distribution with knowledge that it is a taxable distribution only if the manager either—

(i) Is in fact aware that it is a taxable distribution; or

(ii) Has knowledge of facts sufficient to determine that, based on those facts, the distribution would be a taxable distribution and negligently fails to make reasonable attempts to ascertain whether the distribution is a taxable distribution.

(4) *Joint and several liability*. In any case in which more than one fund manager is liable for the five-percent section 4966 tax, all such fund managers are jointly and severally liable for the five-percent section 4966 taxes imposed with respect to that distribution.

(5) *Limit on liability for managers*. The maximum aggregate amount of five-percent section 4966 tax collectible for any one taxable distribution is $10,000.

§53.4966-3 Definition of donor advised fund.

(a) *In general*. Except as provided in §53.4966-4, the term *donor advised fund* means a fund or account—

(1) That is separately identified by reference to contributions of a donor or donors in accordance with paragraph (b) of this section;

(2) That is owned and controlled by a sponsoring organization; and

(3) With respect to which at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor in accordance with paragraph (c) of this section.

(b) *Separate identification by reference to contributions of a donor or donors*—(1) *In general*. A fund or account is separately identified by reference to contributions of a donor or donors if the sponsoring organization maintains a formal record of contributions to the fund or account relating to a donor or donors. If there is no formal record, whether a fund or account is separately identified by reference to contributions of a donor or donors is based on all the facts and circumstances.

(2) *Facts and circumstances tending to show that a fund or account is separately identified*. Facts and circumstances that are relevant in determining that a fund or account is separately identified by reference to contributions of a donor or donors include—

(i) The fund or account balance reflects items such as contributions, dividends, interest, distributions, administrative expenses, and gains and losses (realized or unrealized);

(ii) The fund or account is named after one or more donors, donor-advisors, or related persons;

(iii) The sponsoring organization refers to the fund or account as a donor advised fund;

(iv) The sponsoring organization has an agreement or understanding with one or more donors or donor-advisors that the fund or account is a donor advised fund;

(v) One or more donors or donor-advisors regularly receive a fund or account statement from the sponsoring organization; and

(vi) The sponsoring organization generally solicits advice from the donor(s) or donor-advisor(s) before it makes distributions from the fund or account.

(3) *Commingling*. A fund or account does not fail to be a donor advised fund merely because the sponsoring organization commingles the assets attributed to the fund or account with other assets of the sponsoring organization, as long as the sponsoring organization treats the fund or account as attributable to contributions of a donor or donors.

(c) *Advisory privileges*—(1) *In general*—(i) *Facts and circumstances*. Under section 4966(d)(2)(A)(iii) of the Internal Revenue Code (Code), at least one donor or donor-advisor must have, or reasonably expect to have, advisory privileges by reason of the donor's status as a donor. A donor or donor-advisor may have, or reasonably expect to have, advisory privileges even in the absence of actual provision of advice. The existence of advisory privileges, or the reasonable expectation thereof, is based on all the facts and circumstances, which in turn depend on the conduct (and any agreement or understanding) of both the donor(s) or donor-advisor(s) and the sponsoring organization. Advisory privileges include those arising from service on an advisory committee. If a donor or donor-advisor has, or reasonably expects to have, advisory privileges as defined in this paragraph (c), then the advisory privileges are deemed to be by reason of the donor's status as a donor except as otherwise provided in this paragraph (c).

(ii) *Application to entire fund or account*. If at least one donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to a fund or account or any portion of a fund or

account, advisory privileges by reason of the donor's status as a donor exist with respect to that fund or account even if there are multiple donors to the fund or account.

(iii) *Donor, donor-advisor, or related person appointed to an advisory committee*—(A) *In general*. A sponsoring organization's appointment of a donor, donor-advisor, or related person to be on a committee of persons that advises as to distributions or investments of amounts in the fund or account will be deemed to result in advisory privileges by reason of the donor's status as a donor unless–

(*1*) The appointment is based on objective criteria related to the expertise of the appointee in the particular field of interest or purpose of the fund or account;

(*2*) The committee consists of three or more individuals, not more than one-third of whom are related persons with respect to any member of the committee; and

(*3*) The appointee is not a significant contributor to the fund or account, taking into account contributions by related persons with respect to the appointee, at the time of appointment.

(B) *Exception*. An appointee may be deemed to have advisory privileges by reason of a donor's status as a donor based on the facts and circumstances, such as if the appointee was not a significant contributor to a fund or account at the time of appointment but became a significant contributor shortly thereafter.

(iv) *Officers, etc. of sponsoring organization*. Advice provided solely in a person's capacity as an officer, director, employee (or in a similar capacity) of a sponsoring organization does not by itself give rise to advisory privileges by reason of a donor's status as a donor. However, if an officer, director, or employee of the sponsoring organization is allowed to advise how to distribute or invest amounts in a fund or account because of such person's contributions to the fund or account, such person will be considered to have advisory privileges by reason of the person's status as a donor with respect to that fund or account.

(v) *Deemed advisory privileges*. Except as provided in paragraph (c)(1)(iv) of this section, if a donor is the sole person with advisory privileges with respect to a fund or account, the advisory privileges will be deemed to be by reason of the donor's status as a donor.

(2) *Facts sufficient to find advisory privileges*. A donor or donor-advisor has advisory privileges by reason of the donor's status as a donor, regardless of whether they are exercised, if—

(i) The sponsoring organization allows a donor or donor-advisor to provide nonbinding recommendations regarding distributions from, or regarding the investment of assets held in, a fund or account;

(ii) A written agreement between the sponsoring organization and a donor or a donor-advisor states that a donor or donor-advisor has advisory privileges;

(iii) A written document or any marketing material made available to a donor or donor-advisor indicates that a donor or donor-advisor may provide advice to the sponsoring organization regarding the distribution or investment of amounts held by a sponsoring organization (for example, a pre-approved list of investment options or distributees that the sponsoring organization provides to a donor or donor-advisor); or

(iv) The sponsoring organization generally solicits advice from a donor or donor-advisor regarding the distribution or investment of amounts held in a fund or account.

(d) *Substance over form*. The Commissioner may look to the substance of an arrangement, not merely its form, in determining whether the arrangement is a donor advised fund.

(e) *Examples*. The following examples illustrate the principles of this section (in each example, assume that the funds or accounts at issue are owned and controlled by the sponsoring organization):

(1) *Example 1*. A, B, and C are unrelated donors who jointly establish Fund X at sponsoring organization Y. A, B, and C each make equal contributions to Fund X and each have advisory privileges with respect to all of the assets in Fund X. Y sends A monthly account statements showing Fund X's account balance and any transactions in the account. A shares information about Fund X with B and C when asked or as needed. Fund X is separately identified by reference to contributions of donors and is a donor advised fund.

(2) *Example 2*. Assume the same facts as paragraph (e)(1) of this section (*Example 1*), except that A makes 70 percent of the contributions, B 20 percent, and C 10 percent, with each having advisory privileges with respect to all of the assets in Fund X. Fund X is separately identified by reference to contributions of donors and is a donor advised fund.

(3) *Example 3*. In Year 1, X, a governmental entity described in section 170(c)(1), and Y, a public charity described in section 509(a)(1) of the Code, establish and fully fund Fund M at sponsoring organization A. Fund M is separately identified with respect to X and Y. However, because neither X nor Y is a donor, Fund M is not separately identified by reference to contributions of a donor or donors and is not a donor advised fund.

(4) *Example 4*. Assume the same facts as paragraph (e)(3) of this section (*Example 3*), except that in Year 2 individual donors contribute to Fund M. Only X and Y have advisory privileges with respect to the distribution or investment of amounts held in Fund M. Because no donor or donor-advisor has advisory privileges with respect to Fund M, Fund M is not a donor advised fund.

(5) *Example 5*. F, an individual, is a donor to Fund T, a multiple-donor fund at sponsoring organization X. F is also a director of X who provides investment advice that affects all funds at X in his capacity as a director. F will not be considered to have advisory privileges with respect to Fund T solely because of F's duties as director of X.

(6) *Example 6*. Assume the same facts as paragraph (e)(5) of this section (*Example 5*), except that by reason of F's contribution to Fund T, F is appointed to a committee that advises how to distribute or invest amounts in Fund T. F has advisory privileges with respect to Fund T by reason of F's status as a donor.

(7) *Example 7*. Sponsoring organization Y has established Fund P, which is dedicated to the relief of poverty in City Z. Fund P is advised by a 5-member committee selected by Y from residents of City Z, potentially including donors to Fund P. The committee is comprised of community leaders and other persons with special knowledge or experience in the relief of poverty. Each committee member serves for a term of three years and cannot serve more than two terms. No committee member is related to another committee member and no committee member is (together with related persons with respect to any committee member) a significant contributor to Fund P. Over 100 citizens of City Z have contributed to Fund P. Y maintains a formal record of donors to Fund P and amounts contributed, and thus Fund P is separately identified by reference to contributions of donors. However, under the circumstances, no person who serves on the advisory committee of Fund P is deemed to have advisory privileges by reason of a donor's status as a donor. Fund P is not a donor advised fund.

(8) *Example 8*. Fifteen unrelated individuals establish Fund Q at sponsoring organization T. Each individual contributes to Fund Q, and these individuals constitute a committee appointed by T to advise on investments and distributions from Fund Q. T regularly issues a statement to one of the committee members (who shares the information with the others) showing the account balance and any transactions with Fund Q. Fund Q is a donor advised fund.

(9) *Example 9*. Assume the same facts as in paragraph (e)(8) of this section (*Example 8*), except that the advisory committee consists of three of the donors, rotated annually. Fund Q is a donor advised fund.

(10) *Example 10*. N, an individual, establishes Fund O at W, a sponsoring organization. Fund O

serves as a memorial to N's daughter, and receives many contributions from unrelated individuals. N is the only person with advisory privileges and thus is a donor advisor. Fund O is a donor advised fund.

(11) *Example 11*. F, an individual, establishes Fund R at T, a sponsoring organization, to provide scholarship grants for the advancement of science at local secondary schools. F is the sole donor to Fund R. Pursuant to F's recommendation, an advisory committee consisting of five persons is solely responsible for advising T with respect to the distribution and investment of amounts held in Fund R. F recommends (and T appoints) two individuals who are the heads of the science departments of those schools, neither of whom is related to F. T independently appoints the other three committee members, none of whom are recommended by donors or related to donors. The persons recommended by F for committee membership are not donor-advisors because F's recommendations are for individuals who are not related persons with respect to F, who, based on objective criteria, have expertise in the field of interest of Fund R, the committee consists of more than two individuals, and a majority of the committee is not recommended by F. Because no donor or donor-advisor has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the fund or account by reason of the donor's status as a donor, Fund R is not a donor advised fund.

§53.4966-4 Exceptions to the definition of donor advised fund.

(a) *Funds or accounts that make distributions only to a single identified organization*—(1) *In general*. The term donor advised fund does not include any fund or account that is established by written agreement to make (and that actually does make) distributions only to a single identified organization as defined in paragraph (a)(2) of this section, and that meets the other requirements of this paragraph (a).

(2) *Single identified organization*. For purposes of this paragraph (a), the term *single identified organization* means an organization that is described in sections 170(c)(2) and 509(a)(1), (2), or (3) of the Internal Revenue Code (Code) (other than a disqualified supporting organization), or that is a governmental entity described in section 170(c)(1) if the distribution is exclusively for public purposes.

(3) *Distributions to a single identified organization*. The sponsoring organization must make distributions from the fund or account only to the single identified organization for use in the single identified organization's activities (other than the activities of administering donor advised funds or grant-making), and not to third parties on behalf of the single identified organization.

(4) *Special rules*—(i) *In general*. A fund or account will not be treated as making distributions only to a single identified organization if—

(A) A donor, donor-advisor, or related person has or reasonably expects to have the ability to advise regarding some or all of the distributions from the single identified organization to other individuals or entities; or

(B) A distribution from the fund or account provides, directly or indirectly, a more than incidental benefit (within the meaning of section 4967 of the Code), to a donor, donor-advisor, or related person with respect to the fund.

(ii) *Certifications*. A sponsoring organization may rely on a certification from the donor that no distribution will be described in paragraph (a)(4)(i) of this section as long as the sponsoring organization lacks knowledge to the contrary.

(5) *Substitution for specified organization*. A sponsoring organization may substitute another single identified organization if the substitution is conditioned upon the occurrence of a loss of exemption, substantial failure or abandonment of operations, or a dissolution or reorganization that results in the named single identified organization ceasing to exist, and the event is beyond the direct or indirect control of donor(s), donor-advisor(s), or related persons.

(6) *Examples*. The following examples illustrate the principles of this section:

(i) *Example 1*. A and B, a married couple, establish Fund V at X, a sponsoring organization. Fund V is established by written agreement to make distributions only to Y, a university recognized as exempt under section 501(c)(3) of the Code and described in section 170(b)(1)(A)(ii). In the gift instrument, A and B reserve the right to recommend which university projects should be supported by Fund V and which investments to make with fund assets. A and B certify that A, B, and persons related to A and B do not benefit from any distributions from Fund V and do not have, or reasonably expect to have, the ability to advise regarding some or all of the distributions from Y to other entities. Fund V is not a donor advised fund because all distributions are made to a single identified organization, Y.

(ii) *Example 2*. Assume the same facts as paragraph (a)(6)(i) of this section (*Example 1*), except that the sponsoring organization uses funds from Fund V to purchase goods to distribute to the community on behalf of Y. Fund V does not meet the exception for a fund or account that makes distributions only to a single identified organization because not all distributions from Fund V are made to the single identified organization, Y.

(iii) *Example 3*. Assume the same facts as paragraph (a)(6)(i) of this section (*Example 1*), except that A is on the Board of Y. Because A has the ability to advise some or all of the distributions from Y to other entities, Fund V does not meet the exception for a fund or account that makes distributions only to a single identified organization.

(b) *Certain funds or accounts that grant scholarships*—(1) *In general*. The term donor advised fund does not include any fund or account with respect to which a donor or donor-advisor advises as to which individuals receive grants for travel, study, or other similar purposes, if—

(i) The exclusive purpose of the fund or account is to make grants to individuals for travel, study, or other similar purposes;

(ii) The donor or donor-advisor provides advice exclusively in the person's capacity as a member of the selection committee selecting the individuals who receive grants;

(iii) All the members of the selection committee are appointed by the sponsoring organization;

(iv) No combination of donor(s), donor-advisor(s), or related persons controls, directly or indirectly, the selection committee;

(v) All grants from the fund or account are awarded on an objective and nondiscriminatory basis pursuant to a written procedure approved in advance by the board of directors of the sponsoring organization, and the procedure is designed to ensure that all the grants adhere to the principles set forth by section 4945(g)(1), (2) or (3) of the Code and the regulations under section 4945 (other than the requirement to get advance approval by the IRS); and

(vi) The fund or account maintains adequate records as described in §53.4945-4(c)(6) that demonstrate the recipients were selected on an objective and nondiscriminatory basis.

(2) *Control of committee*—(i) *In general*. For purposes of paragraph (b)(1)(iv) of this section, whether control of the committee exists is determined by looking to the substance, rather than the form, of any arrangement.

(ii) *Direct control*. A committee will be considered *controlled* if donor(s), donor-advisor(s), or related persons, either alone or together—

(A) Can require the committee to take or refrain from taking any action;

(B) Control 50 percent or more of the total voting power of the committee; or

(C) Have the right to exercise veto power over the committee's decisions.

(iii) *Indirect control*. Whether a committee is *indirectly controlled* by a combination of donor(s), donor-advisor(s), or related persons is determined by the facts and circumstances, including the nature of any relationships among the members of the selection committee and with any donor, donor-advisor, or related person. For example, a committee is *indirectly controlled* by a combination of donor(s), donor-advisor(s), or related persons if a majority of the selection committee is currently engaged by the donor, donor-advisor, or any related person in any employment or fiduciary capacity, whether as an employee or independent contractor, or recommended by a donor or donor-advisor and appointed to the selection committee based on other than objective criteria regarding the person's expertise, or a combination thereof.

(3) *Appointing members of the selection committee*. In appointing the members of the selection committee, a sponsoring organization may act through its board of directors, trustees, or other governing body; a committee appointed by the governing body; or an appropriate officer of the sponsoring organization.

(4) *Examples*. The following examples illustrate the principles of this section:

(i) *Example 1*. Fund O was established at sponsoring organization Y to grant scholarships. Fund O receives contributions from many unrelated donors, including D, E, and F. Y appointed D, E, and F to serve on Fund O's 5-person selection committee by reason of their status as donors. Because donors control its selection committee, Fund O does not meet the exception for certain funds or accounts that grant scholarships under paragraph (b) of this section.

(ii) *Example 2*. Assume the same facts as in paragraph (b)(4)(i) of this section (*Example 1)*, except that Y appoints G, a donor; H, G's donor-advisor; and I, an attorney currently employed by G to serve on Fund O's 5-person selection committee. Y appoints G, H, and I by reason of G's status as a donor. The committee is indirectly controlled by G, and thus the fund does not meet the exception for certain funds or accounts that grant scholarships under paragraph (b) of this section.

(iii) *Example 3*. Assume the same facts as in paragraph (b)(4)(i) of this section (*Example 1)*, except that Y appoints D and four officers of Y who have not contributed to Fund O to serve on the 5-person selection committee. Assuming that the other requirements of paragraph (b)(1) of this section are met and that the facts do not indicate that D indirectly controls the committee, Fund O meets the exception for certain funds or accounts that grant scholarships under paragraph (b) of this section.

(c) *Certain scholarship funds established by certain section 501(c)(4) organizations*. The term donor advised fund does not include a fund or account established by a broad-based membership organization described in section 501(c)(4) that establishes a committee to advise as to which individuals receive grants, if—

(1) The fund or account's single identified charitable purpose is to make grants to individuals for scholarships described in section 4945(g)(1);

(2) The selection of recipients of scholarships from the fund or account is made using a selection committee the members of which are nominated by the section 501(c)(4) organization and approved in writing by the sponsoring organization;

(3) The fund or account serves a charitable class;

(4) Recipients of grants from the fund or account are selected on an objective and nondiscriminatory basis pursuant to a procedure, approved in advance by the sponsoring organization's board of directors, that is designed to ensure that all the grants meet the requirements of section 4945(g)(1) and the regulations under section 4945 (other than the requirement to get advance approval by the IRS);

(5) No distribution is made from the fund or account to, or for the benefit of:

(i) Any director, officer, or trustee of the sponsoring organization of the fund or account;

(ii) Any member of the fund or account's selection committee;

(iii) Any member, honorary member, or employee of the section 501(c)(4) organization; or

(iv) Any related person with respect to anyone described in paragraph (c)(5)(i), (ii), or (iii) of this section; and

(6) The fund or account maintains adequate records as described in §53.4945-4(c)(6) that demonstrate the recipients were selected on an objective and nondiscriminatory basis.

(d) *Certain disaster relief funds*. The term donor advised fund does not include a fund or account if—

(1) The fund or account's single identified charitable purpose is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3) of the Code;

(2) The fund or account serves a charitable class;

(3) The selection of recipients of grants from the fund or account is made using a selection committee—

(i) That is not directly or indirectly controlled (as defined in paragraph (b)(2) of this section) by donor(s), donor-advisor(s), or related persons and to which all the members are appointed by the sponsoring organization; or

(ii) The majority of which, if the fund or account gives preference or priority to employees (or their family members) of an employer to receive grants, consists of persons who are not in a position to exercise substantial influence over the affairs of the employer (or adequate substitute procedures exist to ensure that any benefit to the employer is incidental and tenuous);

(4) The selection committee selects recipients of grants from the fund or account (and determines the amounts of such grants) based on objective and nondiscriminatory determinations of need pursuant to a procedure approved in advance by the board of directors of the sponsoring organization;

(5) No distribution is made from the fund or account that would result in more than incidental benefit (within the meaning of section 4967 of the Code) to—

(i) Any director, officer, or trustee of the sponsoring organization of the fund or account;

(ii) Any member of the fund's selection committee; or

(iii) Any related person with respect to a director, officer, or trustee of the sponsoring organization or to a member of the selection committee; and

(6) Records are maintained that demonstrate the need of the recipients for the disaster relief assistance provided and that satisfy section 6033(b)(14) of the Code.

§53.4966-5 Taxable distributions.

(a) *Taxable distributions*—(1) *In general*. Except as provided in paragraphs (a)(2) and (3) of this section, the term *taxable distribution* means any distribution from a donor advised fund—

(i) To any natural person; or

(ii) To any other person if—

(A) The distribution is for any purpose other than one specified in section 170(c)(2)(B) of the Internal Revenue Code (Code), as defined in paragraph (b) of this section; or

(B) The sponsoring organization does not exercise expenditure responsibility with respect to the distribution in accordance with paragraph (d) of this section.

(2) *Non-taxable distributions*. The term taxable distribution does not include any distribution from a donor advised fund to—

(i) Any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization), as defined in paragraph (c) of this section;

(ii) The sponsoring organization of the donor advised fund; or

(iii) Any other donor advised fund.

(3) *Special rule*. If a series of distributions is undertaken pursuant to a plan that achieves a result inconsistent with the purposes of section 4966 of the Code, the distributions are treated as a single distribution for purposes of section 4966. For example, if a donor advises a distribution, that the sponsoring organization subsequently makes, from a donor advised fund to Charity X and the donor or the sponsoring organization arranges for Charity X to use the funds to make distributions to individuals recommended by the donor, the distribution will be a taxable distribution from the sponsoring organization to individuals.

(b) *Distribution for purpose not specified in section 170(c)(2)(B)*—(1) *In general*. For purposes of paragraph (a)(1)(ii)(A) of this section, a distribution to be used for an activity that is prohibited under section 501(c)(3) of the Code or for an activity that, if it were a substantial part of a section 501(c)(3) organization's total activities, would cause loss of tax exemption, is not for a purpose specified in section 170(c)(2)(B). For example, a distribution used for political campaign intervention activity or for attempting to influence legislation is considered to be for a purpose not specified in section 170(c)(2)(B). Purposes described in section 170(c)(2)(B) are treated as such whether or not carried out by an organization described in section 170(c).

(2) *Grants to noncharitable organizations*. If the distribution is a grant (as defined in §53.4945-4(a)(2)) to any organization (other than an organization described in section 501(c)(3) and not in section 509(a)(4) of the Code), it will not be considered for a purpose specified in section 170(c)(2)(B) unless the grantee agrees either to separately account for the grant funds on its books or to segregate the grant funds.

(c) *Organizations described in section 170(b)(1)(A)*—(1) *In general*. For purposes of paragraph (a)(2)(i) of this section, an organization will be treated as described in section 170(b)(1)(A) if—

(i) It is described in both sections 170(b)(1)(A) and 170(c)(2), other than a disqualified supporting organization, and without regard to section 170(c)(2)(A);

(ii) It is a governmental unit described in section 170(b)(1)(A)(v) and 170(c)(1) (or an agency or instrumentality thereof, including an organization described in section 511(a)(2)(B) of the Code), as long as the distribution to it is made for exclusively public purposes; or

(iii) It is a foreign government (or an agency or instrumentality thereof), or an international organization designated as such by Executive Order under 22 U.S.C. 288, as long as the distribution to it is made exclusively for charitable purposes as described in section 170(c)(2)(B).

(2) *Certain foreign organizations*. For purposes of this section, a foreign organization distributee that does not have a ruling or determination letter that it is an organization described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) will be treated as described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization) if, prior to the distribution, the sponsoring organization makes a good faith determination, using procedures similar to those set forth in §53.4945-5(a)(5), that the distributee is described in sections 501(c)(3) and 170(b)(1)(A) (other than a disqualified supporting organization).

(d) *Expenditure responsibility*—(1) *In general*. For purposes of paragraph (a)(1)(ii)(B) of this section, a sponsoring organization will be treated as exercising expenditure responsibility if it follows the procedures set forth in §53.4945-5(b) through (e) as modified by paragraph (d)(2) of this section.

(2) *Special rules*—(i) *Non-applicability of certain Code provisions*. References to sections 507, 4945(d), and 4948 of the Code do not apply.

(ii) *Substituted terms*. In applying §53.4945-5(b) through (e), substitute *sponsoring organization* for *private foundation*, *granting private foundation*, *granting foundation*, *grantor foundation*, *foundation*, or *grantor* (but not for private foundation grantees in §53.4945-5(c)); substitute *distribution* for *grant* or *amount granted*; substitute *distributee* for *grantee*; and substitute *taxable distribution* for *taxable expenditure* each place they appear.

(iii) *Additional modifications*. In lieu of §53.4945-5(b)(3)(iv)(*c*) and (b)(4)(iv)(*c*), the distributee must agree not to use any of the funds to make any grant to an organization that does not comply with the expenditure responsibility requirements of this paragraph (d), to make any grant to a natural person, or to make any grant, loan, compensation, or other similar payment (as described in section 4958(c)(2) of the Code) to a donor, donor-advisor, or related person with respect to the donor advised fund from which the distribution that is the subject of the agreement is made.

§53.4966-6 Applicability date.

Applicability date. The rules of §§53.4966-1 through 53.4966-5 apply to taxable years ending on or after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register November 13, 2023, 8:45 a.m., and published in the issue of the Federal Register for November 14, 2023, 88 FR 77922)

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

Announcement 2023-34

Table of Contents

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 December 04, 2023 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
BRIGHTER DAY FOUNDATION	01/01/2019	LOS ANGELES
JAMES C. WILBOURN WASHINGTON AND LEE ENDOWMENT TRUST C/O CITIZENS NATIONAL BANK	01/01/2020	MERIDIANS, MS
JACKSON COUNTY 4-H FOUNDATION	07/01/2019	SPRINGS , MO
ROBERT SAAH MASSAQUOI FOUNDATION	01/01/2021	SAN DIEGO, CA

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.

Numerical Finding List[1]

Bulletin 2023–49

Announcements:

2023-18, 2023-30 I.R.B. *366*
2023-19, 2023-30 I.R.B. *367*
2023-20, 2023-30 I.R.B. *368*
2023-17, 2023-31 I.R.B. *412*
2023-21, 2023-31 I.R.B. *413*
2023-22, 2023-32 I.R.B. *429*
2023-23, 2023-34 I.R.B. *569*
2023-24, 2023-35 I.R.B. *661*
2023-25, 2023-37 I.R.B. *821*
2023-26, 2023-37 I.R.B. *822*
2023-28, 2023-37 I.R.B. *823*
2023-29, 2023-41 I.R.B. *1064*
2023-30, 2023-45 I.R.B. *1236*
2023-31, 2023-46 I.R.B. *1251*
2023-32, 2023-47 I.R.B. *1258*
2023-33, 2023-47 I.R.B. *1261*
2023-24, 2023-49 I.R.B. *1385*

Notices:

2023-29, 2023-29 I.R.B. *1*
2023-45, 2023-29 I.R.B. *317*
2023-47, 2023-29 I.R.B. *318*
2023-37, 2023-30 I.R.B. *359*
2023-50, 2023-30 I.R.B. *361*
2023-51, 2023-30 I.R.B. *362*
2023-54, 2023-31 I.R.B. *382*
2023-53, 2023-32 I.R.B. *424*
2023-55, 2023-32 I.R.B. *427*
2023-57, 2023-34 I.R.B. *560*
2023-58, 2023-34 I.R.B. *563*
2023-59, 2023-34 I.R.B. *564*
2023-52, 2023-35 I.R.B. *650*
2023-61, 2023-35 I.R.B. *651*
2023-62, 2023-37 I.R.B. *817*
2023-56, 2023-38 I.R.B. *824*
2023-63, 2023-39 I.R.B. *919*
2023-64, 2023-40 I.R.B. *974*
2023-66, 2023-40 I.R.B. *992*
2023-68, 2023-41 I.R.B. *1060*
2023-65, 2023-42 I.R.B. *1067*
2023-67, 2023-42 I.R.B. *1074*
2023-69, 2023-42 I.R.B. *1079*
2023-71, 2023-44 I.R.B. *1191*
2023-70, 2023-45 I.R.B. *1228*
2023-72, 2023-45 I.R.B. *1228*
2023-73, 2023-45 I.R.B. *1232*
2023-75, 2023-47 I.R.B. *1256*
2023-76, 2023-49 I.R.B. *1320*

Proposed Regulations:

REG-124123-22, 2023-30 I.R.B. *369*
REG-124930-21, 2023-31 I.R.B. *431*

Proposed Regulations:—Continued

REG-120730-21, 2023-33 I.R.B. *491*
REG-134420-10, 2023-34 I.R.B. *571*
REG-109348-22, 2023-35 I.R.B. *662*
REG-120727-21, 2023-36 I.R.B. *670*
REG-122793-19, 2023-38 I.R.B. *829*
REG-100908-23, 2023-39 I.R.B. *931*
REG-115559-23, 2023-42 I.R.B. *1082*
REG-106203-23, 2023-43 I.R.B. *1143*
REG-113064-23, 2023-43 I.R.B. *1144*
REG-117614-14, 2023-44 I.R.B. *1193*
REG-127391-16, 2023-44 I.R.B. *1214*
REG-103525-23, 2023-46 I.R.B. *1252*
REG-115762-23, 2023-47 I.R.B. *1262*
REG-120727-21, 2023-47 I.R.B. *1285*
REG-112916-23, 2023-49 I.R.B. *1323*
REG-128276-12, 2023-49 I.R.B. *1362*
REG-142338-07, 2023-49 I.R.B. *1363*

Revenue Procedures:

2023-31, 2023-25 I.R.B. *386*
2023-26, 2023-33 I.R.B. *486*
2023-27, 2023-35 I.R.B. *655*
2023-17, 2023-37 I.R.B. *819*
2023-30, 2023-40 I.R.B. *995*
2023-31, 2023-40 I.R.B. *1057*
2023-32, 2023-41 I.R.B. *1064*
2023-35, 2023-42 I.R.B. *1079*
2023-28, 2023-43 I.R.B. *1092*
2023-33, 2023-43 I.R.B. *1135*
2023-34, 2023-48 I.R.B. *1287*

Revenue Rulings:

2023-13, 2023-32 I.R.B. 413
2023-14, 2023-33 I.R.B. 484
2023-15, 2023-34 I.R.B. 559
2023-15, 2023-34 I.R.B. 559
2023-16, 2023-37 I.R.B. *796*
2023-17, 2023-37 I.R.B. *798*
2023-18, 2023-40 I.R.B. *972*
2023-19, 2023-41 I.R.B. *1059*
2023-20, 2023-45 I.R.B. *1221*
2023-21, 2023-49 I.R.B. *1299*
2023-22, 2023-49 I.R.B. *1301*

Treasury Decisions:

9976, 2023-30 I.R.B. *354*
9977, 2023-31 I.R.B. *375*
9978, 2023-32 I.R.B. *415*
9979, 2023-35 I.R.B. *602*
9980, 2023-43 I.R.B. *1087*
9981, 2023-44 I.R.B. *1174*
9982, 2023-45 I.R.B. *1223*
9983, 2023-46 I.R.B. *1237*

[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 27, 2023.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2023–49

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