

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2015-39
September 28, 2015

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.

Income tax

T.D. 9736, page 402.

This document contains final regulations that address certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The regulations provide that if a taxpayer has identified multiple hedges as being part of a qualified hedging transaction, and the taxpayer has terminated at least one but less than all of the hedges (including a portion of one or more of the hedges), the taxpayer must treat the remaining hedges as having been sold for fair market value on the date of disposition of the terminated hedge.

Rev. Rul. 2015-17, page 358.

Interest rates: underpayment and overpayments. The rates for interest determined under section 6621 of the code for the calendar quarter beginning October 1, 2015, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for the underpayments, and 5 percent for large corporation underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding \$10,000 will be 0.5 percent.

Rev. Proc. 2015-45, page 412.

This revenue procedure describes conditions under which the Internal Revenue Service will treat a regulated investment company (RIC) that invests in one or more other RICs as satisfying the asset diversification requirements of section 851(b)(3)(B) of the Internal Revenue Code.

EMPLOYEE PLANS

Rev. Proc. 2015-47, page 419.

This revenue procedure sets forth procedures for plan administrators and plan sponsors that are required to file electronically Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits," or Form 5500-EZ, "Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan," to request a waiver of the electronic filing requirement due to economic hardship.

Notice 2015-61, page 408.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for September 2015 used under § 417(e)(3)(D), the 24-month average segment rates applicable for September 2015, and the 30-year Treasury rates. These rates reflect the application of § 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act, Public Law 112-141 (MAP-21) and amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA).

T.D. 9732, page 371.

These final regulations provide guidance on the determination of minimum required contributions for single-employer defined benefit pension plans and also contain guidance regarding the excise tax for failure to satisfy the minimum funding requirements for defined benefit pension plans.

(Continued on the next page)

EXEMPT ORGANIZATIONS

Announcement 2015–25, page 422.

Serves notice to potential donors of organizations that have recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Notice 2015–62, page 411.

This notice confirms that under section 4944 private foundation managers may consider the relationship between a particular investment and the foundation's charitable purpose when exercising ordinary business care and prudence in deciding whether to make the investment.

ESTATE TAX

REG–112997–10, page 422.

These regulations provide guidance on the tax imposed on United States citizens and residents and certain trusts, when a gift or bequest is received, directly or indirectly, from certain individuals who relinquished United States citizenship or ceased to be lawful permanent residents of the United States on or after June 17, 2008.

GIFT TAX

REG–112997–10, page 422.

These regulations provide guidance on the tax imposed on United States citizens and residents and certain trusts, when a gift or bequest is received, directly or indirectly, from certain individuals who relinquished United States citizenship or ceased to be lawful permanent residents of the United States on or after June 17, 2008.

EXCISE TAX

Rev. Proc. 2015–46, page 414.

This revenue procedure updates Rev. Proc. 2003–78, 2003–2 C.B. 1029, to correct the mailing address and contact numbers for a foreign insurer or reinsurer that requests a closing agreement for an exemption from the excise tax imposed by section 4371, formalize certain requirements for obtaining a closing agreement, and make corresponding changes to the form closing agreements attached as Appendices A and B to Rev. Proc. 2003–78.

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.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 6621.— Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

Rev. Rul. 2015-17

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 July, 1 2015 is the rate published in Revenue Ruling 2015-16, 2015-18 IRB 130 to take effect beginning August 1, 2015. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of July 2015 is 0 percent. Accordingly, an

overpayment rate of 3 percent (2 percent in the case of a corporation) and an underpayment rate of 3 percent are established for the calendar quarter beginning October 1, 2015. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning October 1, 2015 is 0.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 2015, is 5 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 3 percent rate also applies to estimated tax underpayments for the fourth calendar quarter in 2015.

Interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling. Interest factors for daily compound interest for annual rates of 2 percent, 3 percent and 5 percent are published in Tables 9, 11, and 15 of Rev. Proc. 95-17, 1995-1 C.B. 563, 565, and 569.

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 Deborah Colbert-James of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Colbert-James at (202) 317-3400 (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

365 Day Year

0.5% Compound Rate 184 Days

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

365 Day Year

0.5% Compound Rate 184 Days

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

366 Day Year
0.5% Compound Rate 184 Days

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

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 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

UNDERPAYMENTS

	1995-1 C.B.			1995-1 C.B.		
	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

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

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
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

	RATE	1995-1 C.B. 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

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

	RATE	1995-1 C.B. TABLE	PAGE
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

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

	RATE	1995-1 C.B. TABLE	PAGE
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

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

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. 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. 31, 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

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

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995-1 C.B. TABLE	PG	RATE	1995-1 C.B. TABLE	PG
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

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

	RATE	1995-1 C.B. 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—Mar. 31, 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

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

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 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—Jun. 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

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

	RATE	1995-1 C.B. TABLE	PG
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

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

	RATE	1995-1 C.B. 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—Jun. 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

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

	RATE	1995-1 C.B. TABLE	PG
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%*		

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

	RATE	1995–1 C.B. TABLE	PG
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—Decp. 31, 2015	0.5%*		

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

26 CFR 1.430(a)–1: Determination of minimum required contribution.

26 CFR 1.430(f)–1: Effect of prefunding balance and funding standard carryover balance.

26 CFR 1.430(h)(2)–1: Interest rates used to determine present value.

26 CFR 1.430(j)–1: Payment of minimum required contributions.

26 CFR 1.436–1: Limits on benefits and benefit accruals under single employer defined benefit plans.

26 CFR 54.4971(c)–1: Taxes on failure to meet minimum funding standards; definitions.

T.D. 9732

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 54

Determination of Minimum Required Pension Contributions

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on the determination of minimum required contributions for single-employer defined benefit pension plans. In addition, this document contains final regulations regarding the excise tax for failure to satisfy the minimum funding requirements for defined benefit pension plans. These regulations affect sponsors, administrators, participants, and beneficiaries of defined benefit pension plans.

DATES: Effective Date: These regulations are effective on September 9, 2015.
Applicability Date: These regulations apply to plan years beginning on or after January 1, 2016.

FOR FURTHER INFORMATION

CONTACT: Michael P. Brewer or Linda S. F. Marshall at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under sections 430(a), 430(c), 430(e), 430(f), 430(h), 430(j) and 436, as added to the Internal Revenue Code (Code) by the Pension Protection Act of 2006 (PPA '06), Public Law 109–280 (120 Stat. 780 (2006)), and amended by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Public Law 110–458 (122 Stat. 5092 (2008)), the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP–21), Public Law 112–141 (126 Stat. 405 (2012)), and the Highway and Transportation Funding Act of 2014 (HATFA), Public Law 113–159 (128 Stat. 1839 (2014)).¹ In addition, this document contains final Excise Tax Regulations (26 CFR part 54) under section 4971 applicable to both single-employer and multiemployer defined benefit plans.

¹The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Public Law 111-192 (124 Stat. 1280 (2010)), added section 430(c)(3)(D) and section 430(e)(7) and made changes to certain provisions of PPA '06 to provide temporary relief with respect to the minimum funding requirements and related benefit restrictions under section 436. This document generally does not provide guidance regarding those changes. Guidance regarding the changes made by PRA 2010 was issued in Notice 2011-3 (2011-2 IRB 263).

Section 412 provides minimum funding requirements that generally apply for pension plans (including both defined benefit pension plans and money purchase pension plans). PPA '06 made extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA '06, specifies the minimum funding requirements that apply to single-employer defined benefit pension plans (including multiple employer plans) pursuant to section 412. Section 430 does not apply to multiemployer plans within the meaning of section 414(f) or CSEC plans within the meaning of section 414(y).²

Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for single-employer plans that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (92 Stat. 3790) and section 3002 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, the Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

If the value of plan assets (less the sum of the plan's prefunding balance and funding standard carryover balance) is less than the funding target, section 430(a)(1) defines the minimum required contribution as the sum of the plan's target normal cost and the shortfall and waiver amortization charges for the plan year. If the value of plan assets (less the sum of the plan's prefunding balance and funding standard carryover balance) equals or exceeds the funding target, section 430(a)(2) defines the minimum required contribution as the plan's target normal cost for the plan year reduced (but not below zero) by the amount of the excess.

Section 430(c)(1) provides that the shortfall amortization charge is the total (not less than zero) of the shortfall amortization installments for the plan year with respect to any shortfall amortization base that has not been fully amortized. Section 430(c)(2)(A) provides that the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the amounts necessary to amortize the shortfall amortization base in level annual installments over the 7-plan-year period beginning with that plan year.

Section 430(c)(3) provides that a shortfall amortization base is determined for a plan year based on the plan's funding shortfall for the plan year. Under section 430(c)(4), the funding shortfall is generally the amount (if any) by which the plan's funding target for the year exceeds the value of the plan's assets (as reduced by the funding standard carryover balance and prefunding balance under section 430(f)(4)(B)). The shortfall amortization base for a plan year is the plan's funding shortfall, minus the present value of future amortization installments.

Under section 430(c)(5), a shortfall amortization base is not established for a plan year if the value of a plan's assets is at least equal to the plan's funding target for the plan year. For this purpose, the prefunding balance is subtracted from the value of plan assets, but only if an election to use that prefunding balance to offset the minimum required contribution is in effect for the plan year.

Under section 430(c)(6), if a plan's funding shortfall for a plan year is zero, any shortfall amortization bases and waiver amortization bases established for preceding plan years (and any associated shortfall amortization installments and waiver amortization installments) are eliminated.

Under section 430(e), the waiver amortization charge for a plan year is the total of the waiver amortization installments for the plan year with respect to any waiver amortization bases established for the 5 preceding plan years. Under section 430(e)(2), the waiver amortization installments with respect to a waiver amortiza-

tion base established for a plan year (the amount of the waived funding deficiency for the plan year) are the amounts necessary to amortize the waiver amortization base in level annual installments over the 5-plan-year period beginning with the succeeding plan year.

Under section 430(f)(3), the prefunding balance and the funding standard carryover balance (collectively referred to as funding balances) are permitted to be used to reduce the otherwise applicable minimum required contribution for a plan year in certain situations. Under section 430(f)(6), the prefunding balance is based on the accumulation of the contributions (other than contributions made under section 436(f) to avoid benefit restrictions) that an employer has made for preceding plan years that exceeded the minimum required contribution for those years. Under section 430(f)(7), the funding standard carryover balance generally is based on the funding standard account credit balance as determined under section 412 for a plan as of the last day of the last plan year beginning in 2007.

Section 430(h)(2) specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under section 430(h)(2)(B), in general, present value is determined using three interest rates (segment rates) for the applicable month, each of which applies to benefit payments expected to be paid during a certain period.³ Prior to amendments made by HATFA, section 430(h)(2)(B)(i) provided that the first segment rate applies to benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year. The second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial 5-year period. The third segment rate applies to benefits reasonably determined to be payable after the end of that 15-year period.

Section 2003(d)(1) of HATFA amended section 430(h)(2)(B)(i) to provide that the first segment rate applies to benefits reasonably determined to be payable during the

²Rules regarding CSEC plans were added by the Cooperative and Small Employer Charity Pension Flexibility Act of 2014 (CSEC Act), Public Law 113-97 (128 Stat. 1137), enacted April 7, 2014, and amended by Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235 (128 Stat. 2130), enacted December 16, 2014. A CSEC plan is defined in section 414(y). In general, CSEC plans are certain plans maintained by groups of cooperatives and related organizations or groups of charitable organizations.

³Section 430(h)(2)(D)(ii) provides an alternative to the use of the three segment rates, under which the corporate bond yield curve (determined without regard to the 24-month average) is substituted for the segment rates.

5-year period beginning on the valuation date for the plan year. Pursuant to section 2003(e) of HATFA, this change is required to be applied for plan years beginning on or after January 1, 2014.

Under section 430(j), as under pre-PPA '06 law, the due date for the payment of any minimum required contribution for a plan year is 8 months after the end of the plan year. Any payment made on a date other than the valuation date for the plan year must be adjusted for interest accruing at the plan's effective interest rate under section 430(h)(2)(A) for the plan year for the period between the valuation date and the payment date. Pursuant to section 430(g)(2), the valuation date for a plan year must be the first day of the plan year, except in the case of a small plan described in section 430(g)(2)(B).

Under section 430(j)(3), if the plan had a funding shortfall for the preceding plan year, then the plan sponsor must pay certain quarterly installments toward the required minimum contribution for the plan year. Each quarterly installment is 25 percent of the required annual payment. The required annual payment is equal to the lesser of 90 percent of the minimum required contribution under section 430 for the plan year or 100 percent of the minimum required contribution under section 430 (determined without regard to any funding waiver under section 412(c)) for the preceding plan year. If a quarterly installment is made after the due date for that installment, then the interest rate that applies for the period of underpayment is the plan's effective interest rate plus 5 percentage points.⁴ The requirements regarding quarterly installments are similar to the requirements that formerly applied under section 412(m) as in effect before amendments made by PPA '06.⁵

A plan sponsor that is required under section 430(j)(3) to pay quarterly installments to a plan (other than a small plan described in section 430(g)(2)(B)) for a plan year must make quarterly installments of liquid assets that are sufficient to ensure that a minimum level of liquid assets is available to pay benefits. Gener-

ally, this minimum level of liquid assets is the amount of liquid assets needed to pay for three years of disbursements. A plan sponsor that fails to satisfy this liquidity requirement is treated as failing to make the required quarterly installment, and pursuant to section 206(e) of ERISA, the plan is required to cease making certain types of accelerated payments that are described in section 401(a)(32)(B) of the Code. Under section 430(j)(4)(C), the period of underpayment continues until the close of the quarter in which the due date of the installment occurs. These liquidity requirements are substantially similar to the requirements that formerly applied under section 412(m)(5), as in effect before amendments made by PPA '06.

Section 4971(a) imposes an excise tax on the employer for a failure to meet applicable minimum funding requirements. In the case of a single-employer plan (other than a CSEC plan), the tax is 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within a taxable year. In the case of a multiemployer plan, the tax is 5 percent of the accumulated funding deficiency as of the end of any plan year ending with or within the taxable year. In the case of a CSEC plan, the tax is 10 percent of the CSEC accumulated funding deficiency. Section 4971(b) provides an additional excise tax that applies if the applicable minimum funding requirements remain unsatisfied for a specified period. Section 4971(c) provides definitions that apply for purposes of section 4971, including a definition of unpaid minimum required contribution (which is based on the new section 430 rules for determining the minimum required contribution for a year). Section 4971(f)(1) imposes a tax of 10 percent of the amount of the liquidity shortfall for a quarter that is not paid by the due date for the installment for that quarter. Section 4971(f)(2) provides an additional excise tax that applies if a plan has a liquidity shortfall as of the close of 5 consecutive quarters.

Final regulations (TD 9467) under sections 430 and 436 were published in the Federal Register (74 FR 53004) on October 15, 2009 (the October 2009 final regulations). Those final regulations address issues under sections 430(b), 430(d), 430(f), 430(g), 430(h), 430(i), and 436.

These regulations finalize proposed regulations under sections 430 and 4971 that were published on April 15, 2008 (REG-108508-08, 73 FR 20203). The proposed regulations under section 430, addressing issues that were not addressed in the October 2009 final regulations, were proposed to apply generally to plan years beginning on or after January 1, 2009. The preamble to the proposed regulations and Notice 2008-21 (2008-1 CB 431) provided guidance on standards for applying section 430 for plan years beginning during 2008.

The proposed regulations under section 4971 generally were proposed to apply at the same time the statutory changes to section 4971 under PPA '06 become effective, but would not apply to any taxable years ending before the date the proposed regulations were published (April 15, 2008). In the case of a plan to which a delayed effective date applies pursuant to sections 104 through 106 of PPA '06, the proposed regulations provided that the amendments made to section 4971 apply to the same taxable years, but only with respect to plan years for which section 430 applies to the plan.

Comments were received regarding the proposed regulations, and a public hearing was held on August 4, 2008. These final regulations are generally similar to the proposed regulations, but a number of changes were made in response to comments received. In addition, the final regulations reflect certain changes made by WRERA, the CSEC Act, and HATFA. The final regulations also provide the IRS with flexibility to extend certain regulatory deadlines.

⁴Additional potential consequences of late quarterly contributions are found in section 430(k) of the Code (regarding the imposition of a lien) and sections 101(d) and 4043 of ERISA (regarding notice to participants and beneficiaries and to the Pension Benefit Guaranty Corporation).

⁵Guidance regarding quarterly contribution requirements under former section 412(m) was issued in Notice 89-52 (1989-1 CB 692), and guidance regarding the liquidity requirements under former section 412(m)(5) was issued in Revenue Ruling 95-31 (1995-1 CB 76).

Explanation of Provisions

I. Overview

These regulations finalize the rules proposed in REG-108508-08 (published April 15, 2008), providing guidance regarding the minimum required contribution rules that apply to sponsors of single-employer defined benefit plans under section 430 and the related excise tax rules of section 4971. These regulations also make changes to § 1.430(f)-1 (relating to elections with respect to a plan's prefunding balance and funding standard carryover balance), § 1.430(h)(2)-1 (relating to interest rates) and § 1.436-1 (relating to benefit restrictions).

II. Section 1.430(a)-1 Determination of Minimum Required Contribution

Section 1.430(a)-1 provides rules under section 430(a) for determining the minimum required contribution for a plan year for a single-employer defined benefit plan (including a multiple employer plan under section 413(c)) subject to section 430. The determination of the amount of the minimum required contribution for a plan year depends on whether the value of plan assets, as reduced to reflect certain funding balances pursuant to section 430(f)(4)(B) (but not below zero), is less than or at least equal to the plan's funding target for the plan year. If this value of plan assets is less than the funding target for the plan year, the minimum required contribution for that plan year is equal to the sum of the plan's target normal cost for the plan year plus any applicable shortfall amortization installments and waiver amortization installments. If this value of plan assets equals or exceeds the funding target for the plan year, the minimum required contribution for that plan year is equal to the target normal cost of the plan for the plan year reduced (but not below zero) by any such excess.

The regulations provide that the shortfall amortization installments with respect to a shortfall amortization base established for a plan year generally are the annual amounts necessary to amortize that shortfall amortization base in level annual installments over the 7-year period beginning with that plan year. As provided in

§ 1.430(h)(2)-1(f)(2), these installments are determined assuming that the installments are paid on the valuation date for each plan year and using the interest rates applicable under section 430(h)(2)(C) or (D). The shortfall amortization installments are determined using the interest rates that apply for the plan year for which the shortfall amortization base is established and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years. The regulations also provide that shortfall amortization installments are not redetermined even if the valuation date for a plan changes after the plan year for which the shortfall amortization base was established. In such a case, the dates on which the installments are assumed to be paid are changed to the anniversaries of the new valuation date, and the difference in present value attributable to this change is reflected in any new shortfall amortization base.

Under the regulations, in general, a shortfall amortization base is established for a plan year only if the value of plan assets (reduced, but not below zero, by the prefunding balance if an election is made to use any portion of the prefunding balance to offset the minimum required contribution for the plan year) is less than the funding target for the plan year. This shortfall amortization base (which can be either positive or negative) is equal to the funding shortfall for the plan year, minus the sum of the present values of any remaining shortfall amortization installments and waiver amortization installments (determined in accordance with § 1.430(h)(2)-1(f)(2) using the interest rates that apply for the current plan year rather than the amortization rates that were applied when the amortization installments were determined). For this purpose, the funding shortfall for any plan year is the excess (if any) of the funding target for the plan year over the value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)-1(c)).

Commenters noted that the special rule of section 430(c)(5) can produce anomalous results in certain cases where the

prefunding balance is greater than the excess of the plan assets (without reduction for such balance) over the funding target. One case in which this occurs is for a plan with no funding standard carryover balance and actuarial gains that would have caused the shortfall amortization base (and related shortfall amortization installments) to be negative. In such a case, if a small portion of the prefunding balance is used to offset the minimum required contribution, then it is possible that the minimum required contribution would be reduced by even more than the amount so used.

Another case raised by commenters — with results that are not only anomalous but also potentially circular — is a situation in which a plan has a funding standard carryover balance and the plan sponsor's election to use a portion of the prefunding balance (in addition to using the funding standard carryover balance) to offset the minimum required contribution would result in the establishment of a negative shortfall amortization base and a minimum required contribution that is smaller than the funding standard carryover balance. As a result, none of the prefunding balance can be used to offset the minimum required contribution (because no prefunding balance can be used to offset the minimum required contribution as long as the plan has a funding standard carryover balance), and the minimum required contribution must be recalculated. This results in the recalculated minimum required contribution being large enough that some of the prefunding balance would be needed to fully offset that minimum required contribution, and the first calculation would once again apply.

After consideration of these comments, the IRS and the Treasury Department have concluded that the statutory provisions require this result in these limited factual situations. However, a plan sponsor can avoid the circular results by electing to reduce the funding standard carryover balance to an amount that is too small to offset the entire minimum required contribution. After that reduction, in order to offset the entire minimum required contribution, the plan sponsor must use the full remaining funding standard carryover balance plus at least some portion of the prefunding balance. The

regulations include an example of a plan sponsor reducing the funding standard carryover balance in order to avoid the circularity (*Example 10* of § 1.430(a)–1(g)).

The proposed regulations did not count contributions under section 436(b)(2), (c)(2), and (e)(2) either toward minimum required contributions for the current year or as included in plan assets for that year. Commenters suggested that any contribution under section 436(b)(2), (c)(2), or (e)(2) should be reflected in plan assets for purposes of section 430 if the corresponding increase in funding target is required to be reflected. This would have the effect of reducing the funding shortfall for the plan year. However, under sections 436(b)(2), (c)(2), and (e)(2), these contributions are characterized as “in addition to any minimum required contribution under section 430.” The final regulations adopt the rule as proposed because it reflects this requirement of the statute. This rule is also consistent with section 430(f)(6)(B)(iii), which excludes section 436 contributions from the amount that may be added to the plan’s prefunding balance. The final regulations do not include any special rule that would reduce the funding shortfall for a plan year to take into account section 436 contributions for the plan year (by either including section 436 contributions in plan assets or modifying the definition of funding shortfall). Any such section 436 contributions will be part of plan assets when measured for the following plan year and, accordingly, will reduce any positive shortfall amortization base (or increase any negative shortfall amortization base) that would otherwise be established for that following year.

Under the regulations, the waiver amortization installments with respect to a waiver amortization base established for a plan year are the annual amounts necessary to amortize that waiver amortization base in level annual installments over the 5-year period beginning with the following plan year. As provided in § 1.430(h)(2)–1(f)(2), these installments are determined assuming that the installments are paid on the valuation date for each plan year and using the interest rates applicable under

section 430(h)(2). Thus, if a plan uses the segment rates, the installments are determined by applying the first segment rate to the first four installments and the second segment rate to the fifth (and final) installment. The waiver amortization installments established with respect to a waiver amortization base are determined using the interest rates that apply for the plan year for which the waiver is granted (even though the first installment with respect to the waiver amortization base is not due until the subsequent plan year) and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years.

The regulations provide rules for determining the amount of a minimum required contribution for a short plan year. Under the regulations, the amortization installments are prorated for a short plan year. The regulations do not provide for any proration of the target normal cost. Instead, the determination of target normal cost must reflect benefits that accrue or are expected to accrue during the short plan year.⁶ The regulations also provide rules for the treatment of amortization installments in subsequent plan years to take into account the proration of these installments for short plan years and to clarify the treatment of these installments in the event of a change in valuation date.

In light of the rules in the proposed regulations for determining the amount of a minimum required contribution for a short plan year (which would normally be followed by another plan year with its own minimum required contribution), questions have arisen about how to determine the minimum required contribution for a plan year if the plan terminates before the last day of the year. Under Revenue Ruling 79–237 (1979–2 CB 190) (see 26 CFR 601.601(d)(2)(ii)(b)), the minimum funding requirements apply for the year that a plan terminates but not for later years. These regulations clarify that the rules for short plan years apply for the year of termination by specifying that if a plan terminates before the last day of a plan year, then, for purposes of section 430, the plan is treated as having a short plan year that ends on the termination

date. As a result, the minimum required contribution for such a plan is determined based on that short plan year. If a plan terminates before the date that would otherwise have been the valuation date for a plan year, then the valuation date for the plan year must be changed so that it falls within the short plan year.

The rules for terminated plans include a definition of termination date that is consistent with the 1982 proposed regulations under § 1.412(b)–4(d)(1) and Revenue Ruling 89–87 (1989–2 CB 2) (see 26 CFR 601.601(d)(2)(ii)(b)). These final regulations provide that, in the case of a plan subject to Title IV of ERISA, the termination date is the plan’s termination date established under section 4048(a) of ERISA.

In the case of a plan not subject to Title IV of ERISA, the regulations provide that the termination date is the plan’s termination date established by the plan administrator, provided that the termination date may be no earlier than the date on which all actions necessary to effect the plan termination (other than the distribution of plan assets) are taken. However, a plan is not treated as terminated on that date if the plan assets are not distributed as soon as administratively feasible after that date. Whether plan assets are distributed as soon as administratively feasible is determined based on all the relevant facts and circumstances. A distribution of plan assets that was delayed merely for the purpose of obtaining a higher value than current market value is generally not deemed to have been made as soon as administratively feasible. Additionally, if the plan assets are not distributed within one year following the plan’s termination date established by the plan administrator, the distribution is presumed not to have been made as soon as administratively feasible. However, a plan is not treated as failing to meet the requirement to make distributions of plan assets as soon as administratively feasible after that date to the extent that a delay in distributing plan assets is attributable to either: (1) circumstances beyond the control of the plan administrator; or (2) the period of time necessary to obtain a determination letter from the Commissioner on the plan’s qualified sta-

⁶See 29 CFR 2530.204-2(e) for rules relating to changes in accrual computation periods.

tus upon its termination, provided that the request for a determination letter is timely and the distributions of plan assets are made as soon as administratively feasible after the letter is obtained.

III. Section 1.430(h)(2)–1 Interest Rates Used to Determine Present Value

The regulations update the 2009 regulations to reflect the modification under HATFA to the 5-year period for which the first segment rate applies. In accordance with section 430(h)(2)(C)(i) prior to its amendment by HATFA, § 1.430(h)(2)–1(b)(2)(i) provided that, for a plan with a valuation date that is the first day of the plan year, the first segment rate was used to determine present value of benefits expected to be payable during the 5-year period beginning on the first day of the plan year. Section 1.430(h)(2)–1(b)(2)(ii), labeled “Plans with valuation dates other than the first day of the plan year,” was reserved. The preamble to the 2009 regulations notes that the IRS and the Treasury Department continue to believe that applying the first segment rate to benefits that are expected to be payable during the 5-year period beginning on the valuation date is the best method of valuing assets and liabilities as of the valuation date. Because section 430(h)(2)(C)(i) was then inconsistent with that interpretation and it was anticipated that a technical correction might later adopt that approach, the 2009 regulations reserved the issue of guidance on the interest rates to be used by plans with valuation dates other than the first day of the plan year.

This anticipated technical correction was made in section 2003(d) of HATFA, and the regulations reflect this technical correction. Under the regulations, in general, the first segment rate is used to determine the present value of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year. However, with respect to a plan year beginning before January 1, 2014, for a plan with a valuation date other than the first day of the plan year, the 5-year period beginning on the first day of the plan year is permitted to be used in lieu of the 5-year period beginning on the valuation date. Thus, taxpayers must follow the statute as amended for

this technical correction for plan years beginning on or after January 1, 2014, and are permitted to apply this technical correction for earlier years as well.

IV. Section 1.430(j)–1 Payment of Minimum Required Contributions

A. Payment of minimum required contribution

The regulations under section 430(j) provide rules related to the payment of minimum required contributions, including rules for the payment of quarterly contributions, liquidity requirements, and determining the plan year to which a contribution applies. Under these rules, if the plan has unpaid minimum required contributions that have not yet been corrected at the time a contribution is made, then the contribution is treated as a contribution for the earliest plan year for which there is an unpaid minimum required contribution to the extent necessary to correct that unpaid minimum required contribution.

Any amount of the contribution in excess of the amount needed to correct that unpaid minimum required contribution is treated as a contribution for the next earliest plan year for which there is an unpaid minimum required contribution that has not yet been corrected to the extent necessary to correct that unpaid minimum required contribution. This allocation to the earliest year with unpaid minimum required contributions is automatic and must be shown on the actuarial report (Schedule SB, “Single-Employer Defined Benefit Plan Actuarial Information” of Form 5500, “Annual Return/Report of Employee Benefit Plan”) for the earliest plan year for which a timely contribution could be allocated.

The regulations further provide that if the plan has no unpaid minimum required contributions for prior plan years at the time the contribution is made, or a portion of the contribution corrects all unpaid minimum required contributions, then the contribution (or the remainder of the contribution which is not used to correct an unpaid minimum required contribution) made during the current plan year but before the deadline for contributions for a prior plan year may be designated as a

contribution for either that prior plan year or the current plan year. This designation is established by the completion (and filing, if required) of the actuarial report (Schedule SB, “Single-Employer Defined Benefit Plan Actuarial Information” of Form 5500, “Annual Return/Report of Employee Benefit Plan”) for the plan year for which the contribution is designated, and this designation cannot be changed after the actuarial report is completed (and filed, if required) except as provided in guidance published in the Internal Revenue Bulletin. The regulations provide that any payment of the minimum required contribution under section 430 for a plan year that is made on a date other than the valuation date for that plan year is adjusted for interest for the period between the valuation date and the payment date, generally using the effective interest rate for the plan for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1). The direction of the adjustment depends on whether the contribution is paid before or after the valuation date for the plan year. If the contribution is paid after the valuation date for the plan year, the contribution is discounted to the valuation date. If the contribution is paid before the valuation date for the plan year (which could only occur in the case of a small plan described in section 430(g)(2)(B)), the contribution is increased for interest to the valuation date.

Under the regulations, a payment of the minimum required contribution under section 430 for a plan year can be made no earlier than the first day of the plan year. The deadline for any payment of any minimum required contribution for a plan year is 8 months after the close of the plan year. If any portion of a minimum required contribution is not paid by this deadline, an excise tax applies under section 4971.

B. Requirement for quarterly contributions

The regulations provide rules for accelerated quarterly contributions for plans with funding shortfalls. These rules are similar to the rules provided under Notice 89–52 (1989–1 CB 692) (see 26 CFR 601.601(d)(2)(ii)(b)), but have been updated to reflect statutory changes. These

statutory changes include changes regarding which plans are subject to the quarterly contribution requirements as well as the interest rates applicable to missed quarterly contributions.

Under the regulations, in any case in which a plan has a funding shortfall for the preceding plan year, the employer maintaining the plan must make required quarterly installments for the current plan year. The amount of each required quarterly installment is equal to 25 percent of the required annual payment. For this purpose, the required annual payment is equal to the lesser of 90 percent of the minimum required contribution under section 430(a) for the plan year or 100 percent of the minimum required contribution under section 430(a) (determined without regard to any funding waiver under section 412) for the preceding plan year. These minimum required contributions are determined under section 430 as of the valuation date for each year and are not adjusted for interest. The regulations provide that, for purposes of determining the required annual payment, the minimum required contribution for a plan year is determined without reflecting the use of the prefunding balance or funding standard carryover balance to offset the minimum required contribution for either the current year or the prior year and without regard to any installment acceleration amount under section 430(c)(7).

Pursuant to section 430(j)(3)(C), the regulations provide that the due dates for the four required quarterly installments with respect to a full plan year are as follows: the first installment is due on the 15th day of the 4th plan month, the second installment is due on the 15th day of the 7th plan month, the third installment is due on the 15th day of the 10th plan month, and the fourth installment is due on the 15th day following the end of the plan year. In the case of a short plan year, the regulations provide rules for determining the amount of the required quarterly installments and the due dates for those installments.⁷ The regulations also provide rules for determining the amount of the required quarterly installments if the prior plan year was a short plan year and rules for determining the plan month in

the case of a plan year that does not begin on the first day of a calendar month.

As was the case in Notice 89-52, the regulations provide that a plan sponsor generally can use a plan's funding balances to satisfy quarterly contribution requirements. However, this rule is subject to the limitation on the use of funding balances by underfunded plans pursuant to section 430(f)(3)(C). Consistent with the approach taken in Notice 89-52, a contribution for a prior plan year in excess of the required minimum contribution must actually have been made and the plan sponsor's election to add the excess to the prefunding balance must have taken effect before a plan can elect to use the corresponding portion of the prefunding balance to satisfy the quarterly contribution requirements. A plan sponsor's election to use the plan's funding balances under section 430(f) satisfies the requirement to pay an installment on the date of the election, to the extent of the amount elected, as adjusted with interest at the plan's effective interest rate under section 430(h)(2)(A) for the plan year from the election date through the due date of the installment. The amount of a plan's funding balances available for such an election is increased with interest from the beginning of the plan year to the date of the election. The net effect of these two adjustments is an increase in the plan's funding balances from the beginning of the plan year to the due date of the installment.

A plan sponsor that elects to use the plan's prefunding balance or funding standard carryover balance toward satisfaction of the plan's quarterly contribution requirement before the plan's effective interest rate for the plan year has been determined should assume, in order to ensure that the quarterly contribution requirements are satisfied, that the effective interest rate is equal to the lowest of the three segment rates (generally the first segment rate) to adjust the elected amount. Because the satisfaction of these installments is determined on a cumulative basis, if the use of funding balances is more than enough to satisfy an installment

requirement, then the excess is carried forward to use to satisfy later installments.

The preamble to the proposed regulations noted that the proposed rules under section 430(f) would have provided that the amount of the funding balance used to satisfy the quarterly contribution requirements could not later be added back to the prefunding balance. The October 2009 final regulations under section 430(f) provide a different rule. Under those final regulations, to the extent that a contribution is included in the present value of excess contributions solely because the minimum required contribution has been offset by an election to use the funding standard carryover balance or prefunding balance, the contribution is adjusted for investment experience to reflect the actual rate of return on plan assets under the rules of § 1.430(f)-1(b)(3). Thus, to the extent that a quarterly installment is satisfied through the use of a funding balance but the plan sponsor replenishes its funding balances by subsequently making a contribution for the plan year that is added to the prefunding balance, the amount that may be added to the prefunding balance on account of that subsequent contribution is based on the actual rate of return for the plan year.

The proposed regulations would have credited interest on an early election to use a funding balance for purposes of satisfying the quarterly contribution requirement, but would not have credited interest on an early contribution for this purpose. Commenters asked for early contributions to be credited with interest toward quarterly contribution requirements on the same basis as an early election to use a funding balance. The final regulations make this change.

For required installments due after the valuation date, the proposed regulations would have provided that, if the employer fails to pay the full amount of a required installment when due, then the contribution that constitutes a late payment of the required installment for the period of time that begins on the due date for the required installment and that ends on the date of payment is adjusted using the effective interest rate for the plan for that

⁷As described above in section II of this preamble, a plan that terminates before the last day of the plan year is treated as having a short plan year that ends on the termination date. This rule also applies for purposes of the 8% month deadline described in section III.A of this preamble.

plan year determined pursuant to § 1.430(h)(2)–1(f)(1) plus 5 percentage points. This increased interest rate would not have applied to installments that are due before the valuation date for the plan year because the application of an increased interest rate for such a contribution would not have had the intended effect of increasing the minimum required contribution and section 430(j)(3) did not provide for special rules for valuation dates other than the beginning of the plan year. The proposed regulations included a reserved paragraph for the treatment of quarterly installments that are due before the valuation date. However, the preamble to the proposed regulations described a rule that the IRS and the Treasury Department were considering for inclusion in the final regulations if legislation were enacted authorizing special rules for the application of the quarterly installment requirements for plans with valuation dates other than the first day of the plan year.

Section 101(b)(2)(G)(iii) of WRERA added section 430(j)(3)(E)(iii) which provides authority for special quarterly contribution rules for plans with valuation dates other than the first day of the plan year. Pursuant to this authority, the final regulations provide for any late quarterly installment (and any late election to use the funding balances to satisfy a quarterly installment) to be discounted for interest from the date of the late contribution or election to the due date for the installment using an interest rate equal to the plan's effective interest rate under section 430(h)(2)(A) for the plan year plus 5 percentage points. The discounted amount is then treated as if it were contributed or elected on the due date and further adjusted for interest from the due date to the valuation date. This approach is mathematically equivalent to the approach suggested in the preamble of the proposed regulations if compound interest is used.

C. Standing election to satisfy installments through use of funding balances

The proposed regulations would have permitted plans to satisfy the requirement to pay quarterly installments with an elec-

tion to use funding balances. The preamble to those regulations asked for comments on the utility of standing elections with respect to funding balances. Commenters uniformly favored permitting this use of standing elections.

These final regulations include rules for providing a standing election to satisfy quarterly installments. Under these rules, a plan sponsor may provide a standing election in writing to the plan's enrolled actuary to use the funding standard carryover balance and the prefunding balance to satisfy any otherwise unpaid portion of a required installment under section 430(j)(3). The otherwise unpaid portion of a required installment is the amount necessary to satisfy the required installment rules under section 430(j) based on quarterly installment amounts equal to 25 percent of the minimum required contribution under section 430 for the preceding plan year. Under the regulations, if the amount of the prefunding and funding standard carryover balances available is less than the amount needed to satisfy any otherwise unpaid portion of a required installment, then the entire amount available will be used under the standing election. Any election made pursuant to a standing election is deemed to occur on the later of the last date for making the required installment under section 430(j)(3) and the date the standing election is provided to the enrolled actuary.

The regulations provide that, generally, any standing election to use the funding balances to satisfy quarterly installments remains in effect for the plan with respect to the enrolled actuary named in the election, unless the standing election is revoked or the plan's enrolled actuary is changed. However, a plan sponsor may suspend operation of a standing election for the remainder of a plan year by providing written notice to the enrolled actuary. In addition, if the current year's minimum required contribution has been determined by the plan's enrolled actuary, the plan sponsor may replace the standing election for the remainder of the plan year with a formula election to use (to the extent available) the funding balances as necessary so that the remaining required

installments satisfy the required installment rules under section 430(j) based on quarterly installment amounts taking into account the determination of the current year's minimum required contribution.

D. Liquidity shortfalls

The regulations provide rules for the liquidity requirements that generally apply to plans for which quarterly contributions are required. Under the regulations, if a plan sponsor of a plan (other than a small plan described in section 430(g)(2)(B)) is required to pay quarterly installments pursuant to section 430(j)(3), then the plan sponsor is treated as failing to pay the full amount of the required installment for a quarter to the extent that the value of the liquid assets contributed after the end of that quarter and on or before the due date for the installment is less than the liquidity shortfall (as defined in section 430(j)(4)(E)) for that quarter. Thus, in order to satisfy the quarterly contribution requirement for a quarter, liquid assets in the amount of the liquidity shortfall must be contributed after the end of that quarter and on or before the due date for the installment. However, the regulations provide that if the amount of a required installment for a quarter is increased by reason of this rule, this increase generally is limited to the amount which, when added to the current required installment (determined without regard to the increase) and prior required installments for the plan year, is necessary to increase the funding target attainment percentage for the plan year to 100 percent (taking into account the expected increase in the funding target due to benefits accruing or earned during the plan year). The use of funding balances or the contribution of illiquid assets cannot remedy a liquidity shortfall.⁸

The regulations provide that the term liquidity shortfall generally means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which that installment is due) of the base amount with respect to the quarter, over the value (as of the last day of the quarter) of the plan's liquid assets. For this purpose, the regula-

⁸In this context, see Department of Labor Interpretive Bulletin 94-3 (29 CFR 2509.94-3), which sets forth the Department's view that, in the absence of an applicable exemption, a contribution by an employer to a defined benefit pension plan in a form other than cash constitutes a prohibited transaction under section 406 of ERISA and section 4975 of the Code.

tions provide that the term base amount generally means, with respect to any quarter, an amount equal to three times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter. However, if the generally applicable base amount for a quarter exceeds an amount equal to two times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and the enrolled actuary for the plan certifies to the satisfaction of the Commissioner that such excess is the result of nonrecurring circumstances, the base amount with respect to that quarter is determined without regard to amounts related to those nonrecurring circumstances.

In response to comments, the regulations provide special rules for applying the liquidity requirements to a multiple employer plan to which section 413(c)(4)(A) applies.⁹ Under these rules, the liquidity requirement is satisfied for the plan if it would be satisfied if the plan were a single-employer plan that is not a multiple employer plan. However, if the plan does not satisfy the liquidity requirement on this basis, then the liquidity requirement must be applied separately for each employer under the plan, as if each employer maintained a separate plan. In this case, the value of plan assets as of the end of each quarter under a multiple employer plan must be allocated among the employers sponsoring the plan.

The rules under the regulations relating to the liquidity requirements are similar to the rules provided under Revenue Ruling 95-31, but have been updated to reflect statutory changes. For example, the definition of liquid assets under the proposed regulations is the same as the definition of liquid assets under Revenue Ruling 95-31. Unlike Revenue Ruling 95-31, the regulations measure satisfaction of a liquidity shortfall by reference to contributions made after the end of the quarter and by the due date for the installment (while including contributions made during the plan quarter in plan assets). Although this may appear to be a change from the rules of Revenue Ruling 95-31, the two formulations are mathematically identical.

Under section 430(j)(4)(C), any unpaid liquidity amount is treated as unpaid until the close of the quarter in which the due date for that installment occurs. Under the proposed regulations, section 430(j)(4)(C) would have applied only for purposes of applying the additional interest for late quarterly installments, and the unpaid liquidity amount due during a quarter would have been treated as unpaid until a contribution of liquid assets satisfied that requirement, even if the period of underpayment extended beyond the end of the quarter. Some commenters objected to the approach in the proposed regulations and suggested that section 430(j)(4)(C) should be interpreted so that the unpaid liquidity amount is treated as paid at the end of the quarter for all purposes.

After consideration of the comments received, the IRS and the Treasury Department have modified the final regulations to provide that, pursuant to section 430(j)(4)(C), any portion of a required installment for a quarter that is treated as unpaid by reason of the liquidity requirements is treated as unpaid until the close of the quarter in which the due date for the installment occurs (without regard to any contribution of liquid assets that is made after the due date of the required installment). After the close of the quarter in which the due date for such an installment occurs, any portion of the required installment that was treated as unpaid solely by reason of the liquidity requirements is no longer treated as unpaid (but any portion of the required installment that would be treated as unpaid without regard to the liquidity requirements must be satisfied in accordance with the generally applicable continuing requirement to pay quarterly installments). The requirement to satisfy a liquidity shortfall applies separately with respect to each quarter. In many cases, the failure to contribute sufficient liquid assets to satisfy a liquidity shortfall for a quarter will result in a liquidity shortfall for future quarters until sufficient liquid assets have been contributed to satisfy the liquidity shortfall.

Section 430(j)(3)(A) provides that if the employer fails to pay the full amount of a required installment, the amount of

interest charged on the underpayment for the period of underpayment is determined by increasing the rate of interest otherwise used to adjust the contribution to the valuation date under section 430(j)(2) by 5 percentage points. In general, the period of underpayment is the period between the date the installment is due and the date it is paid. However, under section 430(j)(4)(C), any portion of an installment that is treated as not paid by reason of the liquidity requirement continues to be treated as unpaid until the close of the quarter in which the due date for that installment occurs.

Accordingly, the regulations provide that, to the extent that an unpaid liquidity amount is satisfied with a contribution of liquid assets during the quarter in which it is due, the increased rate of interest applies for purposes of discounting a contribution for the period between the last day of the quarter and the due date of the contribution. By contrast, any portion of the required installment that would be due without regard to the liquidity requirement will remain due after the end of the quarter, and the regulations provide for the use of the increased rate of interest for purposes of discounting a contribution that is applied to that portion from the date of actual payment to the due date.

To the extent that a portion of the unpaid liquidity amount is no longer treated as unpaid after the close of the quarter, the regulations provide a special rule to reflect the requirement to use a higher rate of interest on late required installments by converting that requirement into an interest charge that increases the minimum required contribution. This ensures that the amount of the contributions necessary to satisfy the minimum funding requirements reflects the effect of the additional interest required under section 430(j)(2) even if a portion of the unpaid liquidity amount is no longer considered unpaid after the close of the quarter. Otherwise, the sponsor of a plan with an unpaid liquidity amount could avoid an additional interest adjustment by merely deferring making a contribution until after the close of the quarter in which the liquidity amount was due, and would therefore be

⁹The liquidity requirement of section 430(j)(4) does not apply to plans with 100 or fewer participants on each day during the preceding plan year. For this purpose, the determination of the number of participants is made separately for each employer under a multiple employer plan to which section 413(c)(4)(A) applies.

treated more favorably than a plan sponsor who made a contribution toward the unpaid liquidity amount within that quarter.

Under this special rule, the increase in the minimum required contribution attributable to any unpaid liquidity amount that is no longer treated as unpaid after the close of the quarter is equal to the difference between (1) the amount that is no longer treated as unpaid, discounted for interest from the end of the quarter to the valuation date using the plan's effective interest rate, and (2) the amount that is no longer treated as unpaid, discounted for interest from the end of the quarter to the due date of the required installment using the plan's effective interest rate plus 5 percent, and further discounted for interest from the due date of the installment to the valuation date using the plan's effective interest rate. The regulations include an example illustrating the calculation of the increase in the minimum required contribution due to an unpaid liquidity amount that is no longer treated as unpaid after the close of the quarter in which it is due.

Under the regulations, this increase in the minimum required contribution to reflect an interest adjustment for unpaid liquidity amounts is disregarded when calculating the required annual payment under section 430(j)(3)(D)(ii) (which is used to determine the amount of required quarterly installments).

In addition to the adjustment to reflect the higher interest rate, the regulations identify two further consequences of failing to satisfy the liquidity requirement. Section 206(e) of ERISA and section 401(a)(32) of the Code provide rules regarding the suspension of accelerated distributions for a plan with an unpaid liquidity shortfall. Also, section 4971(f) provides an excise tax with respect to the failure to pay a liquidity shortfall.

The proposed regulations included an ordering rule providing that if an employer makes a contribution of liquid assets that is allocated toward the required installment for a quarter, but the contribution is less than the total amount needed to satisfy the quarterly installment for the quarter, then the contribution would be first attributed toward satisfying the quarterly installment without regard to the liquidity requirement. So that all contributions of liquid assets apply toward

satisfaction of the liquidity requirement, the final regulations provide that any contribution of liquid assets for a quarter applies toward satisfying the liquidity requirement (as well as the otherwise applicable quarterly installment).

V. Section 54.4971(c)-1 Taxes on Failure to Meet Minimum Funding Standards

These regulations set forth the definitions that were modified by PPA '06 that apply for purposes of applying the rules of section 4971. These definitions are substantially the same as the definitions in the proposed regulations, but they have been modified to reflect certain changes made by the CSEC Act.

The regulations define the term *accumulated funding deficiency* to have the meaning given to that term by section 431, in the case of a multiemployer plan, or by section 433, in the case of a CSEC plan. A plan's accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 431 or section 433 applies to the plan.

The regulations define the term *unpaid minimum required contribution*, with respect to any plan year, as the portion of the minimum required contribution under section 430 for the plan year for which contributions have not been made on or before the due date for the plan year under section 430(j)(1) (after taking into account interest adjustments and any offsets from use of the funding balances). The regulations provide that a plan's accumulated funding deficiency under section 412 for the pre-effective plan year is treated as an unpaid minimum required contribution for that plan year until correction is made. Unlike the determination of accumulated funding deficiency which applied under section 412 prior to PPA '06, the total amount of unpaid minimum required contributions that is subject to the excise tax under section 4971 is not adjusted with interest. However, as described in the following paragraph, correction of an unpaid minimum required contribution does require a contribution that includes an adjustment for interest.

The regulations define the term *correct* as it applies to an accumulated funding deficiency or an unpaid minimum required contribution. With respect to an accumulated funding deficiency under a multiemployer plan or a CSEC plan, the regulations adopt the same definition of correct that was proposed to apply to a multiemployer plan. Under the regulations, the correction of an unpaid minimum required contribution under a single-employer plan for a plan year requires the contribution, to or under the plan, of the amount that, when discounted to the valuation date for the plan year for which the unpaid minimum required contribution is due at the appropriate rate of interest, equals or exceeds the unpaid minimum required contribution. For this purpose, the appropriate rate of interest is the plan's effective interest rate for the plan year for which the unpaid minimum required contribution is due except to the extent that the payments are subject to a higher discount rate provided under section 430(j)(3) or (j)(4). With respect to an unpaid minimum required contribution, the regulations provide an ordering rule under which a contribution is attributable first to the earliest plan year of any unpaid minimum required contribution for which correction has not yet been made. With respect to an accumulated funding deficiency under section 412 for the pre-effective plan year that is treated as an unpaid minimum required contribution, the regulations provide that correction requires the contribution, to or under the plan, of the amount of that accumulated funding deficiency adjusted with interest from the end of the pre-effective plan year to the date of the contribution at the plan's valuation interest rate for the pre-effective plan year.

The regulations define the term *single-employer plan* to mean a plan to which the minimum funding requirements of section 412 apply that is not a multiemployer plan as described in section 414(f). Thus, the regulations clarify that the term *single-employer plan* includes a multiple employer plan to which section 413(c) applies.

Section 4971, as amended by PPA '06, imposes an excise tax on unpaid minimum required contributions for all years until corrected. In contrast to the pre-PPA '06

rule (under which an accumulated funding deficiency could be corrected by improvement in the plan's funded status sufficient to trigger a full funding limitation credit), an unpaid minimum required contribution may only be corrected by making the contribution as described under the regulations. Like the proposed regulations, the final regulations apply this rule to unpaid minimum required contributions for all years, without special treatment for pre-PPA '06 funding deficiencies. The final regulations do not reflect comments asking for preservation of the full funding rule with respect to pre-PPA '06 funding deficiencies, because the statute provides the same rules with respect to unpaid contributions for all years.

VI. Authority to issue published guidance with respect to certain generally applicable regulatory deadlines

The regulations contain modifications to § 1.430(f)-1(f)(2) and (f)(3) and adds § 1.436-1(h)(4)(iii)(C)(9) to provide the IRS with authority to issue published guidance

to extend certain deadlines. These changes accommodate plan sponsor actions in response to retroactive changes in the minimum funding requirements and are the modifications that the IRS indicated were expected to be made in Q&A-G-7 of Notice 2012-61 (which provided guidance regarding MAP-21) and in sections IV and V of Notice 2014-53 (which provided guidance regarding HATFA).

Effective/Applicability Dates of Regulations

Section 430 generally applies to plan years beginning on or after January 1, 2008. Sections 1.430(a)-1 and 1.430(j)-1 and the changes made by this Treasury decision to § 1.430(f)-1 apply generally to plan years beginning on or after January 1, 2016. Plans are permitted to apply these provisions for plan years beginning before 2016 and after 2007. In addition, for plan years beginning before 2016 and after 2007, plans are also permitted to rely on either these final regulations or the proposed regulations published April 15, 2008 that are finalized by this Treasury decision. See also Notice 2008-21 for

additional rules with respect to plan years beginning during 2008.

Pursuant to section 114(g) of PPA '06, as added by WRERA, the statutory changes to section 4971 apply to taxable years beginning after 2007, but only with respect to plan years beginning on or after January 1, 2008, which end with or within any such taxable year. Thus, the statutory changes to section 4971 only apply to taxable years that include the last day of a plan year to which section 430 applies to determine the minimum required contribution for the plan.

The amendments to § 54.4971(c)-1 generally apply at the same time the statutory changes to section 4971 under PPA '06 become effective, but do not apply to any taxable years ending before the date the proposed regulations were published (April 15, 2008). Thus, for example, the amendments to § 54.4971(c)-1 do not apply to a short taxable year beginning January 1, 2008 and ending February 29, 2008.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, it is hereby certified that any collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. The certification is based on the fact that § 301.6059-1 currently requires the filing with the IRS of the periodic report of the actuary for a defined benefit plan under section 6059 in accordance with applicable forms, schedules, and accompanying instructions. These regulations make minor changes to this required collection of information, and are not expected to impose an additional burden on small entities. Furthermore, two provisions of these regulations lessen the collection of information imposed on small entities. Section 1.430(f)-1(f)(1)(iii) permits certain standing elections to use funding balances to satisfy required quarterly installments, thus decreasing the

number of elections made by a plan sponsor who uses this feature. Section 1.430(a)-1(b)(5)(ii) provides that, if a plan's termination date is before the date that would otherwise have been the valuation date for a plan year, then the valuation date for the plan year must be changed so that it falls within the short plan year (so that automatic approval is granted for this change). This change avoids the need for an employer to request a change in valuation date with respect to certain small plans, thus lessening the burden for required collections of information for small entities. Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at <http://irs.gov>.

Drafting Information

The principal authors of these regulations are Michael P. Brewer and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the introductory text and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

§ 1.430(j)-1 also issued under 26 U.S.C. 430(j)(4)(F).

Par. 2. Section 1.430(a)-1 is added to read as follows:

§ 1.430(a)-1 Determination of minimum required contribution.

(a) *In general*—(1) *Overview*. This section sets forth rules for determining a plan's minimum required contribution for a plan year under section 430(a). Section 430 and this section apply to single-employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section defines a plan's minimum required contribution for a plan year. Paragraph (c) of this section provides rules for determining shortfall amortization installments. Paragraph (d) of this section provides rules for determining waiver amortization installments. Paragraph (e) of this section provides for early deemed amortization of shortfall and waiver amortization bases for fully funded plans. Paragraph (f) of this section provides definitions that apply for purposes of this section. Paragraph (g) of this section provides examples that illustrate the application of this section. Paragraph (h) of this section provides effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans*—(i) *In general*. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the minimum required contribution is computed separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(ii) *CSEC plans*. A CSEC plan (that is, a plan that fits within the definition of a CSEC plan in section 414(y) for plan years beginning on or after January 1, 2014 and for which the election under section 414(y)(3)(A) has not been made) is not subject to the rules of section 430. See section 433 for the minimum funding rules that apply to CSEC plans.

(b) *Definition of minimum required contribution*—(1) *In general*. In the case of a defined benefit plan that is subject to section 430, except as offset under section 430(f) and § 1.430(f)-1, the minimum required contribution for a plan year is determined as the applicable amount determined under paragraph (b)(2) of this section or paragraph (b)(3) of this section, reduced by the amount of any funding waiver under section 412(c) that is granted for the plan year. See paragraph (b)(4) of this section for special rules for a plan maintained by a commercial passenger airline (or other eligible employer) for which an election under section 402 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), as amended (PPA '06), has been made, and see section 430(j) and § 1.430(j)-1(b) for rules regarding the required interest adjustment for a contribution that is paid on a date other than the valuation date for the plan year. See also § 1.430(j)-1(d)(3)(iv)(B) for rules regarding an increase to the minimum required contribution in certain circumstances for a plan with an unpaid liquidity amount.

(2) *Plan assets less than funding target*—(i) *General rule*. For any plan year in which the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)-1(c), but not below zero) is less than the funding target for the plan year, the minimum required contribution for that plan year is equal to the sum of—

(A) The target normal cost for the plan year;

(B) The total (not less than zero) of the shortfall amortization installments as described in paragraph (c) of this section determined with respect to any shortfall amortization base for the plan year and for each preceding plan year for which the shortfall amortization base has not been fully taken into account (generally, the 6 preceding plan years); and

(C) The total of the waiver amortization installments as described in paragraph (d) of this section determined with respect to any waiver amortization base for all preceding plan years for which the waiver amortization base has not been fully taken into account (generally, the 5 preceding plan years).

(ii) *Special rule for short plan years*—

(A) *Proration of amortization installments*. In determining the minimum required contribution in the case of a plan year that is shorter than 12 months (and is not a 52-week plan year of a plan that uses a 52-53 week plan year), the shortfall amortization installments and waiver amortization installments that are taken into account under paragraphs (b)(2)(i)(B) and (C) of this section are determined by multiplying the amount of those installments that would be taken into account for a 12-month plan year by a fraction, the numerator of which is the duration of the short plan year and the denominator of which is 1 year.

(B) *Effect on subsequent years*. In plan years after the short plan year, installments with respect to a shortfall amortization base or waiver amortization base continue to be taken into account under paragraphs (b)(2)(i)(B) and (C) of this section until the total amount of those installments, as originally determined when the base was established, has been taken into account. Thus, in the case of a plan that has a short plan year, an additional partial installment will be taken into account under paragraphs (b)(2)(i)(B) and (C) of this section for the plan year that ends after the end of the original amortization period (generally 7 years for shortfall amortization bases and 5 years for waiver amortization bases) in an amount determined so that the total of the amortization installments (including the prorated installment payable for the short plan year and the additional partial installment) is equal to the total of the amortization installments as originally determined.

(3) *Plan assets equal or exceed funding target*. For any plan year in which the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)-1(c), but not below zero) equals or exceeds the funding target for the plan year, the minimum re-

quired contribution for that plan year is equal to the target normal cost for the plan year reduced (but not below zero) by that excess.

(4) *Special rules for commercial passenger airlines*—(i) *In general.* This paragraph (b)(4) provides special rules for a plan maintained by a commercial passenger airline (or an employer whose principal business is providing catering services to a commercial passenger airline) for which an election under section 402(a)(1) of PPA '06 has been made. See paragraph (c)(4) of this section for special rules for a plan maintained by a commercial passenger airline (or an employer whose principal business is providing catering services to a commercial passenger airline) for which an election under section 402(a)(2) of PPA '06 has been made.

(ii) *Determinations during 17-year amortization period.* If an election described in section 402(a)(1) of PPA '06 applies for the plan year with respect to an eligible plan described in section 402(c)(1) of PPA '06, then the plan's minimum required contribution for purposes of section 430 of the Internal Revenue Code (Code) for the plan year is equal to the amount necessary to amortize (at an interest rate of 8.85 percent) the unfunded liability of the plan in equal installments over the remaining amortization period. For this purpose, the unfunded liability means the excess of the accrued liability under the plan determined using the unit credit funding method and an interest rate of 8.85 percent over the value of assets (as determined under section 430(g)(3) and § 1.430(g)-1(c)), and the remaining amortization period is the 17-plan-year period beginning with the first plan year for which the election was made, reduced by 1 year for each plan year after the first plan year for which the election was made. In addition, the section 430(f)(3) election to apply funding balances against the minimum required contribution does not apply to a plan to which the election described in section 402(a)(1) of PPA '06 applies for the plan year.

(iii) *Determinations following the election period.* If an election described in section 402(a)(1) of PPA '06 applied to the plan for any preceding plan year but does not apply for the current plan year, then the plan's minimum required contri-

bution for purposes of section 430 of the Code for the plan year is determined without regard to that election. For the first plan year for which that election no longer applies to the plan, any prefunding balance or funding standard carryover balance is reduced to zero.

(5) *Terminated plans*—(i) *Short plan year.* If a plan's termination date occurs during a plan year but before the last day of a plan year, then, for purposes of section 430, the plan is treated as having a short plan year that ends on the termination date.

(ii) *Valuation date.* If a plan's termination date is before the date that would otherwise have been the valuation date for a plan year, then the valuation date for the plan year must be changed so that it falls within the short plan year pursuant to § 1.430(g)-1(b)(2)(i). See § 1.430(g)-1(b)(2)(iv) for a rule providing automatic approval of changes in the valuation date that are required by section 430.

(c) *Shortfall amortization installments*—(1) *In general.* Except as otherwise provided in paragraphs (c)(3) and (4) of this section, the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the annual amounts necessary to amortize that shortfall amortization base in level annual installments over the 7-year period beginning with that plan year. See § 1.430(h)(2)-1(e) and (f) for rules regarding interest rates used for determining shortfall amortization installments and the date within each plan year on which the installments are assumed to be paid. The shortfall amortization installments are determined using the interest rates that apply for the plan year for which the shortfall amortization base is established and are not redetermined in subsequent plan years to reflect any changes in the valuation date or changes in interest rates under section 430(h)(2) for those subsequent plan years.

(2) *Shortfall amortization base*—(i) *In general.* Unless the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)-1(c)(2), but not below zero) is equal to or greater than the funding target for the plan year, a shortfall amortization base is established for the plan year equal to—

(A) The funding shortfall for the plan year; minus

(B) The amount attributable to future installments determined under paragraph (c)(2)(ii) of this section.

(ii) *Amount attributable to future installments.* The amount attributable to future installments is equal to the sum of the present values (determined in accordance with § 1.430(h)(2)-1(e) and (f) using the interest rates that apply for the current plan year) of—

(A) The shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to the shortfall amortization bases for any plan year preceding the plan year; and

(B) The waiver amortization installments that have been determined for the plan year and any succeeding plan year with respect to the waiver amortization bases for any plan year preceding the plan year.

(iii) *Timing assumption for installments after change in valuation date.* For purposes of determining the present value in paragraph (c)(2)(ii) of this section, the shortfall amortization installments and waiver amortization installments are assumed to be paid on the valuation date for the current plan year and anniversaries thereof even if the valuation date for a subsequent plan year is not the same as the valuation date for the plan year for which a shortfall amortization base or waiver amortization base was established. For example, assume that a plan has a July 1 to June 30 plan year and a valuation date that is the first day of the plan year, and that the plan year for the plan is changed to the calendar year, so that the plan has a short plan year beginning July 1, 2017 and ending December 31, 2017 and a calendar plan year thereafter. In this case—

(A) For the July 1, 2017 actuarial valuation, the shortfall amortization payments with respect to shortfall amortization bases established for all prior plan years are assumed to be paid on July 1, 2017 and anniversaries thereof; and

(B) For the January 1, 2018 actuarial valuation, the shortfall amortization payments with respect to shortfall amortization bases established for all prior plan years are assumed to be paid on January 1, 2018 and anniversaries thereof.

(iv) *Transition rule.* See paragraph (h)(4) of this section for a transition rule under which only a portion of the funding target is taken into account in determining whether a shortfall amortization base is established under this paragraph (c)(2).

(3) *Election of funding relief for certain plans*—(i) *Funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010.* See section 430(c)(2)(D) and section 430(c)(7) for special rules that apply to determine the amount of shortfall amortization installments with respect to shortfall amortization bases established for plan years ending on or after October 10, 2009 and beginning before January 1, 2012, for which the relief under section 430(c)(2)(D) is elected.

(ii) *Funding relief related to eligible charity plans.* See section 104(d)(3)(B) through (F) of PPA '06, which reflects amendments made by section 103(b)(2) of the Cooperative and Small Employer Charity Pension Flexibility Act of 2014, Public Law 113–97 (128 Stat. 1137), for special rules that apply to determine the amount of shortfall amortization installments with respect to plan years beginning on or after January 1, 2014, in the case of an eligible charity plan for which the relief under section 104(d)(3)(A) of PPA '06 is elected.

(iii) *Election by commercial passenger airline under section 402(a)(2) of PPA '06.* If an election described in section 402(a)(2) of PPA '06 has been made for an eligible plan described in section 402(c)(1) of PPA '06, then the minimum required contribution for purposes of section 430 is determined under generally applicable rules, except that the shortfall amortization base for the first plan year for which section 430 applies to the plan is amortized over 10 years (rather than over 7 years as provided in paragraph (c)(1) of this section) in accordance with § 1.430(h)(2)–1(e) and (f) using the interest rates that apply for purposes of determining the target normal cost for the first plan year for which section 430 applies to the plan. In such a case, the shortfall amortization installments with respect to the shortfall amortization base for that plan year will continue to be included in determining the minimum required contribution for 10 years rather than 7 years.

See also § 1.430(h)(2)–1(b)(6) for a special rule for determining the funding target in the case of a plan for which an election under section 402(a)(2) of PPA '06 has been made.

(d) *Waiver amortization installments*—(1) *In general.* For purposes of this section, the waiver amortization installments with respect to a waiver amortization base established for a plan year are the annual amounts necessary to amortize that waiver amortization base in level annual installments over the 5-year period beginning with the following plan year. See § 1.430(h)(2)–1(e) and (f) for rules regarding interest rates used for determining waiver amortization installments and the date within each plan year on which the installments are assumed to be paid. The waiver amortization installments established with respect to a waiver amortization base are determined using the interest rates that apply for the plan year for which the waiver is granted (even though the first installment with respect to the waiver amortization base is not due until the subsequent plan year) and are not redetermined in subsequent plan years to reflect any changes in the valuation date or changes in interest rates under section 430(h)(2) for those subsequent plan years.

(2) *Waiver amortization base*—(i) *In general.* For purposes of this section, a waiver amortization base is established for each plan year for which a waiver of the minimum funding standard has been granted in accordance with section 412(c). The amount of the waiver amortization base is equal to the waived funding deficiency under section 412(c)(3) for the plan year.

(ii) *Transition rule.* See paragraph (h)(3) of this section for the treatment of funding waivers granted for plan years beginning before 2008.

(e) *Early deemed amortization upon attainment of funding target.* In any case in which the funding shortfall for a plan year is zero, for purposes of determining the minimum required contribution for that plan year and subsequent plan years—

(1) The shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to those bases) are reduced to zero; and

(2) The waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to those bases) are reduced to zero.

(f) *Definitions*—(1) *In general.* The definitions set forth in this paragraph (f) apply for purposes of this section.

(2) *Funding shortfall.* The term *funding shortfall* means the excess (if any) of—

(i) The funding target for a plan year; over

(ii) The value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)–1(c), but not below zero).

(3) *Funding target.* The term *funding target* means the plan's funding target for a plan year determined under § 1.430(d)–1(b)(2), § 1.430(i)–1(c), or § 1.430(i)–1(e)(1), whichever applies to the plan for the plan year.

(4) *Target normal cost.* The term *target normal cost* means the plan's target normal cost for a plan year determined under § 1.430(d)–1(b)(1), § 1.430(i)–1(d), or § 1.430(i)–1(e)(2), whichever applies to the plan for the plan year.

(5) *Termination date*—(i) *Plans subject to Title IV of ERISA.* In the case of a plan subject to Title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), the termination date means the plan's termination date established under section 4048(a) of ERISA.

(ii) *Other plans*—(A) *In general.* In the case of a plan not subject to Title IV of ERISA, the termination date means the plan's termination date established by the plan administrator, provided that the termination date may be no earlier than the date on which all actions necessary to effect the plan termination (other than the distribution of plan assets) are taken.

(B) *Requirement for prompt distribution.* A plan is not treated as terminated on the applicable date described in paragraph (f)(5)(ii)(A) of this section if the assets are not distributed as soon as administratively feasible after that date. Whether distribution of plan assets is made as soon as administratively feasible is to be determined under all the relevant facts and circumstances. In general, distribution of plan assets is deemed to have been made

as soon as administratively feasible to the extent that any delay in distribution was because of circumstances outside the control of the plan administrator. However, distribution of plan assets that was delayed merely for the purpose of obtaining a higher value than current market value is generally not deemed to have been made as soon as administratively feasible.

(C) *Presumption applicable to prompt distribution requirement.* Except as provided in paragraph (f)(5)(ii)(D) of this section, distribution of plan assets which is not completed within one year following the applicable date described in paragraph (f)(5)(ii)(A) of this section is presumed not to have been made as soon as administratively feasible.

(D) *Exception to prompt distribution presumption for obtaining determination letter from Commissioner.* A plan is not treated as failing to meet the requirement to distribute plan assets as soon as administratively feasible after the proposed termination date if the delay is attributable to the period of time necessary to obtain a determination letter from the Commissioner on the plan's qualified status upon its termination, provided that the request for a determination letter is timely and the distribution of plan assets is made as soon as administratively feasible after the letter is obtained.

(6) *Transition funding shortfall*—(i) *In general.* The term *transition funding shortfall* means the excess, if any, of—

(A) The applicable percentage of the funding target for a plan year; over

(B) The value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)–1(c), but not below zero).

(ii) *Applicable percentage.* For purposes of this paragraph (f)(6), the applicable percentage is determined in accordance with the following table:

Calendar year in which the plan year begins	Applicable percentage
2008	92
2009	94
2010	96

(g) *Examples.* The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions: section 430 applies to determine the minimum required contribution for plan years beginning on or after January 1, 2008; the plan year is the calendar year; the valuation date is January 1; the plan's prefunding balance and funding standard carryover balance are equal to \$0; the plan sponsor did not elect any funding relief under section 430(c)(2)(D) for any plan year; and the plan has not received any funding waivers for any relevant time periods.

Example 1. (i) Plan A has a funding target of \$2,500,000 and assets totaling \$1,800,000 as of January 1, 2016. For purposes of this example, the segment interest rates used for the January 1, 2016 valuation are assumed to be 5.26% for the first segment interest rate and 5.82% for the second segment interest rate. No shortfall or waiver amortization bases have been established for prior plan years.

(ii) A \$700,000 shortfall amortization base is established for 2016, which is equal to the \$2,500,000 funding target less \$1,800,000 of assets.

(iii) With respect to the new shortfall amortization base of \$700,000, there is a shortfall amortization installment of \$116,852 (which is the amount necessary to amortize the \$700,000 shortfall amortization base over 7 years) for each year from 2016 through 2022. The amount of this shortfall amortization installment is determined by discounting the first five installments using the first segment interest rate of 5.26%, and by discounting the sixth and seventh installments using the second segment rate of 5.82%.

Example 2. (i) The facts are the same as in *Example 1*, except that the plan was granted a funding waiver for 2014, resulting in five annual waiver amortization installments of \$70,000 each, beginning with the 2015 plan year.

(ii) As of January 1, 2016, the present value of the remaining waiver amortization installments is \$259,702, which is determined by discounting the remaining four waiver amortization installments of \$70,000 each to January 1, 2016, using the first segment rate of 5.26%. See paragraph (c)(2)(ii) of this section.

(iii) A \$440,298 shortfall amortization base is established for 2016, which is equal to the \$2,500,000 funding target, less \$1,800,000 of assets, less \$259,702 (which is the present value of the remaining four waiver amortization installments).

(iv) With respect to this shortfall amortization base of \$440,298, there is a shortfall amortization installment of \$73,500 (which is equal to the \$440,298 shortfall amortization base amortized over 7 years) for each year from 2016 through 2022.

Example 3. (i) The facts are the same as in *Example 2*. Plan A has a \$100,000 target normal cost for the 2016 plan year and was granted a funding waiver for 2016 to the largest extent permitted under section 412(c).

(ii) If the funding waiver for 2016 had not been granted, the minimum required contribution for 2016 would have been \$243,500. This is equal to the \$100,000 target normal cost, plus the \$70,000 waiver amortization installment from the 2014 waiver, plus the \$73,500 January 1, 2016 shortfall amortization installment.

(iii) In accordance with section 412(c)(1)(C), the portion of the minimum required contribution attributable to the amortization of the 2014 funding waiver cannot be waived. Therefore, the maximum amount of the January 1, 2016 minimum required contribution that can be waived is \$173,500.

(iv) In accordance with paragraph (d) of this section, a waiver amortization base of \$173,500 is established as of January 1, 2016 to be amortized over 5 years beginning with the 2017 plan year. Although the waiver amortization installments for the 2016 funding waiver are not included in the minimum required contribution until 2017, the amount of those installments is determined based on the interest rates used for the 2016 plan year.

(v) The waiver amortization installments with respect to the 2016 funding waiver are calculated using the first segment interest rate of 5.26% for the first four installments (calculated as of January 1, 2017 through January 1, 2020) and the second segment interest rate of 5.82% for the final installment payable as of January 1, 2021. Accordingly, the waiver amortization installments with respect to the 2016 funding waiver are \$40,554 each, payable beginning January 1, 2017.

Example 4. (i) The facts are the same as in *Example 3*. As of January 1, 2017, Plan A has a funding target of \$2,750,000 and assets totaling \$1,900,000. For purposes of this example, the first segment rate used for the 2017 valuation is assumed to be 5.50%, the second segment rate is assumed to be 6.00%, and the third segment rate is assumed to be 6.50%.

(ii) As of January 1, 2017, the present value of the remaining three waiver amortization installments with respect to the 2014 waiver is \$199,242, which is determined using the first segment rate of 5.50%.

(iii) As of January 1, 2017, the present value of the remaining five waiver amortization installments with respect to the 2016 waiver is \$182,701, which is determined using the first segment rate of 5.50%.

(iv) As of January 1, 2017, the present value of the remaining six shortfall amortization installments with respect to the 2016 shortfall amortization base is \$386,052, which is determined using the first segment rate of 5.50% for the first five installments and the second segment rate of 6.00% for the sixth installment.

(v) A shortfall amortization base of \$82,005 is established for 2017, which is equal to the \$2,750,000 funding target, reduced by the sum of \$1,900,000 of assets, \$199,242 (the present value of the remaining waiver amortization installments with respect to the 2014 waiver), \$182,701 (the present value of the remaining waiver amortization installments with respect to the 2016 waiver), and \$386,052 (the present value of the remaining installments with respect to the 2016 shortfall amortization base).

(vi) With respect to this shortfall amortization base of \$82,005, there is a shortfall amortization

installment of \$13,766 (which is the amount necessary to amortize the \$82,005 shortfall amortization base over 7 years) for each year from 2017 through 2023.

Example 5. (i) As of January 1, 2016, a plan has a funding target of \$2,500,000, a target normal cost of \$175,000, and assets totaling \$2,450,000. As of January 1, 2016, there are six remaining installments of \$60,000 each with respect to the only shortfall amortization base for the plan, which was established for the 2015 plan year. Also as of January 1, 2016, there are five remaining installments of \$25,000 each with respect to the only waiver amortization base for the plan, which was established for the 2015 plan year. For purposes of this example, the segment interest rates used for the January 1, 2016, valuation are assumed to be 5.26% for the first segment interest rate and 5.82% for the second segment interest rate.

(ii) A shortfall amortization base of $-\$379,812$ is established for 2016, which is equal to the \$2,500,000 funding target, reduced by the sum of \$2,450,000 of assets, \$316,696 (the present value of the remaining installments with respect to the 2015 shortfall amortization base) and \$113,116 (the present value of the remaining installments with respect to the 2015 funding waiver).

(iii) The shortfall amortization installment for the 2016 shortfall amortization base is $-\$63,403$, which is the amount necessary to amortize the $-\$379,812$ shortfall amortization base over seven years. The first five shortfall amortization installments are discounted using the first segment rate of 5.26% and the sixth and seventh shortfall amortization installments are discounted using the second segment rate of 5.82%.

(iv) The sum of the shortfall amortization installments is equal to $-\$3,403$ ($\$60,000$ plus $-\$63,403$). However, in accordance with paragraph (b)(2)(i)(B) of this section, for purposes of determining the minimum required contribution for a plan year, the total of the shortfall amortization installments for a plan year is limited so that it is not less than zero.

(v) The minimum required contribution as of January 1, 2016 is \$200,000. This is equal to the sum of the target normal cost of \$175,000, the total of the shortfall amortization installments (as limited) of \$0, and the waiver amortization installment of \$25,000.

(vi) The shortfall amortization bases are not set to zero as of January 1, 2016, even though the sum of the shortfall amortization installments was set to zero for the 2016 plan year. Therefore, as of January 1, 2017 (unless the plan has a funding shortfall of zero as of that date), the shortfall amortization base established as of January 1, 2015 will have five remaining installments of \$60,000 each and the shortfall amortization base established as of January 1, 2016 will have six remaining installments of $-\$63,403$ each. Similarly, the waiver amortization base will have four remaining installments of \$25,000 each.

Example 6. (i) The facts are the same as in *Example 5*, except that Plan A has assets totaling \$2,550,000 as of January 1, 2016.

(ii) Because the assets of \$2,550,000 exceed the funding target of \$2,500,000, no new shortfall amortization base is established under paragraph (c)(2) of this section.

(iii) Furthermore, under paragraph (e) of this section, all shortfall amortization bases and waiver amortization bases (and all shortfall amortization installments and waiver amortization installments associated with those bases) are reduced to zero as of January 1, 2016.

(iv) The minimum required contribution for the 2016 plan year is \$125,000, which is equal to the \$175,000 target normal cost less the excess of the assets over the funding target ($\$2,550,000$ minus $\$2,500,000$).

Example 7. (i) The actuarial valuation for Plan B as of January 1, 2016, based on a 12-month plan year, results in a target normal cost of \$110,000 and a shortfall amortization installment for 2016 of \$185,000, attributable to a shortfall amortization base established January 1, 2016. There are no other shortfall or waiver amortization bases for Plan B as of January 1, 2016. The plan year for Plan B is changed to April 1 through March 31, effective April 1, 2016, resulting in a short plan year beginning January 1, 2016 and ending March 31, 2016.

(ii) The target normal cost for the short plan year is redetermined in order to reflect the fact that there is a short plan year. An actuarial valuation shows that the target normal cost is \$25,000 for the short plan year based on the accruals for that short plan year (determined in accordance with 29 CFR 2530.204-2(e)).

(iii) In accordance with paragraph (b)(2)(ii)(A) of this section, the shortfall amortization base is prorated to reflect the three months covered by the short plan year. Accordingly, the shortfall amortization installment for the short plan year is \$46,250 (that is, $\$185,000$ multiplied by $3/12$).

(iv) The total minimum required contribution for the short plan year is \$71,250 (that is, the sum of the target normal cost of \$25,000 plus the shortfall amortization installment of \$46,250).

Example 8. (i) The facts are the same as in *Example 7*. For purposes of this example, assume that the first segment rate for the plan year beginning April 1, 2016 is 5.30%, and the second segment rate is 5.80%.

(ii) The present value of the remaining shortfall amortization installments with respect to the January 1, 2016 shortfall amortization base is equal to \$1,074,937. This is determined by discounting the remaining installments (6 full-year installments of \$185,000 each due April 1, 2016 through April 1, 2021, and a final 9-month installment of \$138,750 due April 1, 2022) using the first segment rate of 5.30% for the first five installments and the second segment rate of 5.80% for the remaining installments.

Example 9. (i) As of January 1, 2016, Plan C has a funding target of \$1,100,000, a target normal cost of \$20,000, and an actuarial value of assets of \$1,150,000. Prior to establishing any shortfall amortization base for 2016, the total of the shortfall amortization installments for 2016 is \$30,000 and the present value of the remaining shortfall amortization installments (including installments for the 2016 plan year) is \$150,000. Based on the segment rates used for the 2016 plan year, the 7-year amortization factor for any shortfall amortization base established for 2016 is 5.9887. The funding standard carryover balance as of January 1, 2016 is \$40,000 and the

prefunding balance is \$60,000. The plan sponsor intends to use both balances to offset the minimum required contribution for 2016.

(ii) In accordance with sections 430(c) and 430(f)(4)(A), the test to determine whether Plan C is exempt from establishing a new shortfall amortization base for 2016 is initially applied based on assets reduced by the prefunding balance, because the plan sponsor intends to use the prefunding balance to offset the minimum required contribution. Therefore, the actuarial value of assets used for this purpose is $\$1,150,000$ minus $\$60,000$, or $\$1,090,000$. This is less than the funding target of $\$1,100,000$, so a new shortfall amortization base is established for 2016.

(iii) The funding shortfall as of January 1, 2016 is the difference between the funding target and the actuarial value of assets, where the actuarial value of assets is reduced by both the funding standard carryover balance and the prefunding balance. Accordingly, the value of assets used for this calculation is $\$1,050,000$ (that is, $\$1,150,000 - \$40,000 - \$60,000$), and the funding shortfall is $\$50,000$ (that is, $\$1,100,000 - \$1,050,000$).

(iv) The shortfall amortization base established as of January 1, 2016 is the difference between the funding shortfall of $\$50,000$ and the $\$150,000$ present value of remaining shortfall amortization installments for bases established in prior years (that is, $-\$100,000$). The shortfall amortization installment attributable to this base is $-\$100,000 \div 5.9887$, or $-\$16,698$.

(v) The preliminary minimum required contribution is the sum of the target normal cost, the shortfall amortization installments for bases established prior to 2016, and the shortfall amortization installment for the new base established for 2016, or $\$33,302$ (that is, $\$20,000 + \$30,000 - \$16,698$). However, this amount is less than the funding standard carryover balance. Because section 430(f)(3)(B) and § 1.430(f)-1(d)(2) require that the funding standard carryover balance be used before using the prefunding balance, this means that the full minimum required contribution will be offset without using the prefunding balance. Accordingly, the plan sponsor will not be electing to use any portion of the prefunding balance to offset the minimum required contribution for 2016.

(vi) Because the plan sponsor is not using the prefunding balance to offset the minimum required contribution, the test to determine whether Plan C is exempt from establishing a new shortfall amortization base for 2016 must be applied without subtracting the prefunding balance from the actuarial value of plan assets. Because the full actuarial value of assets of $\$1,150,000$ is higher than the funding target of $\$1,100,000$, the plan is exempt from establishing a new shortfall amortization base for 2016. However, the actuarial value of plan assets is reduced by both balances when determining the funding shortfall, which is used to determine whether the shortfall amortization bases established prior to 2016 are reduced to zero. Because the funding shortfall is greater than zero as of January 1, 2016 (as calculated in paragraph (iii) of this *Example 9*), the shortfall amortization bases established before the 2016 plan year are retained.

(vii) The minimum required contribution for 2016 is the sum of the target normal cost and the shortfall amortization installments, or \$50,000 (\$20,000 + \$30,000). Because this is larger than the funding standard account carryover balance of \$40,000, the plan sponsor can only offset \$40,000 of the minimum required contribution and must contribute \$10,000 to meet the minimum funding requirements. The prefunding balance cannot be used to offset the remaining \$10,000 minimum funding requirement because doing so would require recalculating the minimum required contribution as illustrated in paragraphs (ii) through (v) of this *Example 9* and the minimum required contribution would be too small to use the prefunding balance.

Example 10. (i) The facts are the same as in *Example 9*, except that, in lieu of making the cash contribution required in *Example 9*, the plan sponsor elects to reduce the funding standard carryover balance by \$9,000.

(ii) Because the plan sponsor intends to use the prefunding balance to offset the minimum required contribution, the test to determine whether Plan C is exempt from establishing a shortfall amortization base for 2016 is based on the actuarial value of assets reduced by the prefunding balance. The actuarial value of assets reduced for the prefunding balance (\$1,090,000) is less than the funding target (\$1,100,000), so a new shortfall amortization base is established for 2016.

(iii) The remaining funding standard carryover balance is \$31,000 (that is, \$40,000 minus the elected reduction of \$9,000). The funding shortfall as of January 1, 2016 is the difference between the funding target and the actuarial value of assets, where the actuarial value of assets is reduced by both the remaining funding standard carryover balance and the prefunding balance. Accordingly, the value of assets used for this calculation is \$1,059,000 (that is, \$1,150,000 – \$31,000 – \$60,000), and the funding shortfall is \$41,000 (that is, \$1,100,000 – \$1,059,000).

(iv) The shortfall amortization base established as of January 1, 2016 is the difference between the funding shortfall of \$41,000 and the \$150,000 present value of remaining shortfall amortization installments for bases established in prior years (that is, –\$109,000). The shortfall amortization installment attributable to this base is –\$109,000 ÷ 5.9887, or –\$18,201.

(v) The minimum required contribution is the sum of the target normal cost, the shortfall amortization installments for bases established prior to 2016, and the shortfall amortization installment for the new base established for 2016, or \$31,799 (that is, \$20,000 + \$30,000 – \$18,201). This amount is larger than the remaining funding standard carryover balance of \$31,000. Therefore, the plan sponsor can offset the full minimum required contribution using the remaining \$31,000 of the funding standard carryover balance and \$799 of the prefunding balance. Because a portion of the prefunding balance is used to offset the minimum required contribution, the test under section 430(c)(5) is applied by subtracting the prefunding balance from the actuarial value of assets as illustrated in paragraph (ii) of this *Example 10*, and no further adjustments are required to the minimum required contribution.

Example 11. (i) An amendment to Plan D was adopted during 2015, scheduled to be effective February 1, 2016. The actuary determines that, as of January 1, 2016, the amendment would increase Plan D's funding target by \$300,000, if the amendment is permitted to take effect. As of February 1, 2016, prior to taking into account the amendment, the presumed adjusted funding target attainment percentage (AFTAP) for Plan D is less than 80% but not less than 60%. Plan D's sponsor makes a section 436 contribution (under section 436(c)(2)(A)) of \$300,000, adjusted for interest as required under § 1.436–1(f)(2)(i)(A)(2), to allow the amendment to take effect.

(ii) Because the plan amendment was adopted prior to the valuation date for 2016 and becomes effective during the 2016 plan year, under § 1.430(d)–1(d)(1)(i), the plan amendment must be taken into account in the funding target as of January 1, 2016. However, because the section 436 contribution is made for the 2016 plan year, it is not included in Plan D's actuarial value of assets as of January 1, 2016.

(iii) The funding shortfall as of January 1, 2016 is calculated as the amount of the funding target (taking into account the plan amendment) minus the actuarial value of assets, where the value of assets is reduced by any funding standard carryover balance and prefunding balance as of that date. Because the funding target takes into account the increase of \$300,000 attributable to the plan amendment but the actuarial value of assets does not include the section 436 contribution, the funding shortfall is \$300,000 higher than it would have been had the plan amendment not been allowed to take effect.

(iv) The funding shortfall as of January 1, 2017 will reflect both the cost of the plan amendment and the value of the section 436 contribution made during 2016. Therefore, in the absence of any other factors affecting the shortfall amortization base, it is expected that a negative shortfall amortization base will be established as of January 1, 2017 as a result of the section 436 contribution made during 2016.

Example 12. (i) Plan E has a calendar year plan year and in 2015 had 97 participants. Plan E has a valuation date of July 1. A shortfall amortization base of \$300,000 was established with the July 1, 2016 valuation. The plan had no other shortfall or waiver amortization bases. For purposes of this example, assume that the first segment rate for the 2016 plan year is 5.50% and the second segment rate is 6.00%. Accordingly, the shortfall amortization installments are determined as seven annual installments of \$50,358 each, payable as of each July 1 beginning July 1, 2016.

(ii) Sometime after January 1, 2016, the number of participants in Plan E increased to over 100 during 2016, and therefore the valuation date was changed to January 1 effective with the 2017 plan year. As of January 1, 2017, Plan E has a funding target of \$2,000,000, plan assets of \$1,600,000, and a zero funding standard carryover balance and prefunding balance. For purposes of this example, assume that as of January 1, 2017, the first segment rate is 5.75% and the second segment rate is 6.25%.

(iii) In accordance with paragraph (c)(1) of this section, the amount of the shortfall amortization installments for the base established July 1, 2016 is

not adjusted for the change in valuation date. As of January 1, 2017, the outstanding balance of the shortfall amortization base established as of July 1, 2016 is \$263,047, determined as the present value of the remaining shortfall amortization installments, calculated as if the shortfall amortization installments of \$50,358 are payable annually on January 1 instead of July 1.

(iv) A new shortfall amortization base of \$136,953 is established effective January 1, 2017 equal to the difference between the funding shortfall of \$400,000 and the outstanding balance of the shortfall amortization base established as of July 1, 2016 (\$263,047). The shortfall amortization installment for this base is calculated as \$23,139.

(v) The total shortfall amortization installment for the 2017 plan year is \$73,497, equal to the sum of the installments for the shortfall amortization base established July 1, 2016 (\$50,358) and the base established January 1, 2017 (\$23,139). The total amortization installment is determined as an amount payable as of January 1 regardless of the fact that the installment for the first base was initially calculated as an amount payable on July 1.

Example 13. (i) A funding waiver of \$300,000 was granted for Plan F for the 2006 plan year. The valuation interest rate for the January 1, 2007 actuarial valuation is 8.50% (which exceeds 150% of the applicable federal mid-term rate). The first segment rate for the January 1, 2008 valuation of Plan F is 5.26%.

(ii) The waiver amortization charge for the plan year beginning January 1, 2007 is \$70,166, which is equal to the \$300,000 funding waiver base amortized over 5 years at the valuation interest rate of 8.50%.

(iii) The annual waiver amortization installment for 2008 and later years is equal to the amortization charge for the 2007 plan year, or \$70,166. As of January 1, 2008, the present value of the remaining waiver amortization installments is \$260,318, which is determined by discounting the remaining four waiver amortization installments of \$70,166 to January 1, 2008, using the first segment rate of 5.26%.

Example 14. (i) As of January 1, 2008, Plan G has a funding target of \$2,500,000, plan assets of \$1,800,000 and a funding standard carryover balance of \$100,000. Plan G has not received a funding waiver for any past plan year. Plan G was in existence during 2007, and in the 2007 plan year was not subject to the deficit reduction contribution in section 412(l) of the Code as it existed prior to PPA '06.

(ii) Plan G qualifies for the transition rule in section 430(c)(5) of the Code (as in effect prior to amendments made by the Tax Increase Prevention Act of 2014, Public Law 113–295, 128 Stat. 4010) and paragraph (h)(4) of this section. Because Plan G's assets are less than 92% of its funding target, a shortfall amortization base must be established as of January 1, 2008.

(iii) Under the transition rule in paragraph (h)(4) of this section, the shortfall amortization base for 2008 is determined using only 92% of Plan G's funding target, or \$2,300,000. For purposes of this calculation, the value of assets is reduced by the funding standard carryover balance for a net asset figure of \$1,700,000 (that is, \$1,800,000 minus \$100,000). Accordingly, the shortfall amortization base as of January 1, 2008 is equal to \$600,000.

(h) *Effective/applicability dates and transition rules*—(1) *Statutory effective date/applicability date.* Section 430 generally applies to plan years beginning on or after January 1, 2008. The applicability of section 430 for purposes of determining the minimum required contribution is delayed for certain plans in accordance with sections 104 through 106 of PPA '06.

(2) *Effective date/applicability date of regulations.* This section applies to plan years beginning on or after January 1, 2016. For plan years beginning before January 1, 2016, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430(a).

(3) *Treatment of pre-PPA '06 funding waivers.* In the case of a plan that has received a funding waiver under section 412 for a plan year for which section 430 was not yet effective with respect to the plan for purposes of determining the minimum required contribution, the waiver is treated as giving rise to a waiver amortization base and the amortization charges with respect to that funding waiver are treated as waiver amortization installments as described in paragraph (d) of this section. With respect to such a pre-existing funding waiver, the amount of the waiver amortization installment is equal to the amortization charge with respect to that waiver determined using the interest rate or rates that applied for the pre-effective plan year.

(4) *Transition rule for determining shortfall amortization base*—(i) *In general.* Except as provided in paragraph (h)(4)(ii) of this section, in the case of plan years beginning after December 31, 2007 and before January 1, 2011, for purposes of applying the rules of paragraph (c)(2) of this section—

(A) The applicable percentage (as described in paragraph (f)(6)(ii) of this section) of the funding target is substituted for the funding target; and

(B) The transition funding shortfall is substituted for the funding shortfall.

(ii) *Transition rule not available for new plans or deficit reduction plans.* The transition rule of paragraph (h)(4)(i) of this section does not apply to a plan—

(A) That was not in effect for a plan year beginning in 2007; or

(B) That was subject to section 412(l) for the last plan year beginning during 2007, determined after the application of sections 412(l)(6) and (9) (regardless of whether the deficit reduction contribution for that plan year was equal to zero).

(5) *Pre-effective plan year*—(i) *In general.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before section 430 applies to the plan to determine the minimum required contribution. Thus, except for plans with a delayed effective date as described in paragraph (h)(1) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(ii) *Eligible charity plans.* An eligible charity plan (as described in section 104(d) of PPA '06, which reflects amendments made by section 202(b)(2) of PRA 2010, Public Law No.111-192, 124 Stat. 1280 (June 25, 2010)) that applies section 430 to the first plan year beginning on or after January 1, 2008 has a pre-effective plan year that is the last plan year beginning before January 1, 2008 and a second pre-effective plan year that is the last plan year that precedes the plan year for which section 430 again applies to the plan. (Section 430 does not apply to such a plan for plan years beginning on or after January 1, 2009 and before January 1, 2017, unless the plan ceases to be an eligible charity plan, or an election under section 104(d)(2) or 104(d)(4) of PPA '06 is made for the plan not to be treated as an eligible charity plan, as of an earlier date.)

Par. 3. Section 1.430(f)-1 is amended as follows:

1. The paragraph heading for paragraph (b)(5) is removed.

2. Paragraph (b)(5)(i) is redesignated as paragraph (b)(5).

3. The paragraph heading of newly redesignated paragraph (b)(5) is revised to read "Special rule for quarterly contributions".

4. The text of the newly redesignated paragraph (b)(5) is amended by removing the words "that are due on or after the valuation date for the plan year for which they are due" from the first sentence.

5. Paragraph (b)(5)(ii) is removed.

6. The paragraph heading for paragraph (d)(1)(i)(B) is removed.

7. Paragraph (d)(1)(i)(B)(I) is redesignated as paragraph (d)(1)(i)(B).

8. The paragraph heading of the newly redesignated paragraph (d)(1)(i)(B) is revised to read "Special rule for late election with respect to quarterly contributions."

9. The text of the newly redesignated paragraph (d)(1)(i)(B) is amended by removing the words "that is due on or after the valuation date" from the first sentence; removing the word "discounted" and adding in its place "adjusted" in the first sentence; and removing the phrase "further discounted" and adding in its place "further adjusted" in the second sentence.

10. Paragraph (d)(1)(i)(B)(2) is removed.

11. Paragraph (f)(1)(i) is amended by removing the phrase "as provided in paragraph (f)(1)(ii) of this section" and adding in its place "as provided in this paragraph (f)(1)" in two places.

12. Paragraph (f)(1)(iii) is added.

13. Paragraph (f)(2)(i) is amended by removing the phrase "as described in section 430(j)(1)" and adding in its place "as described in section 430(j)(1), or such later date as prescribed in guidance published in the Internal Revenue Bulletin".

14. Paragraph (f)(3)(i) is amended by removing the words "Except as otherwise provided in this paragraph (f)(3)" and adding in their place the words "Except as otherwise provided in this paragraph (f)(3) or in guidance published in the Internal Revenue Bulletin".

The revisions and additions read as follows:

§ 1.430(f)-1 Effect of prefunding balance and funding standard carryover balance.

* * * * *

(f) * * *(1) * * *

(iii) *Standing election to satisfy installments through use of funding balances*—(A) *In general.* A plan sponsor may provide a standing election in writing to the plan's enrolled actuary to use (to the extent available) the funding standard carryover balance and the prefunding balance to satisfy any otherwise unpaid portion of a required installment under section 430(j)(3). Any use pursuant to a standing election under this paragraph (f)(1)(iii) is deemed to occur on the later of the last

date for making the required installment and the date the standing election is provided to the enrolled actuary.

(B) *Otherwise unpaid portion of a required installment.* For purposes of paragraph (f)(1)(iii)(A) of this section, the otherwise unpaid portion of a required installment equals the amount necessary to satisfy the required installment rules under section 430(j) based on the installment amounts determined as if the required annual payment were the amount described in § 1.430(j)-1(c)(5)(ii)(B). Thus, the amount of the prefunding and funding standard carryover balances used under a standing election is the amount that is needed to satisfy an installment in the amount of 25 percent of the minimum required contribution for the prior plan year, plus installments in that amount with respect to all earlier required installment due dates for the plan year, taking into account prior contributions for the plan year and prior elections to use the funding standard carryover balance and prefunding balance for the plan year.

(C) *Duration of standing election.* Generally, any standing election under this paragraph (f)(1)(iii) remains in effect for the plan with respect to the enrolled actuary named in the election, unless either of the events described in paragraph (f)(1)(ii)(A) or (B) of this section occurs with respect to the standing election. However, a plan sponsor may suspend application of a standing election for the remaining installments with respect to a plan year by providing, in writing to the plan's enrolled actuary, notice that the standing election is not to apply for the remainder of the plan year. In addition, once the current year's minimum required contribution has been determined, a plan sponsor may modify application of a standing election for the remaining installments with respect to a plan year by providing, in writing to the plan's enrolled actuary, a replacement formula election to use the funding standard carryover balance and prefunding balance (to the extent available) so that the otherwise unpaid portions of the remaining required installments satisfy the required installment rules under section 430(j), taking into account the determination of the current year's minimum required contribution pursuant to § 1.430(j)-1(c)(5)(ii)(A), prior

contributions for the plan year and prior elections to use the prefunding and funding standard carryover balances.

* * * * *

Par. 4. Section 1.430(h)(2)-1(b)(2) is revised to read as follows:

§ 1.430(h)(2)-1 Interest rates used to determine present value.

* * * * *

(b) * * * *

(2) *Benefits payable within 5 years—*
(i) *In general.* In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

(ii) *Special rule for plan years beginning before January 1, 2014.* With respect to a plan year beginning before January 1, 2014, for a plan with a valuation date other than the first day of the plan year, the 5-year period beginning on the first day of the plan year is permitted to be used in lieu of the 5-year period beginning on the valuation date for the plan year under paragraph (b)(2)(i) of this section.

* * * * *

Par. 5. Section 1.430(j)-1 is added to read as follows:

§ 1.430(j)-1 Payment of minimum required contributions.

(a) *In general—*(1) *Overview.* This section provides rules related to the payment of minimum required contributions, including the payment of required installments. Section 430(j) and this section apply to single-employer defined benefit plans (including multiple employer plans as defined in section 413(c)) but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes the general timing requirement for minimum required contributions. Paragraph (c) of this section describes the accelerated required installment schedule for plans with a funding shortfall in the preceding plan year. Paragraph (d) of this section provides rules regarding

liquidity requirements. Paragraph (e) of this section provides definitions. Paragraph (f) of this section provides examples that illustrate the rules of this section. Paragraph (g) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans—*(i) *In general.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, for example, required installments are determined separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(ii) *CSEC plans.* A CSEC plan (that is, a plan that fits within the definition of a CSEC plan in section 414(y) for plan years beginning on or after January 1, 2014 and for which the election under section 414(y)(3)(A) has not been made) is not subject to the rules of section 430. See section 433 for the minimum funding rules that apply to CSEC plans.

(3) *Applicability of section 430(j) to plans of commercial passenger airlines—*
(i) *In general.* Except as otherwise provided in this section, the rules of section 430(j) and this section apply to a plan for which an election described in section 402 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780 (2006)), as amended (PPA '06), has been made in the same manner as those rules apply to any other plan subject to section 430.

(ii) *Special rules for plans for which election was made pursuant to section 402(a)(1) of PPA '06.* For purposes of applying the rules of section 430(j) and this section to a plan with respect to which the election under section 402(a)(1) of PPA '06 has been made, the effective interest rate for the plan is deemed to be 8.85 percent during the period for which the election applies. In addition, see para-

graph (e)(4)(ii) of this section for a special determination of the funding shortfall for a plan for which the election in section 402(a)(1) of PPA '06 has been made.

(b) *General timing requirement for minimum required contributions—(1) Earliest date for contributions.* A payment made before the first day of the plan year cannot be applied toward the minimum required contribution under section 430 for that plan year.

(2) *Deadline for contributions.* The deadline for any payment of any minimum required contribution for a plan year is 8 months after the close of the plan year. See section 4971 and the regulations thereunder regarding an excise tax that applies with respect to minimum required contributions not paid by this deadline. For additional rules that may apply in the case of a failure to pay minimum required contributions by this deadline, see also section 430(k) of the Code and sections 101(d) and 4043 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

(3) *Allocation of contribution to a plan year—(i) Plans with unpaid minimum required contributions that have not been corrected.* If a plan has unpaid minimum required contributions within the meaning of § 54.4971(c)–1(c) of this chapter that have not yet been corrected within the meaning of § 54.4971(c)–1(d)(2) of this chapter at the time a contribution is made, then the contribution is treated as a late contribution for the earliest plan year for which there is an unpaid minimum required contribution (to the extent necessary to correct that unpaid minimum required contribution). To the extent the contribution exceeds the amount necessary to correct the earlier unpaid minimum required contribution, the excess is treated as a late contribution for the next earliest plan year for which there is an unpaid minimum required contribution (to the extent necessary to correct that next earliest unpaid minimum required contribution). The allocation of the contribution under the preceding sentence is repeated until all unpaid minimum required contributions have been corrected, or until the entire contribution is allocated, whichever comes first.

(ii) *Plans without unpaid minimum required contributions.* If a contribution is

made during the current plan year but before the deadline under paragraph (b)(2) of this section for contributions for a prior plan year, and the plan has no unpaid minimum required contribution for any plan year at the time the contribution is made, then the contribution may be designated as a contribution for either that prior plan year or the current plan year. Similarly, if a contribution made during the current plan year but before the deadline under paragraph (b)(2) of this section for contributions for a prior plan year is more than enough to correct a plan's unpaid minimum required contributions for all plan years, the portion of a contribution that was not used to correct unpaid minimum required contributions may be designated as a contribution for either that prior plan year or the current plan year.

(iii) *Method of allocating contributions—(A) Reporting for contributions to correct unpaid minimum required contributions.* The allocation of a contribution under the rules of paragraph (b)(3)(i) of this section to correct unpaid minimum required contributions is automatic and must be shown on the actuarial report (Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan") for the earliest plan year with respect to which, as of the date of the contribution, the deadline for making contributions under paragraph (b)(2) of this section has not passed. See § 1.430(g)–1(d)(1) for the rules for determining the plan year for which these contributions are taken into account in determining the value of plan assets.

(B) *Designation of plan year if no unpaid minimum contribution.* In the case of a contribution described in paragraph (b)(3)(ii) of this section, the designation is established by the completion (and filing, if required) of the actuarial report (Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan") for the plan year for which the contribution is designated and cannot be changed after the actuarial report that reflects the contribution is completed (and filed, if required) except as provided in guidance published in the Internal Revenue Bulletin. Thus, a contribution that has been designated for a plan

year on an actuarial report pursuant to this paragraph (b)(3)(iii)(B) generally cannot be redesignated as a contribution for either an earlier or later plan year.

(4) *Adjustment for interest—(i) In general.* Except as provided in this paragraph (b)(4), any payment toward the minimum required contribution under section 430 for a plan year that is paid on a date other than the valuation date for that plan year is adjusted for interest for the period between the valuation date and the payment date, at the plan's effective interest rate for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1). The direction of the adjustment depends on whether the contribution is paid before or after the valuation date for the plan year. If the contribution is paid after the valuation date for the plan year, the contribution is discounted to the valuation date using the plan's effective interest rate. By contrast, if the contribution is paid before the valuation date for the plan year (which could only occur in the case of a small plan described in section 430(g)(2)(B)), the contribution is increased for interest using the plan's effective interest rate.

(ii) *Interest adjustment for late quarterly installments.* In the case of a plan that must make required installments under the rules of paragraph (c) of this section, to the extent a contribution for a plan year constitutes a late required installment, the adjustment for interest for the period between the valuation date and the payment date is made in two steps. In the first step, the portion of the contribution that constitutes a late required installment is adjusted for interest from the date of the contribution to the due date for the installment by discounting it using the plan's effective interest rate for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1) plus 5 percentage points. In the second step, this discounted amount is treated as if it were contributed on the installment due date for purposes of the interest adjustment under paragraph (b)(4)(i) of this section. However, a contribution made toward the unpaid liquidity amount (as defined in paragraph (d)(3) of this section) that is made before the close of the quarter in which it is due is adjusted under paragraph (b)(4)(iii) of this section.

(iii) *Interest adjustment for unpaid liquidity amounts.* In the case of a plan that

is subject to the liquidity requirement rules of paragraph (d) of this section, to the extent a contribution made during a quarter constitutes a payment of the unpaid liquidity amount for that quarter as described in paragraph (d)(3) of this section, the adjustment for interest for the period between the valuation date and the payment date is made in two steps. In the first step, the portion of the contribution that constitutes a payment of the unpaid liquidity amount is increased for interest from the date of the contribution to the last day of the quarter, at the plan's effective interest rate for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1). In the second step, this adjusted amount is treated as if it were contributed on the last day of that quarter for purposes of the interest adjustment for late required installments under the rules of paragraph (b)(4)(ii) of this section. See paragraph (d)(3)(iv)(B) of this section for an increase to the minimum required contribution that gives effect to this interest adjustment for unpaid liquidity amounts in the event a portion of the required installment is no longer treated as unpaid after the close of the quarter under paragraph (d)(3)(iv)(A) of this section.

(c) *Accelerated quarterly installments required for underfunded plans*—(1) *Plans subject to quarterly installment requirement.* The plan sponsor of a plan that has a funding shortfall for the preceding plan year is required to pay the installments described in paragraph (c)(5) of this section by the due dates described in paragraph (c)(6) of this section. See paragraph (b)(4)(ii) of this section, section 430(k) of the Internal Revenue Code (Code) (regarding the imposition of a lien), and sections 101(d) and 4043 of ERISA (regarding notice to participants and beneficiaries and to the Pension Benefit Guaranty Corporation) for examples of consequences that generally apply following a failure to make required installments.

(2) *Satisfaction of quarterly installment requirement.* A plan sponsor may satisfy the requirement to pay an installment under paragraph (c)(1) of this section by one or a combination of the following—

(i) Making a contribution for the plan year which is allocated among the re-

quired installments under the rules of paragraph (c)(3) of this section; and

(ii) Making an election to use some or all of the plan's prefunding balance or funding standard carryover balance in accordance with the rules of paragraph (c)(4) of this section.

(3) *Satisfaction of quarterly installment requirement with contributions*—(i) *Contributions allocated to earliest quarterly installments.* For purposes of this section, a contribution for a plan year is allocated among the required installments for the plan year under the rules of paragraph (c)(3)(ii) or (iii) of this section, whichever is applicable. Which rule applies depends on whether, at the time the contribution is made, the plan sponsor has unpaid required installments (that is, the plan sponsor has not fully satisfied all required installments for which the due date has passed, taking into account the special rule with respect to the unpaid liquidity amounts in paragraph (d)(3)(iv)(A) of this section).

(ii) *Early contributions increased with interest.* If a plan has no unpaid required installments for a plan year at the time a contribution for the plan year is made, then the contribution is allocated to the required installments (if any) for the plan year due on or after the date of the contribution under the rules of this paragraph (c)(3)(ii). The contribution is allocated in the order in which those installments occur, and the amount allocated to each required installment is limited to the amount necessary to satisfy the required installment (including satisfaction of the liquidity requirement under paragraph (d)(1) of this section, taking into account the special rule with respect to the unpaid liquidity amounts in paragraph (d)(3)(iv)(A) of this section) taking into account any interest as described in the next sentence. If the contribution is made before the due date of the installment to which it is allocated, then the amount credited toward the installment includes interest on the contribution from the date of the contribution to the due date of the required installment (except as provided in paragraph (d)(2) of this section). This interest adjustment is made using an interest rate equal to the plan's effective interest rate under § 1.430(h)(2)–1(f)(1) for the plan year.

(iii) *Allocation of contributions to late required installments without interest*—(A) *In general.* If a plan has any unpaid required installments for a plan year at the time a contribution for the plan year is made, then the contribution is allocated to those unpaid required installments under the rules of this paragraph (c)(3)(iii). The contribution is allocated in the order in which those unpaid required installments occur, and the amount allocated to each required installment is limited to the amount that satisfies the required installment without any adjustment for interest. If a contribution is allocated to an unpaid required installment under this paragraph (c)(3)(iii), then that contribution is adjusted for interest under the rules of paragraph (b)(4) of this section (regarding interest adjustments for late quarterly installments) for purposes of determining the extent to which that contribution satisfies the minimum required contribution for the plan year.

(B) *Bifurcation of contributions that exceed unpaid required installments.* Any amount of a contribution described in paragraph (c)(3)(iii)(A) of this section that is not used to satisfy the unpaid required installments for the plan year is allocated toward any remaining required installments for the plan year under the rules of paragraph (c)(3)(ii) of this section.

(4) *Satisfaction of quarterly installment requirements through use of funding balances.* A plan sponsor may satisfy the requirement to pay an installment under paragraph (c)(1) of this section by making an election to use some or all of the plan's prefunding balance or funding standard carryover balance under section 430(f). Such an election is subject to the rules of § 1.430(f)–1 and cannot exceed the available amount of the plan's prefunding balance and funding standard carryover balance determined under § 1.430(f)–1(d)(1)(ii) as of the date of the election. The amount elected is allocated toward satisfaction of the required installments in the same manner as a contribution made on the date of the election. Thus, the amount of an election to use the plan's prefunding balance or funding standard carryover balance is increased with interest under the rules of paragraph (c)(3)(ii) of this section or is credited against the earliest unpaid required installment under

the rules of paragraph (c)(3)(iii) of this section. See § 1.430(f)-1(f)(1)(iii) for rules permitting the use of a standing election for purposes of satisfying required installments through use of funding balances. See § 1.430(f)-1(d)(1)(i)(B) for rules relating to late elections to use the funding standard carryover balance or prefunding balance to satisfy the required installment rules.

(5) *Amount of required installment—*
(i) *In general.* For purposes of this section, the amount of any required installment due for a plan year is equal to 25 percent of the required annual payment for the plan year as described in paragraph (c)(5)(ii) of this section.

(ii) *Required annual payment.* The required annual payment for a plan year is equal to the lesser of—

(A) 90 percent of the minimum required contribution under section 430 for the plan year; or

(B) 100 percent of the minimum required contribution under section 430 (determined without regard to any funding waiver under section 412) for the preceding plan year.

(iii) *Treatment of funding balances.* For purposes of paragraph (c)(5)(ii) of this section, the minimum required contribution for a plan year is determined without regard to the use of the prefunding balance or funding standard carryover balance for the current year or the prior year. However, see paragraph (c)(4) of this section regarding a plan sponsor's election to use the plan's prefunding balance or funding standard carryover balance for the current year in order to satisfy the requirement to pay an installment.

(iv) *Disregard of certain amounts.* For purposes of paragraph (c)(5)(ii) of this section, the minimum required contribution for a plan year is determined without regard to the installment acceleration amount for the plan year determined under section 430(c)(7) or any increase to the minimum required contribution under paragraph (d)(3)(iv)(B) of this section (relating to an unpaid liquidity amount).

(6) *Due dates for installments.* For purposes of this section, there is a required installment for each quarter of the plan year, and the due dates for the required installments with respect to a full plan

year are set forth in the following table:

Installment	Due date
First required installment	15 th day of 4th plan month
Second required installment	15 th day of 7th plan month
Third required installment	15 th day of 10th plan month
Fourth required installment	15 th day after the end of the plan year

(7) *Special rules for short plan years—*
(i) *In general.* In the case of a short plan year, the rules of this paragraph (c) are modified as provided in this paragraph (c)(7).

(ii) *Current plan year is short plan year—*(A) *Amount of required annual payment.* In determining the required annual payment pursuant to paragraph (c)(5)(ii) of this section for a short plan year, the amount otherwise determined under paragraph (c)(5)(ii)(B) of this section (based on the prior year's minimum required contribution) is multiplied by a fraction, the numerator of which is the duration of the short plan year and the denominator of which is 1 year. This rule applies to the year that contains the plan's termination date if that date is before the date that would otherwise be the end of the plan year (because the plan is treated as having a short plan year for purposes of section 430 pursuant to § 1.430(a)-1(b)(5)).

(B) *Number and due dates of installments.* If the plan has a short plan year, then an installment is due 15 days after the end of that short plan year. In addition, an installment is required for each due date determined under paragraph (c)(6) of this section that falls within the short plan year. Thus, for example, if the short plan year ends before the 15th day of the 4th plan month of the plan year, there will be only one installment for that short plan year, and that installment will be due on the 15th day after the end of the short plan year.

(C) *Amount of installments.* The amount of each installment required to be paid for the short plan year is equal to the required annual payment determined pursuant to paragraph (c)(5)(ii) of this section

(as modified by paragraph (c)(7)(ii)(A) of this section) divided by the number of installments determined pursuant to paragraph (c)(7)(ii)(B) of this section.

(D) *No increase in prior required installments.* If a plan is amended to have a short plan year (including as a result of plan termination) and the required installments determined under paragraph (c)(7)(ii)(C) of this section are greater than the required installments determined without regard to the amendment, then—

(1) The required installments for which the due dates occur before the end of the short plan year are determined without regard to the amendment, and

(2) The required installment due on the 15th day after the end of the short plan year is increased to the extent necessary so that the total of the required installments for the year is the required annual payment determined under paragraph (c)(5)(ii) of this section, determined taking into account the rules of paragraph (c)(7)(ii)(A) of this section.

(iii) *Prior plan year is short plan year.* If the prior plan year is a short plan year, the amount otherwise determined under paragraph (c)(5)(ii)(B) of this section (based on the prior year's minimum required contribution) is multiplied by a fraction, the numerator of which is 1 year and the denominator of which is the duration of the short plan year.

(d) *Liquidity requirement in connection with quarterly installments—*(1) *In general—*(i) *Additional requirement with respect to quarterly installments.* Except as provided in this paragraph (d)(1), if a plan sponsor is required to pay the installments described in paragraph (c) of this section, then the plan sponsor is treated as failing to pay the full amount of the required installment for a quarter to the extent that the value of the liquid assets paid in the required installment after the end of that quarter and on or before the due date for the installment is less than the liquidity shortfall for that quarter. If the amount of any required installment is increased by reason of this paragraph (d)(1)(i), in no event shall this increase exceed the amount which, when added to the current required installment (determined without regard to the increase) and prior required installments for the plan year (not including any portion of a required installment

that is no longer treated as unpaid under paragraph (d)(3)(iv)(A) of this section), is necessary to increase the funding target attainment percentage for the plan year to 100 percent (taking into account the expected increase in the funding target due to benefits accruing or earned during the plan year).

(ii) *Small plan exception.* The liquidity requirement of this paragraph (d) does not apply to a plan for any plan year for which the plan is a small plan described in § 1.430(g)-1(b)(2).

(2) *Satisfaction of liquidity requirement.* The additional requirement with respect to a required installment under paragraph (d)(1) of this section can be satisfied only with an actual contribution of liquid assets that, after application of paragraph (c)(3) of this section, is allocated to satisfy the required installment for the quarter. The liquidity requirement cannot be satisfied through the use of funding balances, and satisfaction of this requirement is determined without taking into account the increase for interest for early contributions set forth in paragraph (c)(3)(ii) of this section. Any contribution of liquid assets that is allocated to satisfy the required installment for a quarter applies for purposes of determining whether the requirements of paragraph (d)(1) of this section are satisfied, even if the contribution is less than the total amount needed to satisfy the requirements of paragraph (c) of this section for the quarter (taking into account any increase in the required installment under this paragraph (d)).

(3) *Failure to satisfy liquidity requirement—(i) Treatment as failure to satisfy quarterly installment.* If an employer fails to satisfy the additional requirement with respect to a required installment for a quarter under paragraph (d)(1) of this section, the portion of that required installment that is treated as not paid by reason of paragraph (d)(1) of this section (the unpaid liquidity amount for that quarter) is treated as an underpayment of the required installment. See paragraph (c)(1) of this section for examples of consequences of underpayment of a required installment.

(ii) *Late satisfaction of liquidity requirement.* The rules of paragraph (d)(2) of this section apply to determine whether a contribution made after the deadline for

a required installment satisfies the liquidity requirement of paragraph (d)(1) of this section. However, pursuant to section 430(j)(4)(C), the unpaid liquidity amount is treated as unpaid until the end of the quarter in which the due date for that installment occurs, even if liquid assets in that amount are contributed during that quarter (but after the due date for the installment). See paragraph (b)(4)(iii) of this section for the application of this rule for purposes of applying the additional interest for late required installments.

(iii) *Additional consequences of failure to pay liquidity shortfall.* See section 206(e) of ERISA and section 401(a)(32) of the Code (regarding suspension of accelerated distributions for a plan with an unpaid liquidity amount). See also section 4971(f) regarding an excise tax imposed in the event of a failure to pay a liquidity shortfall.

(iv) *Treatment in subsequent quarter—(A) Adjustment to required installment.* After the close of the quarter in which the due date of a required installment occurs, any portion of the installment that was treated as unpaid solely by reason of paragraph (d)(1) of this section, and that was not satisfied with a contribution of liquid assets during that quarter, is no longer treated as unpaid (but any portion of the installment that would be treated as unpaid without regard to paragraph (d)(1) of this section must be satisfied in accordance with the rules of paragraph (c) of this section).

(B) *Increase to minimum required contribution for additional interest.* If a portion of the required installment is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, then the minimum required contribution for the plan year for which the installment was due is increased by an amount equal to—

(J) The portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for interest for the period from the last day of the quarter that includes the due date of the required installment to the valuation date, using the plan's effective interest rate for the plan year (determined pursuant to § 1.430(h)(2)-1(f)(1)); minus

(2) The portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for interest for the period from the last day of the quarter that includes the due date of the required installment to the due date of the installment, using the plan's effective interest rate for the plan year plus 5 percentage points, and further discounted for interest for the period from the due date of the required installment to the valuation date using the plan's effective interest rate for the plan year.

(e) *Definitions—(1) In general.* The definitions set forth in this paragraph (e) apply for purposes of this section.

(2) *Adjusted disbursements—(i) In general.* The term *adjusted disbursements* means, with respect to a time period, the amount described in paragraph (e)(2)(ii) of this section if the time period is within a single plan year, or the amount described in paragraph (e)(2)(iii) of this section if the time period spans more than one plan year.

(ii) *Period within a single plan year.* With respect to a period within a plan year, the adjusted disbursements are the disbursements from the plan during that period reduced by the product of—

(A) The plan's funding target attainment percentage determined under section 430(d)(2) for the plan year that contains that period; and

(B) The sum of the purchases of annuities and payments of single sums for that period.

(iii) *Period spanning more than one plan year.* With respect to a period of time that spans more than one plan year, the adjusted disbursements are the sum of the adjusted disbursements determined separately under paragraph (e)(2)(ii) of this section for each portion of a plan year that is included in the time period for which adjusted disbursements are determined.

(3) *Disbursements from the plan.* The term *disbursements from the plan* means all disbursements from the plan's trust, including purchases of annuities, payments of single sums and other benefits, and payments of administrative expenses.

(4) *Funding shortfall—(i) In general.* Except as otherwise provided in this paragraph (e)(4), the term *funding shortfall*

has the same meaning as under § 1.430(a)–1(f)(2).

(ii) *Special rule for plans of commercial passenger airlines.* In the case of a plan year for which an election described in section 402(a)(1) of PPA '06 is in effect, the term *funding shortfall* means the unfunded liability for that plan year determined under § 1.430(a)–1(b)(4)(ii).

(iii) *Special rule for first effective plan year.* See paragraph (g)(5)(ii) of this section for a calculation of the funding shortfall for the plan's pre-effective plan year.

(iv) *Special rule for plan spinoffs and mergers.* [Reserved]

(5) *Liquid assets*—(i) *In general.* The term *liquid assets* means cash, marketable securities, and other assets described in this paragraph (e)(5)(i). For this purpose, marketable securities include financial instruments such as stocks and other equity interests, evidences of indebtedness (including certificates of deposit), options, futures contracts, and other derivatives, for which there is a liquid financial market, and other interests in entities (such as partnerships, trusts, or regulated investment companies) for which there is a liquid financial market. For purposes of the preceding sentence, a liquid financial market is an established financial market described in § 1.1092(d)–1(b) (other than an interbank market or an interdealer market described in § 1.1092(d)–1(b)(1)(v) and (vi), respectively). Any security that is issued or guaranteed by the government of the United States or an agency or instrumentality thereof for which there is an established financial market described in § 1.1092(d)–1(b) is a marketable security. Finally, any financial instrument or other interest in an entity that, under its terms, contains a right by which the instrument or other interest may immediately be redeemed, exchanged, or converted into cash or a marketable security, is a marketable security, provided there are no restrictions on the exercise of that right.

(ii) *Insurance and annuity contracts.* Other assets that are treated as liquid assets of a plan are insurance, annuity, or other contracts issued by an insurance company that is licensed to do business under the laws of any State, but only if the insurance, annuity, or other contract—

(A) Contains an unrestricted right by which the insurance, annuity or other con-

tract may immediately be redeemed, exchanged, or converted into cash or a marketable security;

(B) Provides for substantially equal monthly disbursements to the extent provided in paragraph (e)(5)(iii) of this section; or

(C) Is benefit responsive within the meaning of paragraph (e)(5)(iv) of this section.

(iii) *Insurance and annuity contracts providing for substantially equal periodic payments.* If the contract provides for substantially equal monthly disbursements (for example, an annuity contract in pay status), the only portion of the contract that may be treated as liquid assets for a quarter is the amount equal to 36 times the monthly disbursement (in the month containing the last day of the quarter) which is available under the terms of the contract, provided there are no restrictions on the right to disbursements.

(iv) *Benefit responsive insurance and annuity contracts.* A contract is considered benefit responsive if, under applicable law and contractual provisions, the plan has the right to receive disbursements from the contract in order to pay plan benefits for any participant in the plan, without restrictions on that right.

(v) *Restrictions.* For purposes of this paragraph (e)(5), a restriction on a redemption, exchange, or conversion right, or a restriction on a right to receive a disbursement, may result not only from applicable law or contractual provisions, but also from rehabilitation, conservatorship, receivership, insolvency, bankruptcy, or similar proceedings.

(6) *Liquidity shortfall*—(i) *In general.* Except as modified in paragraph (e)(6)(iii) of this section with respect to multiple employer plans, the term *liquidity shortfall* means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which that installment is due) of—

(A) The base amount with respect to the quarter, over

(B) The value (as of the last day of the quarter) of the plan's liquid assets.

(ii) *Base amount*—(A) *In general.* For purposes of this paragraph (e)(6), the term *base amount* means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from

the plan for the 12 months ending on the last day of that quarter.

(B) *Special rule.* If the generally applicable base amount for a quarter (as determined under paragraph (e)(6)(ii)(A) of this section) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and the enrolled actuary for the plan certifies to the satisfaction of the Commissioner that such excess is the result of nonrecurring circumstances, then the base amount with respect to that quarter is determined without regard to amounts related to those nonrecurring circumstances.

(iii) *Multiple employer plans*—(A) *Satisfaction of liquidity requirement as if plan were not a multiple employer plan.* For a multiple employer plan to which section 413(c)(4)(A) applies, the liquidity requirement of paragraph (d)(1)(i) of this section is satisfied if the liquidity requirement would be satisfied if the plan were a single-employer plan that is not a multiple employer plan to which section 413(c)(4)(A) applies.

(B) *Failure to satisfy the liquidity requirement on a plan-wide basis.* For a multiple employer plan to which section 413(c)(4)(A) applies, if the plan does not satisfy the liquidity requirement in accordance with paragraph (e)(6)(iii)(A) of this section, then the liquidity requirement must be applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the value of plan assets as of the end of each quarter under such a multiple employer plan must be allocated among the employers sponsoring the plan, and the liquidity shortfall must be determined for each employer based on that allocation. See section 413(c)(7)(B) and paragraph (a)(2) of this section.

(7) *Plan month*—(i) *Plan year begins on the first day of a calendar month.* For a plan year that begins with the first day of a calendar month, the term *plan month* means any calendar month that begins during the plan year.

(ii) *Plan year begins on a date other than the first day of a calendar month.* For a plan year that begins on a date other than the first day of a calendar month, the first day of each plan month is the day of the calendar month that corresponds to the

day of the calendar month that is the first day of the plan year. Thus, for example, if the first day of a plan year is January 15, then a plan month starts on the 15th of each calendar month. However, if a calendar month does not contain a day that corresponds to the day of the calendar month that is the first day of the plan year (for example, if a calendar month has only 30 days and the first day of the plan year is the 31st day of a calendar month), then the first day of the plan month that begins during that calendar month is the last day of that calendar month.

(8) *Quarter*. The term *quarter* means, with respect to any required installment, the 3-plan-month period preceding the plan month in which the due date for that installment occurs.

(9) *Short plan year*. The term *short plan year* means a plan year that is shorter than 12 months (and is not a 52-week plan year of a plan that uses a 52-53 week plan year).

(f) *Examples*. The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions: section 430 applies to determine the minimum required contribution for plan years beginning on or after January 1, 2008; the plan year is the calendar year; the valuation date is January 1; the plan sponsor is required to pay the installments described in paragraph (c) of this section; the plan does not have a liquidity shortfall; and the plan sponsor has not elected any funding relief under section 430(c)(2)(D) for any plan year. In addition, these examples assume that, under the funding method used for the plan, interest adjustments are calculated to the nearest half month (rather than days) for transactions that occur on the 1st and 15th of a calendar month.

Example 1. (i) Plan A has a funding standard carryover balance of \$15,000 and a prefunding balance of zero as of January 1, 2016, and the plan's funding ratio for 2015 (determined under § 1.430(f)-1(d)(3)) was over 80%. The minimum required contribution for Plan A (determined prior to any offset for the funding standard carryover balance) is \$100,000 for 2016 and is \$125,000 for 2017. The effective interest rate for the 2017 plan year is 5.90%.

(ii) The required annual payment for 2017 is equal to the lesser of (a) 100% of the 2016 minimum required contribution (\$100,000) or (b) 90% of the 2017 minimum required contribution (90% of \$125,000, or \$112,500). Therefore, each required installment for 2017 is 25% of \$100,000, or \$25,000.

(iii) Installments of \$25,000 each are due by April 15, 2017, July 15, 2017, October 15, 2017, and January 15, 2018. The final contribution for the 2017 plan year is due by September 15, 2018. The amount of this final contribution is equal to \$125,000, less the contributions made prior to that date, with all contributions adjusted to the valuation date using the effective interest rate for the 2017 plan year. If the plan sponsor makes each required installment on the date due, the remaining amount due is determined as follows:

(A) The contribution paid April 15, 2017 is adjusted by discounting the contribution amount for 3% months at the effective interest rate ($\$25,000 \div 1.0590^{(3.5/12)} = \$24,585$).

(B) The contribution paid July 15, 2017 is discounted for 6% months at the effective interest rate ($\$25,000 \div 1.0590^{(6.5/12)} = \$24,236$).

(C) The contribution paid October 15, 2017 is discounted for 9% months at the effective interest rate ($\$25,000 \div 1.0590^{(9.5/12)} = \$23,891$).

(D) The contribution paid January 15, 2018 is discounted for 12% months at the effective interest rate ($\$25,000 \div 1.0590^{(12.5/12)} = \$23,551$).

(E) The sum of the above contributions for the 2017 plan year paid through January 15, 2018, adjusted for interest to the valuation date, is \$96,263. The remaining amount due for the 2017 plan year is \$125,000 minus \$96,263, or \$28,737, as of January 1, 2017.

(iv) If the final contribution is made on September 15, 2018, the remaining amount due must be increased for interest at the plan's effective interest rate for the 20% months between January 1, 2017 and September 15, 2018 (so that, when it is discounted with interest for those 20% months, the resulting amount will equal \$28,737). Therefore, the remaining contribution due on September 15, 2018 is $\$28,737 \times 1.0590^{(20.5/12)} = \$31,694$.

Example 2. (i) The facts are the same as in *Example 1*, except that the plan sponsor elects to use the \$15,000 funding standard carryover balance as of January 1, 2016, to offset the minimum required contribution for the 2016 plan year. The plan sponsor makes a contribution on January 1, 2016 of \$85,000, which satisfies the minimum contribution requirement for 2016.

(ii) The required installments for 2017 are unaffected by the plan sponsor's election to offset the minimum required contribution by the funding standard carryover balance for 2016. Therefore, the required annual payment for 2017 is \$100,000 (determined as the lesser of (a) 100% of \$100,000 or (b) 90% of \$125,000) and the amount of each required installment for the 2017 plan year is 25% of the required annual payment, or \$25,000.

Example 3. (i) The facts are the same as in *Example 1*. Plan A's funding standard carryover balance has increased to \$17,000 as of January 1, 2017, based on the actual rate of return of plan assets during the 2016 plan year. Plan A's funding ratio for 2016 (determined under § 1.430(f)-1(d)(3)) is over 80%. On March 15, 2017, the plan sponsor elects to use the entire amount of the funding standard carryover balance to offset the minimum required contribution for 2017.

(ii) The plan sponsor's election to use the funding standard carryover balance to offset the mini-

mum required contribution is treated as satisfying the requirement to make a required installment to the extent of the amount elected, adjusted with interest for the period from the beginning of the plan year to the due date of the installment using the plan's effective interest rate for the 2017 plan year. This adjustment is made for the 2.5-month period from the beginning of the plan year to the date of the election as provided in § 1.430(f)-1(b)(5), and for the one-month period from the date of the election to the due date for the installment, as provided in paragraphs (c)(3)(ii) and (c)(4) of this section. Therefore, the \$17,000 funding standard carryover balance as of January 1, 2017 offsets $\$17,000 \times 1.0590^{(2.5/12)} \times 1.0590^{(1/12)}$ or \$17,287 of the \$25,000 required installment due April 15, 2017, and the remaining contribution due on April 15, 2017 is \$25,000 minus \$17,287, or \$7,713.

(iii) The interest adjustments in paragraph (ii) of this *Example 3* are based on the effective interest rate even if that rate is not determined by the time that the required installment is due. If the plan's effective interest rate for the plan year has not been determined at the time that the required installment is due, the actual amount of the required installment satisfied by the use of the funding standard carryover balance is determined after the effective interest rate is determined. If the extent to which the funding standard carryover balance satisfies the required installment is overestimated and the result is that the full amount of the required installment is not paid by the due date, the plan is subject to the consequences for late or unpaid required installments as described in paragraph (c)(1) of this section.

Example 4. (i) The facts are the same as in *Example 3*. The plan sponsor makes a contribution of \$7,713 (which is equal to the remaining portion of the first required installment) on April 15, 2017. For the 2017 plan year, the plan sponsor makes another contribution of \$200,000 on June 30, 2017. No further contributions are made for the 2017 plan year.

(ii) The contributions made for the 2017 plan year are adjusted to the valuation date using the plan's effective interest rate for the 2017 plan year. The contribution paid April 15, 2017 is discounted for the 3% months between January 1, 2017 and the date of payment, using the effective interest rate of 5.90% ($\$7,713 \div 1.0590^{(3.5/12)} = \$7,585$). The contribution paid June 30, 2017 is discounted for 6 months using the effective interest rate ($\$200,000 \div 1.0590^{(6/12)} = \$194,349$), for a total interest-adjusted contribution of \$201,934.

(iii) The present value of the excess contribution for 2017 is based on the net contribution required for that year, which is the minimum required contribution minus the offset for the funding standard carryover balance, or \$108,000 (that is, \$125,000 minus \$17,000). Accordingly, the present value of the excess contribution for 2017 is \$201,934 minus \$108,000, or \$93,934. All or a portion of this amount may be credited to the prefunding balance at the election of the plan sponsor.

Example 5. (i) The facts are the same as in *Example 3*. The plan sponsor pays the required installment of \$7,713 on April 15, 2017 and installments of \$25,000 each on July 15, 2017 and October 15, 2017. However, only \$10,000 of the installment due on January 15, 2018 is paid. No additional

contributions are made until the final contribution for the plan year of \$55,000 is paid on September 15, 2018.

(ii) The 2017 Schedule SB shows that the contributions for the plan year exceed the minimum required contribution. This is determined by comparing the net contribution requirement of \$108,000 (equal to the minimum required contribution of \$125,000 offset by \$17,000 for the amount of funding standard carryover balance used) and the interest-adjusted contributions made for the 2017 plan year, developed as shown:

(A) The contribution paid April 15, 2017 is adjusted by discounting the contribution amount for 3% months at the effective interest rate ($\$7,713 \div 1.0590^{(3.5/12)} = \$7,585$).

(B) The contribution paid July 15, 2017 is discounted for 6% months at the effective interest rate ($\$25,000 \div 1.0590^{(6.5/12)} = \$24,236$).

(C) The contribution paid October 15, 2017 is discounted for 9% months at the effective interest rate ($\$25,000 \div 1.0590^{(9.5/12)} = \$23,891$).

(D) The contribution paid January 15, 2018 is discounted for 12% months at the effective interest rate ($\$10,000 \div 1.0590^{(12.5/12)} = \$9,420$).

(E) Pursuant to paragraph (b)(4)(ii) of this section, the interest rate used to adjust the \$15,000 underpayment of the required installment due January 15, 2018 is increased by 5 percentage points for the 8-month period of underpayment (January 15, 2018 through September 15, 2018). Accordingly, \$15,000 of the contribution paid on September 15, 2018 is discounted using a rate of 10.90% for 8 months to the due date of January 15, 2018, and is then further adjusted using the 5.90% effective interest rate for the 12% months between the required installment due date of January 15, 2018 and the valuation date of January 1, 2017. This portion of the September 15, 2018 contribution results in an adjusted amount of \$13,189 as of January 1, 2017 ($\$15,000 \div 1.1090^{(8/12)} \div 1.0590^{(12.5/12)}$).

(F) The remaining \$40,000 of the contribution paid on September 15, 2018 is discounted using the effective interest rate of 5.90% for the 20%-month period between the date of payment and the valuation date. This portion of the payment is therefore adjusted to \$36,268 as of the valuation date (that is, $\$40,000 \div 1.0590^{(20.5/12)}$).

(G) The sum of the contributions (as calculated in paragraphs (ii)(A) through (F) of this *Example 5*) for the 2017 plan year paid through September 15, 2018, adjusted for interest to the valuation date, is \$114,589. This is greater than the net contribution required for the 2017 plan year of \$108,000.

Example 6. (i) The facts are the same as in *Example 5*, except that the plan sponsor does not make the contribution on September 15, 2018.

(ii) The 2017 Schedule SB shows an unpaid minimum required contribution of \$42,868 as of January 1, 2017. This is equal to the difference between the net contribution required for 2017 of \$108,000 (the minimum required contribution of \$125,000, offset by \$17,000 for the amount of the funding standard carryover balance used) and \$65,132 (the interest-adjusted contributions made for the 2017 plan year before the 8% month deadline, as illustrated in paragraphs (ii)(A) through (ii)(D) of *Example 5*).

Example 7. (i) The facts are the same as in *Example 1*, except that the plan year is changed to an August 1 – July 31 plan year effective August 1, 2017. This results in a short plan year beginning January 1, 2017 and ending July 31, 2017. The minimum required contribution for the 7-month period covered by the plan year is calculated as \$72,917 in accordance with § 1.430(a)–1(b)(2)(ii).

(ii) As provided in paragraph (c)(7) of this section, a required installment is due 15 days after the end of the short plan year (August 15, 2017), and required installments are also due on the regularly scheduled due dates for required installments that occur within the short plan year (April 15, 2017 and July 15, 2017).

(iii) The required installments are determined based on the lesser of (a) 90% of the minimum required contribution for the short plan year ending July 31, 2017 (90% of \$72,917, or \$65,625) or (b) 7/12 of 100% of the 2016 minimum required contribution ($\$100,000 \times 7/12$, or \$58,333). The required installments are thus based on \$58,333 because that is the smaller amount.

(iv) The amount of each required installment is determined by dividing the amount determined in paragraph (iii) of this *Example 7* by the number of required installments for the short plan year. This calculation results in required installments of \$19,444 each (that is, \$58,333 divided by 3 installments).

(v) The deadline for the remaining payment is 8% months after the end of the short plan year, or April 15, 2018. If the plan sponsor pays the minimum required amount at each installment date, does not elect to offset any amounts by any funding standard carryover or prefunding balance, and makes a final payment on April 15, 2018, then the remaining payment is \$17,429, determined as follows:

(A) The contribution paid April 15, 2017 is adjusted by discounting the contribution amount for 3% months at the effective interest rate ($\$19,444 \div 1.0590^{(3.5/12)} = \$19,122$).

(B) The contribution paid July 15, 2017 is discounted for 6% months at the effective interest rate ($\$19,444 \div 1.0590^{(6.5/12)} = \$18,850$).

(C) The contribution paid August 15, 2017 is discounted for 7% months at the effective interest rate ($\$19,444 \div 1.0590^{(7.5/12)} = \$18,760$).

(D) The sum of the contributions for the 2017 plan year paid through August 15, 2017, adjusted for interest to the valuation date, is \$56,732. The remaining amount paid April 15, 2018 for the 2017 plan year is $(\$72,917 - \$56,732) \times 1.0590^{(15.5/12)} = \$17,429$.

Example 8. (i) Plan B has an August 10 to August 9 plan year.

(ii) For the plan year that begins on August 10, 2017, a plan month begins on the 10th day of each calendar month. Accordingly, the due dates for the required installments for that plan year are November 24, 2017, February 24, 2018, May 24, 2018 and August 24, 2018. The deadline for the final contribution for the plan year is April 24, 2019.

Example 9. (i) Plan C has a funding standard carryover balance of \$0 and a prefunding balance of \$65,000 as of January 1, 2017. Plan C's funding ratio for 2016 (determined under § 1.430(f)–1(d)(3)) was over 80%. The minimum required contribution for

Plan C (determined prior to any offset for the funding standard carryover balance) is \$120,000 for 2016. Required installments for the 2016 plan year were made timely, and the final installment of the minimum required contribution for the 2016 plan year is due on September 15, 2017 in the amount of \$40,000.

(ii) Prior to April 15, 2017, the plan sponsor makes a standing election to use Plan C's funding balances to offset any otherwise unpaid required installments and any otherwise unpaid minimum required contribution. On June 1, 2017, the actuary completes the 2017 valuation and notifies the plan sponsor that the minimum required contribution for the 2017 plan year is \$100,000. The effective interest rate for the 2017 plan year is 5.90%. No contributions are made for the 2017 plan year until September 15, 2018.

(iii) The first required installment for the 2017 plan year is due on April 15, 2017. Under § 1.430(f)–1(f)(1)(iii)(B), the amount of the prefunding balance used as of April 15, 2017 pursuant to the standing election is 25% of the \$120,000 required annual payment for the 2016 plan year (\$30,000). The prefunding balance is reduced by this amount, adjusted for the 3%-month period between the January 1, 2017 valuation date and the April 15, 2017 due date, using the effective rate for Plan C for 2017 ($\$30,000 \div 1.0590^{(3.5/12)}$, or \$29,503). The prefunding balance is available to offset the April 15, 2017 required installment even though the minimum required contribution for the 2016 plan year has not yet been made, because the standing election to use Plan C's balances to offset the minimum required contribution for the 2016 plan year does not take effect until the due date for that contribution, or September 15, 2017. Therefore, as of April 15, 2017, the prefunding balance still exists and may be used to offset the required installment due as of that date.

(iv) The second required installment for the 2017 plan year is due on July 15, 2017, after the actuary determined the minimum required contribution for the 2017 plan year. The required annual payment for 2017 is equal to the lesser of (a) 100% of the 2017 minimum required contribution (\$120,000) or (b) 90% of the 2017 minimum required contribution (90% of \$100,000, or \$90,000). Therefore, each required installment for 2017 is 25% of \$90,000, or \$22,500.

(v) Although the amount of the required installments for 2017 (\$22,500) is smaller than the amount based on the 2016 minimum required contribution (\$30,000), under § 1.430(f)–1(f)(1)(iii)(B), the amount of the prefunding balance used under the standing election continues to be the \$30,000 based on the minimum required contribution for the 2016 plan year. Alternatively, the plan sponsor can make a replacement formula election to use the prefunding balance to cover the remaining required installments for the 2017 plan year as described in § 1.430(f)–1(f)(1)(iii)(C), based on required installments of \$22,500 each.

(vi) The use of \$30,000 of the prefunding balance as of April 15, 2017 pursuant to the standing election is irrevocable, and therefore the prefunding balance is not adjusted to reflect the fact that the first required installment for the 2017 plan year (based on

the actual 2017 minimum required contribution) is lower than \$30,000.

(vii) However, the excess of the \$30,000 of prefunding balance used on April 15, 2017 over the first required installment is allocated toward the second required installment. In addition, if the plan sponsor makes a replacement formula election in accordance with § 1.430(f)-1(f)(1)(iii)(C), the amount of prefunding balance used pursuant to that election takes into account the actual required installment. In this case, the amount of the prefunding balance used to satisfy the July 15, 2017 required installment is \$14,437. This amount is determined by (1) calculating the excess of the amount of the prefunding balance used on April 15, 2017 over the amount of the required installment due on that date (\$30,000 minus \$22,500 = \$7,500), and adjusting it for the 3 months from April 15, 2017 to July 15, 2017, using the effective interest rate ($\$7,500 \times 1.0590^{(3/12)} = \$7,608$), (2) deducting that amount from the required installment due July 15, 2017, to determine the net amount due as of that date ($\$22,500 - \$7,608 = \$14,892$), and (3) adjusting the net amount to the valuation date of January 1, 2017 for the 6%-month period between the valuation date and the due date for the required installment, using the effective interest rate for Plan C for 2017 ($\$14,892 \div 1.0590^{(6.5/12)} = \$14,437$).

Example 10. (i) The facts are the same as in *Example 9*, except that Plan C's prefunding balance as of January 1, 2017 is only \$20,000, and Plan C's sponsor makes a contribution larger than the minimum required contribution for the 2016 plan year on March 1, 2017.

(ii) The amount of the April 15, 2017 required installment that is satisfied by the plan sponsor's election to offset the prefunding balance is calculated by increasing the January 1, 2017 prefunding balance with interest for 3% months to April 15, 2017, using the effective interest rate for Plan C for 2017. This results in an offset of \$20,337 ($\$20,000 \times 1.0590^{(3.5/12)}$). A cash contribution of \$2,163 ($\$22,500$ minus \$20,337) is needed to satisfy the required installment on that date.

(iii) The excess contribution made for the 2016 plan year cannot be used to offset the remainder of the April 15, 2017 required installment even though it was contributed prior to the date the installment is due, because the sponsor had not yet elected to credit the excess contribution to the prefunding balance. If the plan sponsor elects at a later date to credit the excess contribution to the prefunding balance, the amount can be used to offset required installments due on or after the date of that election. However, note that if Plan C's actuary reflected the excess contribution for 2016 in certifying the 2017 adjusted funding target attainment percentage (AFTAP) used to apply benefit restrictions under section 436, a later election to credit the excess contribution to the prefunding balance would reduce the AFTAP and could cause Plan C to violate section 436.

Example 11. (i) Plan D is not a small plan described in § 1.430(g)-1(b)(2). The valuation date for Plan D is January 1, and Plan D's funding target attainment percentage (FTAP) was 82% as of January 1, 2016 and is 90% as of January 1, 2017. The amount needed to increase the plan's FTAP for the 2017 plan year to 100% (including the expected

increase in the funding target due to benefits accruing or earned during the plan year) is \$500,000. Before taking the liquidity requirement of paragraph (d) of this section into account, the plan sponsor of Plan D is required to pay installments for the 2017 plan year in the amount of \$50,000 each. During the 12-month period ending March 31, 2017, periodic annuity payments of \$425,000 and single sum payments of \$200,000 were made by Plan D. Of the single sum payments, \$125,000 were made during the 2016 plan year and \$75,000 were made during the 2017 plan year. None of these payments were due to nonrecurring circumstances. In addition, administrative expenses of \$25,000 were paid from the plan trust during the 12-month period ending March 31, 2017. As of March 31, 2017, the reported value of Plan D's assets is \$1,500,000, and the fair market value of Plan D's liquid assets is \$1,300,000.

(ii) The amount of the adjusted disbursements from Plan D for the 12-month period ending March 31, 2017 is calculated as the sum of the annuity benefits, single sum payments, and administrative expenses paid during the 12-month period, reduced by the product of the plan's FTAP and the sum of the single sum payments and any payments for annuities purchased during the plan year. This results in adjusted disbursements for the period of \$480,000 (that is, \$425,000 plus \$200,000 plus \$25,000, reduced by 82% of \$125,000 in single sum payments during 2016 and 90% of \$75,000 in single sum payments during 2017).

(iii) The base amount is calculated in accordance with paragraph (e)(6)(ii) of this section as three times the adjusted disbursements determined in paragraph (ii) of this *Example 11*, or \$1,440,000.

(iv) The liquidity shortfall is the difference between the base amount of \$1,440,000 determined in paragraph (iii) of this *Example 11* and the \$1,300,000 in liquid assets as of March 31, 2017, or \$140,000. The required installment due on April 15, 2017 is therefore \$140,000, since this amount is larger than the \$50,000 installment otherwise required, but less than the \$500,000 needed to increase the plan's FTAP (including the expected increase in the funding target due to benefits accruing or earned during the plan year) to 100%.

(v) Note that any contributions of liquid assets made through March 31, 2017 are reflected for purposes of determining the fair market value of Plan D's liquid assets as of March 31, 2017 and are not applied toward satisfying the liquidity requirement as of April 15, 2017. Similarly, any funding standard carryover balance or prefunding balance as of January 1, 2017 cannot be applied to offset the liquidity requirement. Only contributions made in cash or other liquid assets made after March 31, 2017 and by April 15, 2017 can be used to timely satisfy this requirement.

Example 12. (i) The facts are the same as in *Example 11*. The plan sponsor makes a cash contribution for the 2017 plan year of \$30,000 on April 15, 2017, and makes an additional cash contribution for the 2017 plan year of \$110,000 on April 30, 2017. The effective interest rate for Plan D for the 2017 plan year is 5.90%.

(ii) Under paragraph (d)(3)(i) of this section, the underpayment of the required installment due April

15, 2017 is \$110,000 (that is, \$140,000 minus \$30,000).

(iii) Because the \$110,000 contribution was made after the due date for the required installment (which reflects an unpaid liquidity amount) but during the quarter in which the installment was due, and because that contribution does not exceed the unpaid liquidity amount for the quarter, the special interest adjustment under paragraph (b)(4)(iii) of this section applies to the entire amount of the contribution. Accordingly, the contribution is adjusted for interest in two steps for the purpose of determining the portion of the minimum required contribution that is satisfied by the contribution. In the first step, the contribution is adjusted using the effective interest rate for the 2-month period from the payment date of April 30, 2017 to June 30, 2017, the last day of the quarter during which the liquidity requirement was due ($\$110,000 \times 1.0590^{(2/12)} = \$111,056$). In the second step, this amount is adjusted as if that amount had been paid on June 30, 2017. Accordingly, this amount (\$111,056) is discounted for interest at a rate of 10.90% (the effective interest rate for the 2017 plan year of 5.90%, increased by 5 percentage points) for the 2%-month period from June 30, 2017 to the April 15, 2017 due date for the installment, and is further discounted using the effective interest rate of 5.90% for the 3%-month period between April 15, 2017 and the valuation date of January 1, 2017. Therefore, the April 30, 2017 contribution is adjusted to \$106,886 as of January 1, 2017 ($\$111,056 \div 1.1090^{(2.5/12)} \div 1.0590^{(3.5/12)}$).

(iv) The \$140,000 contributed during April 2017 is needed to satisfy the required installment due April 15, 2017 (determined taking into account the liquidity shortfall as of March 31, 2017), and so the full amount is applied to satisfy that installment. No portion of those contributions is applied to the required installments for subsequent quarters, and no additional payments are needed to satisfy the required installment due April 15, 2017 (because the \$110,000 payment satisfies both the unpaid liquidity amount and the remaining amount of the required installment described under paragraph (c)(5) of this section).

Example 13. (i) The facts are the same as in *Example 12*, except that the plan sponsor does not make the second cash contribution of \$110,000 on April 30, 2017, but instead makes a second cash contribution of \$75,000 for the 2017 plan year on July 15, 2017. The base amount as of June 30, 2017 calculated in accordance with paragraph (e)(6)(ii) of this section is \$1,500,000, and the fair market value of liquid assets as of that date is \$1,400,000.

(ii) Under paragraph (d)(3)(i) of this section, the underpayment of the required installment due April 15, 2017 is \$110,000 (that is, \$140,000 minus \$30,000).

(iii) As of June 30, 2017, no portion of the \$110,000 underpayment of the required installment due April 15, 2017 has been satisfied. Under paragraph (d)(3)(iv)(A) of this section, to the extent that the amount due April 15, 2017 solely because of the liquidity requirement under paragraph (d)(1) of this section is not satisfied with a contribution of liquid assets during the quarter, this amount is no longer considered unpaid. Of the \$110,000 underpayment of the required installment that was due on April 15,

2017, \$20,000 would have been due without regard to the liquidity requirement under paragraph (d)(1) of this section and \$90,000 was due solely because of that liquidity requirement. Accordingly, as of July 1, 2017, \$90,000 of the required installment due on April 15, 2017 is no longer treated as unpaid and \$20,000 of that required installment continues to be treated as unpaid.

(iv) Under paragraph (d)(3)(iv)(B) of this section, the interest adjustment in paragraph (b)(4)(iii) of this section for the \$90,000 portion of the installment due April 15, 2017 that is no longer treated as unpaid is given effect through an increase in the minimum required contribution. This increase to the minimum required contribution is \$837, which is determined as the difference between:

(A) The \$90,000 portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for the 6-month period between June 30, 2017 (the last day of the quarter in which the liquidity amount was due) to January 1, 2017 (the valuation date) using the plan's effective interest rate for 2017 (5.90%), resulting in \$87,457 (that is, $\$90,000 \div 1.0590^{(6/12)}$), and

(B) The \$90,000 portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for the 2%-month period between June 30, 2017 and the April 15, 2017 due date using the plan's effective interest rate increased by 5 percentage points (10.90%), and further discounted for the 3%-month period between April 15, 2017 and January 1, 2017 valuation date using the plan's effective interest rate, for a result of \$86,620 (that is, $\$90,000 \div 1.1090^{(2.5/12)} \div 1.0590^{(3.5/12)}$).

(v) The remainder of the required installment that was due on April 15, 2017 without regard to the liquidity requirement (\$20,000) remains unpaid until the July 15, 2017 contribution is made. Under paragraph (c) of this section, \$20,000 of the July 15, 2017 contribution must be allocated to the required installment due on April 15, 2017. The interest adjustment under paragraph (b)(4)(ii) of this section applies to that \$20,000 portion of the contribution because it is a late payment of a required installment. Accordingly, \$20,000 of the July 15, 2017 contribution is adjusted to April 15, 2017, using an interest rate of 10.90% for the 3-month period between July 15, 2017 and the April 15, 2017 due date, and further adjusted using the effective interest rate of 5.90% for 3% months between April 15, 2017 and the January 1, 2017 valuation date. Therefore, the portion of the July 15, 2017 contribution attributable to the April 15, 2017 required installment is adjusted to \$19,166 as of January 1, 2017 ($\$20,000 \div 1.1090^{(3/12)} \div 1.0590^{(3.5/12)}$).

(vi) The liquidity shortfall is recalculated as of June 30, 2017 as \$100,000 (that is, the base amount of \$1,500,000 minus the value of liquid assets of \$1,400,000). This amount is larger than the \$50,000 required installment otherwise applicable, and so the amount of the required installment due on July 15, 2017 is \$100,000. Of the \$75,000 contribution made on July 15, 2017, \$20,000 is applied to satisfy the remainder of the required installment due April 15, 2017, and the remaining \$55,000 is applied toward the required installment due July 15, 2017. An ad-

ditional contribution of \$45,000 in liquid assets is needed to satisfy the required installment due July 15, 2017.

(vii) If instead there were no liquidity shortfall as of June 30, 2017, the required installment due July 15, 2017 would be \$50,000. Of the \$75,000 contribution made on July 15, 2017, \$20,000 would be applied to satisfy the remainder of the required installment due April 15, 2017, \$50,000 would be applied to satisfy the required installment due on July 15, 2017, and the remaining \$5,000 would be applied toward the next required installment.

Example 14. (i) Plan E, which is a small plan described in section 430(g)(2)(B), has a calendar year plan year and a valuation date of December 31. The required installments for the 2017 plan year are \$30,000 each and each of the required installments is paid on the due date. The effective interest rate for Plan E for the 2017 plan year is 5.90%.

(ii) The total contributions made for the plan year and before the valuation date, adjusted with interest to the valuation date, equal \$92,402. This is developed as shown below:

(A) The contribution paid April 15, 2017 is adjusted by increasing the contribution amount for 8% months at the effective interest rate ($\$30,000 \times 1.0590^{(8.5/12)} = \$31,243$).

(B) The contribution paid July 15, 2017 is increased for 5% months at the effective interest rate ($\$30,000 \times 1.0590^{(5.5/12)} = \$30,799$).

(C) The contribution paid October 15, 2017 is increased for 2% months at the effective interest rate ($\$30,000 \times 1.0590^{(2.5/12)} = \$30,360$).

(iii) Pursuant to § 1.430(g)-1(d)(2), the interest-adjusted value of the contributions for the 2017 plan year that are made before the valuation date is subtracted from the December 31, 2017 plan assets in determining the value of plan assets for the December 31, 2017 actuarial valuation.

Example 15. (i) The facts are the same as in *Example 14*, except that the first contribution for the 2017 plan year is made on May 15, 2017 in the amount of \$40,000. The remaining amount of each required installment is paid on the date it is due.

(ii) In accordance with paragraph (c)(3)(iii) of this section, the amount of the required installment due on April 15, 2017 remains at \$30,000, even though the associated contribution was not paid until May 15, 2017. Therefore, \$30,000 of the payment is allocated to the April 15, 2017 required installment and the remaining \$10,000 is allocated to the installment due on July 15, 2017.

(iii) Under paragraph (c)(3)(ii) of this section, the portion of the May 15, 2017 contribution allocated to the July 15, 2017 required installment is increased for interest for the 2 months between the date of the contribution and the due date, using the effective interest rate for 2017. Therefore, the amount allocated to the July 15, 2017 installment is \$10,096 (that is, $\$10,000 \times 1.0590^{(2/12)}$). The remaining installment due July 15, 2017 is \$30,000 minus \$10,096, or \$19,904.

(iv) The total amount credited against the minimum required contribution is \$122,062 as of December 31, 2017. This amount is calculated as shown below:

(A) The portion of the May 15, 2017 contribution allocated to the April 15, 2017 required installment

is first adjusted for the 1 month between the due date and the payment date using the effective interest rate plus 5% ($\$30,000 \div 1.1090^{(1/12)} = \$29,742$). This amount is then adjusted using the effective interest rate, for the 8% months between the due date of April 15, 2017 and the valuation date of December 31, 2017 ($\$29,742 \times 1.0590^{(8.5/12)} = \$30,975$).

(B) The remaining portion of the May 15, 2017 contribution (\$10,000) is increased for the 7% months between the date of the contribution and the valuation date at the effective interest rate ($\$10,000 \times 1.0590^{(7.5/12)} = \$10,365$).

(C) The contribution paid July 15, 2017 is increased for 5% months at the effective interest rate ($\$19,904 \times 1.0590^{(5.5/12)} = \$20,434$).

(D) The contribution paid October 15, 2017 is increased for 2% months at the effective interest rate ($\$30,000 \times 1.0590^{(2.5/12)} = \$30,360$).

(E) The contribution paid January 15, 2018 is discounted for % month at the effective interest rate ($\$30,000 \div 1.0590^{(0.5/12)} = \$29,928$).

(v) The amount deducted from valuation assets as of December 31, 2017 for contributions made before the valuation date is determined without regard to the special interest adjustment for late payment of the required installment due April 15, 2017 (and without regard to the contribution paid on January 15, 2018).

Example 16. (i) Plan F has a required installment of \$10,000 per quarter for the 2016 plan year. The plan sponsor makes a contribution of \$9,993 on April 10, 2016. The effective interest rate for Plan F for the 2016 plan year is 5.90%.

(ii) In accordance with paragraph (c)(3)(ii) of this section, the contribution is increased for interest at the effective interest rate, for the 5 days between the contribution date and the due date for the required installment. Therefore, the amount credited against the required installment due April 15, 2016 is \$10,001 ($\$9,993 \times 1.0590^{(5/365)}$), and the required installment is satisfied.

Example 17. (i) The facts are the same as in *Example 16*, except that a contribution of \$8,000 is made on April 20, 2016.

(ii) In accordance with paragraph (c)(3)(iii) of this section, the amount of the required installment due on April 15, 2016 remains at \$10,000, even though the associated contribution was not paid until after the due date, and so \$2,000 ($\$10,000 - \$8,000$) of the required installment remains unpaid as of April 20, 2016.

(iii) The amount of the April 20, 2016 contribution credited against the minimum required contribution for 2016 is \$7,858. This amount is determined by first adjusting the contribution for the 5 days between the due date for the required installment and the date of the contribution using the effective interest rate for Plan F for the 2016 plan year, plus 5% ($\$8,000 \div 1.1090^{(5/365)} = \$7,989$). The result is further adjusted for the 105 days from the due date for the required installment to the valuation date of January 1, 2016 using the effective interest rate of 5.90% ($\$7,989 \div 1.0590^{(105/365)} = \$7,858$).

(iv) Alternatively, the amount of the April 20, 2016 contribution credited against the minimum required contribution for 2016 could be determined using 3 % months between the due date for the required installment and the January 1, 2016 valua-

tion date, as long as the calculation is done consistently for each contribution and for each plan year. Using this approach, the amount adjusted to the April 15, 2016 due date (using the effective interest rate for Plan F for the 2016 plan year plus 5%) is adjusted to January 1, 2016 for 3% months at the effective interest rate for Plan F for the 2016 plan year. Under this approach, the amount credited against the minimum required contribution is \$7,856 ($\$8,000 \div 1.1090^{(5/365)} \div 1.0590^{(3.5/12)}$).

Example 18. (i) Plan G has a funding standard carryover balance of \$15,000 and a prefunding balance of \$50,000 as of January 1, 2016. Plan G's required installments are \$25,000 each for the 2017 plan year, and the final installment of the minimum required contribution for the 2016 plan year is due on September 15, 2017, in the amount of \$40,000. Plan G's funding ratios for both 2015 and 2016 (determined under § 1.430(f)-1(d)(3)) were over 80%. No elections were made to reduce or use Plan G's funding balances during 2016. The effective interest rate for Plan G for the 2016 and 2017 plan years are 5.40% and 5.90%, respectively.

(ii) On April 15, 2017, Plan G's sponsor elected to use the balances to offset the required installment due on that date. The amount of the required installment is adjusted to January 1, 2017, using the effective interest rate for 2017 to determine the amount by which the balances are reduced. Accordingly, this election results in a reduction of \$24,585 ($\$25,000 \div 1.0590^{(3.5/12)}$) in the funding balances as of January 1, 2017.

(iii) On September 15, 2017, Plan G's sponsor elected to use the balances to offset the remaining minimum required contribution for the 2016 plan year due on that date. This amount is adjusted to January 1, 2016, using the effective interest rate for 2016 to determine the amount by which the balances are reduced. Accordingly, this election results in a reduction of \$36,563 ($\$40,000 \div 1.0540^{(20.5/12)}$) in Plan G's funding balances as of January 1, 2016.

(iv) Section 430(f)(3)(B) and § 1.430(f)-1(d)(2) require that the funding standard carryover balance be exhausted before the prefunding balance is used to offset required contribution amounts. Although the due date for the April 15, 2017 required installment occurs earlier than the due date for the 2016 minimum required contribution, for this purpose contributions for the 2016 plan year are deemed to occur before those for the 2017 plan year. Therefore, the election to offset the 2016 minimum required contribution will eliminate Plan G's funding standard carryover balance, and the 2017 required installment due April 15, 2017 will be offset by the prefunding balance.

(g) *Effective/applicability dates and transition rules*—(1) *Statutory effective date/applicability date.* Section 430 generally applies to plan years beginning on or after January 1, 2008. The applicability of section 430 for purposes of determining the minimum required contribution is delayed for certain plans in accordance with sections 104 through 106 of PPA '06.

(2) *Effective date/applicability date of plan regulations.* This section applies to plan

years beginning on or after January 1, 2016. For plan years beginning before January 1, 2016, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430(j).

(3) *First effective plan year.* For purposes of this section, the *first effective plan year* for a plan is the first plan year after the pre-effective plan year.

(4) *Pre-effective plan year.* For purposes of this section, the *pre-effective plan year* is the plan year described in § 1.430(a)-1(h)(5).

(5) *Special rules relating to first effective plan year*—(i) *Determination of minimum required contribution for pre-effective plan year.* In the case of the plan's first effective plan year, the minimum required contribution for the preceding plan year for purposes of paragraph (c)(5)(ii)(B) of this section is equal to the minimum required contribution under section 412 for the pre-effective plan year (determined without regard to any funding waiver under section 412), determined as of the last day of the pre-effective plan year and without regard to the plan's credit balance.

(ii) *Determination of funding shortfall for pre-effective plan year*—(A) *First effective plan year that begins during 2008.* In general, in the case of a plan with a first effective plan year that begins during 2008, the funding shortfall for the pre-effective plan year that precedes it is determined pursuant to paragraph (e)(4) of this section. However, for this purpose, the plan's current liability for the pre-effective plan year under section 412(l)(7) (as in effect for the pre-effective plan year) is permitted to be used in place of the plan's funding target for the pre-effective plan year. In addition, for this purpose, the value of plan assets that was used for the pre-effective plan year is permitted to be used in place of the value of plan assets computed pursuant to § 1.430(g)-1(c) for the pre-effective plan year, provided that the value of plan assets that was used for the pre-effective plan year was not less than 90 percent nor more than 110 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c). If the value of plan assets that was used for the pre-effective plan year was less than 90 percent of the value of plan

assets computed pursuant to § 1.430(g)-1(c), then 90 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c) is permitted to be used as the value of plan assets for the pre-effective plan year. If the value of plan assets that was used for the pre-effective plan year was more than 110 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c), then 110 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c) is permitted to be used as the value of plan assets for the pre-effective plan year. Finally, for this purpose, the value of plan assets is permitted to be determined without subtraction for the plan's credit balance for the pre-effective plan year.

(B) *First effective plan year begins after 2008.* In the case of a plan with a first effective plan year that begins after December 31, 2008, the determination of the funding shortfall for the pre-effective plan year that immediately precedes it is made in accordance with paragraph (e)(4)(i) of this section. Thus, the funding shortfall for the pre-effective plan year is based on the funding target for the pre-effective plan year and the value of plan assets is determined under § 1.430(g)-1(c) for the pre-effective plan year, even though section 430(g) did not apply to the plan for purposes of determining the minimum required contribution for the pre-effective plan year.

Par. 6. Section 1.436-1 is amended as follows:

1. Paragraph (h)(4)(iii)(C)(7) is amended by removing the word "or".

2. Paragraph (h)(4)(iii)(C)(8) is amended by removing the word "percentage." and adding the words "percentage; or" in its place.

3. Paragraph (h)(4)(iii)(C)(9) is added. The additions read as follows:

§ 1.436-1 *Limits on benefits and benefit accruals under single employer defined benefit plans.*

* * * * *

(h) * * *

(4) * * *

(iii) * * *

(C) * * *

(9) Any other event prescribed in guidance published in the Internal Revenue Bulletin.

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PART 54—PENSION EXCISE TAXES

Par. 7. The authority citation for part 54 continues to read in part as follows:

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

Par. 8. Section 54.4971(c)-1 is added to read as follows:

§ 54.4971(c)-1 Taxes on failure to meet minimum funding standards; definitions.

(a) *In general.* This section sets forth definitions that apply for purposes of applying the rules of section 4971.

(b) *Accumulated funding deficiency—*
(1) *Multiemployer plans.* With respect to a multiemployer plan defined in section 414(f), the term *accumulated funding deficiency* has the meaning given to that term by section 431. A plan's accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 431 applies to the plan.

(2) *CSEC plans.* With respect to a CSEC plan (that is, a plan that fits within the definition of a CSEC plan in section 414(y) for plan years beginning on or after January 1, 2014 and for which the election under section 414(y)(3)(A) has not been made), the term *accumulated funding deficiency* means the CSEC accumulated funding deficiency determined under section 433. A plan's CSEC accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 433 applies to the plan.

(c) *Unpaid minimum required contribution—*(1) *In general.* The term *unpaid minimum required contribution* means, with respect to any plan year, the portion of the minimum required contribution under section 430 for the plan year for which contributions have not been made on or before the due date for the plan year under section 430(j)(1). The unpaid minimum required contribution is determined after taking into account the interest adjustment to contributions under § 1.430(j)-1(b)(4) and any offsets from use of the funding balances under § 1.430(f)-1(d).

(2) *Accumulated funding deficiency for pre-effective plan year.* For purposes of this section, a plan's accumulated funding deficiency under section 412 for the pre-effective plan year is treated as an unpaid minimum required contribution for that plan year until correction is made under the rules of paragraph (d)(2) of this section.

(d) *Correct—*(1) *Accumulated funding deficiency.* With respect to an accumulated funding deficiency for a plan year that is described in paragraph (b) of this section, the term *correct* means to contribute, to or under the plan, the amount necessary to reduce the accumulated funding deficiency as of the end of that plan year to zero. To reduce the deficiency to zero, the contribution must include interest at the plan's valuation interest rate for the period between the end of that plan year and the date of the contribution (determined taking into account the rules of section 431(c)(8) or section 433(c)(9), as applicable).

(2) *Unpaid minimum required contribution—*(i) *In general.* With respect to an unpaid minimum required contribution for a plan year, the term *correct* means to contribute, to or under the plan, an amount that, when discounted to the valuation date for the plan year for which the unpaid minimum required contribution is due at the appropriate rate of interest, equals or exceeds the unpaid minimum required contribution. For this purpose, the appropriate rate of interest is the plan's effective interest rate for the plan year for which the unpaid minimum required contribution is due except to the extent that the payments are subject to additional interest as provided under section 430(j)(3) or (4).

(ii) *Pre-PPA accumulated funding deficiency.* With respect to the accumulated funding deficiency under section 412 for the pre-effective plan year that is described in paragraph (c)(2) of this section, the term *correct* means to contribute, to or under the plan, the amount of that accumulated funding deficiency increased with interest from the end of the pre-effective plan year to the date of the contribution at the plan's valuation interest rate for the pre-effective plan year.

(iii) *Ordering rule.* For purposes of section 4971 and this section, a contribu-

tion is attributable first to the earliest plan year of any unpaid minimum required contribution for which correction has not yet been made.

(3) *Corrective action of certain retroactive plan amendments.* Certain retroactive plan amendments that meet the requirements of section 412(d)(2) may reduce the minimum required contribution for a plan year, which would reduce the accumulated funding deficiency or the amount of the unpaid minimum required contribution for a plan year.

(e) *Taxable period—*(1) *In general.* The term *taxable period* means the period beginning with the end of the plan year in which there is an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4971(a); or

(ii) The date on which the tax imposed by section 4971(a) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in paragraph (e)(1)(i) of this section is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, is treated as the end of the taxable period.

(f) *Single-employer plan.* The term *single-employer plan* means a plan to which the minimum funding requirements of section 412 apply that is not a multiemployer plan as described in section 414(f). The term *single-employer plan* includes a multiple employer plan to which section 413(c) applies, other than a CSEC plan as described in paragraph (b)(2) of this section.

(g) *Examples.* The following examples illustrate the rules of this section.

Example 1. (i) Plan A, a single-employer defined benefit plan, has a calendar year plan year and a January 1 valuation date. The sponsor of Plan A has a calendar taxable year. Plan A has no funding shortfall as of January 1, 2008, and Plan A has no unpaid minimum required contributions for 2008 or any earlier plan year. The minimum required contribution for the 2009 plan year is \$250,000. The plan sponsor makes one contribution for 2009 on July 1, 2009 in the amount of \$200,000, and the sponsor does not make an election to use the prefunding

balance or funding standard carryover balance to offset the minimum required contribution for 2009. The effective interest rate for Plan A for the 2009 plan year is 5.90%.

(ii) The contribution paid July 1, 2009 is discounted for 6 months (to the valuation date) at the effective interest rate ($\$200,000 \div 1.0590^{(6/12)} = \$194,349$). The unpaid minimum required contribution for the 2009 plan year is \$250,000 minus \$194,349, or \$55,651. The excise tax due under section 4971(a) is 10% of the unpaid minimum required contribution, or \$5,565.

Example 2. (i) The facts are the same as in *Example 1*. The plan sponsor makes an additional contribution of \$175,000 on December 31, 2010.

(ii) Under the ordering rule in paragraph (d)(2)(iii) of this section, the contribution made on December 31, 2010 is applied first to correct the unpaid minimum required contribution for 2009. The portion of the contribution paid December 31, 2010 that is required to eliminate the unpaid minimum required contribution for 2009 (taking into account the 2009 effective interest rate for the 24 months between January 1, 2009 and the payment date of December 31, 2010), is \$55,651 multiplied by $1.059^{(24/12)}$ or \$62,412. The remaining payment of \$112,588 (\$175,000 minus \$62,412) is applied to the contribution required for the 2010 plan year.

Example 3. (i) Plan B, a single-employer defined benefit plan, has a calendar year plan year. The sponsor of Plan B has a calendar taxable year. Plan B has an accumulated funding deficiency of \$100,000 as of December 31, 2007, including additional interest due to late required installments during 2007. The valuation interest rate for the 2007 plan year is 7.5%.

(ii) In accordance with paragraph (c)(2) of this section, the accumulated funding deficiency under section 412 as of December 31, 2007 is considered an unpaid minimum required contribution until it is corrected. Pursuant to paragraph (d)(2)(ii) of this section, the amount needed to correct that accumulated funding deficiency is \$100,000 plus interest at the valuation interest rate of 7.5% for the period between December 31, 2007 and the date of payment of the contribution.

(iii) The funding shortfall as of January 1, 2008 is calculated as the difference between the funding target and the value of assets as of that date. The assets are not adjusted by the amount of the accumulated funding deficiency. The fact that the contribution was not made for the 2007 plan year means that the January 1, 2008 funding shortfall is larger than it would have been otherwise.

Example 4. (i) The facts are the same as in *Example 3*. The minimum required contribution for the 2008 plan year is \$125,000, but the plan sponsor does not make any required contributions for 2008.

(ii) The total unpaid minimum required contribution as of December 31, 2008 is the sum of the \$100,000 accumulated funding deficiency under section 412 from 2007 and the \$125,000 unpaid minimum required contribution for 2008, or \$225,000. The section 4971(a) excise tax applies to the aggregate unpaid minimum required contributions for all plan years that remain unpaid as of the end of 2008. In this case, there is an unpaid minimum required contribution of \$100,000 for the 2007 plan year and

an unpaid minimum required contribution of \$125,000 for the 2008 plan year. The section 4971(a) excise tax is 10% of the aggregate of those unpaid amounts, \$22,500.

Example 5. (i) The facts are the same as in *Example 4*, except that the plan sponsor makes a contribution of \$150,000 on December 31, 2008. No additional contributions are paid through September 15, 2009. Required installments of \$25,000 each are due April 15, 2008, July 15, 2008, October 15, 2008, and January 15, 2009. Plan B's effective interest rate for the 2008 plan year is 5.75%.

(ii) In accordance with paragraph (c)(2) of this section, the accumulated funding deficiency under section 412 as of December 31, 2007 is treated as an unpaid minimum required contribution until it is corrected.

(iii) The December 31, 2008 contribution is first applied to the 2007 accumulated funding deficiency under section 412 that is treated as an unpaid minimum required contribution. Accordingly, the amount needed to correct the 2007 unpaid required minimum contribution (\$100,000 multiplied by 1.075, or \$107,500) is applied to eliminate this unpaid minimum required contribution for the 2007 plan year.

(iv) The remaining \$42,500 December 31, 2008 contribution (\$150,000 minus \$107,500) is then applied to the 2008 minimum required contribution. This amount is first allocated to the required installment due April 15, 2008. In accordance with § 1.430(j)-1(b)(4)(ii) of this chapter, the adjustment for interest on late required installments is increased by 5 percentage points for the period of underpayment. Therefore, \$25,000 of the remaining December 31, 2008 contribution is discounted using an interest rate of 10.75% for the 8%-month period between the payment date of December 31, 2008 and the required installment due date of April 15, 2008, and at the 5.75% effective interest rate for the 3% months between April 15, 2008 and January 1, 2008. This portion of the December 31, 2008 contribution results in an adjusted amount of \$22,880 (that is, $\$25,000 \div 1.1075^{(8.5/12)} \div 1.0575^{(3.5/12)}$) as of January 1, 2008.

(v) The remaining December 31, 2008 contribution is then applied to the required installment due July 15, 2008. The \$17,500 balance of the December 31, 2008 contribution (\$150,000 minus \$107,500 minus \$25,000) is paid after the due date for the second required installment. Accordingly, the remaining \$17,500 contribution is adjusted using an interest rate of 10.75% for the 5%-month period between the payment date of December 31, 2008 and the required installment due date of July 15, 2008, and at the 5.75% effective interest rate for the 6% months between July 15, 2008 and January 1, 2008. This portion of the December 31, 2008 contribution results in an adjusted amount of \$16,202 (that is, $\$17,500 \div 1.1075^{(5.5/12)} \div 1.0575^{(6.5/12)}$) as of January 1, 2008.

(vi) The remaining unpaid minimum required contribution for 2008 is \$125,000 minus the interest-adjusted amounts of \$22,880 and \$16,202 applied towards the 2008 minimum required contribution as determined in paragraphs (iv) and (v) of this *Example 5*. This results in an unpaid minimum required contribution of \$85,918 for 2008. The section

4971(a) excise tax is 10% of the unpaid minimum required contribution, or \$8,592.

Example 6. (i) Plan C, a single-employer defined benefit plan, has a calendar year plan year and a January 1 valuation date, and has no funding standard carryover balance or prefunding balance as of January 1, 2008. Plan C's sponsor has a calendar taxable year. The minimum required contributions for Plan C are \$100,000 for the 2008 plan year, \$110,000 for the 2009 plan year, \$125,000 for the 2010 plan year, and \$135,000 for the 2011 plan year. No contributions for these plan years are made until September 15, 2012, at which time the plan sponsor contributes \$273,000 (which is exactly enough to correct the unpaid minimum required contributions for the 2008 and 2009 plan years).

(ii) The excise tax under section 4971(a) for the 2008 taxable year is 10% of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending within the 2008 taxable year. Accordingly, the excise tax for the 2008 taxable year is \$10,000 (that is, 10% of \$100,000). The excise tax for the 2009 taxable year is \$21,000 (that is, 10% of the sum of \$100,000 and \$110,000) and the excise tax for the 2010 taxable year is \$33,500 (that is, 10% of the sum of \$100,000, \$110,000, and \$125,000).

(iii) The contribution made on September 15, 2012 is applied to correct the unpaid minimum required contributions for the 2008 and 2009 plan years by the deadline for making contributions for the 2011 plan year. Therefore, the excise tax under section 4971(a) for the 2011 taxable year is based only on the remaining unpaid minimum required contributions for the 2010 and 2011 plan years, or \$26,000 (that is, 10% of the sum of \$125,000 and \$135,000).

(iv) The plan sponsor may also be required to pay an excise tax of 100% under section 4971(b), if the unpaid minimum required contributions are not corrected by the end of the taxable period.

(h) Effective/applicability dates and transition rules—(1) Statutory effective date—(i) In general. In general, the amendments made to section 4971 by section 114 of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006), as amended (PPA '06), apply to taxable years beginning on or after January 1, 2008, but only with respect to a plan year that—

(A) Begins on or after January 1, 2008; and

(B) Ends with or within any such taxable year.

(ii) *Plans with delayed PPA '06 effective dates.* In the case of a plan for which the effective date of section 430 for purposes of determining the minimum required contribution is delayed in accordance with sections 104 through 106 of PPA '06, the amendments made to section 4971 by section 114 of PPA '06 apply to taxable years beginning on or after Janu-

ary 1, 2008, but only with respect to a plan year—

(A) To which section 430 applies to determine the minimum required contribution of the plan; and

(B) That ends with or within any such taxable year.

(2) *Effective date of regulations.* This section is effective for taxable years beginning on or after the statutory effective date described in paragraph (h)(1) of this section, but in no event does this section apply to taxable years ending before April 15, 2008.

(3) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the plan year described in § 1.430(a)–1(h)(5) of this chapter. Thus, except for plans with a delayed effective date under paragraph (h)(1)(ii) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

John Dalrymple,
*Deputy Commissioner for
Services and Enforcement.*

Approved: July 17, 2015.

Mark J. Mazur,
*Assistant Secretary of the
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 8, 2015, 8:45 a.m., and published in the issue of the Federal Register for September 9, 2015, 80 F.R. 54374)

26 CFR 1.988–5

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

T.D. 9736

Integrated Hedging Transactions of Qualifying Debt

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final regulations and removal
of temporary regulations

SUMMARY: This document contains final
regulations that address certain inte-

grated transactions that involve a foreign
currency denominated debt instrument
and multiple associated hedging transac-
tions. The regulations provide that if a
taxpayer has identified multiple hedges as
being part of a qualified hedging transac-
tion, and the taxpayer has terminated at
least one but less than all of the hedges
(including a portion of one or more of the
hedges), the taxpayer must treat the re-
maining hedges as having been sold for
fair market value on the date of disposi-
tion of the terminated hedge.

DATES: *Effective Date.* These regula-
tions are effective on September 8, 2015.

Applicability Date. These regulations
apply to leg-outs within the meaning of
§ 1.988–5(a)(6)(ii) that occur on or after
September 6, 2012.

**FOR FURTHER INFORMATION
CONTACT:** Sheila Ramaswamy, at (202)
317-6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 5, 2012, the Treasury
Department and the IRS issued temporary
regulations (TD 9598) (the “Temporary
Regulations”) that revised the legging out
rules of § 1.988–5(a)(6)(ii) applicable to
hedging transactions under section
988(d). No public hearing was requested
or held. One comment was received,
which is available at www.regulations.gov
or upon request. After consideration of the
comment, the Temporary Regulations are
adopted as final regulations without sub-
stantive change. The Temporary Regula-
tions are removed.

Summary of Comments and Explanation of Revisions

The only comment received on the
Temporary Regulations suggested that the
promulgation of the Temporary Regula-
tions was unnecessary because the prior
regulations did not support the taxpayer
reporting position that the Temporary
Regulations were designed to prevent.
The comment considered the taxpayer po-
sition addressed in the Temporary Regu-
lations to be inconsistent with both the
purposes of section 988(d) and the eco-
nomic substance of the transaction. Al-

though the comment finds the Temporary
Regulations ultimately unnecessary, it ac-
knowledges that the section 988 hedging
rules are a complicated area of law and
that the prior regulations could be im-
proved to provide greater certainty to tax-
payers. The Treasury Department and the
IRS have determined that the Temporary
Regulations are useful in clarifying the
section 988(d) integration rules — as well
as in preventing unintended approaches to
legging out under those rules — and thus
should be adopted as final.

The comment recommended that the
Treasury Department and the IRS con-
sider aligning the hedge integration re-
gime under section 988 with the approach
taken in regulations under section 1275 on
the basis that the section 1275 approach is
more consistent with economic reality.
The § 1.1275–6 regulations generally al-
low the integration of a qualifying debt
instrument with a hedge or combination of
hedges if the combined cash flows of the
components are substantially equivalent
to the cash flows on a fixed or variable
rate debt instrument. However, a financial
instrument that hedges currency risk can-
not be integrated as a § 1.1275–6 hedge.
See § 1.1275–6(b)(2). Under the legging
out rules of § 1.1275–6, a taxpayer that
legs out of an integrated transaction is
treated as terminating the synthetic debt
instrument for its fair market value and
recognizing any gain or loss. If the tax-
payer remains liable on the qualifying
debt instrument after the leg-out, adjust-
ments are made to reflect any difference
between the fair market value of the qual-
ifying debt instrument and its adjusted
issue price. If the taxpayer remains a party
to the § 1.1275–6 hedge, the hedge is
treated as entered into at its fair market
value. By contrast, subject to § 1.988–
5T(a)(6)(ii)(F), the legging out rules under
§ 1.988–5 treat a taxpayer that legs out of
a synthetic debt instrument under section
988 as having disposed of any remaining
hedges, and those hedges cannot be part of
a qualified hedging transaction for any
period after the leg-out date.

The Treasury Department and the IRS
have determined that achieving greater
alignment between the hedge integration
regimes under sections 988 and 1275 is
beyond the scope of this project and un-
necessary to achieve the purpose of the

Temporary Regulations. The limited purpose of the Temporary Regulations was to clarify the application of the legging out rules under § 1.988-5 to a particular fact pattern rather than to undertake a more general revision of those rules. When some of the hedge components of a qualified hedging transaction are disposed of on a leg-out date, deeming a disposition of all remaining components is sufficient to achieve a clear reflection of income. Continuing to treat the remaining components as integrated, as under the rule of § 1.1275-6, would represent a departure from the approach taken in the original § 1.988-5 regulations. Nonetheless, the Treasury Department and the IRS will continue to consider whether the hedge integration regimes under sections 988 and 1275 should be modified and brought into closer conformity.

As further support for the recommendation to achieve better alignment between §§ 1.988-5 and 1.1275-6, the comment also suggested that the provision in § 1.988-5T(a)(6)(ii)(F) of the Temporary Regulations, which was also included in the prior final regulations, would be unnecessary if the regulations were modified to conform to § 1.1275-6. Under § 1.988-5T(a)(6)(ii)(F), if a taxpayer legs out of a qualified hedging transaction and realizes a gain with respect to the debt instrument or hedge that is disposed of or otherwise terminated, then the taxpayer is not treated as legging out if during the period beginning 30 days before the leg-out date and ending 30 days after that date the taxpayer enters into another transaction that, taken together with any remaining components of the hedge, hedges at least 50 percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction. Section 1.988-5T(a)(6)(ii)(F) also provides a similar rule where a taxpayer has a qualified hedging transaction comprised of multiple components. In such a case, the taxpayer will not be treated as legging out of the qualified hedging transaction if the taxpayer terminates all or a part of one or more of the components and realizes a net gain with respect to the terminated component, components, or portions thereof, provided that the remaining components of the hedge by themselves hedge at least 50

percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction.

The comment suggests that this provision of the section 988 hedging rules is unnecessarily complex, as well as incomplete because it does not cover situations in which, upon legging out, a taxpayer recognizes a loss on the debt instrument or hedge that is disposed of or otherwise terminated. However, as stated in this preamble, in issuing the Temporary Regulations, the Treasury Department and the IRS only sought to clarify the application of the section 988 hedging rules to a particular fact pattern and did not seek to undertake a more general revision of those rules. Accordingly, the Treasury Department and the IRS have determined that modifications to § 1.988-5T(a)(6)(ii)(F) are beyond the scope of this guidance project. However, the Treasury Department and the IRS will continue to consider whether any modifications to the rule are necessary or appropriate.

Finally, the comment also recommended that, even if the final regulations do not adopt the recommendation to align with the approach taken in § 1.1275-6, the Temporary Regulations should be modified to provide that, when an issuer of a qualifying debt instrument legs out but continues to be the obligor on the qualifying debt instrument, the issuer should be deemed to repurchase and reissue the debt instrument for its then fair market value. The Temporary Regulations instead provide that, in such a case, the debt instrument is “treated as sold for its fair market value.” The comment notes that the sale of a debt instrument has no tax consequences for the issuer of the instrument. The Treasury Department and the IRS agree that this aspect of the Temporary Regulations should be modified and, for the sake of consistency, these final regulations adopt the phrasing “treated as sold or otherwise terminated by the taxpayer for its fair market value,” which is used in § 1.988-5(a)(6)(i)(C) (regarding legging in).

The final regulations also update the dates in two existing examples, to be consistent with the applicability date of the revised legging out rules. Additionally, the final regulations reflect minor wording

changes to the Temporary Regulations for purposes of improving clarity. The Treasury Department and the IRS do not intend these changes to be interpreted as substantive changes to the Temporary Regulations.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant impact on a substantial number of small entities. This certification is based upon the fact that these regulations merely clarify an existing standard and do not impose a collection of information on small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

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Adoptions of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805* * *
Par. 2. Section 1.988-5 is amended by:
1. Revising paragraph (a)(6)(ii).

2. Adding *Example 11* to paragraph (a)(9)(iv).

3. Revising paragraph (a)(10)(iv).

The revisions and addition read as follows:

§ 1.988–5 Section 988(d) hedging transactions.

(a) * * *

(6) * * *

(ii) *Legging out.* With respect to a qualifying debt instrument and hedge that are properly identified as a qualified hedging transaction, “legging out” of integrated treatment under this paragraph (a) means that the taxpayer disposes of or otherwise terminates all or any portion of the qualifying debt instrument or the hedge before maturity of the qualified hedging transaction. For purposes of the preceding sentence, if the taxpayer changes a material term of the qualifying debt instrument (for example, exercises an option to change the interest rate or index, or the maturity date) or the hedge (for example, changes the interest or exchange rates underlying the hedge, or the expiration date) before maturity of the qualified hedging transaction, the taxpayer will be deemed to have disposed of or otherwise terminated all or any portion of the qualifying debt instrument or the hedge, as applicable. A taxpayer that disposes of or terminates a qualified hedging transaction (that is, disposes of or terminates both the qualifying debt instrument and the hedge in their entirety on the same day) is considered to have disposed of or otherwise terminated the synthetic debt instrument rather than legging out. See paragraph (a)(9)(iv) of this section, *Example 10* for an illustration of this rule. If a taxpayer legs out of integrated treatment, the following rules apply:

(A) The transaction will be treated as a qualified hedging transaction during the time the requirements of this paragraph (a) were satisfied.

(B) If all of the instruments comprising the hedge (each such instrument, a component) are disposed of or otherwise terminated, the qualifying debt instrument is treated as sold or otherwise terminated by the taxpayer for its fair market value on the date the hedge is disposed of or otherwise terminated (the leg-out date), and

any gain or loss (including gain or loss resulting from factors other than movements in exchange rates) from the identification date to the leg-out date is realized and recognized on the leg-out date. The spot rate on the leg-out date is used to determine exchange gain or loss on the debt instrument for the period beginning on the leg-out date and ending on the date such instrument matures or is disposed of or otherwise terminated. Proper adjustment must be made to reflect any gain or loss taken into account. The netting rule of § 1.988–2(b)(8) applies. See paragraph (a)(9)(iv) of this section, *Example 4* and *Example 5* for an illustration of this rule.

(C) If a hedge has more than one component (and such components have been properly identified as being part of the qualified hedging transaction) and at least one but not all of the components that comprise the hedge has been disposed of or otherwise terminated, or if part of any component of the hedge has been terminated (whether a hedge consists of a single or multiple components), the date such component (or part thereof) is disposed of or terminated is considered the leg-out date and the qualifying debt instrument is treated as sold or otherwise terminated by the taxpayer for its fair market value in accordance with the rules of paragraph (a)(6)(ii)(B) of this section on such leg-out date. In addition, all of the remaining components (or parts thereof) that have not been disposed of or otherwise terminated are treated as sold by the taxpayer for their fair market value on the leg-out date, and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. To the extent relevant, the spot rate on the leg-out date is used to determine exchange gain or loss on the remaining components (or parts thereof) for the period beginning on the leg-out date and ending on the date such components (or parts thereof) are disposed of or otherwise terminated. See paragraph (a)(9)(iv) of this section, *Example 11* for an illustration of this rule.

(D) If the qualifying debt instrument is disposed of or otherwise terminated in whole or in part, the date of such disposition or termination is considered the leg-out date. Accordingly, the hedge (including all components making up the hedge in their entirety) that is part of the quali-

fied hedging transaction is treated as sold by the taxpayer for its fair market value on the leg-out date, and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. To the extent relevant, the spot rate on the leg-out date is used to determine exchange gain or loss on the hedge (including all components thereof) for the period beginning on the leg-out date and ending on the date such hedge is disposed of or otherwise terminated.

(E) Except as provided in paragraph (a)(8)(iii) of this section (regarding identification by the Commissioner), the part of the qualified hedging transaction that has not been disposed of or otherwise terminated (that is, the remaining debt instrument in its entirety even if partially hedged, or the remaining components of the hedge) cannot be part of a qualified hedging transaction for any period after the leg-out date.

(F) If a taxpayer legs out of a qualified hedging transaction and realizes a net gain with respect to the debt instrument that is disposed of or otherwise terminated, then paragraph (a)(6)(ii)(B), (C), and (D) of this section, as appropriate, will not apply if during the period beginning 30 days before the leg-out date and ending 30 days after that date the taxpayer enters into another transaction that, taken together with any remaining components of the hedge, hedges at least 50 percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction or, if appropriate, an equivalent amount under the hedge (or any remaining components thereof) that was part of the qualified hedging transaction. Similarly, in a case in which a hedge has multiple components that are part of a qualified hedging transaction, if the taxpayer legs out of a qualified hedging transaction by terminating one such component or a part of one or more such components and realizes a net gain with respect to the terminated component, components, or portions thereof, then paragraphs (a)(6)(ii)(B), (C), and (D) of this section, as appropriate, will not apply if the remaining components of the hedge (including parts thereof) by themselves hedge at least 50 percent of the remaining currency flow with respect to the qualifying debt instru-

ment that was part of the qualified hedging transaction. See paragraph (a)(9)(iv) of this section, *Example 11* for an illustration of this rule.

* * * * *
 (9) * * *
 (iv) * * *

Example 11. (i) K is a domestic corporation with the U.S. dollar as its functional currency. On January 1, 2013, K borrows 100 British pounds (£) for two years at a 10% rate of interest payable on December 31 of each year with no principal payment due until maturity on December 31, 2014. Assume that the spot rate on January 1, 2013, is £1=\$1. On the same date, K enters into two swap contracts with an unrelated counterparty that economically results in the transformation of the fixed rate £100 borrowing to a floating rate dollar borrowing. The terms of the swaps are as follows:

(A) *Swap #1, Currency swap.* On January 1, 2013, K will exchange £100 for \$100.

(1) On December 31 of both 2013 and 2014, K will exchange \$8 for £10;

(2) On December 31, 2014, K will exchange \$100 for £100.

(B) *Swap #2, Interest rate swap.* On December 31 of both 2013 and 2014, K will pay LIBOR times a notional principal amount of \$100 and will receive 8% times the same \$100 notional principal amount.

(ii) Assume that K properly identifies the pound borrowing and the swap contracts as a qualified hedging transaction as provided in paragraph (a)(8)(i) of this section and that the other relevant

requirements of paragraph (a) of this section are satisfied.

(iii) On January 1, 2014, the spot exchange rate is £1=\$2; the U.S. dollar LIBOR rate of interest is 9%; the market value of K's note in pounds has not changed; and K terminates swap #2. Because interest rates have increased from 8% to 9%, K will incur a loss of (\$.92) (the present value of the (\$1) difference between the 8% and 9% interest payments discounted at the current interest rate of 9%) with respect to the termination of such swap on January 1, 2014. Pursuant to paragraph (a)(6)(ii)(C) of this section, K must treat swap #1 as having been sold for its fair market value on the leg-out date, which is the date swap #2 is terminated. K must realize and recognize gain of \$100.92 (the present value of £110 discounted in pounds to equal £100 x \$2 (\$200) less the present value of \$108 (\$99.08)). The loss inherent in the pound borrowing from January 1, 2013 to January 1, 2014 is realized and recognized on January 1, 2014. Such loss is exchange loss in the amount of \$100 (the present value of £110 that was to be paid at the end of the year discounted at pound interest rates to equal £100 times the change in exchange rates: (£100 x \$1, the spot rate on January 1, 2013) – (£100 x \$2, the spot rate on January 1, 2014)). Pursuant to paragraph (a)(6)(ii)(E) of this section, except as provided in paragraph (a)(8)(iii) of this section (regarding identification by the Commissioner), the pound borrowing and currency swap cannot be part of a qualified hedging transaction for any period after the leg-out date.

(iv) Assume the facts are the same as in paragraph (iii) of this *Example* except that on January 1, 2014, the U.S. dollar LIBOR rate of interest is 7% rather than 9%. When K terminates swap #2, K will

realize gain of \$0.93 (the present value of the (\$1) difference between the 8% and 7% interest payments discounted at the current interest rate of 7%) received with respect to the termination on January 1, 2014. Fifty percent or more of the remaining pound cash flow of the pound borrowing remains hedged after the termination of swap #2. Accordingly, under paragraph (a)(6)(ii)(F) of this section, paragraphs (a)(6)(ii)(B) and (C) of this section do not apply, and the gain on swap #1 and the loss on the qualifying debt instrument are not taken into account. Thus, K will

include in income \$0.93 realized from the termination of swap #2.

(10) * * *

(iv) *Effective/applicability dates for legging in and legging out rules.* (A) The rules of paragraph (a)(6)(i) of this section are effective for qualified hedging transactions that are legged into after March 17, 1992.

(B) The rules of paragraph (a)(6)(ii) and *Example 11* of paragraph (a)(9)(iv) of this section apply to leg-outs that occur on or after September 6, 2012.

* * * * *

§ 1.988-5 [Amended]

Par. 3. For each section listed in the table, remove the language in the “Remove” column and add in its place the language in the “Add” column as set forth below:

Section	Remove	Add
§ 1.988-5(a)(9)(iv), Example 4, paragraph (i), second, third and fourth sentences	January 1, 1990	January 1, 2013
§ 1.988-5(a)(9)(iv), Example 4, paragraph (i), table	December 31, 1990	December 31, 2013
§ 1.988-5(a)(9)(iv), Example 4, paragraph (i), table	December 31, 1991	December 31, 2014
§ 1.988-5(a)(9)(iv), Example 4, paragraph (i), table	December 31, 1992	December 31, 2015
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iii)(B)	1990	2013
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iii)(B)	1991	2014
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iii)(B)	1992	2015
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iii)(D), second sentence	1992	2015
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iv), first, second, fourth, fifth, and sixth sentences	January 1, 1991	January 1, 2014

Section	Remove	Add
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iv), first, fourth, and fifth sentences	January 1, 1990	January 1, 2013
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iv), third sentence	1990	2013
§ 1.988-5(a)(9)(iv), Example 4, paragraph (iv), sixth and seventh sentences	December 31, 1992	December 31, 2015
§ 1.988-5(a)(9)(iv), Example 5, paragraph (i), second, fourth, and fifth sentences	January 1, 1990	January 1, 2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (i), table	December 31, 1990	December 31, 2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (i), table	December 31, 1991	December 31, 2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (i), table	December 31, 1992	December 31, 2015
§ 1.988-5(a)(9)(iv), Example 5, paragraph (ii), second and third sentences	January 1, 1991	January 1, 2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (ii), second sentence	January 1, 1990	January 1, 2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (ii), third sentence	December 31, 1991	December 31, 2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (ii), third sentence	December 31, 1992	December 31, 2015
§ 1.988-5(a)(9)(iv), Example 5, paragraph (ii), third sentence	1991	2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (ii), third sentence	1992	2015
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii), second sentence	January 1, 1990	January 1, 2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii), second sentence	January 1, 1991	January 1, 2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(B)	1990	2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(B)	1991	2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(B)	1992	2015
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(C), first sentence	1990	2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(C), first sentence	1991	2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(C), first sentence	1992	2015

Section	Remove	Add
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iii)(D), second sentence	1990	2013
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iv), first, second, third, and sixth sentences	January 1, 1991	January 1, 2014
§ 1.988-5(a)(9)(iv), Example 5, paragraph (iv), fourth sentence	1990	2013

§ 1.988-5T [Removed]

Approved: August 25, 2015.

Par. 4. Section 1.988-5T is removed.

John Dalrymple,
*Deputy Commissioner for
 Services and Enforcement.*

Mark J. Mazur,
*Assistant Secretary of
 the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on September 3, 2015, 4:15 p.m., and published in the issue of the Federal Register for September 8, 2015, 80 F.R. 53732)

Part III. Administrative, Procedural, and Miscellaneous

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

Notice 2015-61

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

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006 and CSEC plans under § 414(y), § 430 of the Code specifies the minimum funding requirements that apply to single-employer plans 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 August 2015 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2015 are, respectively, 1.68, 4.05, and 4.98.

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 plan years beginning before 2018, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2014 and 2015 were published in Notice 2013-58, 2013-40 I.R.B. 294 and Notice 2014-50, 2014-40 I.R.B. 590, respectively. For plan years beginning in 2016, based on the segment rates applicable for October 1990 to September 2015, the 25-year averages for the period ending September 30, 2015, of the first, second, and third segment rates are 4.92, 6.57, and 7.39 percent, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for September 2015 without adjustment for the 25-year average segment rate limits are as follows:

Applicable Month	First Segment	Second Segment	Third Segment
September 2015	1.34	4.03	5.06

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for September 2015 adjusted to be within the applicable

minimum and maximum percentages of the corresponding

25-year average segment rates, are as follows:

For Plan Years Beginning In	Adjusted 24-Month Average Segment Rates				
	Applicable Month		First Segment	Second Segment	Third Segment
2014	September	2015	4.99	6.32	6.99
2015	September	2015	4.72	6.11	6.81
2016	September	2015	4.43	5.91	6.65

¹Pursuant to § 433(h)(3)(A), the 3rd 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)).

30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan’s current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability

for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for August 2015 is 2.86 percent. The Service determined this rate as the average of the daily

determinations of yield on the 30-year Treasury bond maturing in May 2045 determined each day through August 12, 2015 and the yield on the 30-year Treasury bond maturing in August 2045 determined each day for the balance of the month. For plan years beginning in the month shown below, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rate used to calculate current liability are as follows:

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
<i>Month</i>	<i>Year</i>		90%	to	105%
September	2015	3.15	2.84		3.31

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 seg-

ment rates determined for August 2015 are as follows:

First Segment	Second Segment	Third Segment
1.68	4.05	4.98

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associ-

ate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS participated in the development of this guidance. For further

information regarding this notice, contact Mr. Morgan at 202-317-6391 or Tony Montanaro at 202-317-8698 (not toll-free numbers).

Table I
 Monthly Yield Curve for August 2015
 Derived from August 2015 Data

<i>Maturity</i>	<i>Yield</i>								
0.5	0.55	20.5	4.70	40.5	5.01	60.5	5.12	80.5	5.18
1.0	0.87	21.0	4.72	41.0	5.02	61.0	5.13	81.0	5.18
1.5	1.17	21.5	4.73	41.5	5.02	61.5	5.13	81.5	5.18
2.0	1.43	22.0	4.75	42.0	5.03	62.0	5.13	82.0	5.18
2.5	1.66	22.5	4.76	42.5	5.03	62.5	5.13	82.5	5.18
3.0	1.87	23.0	4.77	43.0	5.03	63.0	5.13	83.0	5.18
3.5	2.05	23.5	4.78	43.5	5.04	63.5	5.13	83.5	5.18
4.0	2.22	24.0	4.79	44.0	5.04	64.0	5.14	84.0	5.19
4.5	2.39	24.5	4.80	44.5	5.04	64.5	5.14	84.5	5.19
5.0	2.55	25.0	4.81	45.0	5.05	65.0	5.14	85.0	5.19
5.5	2.70	25.5	4.82	45.5	5.05	65.5	5.14	85.5	5.19
6.0	2.86	26.0	4.83	46.0	5.05	66.0	5.14	86.0	5.19
6.5	3.00	26.5	4.84	46.5	5.06	66.5	5.14	86.5	5.19
7.0	3.14	27.0	4.85	47.0	5.06	67.0	5.15	87.0	5.19
7.5	3.28	27.5	4.86	47.5	5.06	67.5	5.15	87.5	5.19
8.0	3.40	28.0	4.87	48.0	5.07	68.0	5.15	88.0	5.19
8.5	3.52	28.5	4.88	48.5	5.07	68.5	5.15	88.5	5.19
9.0	3.64	29.0	4.88	49.0	5.07	69.0	5.15	89.0	5.19
9.5	3.74	29.5	4.89	49.5	5.07	69.5	5.15	89.5	5.20
10.0	3.84	30.0	4.90	50.0	5.08	70.0	5.15	90.0	5.20
10.5	3.93	30.5	4.91	50.5	5.08	70.5	5.15	90.5	5.20
11.0	4.01	31.0	4.91	51.0	5.08	71.0	5.16	91.0	5.20
11.5	4.09	31.5	4.92	51.5	5.08	71.5	5.16	91.5	5.20
12.0	4.16	32.0	4.93	52.0	5.09	72.0	5.16	92.0	5.20
12.5	4.22	32.5	4.93	52.5	5.09	72.5	5.16	92.5	5.20
13.0	4.28	33.0	4.94	53.0	5.09	73.0	5.16	93.0	5.20
13.5	4.33	33.5	4.95	53.5	5.09	73.5	5.16	93.5	5.20
14.0	4.37	34.0	4.95	54.0	5.10	74.0	5.16	94.0	5.20
14.5	4.42	34.5	4.96	54.5	5.10	74.5	5.17	94.5	5.20
15.0	4.45	35.0	4.96	55.0	5.10	75.0	5.17	95.0	5.20
15.5	4.49	35.5	4.97	55.5	5.10	75.5	5.17	95.5	5.20
16.0	4.52	36.0	4.97	56.0	5.11	76.0	5.17	96.0	5.21
16.5	4.55	36.5	4.98	56.5	5.11	76.5	5.17	96.5	5.21
17.0	4.57	37.0	4.98	57.0	5.11	77.0	5.17	97.0	5.21
17.5	4.60	37.5	4.99	57.5	5.11	77.5	5.17	97.5	5.21
18.0	4.62	38.0	4.99	58.0	5.11	78.0	5.17	98.0	5.21
18.5	4.64	38.5	5.00	58.5	5.12	78.5	5.17	98.5	5.21
19.0	4.66	39.0	5.00	59.0	5.12	79.0	5.18	99.0	5.21
19.5	4.67	39.5	5.01	59.5	5.12	79.5	5.18	99.5	5.21
20.0	4.69	40.0	5.01	60.0	5.12	80.0	5.18	100.0	5.21

Investments Made for Charitable Purposes

Notice 2015-62

SECTION 1. PURPOSE

This notice provides guidance on the application of section 4944 of the Internal Revenue Code (Code) to investments that are made by private foundations for purposes described in section 170(c)(2)(B), but are not program-related investments (PRIs) as defined in section 4944(c) and the regulations thereunder.

SECTION 2. BACKGROUND

Section 4944(a)(1) imposes an excise tax on a private foundation that invests “any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes.” In addition, section 4944(a)(2) imposes an excise tax on the participation of any foundation manager in the making of such an investment, knowing that the investment will jeopardize the carrying out of any of the foundation’s exempt purposes.

Section 53.4944-1(a)(2)(i) of the Excise Tax Regulations provides that an investment jeopardizes the carrying out of the exempt purposes of a private foundation if it is determined that the foundation managers, in making such investment, failed to exercise ordinary business care and prudence (under the circumstances prevailing at the time of making the investment) in providing for the long-term and short-term financial needs of the foundation to carry out its exempt purposes. In the exercise of the requisite standard of care and prudence the foundation managers may take into account the expected return (including both income and appreciation of capital), the risks of rising and falling price levels, and the need for diversification within the investment portfolio (for example, with respect to type of security, type of industry, maturity of company, degree of risk and potential for return). Further, the determination of whether an investment jeopardizes the carrying out of the foundation’s exempt purposes is made on an investment-by-investment basis, in each case taking into account the foundation’s entire portfolio. Investments that are considered “high

risk” may be closely scrutinized to determine whether the foundation managers have met the requisite standard of care. However, once an investment has been determined not to jeopardize the carrying out of the foundation’s exempt purposes, the investment will not later be considered a jeopardizing investment, even if the foundation subsequently realizes a loss as a result of the investment.

Section 4944(c) provides an exception for PRIs, which are defined as “investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property.” Section 170(c)(2)(B) defines the “charitable purposes” of organizations (including private foundations) that are eligible to receive contributions that are deductible by the donor for federal income tax purposes. The regulations under section 4944 provide additional guidance regarding what it means for purposes of section 4944 for an investment to be made primarily to accomplish one or more of the purposes described in section 170(c)(2)(B) and whether a significant purpose of the investment is the production of income or the appreciation of property.

Questions have arisen about whether an investment made by a private foundation that furthers its charitable purposes, but is not a PRI because a significant purpose of the investment is the production of income or the appreciation of property, is subject to tax under section 4944.

SECTION 3. DISCUSSION

Only a jeopardizing investment is subject to tax under section 4944. Under the regulations, an investment made by a private foundation will not be considered to be a jeopardizing investment if, in making the investment, the foundation managers exercise ordinary business care and prudence (under the circumstances prevailing at the time the investment is made) in providing for the long-term and short-term financial needs of the foundation to carry out its charitable purposes. Although the regulations list some factors that managers generally consider when making investment decisions, the regulations do not provide an exhaustive list of facts and

circumstances that may properly be considered. When exercising ordinary business care and prudence in deciding whether to make an investment, foundation managers may consider all relevant facts and circumstances, including the relationship between a particular investment and the foundation’s charitable purposes. Foundation managers are not required to select only investments that offer the highest rates of return, the lowest risks, or the greatest liquidity so long as the foundation managers exercise the requisite ordinary business care and prudence under the facts and circumstances prevailing at the time of the investment in making investment decisions that support, and do not jeopardize, the furtherance of the private foundation’s charitable purposes. For example, a private foundation will not be subject to tax under section 4944 if foundation managers who have exercised ordinary business care and prudence make an investment that furthers the foundation’s charitable purposes at an expected rate of return that is less than what the foundation might obtain from an investment that is unrelated to its charitable purposes.

This standard is consistent with investment standards under state laws, which generally provide for the consideration of the charitable purposes of an organization or certain factors, including an asset’s special relationship or special value, if any, to the charitable purposes of the organization, in properly managing and investing the organization’s investment assets. *See, e.g.,* Unif. Prudent Mgmt. of Institutional Funds Act. §§ 3(a), 3(e)(1)(H) and accompanying comments, 7A pt. III U.L.A. 21-22 (Pocket Pt. 2015).

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Peter A. Holiat of the Office of the Associate Chief Counsel (TEGE). For further information regarding this notice contact Mr. Holiat at 202-317-5800 (not a toll-free number).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability
(Also Part I, Sections 851; 1.851-3, 1.851-5).

Rev. Proc. 2015–45

SECTION 1. PURPOSE

This revenue procedure describes conditions under which the Internal Revenue Service will treat a regulated investment company (RIC) that invests in one or more other RICs as satisfying the asset diversification requirements of section 851(b)(3)(B) (the 25 percent tests) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 The 25 percent tests impose asset diversification requirements applied at the close of each quarter of a RIC's taxable year. These tests permit no more than 25 percent of the value of a RIC's total assets to be invested in (i) the securities (other than Government securities or the securities of other RICs) of any one issuer; (ii) the securities (other than the securities of other RICs) of two or more issuers that the RIC controls and that are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses; or (iii) the securities of one or more qualified publicly traded partnerships (as defined in section 851(h)) (QPTPs).

.02 Section 851(c) contains special rules applicable to the 25 percent tests. Under these rules, in ascertaining the value of a RIC's investment in the securities of an issuer for purposes of the 25 percent tests, the RIC must include its proper proportion (as determined under regulations prescribed by the Secretary) of the investment in securities of that issuer that are held by any other corporation that is a member of the RIC's controlled group. Section 851(c)(3) defines a controlled group as one or more chains of corporations connected through stock ownership with the RIC if 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the RIC) is owned directly by one or more of the other corporations, and the RIC owns directly 20 percent or more of the total combined voting power of all classes of stock entitled to vote of at least one of the other corporations. The Treasury Department and the Internal Revenue Service

have issued final regulations designated as §§1.851–3 and 1.851–5 of the Income Tax Regulations to clarify the application of the controlled group rules of section 851(c). See TD 9737, published in the Federal Register on September 15, 2015.

.03 A Fund of Funds is a structure composed of a RIC (Upper RIC) that invests in stock (and possibly other securities) of one or more other RICs (Lower RICs). The Upper RIC and Lower RICs generally are members of the same fund family. A Fund of Funds structure may be used by an Upper RIC to allocate its investment exposure among the investment exposures of one or more Lower RICs in which it invests. For example, an Upper RIC that is a target-date retirement fund may invest in equity and bond funds based on the investment timeline of the Upper RIC's investors, gradually moving a greater percentage of the Upper RIC's assets out of equity funds and into bond funds as the target retirement date of the Upper RIC's investors approaches.

.04 If an Upper RIC holds 20 percent or more of the total combined voting power of all classes of stock entitled to vote of a Lower RIC or RICs within the meaning of section 851(c)(3), the Upper RIC and Lower RIC or RICs constitute a chain of corporations connected through stock ownership and are members of a controlled group. Section 851(c)(1) and §1.851–3 therefore require the Upper RIC to include its proportionate share of the assets of the Lower RIC or RICs in determining whether the Upper RIC satisfies the 25 percent tests at the end of each of its quarters.

.05 Section 851(d)(1) contains two remedial provisions, referred to as the “market value exception” and the “30-day cure provision,” which assist a RIC in avoiding loss of RIC status due to a failure to satisfy the asset diversification rules of section 851(b)(3) and (c) as of the end of a quarter.

.06 The market value exception under section 851(d)(1) provides that a corporation that meets the requirements of section 851(b)(3) and (c) at the close of any quarter shall not lose its status as a RIC because of a discrepancy during a subsequent quarter between the value of its various investments and such requirements unless such discrepancy exists im-

mediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. This provision ensures that fluctuations in market values of securities alone will not cause a RIC to fail its asset diversification requirements and that a RIC may dispose of its assets under certain circumstances without endangering the RIC's satisfaction of these requirements. See §1.851–5, Example 5.

.07 The 30-day cure provision under section 851(d)(1) provides that, if a RIC does not meet the requirements of section 851(b)(3) and (c) at the close of any quarter by reason of a discrepancy that exists immediately after the acquisition of any security or other property and that is wholly or partly the result of such acquisition during such quarter, the RIC shall not lose its status for such quarter if such discrepancy is eliminated within 30 days after the close of such quarter, and, in such cases, the RIC shall be considered to have met such requirements at the close of such quarter. See also Rev. Rul. 69–134, 1969–1 C.B. 187 (stating that, for purposes of applying the 30-day cure provision to eliminate a discrepancy, the value of the securities disposed of shall be the value on the last business day of the quarter).

.08 An Upper RIC may have a quarter-end date (quarterly testing date) that differs from that of one or more of the Lower RICs in its controlled group. On the Upper RIC's quarterly testing date, such a Lower RIC may hold assets that, if the Upper RIC included its proportionate share of the Lower RIC's assets on the Upper RIC's quarterly testing date, that inclusion might appear to cause the Upper RIC to fail one or more of the 25 percent tests on that date. The terms of the 30-day cure provision and of the market value exception are both expressed with respect to a RIC's quarterly testing date. As a result, inflexibly including an Upper RIC's share of a Lower RIC's assets on a date that differs from the Lower RIC's testing date might in some circumstances undermine the protection conferred by these relief provisions.

SECTION 3. SCOPE

.01 This revenue procedure applies to an Upper RIC that directly holds 20 per-

cent or more of the total combined voting power of all classes of stock entitled to vote of one or more Lower RICs.

.02 This revenue procedure does not apply to any Upper RIC if a purpose of the Fund of Funds structure is to enable the Upper RIC to invest (directly or indirectly through one or more members of the Upper RIC's controlled group) in securities of an issuer or category of issuers at levels that would not be permissible if the 25 percent tests were applied without regard to this revenue procedure. Thus, for example, this revenue procedure would not apply if direct or indirect transfers of assets are made among controlled group members (whether through contributions, distributions, or otherwise), or controlled group members otherwise acquire or transfer assets, as part of a plan to enable each RIC to satisfy the 25 percent tests on its respective quarter-end date and to maintain an aggregate level of investment in an issuer or a category of issuers in excess of that which would be permissible if the 25 percent tests were applied without regard to this revenue procedure.

SECTION 4. APPLICATION

.01 An Upper RIC will be treated as satisfying the 25 percent tests for a quarter provided that—

(1) The Upper RIC invests solely in cash, cash items, Government securities, and securities of one or more Lower RICs, and each Lower RIC that is a member of the Upper RIC's controlled group, taking into account the market value exception and 30-day cure provision of section 851(d)(1), is treated as satisfying the 25 percent tests for each quarter that ends during or concurrently with the quarter of the Upper RIC; or

(2) The Upper RIC invests in cash, cash items, Government securities, and securities of one or more Lower RICs, and other stocks and securities, and—

(a) Each Lower RIC that is a member of the Upper RIC's controlled group, taking into account the market value exception and 30-day cure provision of section 851(d)(1), satisfies the 25 percent tests for each quarter that ends during or concurrently with the quarter of the Upper RIC; and

(b) Disregarding the Upper RIC's investments in the securities in each Lower

RIC that is a member of the Upper RIC's controlled group and the Upper RIC's proportionate share of any securities held by those Lower RICs, the Upper RIC satisfies the 25 percent tests with respect to the remainder of its assets.

.02 In determining whether a RIC within a chain of corporations satisfies the requirements of section 4.01 of this revenue procedure, the 25 percent tests (taking into account the market value exception and 30-day cure provision of section 851(d)(1)), are applied—

(1) First, to a Lower RIC that is not also an Upper RIC in the chain; and

(2) Next, successively up the chain to each other Lower RIC in the chain; and

(3) Last, to the Upper RIC that is not also a Lower RIC.

SECTION 5. EXAMPLES

.01 *Example 1.* RIC A has a quarterly testing date of March 31. RIC A invests solely in cash, cash items, Government securities, and shares of RIC B, RIC C, RIC D, and RIC E. RIC B and RIC E are members of RIC A's controlled group. RIC A's Fund of Funds structure does not have a purpose of enabling RIC A to invest (directly or indirectly through one or more members of RIC A's controlled group) in securities of an issuer or category of issuers at levels that would not be permissible if the 25 percent tests were applied without regard to this revenue procedure. RIC A is an Upper RIC that is described in section 3 of this revenue procedure. The quarterly testing date for RIC B and RIC E is February 28. On February 28, RIC B satisfies the 25 percent tests. RIC E, however, fails to satisfy one of the 25 percent tests on February 28 due to its acquisition during the quarter of some holdings in Corporation F. On March 15, which is within 30 days after the close of the quarter ending February 28, RIC E sells shares of Corporation F so that the discrepancy between the value of its investments and the requirements of section 851(b)(3)(B) is eliminated. RIC E is therefore considered to have met the 25 percent tests at the close of the quarter ending February 28. Under section 4.01(1) of this revenue procedure, RIC A is treated as satisfying the 25 percent tests for its quarter ending March 31. This is because each Lower RIC that is a member of RIC A's controlled group, taking into account the market value exception and 30-day cure provision of section 851(d)(1), satisfies the 25 percent tests for each quarter that ends during or concurrently with the quarter of RIC A.

.02 *Example 2.* RIC S has a quarterly testing date of June 30. RIC S invests 30 percent of its assets in shares of RIC T, a member of its controlled group, and the remaining 70 percent of its assets in other stocks and securities. RIC S's Fund of Funds structure does not have a purpose of enabling RIC S to invest (directly or indirectly through one or more members of RIC S's controlled group) in securities of an issuer or category of issuers at levels that would not be permissible if the 25 percent tests were

applied without regard to this revenue procedure. RIC S is an Upper RIC described in section 3 of this revenue procedure. The quarterly testing date for RIC T is May 31. On May 31, RIC T fails to satisfy one of the 25 percent tests due to its acquisition during the quarter of some holdings in Corporation U. On June 15, which is within 30 days after the close of the quarter ending May 31, RIC T sells shares of Corporation U so that the discrepancy between the value of its investments and the requirements of section 851(b)(3)(B) is eliminated. RIC T is therefore considered to have met the 25 percent tests at the close of its quarter ending May 31. On June 30, disregarding RIC S's investments in the stock and securities of RIC T, RIC S satisfies the 25 percent tests with respect to the remainder of its assets. Under section 4.01(2) of this revenue procedure, RIC S is treated as satisfying the 25 percent tests for its quarter ending June 30. This is because RIC T, taking into account the market value exception and the 30-day cure provision of section 851(d)(1), satisfies the 25 percent tests for its quarter that ends during or concurrently with the quarter of RIC S, and, disregarding RIC S's investments in the stock and securities of RIC T, RIC S satisfies the 25 percent tests with respect to the remainder of its assets.

.03 *Example 3.* RIC V has a quarterly testing date of June 30. RIC V invests in shares of RIC W. RIC W is a member of RIC V's controlled group and has a quarterly testing date of May 31. RIC V's Fund of Funds structure does not have a purpose of enabling RIC V to invest (directly or indirectly through one or more members of RIC V's controlled group) in securities of an issuer or category of issuers at levels that would not be permissible if the 25 percent tests were applied without regard to this revenue procedure. RIC V is an Upper RIC described in section 3 of this revenue procedure. RIC W's investment in securities of one or more QPTPs increases in value during the quarter ending May 31, with the result that more than 25 percent of RIC W's assets is invested in securities of one or more QPTPs on May 31. Taking into account the market value exception of section 851(d)(1), RIC W satisfies the 25 percent tests for the quarter ending on May 31. During June, RIC V acquires interests in one or more QPTPs. On June 30, disregarding its investment in the securities of RIC W, RIC V satisfies the 25 percent tests with respect to the remainder of its assets, including its interests in one or more QPTPs. Under section 4.01(2) of this revenue procedure, RIC V is treated as satisfying the 25 percent tests for its quarter ending June 30. This is because RIC W, taking into account the market value exception of section 851(d)(1), satisfies the 25 percent tests for its quarter that ends during or concurrently with the quarter of RIC V, and disregarding RIC V's investments in the stock and securities of RIC W, RIC V satisfies the 25 percent tests with respect to the remainder of its assets.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for quarters ending after September 14, 2015.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Susan Thompson Baker and Julianne Allen of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Ms. Baker at (202) 317-7053 or Ms. Allen at (202) 317-6945 (not toll-free number).

26 CFR 46.4374-1: Liability for tax.
(Also: 46.6011(a)-1)

Rev. Proc. 2015-46

.01 SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2003-78, 2003-2 C.B. 1029, to correct the mailing address and contact numbers for a foreign insurer or reinsurer that requests a closing agreement for an exemption from the excise tax imposed by section 4371, formalize certain requirements for obtaining a closing agreement, and make corresponding changes to the form closing agreements attached as Appendices A and B to Rev. Proc. 2003-78.

.01 SECTION 2. BACKGROUND

Section 3 of Rev. Proc. 2003-78 provides the procedures that a foreign insurer or reinsurer (the “taxpayer”) must follow to enter into a closing agreement for establishing an exemption from the section 4371 excise tax on insurance premiums paid to the taxpayer when the exemption is based on the provisions of an applicable U.S. income tax treaty. As set forth therein, the closing agreement must be in the form required by Appendix A or B of the revenue procedure, as applicable. Section 3.05(1) of Rev. Proc. 2003-78, and paragraph (10)(e) of Appendices A and B thereto, include a mailing address for submitting required information and documentation and contact numbers for assistance. These addresses are no longer correct.

Section 3.04(b) of Rev. Proc. 2003-78 requires as part of the closing agreement submission that the taxpayer provide a letter of credit in the amount of \$75,000 (or a larger amount if required by the

circumstances) as security for the payment of any tax determined to be due pursuant to the closing agreement. Paragraph 6(a) of the closing agreements in Appendices A and B provides that the letter of credit issued in favor of the Internal Revenue Service must be an irrevocable letter of credit issued by a United States bank that is a member of the Federal Reserve System, or by a United States branch or agency of a foreign bank that is on the National Association of Insurance Commissioners list of banks from which letters of credit may be accepted.

Under its current administrative practice, the Internal Revenue Service requires the issuing bank to extend the letter of credit automatically, without amendment, for successive periods of one year. If the issuing bank will not extend the letter of credit beyond the end of the current one-year period, the bank must notify the Internal Revenue Service in writing at least 90 days prior to the then-relevant expiration date by registered mail that it will not extend the letter of credit for any additional period. This 90-day minimum notice period ensures that the Internal Revenue Service will have time to determine before the letter of credit expires whether there is any tax due.

.01 SECTION 3. MODIFICATIONS

Section 3.05(1) of Rev. Proc. 2003-78 and paragraph (10)(e) of Appendices A and B are modified to provide that the mailing address for submitting required information and documentation and the contact numbers for assistance are the following:

Internal Revenue Service
Attn: SE:LB:IN:IBC:FPP
1111 Constitution Ave, NW, M3-413
Washington, DC 20224
Telephone: (202) 515-4337
Fax: (855) 257-8108.

Paragraph 6(a) of Appendices A and B is modified to reflect the current administrative practice regarding the terms of the letters of credit described above.

Appendices A and B of Revenue Procedure 2003-78 are, accordingly, revised and restated at the end of this revenue procedure to reflect these changes.

.01 SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for requests for closing agreements submitted after September 28, 2015. With respect to closing agreements in existence prior to the effective date of this revenue procedure, if the letter of credit is not already in compliance with practice set forth above, the Internal Revenue Service will treat a taxpayer as fully complying with the requirements of Paragraph 6(a) of a closing agreement under Rev. Proc. 2003-78, 2003-2 C.B. 1029, Rev. Proc. 92-39, 1992-1 C.B. 860, Rev. Proc. 87-13, 1987-1 C.B. 596, or Rev. Proc. 84-82, 1984-2 C.B. 779, if the taxpayer submits a modified letter of credit in accordance with this revenue procedure within 30 days following the next renewal date of such letter of credit.

.01 SECTION 5: EFFECT ON OTHER DOCUMENTS:

This document modifies Rev. Proc. 2003-78, 2003-2 C.B. 779.

.01 SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephen M. Peng of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Wanda T. Almodovar on (202) 515-4337 (not a toll free number).

APPENDIX A

FORM OF CLOSING AGREEMENT FOR CONVENTIONS

WITH A QUALIFIED EXEMPTION

CLOSING AGREEMENT ON FINAL

DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code of 1986, as amended (the “Code”), the taxpayer (as identified on the signature page of this agreement by taxpayer’s name and address) (herein referred to as “Taxpayer”) and the Commissioner of Internal Revenue (the “Commissioner”) make the following closing agreement (this “Closing Agreement”):

WHEREAS, the Business Profits article of the income tax convention between the United States and Treaty Country (as identified on the signature page of this Closing Agreement), under which benefits are being claimed (the "Convention"), exempts insurance or reinsurance premiums paid to a resident of Treaty Country from the Federal excise tax imposed by section 4371 *et seq.* of the Code (the "Insurance Excise Tax") only to the extent that (i) Taxpayer does not reinsure such risks with a person not entitled to exemption from such tax under the Convention or any other income tax convention between the United States and another country, (ii) the premium was a receipt of a business of insurance carried on by an enterprise of Treaty Country, and (iii) the insurer or reinsurer qualifies under the Limitation on Benefits article of the Convention;

WHEREAS, section 3.01 of Rev. Proc. 2003-78 provides that the person otherwise required to remit the Insurance Excise Tax on account of premiums paid to a foreign insurance or reinsurance company may consider the premium exempt from the Insurance Excise Tax under an income tax treaty if premiums are paid to an insurer or reinsurer that is a resident for treaty purposes of a country with which the United States has a treaty containing an excise tax exemption and, prior to filing the return for the taxable period, such person has knowledge that Taxpayer has in effect for such taxable period a closing agreement with the Internal Revenue Service to be liable as a United States taxpayer for the Insurance Excise Tax pursuant to section 4371 *et seq.*, subject to an applicable exemption under the Convention or any other convention from the Insurance Excise Tax; and

WHEREAS, Taxpayer represents that it is and anticipates continuing to be eligible for benefits under the Convention.

IT IS HEREBY DETERMINED AND AGREED THAT:

(1) Taxpayer shall, for purposes of this closing agreement, be liable as a United States taxpayer for the Insurance Excise Tax on premiums pursuant to section 4371 *et seq.*, subject to an applicable exemption from the Insurance Excise Tax under the Convention or any other convention.

(2)(a) Returns of Insurance Excise Tax due under and pursuant to this Closing Agreement and section 4371 *et seq.* of the Code shall be made by Taxpayer, or by Taxpayer's authorized representative on Taxpayer's behalf, by filing Form 720, *Quarterly Federal Excise Tax Return*, for each return period covered by this Closing Agreement.

(b) For purposes of determining the tax with respect to premiums received on policies issued by the Taxpayer that do not qualify for an exemption under the Convention because Taxpayer reinsures, in whole or in part, a policy of insurance or reinsurance with any person(s) not entitled to exemption from the Insurance Excise Tax under the Convention or any other convention, the tax reportable on the return (Form 720) shall be computed on the basis of the percentage of such policies reinsured. For purposes of the preceding sentence, Taxpayer may consider a reinsurer to be entitled to exemption from the excise tax if the reinsurer is a party to a closing agreement with the Internal Revenue Service, pursuant to Rev. Proc. 2003-78 or a predecessor revenue procedure, under the Convention or an income tax convention between the United States and another country.

(c) Forms 720 shall be filed with the Internal Revenue Service Center, Cincinnati, OH 45999-0009.

(d) Taxpayer, or Taxpayer's authorized representative, shall make the required Federal tax deposits of the Insurance Excise Tax in such manner and at such times as are provided in the Federal tax regulations and in the instructions for Form 720.

(3) Taxpayer agrees that this Closing Agreement is not intended to modify the liability for the Insurance Excise Tax under section 4371 *et seq.* of the Code.

(4) Taxpayer agrees that, for purposes of determining its Insurance Excise Tax liability pursuant to this Closing Agreement and for purposes of verifying Taxpayer's entitlement to benefits under the Convention, Taxpayer will maintain for a period of 6 years from the end of each taxable period to which this Closing Agreement applies (i) accounts and records of items of insurance and reinsurance, and (ii) records to establish eligibility for benefits under the Convention, in each case, that will be made available

upon written request by the Internal Revenue Service at the place mutually agreed upon by the Service and Taxpayer. Taxpayer will be allowed 60 days, or other period of time determined as reasonable by the Service within which to make available its accounts and records.

(5) If it is determined that there is an underpayment in respect of any Insurance Excise Tax determined to be due pursuant to this Closing Agreement and section 4371 *et seq.* of the Code, the Internal Revenue Service shall issue a statement of notice and demand for the tax due plus any interest and applicable penalties. Notice of any underpayment shall be sent to Taxpayer at the name and address shown on the Form 720, if a Form 720 was filed for the period for which an underpayment is determined by the Internal Revenue Service, or otherwise to Taxpayer's registered address in Treaty Country. Payment of all additional amounts due shall be made in accordance with the terms specified in the statement of notice and demand. Collection of such amounts not paid per notice and demand shall be in accordance with paragraph (6) hereof.

(6)(a) As security for payment of tax, Taxpayer shall cause an irrevocable letter of credit to be issued by a United States bank that is a member of the Federal Reserve System, or by a United States branch or agency of a foreign bank that is on the National Association of Insurance Commissioners list of banks from which letters of credit may be accepted, in favor of the Internal Revenue Service in the amount of \$75,000, unless the Internal Revenue Service determines that circumstances warrant a letter of credit in an increased amount. Such letter of credit must be effective as of the date that the Closing Agreement is signed by the Commissioner or his delegate, and must provide that it will be automatically extended by the issuing bank for periods of one year, without amendment, from the then relevant expiration date unless the issuing bank notifies the Internal Revenue Service in writing at least 90 days prior to the then relevant expiration date by registered mail that the issuing bank will not extend the letter of credit for any additional period.

(b) The Service may issue a statement of notice and demand with respect to:

(i) Any tax shown on a Form 720 (original, amended, or substitute for return) that is not paid with such return; or

(ii) Any proposed additional liability for the Insurance Excise Tax sustained by the Internal Revenue Service Regional Director of Appeals having jurisdiction over such matter, if the time for filing a protest of such proposed liability has expired, provided that the statement of notice and demand has been issued as provided in paragraph (5) hereof.

(c) If, after the conditions in paragraph (6)(b) hereof have been met, the tax, interest, and any applicable penalties are not paid in accordance with the terms of the statement of notice and demand, collection of such amounts will be made by resorting to such letter of credit, to the extent thereof, before any levy or proceeding in court for collection is instituted against Taxpayer.

(d) If such letter of credit is drawn upon, it must be reinstated to \$75,000, or such higher amount as determined by the Internal Revenue Service pursuant to paragraph (6)(a) of this Closing Agreement, within 60 days after the date drawn upon.

(7)(a) Solely by reason of the execution by Taxpayer and the Commissioner of this Closing Agreement, any person otherwise required to remit the Insurance Excise Tax on insurance or reinsurance premiums pursuant to section 46.4374-1(c) of the Excise Tax Regulations may consider premiums paid to Taxpayer after the effective date of this Closing Agreement as exempt under the Convention from the Insurance Excise Tax, unless such person has knowledge that the foreign insurer or reinsurer did not qualify for benefits under the Convention during the relevant taxable period.

(b) Taxpayer agrees that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, Taxpayer's name as an insurer or reinsurer that has entered into a closing agreement under this revenue procedure.

(8) Taxpayer agrees to promptly notify the Competent Authority of Treaty Country and the Internal Revenue Service of any change that results in Taxpayer no longer qualifying for benefits under the Convention with respect to the Insurance Excise Tax. Taxpayer also agrees to

promptly notify any person that has previously relied on this Closing Agreement and is required to remit the Insurance Excise Tax on account of premiums paid to Taxpayer that Taxpayer is not entitled to exemption from the Insurance Excise Tax.

(9) The statement submitted in accordance with section 3.04(1)(a) of Rev. Proc. 2003-78 is valid for the period provided in section 1.1441-1(e)(4)(ii) of the Treasury Regulations, or any successor regulations, beginning on the effective date of this Closing Agreement. On or before the expiration of the original validity period, or any subsequent validity period, Taxpayer will file with the Commissioner the same statement, signed under penalties of perjury, along with one copy of the closing agreement to the address set forth in subparagraph (e) of paragraph (10).

(10)(a) This Closing Agreement shall continue in effect until terminated as provided in subparagraph (b) of this paragraph.

(b) This Closing Agreement may be terminated by either Taxpayer or the Commissioner by giving the other written notice of the notifying party's intent to terminate. The decision to terminate is solely at the discretion of the party giving such notice. This Closing Agreement shall be terminated at the close of the last day of the quarterly return period immediately following the return period within which the written notice of termination is given. Taxpayer agrees that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, Taxpayer's name as an insurer or reinsurer whose closing agreement under this revenue procedure has been terminated.

(c) Taxpayer hereby agrees to file a return, Form 720, marked "Final Return" for the taxable period within which this Closing Agreement terminates pursuant to subparagraph (b) of this paragraph, in accordance with rules provided in the Federal tax regulations and the instructions for Form 720. Taxpayer also agrees to furnish a duplicate of such "Final Return" to the address set forth in subparagraph (e) of this paragraph.

(d) Taxpayer agrees that the letter of credit issued pursuant to paragraph (6) hereof shall remain in effect for a period of not less than 60 days after the "Final

Return" has been filed in accordance with subparagraph (c) hereof, or until the examination of Taxpayer's returns is completed and any additional tax due has been paid, whichever is later.

(e) Taxpayer agrees to file the statement required by paragraph (9) and the duplicate Form 720 required by subparagraph (c) of this paragraph at the following address:

Internal Revenue Service
Attn: SE:LB:IN:IBC:FPP
1111 Constitution Ave, NW, M3-413
Washington, DC 20224

WHEREAS, the determinations set forth above are hereby agreed to by Taxpayer:

This Closing Agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

(2) it is subject to the Code sections that expressly provide that effect be given to their provisions (including any stated exception for section 7122) notwithstanding any other law or rule of law; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any change or modification of applicable statutes or tax conventions that apply to that tax period.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.

Date _____

By _____

Title _____
(Name of Taxpayer and authorized representative)

Address _____

Taxpayer Identification Number _____

(If the applicant does not already have a TIN, one will be supplied by the Service pursuant to the completed Form SS-4 submitted with the request for the closing agreement)

Treaty Country _____

Commissioner of the Internal Revenue

By _____

Associate Chief Counsel (International)

Date _____

By _____

Director, International

Date _____

APPENDIX B

FORM OF CLOSING AGREEMENT FOR CONVENTIONS WITH AN ANTI-CONDUIT LIMITATION

CLOSING AGREEMENT ON FINAL DETERMINATION COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), the taxpayer (as identified on the signature page of this agreement by taxpayer's name and address) (herein referred to as "Taxpayer") and the Commissioner of Internal Revenue (the "Commissioner") make the following closing agreement (this "Closing Agreement"):

WHEREAS, the Business Profits article of the income tax convention between the United States and Treaty Country (as identified on the signature page of this Closing Agreement), under which benefits are being claimed (the "Convention"), exempts insurance or reinsurance premiums paid to a resident of Treaty Country from the Federal excise tax imposed by section 4371 *et seq.* of the Code (the "Insurance Excise Tax") only to the extent that (i) the policy was not entered into as part of a conduit arrangement, (ii) the premium was a receipt of a business of insurance carried on by an enterprise of Treaty Country, and (iii) the insurer or reinsurer qualifies under the Limitation on Benefits article of the Convention;

WHEREAS, section 3.01 of Rev. Proc. 2003-78 provides that the person otherwise required to remit the Insurance Excise Tax on account of premiums paid to a foreign insurance or reinsurance company may consider the premium exempt from the Insurance Excise Tax under an income tax treaty if premiums are paid to an insurer or reinsurer that is a resident for treaty purposes of a country with which the United States has a treaty containing an excise tax exemption and, prior to filing the return for the taxable period, such

person has knowledge that Taxpayer has in effect for such taxable period a closing agreement with the Internal Revenue Service to be liable as a United States taxpayer for the Insurance Excise Tax pursuant to section 4371 *et seq.*, subject to an applicable exemption under the Convention or any other convention from the Insurance Excise Tax; and

WHEREAS, Taxpayer represents that it is and anticipates continuing to be eligible for benefits under the Convention.

IT IS HEREBY DETERMINED AND AGREED THAT:

(1) Taxpayer shall, for purposes of this closing agreement, be liable as a United States taxpayer for the Insurance Excise Tax on premiums pursuant to section 4371 *et seq.*, subject to an applicable exemption from the Insurance Excise Tax under the Convention or any other convention.

(2)(a) Returns of Insurance Excise Tax due under and pursuant to this Closing Agreement and section 4371 *et seq.* of the Code shall be made by Taxpayer, or by Taxpayer's authorized representative on Taxpayer's behalf, by filing Form 720, *Quarterly Federal Excise Tax Return*, for each return period covered by this Closing Agreement.

(b) For purposes of determining the tax with respect to premiums received on policies issued by the Taxpayer that do not qualify for an exemption under the Convention because Taxpayer, as part of a conduit arrangement, reinsures, in whole or in part, a policy of insurance or reinsurance with any person(s) not entitled to exemption from the Insurance Excise Tax under the Convention or any other convention, the tax reportable on the return (Form 720) shall be computed on the basis of the percentage of such policies reinsured. For purposes of the preceding sentence, Taxpayer may consider a reinsurer to be entitled to exemption from the excise tax if the reinsurer is a party to a closing agreement with the Internal Revenue Service, pursuant to Rev. Proc. 2003-78 or a predecessor revenue procedure, under the Convention or an income tax convention between the United States and another country.

(c) Forms 720 shall be filed with the Internal Revenue Service Center, Cincinnati, OH 45999-0009.

(d) Taxpayer, or Taxpayer's authorized representative, shall make the required Federal tax deposits of the Insurance Excise Tax in such manner and at such times as are provided in the Federal tax regulations and in the instructions for Form 720.

(3) Taxpayer agrees that this Closing Agreement is not intended to modify the liability for the Insurance Excise Tax under section 4371 *et seq.* of the Code.

(4) Taxpayer agrees that, for purposes of determining its Insurance Excise Tax liability pursuant to this Closing Agreement and for purposes of verifying Taxpayer's entitlement to benefits under the Convention, Taxpayer will maintain for a period of 6 years from the end of each taxable period to which this Closing Agreement applies (i) accounts and records of items of insurance and reinsurance, and (ii) records to establish eligibility for benefits under the Convention, in each case, that will be made available upon written request by the Internal Revenue Service at the place mutually agreed upon by the Service and Taxpayer. Taxpayer will be allowed 60 days, or other period of time determined as reasonable by the Service within which to make available its accounts and records.

(5) If it is determined that there is an underpayment in respect of any Insurance Excise Tax determined to be due pursuant to this Closing Agreement and section 4371 *et seq.* of the Code, the Internal Revenue Service shall issue a statement of notice and demand for the tax due plus any interest and applicable penalties. Notice of any underpayment shall be sent to Taxpayer at the name and address shown on the Form 720, if a Form 720 was filed for the period for which an underpayment is determined by the Internal Revenue Service, or otherwise to Taxpayer's registered address in Treaty Country. Payment of all additional amounts due shall be made in accordance with the terms specified in the statement of notice and demand. Collection of such amounts not paid per notice and demand shall be in accordance with paragraph (6) hereof.

(6)(a) As security for payment of tax, Taxpayer shall cause an irrevocable letter of credit to be issued by a United States bank that is a member of the Federal Reserve System, or by a United States branch or agency of a foreign bank that is

on the National Association of Insurance Commissioners list of banks from which letters of credit may be accepted, in favor of the Internal Revenue Service in the amount of \$75,000, unless the Internal Revenue Service determines that circumstances warrant a letter of credit in an increased amount. Such letter of credit must be effective as of the date that the Closing Agreement is signed by the Commissioner or his delegate, and must provide that it will be automatically extended by the issuing bank for periods of one year, without amendment, from the then relevant expiration date unless the issuing bank notifies the Internal Revenue Service in writing at least 90 days prior to the then relevant expiration date by registered mail that the issuing bank will not extend the letter of credit for any additional period.

(b) The Service may issue a statement of notice and demand with respect to:

(i) Any tax shown on a Form 720 (original, amended, or substitute for return) that is not paid with such return; or

(ii) Any proposed additional liability for the Insurance Excise Tax sustained by the Internal Revenue Service Regional Director of Appeals having jurisdiction over such matter, if the time for filing a protest of such proposed liability has expired, provided that the statement of notice and demand has been issued as provided in paragraph (5) hereof.

(c) If, after the conditions in paragraph (6)(b) hereof have been met, the tax, interest, and any applicable penalties are not paid in accordance with the terms of the statement of notice and demand, collection of such amounts will be made by resorting to such letter of credit, to the extent thereof, before any levy or proceeding in court for collection is instituted against Taxpayer.

(d) If such letter of credit is drawn upon, it must be reinstated to \$75,000, or such higher amount as determined by the Internal Revenue Service pursuant to paragraph (6)(a) of this Closing Agreement, within 60 days after the date drawn upon.

(7)(a) Solely by reason of the execution by Taxpayer and the Commissioner of this Closing Agreement, any person otherwise required to remit the Insurance Excise Tax on insurance or reinsurance premiums pursuant to section 46.4374-

1(c) of the Excise Tax Regulations may consider premiums paid to Taxpayer after the effective date of this Closing Agreement as exempt under the Convention from the Insurance Excise Tax, unless such person has knowledge that the foreign insurer or reinsurer did not qualify for benefits under the Convention during the relevant taxable period.

(b) Taxpayer agrees that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, Taxpayer's name as an insurer or reinsurer that has entered into a closing agreement under this revenue procedure.

(8) Taxpayer agrees to promptly notify the Competent Authority of Treaty Country and the Internal Revenue Service of any change that results in Taxpayer no longer qualifying for benefits under the Convention with respect to the Insurance Excise Tax. Taxpayer also agrees to promptly notify any person that has previously relied on this Closing Agreement and is required to remit the Insurance Excise Tax on account of premiums paid to Taxpayer that Taxpayer is not entitled to exemption from the Insurance Excise Tax.

(9) The statement submitted in accordance with section 3.04(1)(a) of Rev. Proc. 2003-78 is valid for the period provided in section 1.1441-1(e)(4)(ii) of the Treasury Regulations, or any successor regulations, beginning on the effective date of this Closing Agreement. On or before the expiration of the original validity period, or any subsequent validity period, Taxpayer will file with the Commissioner the same statement, signed under penalties of perjury, along with one copy of the closing agreement to the address set forth in subparagraph (e) of paragraph (10).

(10)(a) This Closing Agreement shall continue in effect until terminated as provided in subparagraph (b) of this paragraph.

(b) This Closing Agreement may be terminated by either Taxpayer or the Commissioner by giving the other written notice of the notifying party's intent to terminate. The decision to terminate is solely at the discretion of the party giving such notice. This Closing Agreement shall be terminated at the close of the last day of the quarterly return period immediately following the return period within which

the written notice of termination is given. Taxpayer agrees that the Commissioner or his or her authorized delegate may disclose, by publication or otherwise, Taxpayer's name as an insurer or reinsurer whose closing agreement under this revenue procedure has been terminated.

(c) Taxpayer hereby agrees to file a return, Form 720, marked "Final Return" for the taxable period within which this Closing Agreement terminates pursuant to subparagraph (b) of this paragraph, in accordance with rules provided in the Federal tax regulations and the instructions for Form 720. Taxpayer also agrees to furnish a duplicate of such "Final Return" to the address set forth in subparagraph (e) of this paragraph.

(d) Taxpayer agrees that the letter of credit issued pursuant to paragraph (6) hereof shall remain in effect for a period of not less than 60 days after the "Final Return" has been filed in accordance with subparagraph (c) hereof, or until the examination of Taxpayer's returns is completed and any additional tax due has been paid, whichever is later.

(e) Taxpayer agrees to file the statement required by paragraph (9) and the duplicate Form 720 required by subparagraph (c) of this paragraph at the following address:

Internal Revenue Service
Attn: SE:LB:IN:IBC:FPP
1111 Constitution Ave, NW, M3-413
Washington, DC 20224

WHEREAS, the determinations set forth above are hereby agreed to by Taxpayer:

This Closing Agreement is final and conclusive except:

(1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;

(2) it is subject to the Code sections that expressly provide that effect be given to their provisions (including any stated exception for section 7122) notwithstanding any other law or rule of law; and

(3) if it relates to a tax period ending after the date of this agreement, it is subject to any change or modification of applicable statutes or tax conventions that apply to that tax period.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in triplicate.

Date _____
 By _____
 Title _____
 (Name of Taxpayer and authorized representative)
 Address _____
 Taxpayer Identification Number _____
 (If the applicant does not already have a TIN, one will be supplied by the Service pursuant to the completed Form SS-4 submitted with the request for the closing agreement)
 Treaty Country _____
 Commissioner of the Internal Revenue
 By _____
 Associate Chief Counsel (International)
 Date _____
 By _____
 Director, International
 Date _____

Procedures for Requesting a Waiver of the Electronic Filing Requirements for Form 8955-SSA and Form 5500-EZ

Rev. Proc. 2015-47

SECTION 1. PURPOSE

This revenue procedure sets forth procedures for plan administrators of retirement plans (or, in certain situations, employers maintaining retirement plans) that are required to file electronically Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, or Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, to request a waiver of the electronic filing requirement due to economic hardship.

SECTION 2. BACKGROUND

Section 6011(e) of the Internal Revenue Code authorizes the Internal Revenue Service (IRS) to issue regulations that re-

quire an entity to file returns on magnetic media if the entity is required to file at least 250 returns during the calendar year. The term magnetic media includes electronic filing, as well as other magnetic media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet Web site. On September 29, 2014, the Department of the Treasury and the IRS issued final regulations under §§ 301.6057-3 and 301.6058-2 of the Procedure and Administration Regulations (electronic filing regulations) (T.D. 9695, 79 F.R. 58256). These regulations require certain plan administrators (or, in certain situations, employers maintaining a retirement plan) to file electronically Form 8955-SSA registration statements and Form 5500 series returns. Form 5500 series returns include Form 5500, *Annual Return/Report of Employee Benefit Plan*, Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, and Form 5500-EZ.

Under § 301.6057-3 of the electronic filing regulations, a Form 8955-SSA registration statement must be filed electronically if the plan administrator is required to file at least 250 returns during the calendar year that includes the first day of the plan year. Under § 301.6058-2 of the electronic filing regulations, a Form 5500 series return must be filed electronically if the plan administrator and the employer maintaining the plan are, in the aggregate, required to file at least 250 returns during the calendar year that includes the first day of the plan year. These electronic filing regulations provide that if a filer is required to file electronically a Form 8955-SSA registration statement or a Form 5500 series return and fails to do so, the filer is deemed to have failed to file the registration statement or the return, respectively.¹

The electronic filing regulations provide that the Commissioner of the IRS (Commissioner) may waive the electronic filing requirement in cases of undue economic hardship. The regulations further provide that the principal factor in determining economic hardship will be the

amount, if any, by which the cost of filing the registration statement or return electronically exceeds the cost of filing the registration statement or return on paper or other media. The regulations also provide that a request for a waiver must be made in accordance with published guidance and that the waiver will specify the type of filing and the period to which it applies. The waiver is also subject to any terms and conditions regarding the method of filing that may be prescribed by the Commissioner.

The electronic filing requirement under § 301.6057-3 of the electronic filing regulations applies to Form 8955-SSA registration statements required to be filed for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) on or after July 31, 2015. Filers of Form 8955-SSA registration statements due on July 31, 2015, would be eligible for an automatic extension until October 15, 2015, if they filed Form 5558, *Application for Extension of Time to File Certain Employee Plan Returns*. The electronic filing requirement under § 301.6058-2 of the electronic filing regulations applies to Form 5500 series returns required to be filed for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015. Form 8955-SSA registration statements that are filed electronically are filed using the Filing Information Returns Electronically (FIRE) system. Form 5500 series returns that are required to be filed electronically are generally filed under the Department of Labor's ERISA Filing Acceptance System (EFAST2). However, because Form 5500-EZ returns are paper-only returns that are filed with the IRS, filers of Form 5500-EZ returns that are required to file electronically must file Form 5500-SF returns using EFAST2 in lieu of the Form 5500-EZ.

SECTION 3. SCOPE

As explained in the preamble to the electronic filing regulations, because the Department of the Treasury and the IRS

¹Although the electronic filing regulations generally require electronic filing, certain IRS programs that provide relief from late filing penalties require filers to file delinquent Form 8955-SSA registration statements and Form 5500-EZ returns on paper. See Notice 2014-35, 2014-23 I.R.B. 1072, and Rev. Proc. 2015-32, 2015-24 I.R.B. 1063.

believe that electronic filing will not impose significant burdens on the taxpayers covered by the regulations, the Commissioner anticipates granting waivers of the electronic filing requirement only in exceptional cases. The preamble adds that the Department of the Treasury and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver from the requirement to electronically file Form 8955-SSA registration statements and Form 5500 series returns. The preamble notes, however, that the Department of the Treasury and the IRS anticipate that the guidance would not provide hardship waiver procedures for any electronic filing requirement for a form that a filer is already required to file electronically, such as Form 5500 and Form 5500-SF (which are required to be filed electronically through EFAST2 under a Department of Labor rule). Accordingly, the waiver procedures provided for in **SECTION 4** of this revenue procedure apply only to Form 8955-SSA and Form 5500-EZ filings.

Also, as previously announced in the preamble to the electronic filing regulations, the IRS anticipates adding items on the Form 5500 and Form 5500-SF relating solely to Code requirements and intends to provide an optional paper-only form containing those Code-related items for use by filers that file fewer than 250 returns during the calendar year. Filers that are required to electronically file Form 5500 series returns using EFAST2 and that file at least 250 returns during the calendar year would be required to answer these IRS-only questions electronically using EFAST2 (even though the Department of Labor rule requiring electronic filing does not apply to these IRS-only questions). The Department of the Treasury and the IRS do not believe that answering these IRS-only questions electronically would impose any significant burdens because these filers are already required to electronically file a Form 5500 or Form 5500-SF return using EFAST2. Accordingly, a waiver of the electronic filing requirement will not be granted with respect to these questions.

SECTION 4. HARDSHIP WAIVER PROCEDURES

.01 *Waiver requests.* The IRS will approve or deny a request for a waiver of the electronic filing requirement for Form 8955-SSA or Form 5500-EZ based on each filer's particular facts and circumstances. In the case of a waiver request relating to Form 8955-SSA, the filer must be the plan administrator required to file Form 8955-SSA under § 6057(a). In the case of a waiver request relating to Form 5500-EZ, the filer must be either the plan administrator or the employer that maintains the plan as provided in § 6058(a). In determining whether to approve or deny a request, the IRS will consider the filer's ability to file timely the registration statement or return electronically without incurring an undue economic hardship. The IRS will generally grant a waiver if the filer can demonstrate that undue economic hardship would occur by complying with the electronic filing requirement, including a demonstration of any incremental costs the filer would incur in filing electronically rather than using a paper form.

To request a waiver, the filer (or the filer's authorized representative) must file a separate written request for each plan for which a waiver is requested. For example, a plan administrator that is seeking a waiver of the electronic filing requirement for Form 5500-EZ for two plans maintained by the same employer must file two separate waiver requests.

Each request for a waiver must contain the following information:

(1) A notation at the top of the request stating, in large letters, the type of form followed by the words "*e-file* Waiver Request" (for example, "Form 8955-SSA *e-file* Waiver Request" or "Form 5500-EZ *e-file* Waiver Request").

(2) The filer's name, employer identification number (EIN), mailing address, phone number, e-mail address, and a contact name.

(3) The name and EIN of the employer maintaining the plan (if different from the filer).

(4) The name of the plan and the plan number.

(5) The plan year for which the waiver is requested.

(6) A detailed statement that provides the following information:

(a) the steps the filer has taken in an attempt to meet its requirement to timely file its registration statement or return electronically,

(b) why the steps were unsuccessful, and

(c) the undue economic hardship that would result by complying with the electronic filing requirement, including any incremental costs to the filer of complying with the electronic filing requirement. Incremental costs are those costs that are above and beyond the costs to file on paper. The incremental costs must be supported by a detailed computation that includes a schedule detailing the costs to file on paper and the costs to file electronically.

(7) A statement as to what steps the filer will take to assure its ability to file future registration statements or returns electronically. If a subsequent waiver is requested for a registration statement or return for a later year, the IRS will consider the failure by the filer to take these steps in determining whether a waiver should be granted for the later year.

(8) A statement signed by the filer with the following language:

Under penalties of perjury, I declare that I have reviewed the request and, to the best of my knowledge and belief, the information contained in this waiver request is true, correct, and complete.

Requests made by an authorized representative of the filer must include a valid Form 2848, *Power of Attorney and Declaration of Representative*.

The waiver request should not be attached to the filer's paper Form 8955-SSA registration statement or Form 5500-EZ return. Extension requests or payments should not be submitted with the waiver request.

.02 *Time for Filing a Waiver Request.* Filers must submit a request for a waiver of an electronic filing requirement on or before the due date (including any extensions) of the Form 8955-SSA registration statement or the Form 5500-EZ return for which the waiver is sought. Filers may apply for an extension of time to file the Form 8955-SSA registration statement or Form 5500-EZ return by filing Form 5558, *Application for Extension of Time*

To File Certain Employee Plan Returns, on or before their normal due dates. For information regarding the due date (including extensions) of a Form 8955-SSA registration statement or a Form 5500-EZ return, see the instructions for these forms.

Filers are encouraged to file the waiver request at least 45 days before the due date (including extensions) of the registration statement or return. This will give the IRS sufficient time to process the waiver request, and maximize the amount of time the filer will have to file the Form 8955-SSA registration statement or Form 5500-EZ return electronically if the IRS denies the request.

.03 Place for Filing a Waiver Request. Filers should file a waiver request with the IRS Ogden Submission Processing Center.

Use the following address if using the U.S. Postal Service:

Internal Revenue Service
Ogden Submission Processing Center
Attn: Forms 8955-SSA and 5500-EZ
e-file Waiver Request, Stop 1110
Ogden, UT 84201

Use the following address if using an overnight delivery service:

Internal Revenue Service
Ogden Submission Processing Center
Attn: Forms 8955-SSA and 5500-EZ
e-file Waiver Request, Stop 1110
1973 N. Rulon White Blvd.
Ogden, UT 84404

Filers may also fax the waiver request to the IRS Ogden Submission Processing Center at (877) 801-2985.

.04 IRS Responses to Waiver Requests. The IRS will review and process waiver requests in a timely manner and will send the filer written notice of rejection or approval of the filer's waiver request. The

written notice will provide additional information regarding any further steps to be taken by the filer. The IRS will not be considered to have waived the electronic filing requirement unless the filer receives written approval from the IRS that the waiver request has been granted. In the absence of written approval from the IRS that the waiver request has been granted, a failure to file electronically constitutes a failure to file. Under § 6652(d)(1) and (e), a failure to file timely either a Form 8955-SSA registration statement or a Form 5500-EZ return is subject to penalty unless it is shown that the failure was due to reasonable cause.

SECTION 5. STATEMENT OF AVAILABILITY OF IRS DOCUMENTS

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov> or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective September 28, 2015.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545-2187 and 1545-0956.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is under **SECTION 4, HARDSHIP WAIVER PROCEDURES**. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division, to insure that waivers for electronically filing are properly granted. The likely respondents are small businesses or organizations.

The estimated total annual reporting recordkeeping burden is 240 hours.

The estimated annual burden per respondent/recordkeeper is 8 hours. The estimated number of respondents/recordkeepers is 30.

The estimated frequency of responses is occasional.

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.

SECTION 8. DRAFTING AND OTHER INFORMATION

The principal author of this revenue procedure is Robert M. Walsh of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Mr. Walsh at 202-317-4102 (not a toll-free number). For questions concerning a request for a waiver, please contact the IRS taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number).

For information regarding the FIRE system, see the FIRE system webpage at [http://www.irs.gov/Tax-Professionals/e-File-Providers-&-Partners/Filing-Information>Returns-Electronically-\(FIRE\)](http://www.irs.gov/Tax-Professionals/e-File-Providers-&-Partners/Filing-Information>Returns-Electronically-(FIRE)). For information regarding EFAST2, see the EFAST2 filing webpage maintained by the Department of Labor at <http://www.efast.dol.gov/welcome.html>.

Part IV. Items of General Interest

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

Announcement 2015–25

This announcement serves notice to potential donors that the organizations listed below have recently filed a timely declaratory judgment suit under section 7428 of the Code, challenging revocation

of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1).

In the case of individual contributors, the maximum amount of contributions protected during this period is limited to \$1,000.00, with a husband and wife being

treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Name of Organization	Date Suit Filed	Effective Date of Revocation	Location
Bixun Wang and Lin Cheng Foundation	12/29/2014	4/1/2010	Fremont, CA
American Housing Foundation	11/19/2014	1/1/2006	Amarillo, TX
Congressional District Programs	2/22/2013	1/1/2002	Falls Church, VA
Life Extension Foundation Inc.	8/7/2013	1/1/2006	Ft. Lauderdale, FL
Community Education Foundation	1/15/2014	1/1/2008	Baltimore, MD
Golden State Debt Management	4/28/2014	1/1/2005	Los Angeles, CA

Notice of proposed rulemaking and notice of public hearing

Guidance under Section 2801 Regarding the Imposition of Tax on Certain Gifts and Bequests from Covered Expatriates

REG–112997–10

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to a tax on United States citizens and residents who receive gifts or bequests from certain individuals who relinquished United States citizenship or ceased to be lawful permanent residents of the United States on or

after June 17, 2008. These proposed regulations affect taxpayers who receive covered gifts or covered bequests on or after the date these regulations are published as final regulations in the **Federal Register**. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 9, 2015. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for January 6, 2016, at 10 a.m., must be received by December 9, 2015.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–112997–10), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–112997–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington,

DC; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>

(IRS–REG–112997–10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION

CONTACT: Concerning the proposed regulations, Karlene Lesho or Leslie Finlow at (202) 317-6859; concerning the submission of comments, the public hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not toll-free numbers) or email at P.Taylor@irs.counsel.treas.gov.

SUPPLEMENTARY INFORMATION:

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 collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, and to Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 9, 2015. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collections of information;

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 of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 28.2801-4(e), 28.2801-5(d), 28.6001-1, and 28.6011-1. The collection of information requirement in proposed regulation § 28.2801-4(e) is required in order for the IRS to verify that the U.S. person who received a covered gift or covered bequest is entitled to a reduction in the section 2801 tax for certain foreign taxes paid on the transfer and, if so, the amount of such reduction. The collection of information is mandatory to obtain a benefit. The likely respondents are individuals, domestic trusts, and foreign trusts electing to be treated as domestic trusts.

The collection of information in § 28.2801-5(d) is required to notify the IRS and the U.S. persons who are beneficiaries of a foreign trust that the trust is electing to be treated as a domestic trust for purposes of section 2801. It is also required for the IRS to verify the proper

amount of section 2801 tax due and to notify the beneficiaries who are U.S. citizens or residents in the event the election terminates. This alerts the IRS and the U.S. citizens and residents who are beneficiaries that the trust will be liable for payment of the section 2801 tax while the election is in effect, but that the U.S. beneficiaries will be liable for the tax if and when the election terminates. This collection of information is necessary for the proper performance of IRS functions in the collection of the section 2801 tax. This collection of information is mandatory to obtain a benefit. The likely respondents are the trustees of foreign trusts.

The collection of information in § 28.6001-1 is required for the IRS to verify the books and records pertaining to covered gifts and covered bequests and for the proper performance of IRS functions in the collection of the section 2801 tax. It is also required to verify the receipt of covered gifts and covered bequests by U.S. persons and the value of such gifts and bequests. This collection of information is mandatory. The likely respondents are individuals and trustees of trusts.

The collection of information in § 28.6011-1 is required for the IRS to verify the receipt of a covered gift or covered bequest and other information relevant to the tax imposed under section 2801. This collection of information is necessary for the proper performance of IRS functions in the collection of the section 2801 tax. This collection of information is mandatory. The likely respondents are individuals and trustees of trusts.

Estimated total annual reporting burden: 7,000 hours.

Estimated average annual burden hours per respondent: 1 hour to prepare and attach documentation to Form 708, "U.S. Return of Gifts or Bequests from Covered Expatriates," for the reduction of tax for foreign taxes paid; 2 hours for a trustee of an electing foreign trust to make the election and notify the beneficiaries; 1 hour for the trustee of the foreign trust to prepare annual certifications; 1 hour to notify the U.S. persons who are beneficiaries of the trust that the election is terminated; and 2 hours to prepare taxpayer records and the Form 708 to report the section 2801 tax.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: annually or less.

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.

Background

Section 301 of the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245 (122 Stat. 1624) (the HEART Act), added new section 877A to subtitle A of the Internal Revenue Code (Code), and new chapter 15 and new section 2801 to subtitle B, effective June 17, 2008. Prior to the addition of chapter 15, subtitle B contained chapters 11 through 14 relating to the estate tax, the gift tax, the generation-skipping transfer tax, and special valuation rules for purposes of subtitle B. New chapter 15 consists solely of section 2801.

Prior to the enactment of the HEART Act, citizens and long-term residents of the United States who expatriated to avoid U.S. taxes were subject to an alternative regime of U.S. income, estate, and gift taxes under sections 877, 2107, and 2501, respectively, for a period of 10 years following expatriation. Recognizing that citizens and residents of the United States generally are subject to estate tax on their world-wide assets at the time of death, Congress determined that it was appropriate, in the interests of tax equity, to impose a tax on U.S. citizens or residents who receive, from an expatriate, a transfer that would otherwise have escaped U.S. estate and/or gift taxes as a consequence of expatriation.

In an explanation of an earlier bill also proposing enactment of new chapter 15 and section 2801, the Report of the House Ways and Means Committee states that citizens and long-term residents of the United States have a right to physically

leave the United States and relinquish their citizenship or terminate their residency. See H.R. Rep. No. 110-431 (2007). The Report states that the Committee believed that the Code should not be used to discourage individuals from relinquishing citizenship or terminating residency. At the same time, however, the Report states that the Code should not reward individuals who leave the United States. The Report concludes that an individual's decision to relinquish citizenship or terminate long-term residency should not affect the total amount of taxes imposed (that is, it should be "tax neutral"). The Report further states that, where U.S. estate or gift taxes are avoided with respect to a transfer of property to a U.S. person by reason of the expatriation of the donor, it is appropriate for the recipient to be subject to a tax similar to the donor's avoided transfer taxes.

With the enactment of sections 877A and 2801, sections 877 and 2107 apply only to individuals who relinquished United States citizenship or ceased to be lawful permanent residents prior to June 17, 2008. Section 2501 generally continues to apply to any individual, resident or nonresident, including individuals who expatriate, whether or not on or after June 17, 2008. Section 2501(a)(3) and (a)(5), however, provides special rules for expatriates subject to section 877(b), which are not applicable to individuals who expatriate on or after June 17, 2008.

Section 2801 imposes a tax (section 2801 tax) on covered gifts and covered bequests received by a citizen or resident of the United States (U.S. citizen or resident) from a covered expatriate. The section 2801 tax applies with regard to any property transferred to a U.S. citizen or resident which qualifies as a covered gift or covered bequest under section 2801, regardless of whether the property transferred was acquired by the donor or decedent covered expatriate before or after expatriation.

The value of a covered gift or covered bequest is its fair market value at the time the gift or bequest is received by the U.S. citizen or resident. A U.S. citizen or resident receiving a covered gift or covered bequest (U.S. recipient) is liable for payment of the section 2801 tax imposed under this chapter. A domestic trust that

receives a covered gift or covered bequest is treated as a U.S. citizen and therefore is liable for payment of the section 2801 tax. A foreign trust may elect to be treated as a domestic trust (an electing foreign trust) for this purpose; absent this election, the trust's U.S. citizen or resident beneficiaries will be taxed as distributions are made from the trust (a non-electing foreign trust).

On July 20, 2009, the Treasury Department and the IRS issued Announcement 2009-57, 2009-29 I.R.B. 158. Announcement 2009-57 put taxpayers on notice that any covered gift or covered bequest received on or after June 17, 2008, is subject to the imposition of the section 2801 tax. Announcement 2009-57 states that the IRS intends to issue guidance under section 2801 and that the due date for reporting, filing, and payment of the tax imposed under section 2801 will be included in the guidance. The announcement further provides that the guidance the IRS intends to issue will provide a reasonable period of time between the date of issuance of the guidance and the date prescribed for the filing of the return and the payment of the tax.

On October 15, 2009, the Treasury Department and the IRS released Notice 2009-85, 2009-45 I.R.B. 598. Notice 2009-85 generally provides guidance for individuals who are subject to section 877A (added to the Code together with section 2801). With respect to gifts and bequests, section 9 of Notice 2009-85 provides that gifts or bequests from a covered expatriate on or after June 17, 2008, are subject to a transfer tax under new section 2801. Section 9 of Notice 2009-85 further provides that satisfaction of the reporting and tax obligations under section 2801 for covered gifts or covered bequests received on or after June 17, 2008, is deferred pending the issuance of separate guidance by the IRS.

Explanation of Provisions

The proposed regulations amend title 26 of the Code of Federal Regulations by adding part 28 (Imposition of Tax on Gifts and Bequests from Covered Expatriates) under new section 2801 of the Code. The proposed regulations are divided into seven sections.

Section 28.2801-1 of the proposed regulations sets forth the general rules of liability for the tax imposed by section 2801(a). Section 2801 imposes a tax on United States citizens or residents who receive, directly or indirectly, covered gifts or covered bequests (including distributions from foreign trusts attributable to covered gifts and covered bequests) from a covered expatriate. For purposes of section 2801, domestic trusts and foreign trusts electing to be treated as domestic trusts are treated in the same manner as U.S. citizens.

Definitions

Section 28.2801-2 of the proposed regulations defines terms for purposes of new chapter 15. The proposed regulations define the term "citizen or resident of the United States" as an individual who is a citizen or resident of the United States under the estate and gift tax rules of chapter 11 and chapter 12, respectively, in subtitle B of the Code. Accordingly, whether an individual is a "resident" is based on domicile in the United States, notwithstanding that section 877A adopts the income tax definition of that term. The Treasury Department and the IRS believe that, because section 2801 imposes a tax subject to subtitle B, the tax definition of resident under subtitle B generally should apply for purposes of section 2801. See §§ 20.0-1(b)(1) and 25.2501-1(b).

The proposed regulations generally define the term "covered gift" by reference to the definition of gift for purposes of chapter 12 of subtitle B. The proposed regulations define the term "covered bequest" as any property acquired directly or indirectly because of the death of a covered expatriate. Such property generally is property that would have been includible in the gross estate of the covered expatriate under chapter 11 of subtitle B, had the covered expatriate been a U.S. citizen or resident at the time of death.

Section 2801 defines "covered expatriate" by reference to the section 877A(g)(1) definition of that term. Section 877A(g)(1) generally provides that an individual who expatriates on or after June 17, 2008, is a covered expatriate if, on the expatriation date, (1) the individual's average annual net income tax liability is

greater than \$124,000 (indexed for inflation) for the previous five taxable years, (2) the individual's net worth is at least \$2,000,000 (not indexed), or (3) the individual fails to certify under penalty of perjury that he or she has complied with all U.S. tax obligations for the five preceding taxable years. See section 877A(g)(1); Notice 2009-85, 2009-45 I.R.B. 598. The proposed regulations provide that, if an expatriate meets the definition of a covered expatriate, the expatriate is considered a covered expatriate for purposes of section 2801 at all times after the expatriation date, except during any period beginning after the expatriation date during which such individual is subject to United States estate or gift tax as a U.S. citizen or resident.

Additionally, the proposed regulations define for purposes of section 2801 the terms "domestic trust," "foreign trust," "electing foreign trust," "U.S. recipient," "power of appointment," and "indirect acquisition of property."

Rules and Exceptions Applicable to Covered Gifts and Covered Bequests

Section 28.2801-3 addresses the rules in section 2801(e) and includes rules and several exceptions applicable to the definitions of covered gift and covered bequest. Exceptions include taxable gifts reported on a covered expatriate's timely filed gift tax return, and property included in the covered expatriate's gross estate and reported on such expatriate's timely filed estate tax return, provided that the gift or estate tax due is timely paid. Qualified disclaimers of property made by a covered expatriate are excepted from the definitions of a covered gift and covered bequest. In addition, charitable donations that would qualify for the estate or gift tax charitable deduction are excepted from the terms "covered gift" and "covered bequest."

Section 28.2801-3(c)(4) provides that a gift or bequest to a covered expatriate's U.S. citizen spouse is excepted from the terms "covered gift" and "covered bequest" if the gift or bequest, if given by a U.S. citizen or resident, would qualify for the gift or estate tax marital deduction. In the case of a gift or bequest in trust, this means that, to the extent the gift or be-

quest to the trust (or to a separate share of the trust) would qualify for the estate or gift tax marital deduction, the gift or bequest is not a covered gift or covered bequest. A gift or bequest of a partial or terminable interest in property that a covered expatriate makes to his or her spouse is excepted from the definitions of a covered gift and covered bequest only to the extent that such gift or bequest is qualified terminable interest property (QTIP), as defined in section 2523(f) or section 2056(b)(7), and a valid QTIP election is made. To the extent a covered gift or covered bequest is made to a non-electing foreign trust (or to a separate share of such a trust), a distribution from the trust (or from the separate share of the trust) to the U.S. citizen spouse of the covered expatriate who funded the trust (whether in whole or in part) will not qualify for the exception. Note that gifts and bequests made by a covered expatriate to his or her noncitizen spouse are subject to an annual limit under section 2523(i). Furthermore, a bequest from a covered expatriate to his or her noncitizen surviving spouse who is a U.S. resident is not a covered bequest to the extent the bequest is made to a qualified domestic trust (QDOT) that satisfies the requirements of section 2056A and the corresponding regulations, and for which a valid QDOT election is made.

Section 28.2801-3(d) provides rules to implement section 2801(e)(4) regarding covered gifts and covered bequests made in trust, including transfers of property in trust that are subject to a general power of appointment granted by the covered expatriate. In identifying the recipient of such covered gifts and covered bequests made in trust, the proposed regulations do not adopt the gift tax rule of treating the trust beneficiary or holder of an immediate right to withdraw the property as the recipient of that property. Instead, for purposes of section 2801, the proposed regulations treat transfers in trust that constitute covered gifts and covered bequests as transfers to the trust, to be taxed under the rules in section 2801(e)(4). Specifically, the proposed regulations provide that, if a covered expatriate makes a transfer in trust and such transfer is a covered gift or covered bequest, the transfer is treated as a covered gift or covered bequest to the trust, without regard to the

beneficial interests in the trust or whether any person has a general power of appointment or a power of withdrawal over trust property. Under section 2801(e)(4), the transfer to the trust will be taxed either to the trust receiving the covered gift or covered bequest, in the case of a domestic trust or electing foreign trust, or to the U.S. beneficiaries or distributees of a non-electing foreign trust as trust distributions are made.

Section 28.2801-3(e) provides two rules addressing covered gifts and covered bequests arising from powers of appointment. First, consistent with the rules in chapters 11 and 12, the proposed regulations confirm that the exercise, release, or lapse of a covered expatriate's general power of appointment for the benefit of a U.S. citizen or resident is a covered gift or covered bequest. Second, the proposed regulations provide that a covered expatriate's grant of a general power of appointment over property not held in trust is a covered gift or covered bequest to the powerholder as soon as both the power is exercisable and the transfer of the property subject to the power is irrevocable. See also § 28.2801-4(d)(5)(ii). The preceding sentence applies only for purposes of section 2801, and should not be interpreted as having any impact on the determination of whether the grant of a general power of appointment over property not in trust is a completed gift for Federal gift tax purposes, which is a question to be resolved under chapter 12 without regard to this provision.

Liability for Section 2801 Tax

Section 28.2801-4 provides specific rules regarding who is liable for the payment of the section 2801 tax. Generally, the U.S. citizen or resident who receives the covered gift or covered bequest is liable. Similarly, the proposed regulations provide rules explaining that a domestic trust that receives a covered gift or covered bequest is treated as a U.S. citizen and thus is liable for payment of the section 2801 tax imposed under this section. An electing foreign trust also is treated as a U.S. citizen. See §§ 28.2801-2(b) and 28.2801-5(d). However, a non-electing foreign trust is not liable for the section 2801 tax. Instead, a U.S. citizen or resi-

dent who receives a distribution from a non-electing foreign trust is liable for the section 2801 tax on the receipt of that distribution to the extent the distribution is attributable to covered gifts or covered bequests to that trust. Under section 2801(e)(4)(B)(ii), that U.S. citizen or resident may be entitled to a limited deduction under section 164 against income tax for the section 2801 tax paid on the distribution. The deduction is limited to the extent that the section 2801 tax is imposed on that portion of the distribution that is reported in the gross income of the U.S. citizen or resident. Section 28.2801-4(a)(3)(ii) of the proposed regulations describes how to compute that deduction.

Section 28.2801-4(a)(2)(ii) of the proposed regulations provides that, in the case of a domestic trust or an electing foreign trust, the trust's payment of the section 2801 tax for which the trust is liable does not result in a taxable distribution under section 2621 of the Code to any beneficiary of the trust for generation-skipping transfer (GST) tax purposes. This provision is consistent with the GST tax consequences of a trust's payment of tax, which differ depending upon whether the trust or the trust beneficiary is liable for the tax being paid.

Section 28.2801-4(a)(2)(iv) provides a special rule for certain non-electing foreign trusts that become domestic trusts (migrated foreign trusts). A migrated foreign trust will be treated solely for purposes of section 2801 as a domestic trust for the entire year during which the change from foreign trust to domestic trust occurred. The trust must file a timely Form 708 for the year in which the trust becomes a domestic trust and must report and pay the section 2801 tax on all covered gifts and covered bequests received by the trust during the year it becomes a domestic trust as well as on the portion of the trust's value attributable to any covered gifts and covered bequests received by the trust prior to the year in which it becomes a domestic trust determined as of December 31 of the year prior to the year it becomes a domestic trust.

Charitable Remainder Trusts

Section 28.2801-4(a)(2)(iii) of the proposed regulations provides rules for

charitable remainder trusts (CRTs), as defined in section 664, contributions to which are made by covered expatriates for the benefit of one or more charitable organizations described in section 170(c) and a U.S. citizen or resident other than such a charitable organization (non-charitable U.S. citizen or resident). Section 2801(e)(3) indicates that the value of the charitable organization's remainder interest in a CRT is excluded from the definition of a covered gift or covered bequest. The value of the interest of the non-charitable U.S. citizen or resident in such contributions to the CRT is a covered gift or covered bequest, unless otherwise excluded.

Under section 664, a CRT must be a domestic trust. Accordingly, when a covered expatriate contributes a covered gift or covered bequest to a CRT, the CRT is liable for the payment of the section 2801 tax attributable to the value of the non-charitable U.S. person's interest in the trust. Section 664(d)(1)(B) and (d)(2)(B) and § 1.664-3(a)(4) of the Income Tax Regulations provide that no amount other than the annuity or unitrust amount may be paid "to or for the use of any person other than an organization described under section 170(c)." This rule has been applied in Revenue Ruling 82-128 (1982-2 CB 71) to disqualify a trust as a CRT if the trust could be required to pay estate taxes by reason of the applicable state apportionment statute. Thus, if the CRT's liability for payment of section 2801 tax attributable to the non-charitable recipient's interest in the CRT were to be deemed comparable to the CRT's liability for payment of estate tax, the CRT would not qualify as a CRT under section 664.

A CRT's liability for payment of the section 2801 tax is distinguishable from a CRT's liability for payment of estate tax because the section 2801 tax is imposed expressly on the CRT under a federal tax statute, section 2801(e)(4)(A). In addition, the section 2801 tax is imposed on the CRT as a primary obligation of the CRT, rather than an obligation imposed on the CRT for the payment of a liability belonging to or attributable to another taxpayer. Accordingly, a CRT's payment of the section 2801 tax on the portion of each transfer to the CRT that is a covered gift or covered bequest is not a distribution to or

for the use of any person within the meaning of section 664(d)(1)(B) and (d)(2)(B), and the CRT's liability for such a payment will not cause the trust to be disqualified as a CRT defined in section 664. The proposed regulations confirm that the charitable remainder interest's share of each transfer to the CRT is not a covered gift or covered bequest and provide the method for computing the net covered gifts and covered bequests that are taxable to the CRT under section 2801.

Computation of Section 2801 Tax

Section 28.2801-4 of the proposed regulations also provides guidance on how to compute the section 2801 tax. Generally, the section 2801 tax is determined by reducing the total amount of covered gifts and covered bequests received during the calendar year by the section 2801(c) amount, which is the dollar amount of the per-donee exclusion in effect under section 2503(b) for that calendar year (\$14,000 in 2015), and then multiplying the net amount by the highest estate or gift tax rate in effect during that calendar year. The reference to section 2503(b) in section 2801 is included solely to provide a dollar amount by which to decrease the U.S. recipient's aggregate covered gifts and covered bequests received during that calendar year to determine the amount subject to the section 2801 tax; section 2801 does not incorporate the substantive rule of section 2503(b) that applies to donors of gifts under chapter 12. The resulting tax then is reduced by any estate or gift tax paid to a foreign country with regard to those transfers. See § 28.2801-4(e).

Value of a Covered Gift or Covered Bequest

The value of a covered gift or covered bequest is the fair market value of the property on the date of its receipt by the U.S. citizen or resident. Section 28.2801-4(c) provides that the value of a covered gift is determined by applying the federal gift tax valuation principles under section 2512 and chapter 14 and the corresponding regulations. Similarly, the value of a covered bequest is determined by applying the federal estate tax valuation princi-

ples under section 2031 and chapter 14 and the corresponding regulations, but without regard to sections 2032 and 2032A.

Date of Receipt

The proposed regulations identify the date of the receipt of a covered gift or covered bequest by a U.S. citizen or resident. See § 28.2801-4(d). In general, a covered gift is received on the same date it is given for purposes of chapter 12. In general, a covered bequest is received on the date the property is distributed from the estate or the covered expatriate's revocable trust. However, in the case of property that passes by operation of law or beneficiary designation upon the covered expatriate's death, the date of receipt is the date of death. The proposed regulations provide more detail with regard to the determination of the date of receipt of covered gifts and covered bequests received from a non-electing foreign trust, those received pursuant to powers of appointment, and those received indirectly.

Foreign Trusts

Section 28.2801-5 of the proposed regulations provides guidance on the treatment of foreign trusts under section 2801. If a covered gift or covered bequest is made to a foreign trust, the section 2801 tax applies to any distribution from that trust, whether of income or corpus, to a recipient that is a U.S. citizen or resident, unless the foreign trust elects to be treated as a domestic trust for purposes of section 2801. The proposed regulations define the term "distribution" broadly to include any direct, indirect, or constructive transfer from a foreign trust, including each disbursement from such a trust pursuant to the exercise, release, or lapse of a power of appointment.

Distributions from Foreign Trusts

The section 2801 tax applies only to the portion of a distribution from a non-electing foreign trust that is attributable to covered gifts and covered bequests contributed to the foreign trust. Section 28.2801-5(c) of the proposed regulations provides that the amount of the distribu-

tion attributable to covered gifts and covered bequests is determined by multiplying the total distribution by a ratio, as in effect at the time of the distribution, that is redetermined after each contribution to the trust. The proposed regulations explain how to compute that ratio and provide that each distribution from the foreign trust is considered to be made proportionally from the covered and non-covered portions of the trust, without any tracing with regard to particular assets. One effect of this rule is that the portion of a distribution from a foreign trust that is attributable to covered gifts and covered bequests contributed to the foreign trust includes the ratable portion of any appreciation and income that has accrued on the foreign trust's assets since the contribution of the covered gifts and covered bequests to the foreign trust.

Election by Foreign Trust to Be Treated as Domestic Trust

Section 2801(e)(4)(B)(iii) provides that, solely for purposes of section 2801, a foreign trust may elect to be treated as a domestic trust. Consequently, the section 2801 tax is imposed on the electing foreign trust when it receives covered gifts and covered bequests, rather than on the U.S. trust beneficiaries when distributions are made from the trust. The election may be made for a calendar year whether or not the foreign trust received a covered gift or covered bequest during that calendar year. Section 28.2801-5(d)(3) of the proposed regulations provides guidance on the time and manner of making the election. In order for an election to be valid, the trustee of the foreign trust must satisfy several requirements. The trustee must make the election on a timely filed Form 708 and, if tax is due, timely pay the section 2801 tax (as computed under § 28.2801-5(d)(3)(iii)) by the due date of the Form 708 for that year and include a computation of how the applicable ratio and tax liability were calculated. Further, the trustee must designate and authorize a U.S. agent for purposes of section 2801, and must agree to file annually a Form 708 either to certify that no covered gifts or covered bequests were received by the foreign trust during the calendar year, or to report and, if tax is due, pay the section

2801 tax on covered gifts and covered bequests received by the foreign trust during the calendar year. The trustee also must report the portion of the trust attributable to covered gifts and covered bequests and all distributions attributable to covered gifts and covered bequests made to U.S. recipients in years prior to the year of the election. Finally, the trustee must notify the permissible U.S. distributees of the trust that the trustee is making the election to be treated as a domestic trust for purposes of section 2801.

Under § 28.2801-5(d)(3)(iii), an electing foreign trust that received covered gifts or covered bequests in prior calendar years when the election to be treated as a domestic trust was not in effect also must pay the section 2801 tax liability for all prior calendar years at the time the election is made on Form 708. Such liability is based on the fair market value of the trust attributable to covered gifts and covered bequests as of the last day of the calendar year immediately preceding the year for which the election is made, using the ratio calculated and then in effect under § 28.2801-5(c). If the trustee is unable to determine the portion of the trust attributable to covered gifts and covered bequests, then the fair market value of the entire trust as of the last day of the calendar year immediately preceding the year for which the election is made is subject to the section 2801 tax.

A valid election to be treated as a domestic trust is effective as of the beginning of the calendar year for which the Form 708 is filed. The effect of a valid election is that, as of such effective date of the election and until the election is terminated, U.S. citizens and residents receiving a distribution from that foreign trust will not be subject to section 2801 tax on that distribution. Instead, the electing foreign trust, like a domestic trust, must report and pay the section 2801 tax on each covered gift and covered bequest as it is received. The election, however, will not change the section 2801 tax liability of the U.S. recipients with regard to distributions made from the trust prior to the effective date of the election. The election has no impact outside of section 2801 on the taxation or reporting of trust distributions to U.S. persons.

Dispute as to Amount of Section 2801 Tax Owed by Electing Foreign Trust

If the IRS asserts that additional section 2801 tax is due from the electing foreign trust because, for example, the trust undervalued the covered gift or covered bequest or failed to report all covered gifts and covered bequests, then the IRS will notify the trustee of the foreign trust and the U.S. agent of the additional tax due on the asserted additional value or additional covered gifts or covered bequests, including any penalties and interest, and request payment by the due date identified in the IRS letter. If the trustee of the electing foreign trust and the IRS are unable to come to an agreement and the trustee fails to timely pay the additional tax and other asserted amounts, then the election is deemed to be an “imperfect election.” This means that the election terminates as of the first day of the calendar year for which the IRS asserts that the additional section 2801 tax is due. In this event, the covered gifts and covered bequests for which the return was timely filed, but only to the extent of the value on which the section 2801 tax was timely paid, are no longer considered to be covered gifts or covered bequests for purposes of determining the ratio under § 28.2801-5(c)(1), and distributions relating to such amounts will not be taxable to a U.S. citizen or resident who receives a trust distribution. However, with regard to the asserted additional value or additional covered gifts or covered bequests on which the trust did not timely pay the section 2801 tax asserted by the IRS, the foreign trust is not an electing foreign trust and thus is not the taxpayer responsible for the payment of that additional section 2801 tax. Instead, as of the effective date of the termination of the trust’s election, the usual rule of section 2801(e)(4)(B) applies with regard to the taxation of distributions from foreign trusts. Specifically, the U.S. citizens or residents who receive any trust distributions on or after the effective date of the terminated election should take into consideration the additional value or additional covered gifts or covered bequests asserted by the IRS in determining the ratio under § 28.2801-5(c)(1) to be applied to such distributions. If the U.S.

recipient does not take the additional value or additional covered gifts or covered bequests asserted by the IRS into consideration in computing that ratio, and the IRS challenges the computation of that ratio during its review of the U.S. recipient’s Form 708 reporting the distribution, the IRS’s assertion of the additional value or additional covered gifts or covered bequests then will become an issue to be resolved as part of the usual examination process for the U.S. recipient’s Form 708. See § 28.2801-5(e), *Example 4*.

Termination of Status as Electing Foreign Trust

An electing foreign trust’s failure to file the Form 708 on an annual basis or to timely pay its section 2801 tax terminates that foreign trust’s election to be treated as a domestic trust as of the first day of the calendar year for which the certification is not timely made or for which its section 2801 tax is not timely paid. But see § 28.2801-5(d)(6) in the case of a dispute as to the amount of section 2801 tax owed by an electing foreign trust. In the event of the termination of the election, the trustee should notify the permissible U.S. distributees of the effective date of the termination and that each U.S. recipient of a distribution made from the foreign trust on or after that date is subject to the section 2801 tax to the extent the distribution is attributable to covered gifts or covered bequests. After an election is terminated, a foreign trust is not prohibited from making a new election to be treated as a domestic trust by complying with all applicable requirements.

Other Provisions

Section 28.2801-6(a) addresses how the basis rules under sections 1014, 1015(a), and 1022 impact the determination of the U.S. recipient’s basis in the covered gift or covered bequest. Unlike section 1015(d), which generally allows gift tax paid on the gift to be added to the donee’s basis, section 2801 does not provide a similar basis adjustment for the payment of the section 2801 tax.

Section 28.2801-6(b) clarifies the applicability of the GST tax to certain sec-

tion 2801 transfers and cross-references the GST rules.

Section 28.2801-6(c) discusses the interaction of section 2801 and the information reporting provisions of sections 6039F and 6048(c). Generally, pursuant to section 6039F and Notice 97-34, 1997-1 CB 422, a U.S. person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) who receives a gift or bequest (including a covered gift or covered bequest) from a foreign person (other than through a foreign trust) must report such gift or bequest on Part IV of Form 3520, “Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts,” if the total value of such gifts and bequests exceeds a certain threshold. A U.S. citizen or resident, as defined under § 28.2801-2(b) and thus including a domestic trust as defined in § 28.2801-2(c), but not including a foreign trust that elects to be treated as a domestic trust, is included within the definition of a U.S. person for purposes of section 6039F.

Under section 6039F(c)(1)(A), if a U.S. person fails to furnish all of the information regarding the gift or bequest in accordance with the requirements of Form 3520, and any related guidance, within the time prescribed (in the case of a U.S. citizen or resident, the time for filing the Form 1040, including extensions), then, absent reasonable cause, a monthly penalty of 5 percent of the amount of the gift or bequest (not to exceed 25 percent) may be imposed until such information is furnished. In addition, the tax consequences of the receipt of such gift or bequest may be determined by the Secretary. Taxpayers should be aware that the information reported on Part IV of Form 3520, whether or not timely filed, may be considered in determining whether a U.S. citizen or resident received a covered gift or covered bequest.

Pursuant to section 6048(c) and Notice 97-34, a U.S. person must report any distributions received from a foreign trust on Part III of Form 3520. Under section 6677(a), a penalty of the greater of \$10,000 or 35 percent of the gross value of the distribution may be imposed on a U.S. person who fails to timely report the distribution. A U.S. citizen or resident, as

defined in § 28.2801-2(b), but not including a foreign trust that elects to be treated as a domestic trust, generally would be required to report such a distribution under section 6048(c).

Further, if adequate records are not provided to determine the treatment of such a distribution, to the extent provided in Notice 97-34, as modified by the instructions to Form 3520 and any subsequent guidance, such distribution may be treated as an accumulation distribution includible in the gross income of the distributee. Taxpayers similarly should be aware that information reported on Part III of Form 3520 may be used to determine if a U.S. citizen or resident received a trust distribution attributable to a covered gift or covered bequest.

Finally, § 28.2801-6(d) addresses the section 6662 accuracy-related penalties on underpayments of tax, the section 6651 failure to file and pay penalties, and the section 6695A penalty on substantial and gross valuation misstatements attributable to incorrect appraisals. The Treasury Department and the IRS recognize that taxpayers have had to defer their tax reporting and payment obligations with respect to covered gifts and covered bequests received after the effective date of section 2801 (as described in Notice 2009-85). Thus, there may be circumstances under which a taxpayer who received a covered gift or covered bequest in a year prior to the issuance of final regulations may have difficulty in complying with the deferred filing and payment requirements with respect to those receipts. A taxpayer who establishes that such failure in this regard is due to reasonable cause and not to willful neglect will not be subject to the section 6651 penalties for failure to file or pay. The determination of whether an exception to the other penalties applies will be made on a case-by-case basis.

Section 28.2801-7 provides guidance on the responsibility of a U.S. recipient, as defined in § 28.2801-2(e), to determine if tax under section 2801 is due. The Treasury Department and the IRS realize that, because the tax imposed by this section is imposed on the U.S. citizen or resident receiving a covered gift or covered bequest, rather than on the donor or decedent covered expatriate making the gift or bequest, U.S. taxpayers may have difficulty

determining whether they are liable for any tax under section 2801. Nevertheless, the same standard of due diligence that applies to any other taxpayer to determine whether the taxpayer has a tax liability or a filing requirement also applies to U.S. citizens and residents under this section. Accordingly, it is the responsibility of each U.S. citizen or resident receiving a gift or bequest, whether directly or indirectly, from an expatriate (as defined in section 877A(g)(2)) to determine its tax obligations under section 2801. Thus, the burden is on that U.S. citizen or resident to determine whether the expatriate was a covered expatriate (as defined in section 877A(g)(1)) and, if so, whether the gift or bequest was a covered gift or covered bequest.

The Treasury Department and the IRS understand that a U.S. citizen or resident receiving a gift or bequest from an expatriate may be unable to obtain directly from the expatriate, the expatriate's attorney, the expatriate's executor, or other reliable sources the information necessary to make the above determinations. If the IRS receives a request from a U.S. citizen or resident who received a gift from an expatriate who has consented to the disclosure of certain return information to that donee, a gift from an expatriate who is deceased at the time of the request, or a bequest from an expatriate, the IRS may in certain circumstances disclose to such U.S. citizen or resident the return or return information of the donor or decedent expatriate that may assist the U.S. citizen or resident in determining whether the donor or decedent was a covered expatriate and whether the transfer was a covered gift or covered bequest. See section 6103. The types of information and requirements and procedures for requesting such information will be set forth in guidance published in the Internal Revenue Bulletin.

Although the IRS, if authorized, may disclose returns and return information upon request, the IRS will not make the determinations as to whether an expatriate from whom a gift or bequest was received was a covered expatriate or whether the gift or bequest was a covered gift or covered bequest. Furthermore, the U.S. citizen or resident receiving a gift or bequest from an expatriate may not rely on any information provided by the IRS that the

U.S. citizen or resident knows or has reason to know is incorrect. These determinations are the responsibility of the U.S. citizen or resident.

The proposed regulations provide that, if a living expatriate donor does not authorize the IRS to release to a U.S. citizen or resident the donor's relevant return or return information, there is a rebuttable presumption that the expatriate donor is a covered expatriate and that each gift from that expatriate to a U.S. citizen or resident is a covered gift. A taxpayer who reasonably concludes that a gift or bequest is not subject to section 2801 and intends to rebut the presumption may choose to file a protective return to start the period for assessment of any section 2801 tax. See §§ 28.2801-7(b)(2), 28.6011-1(b).

Administrative Regulations

The proposed regulations also include administrative regulations that address filing and payment due dates, returns, extension requests, and recordkeeping requirements with respect to the section 2801 tax. See §§ 28.6001-1, 28.6011-1, 28.6060-1, 28.6071-1, 28.6081-1, 28.6091-1, 28.6101-1, 28.6107-1, 28.6109-1, 28.6151-1, 28.6694-1, 28.6694-2, 28.6694-3, 28.6694-4, 28.6695-1, 28.6696-1, 28.7701-1. Section 28.6011-1(a) provides the return requirements to report the receipt of covered gifts and covered bequests from covered expatriates using Form 708.

The Treasury Department and the IRS will permit the filing of a protective Form 708, unaccompanied by any payment of tax under section 2801, in limited circumstances when a U.S. citizen or resident receives a gift or bequest from an expatriate and reasonably concludes, after exercising due diligence, that the gift or bequest is not a covered gift or covered bequest from a covered expatriate. The mere absence of information confirming that the expatriate is a covered expatriate or that the gift or bequest is a covered gift or covered bequest is not a sufficient basis for a protective return. Section 28.6011-1(b)(i) provides that filing a protective Form 708, together with the required attachments, will start the period for the assessment of any section 2801 tax.

The IRS intends to issue Form 708 once these regulations are published as final regulations in the **Federal Register**. The IRS will provide the due date for filing Form 708 and for payment of the section 2801 tax liability in the final regulations. Consistent with Announcement 2009–57, U.S. recipients will be given a reasonable period of time after the date the final regulations are published in the **Federal Register** to file the Form 708 and to pay the section 2801 tax on covered gifts and covered bequests received on or after June 17, 2008, and before the date of publication of the final regulations in the **Federal Register**. Interest will not accrue on the section 2801 tax liability for any taxable years until the due date for payment, as specified in the final regulations, has passed.

Effect on Other Documents

The following publication will be obsolete when regulations finalizing these proposed regulations are published in the **Federal Register**:

Announcement 2009–57, 2009–29 I.R.B. 158.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation does not affect small entities because it applies to individuals and certain trusts. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Statement of Availability for Documents Published in the Internal Revenue Bulletin

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov>.

Drafting Information

The principal authors of these regulations are Karlene Lesho and Leslie Finlow, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, 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. In particular, comments are requested with respect to the following issues:

1. How to calculate the amount of a distribution from a foreign trust that is attributable to a covered gift or covered bequest if the U.S. recipient does not have adequate books and records or information available to make such a determination.

2. How to minimize the burden associated with a foreign trust making an election to be treated as a domestic trust while adequately securing the government’s interest in collecting the tax from the foreign trust.

3. How contributions to or distributions from a non-electing foreign trust to a U.S. citizen spouse could qualify for the marital exception in section 2801(e)(3), taking into account the rules applicable to domestic trusts and foreign trusts in section 2801(e)(4).

All comments will be available at www.regulations.gov or upon request.

A public hearing has been scheduled for January 6, 2016, at 10 a.m. in the IRS Auditorium Internal Revenue Building,

1111 Constitution Avenue, N.W., Washington, DC. 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. For more information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by December 9, 2015. A period of 10 minutes will be allotted to each person for making comments. Copies of the agenda will be available free of charge at the meeting.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR chapter 1 is proposed to be amended by adding part 28 to subchapter B as follows:

Paragraph 1. Part 28 is proposed to be added to read as follows:

PART 28—IMPOSITION OF TAX ON GIFTS AND BEQUESTS FROM COVERED EXPATRIATES

§ 28.2801–0 Table of contents.

28.2801–1 Tax on certain gifts and bequests from covered expatriates.

28.2801–2 Definitions.

28.2801–3 Rules and exceptions applicable to covered gifts and covered bequests.

28.2801–4 Liability for and payment of tax on covered gifts and covered bequests; computation of tax.

28.2801–5 Foreign trusts.

28.2801–6 Special rules and cross-references.

28.2801–7 Determining responsibility under section 2801.

28.6001–1 Records required to be kept.

28.6011–1 Returns.

28.6060-1 Reporting requirements for tax return preparers.

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28.6081-1 Automatic extension of time for filing returns reporting gifts and bequests from covered expatriates.

28.6091-1 Place for filing returns.

28.6101-1 Period covered by returns.

28.6107-1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

28.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

28.6151-1 Time and place for paying tax shown on returns.

28.6694-1 Section 6694 penalties applicable to return preparer.

28.6694-2 Penalties for understatement due to an unreasonable position.

28.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

28.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

28.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

28.6696-1 Claims for credit or refund by tax return preparers and appraisers.

28.7701-1 Tax return preparer.

Authority: 26 U.S.C. 7805

Section 28.6001-1 also issued under 26 U.S.C. 6001(a).

Section 28.6011(a)-1 also issued under 26 U.S.C. 6011(a).

Section 28.6060-1 also issued under 26 U.S.C. 6060(a).

Section 28.6071(a)-1 also issued under 26 U.S.C. 6071(a).

Section 28.6081-1 also issued under 26 U.S.C. 6081(a).

Section 28.6091-1 also issued under 26 U.S.C. 6091.

Section 28.6101-1 also issued under 26 U.S.C. 6101.

Section 28.6107-1 also issued under 26 U.S.C. 6107(c).

Section 28.6109-1 also issued under 26 U.S.C. 6109(a).

Section 28.6151-1 also issued under 26 U.S.C. 6151.

Section 28.6695-1 also issued under 26 U.S.C. 6695(b).

Section 28.6696-1 also issued under 26 U.S.C. 6696(c).

§ 28.2801-0 Table of contents.

This section lists the captions in §§ 28.2801-1 through 28.2801-7.

§ 28.2801-1 Tax on certain gifts and bequests from covered expatriates.

- (a) In general.
- (b) Effective/applicability date.

§ 28.2801-2 Definitions.

- (a) Overview.
- (b) Citizen or resident of the United States.
- (c) Domestic trust.
- (d) Foreign trust.
 - (1) In general.
 - (2) Electing foreign trust
- (e) U.S. recipient.
- (f) Covered bequest.
- (g) Covered gift.
- (h) Expatriate and covered expatriate.
- (i) Indirect acquisition of property.
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§ 28.2801-3 Rules and exceptions applicable to covered gifts and covered bequests.

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- (c) Exceptions to covered gift and covered bequest.
 - (1) Reported taxable gifts.
 - (2) Property reported as subject to estate tax.
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 - (1) Covered expatriate as holder of power.
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- (f) Examples.
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 - (1) U.S. citizen or resident.
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- (1) In general.
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 - (e) Reduction of tax for foreign estate or gift tax paid.
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§ 28.2801-5 Foreign trusts.

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 - (1) Section 2801 ratio.
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 - (ii) Computation.
 - (2) Effect of reported transfer and tax payment.
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 - (i) When to make the election.
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(i) Procedure.

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§ 28.2801–6 *Special rules and cross-references.*

(a) Determination of basis.

(b) Generation-skipping transfer tax.

(c) Information returns.

(1) Gifts and bequests.

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§ 28.2801–7 *Determining responsibility under section 2801.*

(a) Responsibility of recipients of gifts and bequests from expatriates.

(b) Disclosure of return and return information.

(1) In general.

(2) Rebuttable presumption.

(c) Effective/applicability date.

§ 28.2801–1 *Tax on certain gifts and bequests from covered expatriates.*

(a) *In general.* Section 2801 of the Internal Revenue Code (Code) imposes a tax (section 2801 tax) on covered gifts and covered bequests, including distributions from foreign trusts attributable to covered gifts or covered bequests, received by a United States citizen or resident (U.S. citizen or resident) from a covered expatriate during a calendar year. Domestic trusts, as well as foreign trusts electing to be treated as domestic trusts for purposes of section 2801, are subject to tax under section 2801 in the same manner as if the trusts were U.S. citizens. See section 2801(e)(4)(A)(i) and (e)(4)(B)(iii). Accordingly, the section 2801 tax is paid by the U.S. citizen or resident, domestic trust, or foreign trust electing to be treated as a domestic trust for purposes of section 2801 that receives the covered gift or covered bequest. For purposes of this part 28, references to a U.S. citizen or U.S. citizens are considered to include a domestic trust and a foreign trust electing to be treated as a domestic trust for purposes of section 2801.

(b) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801–2 *Definitions.*

(a) *Overview.* This section provides definitions of terms applicable solely for purposes of section 2801 and the corresponding regulations.

(b) *Citizen or resident of the United States.* A citizen or resident of the United States (U.S. citizen or resident) is an individual who is a citizen or resident of the United States under the rules applicable for purposes of chapter 11 or 12 of the

Code, as the case may be, at the time of receipt of the covered gift or covered bequest. Furthermore, for purposes of this part 28, references to U.S. citizens also include domestic trusts, as well as foreign trusts electing to be treated as a domestic trust under § 28.2801–5(d). See § 28.2801–1(a)(1).

(c) *Domestic trust.* The term *domestic trust* means a trust defined in section 7701(a)(30)(E). For purposes of this part 28, references to a domestic trust include a foreign trust that elects under § 28.2801–5(d) to be treated as a domestic trust solely for purposes of section 2801.

(d) *Foreign trust.* (1) *In general.* The term *foreign trust* means a trust defined in section 7701(a)(31).

(2) *Electing foreign trust.* The term *electing foreign trust* is a foreign trust that has in effect a valid election to be treated as a domestic trust solely for purposes of section 2801. See § 28.2801–5(d).

(e) *U.S. recipient.* The term *U.S. recipient* means a citizen or resident of the United States, a domestic trust, and an electing foreign trust that receives a covered gift or covered bequest, whether directly or indirectly, during the calendar year. The term U.S. recipient includes U.S. citizens or residents receiving a distribution from a foreign trust not electing to be treated as a domestic trust for purposes of section 2801 if the distributions are attributable (in whole or in part) to one or more covered gifts or covered bequests received by the foreign trust. This term also includes the U.S. citizen or resident shareholders, partners, members, or other interest-holders, as the case may be (if any), of a domestic entity that receives a covered gift or covered bequest.

(f) *Covered bequest.* The term *covered bequest* means any property acquired directly or indirectly by reason of the death of a covered expatriate, regardless of its situs and of whether such property was acquired by the covered expatriate before or after expatriation from the United States. The term also includes distributions made by reason of the death of a covered expatriate from a foreign trust that has not elected under § 28.2801–5(d) to be treated as a domestic trust for purposes of section 2801 to the extent the distributions are attributable to covered gifts or covered bequests made to the for-

eign trust. See § 28.2801–3 for additional rules and exceptions applicable to the term *covered bequest*.

(g) *Covered gift*. The term *covered gift* means any property acquired by gift directly or indirectly from an individual who is a covered expatriate at the time the property is received by a U.S. citizen or resident, regardless of its situs and of whether such property was acquired by the covered expatriate before or after expatriation from the United States. The term also includes distributions made, other than by reason of the death of a covered expatriate, from a foreign trust that has not elected under § 28.2801–5(d) to be treated as a domestic trust for purposes of section 2801 to the extent the distributions are attributable to covered gifts or covered bequests made to the foreign trust. See § 28.2801–3 for additional rules and exceptions applicable to the term *covered gift*.

(h) *Expatriate and covered expatriate*. The term *expatriate* has the same meaning for purposes of section 2801 as that term has in section 877A(g)(2). The term *covered expatriate* has the same meaning for purposes of section 2801 as that term has in section 877A(g)(1). The determination of whether an individual is a covered expatriate is made as of the expatriation date as defined in section 877A(g)(3), and if an expatriate meets the definition of a covered expatriate, the expatriate is considered a covered expatriate for purposes of section 2801 at all times after the expatriation date. However, an expatriate (as defined in section 877A(g)(2)) is not treated as a covered expatriate for purposes of section 2801 during any period beginning after the expatriation date during which such individual is subject to United States estate or gift tax (chapter 11 or chapter 12 of subtitle B) as a U.S. citizen or resident. See section 877A(g)(1)(C). An individual's status as a covered expatriate will be determined as of the date of the most recent expatriation, if there has been more than one.

(i) *Indirect acquisition of property*. An indirect acquisition of property, as referred to in the definitions of a covered gift and covered bequest, includes—

(1) Property acquired as a result of a transfer that is a covered gift or covered bequest to a corporation or other entity

other than a trust or estate, to the extent of the respective ownership interest of the recipient U.S. citizen or resident in the corporation or other entity;

(2) Property acquired by or on behalf of a U.S. citizen or resident, either from a covered expatriate or from a foreign trust that received a covered gift or covered bequest, through one or more other foreign trusts, other entities, or a person not subject to the section 2801 tax;

(3) Property paid by a covered expatriate, or distributed from a foreign trust that received a covered gift or covered bequest, in satisfaction of a debt or liability of a U.S. citizen or resident, regardless of the payee of that payment or distribution;

(4) Property acquired by or on behalf of a U.S. citizen or resident pursuant to a non-covered expatriate's power of appointment granted by a covered expatriate over property not in trust, unless the property previously was subjected to section 2801 tax upon the grant of the power or the covered expatriate had no more than a non-general power of appointment over that property; and

(5) Property acquired by or on behalf of a U.S. citizen or resident in other transfers not made directly by the covered expatriate to the U.S. citizen or resident.

(j) *Power of appointment*. The term *power of appointment* refers to both a general and non-general power of appointment. A general power of appointment is as defined in sections 2041(b) and 2514(c) of the Code and a non-general power of appointment is any power of appointment that is not a general power of appointment.

(k) *Effective/applicability date*. This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801–3 *Rules and exceptions applicable to covered gifts and covered bequests*.

(a) *Covered gift*. Subject to the provisions of paragraphs (c), (d), and (e) of this

section, the term *gift* as used in the definition of covered gift in § 28.2801–2(g) has the same meaning as in chapter 12 of subtitle B, but without regard to the exceptions in section 2501(a)(2), (a)(4), and (a)(5), the per-donee exclusion under section 2503(b) for certain transfers of a present interest, the exclusion under section 2503(e) for certain educational or medical expenses, and the waiver of certain pension rights under section 2503(f).

(b) *Covered bequest*. Subject to the provisions of paragraphs (c), (d), and (e) of this section, property acquired “by reason of the death of a covered expatriate” as described in the definition of covered bequest in § 28.2801–2(f) includes any property that would have been includible in the gross estate of the covered expatriate under chapter 11 of subtitle B if the covered expatriate had been a U.S. citizen at the time of death. Therefore, in addition to the items described in § 28.2801–2(f), the term *covered bequest* includes, without limitation, property or an interest in property acquired by reason of a covered expatriate's death—

(1) By bequest, devise, trust provision, beneficiary designation or other contractual arrangement, or by operation of law;

(2) That was transferred by the covered expatriate during life, either before or after expatriation, and which would have been includible in the covered expatriate's gross estate under section 2036, section 2037, or section 2038 had the covered expatriate been a U.S. citizen at the time of death;

(3) That was received for the benefit of a covered expatriate from such covered expatriate's spouse, or predeceased spouse, for which a valid qualified terminable interest property (QTIP) election was made on such spouse's, or predeceased spouse's, Form 709, “U.S. Gift (and Generation-Skipping Transfer) Tax Return,” Form 706, “United States Estate (and Generation-Skipping Transfer) Tax Return,” or Form 706–NA, “United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States,” which would have been included in the covered expatriate's gross estate under section 2044 if the covered expatriate was a U.S. citizen at the time of death; or

(4) That otherwise passed from the covered expatriate by reason of death, such as—

(i) Property held by the covered expatriate and another person as joint tenants with right of survivorship or as tenants by the entirety, but only to the extent such property would have been included in the covered expatriate's gross estate under section 2040 if the covered expatriate had been a U.S. citizen at the time of death;

(ii) Any annuity or other payment that would have been includible in the covered expatriate's gross estate if the covered expatriate had been a U.S. citizen at the time of death;

(iii) Property subject to a general power of appointment held by the covered expatriate at death; or

(iv) Life insurance proceeds payable upon the covered expatriate's death that would have been includible in the covered expatriate's gross estate under section 2042 if the covered expatriate had been a U.S. citizen at the time of death.

(c) *Exceptions to covered gift and covered bequest.* The following transfers from a covered expatriate are exceptions to the definition of covered gift and covered bequest.

(1) *Reported taxable gifts.* A transfer of property that is a taxable gift under section 2503(a) and is reported on the donor's timely filed Form 709 is not a covered gift, provided that the donor also timely pays the gift tax, if any, shown as due on that return. A transfer excluded from the definition of a taxable gift, such as a transfer of a present interest not in excess of the annual exclusion amount under section 2503(b), is not excluded from the definition of a covered gift under this paragraph (c)(1) even if reported on the donor's Form 709.

(2) *Property reported as subject to estate tax.* Property that is included in the gross estate of the covered expatriate and is reported on a timely filed Form 706 or Form 706-NA is not a covered bequest, provided that the estate also timely pays the estate tax, if any, shown as due on that return. For this purpose, estate tax imposed on distributions from or on the remainder of a qualified domestic trust (QDOT) are deemed to be reported on a timely filed Form 706, if the tax due thereon was timely paid. Thus, if the cov-

ered expatriate's gross estate is not of sufficient value to require the filing of a Form 706-NA, for example, and no Form 706-NA is timely filed, the property passing from that covered expatriate is not excluded from the definition of a covered bequest under the rule of this paragraph (c)(2). Further, this exclusion does not apply to the property not on such a form, whether or not subject to United States estate tax (that is, non U.S.-situs property that passes to U.S. citizens or residents).

(3) *Transfers to charity.* A gift to a donee described in section 2522(b) or a bequest to a beneficiary described in section 2055(a) is not a covered gift or covered bequest to the extent a charitable deduction under section 2522 or section 2055 would have been allowed if the covered expatriate had been a U.S. citizen or resident at the time of the transfer.

(4) *Transfers to spouse.* A transfer from a covered expatriate to the covered expatriate's spouse is not a covered gift or covered bequest to the extent a marital deduction under section 2523 or section 2056 would have been allowed if the covered expatriate had been a U.S. citizen or resident at the time of the transfer. To the extent that a gift or bequest to a trust (or to a separate share of the trust) would qualify for the marital deduction, the gift or bequest is not a covered gift or covered bequest. For purposes of this paragraph (c)(4), a marital deduction is deemed not to be allowed for qualified terminable interest property (QTIP) or for property in a qualified domestic trust (QDOT) unless a valid QTIP and/or QDOT election is made. The term *covered bequest* also does not include assets in a QDOT funded for the benefit of a covered expatriate by the covered expatriate's predeceased spouse, but only if a valid election was made on the predeceased spouse's Form 706 or Form 706-NA to treat the trust as a QDOT.

(5) *Qualified disclaimers.* A transfer pursuant to a covered expatriate's qualified disclaimer, as defined in section 2518(b), is not a covered gift or covered bequest from that covered expatriate.

(d) *Covered gifts and covered bequests made in trust.* For purposes of section 2801, when a covered expatriate transfers property to a trust in a transfer that is a covered gift or covered bequest as deter-

mined under this section, the transfer of property is treated as a covered gift or covered bequest to the trust, without regard to the beneficial interests in the trust or whether any person has a general power of appointment or a power of withdrawal over trust property. Accordingly, the rules in section 2801(e)(4) and § 28.2801-4(a) apply to determine liability for payment of the section 2801 tax. The U.S. recipient of a covered gift or a covered bequest to a domestic trust or an electing foreign trust is the domestic or electing foreign trust, and the U.S. recipient of a covered gift or a covered bequest to a non-electing foreign trust is any U.S. citizen or resident receiving a distribution from the non-electing foreign trust. See § 28.2801-2(e) for the definition of a U.S. recipient.

(e) *Powers of appointment—(1) Covered expatriate as holder of power.* The exercise or release of a general power of appointment held by a covered expatriate over property, whether or not in trust (even if that covered expatriate was a U.S. citizen or resident when the general power of appointment was granted), for the benefit of a U.S. citizen or resident is a covered gift or covered bequest. The lapse of a general power of appointment is treated as a release to the extent provided in sections 2041(b)(2) and 2514(e). Furthermore, the exercise of a power of appointment by a covered expatriate that creates another power of appointment as described in section 2041(a)(3) or section 2514(d) for the benefit of a U.S. citizen or resident is a covered gift or a covered bequest.

(2) *Covered expatriate as grantor of power.* The grant by a covered expatriate to an individual who is a U.S. citizen or resident of a general power of appointment over property not transferred in trust by the covered expatriate is a covered gift or covered bequest to the powerholder. For the rule applying to the grant by a covered expatriate of a general power of appointment over property in trust, see paragraph (d) of this section.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Transfer to spouse. In Year 1, CE, a covered expatriate domiciled in Country F, a foreign country with which the United States does not have a gift tax treaty, gives \$300,000 cash to his wife, W,

a U.S. resident and citizen of Country F. Under paragraph (c)(4) of this section, the \$100,000 exemption for a noncitizen spouse, as indexed for inflation in Year 1, is excluded from the definition of a covered gift under section 2801 because only that amount of the transfer would have qualified for the gift tax marital deduction if CE had been a U.S. citizen at the time of the gift. See sections 2801(e)(3) and 2523(i). The remaining amount (\$300,000 less the \$100,000 exemption for a noncitizen spouse as indexed for inflation), however, is a covered gift from CE to W. W must timely file Form 708, "U.S. Return of Gifts or Bequests from Covered Expatriates," and timely pay the tax. See §§ 28.6011-1(a), 28.6071-1(a), and 28.6151-1(a). W also must report the transfer on Form 3520, "Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts," and any other required form. See § 28.2801-6(c)(1).

Example 2. Reporting property as subject to estate tax. (i) CE, a covered expatriate domiciled in Country F, a foreign country with which the United States does not have an estate tax treaty, owns a condominium in the United States with son, S, a U.S. citizen. CE and S each contributed their actuarial share of the purchase price when purchasing the condominium and own it as joint tenants with rights of survivorship. On December 14, Year 1, CE dies. At the time of CE's death, the fair market value of CE's share of the condominium, \$250,000, is included in CE's gross estate under sections 2040 and 2103.

(ii) On September 14 of the following calendar year, Year 2, the executor of CE's estate timely files a Form 4768, "Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes," requesting a 6-month extension of time to file Form 706-NA, and a 1-year extension of time to pay the estate tax. The IRS grants both extensions but CE's executor fails to file the Form 706-NA until after March 14 of the calendar year immediately following Year 2.

(iii) S learns that the executor of CE's estate did not timely file Form 706-NA. Because CE is a covered expatriate, S received a covered bequest as defined under § 28.2801-2(f) and paragraph (b) of this section. S must timely file Form 708 and pay the section 2801 tax. See §§ 28.6011-1(a), 28.6071-1(a), and 28.6151-1(a). S also must file Form 3520 to report a large gift or bequest from a foreign person, and any other required form. See § 28.2801-6(c)(1).

Example 3. Covered gift in trust with grant of general power of appointment over trust property. (i) On October 20, Year 1, CE, a covered expatriate domiciled in Country F, a foreign country with which the United States does not have a gift tax treaty, transfers \$500,000 in cash from an account in Country F to an irrevocable foreign trust created on that same date. Under section 2511(a), no gift tax is imposed on the transfer and thus, CE is not required to file a U.S. gift tax return. Under the terms of the foreign trust, A, CE's child and a U.S. resident, and Q, A's child and a U.S. citizen, may receive discretionary distributions of income and principal during life. At A's death, the assets remaining in the foreign trust will be distributed to B, CE's other U.S. resident child, or if B is not living at the time of A's

death, then to CE's then-living issue, *per stirpes*. The terms of the foreign trust also allow A to appoint trust principal and/or income to A, A's estate, A's creditors, the creditors of A's estate, or A's issue at any time. On March 5, Year 2, A exercises this power to appoint and causes the trustee to distribute \$100,000 to Q.

(ii) On October 20, Year 1, the irrevocable foreign trust receives a covered gift for purposes of section 2801, but no section 2801 tax is imposed at that time. On March 5, Year 2, when Q receives \$100,000 from the irrevocable foreign trust pursuant to the exercise of A's power of appointment, Q has received a distribution attributable to a covered gift and section 2801 tax is imposed on Q as of the date of the distribution. See § 28.2801-4(d). Q must timely file Form 708 to report the covered gift from a foreign person (specifically, from CE). See section 6039F(a) and §§ 28.6011-1(a), 28.6071-1(a), and 28.6151-1(a). Under section 2501, A makes a taxable gift to Q of \$100,000 when A exercises the general power of appointment for Q's benefit. See section 2514(b). Accordingly, A must report A's \$100,000 gift to Q on a timely filed Form 709. See section 6019. Because A is considered the transferor of the \$100,000 for gift and GST tax purposes, the distribution to Q is not a generation-skipping transfer under chapter 13. See § 26.2652-1(a)(1). Furthermore, because the \$100,000 is being distributed from a foreign trust, Q must report the gift on a Form 3520 as a distribution from a foreign trust. See § 28.2801-6(c)(2).

Example 4. Lapse of power of appointment held by covered expatriate. (i) A, a U.S. citizen, creates an irrevocable domestic trust for the benefit of A's issue, CE, and CE's children. CE is a covered expatriate, but CE's children are U.S. citizens. CE has the right to withdraw \$5,000 in each year in which A makes a contribution to the trust, but the withdrawal right lapses 30 days after the date of the contribution. In Year 1, A funds the trust, but CE fails to exercise CE's right to withdraw \$5,000 within 30 days of the contribution. The \$5,000 lapse is not considered to be a release of the power, so it is neither a gift for U.S. gift tax purposes, nor a covered gift for purposes of section 2801 under paragraph (e)(1) of this section.

(g) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-4 *Liability for and payment of tax on covered gifts and covered bequests; computation of tax.*

(a) *Liability for tax—(1) U.S. citizen or resident.* A U.S. citizen or resident who receives a covered gift or covered bequest

is liable for payment of the section 2801 tax.

(2) *Domestic trust—(i) In general.* A domestic trust that receives a covered gift or covered bequest is treated as a U.S. citizen and is liable for payment of the section 2801 tax. See section 2801(e)(4)(A)(i) and § 28.2801-2(b).

(ii) *Generation-skipping transfer tax.* A trust's payment of the section 2801 tax does not result in a taxable distribution under section 2621 to any trust beneficiary for purposes of the generation-skipping transfer tax to the extent that the trust, rather than the beneficiary, is liable for the section 2801 tax.

(iii) *Charitable remainder trust.* A domestic trust qualifying as a charitable remainder trust (as that term is defined in § 1.664-1(a)(1)(iii)(a)) is subject to section 2801 when it receives a covered gift or covered bequest. Section 2801(e)(3) excepts from the definition of covered gift and covered bequest property with respect to which a deduction under section 2522 or section 2055, respectively, would have been allowed if the covered expatriate had been a U.S. citizen or resident at the time of the transfer. See § 28.2801-3(c)(3). As a result, the charitable remainder interest's share of each transfer to the charitable remainder trust is not a covered gift or covered bequest. To compute the amount of covered gifts and covered bequests taxable to the charitable remainder trust for a calendar year, the charitable remainder trust will (A) calculate, in accordance with the regulations under section 664 and as of the date of the trust's receipt of the contribution, the value of the remainder interest in each contribution received in such calendar year that would have been a covered gift or covered bequest without regard to section 2801(e)(3), (B) subtract the remainder interest in each such contribution from the amount of that contribution to compute the annuity or unitrust (income) interest in that contribution, and (C) add the total of such income interests, each of which is the portion of the contribution that constitutes a covered gift or covered bequest to the trust. The charitable remainder trust then computes its section 2801 tax in accordance with paragraph (b) of this section.

(iv) *Migrated foreign trust.* A foreign trust (other than one electing to be treated

as a domestic trust under § 28.2801–5(d)) that has previously received a covered gift or covered bequest and that subsequently becomes a domestic trust as defined under section 7701(a)(30)(E) (migrated foreign trust), must file a timely Form 708, “U.S. Return of Gifts or Bequests from Covered Expatriates,” for the taxable year in which the trust becomes a domestic trust. The section 2801 tax, if any, must be paid by the due date of that Form 708. On that Form 708, the section 2801 tax is calculated in the same manner as if such trust was making an election under § 28.2801–5(d) to be treated as a domestic trust solely for purposes of the section 2801 tax. Accordingly, the trustee must report and pay the section 2801 tax on all covered gifts and covered bequests received by the trust during the year in which the trust becomes a domestic trust, as well as on the portion of the trust’s value at the end of the year preceding the year in which the trust becomes a domestic trust that is attributable to all prior covered gifts and covered bequests. Because the migrated foreign trust will be treated solely for purposes of section 2801 as a domestic trust for the entire year during which it became a domestic trust, distributions made to U.S. citizens or residents during that year but before the date on which the trust became a domestic trust will not be subject to section 2801.

(3) *Foreign trust*—(i) *In general.* A foreign trust that receives a covered gift or covered bequest is not liable for payment of the section 2801 tax unless the trust makes an election to be treated as a domestic trust solely for purposes of section 2801 as provided in § 28.2801–5(d). Absent such an election, each U.S. recipient is liable for payment of the section 2801 tax on that person’s receipt, either directly or indirectly, of a distribution from the foreign trust to the extent that the distribution is attributable to a covered gift or covered bequest made to the foreign trust. See § 28.2801–5(b) and (c) regarding distributions from foreign trusts.

(ii) *Income tax deduction.* The U.S. recipient of a distribution from a foreign trust is allowed a deduction against income tax under section 164 in the calendar year in which the section 2801 tax is paid or accrued. The amount of the deduction is equal to the portion of the section

2801 tax attributable to such distribution, but only to the extent that portion of the distribution is included in the U.S. recipient’s gross income. The amount of the deduction allowed under section 164 is calculated as follows:

(A) First, the U.S. recipient must determine the total amount of distribution(s) from the foreign trust treated as covered gifts and covered bequests received by that U.S. recipient during the calendar year to which the section 2801 tax payment relates.

(B) Second, of the amount determined in paragraph (a)(3)(ii)(A) of this section, the U.S. recipient must determine the amount that also is includable in the U.S. recipient’s gross income for that calendar year. For purposes of this paragraph (a)(3)(ii)(B), distributions from foreign trusts includable in the U.S. recipient’s gross income are deemed first to consist of the portion of those distributions, if any, that are attributable to covered gifts and covered bequests.

(C) Finally, the U.S. recipient must determine the portion of the section 2801 tax paid for that calendar year that is attributable to the amount determined in paragraph (a)(3)(ii)(B) of this section, the covered gifts and covered bequests received from the foreign trust that are also included in the U.S. recipient’s gross income. This amount is the allowable deduction. Thus, for a calendar year taxpayer, the deduction is determined by multiplying the section 2801 tax paid during the calendar year by the ratio of the amount determined in paragraph (a)(3)(ii)(B) of this section to the total covered gifts and covered bequests received by the U.S. recipient during the calendar year to which that tax payment relates (that is, 2801 tax liability x [foreign trust distributions attributable to covered gifts and covered bequests that are also included in gross income / total covered gifts or covered bequests received]).

(b) *Computation of tax*—(1) *In general.* The section 2801 tax is computed by multiplying the net covered gifts and covered bequests (as defined in paragraph (b)(2) of this section) received by a U.S. recipient during the calendar year by the greater of—

(i) The highest rate of estate tax under section 2001(c) in effect for that calendar year; or

(ii) The highest rate of gift tax under section 2502(a) in effect for that calendar year. See paragraph (f) of this section, *Example 1.*

(2) *Net covered gifts and covered bequests.* The net covered gifts and covered bequests received by a U.S. recipient during the calendar year is the total value of all covered gifts and covered bequests received by that U.S. recipient during the calendar year, less the section 2801(c) amount, which is the dollar amount of the per-donee exclusion in effect under section 2503(b) for that calendar year.

(c) *Value of covered gift or covered bequest.* The value of a covered gift or covered bequest is the fair market value of the property as of the date of its receipt by the U.S. recipient. See paragraph (d) of this section regarding the determination of the date of receipt. As in the case of chapters 11 and 12, the fair market value of a covered gift or covered bequest is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a covered gift is determined in accordance with the federal gift tax valuation principles of section 2512 and chapter 14 and the corresponding regulations. The fair market value of a covered bequest is determined by applying the federal estate tax valuation principles of section 2031 and chapter 14 and the corresponding regulations, but without regard to sections 2032 and 2032A.

(d) *Date of receipt*—(1) *In general.* The section 2801 tax is imposed upon the receipt of a covered gift or covered bequest by a U.S. recipient.

(2) *Covered gift.* The date of receipt of a covered gift is the same as the date of the gift for purposes of chapter 12 as if the covered expatriate had been a U.S. citizen at the time of the transfer. Thus, for a gift of stock, if the covered expatriate delivers a properly endorsed stock certificate to the U.S. recipient, the date of delivery is the date of receipt for purposes of this section. Alternatively, if the covered expatriate delivers the stock certificate to the issuing

corporation or its transfer agent in order to transfer title to the U.S. recipient, the date of receipt is the date the stock is transferred on the books of the corporation. For a transfer of assets by a covered expatriate to a domestic revocable trust, the trust receives the transfer on the date the covered expatriate relinquishes the right to revoke the trust. If, before the donor's relinquishment of the right to revoke the trust, the revocable trust distributes property to a U.S. citizen or resident not in discharge of a support or other obligation of the donor, then the U.S. recipient receives a covered gift on the date of that distribution. For an asset subject to a claim of right of another involving a bona fide dispute, the date of receipt is the date on which such claim is extinguished.

(3) *Covered bequest.* The date of receipt of a covered bequest is the date of distribution from the estate or the decedent's revocable trust rather than the date of death of the covered expatriate. However, the date of receipt is the date of death for property passing on the death of the covered expatriate by operation of law, or by beneficiary designation or other contractual agreement. Notwithstanding the previous sentences, for an asset subject to a claim of right of another involving a bona fide dispute, the date of receipt is the date on which such claim is extinguished.

(4) *Foreign trusts.* The date of receipt by a U.S. citizen or resident of property from a foreign trust that has not elected to be treated as a domestic trust under § 28.2801-5(d) is the date of its distribution from the foreign trust.

(5) *Powers of appointment*—(i) *Covered expatriate as holder of power.* In the case of the exercise, release, or lapse of a power of appointment held by a covered expatriate that is a covered gift pursuant to § 28.2801-3(e)(1), the date of receipt is the date of the exercise, release, or lapse of the power. In the case of the exercise, release, or lapse of a power of appointment held by a covered expatriate that is a covered bequest pursuant to § 28.2801-3(e)(1), the date of receipt is (A) the date the property subject to the power is distributed from the decedent's estate or revocable trust when the power of appointment is over property in such estate or trust, or (B) the date of the covered expa-

triate's death when the power of appointment is over property passing on the covered expatriate's death by operation of law, by beneficiary designation, or by other contractual agreement.

(ii) *Covered expatriate as grantor of power.* The date of receipt of property subject to a general power of appointment granted by a covered expatriate to a U.S. citizen or resident over property not transferred in trust that constitutes a covered gift or covered bequest pursuant to § 28.2801-3(e)(2) is the first date on which both the power is exercisable by the U.S. citizen or resident and the property subject to the general power has been irrevocably transferred by the covered expatriate. The date of receipt of property subject to a general power of appointment over property in a domestic trust or an electing foreign trust is determined in accordance with paragraphs (d)(2) and (d)(3) of this section, and over property in a non-electing foreign trust is determined in accordance with paragraph (d)(4) of this section. See § 28.2801-3(d) for the rule applying to covered gifts and covered bequests made in trust.

(6) *Indirect receipts.* The date of receipt by a U.S. citizen or resident of a covered gift or covered bequest received indirectly from a covered expatriate is the date of its receipt, as determined under paragraph (d)(2) or (d)(3) of this section, by the U.S. citizen or resident who is the first recipient of that property from the covered expatriate to be subject to section 2801 with regard to that property. For example, the date of receipt of property (i) subject to a non-general power of appointment over property not held in trust given by a covered expatriate to a foreign person (other than another covered expatriate) is the date that property is received by the U.S. citizen or resident in whose favor the power was exercised, and (ii) received through one or more entities not subject to section 2801 is the date of its receipt by the U.S. citizen or resident from a conduit entity.

(e) *Reduction of tax for foreign estate or gift tax paid.* The section 2801 tax is reduced by the amount of any gift or estate tax paid to a foreign country with respect to the covered gift or covered bequest. For this purpose, the term *foreign country* includes possessions and political

subdivisions of foreign states. However, no reduction is allowable for interest and penalties paid in connection with those foreign taxes. To claim the reduction of section 2801 tax, the U.S. recipient must attach to the Form 708 a copy of the foreign estate or gift tax return and a copy of the receipt or cancelled check for payment of the foreign estate or gift tax. The U.S. recipient also must report, on an attachment to the Form 708:

(1) The amount of foreign estate or gift tax paid with respect to each covered gift or covered bequest and the amount and date of each payment thereof;

(2) A description and the value of the property with respect to which such taxes were imposed;

(3) Whether any refund of part or all of the foreign estate or gift tax has been or will be claimed or allowed, and the amount; and

(4) All other information necessary for the verification and computation of the amount of the reduction of section 2801 tax.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Computation of tax. In Year 1, A, a U.S. citizen, receives a \$50,000 covered gift from B and an \$80,000 covered bequest from C. Both B and C are covered expatriates. In Year 1, the highest estate and gift tax rate is 40 percent and the section 2801(c) amount is \$14,000. A's section 2801 tax for Year 1 is computed by multiplying A's net covered gifts and covered bequests by 40 percent. A's net covered gifts and covered bequests for Year 1 are \$116,000, which is determined by reducing A's total covered gifts and covered bequests received during Year 1, \$130,000 (\$50,000 + \$80,000), by the section 2801(c) amount of \$14,000. A's section 2801 tax liability is then reduced by any foreign estate or gift tax paid under paragraph (e) of this section. Assuming A, B, and C paid no foreign estate or gift tax on the transfers, A's section 2801 tax liability for Year 1 is \$46,400 (\$116,000 x 0.4).

Example 2. Deduction of section 2801 tax for income tax purposes. In Year 1, B receives a covered bequest of \$25,000. Also in Year 1, B receives an aggregate \$500,000 of distributions from a non-electing foreign trust of which \$100,000 was attributable to a covered gift. In Year 1, the highest estate and gift tax rate is 40 percent and the section 2801(c) amount is \$14,000. Based on information provided by the trustee of the foreign trust, B includes \$50,000 of the aggregate distributions from the foreign trust in B's gross income for Year 1. Under paragraph (a)(3)(ii) of this section, B (a cash basis taxpayer) is entitled to an income tax deduction under section 164 for the calendar year in which the section 2801 tax is paid. In Year 2, B timely reports the distributions from the foreign trust and pays \$44,400 in

section 2801 tax $((\$125,000 - \$14,000) \times 0.4)$. In Year 2, B is entitled to an income tax deduction because B paid the section 2801 tax in Year 2 on the Year 1 covered gift and covered bequest. B's Year 2 income tax deduction is computed as follows:

(i) \$100,000 of B's total covered gifts and covered bequests of \$125,000 received in Year 1 consisted of the portion of the distributions from the foreign trust attributable to covered gifts and covered bequests received by the trust. See paragraph (a)(3)(ii)(A) of this section.

(ii) \$50,000 of the \$500,000 of trust distributions were includable in B's gross income for Year 1. This amount is deemed to consist first of distributions subject to the section 2801 tax (\$100,000). Thus, the entire amount included in B's gross income (\$50,000) also is subject to the section 2801 tax, and is used in the numerator to determine the income tax deduction available to B. See paragraph (a)(3)(ii)(B) of this section.

(iii) The portion of B's section 2801 tax liability attributable to distributions from a foreign trust is \$17,760 $(\$44,400 \times (\$50,000/\$125,000))$. Therefore, B's deduction under section 164 is \$17,760. See paragraph (a)(3)(ii)(C) of this section.

Example 3. Date of receipt; bona fide claim. On October 10, Year 1, CE, a covered expatriate, died testate as a resident of Country F, a foreign country with which the United States does not have an estate tax treaty. CE designated his son, S, as the beneficiary of CE's retirement account. S is a U.S. citizen. CE's wife, W, who is a citizen and resident of Country F, elects to take her elective share of CE's estate under local law. S contests whether the retirement account is property subject to the elective share. S and W agree to settle their respective claims by dividing CE's assets equally between them. On December 15 of Year 2, Country F's court enters an order accepting the terms of the settlement agreement and dismissing the case. Under paragraph (d)(3) of this section, S received a covered bequest of one-half of CE's retirement account on December 15, Year 2, when W's claim of right was extinguished.

(g) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-5 Foreign trusts.

(a) *In general.* The section 2801 tax is imposed on a U.S. recipient who receives distributions, whether of income or principal, from a foreign trust to the extent the distributions are attributable to one or more covered gifts or covered bequests made to that foreign trust. See paragraph

(d) of this section regarding a foreign trust's election to be treated as a domestic trust for purposes of section 2801.

(b) *Distribution defined.* For purposes of determining whether a U.S. recipient has received a distribution from a foreign trust, the term *distribution* means any direct, indirect, or constructive transfer from a foreign trust. This determination is made without regard to whether any portion of the trust is treated as owned by the U.S. recipient or any other person under subpart E of part I, subchapter J, chapter 1 of the Code (pertaining to grantors and others treated as substantial owners) and without regard to whether the U.S. recipient of the transfer is designated as a beneficiary by the terms of the trust. For purposes of section 2801, the term *distribution* also includes each disbursement from a foreign trust pursuant to the exercise, release, or lapse of a power of appointment, whether or not a general power. In addition to the reporting requirements under this section, see section 6048(c) regarding the information reporting requirement for U.S. persons receiving a distribution or deemed distribution from a foreign trust during the year.

(c) *Amount of distribution attributable to covered gift or covered bequest—(1) Section 2801 ratio—(i) In general.* A foreign trust may have received covered gifts and covered bequests as well as contributions that were not covered gifts or covered bequests. Under such circumstances, the fair market value of the foreign trust at any time consists in part of a portion of the trust attributable to the covered gifts and covered bequests it has received (covered portion) and in part of a portion of the trust attributable to other contributions (non-covered portion). The covered portion of the trust includes the ratable portion of appreciation and income that has accrued on the foreign trust's assets from the date of the contribution of the covered gifts and covered bequests to the foreign trust. For purposes of section 2801, the amount of each distribution from the foreign trust, whether made from the income or principal of the trust, that is considered attributable to the foreign trust's covered gifts and covered bequests is determined on a proportional basis, by reference to the section 2801 ratio (as described in paragraph (c)(1)(ii) of this section), and not by

the identification or tracing of particular trust assets. Specifically, this portion of each distribution is determined by multiplying the distributed amount by the percentage of the trust that consists of its covered portion immediately prior to that distribution (section 2801 ratio). Thus, for example, the section 2801 ratio of a foreign trust whose assets are comprised exclusively of covered gifts or covered bequests and the income and appreciation thereon, would be 1 and the full amount of each distribution from that foreign trust to a U.S. citizen or resident would be subject to section 2801.

(ii) *Computation.* The section 2801 ratio, which must be redetermined after each contribution to the foreign trust, is computed by using the following fraction:

$$\text{Section 2801 ratio} = \frac{X + Y}{Z}$$

where,

X = The value of the trust attributable to covered gifts and covered bequests, if any, immediately before the contribution (pre-contribution value); this value is determined by multiplying the fair market value of the trust assets immediately prior to the contribution by the section 2801 ratio in effect immediately prior to the current contribution. This amount will be zero for all years prior to the year in which the foreign trust receives its first covered gift or covered bequest;

Y = The portion, if any, of the fair market value of the current contribution that constitutes a covered gift or covered bequest; and

Z = The fair market value of the trust immediately after the current contribution.

See paragraph (e) of this section, *Example 1*, for an illustration of this computation.

(2) *Effect of reported transfer and tax payment.* Once a section 2801 tax has been timely paid on property that thereafter remains in a foreign trust, that property is no longer considered to be, or to be attributable to, a covered gift or covered bequest to the foreign trust for purposes of the computation described in paragraph (c)(1)(ii) of this section. For purposes of the prior sentence, a section 2801 tax is deemed to have been timely paid on amounts for which no section 2801 tax was due as long as those amounts were reported as a covered gift or covered be-

quest on a timely filed Form 708, “U.S. Return of Gifts or Bequests from Covered Expatriates.”

(3) *Inadequate information to calculate section 2801 ratio.* If the trustee of the foreign trust does not have sufficient books and records to calculate the section 2801 ratio, or if the U.S. recipient is unable to obtain the necessary information with regard to the foreign trust, the U.S. recipient must proceed upon the assumption that the entire distribution for purposes of section 2801 is attributable to a covered gift or covered bequest.

(d) *Foreign trust treated as domestic trust*—(1) *Election required.* To be considered an electing foreign trust, so that the foreign trust is treated as a domestic trust solely for purposes of the section 2801 tax, a valid election is required.

(2) *Effect of election.* (i) A valid election subjects the electing foreign trust to the section 2801 tax on (A) all covered gifts and covered bequests received by the foreign trust during that calendar year, (B) the portion of the trust attributable to covered gifts and covered bequests received by the trust in prior years, as determined in paragraph (d)(3)(iii) of this section, and (C) all covered gifts and covered bequests received by the foreign trust during calendar years subsequent to the first year in which the election is effective, unless and until the election is terminated. To the extent that covered gifts and covered bequests are subject to the section 2801 tax under the prior sentence, those trust receipts are no longer treated as a covered gift or covered bequest for purposes of determining the portion of the trust attributable to covered gifts and covered bequests. Therefore, upon making a valid election, the foreign trust’s section 2801 ratio described in paragraph (c)(1)(ii) of this section will be zero until the effective date of any termination of the election and the subsequent receipt of any covered gift or covered bequest, and a distribution made from the foreign trust while this election is in effect is not taxable under section 2801 to the recipient trust beneficiary.

(ii) This election has no effect on any distribution from the foreign trust that was made to a U.S. recipient in a calendar year prior to the calendar year for which the election is made. Thus, even after a valid

election is made, a distribution to a U.S. recipient in a calendar year prior to the calendar year for which the election is made that was attributable to one or more covered gifts or covered bequests continues to be a distribution attributable to one or more covered gifts or covered bequests and the section 2801 ratio in place at the time of the distribution continues to apply to that distribution. Furthermore, an election under this section does not relieve the U.S. recipient from the information reporting requirements of section 6048(c).

(3) *Time and manner of making the election*—(i) *When to make the election.* The election is made on a timely filed Form 708 for the calendar year for which the foreign trust seeks to subject itself to the section 2801 tax as described in paragraph (d)(2)(i) of this section. The election may be made for a calendar year whether or not the foreign trust received a covered gift or covered bequest during that calendar year. See § 28.6071-1.

(ii) *Requirements for a valid election.* To make a valid election to be treated as a domestic trust for purposes of section 2801, the electing foreign trust must timely file a Form 708 and must, on such form—

(A) Make the election, timely pay the section 2801 tax, if any, as determined under paragraph (d)(3)(iii) of this section, and include a computation illustrating how the trustee of the electing foreign trust calculated both the section 2801 ratio described in paragraph (c)(1)(ii) of this section and the section 2801 tax;

(B) Designate and authorize a U.S. agent as provided in paragraph (d)(3)(iv) of this section;

(C) Agree to file Form 708 annually;

(D) List the amount and year of all prior distributions attributable to covered gifts and covered bequests made to a U.S. recipient and provide the name, address, and taxpayer identification number of each U.S. recipient; and

(E) Notify each permissible distributee that the trustee is making the election under this paragraph (d) and provide to the IRS a list of the name, address, and taxpayer identification number of each permissible distributee. For this purpose, a permissible distributee is any U.S. citizen or resident who:

(1) Currently may or must receive distributions from the trust, whether of income or principal;

(2) May withdraw income or principal from the trust, regardless of whether the right arises or lapses upon the occurrence of a future event; or

(3) Would have been described in paragraph (d)(3)(ii)(E)(1) of this section if either the interests of all persons described in (d)(3)(ii)(E)(1) or (E)(2) had just terminated or the trust had just terminated.

(iii) *Section 2801 tax payable with the election.* To make a valid election to be treated as a domestic trust for purposes of section 2801, the electing foreign trust must timely pay the section 2801 tax on all covered gifts and covered bequests received by the electing foreign trust in the calendar year for which the Form 708 is being filed. In some cases, an electing foreign trust may have received covered gifts or covered bequests in prior calendar years during which no such election was in effect. In those cases, the trustee must also, at the same time, report and pay the tax on the fair market value, determined as of the last day of the calendar year immediately preceding the year for which the Form 708 is being filed, of the portion of the trust attributable to covered gifts and covered bequests received by such trust in prior calendar years (except as provided in paragraph (d)(6)(iii) of this section with regard to an imperfect election). That portion is determined by multiplying the fair market value of the trust, as of the December 31 immediately preceding the year for which the election is made, by the section 2801 ratio in effect on that date, as calculated under paragraph (c)(1)(ii) of this section. If the trustee does not have sufficient books and records to determine what amount of the corpus and undistributed income is attributable to undistributed prior covered gifts and covered bequests, then that amount is deemed to be the entire fair market value of the trust as of that December 31. See paragraph (c)(3) of this section.

(iv) *Designation of U.S. agent*—(A) *In general.* The trustee of an electing foreign trust must designate and authorize a U.S. person, as defined in section 7701(a)(30), to act as an agent for the trust solely for purposes of section 2801. By designating a U.S. agent, the trustee of the foreign

trust agrees to provide the agent with all information necessary to comply with any information request or summons issued by the Secretary. Such information may include, without limitation, copies of the books and records of the trust, financial statements, and appraisals of trust property.

(B) *Role of designated agent.* Acting as an agent for the trust for purposes of section 2801 includes serving as the electing foreign trust's agent for purposes of section 7602 ("Examination of books and witnesses"), section 7603 ("Service of summons"), and section 7604 ("Enforcement of summons") with respect to—

(1) Any request by the Secretary to examine records or produce testimony related to the proper identification or treatment of covered gifts or covered bequests contributed to the electing foreign trust and distributions attributable to such contributions; and

(2) Any summons by the Secretary for records or testimony related to the proper identification or treatment of covered gifts or covered bequests contributed to the electing foreign trust and distributions attributable to such contributions.

(C) *Effect of appointment of U.S. agent.* An electing foreign trust that appoints such an agent is not considered to have an office or a permanent establishment in the United States, or to be engaged in a trade or business in the United States, solely because of the agent's activities as an agent pursuant to this section.

(4) *Annual certification or filing requirement.* The trustee of an electing foreign trust must file a timely Form 708 annually either to report and pay the section 2801 tax on all covered gifts and covered bequests received by the trust during the calendar year, or to certify that the electing foreign trust did not receive any covered gifts or covered bequests during the calendar year.

(5) *Duration of status as electing foreign trust—(i) In general.* A valid election (one that meets all of the requirements of paragraph (d)(3) of this section) is effective as of January 1 of the calendar year for which the Form 708 on which the election is made is filed. The election, once made, applies for all calendar years until the election is terminated as de-

scribed in paragraph (d)(5)(ii) of this section.

(ii) *Termination.* An election to be treated as a domestic trust for purposes of section 2801 is terminated either by the failure of the foreign trust to make the annual filing, together with any payment of the section 2801 tax, as required by paragraph (d)(4) of this section, or by the failure of the foreign trust to timely pay any additional amount of section 2801 tax (in accordance with the requirements of paragraph (d)(6)(ii) of this section) with respect to recalculations described in paragraph (d)(6) of this section (a failure that results in an imperfect election). A termination, if any, is effective as of the beginning of the calendar year for which the trustee fails to make the annual filing required by paragraph (d)(4) of this section or for which the trustee fails to pay any of the amounts described in this paragraph (d)(5)(ii). In the case of a terminated election, the trustee should notify promptly each permissible distributee, as defined in paragraph (d)(3)(ii)(E) of this section, that the foreign trust's election was terminated as of January 1 of the applicable year (with the actual year of the termination being set forth in the notice), and that each U.S. recipient of a distribution made from the foreign trust on and after that date is subject to the section 2801 tax on the portion of each such distribution that is attributable to covered gifts and covered bequests. See paragraph (d)(6)(iii)(B) of this section for an additional notification requirement in the case of an imperfect election.

(iii) *Subsequent elections.* If a foreign trust's election is terminated under paragraph (d)(5)(ii) of this section, the foreign trust is not prohibited from making another election in a future year, subject to the requirements of paragraph (d)(3) of this section.

(6) *Dispute as to amount of section 2801 tax owed by electing foreign trust—*

(i) *Procedure.* If the Commissioner disputes the value of a covered gift or covered bequest, or otherwise challenges the computation of the section 2801 tax, that is reported on the electing foreign trust's timely filed Form 708 for any calendar year, the Commissioner will issue a letter (but not a notice of deficiency as defined in section 6212) to the trustee of the elect-

ing foreign trust and the appointed U.S. agent that details the disputed information and the proper amount of section 2801 tax as recalculated. The foreign trust must pay the additional amount of section 2801 tax including interest and penalties, if any, in accordance with the requirements of paragraph (d)(6)(ii) of this section, on or before the due date specified in the letter to maintain its election.

(ii) *Effect of timely paying the additional section 2801 tax amount.* If the trustee of the foreign trust timely pays the additional amount(s) specified in the Commissioner's letter, or such other amount as agreed to by the Commissioner, and enters into a closing agreement with the IRS as described in section 7121, then the foreign trust's election to be treated as a domestic trust under paragraph (d) of this section remains in effect. In addition, in the absence of fraud, malfeasance, or misrepresentation of a material fact, that payment, in conjunction with the closing agreement, will be deemed to render any determination of value to which the closing agreement applies as final and binding on both the IRS and the foreign trust. Thus, subsequently, the IRS will not be able to challenge the section 2801 tax due from either the foreign trust or any of its beneficiaries who are U.S. citizens or residents for the year for which that Form 708 was filed by the foreign trust, except with respect to any covered gifts or covered bequests not reported on that return, and neither the foreign trust nor any of its beneficiaries will be able to file a claim for refund with respect to section 2801 tax paid by the foreign trust on the covered gifts and covered bequests reported on that Form 708.

(iii) *Effect of failing to timely pay the additional section 2801 tax amount (imperfect election)—(A) In general.* If the foreign trust fails to timely pay the additional amount of section 2801 tax with interest and penalties, if any, claimed to be due by the IRS in accordance with the requirements of paragraph (d)(6)(ii) of this section, then the foreign trust's valid election is terminated and becomes an imperfect election. The foreign trust's election is terminated, and is converted into an imperfect election, retroactively as of the first day of the calendar year for which was filed the Form 708 with respect to

which the additional amount of section 2801 tax is claimed to be due by the IRS. Thus, the value the foreign trust has reported on the Form 708 and on which the trust has paid the section 2801 tax is no longer considered to be attributable to covered gifts or covered bequests when computing the section 2801 ratio described in paragraph (c)(1)(ii) of this section applicable to distributions made by the foreign trust to U.S. recipients during the calendar year for which the Form 708 was filed and thereafter. The U.S. recipients of distributions from the foreign trust, however, should take into consideration the additional value determined by the IRS, on which the foreign trust did not timely pay the section 2801 tax, when computing the section 2801 ratio to be applied to a distribution from the trust. See paragraph (c) of this section. Any disagreement with regard to that additional value will be an issue to be resolved as part of the review of that U.S. recipient's own Form 708 reporting a distribution.

(B) *Notice to permissible beneficiaries.* If the trustee of the foreign trust fails to remit the additional payment of the section 2801 tax including all interest and penalties, if any, in accordance with the requirements of paragraph (d)(6)(ii) of this section, by the due date stated in the IRS letter, the trustee should notify promptly each permissible distributee, as defined in paragraph (d)(3)(ii)(E) of this section, of the amount of additional value on which the foreign trust did not timely pay the section 2801 tax as determined by the IRS and that:

(1) The foreign trust's election was terminated as of January 1 of the applicable year (with the actual year of the termination being set forth in the notice); and

(2) Each U.S. recipient of a distribution made from the foreign trust on and after that termination date is subject to the section 2801 tax on the portion of each such distribution attributable to covered gifts and covered bequests.

(C) *Reasonable cause.* If a U.S. recipient received a distribution from such trust on or after January 1 of the year for which the election was terminated and the election became an imperfect election, provided the U.S. recipient files a Form 708 and pays the section 2801 tax within a

reasonable period of time after being notified by the trustee of the foreign trust or otherwise becoming aware that a valid election was not in effect when the distribution was made, the U.S. recipient's failure to timely file and pay are due to reasonable cause and not willful neglect for purposes of section 6651. For this purpose, a reasonable period of time is not more than six months after the U.S. recipient is notified by the trustee or the U.S. recipient otherwise becomes aware that a valid election is not in effect.

(D) *Interim period.* If a foreign trust's valid election is terminated and becomes an imperfect election, there is a period of time (interim period) after the effective date of the termination of the election during which both the foreign trust and its U.S. beneficiaries are likely to continue to comply with section 2801 as it applies to an electing foreign trust with a valid election in place. The interim period begins on the effective date of the termination of the foreign trust's election that resulted in an imperfect election as described in paragraph (d)(6)(iii)(A) of this section, and ends on December 31 of the calendar year immediately preceding the calendar year in which the additional section 2801 tax claimed by the IRS is due. As under the rule in paragraph (d)(6)(iii)(A) of this section regarding imperfect elections, the covered gifts and covered bequests received by the foreign trust during this interim period, which the foreign trust has reported on its timely filed Form 708 and on which the foreign trust has timely paid the section 2801 tax, are no longer considered to be covered gifts and covered bequests for purposes of computing the section 2801 ratio described in paragraph (c)(1)(ii) of this section as it applies to distributions made by non-electing foreign trusts to their U.S. beneficiaries. In addition, each distribution made by the foreign trust to a U.S. citizen or resident during this interim period must be reported on that U.S. recipient's Form 708 by applying the section 2801 ratio to that distribution. Once the interim period has ended, the foreign trust has no election in place and the rules of section 2801(e)(4)(B)(i) will apply until the foreign trust subsequently (if ever) makes another valid election to be treated as a

domestic trust for purposes of section 2801.

(7) *No overpayment caused solely by virtue of defect in election.* Any remittance of section 2801 tax made by a foreign trust electing to be treated as a domestic trust does not become an overpayment solely by virtue of a defect in the election. Instead, if at some subsequent time the IRS determines that the election was not in fact a valid election, then the election shall be considered valid only with respect to the covered gifts or covered bequests on which the section 2801 tax was timely paid by the foreign trust and each covered gift and covered bequest on which the section 2801 tax has been timely paid is no longer treated as a covered gift or covered bequest for purposes of determining the portion of the foreign trust attributable to covered gifts and covered bequests. See paragraphs (d)(2)(i) and (d)(6)(iii) of this section.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Computation of section 2801 ratio. A and B each contribute \$100,000 to a foreign trust. A (but not B) is a covered expatriate and A's contribution is a covered gift. The section 2801 ratio immediately after these two contributions is 0.50, computed as follows: the pre-contribution value of the trust (\$0) times the pre-contribution section 2801 ratio (-0-), plus the current covered gift (\$100,000), divided by the post-contribution fair market value of the trust (\$200,000). See § 28.2801-5(c). Therefore, 50 percent of each distribution from the trust is subject to the section 2801 tax until the next contribution is made to the trust. If the trustee distributes \$40,000 to C, a U.S. citizen, before the trust receives any other contributions, then \$20,000 ($\$40,000 \times 0.5$) is a covered gift to C.

Example 2. Computation of section 2801 ratio when multiple contributions are made to foreign trust. (i) In 2005, A, a U.S. citizen, established and funded an irrevocable foreign trust with \$200,000 and reported the transfer as a completed gift. On January 1 of each of the following three years (2006 through 2008), A contributed an additional \$100,000 to the foreign trust. A reported A's contributions to the foreign trust as completed gifts on timely filed Forms 709, for calendar years 2005 through 2008. On August 8, 2008, a date after the effective date of section 2801 (June 17, 2008), A expatriated and became a covered expatriate. On January 1 of a year after 2008 (Year X), A makes an additional \$100,000 contribution to the trust. The aggregate \$600,000 contributed to the trust by A, both before and after expatriation, are the only contributions to the trust. Each year, the trustee of the foreign trust provides beneficiary B, a U.S. citizen, with an accounting of the trust showing each receipt and dis-

bursement of the trust during that year, including the date and amount of each contribution by A.

(ii) The fair market value of the trust was \$610,000 immediately prior to A's contribution to the trust on January 1, Year X. Therefore, upon the Year X contribution of A's first and only covered gift, the portion of the trust attributable to covered gifts and covered bequests (covered portion) changed from zero to 0.14 ((section 2801 ratio of 0 x \$610,000 fair market value pre-contribution) plus the \$100,000 covered gift/ \$710,000 fair market value post-contribution). See paragraph (c) of this section.

(iii) In February of Year X, B received a distribution of \$225,000 from the foreign trust. Although A contributed a total of \$600,000 to the foreign trust, A contributed only \$100,000 while A was a covered expatriate. Under paragraph (c) of this section, the portion of the \$225,000 distribution from the foreign trust attributable to a covered gift is \$31,500 ($\$225,000 \times 0.14$ (section 2801 ratio)) because the distribution is made proportionally from the covered and non-covered portions of the trust. See paragraph (c)(1) of this section. Accordingly, B received a covered gift of \$31,500.

(iv) Pursuant to the terms of the foreign trust, the trust made a terminating distribution on August 5, Year X, when B turned 35, and B received the balance of the appreciated trust, \$505,000. The portion of this distribution attributable to covered gifts and covered bequests is \$70,700 ($\$505,000 \times 0.14$). Therefore, B has received covered gifts from the foreign trust during Year X in the total amount of \$102,200 ($\$31,500 + \$70,700$).

Example 3. Termination of foreign trust election. The trustee of a foreign trust that received a covered gift makes a valid election to be treated as a domestic trust under § 28.2801-5(d) for Year 1. However, the trustee fails to file timely the Form 708 for the next year, Year 2. The foreign trust election is terminated as of January 1, Year 2, under paragraph (d)(5)(ii) of this section. Thus, any distributions made to U.S. recipients during Year 1 have a section 2801 ratio of zero and are not subject to the section 2801 tax. However, any such distributions made during Year 2 are subject to the section 2801 tax to the extent the distributions are attributable to a covered gift or covered bequest received by the trust during Year 2. Unless the trustee makes a new election as described in paragraph (d)(5)(iii) of this section, beginning in Year 2, the foreign trust's section 2801 ratio must be recomputed each time the foreign trust receives a contribution.

Example 4. Imperfect election by foreign trust.

(i) In Year 1, CE, a covered expatriate, gives a 20 percent limited partnership interest in a closely held business to a foreign trust created for the benefit of CE's child, A, who is a U.S. citizen. The limited partnership interest is a covered gift. The trustee of the foreign trust makes a valid election to have the trust treated as a domestic trust for purposes of section 2801, trustee timely files a Form 708, and timely pays the section 2801 tax on the reported fair market value of the covered gift (\$500,000). Later in Year 1, the trust makes a \$100,000 distribution to A.

(ii) In Year 2, CE contributes \$200,000 in cash to the foreign trust. The cash is a covered gift. The trustee of the foreign trust timely files a Form 708

reporting the transfer and pays the section 2801 tax. The trust does not make a distribution to any beneficiary during Year 2. Late in Year 3, the IRS disputes the reported value of the partnership interest transferred in Year 1 and determines that the proper valuation on the date of the gift was \$800,000. In Year 3, the IRS issues a letter to the trustee of the foreign trust detailing its finding of the increased valuation and of the resulting additional section 2801 tax including accrued interest, if any, due on or before a later date in Year 3 specified in the letter. The foreign trust fails to pay the additional section 2801 tax liability on or before that due date.

(iii) Under paragraph (d)(6)(iii) of this section, the foreign trust's election for Year 1 is an imperfect election; although it timely filed its return reporting the transfer and paid the tax, it failed to timely pay the additional section 2801 tax when the IRS notified the trust of an additional amount of section 2801 tax claimed to be due. Accordingly, the foreign trust's election is deemed to have terminated as of January 1 of Year 1. In computing the foreign trust's section 2801 ratio upon the receipt of the covered gift in Year 1, the \$500,000 of value on which the section 2801 tax was timely paid is no longer deemed to be a covered gift. See paragraph (d)(6)(iii) of this section. When the trustee advises A of the letter from the IRS, A must file a late Form 708 reporting the portion of the Year 1 distribution attributable to covered gifts and covered bequests. Although A may owe section 2801 tax and interest, A will not owe any penalties under section 6651 as long as A files the Form 708 and pays the tax within a reasonable period of time after A receives notice of the termination of the election from the trustee of the foreign trust or otherwise becomes aware of the termination of the election. See paragraph (d)(6)(iii)(C) of this section.

(iv) When A files the Form 708, the IRS will verify whether A treated the \$300,000 undervaluation claimed by the IRS as a covered gift in computing the section 2801 ratio. As with any other item reported on that return, A has the burden to prove the value of the covered gift to the foreign trust, and the IRS may challenge that value. If A treats the \$300,000 as a covered gift to the trust, under paragraph (c)(1)(ii) of this section, the section 2801 ratio after the Year 1 contribution is 0.375 ($\$0 + (\$300,000)/\$800,000$). Thus, 37.5 percent of all distributions made to A from the foreign trust during Year 1 are subject to the section 2801 tax.

(v) The foreign trust's timely filing of the Form 708 for Year 2 and the timely payment of the section 2801 tax shown on that return is not a valid election under paragraph (d)(5)(iii) of this section because the trust did not timely pay the section 2801 tax on all covered gifts and covered bequests in prior years as required in paragraph (d)(3) of this section, that is, the tax on the additional \$300,000 of value of the Year 1 transfer. However, under paragraph (d)(6)(iii)(D) of this section, because the foreign trust timely filed and paid the section 2801 tax on the Year 2 covered gift of \$200,000, and the additional unpaid tax was not due until Year 3, the \$200,000 amount is no longer considered a covered gift for purposes of computing the section 2801 ratio.

Example 5. Subsequent election after termination of foreign trust election. The facts are the same as in

Example 4. In Year 3, the foreign trust does not receive a covered gift or covered bequest. However, the trustee decides that making another election to be treated as a domestic trust would be in the best interests of the trust's beneficiaries. Accordingly, by the due date for the Form 708 for Year 3, the trustee timely files the return and pays the section 2801 tax on the portion of the trust attributable to covered gifts and covered bequests. See paragraph (d)(5)(iii) of this section. The trustee calculates the portion of the trust attributable to covered gifts and covered bequests received by the trust in prior calendar years by multiplying the fair market value of the trust on December 31, Year 2, by the section 2801 ratio in effect on that date. See paragraph (d)(3)(iii) of this section. The foreign trust is an electing foreign trust in Year 3.

(f) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-6 *Special rules and cross-references.*

(a) *Determination of basis.* For purposes of determining the U.S. recipient's basis in property received as a covered gift or covered bequest, see sections 1015 and 1014, respectively. However, section 1015(d) does not apply to increase the basis in a covered gift to reflect the tax paid under this section. For purposes of determining a U.S. recipient's basis in property received as a covered bequest from a decedent who died during 2010 and whose executor elected under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 not to have the estate tax provisions apply, see section 1022.

(b) *Generation-skipping transfer tax.* Transfers made by a nonresident not a citizen of the United States (NRA transferor) are subject to generation-skipping transfer (GST) tax only to the extent those transfers are subject to federal estate or gift tax as defined in § 26.2652-1(a)(2). In applying this rule, taxable distributions from a trust and taxable terminations are subject to the GST tax only to the extent the NRA transferor's contributions to the trust were subject to federal estate or gift tax as defined in § 26.2652-1(a)(2). See

§ 26.2663-2. A transfer is subject to federal estate or gift tax, regardless of whether a federal estate or gift tax return reporting the transfer is timely filed and regardless of whether chapter 15 applies because of a covered expatriate's failure to timely file and pay the section 2801 tax, if applicable.

(c) *Information returns*—(1) *Gifts and bequests*. Pursuant to section 6039F and the corresponding regulations, and to the extent provided in Notice 97-34, 1997-1 CB 422, and Form 3520, Part IV, each U.S. person (other than an organization described in section 501(c) and exempt from tax under section 501(a) who treats an amount received from a foreign person (other than through a foreign trust) as a gift or bequest (including a covered gift or covered bequest) must report such gift or bequest on Part IV of Form 3520 if the value of the total of such gifts and bequests exceeds a certain threshold. A U.S. citizen or resident, as defined in § 28.2801-2(b) but not including a foreign trust that elects to be treated as a domestic trust, is included within the definition of a U.S. person for purposes of section 6039F.

(2) *Foreign trust distributions*. Pursuant to section 6048(c) and the corresponding regulations, and to the extent provided in Notice 97-34 and Part III of Form 3520, U.S. persons must report each distribution received during the taxable year from a foreign trust on Part III of Form 3520. Under section 6677(a), a penalty of the greater of \$10,000 or 35 percent of the gross value of the distribution may be imposed on a U.S. person who fails to timely report the distribution. A U.S. citizen or resident as defined in § 28.2801-2(b), but not including a foreign trust that elects to be treated as a domestic trust, generally is required to report such a distribution under section 6048(c).

(3) *Penalties and use of information*. The filing of Form 706, Form 706-NA, Form 708, or Form 709 does not relieve a U.S. citizen or resident who is required to file Form 3520 from any penalties imposed under section 6677(a) for failure to comply with section 6048(c), or from any penalties imposed under section 6039F(c) for failure to comply with section 6039F(a). Pursuant to section 6039F(c)(1)(A), the Secretary may determine the tax conse-

quences of the receipt of a purported foreign gift or bequest.

(d) *Application of penalties*—(1) *Accuracy-related penalties on underpayments*. The section 6662 accuracy-related penalty may be imposed upon any underpayment of tax attributable to—

(i) A substantial valuation understatement under section 6662(g) of a covered gift or covered bequest; or

(ii) A gross valuation misstatement under section 6662(h) of a covered gift or covered bequest.

(2) *Penalty for substantial and gross valuation misstatements attributable to incorrect appraisals*. The section 6695A penalty for substantial and gross valuation misstatements attributable to incorrect appraisals may be imposed upon any person who prepares an appraisal of the value of a covered gift or covered bequest.

(3) *Penalty for failure to file a return and to pay tax*. See section 6651 for the application of a penalty for the failure to file Form 708, or the failure to pay the section 2801 tax.

(e) *Effective/applicability date*. This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.2801-7 *Determining responsibility under section 2801*.

(a) *Responsibility of recipients of gifts and bequests from expatriates*. It is the responsibility of the taxpayer (in this case, the U.S. citizen or resident receiving a gift or bequest from an expatriate or a distribution from a foreign trust funded at least in part by an expatriate) to ascertain the taxpayer's obligations under section 2801, which includes making the determination of whether the transferor is a covered expatriate and whether the transfer is a covered gift or covered bequest.

(b) *Disclosure of return and return information*—(1) *In general*. In certain circumstances, the Internal Revenue Service (IRS) may be permitted, upon request of a U.S. citizen or resident in receipt of a gift

or bequest from an expatriate, to disclose to the U.S. citizen or resident return or return information of the donor or decedent expatriate that may assist the U.S. citizen or resident in determining whether the donor or decedent was a covered expatriate and whether the transfer was a covered gift or covered bequest. The U.S. citizen or resident may not rely upon this information, however, if the U.S. citizen or resident knows, or has reason to know, that the information received from the IRS is incorrect. The circumstances under which such information may be disclosed to a U.S. citizen or resident, and the procedures for requesting such information from the IRS, will be as provided by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)).

(2) *Rebuttable presumption*. Unless a living donor expatriate authorizes the disclosure of his or her relevant return or return information to the U.S. citizen or resident receiving the gift, there is a rebuttable presumption that the donor is a covered expatriate and that the gift is a covered gift. A taxpayer who reasonably concludes that a gift or bequest is not subject to section 2801 may file a protective Form 708 in accordance with § 28.6011-1(b) to start the period for the assessment of any section 2801 tax.

(c) *Effective/applicability date*. This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**. Once these regulations have been published as final regulations in the **Federal Register**, taxpayers may rely upon the final rules of this part for the period beginning June 17, 2008, and ending on the date preceding the date these regulations are published as final regulations in the **Federal Register**.

§ 28.6001-1 *Records required to be kept*.

(a) *In general*. Every U.S. recipient as defined in § 28.2801-2(e) subject to taxation under chapter 15 of the Internal Revenue Code must keep, for the purpose of determining the total amount of covered gifts and covered bequests, such permanent books of account or records as are necessary to establish the amount of that person's aggregate covered gifts and covered bequests, and the other information required to be shown on Form 708,

“United States Return of Tax for Gifts and Bequests from Covered Expatriates.” All documents and vouchers used in preparing the Form 708 must be retained by the person required to file the return so as to be available for inspection whenever required.

(b) *Supplemental information.* In order that the Internal Revenue Service (IRS) may determine the correct tax, the U.S. recipient as defined in § 28.2801-2(e) must furnish such supplemental information as may be deemed necessary by the IRS. Therefore, the U.S. recipient must furnish, upon request, copies of all documents relating to the covered gift or covered bequest, appraisals of any items included in the aggregate amount of covered gifts and covered bequests, copies of balance sheets and other financial statements obtainable by that person relating to the value of stock or other property constituting the covered gift or covered bequest, and any other information obtainable by that person that may be necessary in the determination of the tax. See section 2801 and the corresponding regulations. For every policy of life insurance listed on the return, the U.S. recipient must procure a statement from the insurance company on Form 712 and file it with the IRS office where the return is filed. If specifically requested by the Commissioner, the insurance company must file this statement directly with the Commissioner.

§ 28.6011-1 Returns.

(a) *Return required.* The return of any tax to which this part 28 applies must be made on Form 708, “United States Return of Tax for Gifts and Bequests from Covered Expatriates,” according to the instructions applicable to the form. With respect to each covered gift and covered bequest received during the calendar year, the U.S. recipient as defined in § 28.2801-2(e) must include on Form 708 the information set forth in § 25.6019-4. The U.S. recipient must file Form 708 for each calendar year in which a covered gift or covered bequest is received. The U.S. recipient who receives the covered gift or covered bequest during the calendar year is the person required to file the return. A U.S. recipient is not required to file such form, however, for a calendar year in

which the total fair market value of all covered gifts and covered bequests received by that person during that calendar year is less than or equal to the section 2801(c) amount, which is the dollar amount of the per-donee exclusion in effect under section 2503(b) for that calendar year.

(b) *Protective return.* (i) A U.S. citizen or resident (as defined in § 28.2801-2(b)) that receives a gift or bequest from an expatriate and reasonably concludes that the gift or bequest is not a covered gift or a covered bequest from a covered expatriate may file a protective Form 708 in order to start the period for assessment of tax. To be a protective Form 708, it must provide all of the information otherwise required on Form 708, along with an affidavit, signed under penalties of perjury, setting forth the information on which that U.S. citizen or resident has relied in concluding that the donor or decedent, as the case may be, was not a covered expatriate, or that the transfer was not a covered gift or a covered bequest, as well as that person’s efforts to obtain other information that might be relevant to these determinations. If that U.S. citizen or resident has obtained information from the Internal Revenue Service (IRS) (as described in § 28.2801-7(b)(1)), it must attach a copy of such information. The U.S. citizen or resident also must attach a copy of a completed Form 3520, Part III, for all trust distributions, or Part IV for all gifts and bequests, if applicable. If the return meets the requirements of this paragraph (b)(i), and if the IRS does not assess a section 2801 tax liability for that tax year within the limitations period for assessment stated in section 6501, the IRS may not later assess a section 2801 tax with regard to any transfer reported on that Form 708.

(ii) A U.S. citizen or resident who receives a gift or bequest from an expatriate and who files a protective Form 708 meeting the requirements of paragraph (b)(i) of this section showing no tax due, absent fraud or other special factors, will not be subject to any additions to tax for late filing under section 6651(a)(1) or for late payment under section 6651(a)(2), even if the gift or bequest is determined to be a covered gift or covered bequest from a covered expatriate within the limitations period for assessment stated in section

6501. Notwithstanding the foregoing, however, if a U.S. citizen or resident knows, or has reason to know, that the information provided by the IRS or any other source is incorrect or incomplete, that U.S. citizen or resident may not rely on that information, and except as provided in the preceding paragraph (b)(i) of this section, may be subject to all of the generally applicable provisions governing assessment of tax, collection of tax, and penalties. See sections 6501, 6502, 6651 and 6662.

(c) *Effective/applicability dates.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more signing tax return preparers to prepare a return or claim for refund of any tax to which this part 28 applies, other than for the person, at any time during a return period, must satisfy the recordkeeping and inspection requirements in the manner stated in § 1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6071-1 Time for filing returns.

(a) *In general*—(1) A U.S. recipient as defined in § 28.2801-2(e) must file Form 708, “U.S. Return of Gifts or Bequests from Covered Expatriates,” on or before the fifteenth day of the eighteenth calendar month following the close of the calendar year in which the covered gift or covered bequest was received. Notwithstanding the preceding sentence, the due date for a Form 708 reporting a covered bequest that is not received on the decedent’s date of death under § 28.2801-4(d)(3) is the later of—

(i) The fifteenth day of the eighteenth calendar month following the close of the calendar year in which the covered expatriate died; or

(ii) The fifteenth day of the sixth month of the calendar year following the close of

the calendar year in which the covered bequest was received.

(2) If a U.S. recipient receives multiple covered gifts and covered bequests during the same calendar year, the rule in paragraph (a)(1) of this section may result in different due dates and the filing of multiple returns reporting the different transfers received during the same calendar year.

(b) *Migrated foreign trust.* The due date for a Form 708 for the year in which a foreign trust becomes a domestic trust is the fifteenth day of the sixth month of the calendar year following the close of the calendar year in which the foreign trust becomes a domestic trust.

(c) *Certain returns by foreign trusts—*
(1) *Election under § 28.2801-5(d) for calendar year in which no covered gift or covered bequest received.* A foreign trust making an election to be treated as a domestic trust for purposes of section 2801 under § 28.2801-5(d) for a calendar year in which the foreign trust received no covered gifts or covered bequests must file a Form 708 on or before the fifteenth day of the sixth month of the calendar year following the close of the calendar year for which the election is made.

(2) *Certification to maintain election under § 28.2801-5(d) for calendar year in which no covered gift or covered bequest received.* An electing foreign trust filing a Form 708 to certify that the electing foreign trust did not receive any covered gifts or covered bequests during the calendar year must file the Form 708 on or before the fifteenth day of the sixth month of the calendar year following the close of that calendar year. See § 28.2801-5(d)(4).

(d) *Transition period.* The Form 708 reporting covered gifts or covered bequests received on or after June 17, 2008, and before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**, will be due within a reasonable period of time after the date of that publication as specified in the final regulations, but in no event before the due date of the first return required under the final regulations for covered gifts or covered bequests received after the final regulations are published.

(e) *Effective/applicability dates.* This section applies to each Form 708 filed on or after the date on which a Treasury

decision is published adopting these rules as final regulations in the **Federal Register**.

§ 28.6081-1 *Automatic extension of time for filing returns reporting gifts and bequests from covered expatriates.*

(a) *In general.* A U.S. recipient as defined in § 28.2801-2(e) may request an extension of time to file a Form 708, “U.S. Return of Gifts or Bequests from Covered Expatriates,” by filing Form 7004, “Application for Automatic Extension of Time to file Certain Business Income Tax, Information, and Other Returns.” A U.S. recipient must include on Form 7004 an estimate of the amount of section 2801 tax liability and must file Form 7004 with the Internal Revenue Service office designated in the Form’s instructions (except as provided in § 301.6091-1(b) of this chapter for hand-carried documents).

(b) *Automatic extension.* A U.S. recipient as defined in § 28.2801-2(e) will be allowed an automatic six-month extension of time beyond the date prescribed in § 28.6071-1 to file Form 708 if Form 7004 is filed on or before the due date for filing Form 708 in accordance with the procedures under paragraph (a) of this section.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (b) of this section will not extend the time for payment of any tax due with such return.

(d) *Penalties.* See section 6651 regarding penalties for failure to file the required tax return or failure to pay the amount shown as tax on the return.

(e) *Effective/applicability dates.* This section applies to applications for an extension of time to file Form 708 filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6091-1 *Place for filing returns.*

A U.S. recipient as defined in § 28.2801-2(e) must file Form 708, “U.S. Return of Gifts and Bequests from Covered Expatriates,” with the Internal Revenue Service office designated in the instructions applicable to the Form.

§ 28.6101-1 *Period covered by returns.*

See § 28.6011-1 for the rules relating to the period covered by the return.

§ 28.6107-1 *Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.*

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of any tax to which this part 28 applies must furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in § 1.6107-1 of this chapter.

(b) *Effective/applicability dates.* This section applies to returns and claims for refund filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6109-1 *Tax return preparers furnishing identifying numbers for returns or claims for refund.*

(a) *In general.* Each tax return or claim for refund of the tax under chapter 15 of subtitle B of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by § 1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in § 1.6109-2 of this chapter.

(b) *Effective/applicability date.* This section applies on and after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6151-1 *Time and place for paying tax shown on returns.*

The tax due under this part 28 must be paid at the time prescribed in § 28.6071-1 for filing the return, and at the place prescribed in § 28.6091-1 for filing the return.

§ 28.6694-1 *Section 6694 penalties applicable to return preparer.*

(a) *In general.* For general rules regarding section 6694 penalties applicable to preparers of returns or claims for refund of the tax under chapter 15 of subtitle B of the Internal Revenue Code (Code), see § 1.6694-1 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6694–2 *Penalties for understatement due to an unreasonable position.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax under chapter 15 of subtitle B of the Code is subject to penalties under section 6694(a) in the manner stated in § 1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6694–3 *Penalty for understatement due to willful, reckless, or intentional conduct.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax under chapter 15 of subtitle B of the Code is subject to penalties under section 6694(b) in the manner stated in § 1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6694–4 *Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.*

(a) *In general.* For rules relating to the extension of the period of collection when a tax return preparer who prepared a return or claim for refund of tax under chapter 15 of subtitle B of the Code pays 15 percent of a penalty for understatement of taxpayer's liability, and for procedural matters relating to the investigation, assessment, and collection of the penalties under section 6694(a) and (b), the rules under § 1.6694–4 of this chapter apply.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6695–1 *Other assessable penalties with respect to the preparation of tax returns for other persons.*

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax under chapter 15 of subtitle B of the Internal Revenue Code (Code) is subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a

check under section 6695(f) of the Code, in the manner stated in § 1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.6696–1 *Claims for credit or refund by tax return preparers and appraisers.*

(a) *In general.* For rules regarding claims for credit or refund by a tax return preparer who prepared a return or claim for refund for any tax under chapter 15 of subtitle B of the Internal Revenue Code (Code), or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A of the Code, the rules under § 1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section applies to returns and claims for refund filed, appraisals, and advice provided, on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§ 28.7701–1 *Tax return preparer.*

For the definition of the term *tax return preparer*, see § 301.7701–15 of this chapter.

John Dalrymple
Deputy Commissioner for
Services and Enforcement.

(Filed by the Office of the Federal Register on September 9, 2015, 8:45 a.m., and published in the issue of the Federal Register for September 10, 2015, 80 F.R. 54447)

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 sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Internal Revenue Service

Washington, DC 20224

Official Business
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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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