

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2001-52, page 434.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for November 2001.

EMPLOYEE PLANS

Rev. Rul. 2001-51, page 427.

Limitations on benefits and contributions. This ruling provides guidance on the limitations under section 415 of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001. Rev. Rul. 98-1 modified.

T.D. 8966, page 422.

Final regulations under section 125 of the Code relate to the effect of the Family and Medical Leave Act on the operation of cafeteria plans.

REG-142499-01, page 476.

Catch-up contributions for individuals age 50 or over. Proposed regulations under section 414(v) of the Code provide guidance concerning the requirements for retirement plans providing catch-up contributions for individuals age 50 or over. A public hearing is scheduled for February 21, 2002.

Announcement 2001-109, page 485.

Revision of Forms 5300, 5307, 5309, 6406, and Schedule Q (Form 5300). The 2001 revisions of application forms used to request certain determination letters are now available on the IRS Web Site.

EXEMPT ORGANIZATIONS

Announcement 2001-110, page 486.

Northwest Childrens Institute of Seattle, WA, no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

EXCISE TAX

Announcement 2001-111, page 486.

The Service invites comments from the public on issues that the IRS may address in proposed regulations (REG-143219-01) relating to claims for credit or refund of the gasoline tax.

ADMINISTRATIVE

Notice 2001-70, page 437.

Additional disaster relief for taxpayers on account of the September 11, 2001, terrorist attack; depreciation, mid-quarter convention relief. This notice announces that the Treasury Department and the IRS intend to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention rules contained in section 168(d)(3) of the Code to certain property placed in service in the tax year that includes September 11, 2001. This notice also provides guidance on making the election before regulations are issued.

Rev. Proc. 2001-50, page 437.

Rules and specifications for private printing of substitute forms. This procedure provides requirements for reproducing paper substitutes and for furnishing substitute recipient statements for Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S. It will be reproduced as the next revision of Publication 1179. Rev. Proc. 2000-28 superseded.

Announcements of Declaratory Judgment Proceedings Under Section 7428 begin on page 487.

Finding Lists begin on page ii.

Index for July through October begins on page iv.



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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 and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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 proce-

dures 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

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

Section 42.—Low Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, page 434.

Section 125.—Cafeteria Plans

26 CFR 1.125-3: *Effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans.*

T.D. 8966

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to cafeteria plans that reflect changes made by the Family and Medical Leave Act of 1993 (Act). The final regulations provide the public with guidance needed to comply with the Act and affect employees who participate in cafeteria plans.

DATES: *Effective Date:* These regulations are effective October 17, 2001.

Applicability Date: These regulations are applicable for cafeteria plan years beginning on or after January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Shoshanna Chaiton at (202) 622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains additions to the Income Tax Regulations (26 CFR Part 1) under section 125 of the Internal Revenue Code of 1986 (Code). These additions conform the cafeteria plan regulations to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103-3, 29 U.S.C. 2601 *et seq.* FMLA imposes certain requirements on employers regarding coverage, including family cover-

age, under group health plans for employees taking FMLA leave and regarding the restoration of benefits to employees who return from FMLA leave. Proposed regulations, EE-20-95 (1996-1 C.B. 758), published in the Federal Register on December 21, 1995 (60 FR 66229), addressed a number of the principal questions that were raised about how these FMLA requirements affect the operation of cafeteria plans (including flexible spending arrangements) maintained under section 125. These final regulations are based on the 1995 proposed regulations, and include clarifications and other changes resulting from comments received on the proposed regulations.

Summary of Changes

A number of comments that were made in response to the 1995 proposed regulations relate to FMLA. The requirements pertaining to FMLA leave, including the employer's obligation to maintain coverage under a group health plan during FMLA leave and to restore benefits upon return from FMLA leave, are established by FMLA, not the Code. The U.S. Department of Labor, in 29 CFR part 825, has published rules interpreting the requirements of FMLA, and the Department of Labor has jurisdiction relating to those rights or obligations. These final regulations do not interpret FMLA or the rules published by the Department of Labor. Rather, they provide guidance on the cafeteria plan rules that apply to an employee in circumstances to which FMLA and the Labor Regulations thereunder also apply. Accordingly, these final regulations include a number of changes intended to clarify which particular conditions must be satisfied to comply with FMLA and with the cafeteria plan rules.

The Department of the Treasury, including the Internal Revenue Service (IRS), discussed these final regulations with the Department of Labor to ensure that they do not conflict with, and are not inconsistent with, the provisions of FMLA or the Labor regulations thereunder, at 29 CFR Part 825. In response to those discussions and comments made by the public, these cafeteria plan regulations have been changed to clarify the circumstances under

which an employer is required to maintain coverage and an employee is required to continue paying premiums. These changes are described below.

As a general matter, under FMLA, an employer has the obligation to offer coverage under any group health plan for the duration of FMLA leave, whether paid or unpaid, and under the same conditions as coverage would have been provided if the employee had been continuously working during the entire leave period. The employee has the right to keep this coverage by continuing to pay the premium. During the period of FMLA leave, the employer is required to continue payment of its share of the costs of group health insurance coverage, but may condition such continued payments on the employee paying his or her share of the costs under one of the methods set forth at 29 CFR 825.210. See also the notice requirements at 29 CFR 825.301(b)(1)(iv).

Furthermore, the employer must either allow the employee to revoke coverage while on unpaid FMLA leave, or continue coverage but allow the employee to discontinue his or her share of the premium payments while the employee is on unpaid leave. Although ordinarily health plan coverage would cease if an employee does not make his or her share of the premium payments, FMLA does not give the employee a right to require that the employer terminate coverage. The FMLA permits an employer to continue health plan coverage while the employee is on unpaid FMLA leave by paying both the employer's and the employee's share of group health plan contributions. In this event, the employer may recover the employee's share of the contributions when the employee returns from leave or, if the employee fails to return from leave, the employer may recover the employee's share of contributions and may also recover its own share as well under the circumstances set forth in 29 CFR 825.213(a). However, under the FMLA, an employee who chooses to discontinue premium payments may not be required to make contributions until the unpaid FMLA leave ends.

Upon return from leave, FMLA requires that the employee have the right to be reinstated under the same terms as if the employee had worked during the en-

tire leave period without any break in coverage. An employee who has revoked coverage or has failed to make required payments therefore has the right to be reinstated in the group health plan upon return from leave. If the employee does not elect to be reinstated in the group health plan upon return from FMLA leave, the employer may nevertheless require the employee to resume participation if the employer also requires employees who return from unpaid non-FMLA leave to resume participation upon return from leave. This reflects a change in position from the 1995 proposed regulations, which specifically prohibited an employer from requiring an employee whose coverage has terminated while on FMLA leave to reinstate coverage under a health FSA upon return from FMLA leave. Several commentators disagreed with this position, and suggested that the FMLA regulations do not require this rule. In response to these comments, the rule has been modified as described above.

One commentator questioned whether an employee on paid FMLA leave may change or revoke an election. Whether an employer is required to permit an employee on paid FMLA leave to revoke an election is governed by the FMLA and the Labor Regulations thereunder, rather than these regulations. As described above, the FMLA permits an employer to require that the employee continue coverage during an FMLA leave if the employer is continuing the employee's pay during the FMLA leave and does not treat employees on paid FMLA leave differently from other employees on paid leave. If these two conditions are satisfied, as described in Q&A-4, an employer may require that an employee who goes on paid FMLA leave continue to pay premiums by the method normally used during any paid leave.

In response to comments, the rule in the 1995 regulations concerning the catch-up payment option was modified. Under the 1995 regulations, an employee who elected to use the catch-up payment option before going on FMLA leave was required to enter into an advance agreement with the employer specifying that the employee wanted to continue health coverage while on unpaid FMLA leave, that the employer would pay the premiums during the FMLA leave, and that the employee would repay these amounts

upon return. Commentators noted that this rule did not provide enough flexibility for employers attempting to recoup payments in situations where employees originally elected the pay-as-you-go method but then were not able to make those required payments. Accordingly, the rule under the final regulations eliminates the requirement that an employee who elects the catch-up payment option enter into an advance agreement with the employer. The new rule adds flexibility and permits continued coverage because, although employees may still use either the catch-up payment option or the after-tax pay-as-you-go method from the outset, now employers may continue coverage and, under the catch-up payment option, recoup any amounts paid on an employee's behalf if the employee cannot make all the payments under the pay-as-you-go method.

The 1995 proposed regulations included a special proration rule for cases in which health coverage under a flexible spending arrangement (FSA) did not continue during an FMLA leave because the employee revoked coverage or failed to make required payments, and then the employee elects to resume the coverage when the leave ends during the same year. The proposed regulation permitted the employee's coverage to be reduced after the employee resumes work if the employee did not have coverage during the FMLA leave. Based on information provided by the Department of Labor concerning FMLA, the final regulations require that, where an employee does not have coverage under the FSA during FMLA leave because the employee chooses to revoke coverage or does not pay required premiums for any reason during FMLA leave, the employer must provide the employee upon return from FMLA leave a choice between: (1) resuming coverage at the original level and making up the unpaid premium payments or (2) resuming coverage at a level that is reduced under the proration rule and resuming premium payments at the original level. Where the employee selects the prorated method and the plan has already made disbursements to the employee that exceed the premiums that will be paid for the year, the employer may not require the employee to pay any more than the remaining premiums due. If health FSA

coverage does continue during the leave (whether due to an FMLA coverage continuation election by the employee or because the employer's plan requires health FSA coverage to be continued during a leave), there would of course be no proration.

Commentators requested clarification regarding whether employers are required to obtain elections from employees who are on FMLA leave when an open enrollment period occurs. In response to this comment, the final regulations clarify that employees on FMLA leave have the same rights during the leave period as employees participating in a cafeteria plan who are not on FMLA leave. Accordingly, employers are required to give employees on FMLA leave the right to enroll in a plan or change their election while they are on leave in the same manner as for active employees, rather than waiting for the employees on FMLA leave to return to work.

These final regulations supplement the regulations that were issued at §1.125-4 (T.D. 8878, 2000-15 I.R.B. 857, issued in March of 2000 (65 FR 15548) and T.D. 8921, 2001-7 I.R.B. 532, issued in January of 2001 (66 FR 1837)) setting forth the conditions under which a cafeteria plan can permit an employee to make an election change during the year. Thus, as provided at §1.125-4(g), if an employee goes on an FMLA leave, section 125 allows a cafeteria plan to permit the employee to make an election change if the conditions in either these final regulations or the regulations at §1.125-4 are satisfied. Further, as described above, FMLA requires that an employee who goes on an FMLA leave have the same election rights under a group health plan as an employee who is not on FMLA leave. Thus, a cafeteria plan that is subject to FMLA must allow an employee who goes on an FMLA leave to be able to make the same election changes as an employee who is not on an FMLA leave.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C.

chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be 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 Christine Keller, Division Counsel/Associate Chief Counsel (Office of Tax Exempt and Government Entities). However, other personnel from the IRS and Department of the Treasury participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.125-3 is added to read as follows:

§1.125-3 Effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans.

The following questions and answers provide guidance on the effect of the Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 *et. seq.*, on the operation of cafeteria plans:

Q-1: May an employee revoke coverage or cease payment of his or her share of group health plan premiums when taking unpaid FMLA leave?

A-1: Yes. An employer must either allow an employee on unpaid FMLA leave to revoke coverage, or continue coverage but allow the employee to discontinue payment of his or her share of the premium for group health plan coverage (including a health flexible spending arrangement (FSA)) under a cafeteria plan for the period of the FMLA leave. See 29 CFR 825.209(e). FMLA does not require that an employer allow an employee to revoke coverage if the employer

pays the employee's share of premiums. As discussed in Q&A-3, if the employer continues coverage during an FMLA leave, the employer may recover the employee's share of the premiums when the employee returns to work. FMLA also provides the employee a right to be reinstated in the group health plan coverage (including a health FSA) provided under a cafeteria plan upon returning from FMLA leave if the employee's group health plan coverage terminated while on FMLA leave (either by revocation or due to non-payment of premiums). Such an employee is entitled, to the extent required under FMLA, to be reinstated on the same terms as prior to taking FMLA leave (including family or dependent coverage), subject to any changes in benefit levels that may have taken place during the period of FMLA leave as provided in 29 CFR 825.215(d)(1). See 29 CFR 825.209(e) and 825.215(d). In addition, such an employee has the right to revoke or change elections under §1.125-4 (*e.g.*, because of changes in status or cost or coverage changes as provided under §1.125-4) under the same terms and conditions as are available to employees participating in the cafeteria plan who are working and not on FMLA leave.

Q-2: Who is responsible for making premium payments under a cafeteria plan when an employee on FMLA leave continues group health plan coverage?

A-2: FMLA provides that an employee is entitled to continue group health plan coverage during FMLA leave whether or not that coverage is provided under a health FSA or other component of a cafeteria plan. See 29 CFR 825.209(b). FMLA permits an employer to require an employee who chooses to continue group health plan coverage while on FMLA leave to be responsible for the share of group health premiums that would be allocable to the employee if the employee were working, and, for this purpose, treats amounts paid pursuant to a pre-tax salary reduction agreement as amounts allocable to the employee. However, FMLA requires the employer to continue to contribute the share of the cost of the employee's coverage that the employer was paying before the employee commenced FMLA leave. See 29 CFR 825.100(b) and 825.210(a).

Q-3: What payment options are required or permitted to be offered under a

cafeteria plan to an employee who continues group health plan coverage while on unpaid FMLA leave, and what is the tax treatment of these payments?

A-3: (a) *In general.* Subject to the limitations described in paragraph (b) of this Q&A-3, a cafeteria plan may offer one or more of the following payment options, or a combination of these options, to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave; provided that the payment options for employees on FMLA leave are offered on terms at least as favorable as those offered to employees not on FMLA leave. These options are referred to in this section as pre-pay, pay-as-you-go, and catch-up. See also the FMLA notice requirements at 29 CFR 825.301(b)(1)(iv).

(1) *Pre-pay.* (i) Under the pre-pay option, a cafeteria plan may permit an employee to pay, prior to commencement of the FMLA leave period, the amounts due for the FMLA leave period. However, FMLA provides that the employer may not mandate that an employee pre-pay the amounts due for the leave period. See 29 CFR 825.210(c)(3) and (4).

(ii) Contributions under the pre-pay option may be made on a pre-tax salary reduction basis from any taxable compensation (including from unused sick days or vacation days). However, see Q&A-5 of this section regarding additional restrictions on pre-tax salary reduction contributions when an employee's FMLA leave spans two cafeteria plan years.

(iii) Contributions under the pre-pay option may also be made on an after-tax basis.

(2) *Pay-as-you-go.* (i) Under the pay-as-you-go option, employees may pay their share of the premium payments on the same schedule as payments would have been made if the employee were not on leave or under any other payment schedule permitted by the Labor Regulations at 29 CFR 825.210(c) (*e.g.*, on the same schedule as payments are made under section 4980B (relating to coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) 26 U.S.C. 4980B), under the employer's existing rules for payment by employees on leave without pay, or under any other system voluntarily agreed to between the employer and the employee that is not incon-

sistent with this section or with 29 CFR 825.210(c)).

(ii) Contributions under the pay-as-you-go option are generally made by the employee on an after-tax basis. However, contributions may be made on a pre-tax basis to the extent that the contributions are made from taxable compensation (e.g., from unused sick days or vacation days) that is due the employee during the leave period.

(iii) An employer is not required to continue the group health coverage of an employee who fails to make required premium payments while on FMLA leave, provided that the employer follows the notice procedures required under FMLA. See 29 CFR 825.212. However, if the employer chooses to continue the health coverage of an employee who fails to pay his or her share of the premium payments while on FMLA leave, FMLA permits the employer to recoup the premiums (to the extent of the employee's share). See 29 CFR 825.212(b). Such recoupment may be made as set forth in paragraphs (a)(3)(i) and (ii) of this Q&A-3. See also Q&A-6 of this section regarding coverage under a health FSA when an employee fails to make the required premium payments while on FMLA leave.

(3) *Catch-up.* (i) Under the catch-up option, the employer and the employee may agree in advance that the group coverage will continue during the period of unpaid FMLA leave, and that the employee will not pay premiums until the employee returns from the FMLA leave. Where an employee is electing to use the catch-up option, the employer and the employee must agree in advance of the coverage period that: the employee elects to continue health coverage while on unpaid FMLA leave; the employer assumes responsibility for advancing payment of the premiums on the employee's behalf during the FMLA leave; and these advance amounts are to be paid by the employee when the employee returns from FMLA leave.

(ii) When an employee fails to make required premium payments while on FMLA leave, an employer is permitted to utilize the catch-up option to recoup the employee's share of premium payments when the employee returns from FMLA leave. See, e.g., 29 CFR 825.212(b). If the employer chooses to continue group

coverage under these circumstances, the prior agreement of the employee, as set forth in paragraph (a)(3)(i) of this Q&A-3, is not required.

(iii) Contributions under the catch-up option may be made on a pre-tax salary reduction basis from any available taxable compensation (including from unused sick days and vacation days) after the employee returns from FMLA leave. The cafeteria plan may provide for the catch-up option to apply on a pre-tax salary reduction basis if premiums have not been paid on any other basis (i.e., have not been paid under the pre-pay or pay-as-you-go options or on a catch-up after-tax basis).

(iv) Contributions under the catch-up option may also be made on an after-tax basis.

(b) *Exceptions.* Whatever payment options are offered to employees on non-FMLA leave must be offered to employees on FMLA leave. In accordance with 29 CFR 825.210(c), cafeteria plans may offer one or more of the payment options described in paragraph (a) of this Q&A-3, with the following exceptions:

(1) FMLA does not permit the pre-pay option to be the sole option offered to employees on FMLA leave. However, the cafeteria plan may include pre-payment as an option for employees on FMLA leave, even if such option is not offered to employees on non-FMLA leave-without-pay.

(2) FMLA allows the catch-up option to be the sole option offered to employees on FMLA leave if and only if the catch-up option is the sole option offered to employees on non-FMLA leave-without-pay.

(3) If the pay-as-you-go option is offered to employees on non-FMLA leave-without-pay, the option must also be offered to employees on FMLA leave. The employer may also offer employees on FMLA leave the pre-pay option and/or the catch-up option.

(c) *Voluntary waiver of employee payments.* In addition to the foregoing payment options, an employer may voluntarily waive, on a nondiscriminatory basis, the requirement that employees who elect to continue group health coverage while on FMLA leave pay the amounts the employees would otherwise be required to pay for the leave period.

(d) *Example.* The following example illustrates this Q&A-3:

Example. (i) Employer Y allows employees to pay premiums for group health coverage during an FMLA leave on an after-tax basis while the employee is on unpaid FMLA leave. Under the terms of Y's cafeteria plan, if an employee elects to continue health coverage during an unpaid FMLA leave and fails to pay one or more of the after-tax premium payments due for that coverage, the employee's salary after the employee returns from FMLA leave is reduced to cover unpaid premiums (i.e. the premiums that were to be paid by the employee on an after-tax basis during the FMLA leave, but were paid by the employer instead).

(ii) In this *Example*, Y's cafeteria plan satisfies the conditions in this Q&A-3. Y's cafeteria plan would also satisfy the conditions in this Q&A-3 if the plan provided for coverage to cease in the event the employee fails to make a premium payment when due during an unpaid FMLA leave.

Q-4: Do the special FMLA requirements concerning payment of premiums by an employee who continues group health plan coverage under a cafeteria plan apply if the employee is on paid FMLA leave?

A-4: No. The Labor Regulations provide that, if an employee's FMLA leave is paid leave as described at 29 CFR 825.207 and the employer mandates that the employee continue group health plan coverage while on FMLA leave, the employee's share of the premiums must be paid by the method normally used during any paid leave (e.g., by pre-tax salary reduction if the employee's share of premiums were paid by pre-tax salary reduction before the FMLA leave began). See 29 CFR 825.210(b).

Q-5: What restrictions apply to contributions when an employee's FMLA leave spans two cafeteria plan years?

A-5: (a) No amount will be included in an employee's gross income due to participation in a cafeteria plan during FMLA leave, provided that the plan complies with other generally applicable cafeteria plan requirements. Among other requirements, a plan may not operate in a manner that enables employees on FMLA leave to defer compensation from one cafeteria plan year to a subsequent cafeteria plan year. See section 125(d)(2).

(b) The following example illustrates this Q&A-5:

Example. (i) Employee A elects group health coverage under a calendar year cafeteria plan maintained by Employer X. Employee A's premium for health coverage is \$100 per month throughout the 12-month period of coverage. Employee A takes FMLA leave for 12 weeks beginning on October 31 after making 10 months of premium payments totaling \$1,000 (10 months x \$ 100 = \$1,000). Employee A elects to continue health coverage while on

FMLA leave and utilizes the pre-pay option by applying his or her unused sick days in order to make the required premium payments due while he or she is on FMLA leave.

(ii) Because A cannot defer compensation from one plan year to a subsequent plan year, A may pre-pay the premiums due in November and December (*i.e.*, \$100 per month) on a pre-tax basis, but A cannot pre-pay the premium payment due in January on a pre-tax basis. If A participates in the cafeteria plan in the subsequent plan year, A must either pre-pay for January on an after-tax basis or use another option (*e.g.*, pay-as-you-go, catch-up, reduction in unused sick days, etc.) to make the premium payment due in January.

Q-6: Are there special rules concerning employees taking FMLA leave who participate in health FSAs offered under a cafeteria plan?

A-6: (a) *In general.* (1) A group health plan that is a flexible spending arrangement (FSA) offered under a cafeteria plan must conform to the generally applicable rules in this section concerning employees who take FMLA leave. Thus, to the extent required by FMLA (see 29 CFR 825.209(b)), an employer must –

(i) Permit an employee taking FMLA leave to continue coverage under a health FSA while on FMLA leave; and

(ii) If an employee is on unpaid FMLA leave, either –

(A) Allow the employee to revoke coverage; or

(B) Continue coverage, but allow the employee to discontinue payment of his or her share of the premium for the health FSA under the cafeteria plan during the unpaid FMLA leave period.

(2) Under FMLA, the plan must permit the employee to be reinstated in health coverage upon return from FMLA leave on the same terms as if the employee had been working throughout the leave period, without a break in coverage. See 29 CFR 825.214(a) and 825.215(d)(1) and paragraph (b)(2) of this Q&A-6. In addition, under FMLA, a plan may require an employee to be reinstated in health coverage upon return from a period of unpaid FMLA leave, provided that employees who return from a period of unpaid leave not covered by the FMLA are also required to resume participation upon return from leave.

(b) *Coverage.* (1) Regardless of the payment option selected under Q&A-3 of this section, for so long as the employee continues health FSA coverage (or for so long as the employer continues the health FSA coverage of an employee who fails

to make the required contributions as described in Q&A-3(a)(2)(iii) of this section), the full amount of the elected health FSA coverage, less any prior reimbursements, must be available to the employee at all times, including the FMLA leave period.

(2) (i) If an employee's coverage under the health FSA terminates while the employee is on FMLA leave, the employee is not entitled to receive reimbursements for claims incurred during the period when the coverage is terminated. If an employee subsequently elects or the employer requires the employee to be reinstated in the health FSA upon return from FMLA leave for the remainder of the plan year, the employee may not retroactively elect health FSA coverage for claims incurred during the period when the coverage was terminated. Upon reinstatement into a health FSA upon return from FMLA leave (either because the employee elects reinstatement or because the employer requires reinstatement), the employee has the right under FMLA: to resume coverage at the level in effect before the FMLA leave and make up the unpaid premium payments, or to resume coverage at a level that is reduced and resume premium payments at the level in effect before the FMLA leave. If an employee chooses to resume health FSA coverage at a level that is reduced, the coverage is prorated for the period during the FMLA leave for which no premiums were paid. In both cases, the coverage level is reduced by prior reimbursements.

(ii) FMLA requires that an employee on FMLA leave have the right to revoke or change elections (because of events described in § 1.125-4) under the same terms and conditions that apply to employees participating in the cafeteria plan who are not on FMLA leave. Thus, for example, if a group health plan offers an annual open enrollment period to active employees, then, under FMLA, an employee on FMLA leave when the open enrollment is offered must be offered the right to make election changes on the same basis as other employees. Similarly, if a group health plan decides to offer a new benefit package option and allows active employees to elect the new option, then, under FMLA, an employee on FMLA leave must be allowed to elect the new option on the same basis as other employees.

(3) The following examples illustrate the rules in this Q&A-6:

Example 1. (i) Employee B elects \$1,200 worth of coverage under a calendar year health FSA provided under a cafeteria plan, with an annual premium of \$1,200. Employee B is permitted to pay the \$1,200 through pre-tax salary reduction amounts of \$100 per month throughout the 12-month period of coverage. Employee B incurs no medical expenses prior to April 1. On April 1, B takes FMLA leave after making three months of contributions totaling \$300 (3 months x \$ 100 = \$300). Employee B's coverage ceases during the FMLA leave. Consequently, B makes no premium payments for the months of April, May, and June, and B is not entitled to submit claims or receive reimbursements for expenses incurred during this period. Employee B returns from FMLA leave and elects to be reinstated in the health FSA on July 1.

(ii) Employee B must be given a choice of resuming coverage at the level in effect before the FMLA leave (*i.e.*, \$1,200) and making up the unpaid premium payments (\$300), or resuming health FSA coverage at a level that is reduced on a *pro-rata* basis for the period during the FMLA leave for which no premiums were paid (*i.e.*, reduced for 3 months or 1/4 of the plan year) less prior reimbursements (*i.e.*, \$0) with premium payments due in the same monthly amount payable before the leave (*i.e.*, \$100 per month). Consequently, if B chooses to resume coverage at the level in effect before the FMLA leave, B's coverage for the remainder of the plan year would equal \$1,200 and B's monthly premiums would be increased to \$150 per month for the remainder of the plan year, to make up the \$300 in premiums missed (\$100 per month plus \$50 per month (\$300 divided by the remaining 6 months)). If B chooses prorated coverage, B's coverage for the remainder of the plan year would equal \$900, and B would resume making premium payments of \$100 per month for the remainder of the plan year.

Example 2. (i) Assume the same facts as *Example 1* except that B incurred medical expenses totaling \$200 in February and obtained reimbursement of these expenses.

(ii) The results are the same as in *Example 1*, except that if B chooses to resume coverage at the level in effect before the FMLA leave, B's coverage for the remainder of the year would equal \$1,000 (\$1,200 reduced by \$200) and the monthly payments for the remainder of the year would still equal \$150. If instead B chooses prorated coverage, B's coverage for the remainder of the plan year would equal \$700 (\$1,200 prorated for 3 months, and then reduced by \$200) and the monthly payments for the remainder of the year would still equal \$100.

Example 3. (i) Assume the same facts as *Example 1* except that, prior to taking FMLA leave, B elects to continue health FSA coverage during the FMLA leave. The plan permits B (and B elects) to use the catch-up payment option described in Q&A-3 of this section, and as further permitted under the plan, B chooses to repay the \$300 in missed payments on a ratable basis over the remaining 6-month period of coverage (*i.e.*, \$50 per month).

(ii) Thus, B's monthly premium payments for the remainder of the plan year will be \$150 (\$100 + \$50).

Q-7: Are employees entitled to non-health benefits while taking FMLA leave?

A-7: FMLA does not require an employer to maintain an employee's non-health benefits (e.g., life insurance) during FMLA leave. An employee's entitlement to benefits other than group health benefits under a cafeteria plan during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on non-FMLA leave (paid or unpaid). See 29 CFR 825.209(h). Therefore, an employee who takes FMLA leave is entitled to revoke an election of non-health benefits under a cafeteria plan to the same extent as employees taking non-FMLA leave are permitted to revoke elections of non-health benefits under a cafeteria plan. For example, election changes are permitted due to changes of status or upon enrollment for a new plan year. See § 1.125-4. However, FMLA provides that, in certain cases, an employer may continue an employee's non-health benefits under the employer's cafeteria plan while the employee is on FMLA leave in order to ensure that the employer can meet its responsibility to provide equivalent benefits to the employee upon return from unpaid FMLA. If the employer continues an employee's non-health benefits during FMLA leave, the employer is entitled to recoup the costs incurred for paying the employee's share of the premiums during the FMLA leave period. See 29 CFR 825.213(b). Such recoupment may be on a pre-tax basis. A cafeteria plan must, as required by FMLA, permit an employee whose coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums) to be reinstated in the cafeteria plan on return from FMLA leave. See 29 CFR 825.214(a) and 825.215(d).

Q-8: What is the applicability date of the regulations in this section?

A-8: This section is applicable for cafeteria plan years beginning on or after January 1, 2002.

Par. 3. Section 1.125-4 is amended by adding a sentence at the end of paragraph (g) to read as follows:

§ 1.125-4 Permitted election changes.

* * * * *

(g) *Special requirements relating to the Family and Medical Leave Act.* * * * See § 1.125-3 for additional rules.

* * * * *

David A. Mader,
*Acting Deputy Commissioner
of Internal Revenue.*

Approved October 9, 2001.

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

(Filed by the Office of the Federal Register on October 16, 2001, 8:45 a.m., and published in the issue of the Federal Register for October 17, 2001, 66 F.R. 52676)

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, page 434.

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

The adjusted applicable federal long-term rate is set forth for the month of November 2001. See Rev. Rul. 2001-52, page 434.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, page 434.

Section 415.—Limitations on Benefits and Contributions Under Qualified Plans

Limitations on benefits and contributions. This ruling provides guidance on the limitations under section 415 of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001.

Rev. Rul. 2001-51

I. Purpose

This revenue ruling provides guidance relating to the increases in the limitations of § 415 of the Internal Revenue Code (Code) enacted as part of the Economic Growth and Tax Relief Reconciliation Act

of 2001 (EGTRRA), Pub. L. 107-16. Specifically, this revenue ruling provides questions and answers on:

- Benefit increases that may be provided as a result of the increased § 415 limitations under EGTRRA;
- Plan amendments that may be adopted to take into account the increased § 415 limitations under EGTRRA;
- The effect of the increased § 415 limitations under EGTRRA on other qualification requirements; and
- How the “sunset” provision of EGTRRA is taken into account for purposes of §§ 412 and 404.

II. Background

Rules in Effect Prior to EGTRRA

Section 415 of the Code imposes limitations on contributions and benefits under qualified plans. The benefits that may be provided to a participant under a defined benefit plan must not exceed the limitations of § 415(b). Section 415(b) provides that benefits provided to a participant under a defined benefit plan must not exceed the lesser of the defined benefit dollar limitation of § 415(b)(1)(A) and the defined benefit compensation limitation of § 415(b)(1)(B), both adjusted as required under § 415(b). The defined benefit dollar limitation prior to the effective date of the EGTRRA amendment is \$90,000, adjusted annually for cost-of-living increases under § 415(d), with the adjusted limit effective January 1 of the following calendar year. The defined benefit dollar limitation in effect for a calendar year (e.g., \$140,000, effective January 1, 2001) applies to all limitation years that end with or within the calendar year. Prior to the effective date of the EGTRRA amendment, the defined benefit dollar limitation is adjusted under § 415(b)(2) for commencement of benefits before or after a participant's social security retirement age. Under § 415(b)(5), the defined benefit dollar limitation is adjusted for less than 10 years of participation. The defined benefit compensation limitation is equal to a participant's high 3-year average compensation, adjusted, if applicable, under § 415(b)(5) for less than 10 years of service. The limitations of § 415 as in effect immediately prior to the effective date for a plan of changes enacted under

EGTRRA are referred to in this revenue ruling as the “pre-EGTRRA § 415 limitations.”

Annual additions credited to a participant’s account under a defined contribution plan must not exceed the limitations of § 415(c). Section 415(c) provides that annual additions credited on behalf of a participant under a defined contribution plan must not exceed the lesser of the defined contribution dollar limitation of § 415(c)(1)(A), or the defined contribution compensation limitation of § 415(c)(1)(B). Prior to the effective date of the EGTRRA amendment, the defined contribution dollar limitation is \$30,000, adjusted annually under § 415(d) for cost-of-living increases, with the adjusted limit effective January 1 of the following calendar year. The defined contribution dollar limitation in effect for a calendar year (e.g., \$35,000, effective January 1, 2001) applies to all limitation years that end with or within the calendar year. Prior to the effective date of the EGTRRA amendment, the defined contribution compensation limitation is 25 percent of a participant’s compensation.

Section 411(a) prescribes rules as to when an employee’s right to his or her normal retirement benefit must become nonforfeitable under a qualified plan. Section 411(d)(6) generally prohibits a plan amendment, except for an amendment described in § 412(c)(8), that has the effect of decreasing a participant’s accrued benefits under the plan.

Section 1106(h) of the Taxpayer Reform Act of 1986, Pub. L. 99-514, provides that notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury, a plan may incorporate by reference the limitations under § 415 of the Code. In Notice 87-21 (1987-1 C.B. 458) Q&A-11, the Service provided guidance for plans to incorporate by reference the limitations of § 415, for limitation years beginning on or after January 1, 1987.

Section 401(a)(4) prescribes nondiscrimination rules for qualified plans. Section 1.401(a)(4)-2 of the Income Tax Regulations imposes requirements relating to nondiscrimination in amount of employer contributions under a defined contribution plan. For this purpose, § 1.401(a)(4)-2(b) provides two safe harbor tests, and § 1.401(a)(4)-2(c) provides

a general test. In order to satisfy either of the safe harbors, a plan must provide for either a uniform allocation formula or a uniform points allocation formula as described in the regulation.

Section 1.401(a)(4)-3 imposes requirements relating to nondiscrimination in amount of benefits under a defined benefit plan. For this purpose, § 1.401(a)(4)-3(b) provides several safe harbor tests, and § 1.401(a)(4)-3(c) provides a general test. In order to satisfy any of the safe harbors, a plan must provide for a uniform normal retirement benefit, uniform post-normal retirement benefit, and uniform subsidies. Plans that satisfy the general test may do so by testing benefits with or without the application of the § 415 limitations.

Changes Under EGTRRA

Section 611(a)(1) of EGTRRA increased the defined benefit dollar limitation of § 415(b) of the Code to \$160,000, effective for limitation years ending after December 31, 2001. Under section 611(a)(2) of EGTRRA, effective for limitation years ending after December 31, 2001, the § 415(b) dollar limitation is reduced for commencement of benefits prior to age 62, rather than for commencement of benefits prior to a participant’s social security retirement age, and no adjustment to the dollar limitation is required where a participant’s benefit commences after age 62 and not later than age 65. Under section 611(a)(3) of EGTRRA, effective for limitation years ending after December 31, 2001, the § 415(b) dollar limitation is increased when benefits commence after age 65, rather than for benefits that commence after a participant’s social security retirement age.

Specific amendments affecting multiemployer plans (as defined in § 414(f)) were made to §§ 415(b)(11) and 415(f) of the Code, respectively, by sections 654(a) and (b) of EGTRRA to provide, respectively, that: (1) the defined benefit compensation limit of § 415(b)(1)(B) does not apply to a multiemployer plan, effective for limitation years beginning after December 31, 2001; and (2) multiemployer plans are not combined or aggregated (a) with any other plan which is not a multiemployer plan for purposes of applying § 415(b)(1)(B) to such other plan, or (b)

with any other multiemployer plan for purposes of applying the limitations of § 415, effective for limitation years beginning after December 31, 2001.

Section 611(b) of EGTRRA increased the defined contribution dollar limitation of § 415(c)(1)(A) of the Code to \$40,000, effective for limitation years beginning after December 31, 2001. Section 632(a) of EGTRRA increased the “25 percent” in the defined contribution compensation limitation of § 415(c)(1)(B) of the Code to “100 percent,” effective for years beginning after December 31, 2001.

Section 611 of EGTRRA also made changes to the methodology for determining cost-of-living increases under § 415(d) of the Code.

Section 901(a) of EGTRRA provides a “sunset” provision under which all provisions of, and amendments made by, EGTRRA shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.

The Conference Report (*H.R. Conf. Rep. No. 84*, 107th Cong., 1st Sess. 212, 214 (2001)) that accompanies EGTRRA provides that in adopting rules regarding the application of the increases in the defined benefit plan limits, it is intended that the Secretary will apply rules similar to those adopted in Notice 99-44 (1999-2 C.B. 326) regarding benefit increases due to the repeal of the combined plan limit under former § 415(e).

III. Questions and Answers on § 415 Changes Under EGTRRA

Q-1: What is the effective date of the increase in the dollar limitation for defined benefit plans under section 611(a) of EGTRRA?

A-1: In accordance with section 611(i)(2) of EGTRRA, the increase in the dollar limitation for defined benefit plans under section 611(a) of EGTRRA is effective for the first limitation year ending after December 31, 2001. Thus, the defined benefit dollar limitation applicable to any limitation year ending in 2002 is \$160,000.

With respect to limitation years ending after December 31, 2001, a defined benefit plan will not fail to satisfy § 415 solely because the plan provides that the benefit of any participant exceeds the pre-EGTRRA § 415(b) limitations. Accordingly, the pre-

EGTRRA § 415 limitations will not limit the benefit of a participant in a defined benefit plan whose benefit has not commenced as of the first day of the first limitation year ending after December 31, 2001. For rules regarding the application of the pre-EGTRRA § 415(b) limitations to a participant in a defined benefit plan whose benefit has commenced as of that date, see Q&A-5.

Example 1

Plan A is a defined benefit plan with a calendar year limitation year. When will the dollar limit applicable to the benefits of participants under Plan A be increased to \$160,000 under EGTRRA?

For participants of Plan A, the increase in the dollar limitation to \$160,000 is effective for the limitation year beginning January 1, 2002 (and ending December 31, 2002).

Example 2

Plan B is a defined benefit plan with a limitation year that begins February 1. When will the dollar limit applicable to the benefits of participants under Plan B increase to \$160,000 under EGTRRA?

For participants of Plan B, the increase in the dollar limitation to \$160,000 is effective for the limitation year beginning February 1, 2001 (and ending January 31, 2002).

Q-2: If a defined benefit plan is not amended to take into account the increased § 415 limitations under EGTRRA, how may the benefits of plan participants be affected?

A-2: If a defined benefit plan is not amended to take into account the increased § 415 limitations under EGTRRA, the effect on the benefits of plan participants will depend on the plan's existing provisions for applying the limitations of § 415 and any other relevant plan provisions. In some circumstances, a plan's existing provisions could result in automatic benefit increases for participants as of the effective date of the increased § 415 limitations for the plan. For example, the increased § 415 limitations under EGTRRA could result in automatic benefit increases for participants in

defined benefit plans that incorporate by reference the limitations of § 415.

Example

Participant B, a participant in a defined benefit plan (Plan R) with a limitation year beginning March 1, 2001, and ending February 28, 2002, retires on April 1, 2001, at age 65 (Participant B's social security retirement age) and receives a single-sum distribution of his benefit on May 1, 2001. On retirement, Participant B's annual benefit in the form of an annuity under the plan formula was \$170,000, but Participant B's accrued benefit under the plan was limited to \$140,000 to satisfy § 415. Participant B received the single-sum equivalent of an annual benefit of \$140,000. The terms of Plan R incorporate the limitations of § 415 of the Code by reference. What effect does the increase in the defined benefit dollar limitation under EGTRRA have on Participant B's benefit?

The defined benefit dollar limitation in effect for 2001 (\$140,000) was used in the calculation of the single sum distributed on May 1, 2001. The increase in the defined benefit dollar limitation to \$160,000 under EGTRRA is effective for Plan R for the limitation year beginning March 1, 2001, and ending February 28, 2002. Therefore, the \$160,000 dollar limitation applies to Participant B's benefit, and Participant B's benefit must increase. Participant B must receive an additional lump sum amount to reflect the higher dollar limitation applicable to Participant B's benefit. The additional lump sum benefit is calculated as the actuarial equivalent of the excess of (1) Participant B's accrued benefit in the form of a straight life annuity when the dollar limitation applicable at Participant B's retirement age under EGTRRA is taken into account, over (2) Participant B's accrued benefit in the form of a straight life annuity when the pre-EGTRRA dollar limitation applicable at Participant B's retirement age is taken into account.

Q-3: How do the increased § 415(b) limitations under EGTRRA affect the methodology used to apply the § 415(b) limitations to a benefit under a defined

benefit plan that is not payable in the form of an annual straight life annuity within the meaning of § 415(b)(2)(A)?

A-3: The determination as to whether such a benefit satisfies the 415(b) limitations generally follows the same steps and procedures as those used in Q&A-7 and Q&A-8, as applicable, of Rev. Rul. 98-1 (1998-1 C.B. 249), with the following modifications. As in Rev. Rul. 98-1, to satisfy the limitations of § 415(b), a participant's benefit must not exceed the lesser of the § 415(b) dollar limitation applicable to the participant and the § 415(b) compensation limitation applicable to the participant. See Rev. Rul. 98-1 for a more detailed description of the methodology used in the steps below.

Step 1, the determination of the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit, is unchanged from Q&A-7 and Q&A-8, as applicable, of Rev. Rul. 98-1.

Step 2, the determination of the § 415(b) dollar limitation that applies at the age the benefit is payable under Q&A-7 and Q&A-9, as applicable, of Rev. Rul. 98-1, is modified to reflect the increase of the defined benefit dollar limitation to \$160,000, and the amendment of § 415(b)(2)(C) and § 415(b)(2)(D), as described in the following two paragraphs.

Effective for limitation years ending after December 31, 2001, § 415(b)(2)(C) as amended by EGTRRA provides that the § 415(b) dollar limitation is reduced when a participant's benefit commences prior to age 62, rather than for a benefit that commences prior to a participant's social security retirement age, and there are no age adjustments to the dollar limitation where a participant's benefit commences after age 62 and no later than age 65. Where a participant's benefit commences prior to age 62, the § 415(b) dollar limitation applicable to the participant at the earlier age is the annual benefit payable in the form of a straight life annuity commencing at the earlier age that is actuarially equivalent to the § 415(b) dollar limitation applicable to the participant at age 62, calculated using assumptions that satisfy § 415(b)(2)(E).

Effective for limitation years ending after December 31, 2001, § 415(b)(2)(D) as amended by EGTRRA provides that the § 415(b) dollar limitation is increased when a participant's benefit commences after age 65, rather than for a benefit that commences after a participant's social security retirement age. Where a participant's benefit commences after age 65, the § 415(b) dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity commencing at the later age that is actuarially equivalent to the § 415(b) dollar limitation applicable to the participant at age 65, calculated using assumptions that satisfy § 415(b)(2)(E).

Step 3, the determination of the § 415(b) compensation limitation applicable to the participant, is unchanged. However, see Q&A-8 of this revenue ruling for new rules relating to multiemployer plans.

Q-4: What special considerations for a defined benefit plan that has a normal retirement age less than 65 must be taken into account once the amendments to § 415 under EGTRRA are effective for the plan?

A-4: In the case of a defined benefit plan with a normal retirement age less than 65, the requirements for nonforfeitability of benefits and actuarial increase for delayed retirement of § 411 of the Code must be coordinated with the requirements of § 415. Under § 411, if benefits are not paid to a participant after the participant attains the plan's normal retirement age, and the plan's terms do not provide for the "suspension" of the participant's benefits in accordance with § 411(a)(3)(B) of the Code and 29 C.F.R. § 2530.203-3, then the participant's benefit must be actuarially increased for late retirement to avoid any forfeiture of the participant's benefit. However, under § 415 as amended by EGTRRA, the dollar limitation applicable to a participant does not increase between ages 62 and 65. If a participant continues to work past a plan's normal retirement age that is less than 65, and the participant's benefit equals the § 415 dollar limitation at an age between 62 and 65, any actuarial increase to the participant's benefit after that age and prior to age 65 would violate § 415. In such a case, in

order to satisfy §§ 415 and 411, the terms of the plan must either provide for the in-service payment of the participant's benefit (where the participant has attained normal retirement age and has a benefit that cannot be actuarially increased without violating § 415), or provide for the suspension of benefits in accordance with § 411(a)(3)(B) of the Code and 29 C.F.R. § 2530.203-3.

Q-5: May a defined benefit plan provide for benefit increases to reflect the increased § 415 limitations under EGTRRA for a current or former employee who has commenced benefits under the plan prior to the effective date of such increases?

A-5: A defined benefit plan may provide for benefit increases to reflect the increased § 415 limitations under EGTRRA for a current or former employee who has commenced benefits under the plan prior to the effective date of the § 415 increases under EGTRRA, but only if the employee or former employee is a participant in the plan on or after that effective date. For this purpose, an employee or former employee is a participant in the plan on a date if the employee or former employee has an accrued benefit (other than an accrued benefit resulting from a benefit increase that arises solely as a result of the increases in the § 415 limitations under EGTRRA) on that date. Thus, benefit increases to reflect the increases in the § 415 limitations under EGTRRA cannot be provided to current or former employees who do not have accrued benefits under the plan on or after the effective date of the § 415 increases under EGTRRA for the plan. However, if a current or former employee accrues additional benefits under the plan that could have been accrued without regard to the increased § 415 limitations under EGTRRA (including benefits that accrue as a result of a plan amendment) on or after the effective date of the increased § 415 limitations under EGTRRA for the plan, then the current or former employee may receive a benefit arising from the increased § 415 limitations under EGTRRA.

Q-6: How is the maximum permissible benefit increase calculated for a current or former employee who has commenced benefits under a defined benefit plan in a

form not subject to § 417(e)(3) prior to the effective date of the increased § 415 limitations under EGTRRA?

A-6: For any limitation year beginning on or after the effective date for the plan of the increased § 415 limitations under EGTRRA, the benefit payable to any current or former employee who has commenced benefits under the plan prior to such effective date in a form not subject to § 417(e)(3) may be increased to a benefit that is no greater than the benefit that could have been provided had the provisions of EGTRRA been in effect at the time of the commencement of benefit. Thus, the annual benefit for limitation years beginning on or after the effective date for the plan of the increased § 415 limitations under EGTRRA is limited to the § 415(b) limitation for the employee (increased for cost-of-living adjustments, if the plan provides for such adjustments) based on the employee's age at the time of commencement. Benefits attributable to limitation years beginning before the effective date for the plan of the increased § 415 limitations under EGTRRA cannot reflect benefit increases that could not be paid for those years because of § 415(b). In addition, any plan amendment to provide an increase as a result of the increased § 415 limitations under EGTRRA can be effective no earlier than the effective date of the increased § 415 limitations under EGTRRA for the plan.

Example

Plan A has a calendar year limitation year, and provides that retiree benefits limited by § 415 are increased as COLA adjustments are made under § 415(d). Participant S, a participant of Plan A, retired in 2000 at age 60 with 20 years of participation. Participant S's social security retirement age is 66. Participant S's annual benefit under the plan formula before limitation for § 415 was \$180,000, and this benefit was limited by the defined benefit dollar limit to \$85,252 (the applicable mortality table and 6 percent are used under the plan for early retirement purposes). The defined benefit compensation limitation applicable to Participant S was \$200,000 and, thus, did not limit Participant S's benefit. How will Participant S's benefit be affected by

the changes made to § 415 under section 611 of EGTRRA?

Following the increase in the § 415(b) dollar limit on January 1, 2001, to \$140,000, Participant S's benefit was increased to \$88,409 [$\$85,252 \times (\$140,000/\$135,000)$]. After the § 415(b) increase in the dollar limit under EGTRRA is applicable to Plan A for the limitation year beginning January 1, 2002, Participant S's annual benefit may be increased to an amount equal to the annual benefit commencing at age 60 that is actuarially equivalent (calculated using actuarial assumptions that satisfy § 415(b)(2)(E)) to an annual benefit of \$160,000 payable at age 62. In other words, Participant S's benefit may be increased to an amount equal to the benefit that a 60 year old could receive if the defined benefit dollar limit is \$160,000 (with no reduction in the dollar limit for benefits that commence before age 65 and on or after age 62, but reduced actuarially for benefits that commence before age 62). Participant S's annual benefit may be increased to \$134,720. However, Participant S may not receive this increased benefit until January 1, 2002.

Q-7: How is the maximum permissible benefit increase calculated for a current or former employee under a defined benefit plan whose benefit is payable in a form subject to § 417(e)(3) prior to the effective date of the increased § 415 limitations under EGTRRA?

A-7: In the case of a form of benefit that is subject to § 417(e)(3), the benefit payable for any limitation year beginning on or after the effective date for the plan of the increased § 415 limitations under EGTRRA may be increased by an amount that is actuarially equivalent to the amount of increase that could have been provided had the benefit been paid in the form of a straight life annuity. Benefits attributable to limitation years beginning before the effective date for the plan of the increased § 415 limitations under EGTRRA cannot reflect benefit increases that could not be paid for those years because of § 415(b). In addition, any plan amendment to provide an increase as a result of the increased § 415 limitations under EGTRRA can be effective no ear-

lier than the effective date of the increased § 415 limitations under EGTRRA for the plan.

Example

Participant D, a participant in a defined benefit plan (Plan T) with a calendar year limitation year and plan year, retires on January 1, 2001, D's 64th birthday, with 25 years of service and participation. Participant D's social security retirement age is 65. The terms of Plan T provide for increases in retiree benefits (that are limited by § 415(b)) as the § 415 limits are increased for COLAs under § 415(d). On retirement, D's annual benefit in the form of an annuity under the plan formula, before limitation for § 415, is \$200,000. Participant D's accrued benefit under the plan in the form of an annuity is limited to \$130,667 [$(140,000) \times (1 - (5/9)(12)(.01))$] to satisfy § 415(b). Participant D's benefit is payable in the form of 10 equal annual installments commencing January 1, 2001. For purposes of actuarial equivalence for early commencement and optional forms, the plan provides for the use of the applicable mortality table and the applicable interest rate (assumed to be 6 percent for purposes of this example). What is the maximum benefit increase that D can receive under Plan T as a result of the increased § 415 limitations under EGTRRA?

When D's benefits began, the benefit was calculated as a straight life annuity of \$130,667 per year, adjusted for payment as 10 annual payments. The annuity benefit of \$130,667 was multiplied by an age 64 annuity factor (calculated using the applicable mortality table and the applicable interest rate), and the resulting amount was spread over 10 years, using the applicable interest rate. Participant D has an accrued benefit under Plan T when EGTRRA becomes effective for Plan T on January 1, 2002. If Plan T is amended to provide for such increases to retired participants, then D's benefit, if payable in the form of a straight life annuity, could be increased to a straight life annuity of \$160,000 in the limitation year beginning January 1, 2002.

As of January 1, 2002, D has nine remaining installment payments. The remaining nine installment payments could be increased by the actuarial equivalent (spread over a period of nine years) of the value of the increase in the straight life annuity that would have been payable beginning January 1, 2002, if D had elected a straight life annuity on retirement rather than the installment payment option. That is, the maximum increase that D is permitted to receive in 2002 as a result of the § 415(b) increase under EGTRRA is the amount equal to the product of \$29,333 ($\$160,000 - \$130,667$) times an age 65 annuity factor (derived using the applicable mortality table and the applicable interest rate), spread over 9 years at an assumed interest rate equal to the applicable interest rate.

Q-8: In addition to the changes enacted to § 415 under section 611 of EGTRRA, how did the § 415(b) limitation specifically applicable to multiemployer defined benefit plans change under EGTRRA?

A-8: As provided in section 654 of EGTRRA, the compensation limitation of § 415(b)(1)(B) of the Code does not apply to multiemployer defined benefit plans for limitation years beginning after December 31, 2001. Additionally, the § 415 aggregation rules affecting multiemployer plans were changed to provide that, for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated (1) with a non-multiemployer plan for purposes of applying the § 415(b)(1)(B) compensation limit to the non-multiemployer plan, or (2) with any other multiemployer plan for purposes of applying the § 415 limitations.

Q-9: What is the effective date of the increase in the § 415(c)(1)(A) dollar limitation for defined contribution plans?

A-9: As provided in section 611(b) of EGTRRA, the increase in the § 415(c)(1)(A) dollar limitation for defined contribution plans under EGTRRA is effective for the first limitation year beginning after December 31, 2001.

Example

Plan C is a defined contribution plan with a limitation year that begins February 1. What is the § 415(c)(1)(A)

limitation applicable to Plan C for the limitation years beginning February 1, 2001, and February 1, 2002?

Reg. § 1.415-6 (Limitation for defined contribution plans) provides that the dollar limitation of § 415(c)(1)(A) is adjusted for cost-of-living increases under § 415(d), and the COLA-adjusted dollar limitation is effective as of January 1 of each calendar year and applies to limitation years that end during that calendar year. The limitation year beginning February 1, 2001, ends in the calendar year 2002 (on January 31, 2002), so the defined contribution dollar limitation that applies to the limitation year is the defined contribution dollar limit in effect January 1, 2002, without regard to EGTRRA (\$35,000, increased if applicable, to reflect increases in the cost-of-living, announced by the Service). The defined contribution dollar limit effective January 1, 2002, has not yet been announced. The increase in the defined contribution dollar limitation to \$40,000 under EGTRRA (adjusted under § 415(d), if applicable) is first effective for Plan C for the limitation year beginning February 1, 2002, and ending January 31, 2003.

Q-10: What is the effective date for the increase in the compensation limitation for defined contribution plans under § 415(c)(1)(B)?

A-10: As provided in section 632(a) of EGTRRA, the 25 percent compensation limitation in § 415(c)(1)(B) of the Code is increased to 100 percent, effective for the first limitation year beginning after December 31, 2001.

Q-11: How will a defined contribution or defined benefit plan that takes into account the increased § 415 limitations under EGTRRA as of the first day of the first limitation year for which the increases are effective for the plan, satisfy the nondiscrimination in amount of benefits requirement?

A-11: A defined contribution or defined benefit plan that uses a safe harbor and takes into account the increased § 415 limitations under EGTRRA as of the first day of the first limitation year for which the increases are effective for the plan,

will not fail to satisfy the uniformity requirements of §§ 1.401(a)(4)-2(b) or 1.401(a)(4)-3(b)(2) merely because the increased § 415 limitations under EGTRRA are taken into account under the plan.

For purposes of the general test for nondiscrimination in amount of contributions, increased contributions allocated under the terms of a defined contribution plan due to the increased § 415 limitations under EGTRRA must be taken into account in accordance with the rules of § 1.401(a)(4)-2(c)(2)(ii) for the plan year for which the increased allocations are made. For purposes of the general test for nondiscrimination in amount of benefits, increased benefits provided to an employee under the terms of a defined benefit plan due to the increased § 415 limitations under EGTRRA must be included as increases in the employee's accrued benefit (within the meaning of § 411(a)(7)(A)(i)) and the employee's most valuable optional form of payment of the accrued benefit (within the meaning of § 1.401(a)(4)-3(d)(1)(ii)) in accordance with the rules of § 1.401(a)(4)-3(d), and must be included in the computation of both the normal and most valuable accrual rates for any measurement period that includes the plan year for which the increase occurs. If the limitations of § 415 are taken into account in testing the plan for limitation years for which the increased § 415 limitations under EGTRRA are effective for the plan, those limitations must reflect the increased § 415 limitations under EGTRRA.

Q-12: If benefit increases are provided to employees and former employees under a plan as a result of the increased § 415 limitations under EGTRRA, how are the requirements of §§ 1.401(a)(4)-5 and 1.401(a)(4)-10 satisfied?

A-12: If benefit increases resulting from the increased § 415 limitations under EGTRRA are provided as of the effective date of the increased § 415 limitations under EGTRRA for the plan to either (1) all current and former employees who have an accrued benefit under the plan immediately before the effective date of the increased § 415 limitations under EGTRRA, or (2) all employees participating in the plan that have one hour of ser-

vice after the effective date of the increased § 415 limitations under EGTRRA for the plan, through the adoption of a plan amendment, then the timing of such an amendment satisfies the requirements of § 1.401(a)(4)-5, and the requirements of § 1.401(a)(4)-10(b) are satisfied. If, as of the effective date of the increased § 415 limitations under EGTRRA for the plan, benefit increases are provided to either of the two groups described in the preceding sentence through the operation of the plan's existing provisions, then the requirements of §§ 1.401(a)(4)-5 and 1.401(a)(4)-10(b) are satisfied. If benefit increases due to the increased § 415 limitations under EGTRRA are provided only to a certain group of current or former employees not described in the preceding paragraph through the adoption of a plan amendment, or if a plan amendment to reflect the increased § 415 limitations under EGTRRA is effective as of a later date than the effective date of the increased § 415 limitations under EGTRRA for the plan, then the timing of such an amendment (considered in conjunction with the effect of the increased § 415 limitations under EGTRRA) must satisfy a facts-and-circumstances determination under § 1.401(a)(4)-5(a)(2), and the requirements of § 1.401(a)(4)-10 must be applied.

Q-13: May a plan be amended to limit the extent to which a participant's benefit would otherwise automatically increase under the terms of the plan as a result of the increased § 415 limitations under EGTRRA?

A-13: A plan may be amended to limit the extent to which a participant's benefit would otherwise automatically increase under the terms of the plan as a result of the increased § 415 limitations under EGTRRA, if the amendment is adopted before the effective date of the increased § 415 limitations for the plan. However, see Q&A-14 for certain qualification requirements that may be affected by such an amendment. A plan sponsor may wish to make a plan amendment to preclude a benefit increase that would otherwise occur as a result of the increased § 415 limitations under EGTRRA in order to provide time for the plan sponsor to consider the extent to which a benefit increase relating to the increased § 415 limitations under EGTRRA should or

should not be provided at some later date consistent with all relevant qualification requirements. A plan amendment to limit the extent to which such a benefit increase would otherwise occur that is not both adopted prior to, and effective as of, the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan may fail to satisfy § 411(d)(6). Therefore, a plan amendment that is intended to limit such a benefit increase should be both adopted prior to, and effective as of, the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan. The following is an example of language that could be used by a plan sponsor, on an interim or permanent basis, in amending a defined benefit plan that would otherwise provide for a benefit increase due to the increased § 415 limitations under EGTRRA, to retain the effect of the pre-EGTRRA § 415 limitations in determining a participant's accrued benefit under the plan (without failing to satisfy § 411(d)(6)):

Effective as of the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan (the "Effective Date"), and notwithstanding any other provision of the Plan, the accrued benefit for any participant shall be determined by applying the terms of the Plan implementing the limitations of § 415 as if the limitations of § 415 continued to include the limitations of § 415 as in effect on the day immediately prior to the Effective Date.

Q-14: Are there qualification requirements that may not be satisfied if a plan continues to limit benefits after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan using the pre-EGTRRA § 415 limitations?

A-14: There are some qualification requirements that may not be satisfied if a plan continues to limit benefits using the pre-EGTRRA § 415 limitations after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan. Any exception from the otherwise applic-

able qualification rules that is permitted solely in order to satisfy the maximum limitations on contributions or benefits under § 415 with respect to a participant does not apply if the participant's contributions or benefits are below the limitations of § 415. Thus, such an exception is not permitted where a plan limits benefits in a manner that is more restrictive than required under § 415. For example, at any time on or after the first day of the first limitation year beginning on or after January 1, 2002, a qualified defined contribution plan could not provide that the provisions of § 1.415-6(b)(6) would be applied to place an amount that does not exceed the limitations under § 415, but that does exceed the pre-EGTRRA § 415 limitations, in an unallocated suspense account as an excess annual addition. Similarly, a qualified cash or deferred arrangement could not provide that the provisions of § 1.415-6(b)(6)(iv) would be applied to permit the distribution of elective deferrals that do not exceed the limitations under § 415, but that exceed the pre-EGTRRA § 415 limitations. The qualification issues described in this Q&A-14 may arise whenever a lower limitation is applied under a plan in lieu of a statutory § 415 limitation that applies for the limitation year.

Q-15: How may a plan that continues to limit benefits after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan, using the pre-EGTRRA § 415 limitations, satisfy the nondiscrimination in amount of benefits requirement?

A-15: Section 1.401(a)(4)-2(b)(4)(iv) provides that the use of safe harbors by defined contribution plans, for nondiscrimination in amount of contributions purposes, is not precluded by plan provisions (which must apply uniformly to all employees) that (1) limit allocations otherwise provided under the allocation formula to a maximum dollar amount or a maximum percentage of plan year compensation, (2) limit the dollar amount of plan year compensation taken into account in determining the amount of allocations, or (3) apply the restrictions of § 409(n) or the limits of § 415. Section 1.401(a)(4)-3(b)(6)(v) provides that the use of safe harbors by defined benefit

plans, for nondiscrimination in amount of benefits purposes, is not precluded by plan provisions (which must apply uniformly to all employees) that (1) limit benefits otherwise provided under the benefit formula or accrual method to a maximum dollar amount or to a maximum percentage of average annual compensation or in accordance with § 401(a)(5)(D), (2) apply the limits of § 415, or (3) limit the dollar amount of compensation taken into account in determining benefits. Because the pre-EGTRRA § 415 limitations uniformly limit allocations or benefits to a maximum dollar amount or percentage of compensation, a plan that continues to apply the pre-EGTRRA § 415 limitations does not fail to satisfy a safe harbor solely because it continues to apply such limitations.

If a plan continues to limit benefits using the pre-EGTRRA § 415 limitations, on or after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan, the annual additions or accrued benefits that are taken into account in performing the general tests for nondiscrimination in amount of contributions or benefits must reflect the plan provisions that limit benefits in this manner.

Q-16: How are the increased § 415 limitations under EGTRRA treated under the plan for purposes of § 412?

A-16: For purposes of § 412, any increase in the liabilities of a plan as a result of the increased § 415 limitations under EGTRRA must be treated as occurring pursuant to a plan amendment effective no earlier than the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan (whether the increase in liabilities under the terms of the plan arises pursuant to a plan amendment, or pursuant to existing plan provisions, *i.e.*, where benefits automatically increase as of the date the increased § 415 limitations under EGTRRA are effective for the plan). Accordingly, any amortization base that is established under § 412 for an increase in liabilities under a plan resulting from the increased § 415 limitations under EGTRRA must have an amortization period of 30 years. A plan amend-

ment that makes the increased § 415 limitations under EGTRRA effective for a plan cannot be taken into account for purposes of § 412 prior to the effective date of the increased § 415 limitations under EGTRRA for the plan.

Q-17: How is the sunset provision of section 901 of EGTRRA taken into account for purposes of §§ 412 and 404 of the Code, and with respect to the calculation of benefit payments that must not exceed the limitations of § 415?

A-17: The “sunset” provision of section 901 of EGTRRA is not taken into account for purposes of § 412 of the Code for years beginning on or before December 31, 2010. Thus, for example, projected benefits under a defined benefit plan are computed assuming that the increase in the dollar limitation to \$160,000, as adjusted under § 415(d), remains in effect for limitation years beginning after December 31, 2010. Section 404(j) provides that benefits or contributions in excess of the limitations of § 415 are not taken into account in computing the amount of any deduction allowable under paragraphs (1), (2), (3), (4), (7), or (9) of § 404(a). For years beginning on or before December 31, 2010, the determination that contributions do not exceed the limitation of § 404(j) is made without regard to the sunset provision of section 901 of EGTRRA. Until further guidance is provided, a participant’s benefit will be tested for satisfaction of the § 415 limitations using the limitations currently in effect and applicable to the participant.

IV. Effect on Other Documents

Rev. Rul. 98-1 is modified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Ann Trichilo of Employee Plans. For further information regarding this revenue ruling, please contact the Employee Plans’ taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 9:30 p.m. Eastern time, Monday through Fri-

day (a toll-free number). Ms. Trichilo may be reached at (202) 283-9695 (not a toll-free number).

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, on this page.

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

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal Rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for October 2001.

Rev. Rul. 2001-52

This revenue ruling provides various prescribed rates for federal income tax purposes for November 2001 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2001-52 TABLE 1

Applicable Federal Rates (AFR) for November 2001

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	2.73%	2.71%	2.70%	2.69%
110% AFR	3.00%	2.98%	2.97%	2.96%
120% AFR	3.28%	3.25%	3.24%	3.23%
130% AFR	3.55%	3.52%	3.50%	3.49%
<i>Mid-Term</i>				
AFR	4.13%	4.09%	4.07%	4.06%
110% AFR	4.55%	4.50%	4.47%	4.46%
120% AFR	4.97%	4.91%	4.88%	4.86%
130% AFR	5.39%	5.32%	5.29%	5.26%
150% AFR	6.23%	6.14%	6.09%	6.06%
175% AFR	7.29%	7.16%	7.10%	7.06%
<i>Long-Term</i>				
AFR	5.31%	5.24%	5.21%	5.18%
110% AFR	5.84%	5.76%	5.72%	5.69%
120% AFR	6.39%	6.29%	6.24%	6.21%
130% AFR	6.93%	6.81%	6.75%	6.72%

REV. RUL. 2001-52 TABLE 2

Adjusted AFR for November 2001

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	2.39%	2.38%	2.37%	2.37%
Mid-term adjusted AFR	3.41%	3.38%	3.37%	3.36%
Long-term adjusted AFR	4.74%	4.69%	4.66%	4.64%

REV. RUL. 2001-52 TABLE 3

Rates Under Section 382 for November 2001

Adjusted federal long-term rate for the current month	4.74%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.85%

REV. RUL. 2001-52 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for November 2001

Appropriate percentage for the 70% present value low-income housing credit	8.10%
Appropriate percentage for the 30% present value low-income housing credit	3.47%

REV. RUL. 2001-52 TABLE 5

Rate Under Section 7520 for November 2001

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

5.0%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, page 434.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month

of November 2001. See Rev. Rul. 2001-52, page 434.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2001. See Rev. Rul. 2001-52, page 434.

Part III. Administrative, Procedural, and Miscellaneous

Additional Disaster Relief for Taxpayers Affected by the September 11, 2001, Terrorist Attack – Mid-Quarter Convention Relief

Notice 2001-70

This notice announces that the Treasury Department and the Internal Revenue Service intend to issue regulations permitting taxpayers to elect not to apply the mid-quarter convention rules contained in § 168(d)(3) of the Internal Revenue Code to certain property placed in service in the taxable year that includes September 11, 2001. This notice also provides taxpayers a mechanism for making the election before regulations are issued.

Section 168(d)(3) generally provides that, except as provided in regulations, if the aggregate basis of property placed in service during the last three months of the taxable year exceeds 40 percent of the aggregate basis of property (other than property described in § 168(d)(3)(B)) placed in service during

the taxable year, the applicable depreciation convention for all property (other than property described in § 168(d)(2)) to which § 168 applies placed in service during the taxable year is the mid-quarter convention.

Many taxpayers time the acquisition and placing in service of property within a taxable year to avoid application of the mid-quarter convention. Treasury and the Service have been made aware that, as a result of events related to the September 11, 2001, terrorist attacks, many taxpayers have encountered difficulty completing the acquisition and placing in service of property in accordance with plans developed earlier in the year, and certain taxpayers would choose to delay acquisition and placing of property in service during the last quarter of their taxable year if failing to delay would result in application of the mid-quarter convention.

Accordingly, if the third quarter of the taxpayer's 2001 taxable year includes September 11, 2001, then the taxpayer may elect to apply the half-year convention to all property (other than property

described in § 168(d)(2)) placed in service during the taxpayer's 2001 taxable year for purposes of § 168(d).

To make the election under this notice, a taxpayer must write "Election Pursuant to Notice 2001-70" across the top of its Form 4562, *Depreciation and Amortization*, for the taxpayer's taxable year that includes September 11, 2001.

Treasury and the Service intend to amend the regulations under § 168 to incorporate the guidance set forth in this notice. Until the regulations are amended, taxpayers may rely on the guidance set forth in this notice.

The principal author of this notice is Bernard P. Harvey of the Office of Associate Chief Counsel, Passthroughs and Special Industries. For further information regarding this notice contact Mr. Harvey at (202) 622-3110 (not a toll-free call).

26 CFR 601.602: Forms and instructions. (Also Part I, Sections 220, 408, 408A, 529, 530(h), 1441, 6041, 6041A, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, 6050H, 6050J, 6050N, 6050P, 6050Q, 6050R, 6050S, 1.408-5, 1.408-7, 1.408A-7, 1.1441-1 through 1.1441-5, 1.6041-1, 7.6041-1, 1.6042-2, 1.6042-4, 1.6044-2, 1.6044-5, 1.6045-1, 5f.6045-1, 1.6045-2, 1.6045-4, 1.6047-1, 1.6049-4, 1.6049-6, 1.6049-7, 1.6050A-1, 1.6050B-1, 1.6050D-1, 1.6050E-1, 1.6050H-1, 1.6050H-2, 1.6050J-1T, 1.6050N-1, 1.6050P-1).

NOTE: This revenue procedure will be reprinted as the next revision of IRS Publication 1179, *Rules and Specifications for Private Printing of Substitute Forms 1096, 1098, 1099, 5498, W-2G (and 1042-S)*.

Rev. Proc. 2001-50

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Part 1
General Information

Section 1.1 - Overview of Revenue Procedure 2001-50

1.1.1 Purpose

The purpose of this revenue procedure is to set forth the requirements for the year 2001 for:

- Using official Internal Revenue Service (IRS) forms to file information returns with the IRS,
- Preparing acceptable substitutes of the official IRS forms to file information returns with the IRS, and
- Using official or acceptable substitute forms to furnish information to recipients.

1.1.2 Which Forms Are Covered?

This revenue procedure contains specifications for these information returns:

Form	Title
1096	Annual Summary and Transmittal of U.S. Information Returns
1098	Mortgage Interest Statement
1098-E	Student Loan Interest Statement
1098-T	Tuition Payments Statement
1099-A	Acquisition or Abandonment of Secured Property
1099-B	Proceeds From Broker and Barter Exchange Transactions
1099-C	Cancellation of Debt
1099-DIV	Dividends and Distributions
1099-G	Certain Government and Qualified State Tuition Program Payments
1099-INT	Interest Income
1099-LTC	Long-Term Care and Accelerated Death Benefits
1099-MISC	Miscellaneous Income
1099-MSA	Distributions From an Archer MSA or Medicare+Choice MSA
1099-OID	Original Issue Discount
1099-PATR	Taxable Distributions Received From Cooperatives

1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
1099-S	Proceeds From Real Estate Transactions
5498	IRA Contribution Information
5498-MSA	Archer MSA or Medicare+Choice MSA Information
W-2G	Certain Gambling Winnings
1042-S	Foreign Person's U.S. Source Income Subject to Withholding

1.1.3 Scope

For purposes of this revenue procedure, a substitute form or statement is one that is not printed by the IRS. For a substitute form or statement to be acceptable to the IRS, it must conform to the official form or the specifications outlined in this revenue procedure. **Do not submit any substitute forms or statements listed above to the IRS for approval.** Privately printed forms may not state "This is an IRS approved form."

Filers making payments to certain recipients during a calendar year (or in some cases, filers receiving payments) are required by the Internal Revenue Code (the Code) to file information returns with the IRS for these payments. These filers must also provide this information to their recipients. See **Part 4** for specifications that apply to recipient statements (**generally Copy B**).

In general, section 6011 of the Code contains requirements for filers of information returns. A filer must file information returns on magnetic media, through electronic filing, or on paper. A filer who is required to file 250 or more information returns of any one type during a calendar year must file those returns by magnetic media or electronic filing.

Exception. Filers are not required to use magnetic media or electronic filing when filing 250 or more Forms **1098-E** or **1098-T**.

Although not required, small volume filers (fewer than 250 returns during a calendar year) and Form **1098-E** and **1098-T** filers may file the forms on magnetic media or electronically. See the legal requirements for filing information returns (and providing a copy to a payee) in the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G** and the **2001 Instructions for Form 1042-S**. In addition, see **Pub. 1220**, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Magnetically or Electronically.

1.1.4 For More Information

The IRS prints and provides the forms on which various payments must be reported. Alternatively, filers may prepare substitute copies of these IRS forms and use such forms to report payments to the IRS.

- For copies of the official forms and the instruction booklet for the reporting year, call our toll-free number at **1-800-TAX-FORM (1-800-829-3676)**.
- The IRS operates a central call site in Martinsburg, WV, to answer questions related to information returns, penalties, and backup withholding. Call **304-263-8700** Monday through Friday 8:30 a.m. to 4:30 p.m. eastern time. The TTY/TDD number is **304-267-3367**.

1.1.5 Changes to the Revenue Procedure

The following changes have been made to this year's Revenue Procedure:

- Rules and specifications for Form **1042-S**, Foreign Person's U.S. Source Income Subject to Withholding, were added to the Revenue Procedure as Section 5.1. Exhibit U also shows an example of the form.
- Form **1099-MISC** was reformatted to 2, instead of 3, forms per page. Also: New boxes 14 through 18 were added for improved processing, boxes 11 and 12 were renumbered as 16 and 17, and box 13 was labeled.
- Extra boxes for contact information were added to **Form 1096**.
- A new box 2 was added to Form **1098-E**.
- On Form **1098-T**: Boxes 1 and 2 were labeled, new box 3 was added, and boxes 3 and 4 were renumbered 4 and 5.
- New box 2c was added, and boxes 2c and 2d were renumbered 2d and 2e on Form **1099-DIV**.

- New box 4 was added, and box 4 was renumbered 5 on Form **1099-LTC**.
- New box 4 was added, a checkbox was removed from box 6, and boxes 4-10 were renumbered 5-11 on Form **5498**.

1.1.6 Some Changes for 2002

Some changes anticipated for the 2002 forms are:

- New Form **1099-Q**, Qualified Tuition Program Payments (Under Section 529), is being developed.
- The title of Form **1099-G** is being changed to Certain Government Payments.
- The title of Form **1099-MSA** is being changed to Distributions From an Archer MSA or Medicare+Choice MSA
- The title of Form **5498** is being changed to IRA and Coverdell ESA Contribution Information.
- The title of Form **5498-MSA** is being changed to Archer MSA or Medicare+Choice MSA Information

Section 1.2 - General Requirements for Acceptable Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S

1.2.1 Introduction

Paper substitutes for Form 1096 and Copy A of Forms 1098, 1099, 5498, W-2G, and 1042-S that totally conform to the specifications listed in this revenue procedure may be privately printed and filed as returns with the IRS. The reference to the Department of the Treasury - Internal Revenue Service should be included on all such forms.

If you are uncertain of any specification and want it clarified, you may submit a letter citing the specification, stating your understanding and interpretation of the specification, and enclosing an example of the form (if appropriate) to:

Internal Revenue Service
 Attn: Substitute Forms Program
 W:CAR:MP:FP:S:SP
 1111 Constitution Ave., NW
 Room 5244 IR
 Washington, DC 20224

Note: Allow at least 45 days for the IRS to respond.

You may also contact the Substitute Forms Program Unit via e-mail at ffp@publish.no.irs.gov. Please enter "Substitute Forms" on the Subject Line.

Forms 1096, 1098, 1099, 5498, and W-2G are subject to annual review and possible change. Therefore, filers are cautioned against overstocking supplies of privately printed substitutes. **The specifications contained in this revenue procedure apply to 2001 forms only.**

1.2.2 Copy A Specifications

Proposed substitutes for Copy A that do not conform to the specifications in this revenue procedure are not acceptable. Further, if you file such forms with the IRS, you may be subject to a penalty for failure to file an information return under section 6721 of the Code. Generally, the penalty is \$50 for each failure to file a form (up to \$250,000) that the IRS cannot accept as a return because it does not meet the provisions in this revenue procedure. No IRS office is authorized to allow deviations from this revenue procedure.

Caution: Overuse of proportional fonts may cause you to be subject to penalties and delays in processing.

1.2.3 Copy B and Copy C Specifications

Copies B and Copies C of the following forms must contain the information in **Part 4** to be considered a "statement" or "official form" under the applicable provisions of the Code. The format of this information is at the discretion of the filer with the exception of the location of the tax year, form number, form name, and the information for **composite Form 1099 statements** as outlined under **Section 4.2**.

Copy B of the following forms are:

Form	Recipient
1098	For Payer
1098-E; 1099-A	For Borrower

1098-T	For Student
1099-C	For Debtor
1099-LTC	For Policyholder
1099-R; W-2G	(These forms may require Copy B to be attached to the Federal income tax return.)
1099-S	For Transferor
All other Forms 1099	For Recipient
5498; 5498-MSA	For Participant

Copy C of the following forms are:

Form	Recipient
1099-LTC	For Insured
1099-R	For Recipient's Records
W-2G	For Winner's Records

Note: On Copy C, Form 1099-LTC, you may reverse the locations of the policyholder's and the insured's name, street address, city, state, and ZIP code for easier mailing.

Section 1.3 - Definitions

- 1.3.1 Form Recipient** **Form recipient** means the person to whom you are required by law to furnish a copy of the official form or information statement. The form recipient may be referred to by different names on various Forms 1099 and related forms ("payer," "borrower," "student," "debtor," "policyholder," "insured," "transferor," "recipient," "participant," or, in the case of Form W-2G, the "winner"). See **Section 1.2.3** earlier.
- 1.3.2 Filer** **Filer** means the person or organization required by law to file a form listed in **Section 1.1.2** with the IRS. As outlined earlier, a filer may be a payer, creditor, recipient of mortgage or student loan interest payments, educational institution, broker, barter exchange, person reporting real estate transactions, trustee or issuer of any individual retirement arrangement or medical savings account, or lender who acquires an interest in secured property or who has reason to know that the property has been abandoned.
- 1.3.3 Substitute Form** **Substitute form** means a paper substitute of Copy A of an official form listed in **Section 1.1.2** that totally conforms to the provisions in this revenue procedure.
- 1.3.4 Substitute Form Recipient Statement** **Substitute form recipient statement** means a paper statement of the information reported on a form listed in **Section 1.1.2**. This statement must be furnished to a person (form recipient), as defined under the applicable provisions of the Code and the applicable regulations.
- 1.3.5 Composite Substitute Statement** **Composite substitute statement** means one in which two or more required statements (e.g., Forms 1099-INT and 1099-DIV) are furnished to the recipient on one document. However, each statement must be designated separately and must contain all the requisite Form 1099 information except as provided under **Section 4.2**. A composite statement **may not** be filed with the IRS.

Part 2 Specifications for Substitute Forms 1096 and Copies A of Forms 1098, 1099, and 5498 (All Filed With the IRS)

Section 2.1 - Specifications

- 2.1.1 General Requirements** Form identifying numbers (e.g., 9191 for Form 1099-DIV) must be printed in nonreflective black carbon-based ink in print positions 15 through 19 using an OCR A font. The checkboxes to the right of the form

identifying numbers must be 10-point boxes. The “VOID” checkbox is in print position 25. The “CORRECTED” checkbox is in position 33. Measurements are from the left edge of the paper, not including the perforated strip. See **Exhibits D and K**.

The substitute form must be an exact replica of the official IRS form with respect to layout and content. To determine the correct form measurements, see **Exhibits A through U** at the end of this publication.

Hot wax and cold carbon spots are not permitted on any of the internal form plies. These spots are permitted on the back of a mailer top envelope ply.

Use of chemical transfer paper for Copy A is acceptable.

The Government Printing Office (GPO) symbol must be deleted.

2.1.2 Color and Paper Quality

Color and paper quality for Copy A (cut sheets and continuous pinfeed forms) as specified by JCP Code 0-25, dated November 29, 1978, must be white 100% bleached chemical wood, optical character recognition (OCR) bond produced in accordance with the following specifications.

Note: *Reclaimed fiber in any percentage is permitted provided the requirements of this standard are met.*

• Acidity: Ph value, average, not less than.....	4.5
• Basis Weight: 17 x 22-500 cut sheets	18-20
Metric equivalent—g/m ²	75
A tolerance of ±5 pct. is allowed.	
• Stiffness: Average, each direction, not less than—milligrams	50
• Tearing strength: Average, each direction, not less than—grams.....	40
• Opacity: Average, not less than—percent.....	82
• Thickness: Average—inch.....	0.0038
Metric equivalent—mm.....	0.097
A tolerance of +0.0005 inch (0.0127 mm) is allowed. Paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other.	
• Porosity: Average, not less than—seconds	10
• Finish (smoothness): Average, each side—seconds	20-55
For information only, the Sheffield equivalent—units.....	170-100
• Dirt: Average, each side, not to exceed—parts per million	8

2.1.3 Chemical Transfer Paper

Chemical transfer paper is permitted for Copy A only if the following standards are met:

- Only chemically backed paper is acceptable for Copy A. Front and back chemically treated paper cannot be processed properly by machine.
- Carbon-coated forms are not permitted.
- Chemically transferred images must be black.

All copies must be **clearly legible**. Hot wax and cold carbon spots **are not** permitted for Copy A. **Interleaved carbon** should be black and must be of good quality to assure legibility on all copies and to avoid smudging. Fading must be minimized to assure legibility.

2.1.4 Printing

All print on **Copy A of Forms 1098, 1099, 5498**, and the print on **Form 1096** above the statement “Please return this entire page to the Internal Revenue Service. Photocopies are not acceptable.” must be in Flint J-6983 red OCR dropout ink or an exact match. However, the four-digit form identifying number **must** be in nonreflective carbon-based **black** ink in OCR A font.

The shaded areas of any substitute form should generally correspond to the format of the official form.

The printing for the **Form 1096** statement and the following text may be in any shade or tone of black ink. Black ink should only appear on the lower part of the reverse side of Form 1096 where it will not bleed through and interfere with scanning.

Note: *The instructions on the front and back of Form 1096, which include filing addresses, must be printed.*

Separation between fields must be 0.1 inch.

Except for Form 1099-R and 1099-MISC, the numbered captions are printed as solid with no shaded background.

Other printing requirements are discussed below.

2.1.5 OCR Specifications

The contractor must initiate or have a quality control program to assure OCR ink density. Readings will be made when printed on approved 20 lb. white OCR bond with a reflectance of not less than 80%. Black ink must not have a reflectance greater than 15%. These readings are based on requirements of the "Scan-Optics Series 9000" Optical Scanner using Flint J-6983 red OCR dropout ink or an exact match.

The following testers and ranges are acceptable:

- **MacBeth PCM-II.** The tested Print Contrast Signal (PCS) values when using the MacBeth PCM-II tester on the "C" scale must range from .01 minimum to .06 maximum.
- **Kidder 082A.** The tested PCS values when using the Kidder 082A tester on the Infra Red (IR) scale must range from .12 minimum to .21 maximum. White calibration disc must be 100%. Sensitivity must be set at one (1).
- **Alternative testers.** Alternative testers must be approved by the Government so that tested PCS values can be established. You may obtain approval by writing to the following address:

Commissioner of Internal Revenue
Attn: W:CAR:MP:M:T:M, Room 1225
Tax Products
1111 Constitution Avenue, NW
Washington, DC 20224

2.1.6 Typography

Type must be substantially identical in size and shape to the official form. All rules are either 1/2-point or 3/4-point. Rules must be identical to those on the official IRS form.

Note: *The form identifying number must be nonreflective carbon-based black ink in OCR A font.*

2.1.7 Dimensions

Generally, three **Forms 1098, 1099, or 5498 (Copy A)** are contained on a single page, 8 inches wide (without any snap-stubs and/or pinfeed holes) by 11 inches deep.

Exceptions. Forms 1099-MISC, 1099-R, and 1042-S contain two documents per page.

There is a .33 inch top margin from the top of the corrected box, and a .25 inch right margin. There is a 1/32 (0.0313) inch tolerance for the right margin. If the right and top margins are properly aligned, the left margin for all forms will be correct. All margins must be free of print. See **Exhibits A through U** in this publication for the correct form measurements.

These measurements are constant for all **Forms 1098, 1099, and 5498**. These measurements are shown only once in this publication, on Form 1098 (Exhibit B). Exceptions to these measurements are shown on the rest of the exhibits.

The depth of the individual trim size of each form on a page must be 3 2/3 inches, the same depth as the official form.

Exceptions. The depth of **Forms 1099-MISC and 1099-R** is 5 1/2 inches.

2.1.8 Perforation

Copy A (three per page; two per page for **Forms 1099-MISC and 1099-R**) of privately printed continuous substitute forms must be perforated at each 11" page depth. No perforations are allowed between the 3 2/3" forms (5 1/2" for **Forms 1099-MISC or 1099-R**) on a single copy page of Copy A.

The words "Do Not Cut or Separate Forms on This Page" must be printed in red dropout ink (as required by form specifications) between the three forms (two for **Forms 1099-MISC or 1099-R**).

Note: *Perforations are required between all the other individual copies (Copies B and C, and Copies 1 and 2 for **Forms 1099-R and 1099-MISC**, and Copy D for **Forms 1099-LTC and 1099-R**) in the set.*

2.1.9 What To Include

You must include the OMB Number on **Copies A and Form 1096** in the same location as on the official form.

The words “For Privacy Act and Paperwork Reduction Act Notice, see the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G**” *must* be printed on Copy A; “**For more information and the Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G**” *must* be printed on **Form 1096**.

A postal indicia may be used if it meets the following criteria:

- It is printed in the OCR ink color prescribed for the form, and
- No part of the indicia is within one print position of the scannable area.

The printer’s symbol (GPO) must not be printed on substitute Copy A. Instead, the employer identification number (EIN) of the forms printer must be entered in the bottom margin on the face of each individual form of **Copy A**, or on the bottom margin on the back of each **Form 1096**.

The Catalog Number (Cat. No.) shown on the 2001 forms is used for IRS distribution purposes and need not be printed on any substitute forms.

Section 2.2 - Instructions for Preparing Paper Forms That Will Be Filed With the IRS

2.2.1 Recipient Information

The form recipient’s name, street address, city, state, and ZIP code information should be **typed or machine printed in black ink** in the same format as shown on the official IRS form. The city, state, and ZIP code must be on the same line.

The following rules apply to the form recipient’s name(s):

- The name of the appropriate form recipient must be shown on the first or second name line in the area provided for the form recipient’s name.
- No descriptive information or other name may precede the form recipient’s name.
- Only **one** form recipient’s name may appear on the first name line of the form.
- If the multiple recipients’ names are required on the form, enter on the first name line the recipient name that corresponds to the recipient taxpayer identification number (TIN) shown on the form. Place the other form recipients’ names on the second name line (only 2 name lines are allowable).

Because certain states require that trust accounts be provided in a different format, generally filers should provide information returns reflecting payments to trust accounts with the:

- Trust’s employer identification number (EIN) in the recipient’s TIN area,
- Trust’s name on the recipient’s first name line, and
- Name of the trustee on the recipient’s second name line.

Although handwritten forms will be accepted, the IRS prefers that filers **type or machine print** data entries. Also, filers should insert data in the **middle of blocks** well separated from other printing and guidelines, and take measures to guarantee clear, dark black, sharp images. Carbon copies and photocopies are not acceptable.

2.2.2 Account Number Box

You should use the account number box for an account number designation. This number must not appear anywhere else on the form, and this box may not be used for any other item.

Showing the account number is optional. However, it may be to your benefit to include the recipient’s account number or designation on paper documents if your recordkeeping system uses, for identification purposes, the account number or designation in conjunction with, or instead of, the name, social security number, or employer identification number.

If you furnish the account number, the IRS will include it in future notices to you about backup withholding. If you use window envelopes and a reduced rate to mail statements to recipients, be sure the account number does not appear in the window. Otherwise, the Postal Service may not accept them for mailing.

2.2.3 Specifications and Restrictions

Machine-printed forms should be printed using a 6 lines/inch option, and should be printed in 10 pitch pica (10 print positions per inch) or 12 pitch elite (12 print positions per inch). **Proportional spaced fonts are unacceptable.**

Substitute forms prepared in continuous or strip form must be burst and stripped to conform to the size specified for a single sheet before they are filed with the IRS. The size specified **does not include pinfeed holes**. Pinfeed holes **must not** be present on forms filed with the IRS.

Do not:

- Use a felt tip marker. The machine used to “read” paper forms generally cannot read this ink type.
- Use dollar signs (\$), ampersands (&), asterisks (*), commas (,), or other special characters in the numbered money boxes.
Exception. Use decimal points to indicate dollars and cents (e.g., 2000.00 is acceptable).
- Fold **Forms 1096, 1098, 1099, or 5498** mailed to the IRS. Mail these forms flat in an appropriately sized envelope or box. Folded documents cannot be readily moved through the machine used in IRS processing.
- Staple Forms 1096 to the transmitted returns. Any staple holes near the return code number may impair the IRS’s ability to machine scan the type of documents.
- Type other information on **Copy A**.
- Cut or separate the individual forms on the sheet of forms of **Copy A (except Forms W-2G)**.

2.2.4 Where To File

Mail completed paper forms to the IRS service center shown in the **Instructions for Form 1096** and in the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Specific information needed to complete the forms mentioned in this revenue procedure are given in the specific form instructions. A chart is included in the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G giving a quick guide to which form must be filed to report a particular payment.

Part 3
Specifications for Substitute Form
W-2G (Filed With the IRS)

Section 3.1 - General

3.1.1 Purpose

The following specifications give the format requirements for substitute **Form W-2G (Copy A only)**, which is filed with the IRS.

A filer may use a substitute Form W-2G to file with the IRS (referred to as “**substitute Copy A**”). The substitute form must be an exact replica of the official form with respect to layout and content.

Section 3.2 - Specifications for Copy A of Form W-2G

3.2.1 Substitute Form W-2G (Copy A)

You must follow these specifications when printing substitute Copy A of the Form W-2G.

Item	Substitute Form W-2G (Copy A)
Paper Color and Quality	Paper for Copy A must be white chemical wood bond, or equivalent, 20 pound (basis 17 x 22-500), plus or minus 5 percent. The paper must consist substantially of bleached chemical wood pulp. It must be free from unbleached or ground wood pulp or post-consumer recycled paper. It also must be suitably sized to accept ink without feathering.
Ink Color and Quality	All printing must be in a high quality nongloss black ink.
Typography	The type must be substantially identical in size and shape to the official form. All rules on the document are either 1/2 point (.007 inch), 1 point (0.015 inch), or 3 point (0.045 inch). Vertical rules must be parallel to the left edge of the document, horizontal rules to the top edge.
Dimensions	The official form is 8 inches wide x 3 2/3 inches deep, exclusive of a 2/3 inch snap stub on the left side of the form. Any substitute Copy A must be the same dimensions. The snap feature is not required on substitutes. All margins must be free of print. The top and right margins must be 1/4 inch plus or minus .0313. If the top and right margins are properly aligned, the left margin for all forms will be correct. If the substitute forms are in continuous or strip form, they must be burst and stripped to conform to the size specified for a single form.

Hot Wax and Cold Carbon Spots	Hot wax and cold carbon spots are not permitted on any of the internal form plies. These spots are permitted on the back of a mailer top envelope ply. Interleaved carbons, if used, should be black and of good quality to avoid smudging.
Printer's Symbol	The Government Printing Office (GPO) symbol must not be printed on substitute Forms W-2G. Instead, the employer identification number (EIN) of the forms printer must be printed in the bottom margin on the face of each individual Copy A on a sheet. The form must not contain the statement "IRS approved" or any similar statement.
Catalog Number	The Catalog Number (Cat. No.) shown on Form W-2G is used for IRS distribution purposes and need not be printed on any substitute forms

Part 4 Substitute Statements to Form Recipients and Form Recipient Copies

Section 4.1 - Specifications

4.1.1 Introduction

If you do not use the official IRS form to furnish statements to recipients, you must furnish an acceptable substitute statement. To be acceptable, your substitute statement must comply with the rules in this section. In general, see Regulations sections 1.6042-4, 1.6044-5, 1.6049-6, and 1.6050N-1 to determine how certain statements must be provided to recipients (statement mailing requirements for most **Forms 1099-DIV** and **1099-INT**, all **Forms 1099-OID** and **1099-PATR**, and **Form 1099-MISC** or **1099-S** for royalties).

Note: *A trustee of a grantor-type trust may choose to file **Forms 1099** and furnish a statement to the grantor under Regulations sections 1.671-4(b)(2)(iii) and (b)(3)(ii). The statement required by those regulations is not subject to the requirements outlined in this section.*

4.1.2 Substitute Statements to Recipients for Certain Forms 1099-INT and 1099-DIV, and for Forms 1099-OID and 1099-PATR

The rules in this section apply to **Form 1099-INT** (except for interest reportable under section 6041), **1099-DIV** (except for section 404(k) dividends), **1099-OID**, and **1099-PATR only**. You may furnish form recipients with **Copy B** of the official Form 1099 or a substitute Form 1099 (form recipient statement) if it contains the same language as the official IRS form (such as aggregate amounts paid to the form recipient, any backup withholding, the name, address, and TIN of the person making the return, and any other information required by the official form). Except for state income tax withholding information, information not required by the official form should not be included on the substitute form.

You may enter a total of the individual accounts listed on the form only if they have been paid by the same payer. For example, if you are listing interest paid on several accounts by one financial institution on Form 1099-INT, you may also enter the total interest amount. You may also enter a date next to the corrected box if that box is checked.

A substitute form recipient statement for **Forms 1099-INT, 1099-DIV, 1099-OID, or 1099-PATR** must comply with the following requirements:

1. Box captions and numbers that are applicable must be clearly identified, using the same wording and numbering as on the official form.
Note: *For **Form 1099-INT**, if box 3 is not on your substitute form, you may drop "not included in box 3" from the box 1 caption.*
2. The form recipient statement must contain all applicable form recipient instructions provided on the front and back of the official IRS form. Those instructions may be provided on a separate sheet of paper.
3. The form recipient statement must contain the following in bold and conspicuous type:
This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

4. The box caption “**Federal income tax withheld**” must be in boldface type on the form recipient statement.
5. The form recipient statement must contain the Office of Management and Budget (OMB) number as shown on the official IRS form. See **Part 5**.
6. The form recipient statement must contain the tax year (e.g., 2001), form number (e.g., Form 1099-INT), and form name (e.g., Interest Income) of the official IRS Form 1099. This information must be displayed prominently together in one area of the statement. For example, the tax year, form number, and form name could be shown in the upper right part of the statement. Each copy must be appropriately labeled (such as Copy B, For Recipient). See **Section 4.4** for applicable labels and arrangement of assembly of forms.
Note: Do not include the words “Substitute for” or “In lieu of” on the form recipient statement.
7. Layout and format of the form is at the discretion of the filer. However, the IRS encourages the use of boxes so that the statement has the appearance of a form and can be easily distinguished from other nontax statements.
8. Each recipient statement of **Forms 1099-DIV, 1099-INT, 1099-OID, and 1099-PATR** must include the direct access telephone number of an individual who can answer questions about the statement. **Include that telephone number conspicuously anywhere on the recipient statement.**
9. Until new regulations are issued, the IRS will not assess penalties for use of a logo (e.g., the name of the payer in any typeface, font, or style, and/or a symbolic icon) or slogan on a recipient statement if the logo or slogan is used by the payer in the ordinary course of its trade or business. In addition, use of the logo or slogan must not make it less likely for a reasonable payee to recognize the importance of the statement for tax reporting purposes.
10. A mutual fund family may state separately on one document (e.g., one piece of paper) the dividend income earned by a recipient from each fund within the family of funds as required by **Form 1099-DIV**. However, each fund and its earnings must be stated separately. The form must contain an instruction to the recipient that each fund’s dividends and name, not the name of the mutual fund family, must be reported on the recipient’s tax return. **The form cannot contain an aggregate total of all funds.** In addition, a mutual fund family may furnish a single statement (as a single filer) for **Forms 1099-INT, 1099-DIV, and 1099-OID** information. Each fund and its earnings must be stated separately. The form must contain an instruction to the recipient that each fund’s earnings and name, not the name of the mutual fund family, must be reported on the recipient’s tax return. **The form cannot contain an aggregate total of all funds**

4.1.3 Substitute Statements to Recipients for Certain Forms 1098, 1099, 5498, and W-2G

Statements to form recipients for **Forms 1098, 1098-E, 1098-T, 1099-A, 1099-B, 1099-C, 1099-G, 1099-LTC, 1099-MISC, 1099-MSA, 1099-R, 1099-S, 5498, 5498-MSA, W-2G, 1099-DIV** (only for section 404(k) dividends reportable under section 6047), and **1099-INT** (only for interest of \$600 or more made in the course of a trade or business reportable under section 6041) can be copies of the official forms or an acceptable substitute. To be acceptable, a substitute form recipient statement must meet the following requirements.

1. The tax year, form number, and form name must be the same as the official form and must be displayed prominently together in one area on the statement. For example, they may be shown in the upper right part of the statement.
2. The filer’s and the form recipient’s identifying information required on the official IRS form must be included.
3. Each substitute recipient statement for **Forms W-2G, 1098, 1098-E, 1098-T, 1099-A, 1099-B, 1099-DIV, 1099-G** (excluding state and local income tax refunds), **1099-INT, 1099-LTC, 1099-MISC** (excluding fishing boat proceeds), **1099-OID, 1099-PATR, and 1099-S** must include the direct access telephone number of an individual who can answer questions about the statement. **You may include the telephone number conspicuously anywhere on the recipient statement.** Although not required, payers reporting on **Forms 1099-C, 1099-MSA, 1099-R, 5498, and 5498-MSA** are encouraged to furnish telephone numbers.
4. All applicable money amounts and information, including box numbers, required to be reported to the form recipient must be titled on the form recipient statement in substantially the same manner as those on the official IRS form. The box caption “**Federal income tax withheld**” must be in boldface type on the form recipient statement.
Exception. If you are reporting a payment as “Other income” in box 3 of **Form 1099-MISC**, you may substitute appropriate language for the box title. For example, for payments of accrued wages and leave to a beneficiary of a deceased employee, you might change the title of box 3 to “Beneficiary payments” or something similar.

Note: *You cannot make this change on Copy A.*

5. You must provide appropriate instructions to the form recipient similar to those on the official IRS form, to aid in the proper reporting on the form recipient's income tax return. For payments reported on **Form 1099-B**, the requirement to include instructions substantially similar to those on the official IRS form may be satisfied by providing form recipients with a single set of instructions for all **Forms 1099-B** statements required to be furnished in a calendar year.
Note: *If Federal income tax is withheld and shown on Form 1099-R or W-2G, Copy B and Copy C must be furnished to the recipient. If Federal income tax is not withheld, only Copy C of Form 1099-R and W-2G must be furnished. However, for Form 1099-R, instructions similar to those on the back of the official Copy B and Copy C of Form 1099-R must be furnished to the recipient. For convenience, you may choose to provide both Copies B and C of Form 1099-R to the recipient.*
6. If you use carbon to produce recipient statements, the quality of the carbon must meet the following standards:
 - All copies must be **clearly legible**,
 - All copies must be able to be photocopied, and
 - Fading must not diminish legibility and the ability to photocopy.In general, black chemical transfer inks are preferred, but other colors are permitted if the above standards are met. Hot wax and cold carbon spots are not permitted on any of the internal form plies. The back of a mailer top envelope ply may contain these spots.
7. A mutual fund family may state separately on one document (e.g., one piece of paper) the **Form 1099-B** information for a recipient from each fund as required by Form 1099-B. However, the gross proceeds, etc., from each transaction within a fund must be stated separately. The form must contain an instruction to the recipient that each fund's (not the mutual fund family's) name and amount must be reported on the recipient's tax return. The form cannot contain an aggregate total of all funds.
8. You may use a Uniform Settlement Statement (under the Real Estate Settlement Procedures Act of 1974 (RESPA)) for **Form 1099-S**. The Uniform Settlement Statement is acceptable as the written statement to the transferor if you include the legend for **Form 1099-S** in **Section 4.3.2** and indicate which information on the Uniform Settlement Statement is being reported to the IRS on Form 1099-S.
9. For reporting state income tax withholding and state payments, you may add an additional box(es) to recipient copies as appropriate.
Note: *You cannot make this change on Copy A.*
10. On **Copy C** of **Form 1099-LTC**, you may reverse the location of the policyholder's and the insured's name, street address, city, state, and ZIP code for easier mailing.
11. Logos are permitted on substitute recipient statements for the forms listed in this section (**Section 4.1.3**).

Section 4.2 - Composite Statements

4.2.1 Composite Substitute Statements for Certain Forms 1099-INT, 1099-DIV, 1099-MISC, and 1099-S, and for Forms 1099-OID and 1099-PATR

A composite form recipient statement is permitted for reportable payments of interest, dividends, original issue discount, patronage dividends, and royalties (**Forms 1099-INT** (except for interest reportable under section 6041), **1099-DIV** (except for section 404(k) dividends), **1099-MISC** or **1099-S** (for royalties only), **1099-OID**, or **1099-PATR**) when one payer is reporting more than one of these payments during a calendar year to the same form recipient. Generally, do not include any other **Form 1099** information (e.g., **1098** or **1099-A**) on a composite statement with the information required on the forms listed in the preceding sentence.

Exception. A filer may include **Form 1099-B** information on a composite form with the forms listed above.

Although the composite form recipient statement may be on one sheet, the format of the composite form recipient statement must satisfy the following requirements in addition to the requirements listed earlier in **Section 4.1.2**.

- All information pertaining to a particular type of payment must be located and blocked together on the form and separate from any information covering other types of payments included on the form. For example, if you are reporting interest and dividends, the **Form 1099-INT** information must be presented separately from the **Form 1099-DIV** information.
- The composite form recipient statement must prominently display the tax year, form number, and form name of the official IRS form together in one area at the beginning of each appropriate block of information.

- Any information required by the official IRS forms that would otherwise be repeated in each information block is required to be listed only once in the first information block on the composite form. For example, there is no requirement to report the name of the filer in each information block. This rule does not apply to any money amounts (e.g., Federal income tax withheld) or to any other information that applies to money amounts.
- A composite statement is an acceptable substitute only if the type of payment and the recipient's tax obligation with respect to the payment are as clear as if each required statement were furnished separately on an official form.

4.2.2 Composite Substitute Statements to Recipients for Forms Specified in Section 4.1.3

A composite form recipient statement for the forms specified in **Section 4.1.3** is permitted when one filer is reporting more than one type of payment during a calendar year to the same form recipient. A composite statement is not allowed for a combination of forms listed in **Section 4.1.3** and forms listed in **Section 4.1.2**.

Exceptions. **Form 1099-B** information may be reported on a composite form with the forms specified in **Section 4.1.2** as described in **Section 4.2.1**. In addition, royalties reported on **Form 1099-MISC** or **1099-S** may be reported on a composite form only with the forms specified in **Section 4.1.2**.

Although the composite form recipient statement may be on one sheet, the format of the composite form recipient statement must satisfy the requirements listed in **Section 4.2.1** as well as the requirements in **Section 4.1.3**. A composite statement of **Forms 1098** and **1099-INT** (for interest reportable under section 6049) is **not** allowed.

Section 4.3 - Required Legends

4.3.1 Required Legends for Forms 1098

Form 1098 recipient statements (**Copy B**) must contain the following legends:

- **Form 1098**
 1. "The information in boxes 1, 2, and 3 is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for this mortgage interest or for these points or because you did not report this refund of interest on your return."
 2. "**Caution:** *The amount shown may not be fully deductible by you. Limits based on the loan amount and the cost and value of the secured property may apply. Also, you may only deduct interest to the extent it was incurred by you, actually paid by you, and not reimbursed by another person.*"
- **Form 1098-E** – "This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if the IRS determines that an underpayment of tax results because you overstated a deduction for student loan interest."
- **Form 1098-T** – "This is important tax information and is being furnished to the Internal Revenue Service."

4.3.2 Required Legends for Forms 1099 and W-2G

Forms 1099 and W-2G recipient statements must contain the following legends:

- **Forms 1099-A and 1099-C – Copy B**
"This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported."
- **Forms 1099-B, 1099-DIV, 1099-G, 1099-INT, 1099-MISC, 1099-OID, and 1099-PATR – Copy B**
"This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported."
- **Form 1099-LTC – Copy B** – "This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported."

Copy C – “Copy C is provided to you for information only. Only the policyholder is required to report this information on a tax return.”

- **Form 1099-MSA – Copy B**

“This information is being furnished to the Internal Revenue Service.”

- **Form 1099-R –**

Copy B – “Report this income on your Federal tax return. If this form shows Federal income tax withheld in box 4, attach this copy to your return. This information is being furnished to the Internal Revenue Service.”

Copy C – “This information is being furnished to the Internal Revenue Service.”

- **Form 1099-S – Copy B**

“This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.”

- **Form W-2G –**

Copy B – “This information is being furnished to the Internal Revenue Service. Report this income on your Federal tax return. If this form shows Federal income tax withheld in box 2, attach this copy to your return.”

Copy C – “This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.”

4.3.3 Required Legends for Forms 5498

Form 5498 recipient statements (**Copy B**) must contain the following legends:

- **Form 5498** – “This information is being furnished to the Internal Revenue Service.”

Note: *If you do not furnish another statement to the participant because no contributions were made for the year, the statement of the fair market value of the account must contain this legend and a designation of which information is being furnished to the IRS.*

- **Form 5498-MSA** – “The information in boxes 1 through 6 is being furnished to the Internal Revenue Service.”

Section 4.4 - Miscellaneous Instructions for Copies B, C, D, 1, and 2

4.4.1 Copies

Copies B, C, and in some cases, **D, 1, and 2** are included in the official assembly for the convenience of the filer. You are not legally required to include all these copies with the privately printed substitute forms. Furnishing Copies B and, in some cases, C will satisfy the legal requirement to provide statements of information to form recipients.

Note: *If an amount of Federal income tax withheld is shown on **Form 1099-R** or **W-2G**, **Copy B** (to be attached to the tax return) and **Copy C** must be furnished to the recipient. **Copy D** (**Forms 1099-R** and **W-2G**) may be used for filer records. Only **Copy A** should be filed with the IRS.*

4.4.2 Arrangement of Assembly

Copy A (“For Internal Revenue Service Center”) of all forms must be on top. The rest of the assembly must be arranged, from top to bottom, as follows.

For:

- **Form 1098**—Copy B “For Payer”; Copy C “For Recipient.”
- **Form 1098-E**—Copy B “For Borrower”; Copy C “For Recipient.”
- **Form 1098-T**—Copy B “For Student”; Copy C “For Filer.”
- **Form 1099-A**—Copy B “For Borrower”; Copy C “For Lender.”
- **Forms 1099-B, 1099-DIV, 1099-G, 1099-INT, 1099-MSA, 1099-OID, and 1099-PATR**—Copy B “For Recipient”; Copy C “For Payer.”
- **Form 1099-C**—Copy B “For Debtor”; Copy C “For Creditor.”
- **Form 1099-LTC**—Copy B “For Policyholder”; Copy C “For Insured”; and Copy D “For Payer.”
- **Form 1099-MISC**—Copy 1 “For State Tax Department”; Copy B “For Recipient”; Copy 2 “To be filed with recipient’s state income tax return, when required”; and Copy C “For Payer.”
- **Form 1099-R**—Copy 1 “For State, City, or Local Tax Department”; Copy B “Report this income on your Federal tax return. If this form shows Federal income tax withheld in box 4, attach this copy to your return”; Copy C “For Recipient’s Records”; Copy 2 “File this copy with your state, city, or local income tax return, when required”; Copy D “For Payer.”

- **Form 1099-S**—Copy B “For Transferor”; Copy C “For Filer.”
- **Form 5498**—Copy B “For Participant”; Copy C “For Trustee or Issuer.”
- **Form 5498-MSA**—Copy B “For Participant”; Copy C “For Trustee.”
- **Form W-2G**—Copy 1 “For State Tax Department”; Copy B “Report this income on your Federal tax return. If this form shows Federal income tax withheld in box 2, attach this copy to your return”; Copy C “For Winner’s Records”; Copy 2 “Attach this copy to your state income tax return, if required.”; Copy D “For Payer.”

4.4.3 Perforations

Perforations are required between forms on all copies except Copy A to make separating the forms easier. (Copy A of Form W-2G may be perforated.)

Part 5 Additional Instructions for Substitute Forms 1098, 1099, 5498, W-2G, and 1042-S

Section 5.1 - Paper Substitutes for Form 1042-S

5.1.1 Paper Substitutes

Paper substitutes of Copy A for Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding, that totally conform to the specifications contained in this procedure may be privately printed without prior approval from the Internal Revenue Service. Proposed substitutes not conforming to these specifications must be submitted for consideration.

Note: *Copies B, C, D, and E of Form 1042-S may contain multiple income entries for the same recipient, i.e. multiple rows of the top boxes 1-8 of the Form.*

5.1.2 Time Frame For Submission of Form 1042-S

The request should be submitted by November 15 of the year prior to the year the form is to be used. This is to allow the Service adequate time to respond and the submitter adequate time to make any corrections. These requests should contain a copy of the proposed form, the need for the specific deviation(s), and the number of information returns to be printed.

5.1.3 Revisions

Form 1042-S is subject to annual review and possible change. Withholding agents and form suppliers are cautioned against overstocking supplies of the privately printed substitutes.

5.1.4 Obtaining Copies

Copies of the official form for the reporting year may be obtained from most Service offices. The Service provides only cut sheets (no carbon interleaves) of these forms. Continuous fan-fold/pinned forms are not provided.

5.1.5 Instructions For Withholding Agents

Instructions for withholding agents:

- Only original copies may be filed with the Service. Carbon copies and reproductions are not acceptable.
- The term “Recipient’s U.S. TIN” for an individual means the social security number (SSN) or IRS individual taxpayer identification number (ITIN), consisting of nine digits separated by hyphens as follows: 000–00–0000. For all other recipients, the term means employer identification number (EIN) or qualified intermediary employer identification number (QI-EIN). The EIN and QI-EIN consist of nine digits separated by a hyphen as follows: 00-0000000. The taxpayer identification number (TIN) must be in one of these formats.
- Withholding agents are requested to type or machine print whenever possible, provide quality data entries on the forms (that is, use black ribbon and insert data in the middle of blocks well separated from other printing and guidelines), and take other measures to guarantee a clear, sharp image. Withholding agents are not required, however, to acquire special equipment solely for the purpose of preparing these forms.
- The “VOID,” “CORRECTED,” and “PRO-RATA BASIS REPORTING” boxes must be printed at the top center of the form under the title and checked, if applicable.
- Substitute forms prepared in continuous or strip form must be burst and stripped to conform to the size specified for a single form before they are filed with the Service. The dimensions are found below. Computer cards are acceptable provided they meet all requirements regarding layout, content, and size.

5.1.6 Substitute Form 1042-S Format Requirements

Property	Substitute Form 1042-S Format Requirements
Printing	Privately printed substitute Forms 1042-S must be exact replicas of the official forms with respect to layout and content. Only the dimensions of the substitute form may differ. The Government Printing Office (GPO) symbol must be deleted. The exact dimensions are found below.
Box Entries	Only one item of income may be represented on the copy submitted to the Service (Copy A). Multiple income items may be used on copies provided to recipients only. All boxes appearing on the official form must be present on the substitute form, with appropriate captions.
Color and Quality of Ink	All printing must be in high quality non-gloss black ink. Bar codes should be free from picks and voids.
Typography	Type must be substantially identical in size and shape to corresponding type on the official form. All rules on the document are either 1 point (0.015") or 3 point (0.045"). Vertical rules must be parallel to the left edge of the document; horizontal rules must be parallel to the top edge.
Carbons	Carbonized forms or "spot carbons" are not permissible. Interleaved carbons, if used, must be of good quality to preclude smudging and should be black.
Assembly	If all five parts are present, the parts of the assembly shall be arranged from top to bottom as follows: Copy A (Original) "For Internal Revenue Service," Copies B, C, and D "For Recipient," and Copy E "For Withholding Agent."
Color Quality of Paper	<ul style="list-style-type: none"> • Paper For Copy A must be white chemical wood bond, or equivalent, 20 pound (basis 17 x 22-500), plus or minus 5 percent; or offset book paper, 50 pound (basis 25 x 38-500). No optical brighteners may be added to the pulp or paper during manufacture. The paper must consist of principally bleach chemical wood pulp or recycled printed paper. It also must be suitably sized to accept ink without feathering. • Copies B, C, D (for Recipient), and E (For Withholding Agent) are provided in the official assembly solely for the convenience of the withholding agent. Withholding agents may choose the format, design, color, and quality of the paper used for these copies.
Dimensions	<ul style="list-style-type: none"> • The official form is 8 inches wide x 5 1/2 inches deep, exclusive of a 1/2 snap stub on the left side of the form. The snap feature is not required on substitutes. • The width of a substitute Copy A must be a minimum of 7 inches and a maximum of 8 inches, although adherence to the size of the official form is preferred. If the width of substitute Copy A is reduced from that of the official form, the width of each field on the substitute form must be reduced proportionately. The left margin must be 1/2 inch and free of all printing other than that shown on the official form. • The depth of a substitute Copy A must be a minimum of 5 1/6 inches and a maximum of 5 1/2 inches.
Other Copies	Copies B, C, and D must be furnished for the convenience of payees who must send a copy of the form with other Federal and State returns they file. Copy E may be used as a withholding agent's record/copy.

Section 5.2 - OMB Requirements for All Forms in This Revenue Procedure

5.2.1 OMB Requirements

The Paperwork Reduction Act (the Act) of 1995 (Public Law 104–13) requires that:

- The OMB approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in or near the upper right corner) the OMB approval number, if any. (The official OMB numbers may be found on the official IRS printed forms and are also shown on the forms in the exhibits in **Part 6**.)
- Each IRS form (or its instructions) states:
 1. Why the IRS needs the information,
 2. How it will be used, and
 3. Whether or not the information is required to be furnished to the IRS.

This information must be provided to any users of official or substitute IRS forms or instructions.

5.2.2 Substitute Form Requirements

The OMB requirements for substitute IRS forms are:

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.
- For Copy A, the OMB number must appear exactly as shown on the official IRS form.
- For any copy other than Copy A, the OMB number must use one of the following formats.
 1. OMB No. XXXX-XXXX (preferred) or
 2. OMB # XXXX-XXXX (acceptable).

5.2.3 Required Explanation to Users

All substitute forms (**Copy A only**) must state “For Privacy Act and Paperwork Reduction Act Notice, see the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.**” (or “For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.” for Copy A of Form 1042-S).

If no instructions are provided to users of your forms, you must furnish them the exact text of the Privacy Act and Paperwork Reduction Act Notice.

Section 5.3 - Reproducible Copies of Forms

5.3.1 Introduction

You can order official IRS forms and information copies of Federal tax materials by calling the IRS Distribution Center at 1-800-829-3676. Other ways to get Federal tax material include:

- The Internet.
- CD-ROM.
- GPO Superintendent of Documents Bookstores.

Note: *Several IRS forms are provided electronically on the IRS home page and on the Federal Tax Forms CD-ROM, but Copy A of Forms 1096, the 1098 series, 1099 series, and 5498 series cannot be used for filing with the IRS when printed from a conventional printer. These forms contain drop-out ink requirements as described in Part 2 of this publication.*

5.3.2 Internet

You can download tax materials from the Internet.

You Can Access the Internet by...	Using...
File Transfer Protocol (FTP)	ftp.irs.gov
World Wide Web	www.irs.gov

5.3.3 IRS Federal Tax Forms CD-ROM

The IRS also offers an alternative to downloading electronic files and provides current and prior-year access to tax forms and instructions through its Federal Tax Forms CD-ROM. The CD will be available for the upcoming filing season. Order **Pub. 1796**, IRS Federal Tax Products CD-ROM, by using the IRS’s Internet Web Site at **www.irs.gov/cdorders** or by calling 1-877-CDFORMS (1-877-233-6767).

5.3.4 GPO Supt. of Documents Bookstores

The Government Printing Office (GPO) Superintendent of Documents Bookstores also sell individual copies of tax forms, instructions, and publications.

Section 5.4 - Effect on Other Revenue Procedures

5.4.1 Other Revenue Procedures

Revenue Procedure 2000-28, 2000-27 I.R.B. 60, which provides rules and specifications for private printing of 2000 substitute forms and statements to recipients, is superseded.

Part 6 Exhibits

Section 6.1 - Exhibits of Forms in the Revenue Procedure

6.1.1 Purpose

Exhibits A through U illustrate some of the specifications that were discussed earlier in this revenue procedure. The dimensions apply to the actual size forms, but the exhibits have been reduced in size.

Generally, the illustrated dimensions apply to all like forms. For example, Exhibit B shows 11.00" from the top edge to the bottom edge of Form 1098 and .85" between the bottom rule of the top form and the top rule of the second form on the page. These dimensions apply to all forms that are printed three to a page.

6.1.2 Guidelines

Keep in mind the following guidelines when printing substitute forms.

- Closely follow the specifications to avoid delays in processing the forms.
 - Always use the specifications as outlined in this revenue procedure and illustrated in the exhibits.
 - Do not add the text line "Do Not Cut or Separate Forms on This Page" to the bottom form. This will cause inconsistency with the specifications.
-

Exhibit A

Do Not Staple 6969

Form **1096**

Department of the Treasury
Internal Revenue Service

**Annual Summary and Transmittal of
U.S. Information Returns**

OMB No. 1545-0108

2001

FILER'S name

Street address (including room or suite number)

City, state, and ZIP code

Name of person to contact

Fax number ()

Telephone number ()

E-mail address

For Official Use Only

--	--	--	--	--	--	--	--	--	--	--	--	--	--

1 Employer identification number

2 Social security number

3 Total number of forms

4 Federal income tax withheld

5 Total amount reported with this Form 1096

Enter an "X" in only one box below to indicate the type of form being filed.

If this is your final return, enter an "X" here

W-2G 32	1098 81	1098-E 84	1098-T 83	1099-A 80	1099-B 79	1099-C 85	1099-DIV 91	1099-G 86	1099-INT 92	1099-LTC 93	1099-MISC 95	1099-MSA 94	1099-OID 96
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1099-PATR 97	1099-R 98	1099-S 75	5498 28	5498-MSA 27									
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>									

Please return this entire page to the Internal Revenue Service. Photocopies are not acceptable.

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ▶

Title ▶

Date ▶

Instructions

Purpose of form. Use this form to transmit paper Forms 1099, 1098, 5498, and W-2G to the Internal Revenue Service. **Do not use Form 1096 to transmit magnetic media.** See Form 4804, Transmittal of Information Returns Reported Magnetically/Electronically.

Who must file. The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Form 1099, 1098, 5498, or W-2G. A filer includes a payer, a recipient of mortgage interest payments (including points) or student loan interest, an educational institution, a broker, a barter exchange, a creditor, a person reporting real estate transactions, a trustee or issuer of any individual retirement arrangement or a medical savings account (MSA) (including a Medicare+Choice MSA), and a lender who acquires an interest in secured property or who has reason to know that the property has been abandoned.

Preaddressed Form 1096. If you received a preaddressed Form 1096 from the IRS with Package 1099, use it to transmit paper Forms 1099, 1098, 5498, and W-2G to the Internal Revenue Service. If any of the imprinted information is incorrect, make corrections on the form.

Note: You will no longer receive an IRS-prepared label with your Package 1099.

If you are not using a preaddressed form, enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form.

When to file. File Form 1096 with Forms 1099, 1098, or W-2G by February 28, 2002. File Form 1096 with Forms 5498 by May 31, 2002.

Where To File

Send all information returns filed on paper with Form 1096 to the following:

<p>If your principal business, office or agency, or legal residence in the case of an individual, is located in</p>	<p>Use the following Internal Revenue Service Center address</p>
Alabama, Arizona, Florida, Georgia, Louisiana, Mississippi, New Mexico, Texas	Austin, TX 73301
Arkansas, Connecticut, Kentucky, Maine, Massachusetts, New Hampshire, New York, Ohio, Rhode Island, Vermont, West Virginia	Cincinnati, OH 45999
Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Wisconsin	Kansas City, MO 64999

For more information and the Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.

Cat. No. 144000

Form **1096** (2001)

Exhibit B

<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		4.70"
8181 RECIPIENT'S/LENDER'S name, address, and telephone number 3.33"		OMB No. 1545-0901 2001 Form 1098
RECIPIENT'S Federal identification no. PAYER'S social security number 1.70"	1 Mortgage interest received from payer(s)/borrower(s) \$ 2.80"	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
PAYER'S/BORROWER'S name 3.40"	2 Points paid on purchase of principal residence \$	
Street address (including apt. no.)	3 Refund of overpaid interest \$	
City, state, and ZIP code	4 2.83"	
Account number (optional)		
Form 1098 Cat. No. 14402K Department of the Treasury - Internal Revenue Service		
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page 7.30" 8.00" .85"		
<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		
8181 RECIPIENT'S/LENDER'S name, address, and telephone number		OMB No. 1545-0901 2001 Form 1098
RECIPIENT'S Federal identification no. PAYER'S social security number	1 Mortgage interest received from payer(s)/borrower(s) \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
PAYER'S/BORROWER'S name	2 Points paid on purchase of principal residence \$	
Street address (including apt. no.)	3 Refund of overpaid interest \$	
City, state, and ZIP code	4	
Account number (optional)		
Form 1098 Cat. No. 14402K Department of the Treasury - Internal Revenue Service		
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page		
<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		
8181 RECIPIENT'S/LENDER'S name, address, and telephone number 11.00"		OMB No. 1545-0901 2001 Form 1098
RECIPIENT'S Federal identification no. PAYER'S social security number	1 Mortgage interest received from payer(s)/borrower(s) \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
PAYER'S/BORROWER'S name	2 Points paid on purchase of principal residence \$	
Street address (including apt. no.)	3 Refund of overpaid interest \$	
City, state, and ZIP code	4	
Account number (optional)		
Form 1098 Cat. No. 14402K Department of the Treasury - Internal Revenue Service		

Exhibit C

8484 VOID CORRECTED

RECIPIENT'S/LENDER'S name, address, and telephone number			OMB No. 1545-1576 2001 Form 1098-E	<p>Student Loan Interest Statement</p> <p>Copy A</p> <p>For Internal Revenue Service Center File with Form 1096.</p> <p>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</p>
RECIPIENT'S Federal identification no.	BORROWER'S social security number	1 Student loan interest received by lender		
BORROWER'S name		\$ 2.80		
Street address (including apt. no.)		3.40		
City, state, and ZIP code		2.83		
Account number (optional)		2 Check if box 1 includes loan origination fees and/or capitalized interest <input type="checkbox"/>		

Form 1098-E Cat. No. 25088U Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

8484 VOID CORRECTED

RECIPIENT'S/LENDER'S name, address, and telephone number			OMB No. 1545-1576 2001 Form 1098-E	<p>Student Loan Interest Statement</p> <p>Copy A</p> <p>For Internal Revenue Service Center File with Form 1096.</p> <p>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</p>
RECIPIENT'S Federal identification no.	BORROWER'S social security number	1 Student loan interest received by lender		
BORROWER'S name		\$		
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		2 Check if box 1 includes loan origination fees and/or capitalized interest <input type="checkbox"/>		

Form 1098-E Cat. No. 25088U Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

8484 VOID CORRECTED

RECIPIENT'S/LENDER'S name, address, and telephone number			OMB No. 1545-1576 2001 Form 1098-E	<p>Student Loan Interest Statement</p> <p>Copy A</p> <p>For Internal Revenue Service Center File with Form 1096.</p> <p>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</p>
RECIPIENT'S Federal identification no.	BORROWER'S social security number	1 Student loan interest received by lender		
BORROWER'S name		\$		
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		2 Check if box 1 includes loan origination fees and/or capitalized interest <input type="checkbox"/>		

Form 1098-E Cat. No. 25088U Department of the Treasury - Internal Revenue Service

Exhibit D

8383
 VOID CORRECTED
6.30"

FILER'S name, street address, city, state, ZIP code, and telephone number		1 Qualified tuition and related expenses \$ _____ 2 Reimbursements or refunds \$ _____	OMB No. 1545-1574 <div style="font-size: 2em; font-weight: bold; text-align: center;">2001</div> Form 1098-T	Tuition Payments Statement Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
FILER'S Federal identification no.	STUDENT'S social security number	3 Scholarships or grants \$ _____		
STUDENT'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		4 Check if at least half-time student <input type="checkbox"/> 5 Check if a graduate student <input type="checkbox"/>		

3.40"
1.40"
2.80"
25"

Form 1098-T Cat. No. 25087J Department of the Treasury - Internal Revenue Service
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8383
 VOID CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone number		1 Qualified tuition and related expenses \$ _____ 2 Reimbursements or refunds \$ _____	OMB No. 1545-1574 <div style="font-size: 2em; font-weight: bold; text-align: center;">2001</div> Form 1098-T	Tuition Payments Statement Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
FILER'S Federal identification no.	STUDENT'S social security number	3 Scholarships or grants \$ _____		
STUDENT'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		4 Check if at least half-time student <input type="checkbox"/> 5 Check if a graduate student <input type="checkbox"/>		

Form 1098-T Cat. No. 25087J Department of the Treasury - Internal Revenue Service
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8383
 VOID CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone number		1 Qualified tuition and related expenses \$ _____ 2 Reimbursements or refunds \$ _____	OMB No. 1545-1574 <div style="font-size: 2em; font-weight: bold; text-align: center;">2001</div> Form 1098-T	Tuition Payments Statement Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
FILER'S Federal identification no.	STUDENT'S social security number	3 Scholarships or grants \$ _____		
STUDENT'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)		4 Check if at least half-time student <input type="checkbox"/> 5 Check if a graduate student <input type="checkbox"/>		

Form 1098-T Cat. No. 25087J Department of the Treasury - Internal Revenue Service

Exhibit E

8080 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0877		2001 Form 1099-A Acquisition or Abandonment of Secured Property Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
LENDER'S name, street address, city, state, ZIP code, and telephone no.			1 Date of lender's acquisition or knowledge of abandonment	
LENDER'S Federal identification number	BORROWER'S identification number		2 Balance of principal outstanding \$	
BORROWER'S name			4 Fair market value of property \$	
Street address (including apt. no.)			5 Was borrower personally liable for repayment of the debt? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City, state, and ZIP code			6 Description of property	
Account number (optional)				
Form 1099-A		Cat. No. 14412G		Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page				
8080 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0877		2001 Form 1099-A Acquisition or Abandonment of Secured Property Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
LENDER'S name, street address, city, state, ZIP code, and telephone no.			1 Date of lender's acquisition or knowledge of abandonment	
LENDER'S Federal identification number	BORROWER'S identification number		2 Balance of principal outstanding \$	
BORROWER'S name			4 Fair market value of property \$	
Street address (including apt. no.)			5 Was borrower personally liable for repayment of the debt? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City, state, and ZIP code			6 Description of property	
Account number (optional)				
Form 1099-A		Cat. No. 14412G		Department of the Treasury - Internal Revenue Service
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8080 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0877		2001 Form 1099-A Acquisition or Abandonment of Secured Property Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
LENDER'S name, street address, city, state, ZIP code, and telephone no.			1 Date of lender's acquisition or knowledge of abandonment	
LENDER'S Federal identification number	BORROWER'S identification number		2 Balance of principal outstanding \$	
BORROWER'S name			4 Fair market value of property \$	
Street address (including apt. no.)			5 Was borrower personally liable for repayment of the debt? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City, state, and ZIP code			6 Description of property	
Account number (optional)				
Form 1099-A		Cat. No. 14412G		Department of the Treasury - Internal Revenue Service

Exhibit F

7979 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1a Date of sale	OMB No. 1545-0715	2001 Form 1099-B	Proceeds From Broker and Barter Exchange Transactions
		1b CUSIP no.			
		2 Stocks, bonds, etc. \$	Reported to IRS } <input type="checkbox"/> Gross proceeds } <input type="checkbox"/> Gross proceeds less commissions and option premiums	1.90"	
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Bartering \$	4 Federal income tax withheld \$	3.90"	
RECIPIENT'S name		5 Description			
		Regulated Futures Contracts			
Street address (including apt. no.)		6 Profit or (loss) realized in 2001 \$	7 Unrealized profit or (loss) on open contracts—12/31/2000 \$	1.40"	
City, state, and ZIP code					
Account number (optional)		8 Unrealized profit or (loss) on open contracts—12/31/2001 \$	9 Aggregate profit or (loss) \$	4.15"	
		2nd TIN not. <input type="checkbox"/>			

Form **1099-B** .60" Cat. No. 14411V Department of the Treasury - Internal Revenue Service

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Copy A
For
**Internal Revenue
Service Center**
File with Form 1096.
For Privacy Act
and Paperwork
Reduction Act
Notice, see the
**2001 General
Instructions for
Forms 1099, 1098,
5498, and W-2G.**

7979 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1a Date of sale	OMB No. 1545-0715	2001 Form 1099-B	Proceeds From Broker and Barter Exchange Transactions
		1b CUSIP no.			
		2 Stocks, bonds, etc. \$	Reported to IRS } <input type="checkbox"/> Gross proceeds } <input type="checkbox"/> Gross proceeds less commissions and option premiums		
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Bartering \$	4 Federal income tax withheld \$	Copy A	
RECIPIENT'S name		5 Description			
		Regulated Futures Contracts			
Street address (including apt. no.)		6 Profit or (loss) realized in 2001 \$	7 Unrealized profit or (loss) on open contracts—12/31/2000 \$	File with Form 1096.	
City, state, and ZIP code					
Account number (optional)		8 Unrealized profit or (loss) on open contracts—12/31/2001 \$	9 Aggregate profit or (loss) \$	For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
		2nd TIN not. <input type="checkbox"/>			

Form **1099-B** Cat. No. 14411V Department of the Treasury - Internal Revenue Service

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7979 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1a Date of sale	OMB No. 1545-0715	2001 Form 1099-B	Proceeds From Broker and Barter Exchange Transactions
		1b CUSIP no.			
		2 Stocks, bonds, etc. \$	Reported to IRS } <input type="checkbox"/> Gross proceeds } <input type="checkbox"/> Gross proceeds less commissions and option premiums		
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Bartering \$	4 Federal income tax withheld \$	Copy A	
RECIPIENT'S name		5 Description			
		Regulated Futures Contracts			
Street address (including apt. no.)		6 Profit or (loss) realized in 2001 \$	7 Unrealized profit or (loss) on open contracts—12/31/2000 \$	File with Form 1096.	
City, state, and ZIP code					
Account number (optional)		8 Unrealized profit or (loss) on open contracts—12/31/2001 \$	9 Aggregate profit or (loss) \$	For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
		2nd TIN not. <input type="checkbox"/>			

Form **1099-B** Cat. No. 14411V Department of the Treasury - Internal Revenue Service

Exhibit G

8585 VOID CORRECTED

CREDITOR'S name, street address, city, state, and ZIP code		OMB No. 1545-1424 <div style="font-size: 2em; font-weight: bold;">2001</div>		Cancellation of Debt
		Form 1099-C		
CREDITOR'S Federal identification number	DEBTOR'S identification number	1 Date canceled ← 1.40" →	2 Amount of debt canceled ← 1.40" →	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
DEBTOR'S name ← 3.40" →		3 Interest if included in box 2 \$	4	
Street address (including apt. no.)		5 Debt description		
City, state, and ZIP code				
Account number (optional)		6 Check for bankruptcy <input type="checkbox"/>	7 Fair market value of property \$	

Form **1099-C** Cat. No. 26280W Department of the Treasury - Internal Revenue Service
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8585 VOID CORRECTED

CREDITOR'S name, street address, city, state, and ZIP code		OMB No. 1545-1424 <div style="font-size: 2em; font-weight: bold;">2001</div>		Cancellation of Debt
		Form 1099-C		
CREDITOR'S Federal identification number	DEBTOR'S identification number	1 Date canceled	2 Amount of debt canceled \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
DEBTOR'S name		3 Interest if included in box 2 \$	4	
Street address (including apt. no.)		5 Debt description		
City, state, and ZIP code				
Account number (optional)		6 Check for bankruptcy <input type="checkbox"/>	7 Fair market value of property \$	

Form **1099-C** Cat. No. 26280W Department of the Treasury - Internal Revenue Service
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8585 VOID CORRECTED

CREDITOR'S name, street address, city, state, and ZIP code		OMB No. 1545-1424 <div style="font-size: 2em; font-weight: bold;">2001</div>		Cancellation of Debt
		Form 1099-C		
CREDITOR'S Federal identification number	DEBTOR'S identification number	1 Date canceled	2 Amount of debt canceled \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
DEBTOR'S name		3 Interest if included in box 2 \$	4	
Street address (including apt. no.)		5 Debt description		
City, state, and ZIP code				
Account number (optional)		6 Check for bankruptcy <input type="checkbox"/>	7 Fair market value of property \$	

Form **1099-C** Cat. No. 26280W Department of the Treasury - Internal Revenue Service

Exhibit H

9191 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Ordinary dividends	OMB No. 1545-0110	<div style="font-size: 2em; font-weight: bold;">2001</div>	Dividends and Distributions
		\$			
		2a Total capital gain distr.			
		\$	← 1.40" →		
		2b 28% rate gain		Form 1099-DIV	
		\$			
PAYER'S Federal identification number	RECIPIENT'S identification number	2c Qualified 5-year gain	2d Unrecap. sec. 1250 gain	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
		\$	\$		
RECIPIENT'S name		2e Section 1202 gain	3 Nontaxable distributions		
		\$	\$		
Street address (including apt. no.)		4 Federal income tax withheld	5 Investment expenses		
		\$	\$		
City, state, and ZIP code		6 Foreign tax paid	7 Foreign country or U.S. possession		
		\$	\$		
Account number (optional)	2nd TIN not.	8 Cash liquidation distr.	9 Noncash liquidation distr.		
	<input type="checkbox"/>	\$	\$	← 4.50" →	

Form **1099-DIV** Cat. No. 14415N Department of the Treasury - Internal Revenue Service

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9191 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Ordinary dividends	OMB No. 1545-0110	<div style="font-size: 2em; font-weight: bold;">2001</div>	Dividends and Distributions
		\$			
		2a Total capital gain distr.			
		\$			
		2b 28% rate gain		Form 1099-DIV	
		\$			
PAYER'S Federal identification number	RECIPIENT'S identification number	2c Qualified 5-year gain	2d Unrecap. sec. 1250 gain	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
		\$	\$		
RECIPIENT'S name		2e Section 1202 gain	3 Nontaxable distributions		
		\$	\$		
Street address (including apt. no.)		4 Federal income tax withheld	5 Investment expenses		
		\$	\$		
City, state, and ZIP code		6 Foreign tax paid	7 Foreign country or U.S. possession		
		\$	\$		
Account number (optional)	2nd TIN not.	8 Cash liquidation distr.	9 Noncash liquidation distr.		
	<input type="checkbox"/>	\$	\$		

Form **1099-DIV** Cat. No. 14415N Department of the Treasury - Internal Revenue Service

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9191 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Ordinary dividends	OMB No. 1545-0110	<div style="font-size: 2em; font-weight: bold;">2001</div>	Dividends and Distributions
		\$			
		2a Total capital gain distr.			
		\$			
		2b 28% rate gain		Form 1099-DIV	
		\$			
PAYER'S Federal identification number	RECIPIENT'S identification number	2c Qualified 5-year gain	2d Unrecap. sec. 1250 gain	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
		\$	\$		
RECIPIENT'S name		2e Section 1202 gain	3 Nontaxable distributions		
		\$	\$		
Street address (including apt. no.)		4 Federal income tax withheld	5 Investment expenses		
		\$	\$		
City, state, and ZIP code		6 Foreign tax paid	7 Foreign country or U.S. possession		
		\$	\$		
Account number (optional)	2nd TIN not.	8 Cash liquidation distr.	9 Noncash liquidation distr.		
	<input type="checkbox"/>	\$	\$		

Form **1099-DIV** Cat. No. 14415N Department of the Treasury - Internal Revenue Service

Exhibit I

8888 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			1 Unemployment compensation <div style="border: 1px solid black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="text-align: center; font-size: 0.8em;">← 1.40" →</div> \$		OMB No. 1545-0120 2001 Form 1099-G	Certain Government and Qualified State Tuition Program Payments Copy A For Internal Revenue Service Center File with Form 1096. <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</small>
PAYER'S name, street address, city, state, ZIP code, and telephone no.		2 State or local income tax refunds, credits, or offsets \$				
				PAYER'S Federal identification number	RECIPIENT'S identification number	
RECIPIENT'S name		5 Qualified state tuition program earnings \$	6 Taxable grants \$			
Street address (including apt. no.)		7 Agriculture payments \$	8 The amount in box 2 applies to income from a trade or business <input type="checkbox"/>			
City, state, and ZIP code						
Account number (optional)						

Form **1099-G** Cat. No. 14438M Department of the Treasury - Internal Revenue Service

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8888 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			1 Unemployment compensation <div style="border: 1px solid black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="text-align: center; font-size: 0.8em;">← 1.40" →</div> \$		OMB No. 1545-0120 2001 Form 1099-G	Certain Government and Qualified State Tuition Program Payments Copy A For Internal Revenue Service Center File with Form 1096. <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</small>
PAYER'S name, street address, city, state, ZIP code, and telephone no.		2 State or local income tax refunds, credits, or offsets \$				
				PAYER'S Federal identification number	RECIPIENT'S identification number	
RECIPIENT'S name		5 Qualified state tuition program earnings \$	6 Taxable grants \$			
Street address (including apt. no.)		7 Agriculture payments \$	8 The amount in box 2 applies to income from a trade or business <input type="checkbox"/>			
City, state, and ZIP code						
Account number (optional)						

Form **1099-G** Cat. No. 14438M Department of the Treasury - Internal Revenue Service

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8888 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			1 Unemployment compensation <div style="border: 1px solid black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="text-align: center; font-size: 0.8em;">← 1.40" →</div> \$		OMB No. 1545-0120 2001 Form 1099-G	Certain Government and Qualified State Tuition Program Payments Copy A For Internal Revenue Service Center File with Form 1096. <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</small>
PAYER'S name, street address, city, state, ZIP code, and telephone no.		2 State or local income tax refunds, credits, or offsets \$				
				PAYER'S Federal identification number	RECIPIENT'S identification number	
RECIPIENT'S name		5 Qualified state tuition program earnings \$	6 Taxable grants \$			
Street address (including apt. no.)		7 Agriculture payments \$	8 The amount in box 2 applies to income from a trade or business <input type="checkbox"/>			
City, state, and ZIP code						
Account number (optional)						

Form **1099-G** Cat. No. 14438M Department of the Treasury - Internal Revenue Service

Exhibit J

9292 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		Payer's RTN (optional)	OMB No. 1545-0112	2001 Interest Income Form 1099-INT
PAYER'S Federal identification number	RECIPIENT'S identification number	1 Interest income not included in box 3 \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
RECIPIENT'S name		2 Early withdrawal penalty \$	3 Interest on U.S. Savings Bonds and Treas. obligations \$	
Street address (including apt. no.)		4 Federal income tax withheld \$	5 Investment expenses \$	
City, state, and ZIP code		6 Foreign tax paid	7 Foreign country or U.S. possession	
Account number (optional)	2nd TIN not. <input type="checkbox"/>	\$		

Form 1099-INT .60" Cat. No. 14410K Department of the Treasury - Internal Revenue Service

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9292 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		Payer's RTN (optional)	OMB No. 1545-0112	2001 Interest Income Form 1099-INT
PAYER'S Federal identification number	RECIPIENT'S identification number	1 Interest income not included in box 3 \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
RECIPIENT'S name		2 Early withdrawal penalty \$	3 Interest on U.S. Savings Bonds and Treas. obligations \$	
Street address (including apt. no.)		4 Federal income tax withheld \$	5 Investment expenses \$	
City, state, and ZIP code		6 Foreign tax paid	7 Foreign country or U.S. possession	
Account number (optional)	2nd TIN not. <input type="checkbox"/>	\$		

Form 1099-INT Cat. No. 14410K Department of the Treasury - Internal Revenue Service

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9292 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		Payer's RTN (optional)	OMB No. 1545-0112	2001 Interest Income Form 1099-INT
PAYER'S Federal identification number	RECIPIENT'S identification number	1 Interest income not included in box 3 \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
RECIPIENT'S name		2 Early withdrawal penalty \$	3 Interest on U.S. Savings Bonds and Treas. obligations \$	
Street address (including apt. no.)		4 Federal income tax withheld \$	5 Investment expenses \$	
City, state, and ZIP code		6 Foreign tax paid	7 Foreign country or U.S. possession	
Account number (optional)	2nd TIN not. <input type="checkbox"/>	\$		

Form 1099-INT Cat. No. 14410K Department of the Treasury - Internal Revenue Service

Exhibit K

9393 VOID CORRECTED 4.50"

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Gross long-term care benefits paid	OMB No. 1545-1519 2001 Form 1099-LTC	Long-Term Care and Accelerated Death Benefits	
		2 Accelerated death benefits paid			
PAYER'S Federal identification number	POLICYHOLDER'S identification number	3 Check one: <input type="checkbox"/> Per diem <input type="checkbox"/> Reimbursed amount	INSURED'S social security no.		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
POLICYHOLDER'S name		INSURED'S name			
Street address (including apt. no.)		Street address (including apt. no.)			
City, state, and ZIP code		City, state, and ZIP code			
Account number (optional)	4 Qualified contract <input type="checkbox"/> (optional)	5 Check, if applicable: <input type="checkbox"/> Chronically ill <input type="checkbox"/> Terminally ill	Date certified		

Form **1099-LTC** Cat. No. 23021Z Department of the Treasury - Internal Revenue Service

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9393 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Gross long-term care benefits paid	OMB No. 1545-1519 2001 Form 1099-LTC	Long-Term Care and Accelerated Death Benefits	
		2 Accelerated death benefits paid			
PAYER'S Federal identification number	POLICYHOLDER'S identification number	3 Check one: <input type="checkbox"/> Per diem <input type="checkbox"/> Reimbursed amount	INSURED'S social security no.		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
POLICYHOLDER'S name		INSURED'S name			
Street address (including apt. no.)		Street address (including apt. no.)			
City, state, and ZIP code		City, state, and ZIP code			
Account number (optional)	4 Qualified contract <input type="checkbox"/> (optional)	5 Check, if applicable: <input type="checkbox"/> Chronically ill <input type="checkbox"/> Terminally ill	Date certified		

Form **1099-LTC** Cat. No. 23021Z Department of the Treasury - Internal Revenue Service

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9393 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Gross long-term care benefits paid	OMB No. 1545-1519 2001 Form 1099-LTC	Long-Term Care and Accelerated Death Benefits	
		2 Accelerated death benefits paid			
PAYER'S Federal identification number	POLICYHOLDER'S identification number	3 Check one: <input type="checkbox"/> Per diem <input type="checkbox"/> Reimbursed amount	INSURED'S social security no.		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
POLICYHOLDER'S name		INSURED'S name			
Street address (including apt. no.)		Street address (including apt. no.)			
City, state, and ZIP code		City, state, and ZIP code			
Account number (optional)	4 Qualified contract <input type="checkbox"/> (optional)	5 Check, if applicable: <input type="checkbox"/> Chronically ill <input type="checkbox"/> Terminally ill	Date certified		

Form **1099-LTC** Cat. No. 23021Z Department of the Treasury - Internal Revenue Service

Exhibit L

9595 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0115		2001	Miscellaneous Income
PAYER'S name, street address, city, state, and ZIP code		1 Rents		\$			
PAYER'S Federal identification number		RECIPIENT'S identification number		2 Royalties		Form 1099-MISC	
				3 Other income			
RECIPIENT'S name		5 Fishing boat proceeds		6 Medical and health care payments		File with Form 1096.	
				7 Nonemployee compensation			
Street address (including apt. no.)		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>		10 Crop insurance proceeds		For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
				11			
City, state, and ZIP code		13 Excess golden parachute payments		14 Gross proceeds paid to an attorney		For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
				15			
Account number (optional)		2nd TIN not <input type="checkbox"/>		17 State/Payer's state no.		18 State income	
				\$		\$	

Form **1099-MISC** Cat. No. 14425J Department of the Treasury - Internal Revenue Service

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9595 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				OMB No. 1545-0115		2001	Miscellaneous Income
PAYER'S name, street address, city, state, and ZIP code		1 Rents		\$			
PAYER'S Federal identification number		RECIPIENT'S identification number		2 Royalties		Form 1099-MISC	
				3 Other income			
RECIPIENT'S name		5 Fishing boat proceeds		6 Medical and health care payments		File with Form 1096.	
				7 Nonemployee compensation			
Street address (including apt. no.)		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>		10 Crop insurance proceeds		For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
				11			
City, state, and ZIP code		13 Excess golden parachute payments		14 Gross proceeds paid to an attorney		For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
				15			
Account number (optional)		2nd TIN not <input type="checkbox"/>		17 State/Payer's state no.		18 State income	
				\$		\$	

Form **1099-MISC** Cat. No. 14425J Department of the Treasury - Internal Revenue Service

Exhibit M

9494 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code			OMB No. 1545-1517 2001 Form 1099-MSA	Distributions From an MSA or Medicare+Choice MSA
PAYER'S Federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess contributions \$	Copy A For Internal Revenue Service Center File with Form 1096. <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</small>
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$	
Street address (including apt. no.)		5 Medicare+Choice MSA <input type="checkbox"/>		
City, state, and ZIP code				
Account number (optional)				

Form 1099-MSA Cat. No. 23114L Department of the Treasury - Internal Revenue Service

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9494 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code			OMB No. 1545-1517 2001 Form 1099-MSA	Distributions From an MSA or Medicare+Choice MSA
PAYER'S Federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess contributions \$	Copy A For Internal Revenue Service Center File with Form 1096. <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</small>
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$	
Street address (including apt. no.)		5 Medicare+Choice MSA <input type="checkbox"/>		
City, state, and ZIP code				
Account number (optional)				

Form 1099-MSA Cat. No. 23114L Department of the Treasury - Internal Revenue Service

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9494 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code			OMB No. 1545-1517 2001 Form 1099-MSA	Distributions From an MSA or Medicare+Choice MSA
PAYER'S Federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess contributions \$	Copy A For Internal Revenue Service Center File with Form 1096. <small>For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.</small>
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$	
Street address (including apt. no.)		5 Medicare+Choice MSA <input type="checkbox"/>		
City, state, and ZIP code				
Account number (optional)				

Form 1099-MSA Cat. No. 23114L Department of the Treasury - Internal Revenue Service

Exhibit N

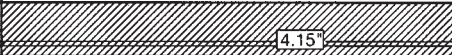


9696 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			
PAYER'S name, street address, city, state, ZIP code, and telephone no.			
1 Original issue discount for 2001 \$	OMB No. 1545-0117 2001 Form 1099-OID		
2 Other periodic interest \$			
Original Issue Discount			
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Early withdrawal penalty \$	4 Federal income tax withheld \$
RECIPIENT'S name		5 Description	
Street address (including apt. no.)		6 Original issue discount on U.S. Treasury obligations \$	
City, state, and ZIP code		7 Investment expenses \$	
Account number (optional)	2nd TIN not. <input type="checkbox"/>		
2.80"			
Form 1099-OID Cat. No. 14421R Department of the Treasury - Internal Revenue Service			
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			
9696 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			
PAYER'S name, street address, city, state, ZIP code, and telephone no.			
1 Original issue discount for 2001 \$	OMB No. 1545-0117 2001 Form 1099-OID		
2 Other periodic interest \$			
Original Issue Discount			
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Early withdrawal penalty \$	4 Federal income tax withheld \$
RECIPIENT'S name		5 Description	
Street address (including apt. no.)		6 Original issue discount on U.S. Treasury obligations \$	
City, state, and ZIP code		7 Investment expenses \$	
Account number (optional)	2nd TIN not. <input type="checkbox"/>		
2.80"			
Form 1099-OID Cat. No. 14421R Department of the Treasury - Internal Revenue Service			
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page			
9696 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED			
PAYER'S name, street address, city, state, ZIP code, and telephone no.			
1 Original issue discount for 2001 \$	OMB No. 1545-0117 2001 Form 1099-OID		
2 Other periodic interest \$			
Original Issue Discount			
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Early withdrawal penalty \$	4 Federal income tax withheld \$
RECIPIENT'S name		5 Description	
Street address (including apt. no.)		6 Original issue discount on U.S. Treasury obligations \$	
City, state, and ZIP code		7 Investment expenses \$	
Account number (optional)	2nd TIN not. <input type="checkbox"/>		
2.80"			
Form 1099-OID Cat. No. 14421R Department of the Treasury - Internal Revenue Service			

Exhibit O

9797 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Patronage dividends	OMB No. 1545-0118 2001 Form 1099-PATR
		2 Nonpatronage distributions	
		3 Per-unit retain allocations	
		\$	← 1.40" →
PAYER'S Federal identification number		RECIPIENT'S identification number	4 Federal income tax withheld
RECIPIENT'S name		5 Redemption of nonqualified notices and retain allocations	\$
Street address (including apt. no.)		6	7 Investment credit
City, state, and ZIP code		8 Work opportunity credit	9 Patron's AMT adjustment
Account number (optional)		2nd TIN not.	\$
← 2.80" →		<input type="checkbox"/>	← 4.15" →

**Taxable
Distributions
Received From
Cooperatives**

Copy A
For
**Internal Revenue
Service Center**
File with Form 1096.
For Privacy Act
and Paperwork
Reduction Act
Notice, see the
**2001 General
Instructions for
Forms 1099, 1098,
5498, and W-2G.**

Form **1099-PATR** Cat. No. 14435F Department of the Treasury - Internal Revenue Service
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9797 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Patronage dividends	OMB No. 1545-0118 2001 Form 1099-PATR
		2 Nonpatronage distributions	
		3 Per-unit retain allocations	
		\$	
PAYER'S Federal identification number		RECIPIENT'S identification number	4 Federal income tax withheld
RECIPIENT'S name		5 Redemption of nonqualified notices and retain allocations	\$
Street address (including apt. no.)		6	7 Investment credit
City, state, and ZIP code		8 Work opportunity credit	9 Patron's AMT adjustment
Account number (optional)		2nd TIN not.	\$
		<input type="checkbox"/>	

**Taxable
Distributions
Received From
Cooperatives**

Copy A
For
**Internal Revenue
Service Center**
File with Form 1096.
For Privacy Act
and Paperwork
Reduction Act
Notice, see the
**2001 General
Instructions for
Forms 1099, 1098,
5498, and W-2G.**

Form **1099-PATR** Cat. No. 14435F Department of the Treasury - Internal Revenue Service
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9797 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Patronage dividends	OMB No. 1545-0118 2001 Form 1099-PATR
		2 Nonpatronage distributions	
		3 Per-unit retain allocations	
		\$	
PAYER'S Federal identification number		RECIPIENT'S identification number	4 Federal income tax withheld
RECIPIENT'S name		5 Redemption of nonqualified notices and retain allocations	\$
Street address (including apt. no.)		6	7 Investment credit
City, state, and ZIP code		8 Work opportunity credit	9 Patron's AMT adjustment
Account number (optional)		2nd TIN not.	\$
		<input type="checkbox"/>	

**Taxable
Distributions
Received From
Cooperatives**

Copy A
For
**Internal Revenue
Service Center**
File with Form 1096.
For Privacy Act
and Paperwork
Reduction Act
Notice, see the
**2001 General
Instructions for
Forms 1099, 1098,
5498, and W-2G.**

Form **1099-PATR** Cat. No. 14435F Department of the Treasury - Internal Revenue Service

Exhibit P

9898 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code 4.50"		1 Gross distribution \$ _____ 2a Taxable amount \$ _____	OMB No. 1545-0119 <div style="font-size: 2em; font-weight: bold; text-align: center;">2001</div> Form 1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
		2b Taxable amount not determined <input type="checkbox"/> Total distribution <input type="checkbox"/> ← 1.25" ← Copy →		
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a) \$ _____	4 Federal income tax withheld \$ _____	Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
RECIPIENT'S name		5 Employee contributions or insurance premiums \$ _____	6 Net unrealized appreciation in employer's securities \$ _____	
Street address (including apt. no.)		7 Distribution code ← 1.00" → IRA/SEP/SIMPLE <input type="checkbox"/>	8 Other \$ _____ % ← .40" →	
City, state, and ZIP code		9a Your percentage of total distribution %	9b Total employee contributions \$	
Account number (optional)		10 State tax withheld \$ _____ \$ _____	11 State/Payer's state no.	12 State distribution \$ _____ \$ _____
_____		13 Local tax withheld \$ _____ \$ _____	14 Name of locality	15 Local distribution \$ _____ \$ _____

Form 1099-R
Cat. No. 14436Q
Department of the Treasury - Internal Revenue Service

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9898 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code 1.00"		1 Gross distribution \$ _____ 2a Taxable amount \$ _____	OMB No. 1545-0119 <div style="font-size: 2em; font-weight: bold; text-align: center;">2001</div> Form 1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
		2b Taxable amount not determined <input type="checkbox"/> Total distribution <input type="checkbox"/> ← 1.25" ← Copy →		
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a) \$ _____	4 Federal income tax withheld \$ _____	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
RECIPIENT'S name		5 Employee contributions or insurance premiums \$ _____	6 Net unrealized appreciation in employer's securities \$ _____	
Street address (including apt. no.)		7 Distribution code IRA/SEP/SIMPLE <input type="checkbox"/>	8 Other \$ _____ %	
City, state, and ZIP code		9a Your percentage of total distribution %	9b Total employee contributions \$	
Account number (optional)		10 State tax withheld \$ _____ \$ _____	11 State/Payer's state no.	12 State distribution \$ _____ \$ _____
_____		13 Local tax withheld \$ _____ \$ _____	14 Name of locality	15 Local distribution \$ _____ \$ _____

Form 1099-R
Cat. No. 14436Q
Department of the Treasury - Internal Revenue Service

Exhibit Q

7575 VOID CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone no.		1 Date of closing ← 1.40" →	OMB No. 1545-0997 2001 Form 1099-S	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S Federal identification number ← 1.70" →	TRANSFEROR'S identification number ← 1.70" →	3 Address or legal description (including city, state, and ZIP code) ← 2.80" →		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
TRANSFEROR'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)				
		4 Check here if the transferor received or will receive property or services as part of the consideration. <input type="checkbox"/>		
		5 Buyer's part of real estate tax \$		

Form 1099-S
Cat. No. 64292E
Department of the Treasury - Internal Revenue Service

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7575 VOID CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone no.		1 Date of closing	OMB No. 1545-0997 2001 Form 1099-S	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S Federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
TRANSFEROR'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)				
		4 Check here if the transferor received or will receive property or services as part of the consideration. <input type="checkbox"/>		
		5 Buyer's part of real estate tax \$		

Form 1099-S
Cat. No. 64292E
Department of the Treasury - Internal Revenue Service

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7575 VOID CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone no.		1 Date of closing	OMB No. 1545-0997 2001 Form 1099-S	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S Federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
TRANSFEROR'S name				
Street address (including apt. no.)				
City, state, and ZIP code				
Account number (optional)				
		4 Check here if the transferor received or will receive property or services as part of the consideration. <input type="checkbox"/>		
		5 Buyer's part of real estate tax \$		

Form 1099-S
Cat. No. 64292E
Department of the Treasury - Internal Revenue Service

Exhibit R

2828 VOID CORRECTED

TRUSTEE'S or ISSUER'S name, street address, city, state, and ZIP code		1 IRA contributions (other than amounts in boxes 2, 3, 4, and 8-11) \$	OMB No. 1545-0747		2001	IRA Contribution Information
		2 Rollover contributions \$	Form 5498			
TRUSTEE'S or ISSUER'S Federal identification no.	PARTICIPANT'S social security number	3 Roth conversion amount \$	4 Recharacterized contributions \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
PARTICIPANT'S name		5 Fair market value of account \$	6 Life insurance cost included in box 1 \$			
Street address (including apt. no.)		7 IRA SEP SIMPLE Roth IRA Ed IRA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
City, state, and ZIP code		8 SEP contributions \$	9 SIMPLE contributions \$			
Account number (optional)		10 Roth IRA contributions \$	11 Ed IRA contributions \$			

Form **5498**

Cat. No. 50010C

Department of the Treasury - Internal Revenue Service

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2828 VOID CORRECTED

TRUSTEE'S or ISSUER'S name, street address, city, state, and ZIP code		1 IRA contributions (other than amounts in boxes 2, 3, 4, and 8-11) \$	OMB No. 1545-0747		2001	IRA Contribution Information
		2 Rollover contributions \$	Form 5498			
TRUSTEE'S or ISSUER'S Federal identification no.	PARTICIPANT'S social security number	3 Roth conversion amount \$	4 Recharacterized contributions \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
PARTICIPANT'S name		5 Fair market value of account \$	6 Life insurance cost included in box 1 \$			
Street address (including apt. no.)		7 IRA SEP SIMPLE Roth IRA Ed IRA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
City, state, and ZIP code		8 SEP contributions \$	9 SIMPLE contributions \$			
Account number (optional)		10 Roth IRA contributions \$	11 Ed IRA contributions \$			

Form **5498**

Cat. No. 50010C

Department of the Treasury - Internal Revenue Service

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2828 VOID CORRECTED

TRUSTEE'S or ISSUER'S name, street address, city, state, and ZIP code		1 IRA contributions (other than amounts in boxes 2, 3, 4, and 8-11) \$	OMB No. 1545-0747		2001	IRA Contribution Information
		2 Rollover contributions \$	Form 5498			
TRUSTEE'S or ISSUER'S Federal identification no.	PARTICIPANT'S social security number	3 Roth conversion amount \$	4 Recharacterized contributions \$		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
PARTICIPANT'S name		5 Fair market value of account \$	6 Life insurance cost included in box 1 \$			
Street address (including apt. no.)		7 IRA SEP SIMPLE Roth IRA Ed IRA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>				
City, state, and ZIP code		8 SEP contributions \$	9 SIMPLE contributions \$			
Account number (optional)		10 Roth IRA contributions \$	11 Ed IRA contributions \$			

Form **5498**

Cat. No. 50010C

Department of the Treasury - Internal Revenue Service

Exhibit S

2727 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				2001 Form 5498-MSA	MSA or Medicare+Choice MSA Information
TRUSTEE'S name, street address, city, state, and ZIP code		1 Employee or self-employed person's MSA contributions made in 2001 and 2002 for 2001	OMB No. 1545-1518		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
		\$			
		2 Total contributions made in 2001			
		\$	← 1.40" →		
TRUSTEE'S Federal identification number	PARTICIPANT'S social security number	3 Total MSA contributions made in 2002 for 2001			
		\$			
PARTICIPANT'S name		4 Rollover contributions	5 Fair market value of MSA or M+C MSA		
← 3.40" →		\$	\$		
Street address (including apt. no.)		6 Medicare+Choice MSA <input type="checkbox"/>			
City, state, and ZIP code					
Account number (optional)					
Form 5498-MSA		Cat. No. 23097L		Department of the Treasury - Internal Revenue Service	
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page					
2727 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				2001 Form 5498-MSA	MSA or Medicare+Choice MSA Information
TRUSTEE'S name, street address, city, state, and ZIP code		1 Employee or self-employed person's MSA contributions made in 2001 and 2002 for 2001	OMB No. 1545-1518		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
		\$			
		2 Total contributions made in 2001			
		\$			
TRUSTEE'S Federal identification number	PARTICIPANT'S social security number	3 Total MSA contributions made in 2002 for 2001			
		\$			
PARTICIPANT'S name		4 Rollover contributions	5 Fair market value of MSA or M+C MSA		
		\$	\$		
Street address (including apt. no.)		6 Medicare+Choice MSA <input type="checkbox"/>			
City, state, and ZIP code					
Account number (optional)					
Form 5498-MSA		Cat. No. 23097L		Department of the Treasury - Internal Revenue Service	
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2727 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED				2001 Form 5498-MSA	MSA or Medicare+Choice MSA Information
TRUSTEE'S name, street address, city, state, and ZIP code		1 Employee or self-employed person's MSA contributions made in 2001 and 2002 for 2001	OMB No. 1545-1518		Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.
		\$			
		2 Total contributions made in 2001			
		\$			
TRUSTEE'S Federal identification number	PARTICIPANT'S social security number	3 Total MSA contributions made in 2002 for 2001			
		\$			
PARTICIPANT'S name		4 Rollover contributions	5 Fair market value of MSA or M+C MSA		
		\$	\$		
Street address (including apt. no.)		6 Medicare+Choice MSA <input type="checkbox"/>			
City, state, and ZIP code					
Account number (optional)					
Form 5498-MSA		Cat. No. 23097L		Department of the Treasury - Internal Revenue Service	

Exhibit T

3232 CORRECTED

PAYER'S name	1 Gross winnings	2 Federal income tax withheld
Street address	3 Type of wager	4 Date won
City, state, and ZIP code	5 Transaction	6 Race
Federal identification number Telephone number	7 Winnings from identical wagers	8 Cashier
WINNER'S name	9 Winner's taxpayer identification no.	10 Window
Street address (including apt. no.)	11 First I.D.	12 Second I.D.
City, state, and ZIP code	13 State/Payer's state identification no.	14 State income tax withheld
Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.		
Signature ▶	Date ▶	

OMB No. 1545-0238
2001
Form W-2G
Certain Gambling Winnings
For Privacy Act and Paperwork Reduction Act Notice, see the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.**
File with Form 1096.
Copy A
For Internal Revenue Service Center

Form **W-2G** Cat. No. 10138V Department of the Treasury - Internal Revenue Service

3232 CORRECTED

PAYER'S name	1 Gross winnings	2 Federal income tax withheld
Street address	3 Type of wager	4 Date won
City, state, and ZIP code	5 Transaction	6 Race
Federal identification number Telephone number	7 Winnings from identical wagers	8 Cashier
WINNER'S name	9 Winner's taxpayer identification no.	10 Window
Street address (including apt. no.)	11 First I.D.	12 Second I.D.
City, state, and ZIP code	13 State/Payer's state identification no.	14 State income tax withheld
Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.		
Signature ▶	Date ▶	

OMB No. 1545-0238
2001
Form W-2G
Certain Gambling Winnings
For Privacy Act and Paperwork Reduction Act Notice, see the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.**
File with Form 1096.
Copy A
For Internal Revenue Service Center

Form **W-2G** Cat. No. 10138V Department of the Treasury - Internal Revenue Service

3232 CORRECTED

PAYER'S name	1 Gross winnings	2 Federal income tax withheld
Street address	3 Type of wager	4 Date won
City, state, and ZIP code	5 Transaction	6 Race
Federal identification number Telephone number	7 Winnings from identical wagers	8 Cashier
WINNER'S name	9 Winner's taxpayer identification no.	10 Window
Street address (including apt. no.)	11 First I.D.	12 Second I.D.
City, state, and ZIP code	13 State/Payer's state identification no.	14 State income tax withheld
Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.		
Signature ▶	Date ▶	

OMB No. 1545-0238
2001
Form W-2G
Certain Gambling Winnings
For Privacy Act and Paperwork Reduction Act Notice, see the **2001 General Instructions for Forms 1099, 1098, 5498, and W-2G.**
File with Form 1096.
Copy A
For Internal Revenue Service Center

Form **W-2G** Cat. No. 10138V Department of the Treasury - Internal Revenue Service

Exhibit U

Form 1042-S		Foreign Person's U.S. Source Income Subject to Withholding				2001		OMB No. 1545-0096	
Department of the Treasury Internal Revenue Service		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<input type="checkbox"/> PRO-RATA BASIS REPORTING		Copy A for Internal Revenue Service			
1 Income code	2 Gross income	3 Withholding allowances	4 Net income	5 Tax rate	6 Exemption code	7 U.S. Federal tax withheld	8 Amount repaid to recipient		
9 Withholding agent's EIN ▶ <input type="checkbox"/> EIN <input type="checkbox"/> QI-EIN				14 Recipient's U.S. TIN, if any ▶ <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN <input type="checkbox"/> QI-EIN					
10 WITHHOLDING AGENT'S name and address (including ZIP code)				15 Recipient's country of residence for tax purposes			16 Country code		
				17 NONQUALIFIED INTERMEDIARY'S (NQI's)/ FLOW-THROUGH ENTITY'S name			18 Country code		
11 Recipient's account number (optional)				12 Recipient code					
13 RECIPIENT'S name (first name, initial, and last name), street address, city or town, province or state, and country (including postal code)				19 NQI's/Flow-through entity's address					
				20 NQI's/Flow-through entity's TIN, if any ▶					
22 State income tax withheld			23 Payer's state tax no.		24 Name of state				

For Privacy Act and Paperwork Reduction Act Notice, see page 15 of the separate instructions. Cat. No. 11386R Form **1042-S** (2001)

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Department of the Treasury Internal Revenue Service		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		<input type="checkbox"/> PRO-RATA BASIS REPORTING		Copy A for Internal Revenue Service			
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For Privacy Act and Paperwork Reduction Act Notice, see page 15 of the separate instructions. Cat. No. 11386R Form **1042-S** (2001)

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Catch-Up Contributions for Individuals Age 50 or Over

REG-142499-01

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would provide guidance concerning the requirements for retirement plans providing catch-up contributions to individuals age 50 or older pursuant to the provisions of section 414(v). These proposed regulations would affect section 401(k) plans, section 408(p) SIMPLE IRA plans, section 408(k) simplified employee pensions, section 403(b) tax-sheltered annuity contracts, and section 457 eligible governmental plans, and would affect participants eligible to make elective deferrals under these plans or contracts. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for February 21, 2002, must be received by January 31, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG-142499-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG-142499-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad or John T. Ricotta at (202) 622-6060 (not a toll-free number); concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Donna Poindexter (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations under section 414(v) of the Internal Revenue Code of 1986 (Code). Section 414(v) was added by section 631 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (Public Law 107-16), enacted on June 7, 2001. Under section 414(v), an individual age 50 or over is permitted to make additional elective deferrals (up to a dollar limit provided in that section) under a plan that otherwise permits elective deferrals if certain requirements provided under that section are satisfied. Section 414(v) also provides that a plan will not violate any provision of the Code by permitting these additional elective deferrals to be made.

Explanation of Provisions

These proposed regulations would implement new section 414(v) by providing that an employer plan is not treated as violating any provision of the Code solely because the plan permits a catch-up eligible participant (as defined in these proposed regulations) to make catch-up contributions. Catch-up contributions generally are elective deferrals made by a catch-up eligible participant that exceed an otherwise applicable limit and that are treated as catch-up contributions under the plan, but only to the extent they do not exceed the maximum amount of catch-up contributions permitted for the taxable year. An employer is not required to provide for catch-up contributions in any of its plans, even if the plans provide for elective deferrals. If, however, any plan of an employer provides for catch-up contributions, all plans of the employer that provide elective deferrals must comply

with the universal availability requirements described below.

A. Eligibility for Catch-up Contributions

Under these proposed regulations, a participant is a catch-up eligible participant, and thus is permitted to make catch-up contributions, if the participant is otherwise eligible to make elective deferrals under the plan and is age 50 or older. For purposes of this rule, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of that year. The effect of this rule is that all participants who will attain age 50 during a calendar year are treated the same beginning January 1 of that year, without regard to whether the participant survives to his or her 50th birthday or terminates employment during the year and without regard to the employer's choice of plan year.

A catch-up eligible participant can make catch-up contributions under a section 401(k) plan, a SIMPLE IRA plan as defined in section 408(p), a simplified employee pension as defined in section 408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan, as long as the participant can otherwise make elective deferrals under the plan or contract. For this purpose, elective deferrals include not only elective deferrals defined in section 402(g)(3), but also any contribution to a section 457 eligible governmental plan.

B. Determination of Catch-up Contribution

In describing section 631 of EGTRRA, the Conference report states that "the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 457 plan is increased for individuals who have attained age 50 by the end of the year." Conf. Rep. No. 107-84, at 236 (2001). The legislative history to section 631 of EGTRRA indicates that the intent of Congress in enacting section 414(v) was to allow a catch-up eligible participant to make additional elective deferrals over and above any otherwise applicable limit,

up to the catch-up contribution limit for the taxable year. The proposed regulations would provide that elective deferrals made by a catch-up eligible participant are treated as catch-up contributions if they exceed any otherwise applicable limit, to the extent they do not exceed the maximum dollar amount of catch-up contributions permitted under section 414(v). However, the regulations would not require that a participant have made elective deferrals in excess of an otherwise applicable limit in order to be a catch-up eligible participant. A plan providing for \$1,000 of catch-up contributions in 2002 could allow a participant who is over age 50 to make elective deferrals in an amount projected to exceed the otherwise applicable limit by \$1,000 at any time during 2002.

Under the proposed regulations, catch-up contributions would be determined by reference to three types of limits: statutory limits, employer-provided limits, and the actual deferral percentage (ADP) limit. A statutory limit is a limit contained in the Code on elective deferrals or annual additions permitted to be made under the plan or contract (without regard to section 414(v)). Statutory limits include the requirement under section 401(a)(30) that the plan limit all elective deferrals within a calendar year under the plan and other plans (or contracts) maintained by members of a controlled group to the amount permitted under section 402(g).

An employer-provided limit is a limit on the elective deferrals an employee can make under the plan (without regard to section 414(v)) that is contained in the terms of the plan, but that is not a statutory limit. For example, a limit on elective deferrals of highly compensated employees to 10% of pay is an employer-provided limit. The condition that an employer-provided limit be contained in the terms of the plan is intended to correspond with the requirements of §1.401-1 that a qualified plan have a definite written program and provide for a definite predetermined formula for allocating contributions made to the plan.

For a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest dollar amount of elective deferrals that may be retained

in the plan by a highly compensated employee after the application of section 401(k)(8)(C) (without regard to section 414(v)). For example, if after ADP testing, elective deferrals by highly compensated employees in excess of \$8,000 would be required to be distributed or recharacterized as employee contributions under the statutory correction set forth under section 401(k)(8)(C), then the ADP limit is \$8,000. Similar rules apply in the case of a SEP.

The amount of elective deferrals in excess of an applicable limit is generally determined as of the end of a plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. For example, if a plan limits elective deferrals to 10% of compensation, then whether the participant has elective deferrals in excess of 10% of compensation is determined at the end of the plan year. Similarly, elective deferrals in excess of the ADP limit are determined as of the end of the plan year. For a limit that is determined on the basis of a year other than a plan year (such as the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

If a plan provides for separate employer-provided limits on separate portions of compensation during the plan year, the determination of the amount of elective deferrals in excess of the employer-provided limit is still made on an annual basis, with the applicable limit for the year equal to the sum of the dollar limits that apply to the separate portions of compensation. This situation may occur, for example, when the plan sets a deferral percentage limit for each payroll period.

If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan may provide, as an alternative rule, that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits. For example, if a plan using this time-weighted average limits deferrals to 8 percent of compensation during the first half of the year and 10

percent of compensation for the second half of the year, the applicable limit will be 9 percent of each employee's plan year compensation.

Under the proposed regulations, elective deferrals in excess of an applicable limit would be treated as catch-up contributions only to the extent that such elective deferrals do not exceed the catch-up contribution limit for the taxable year reduced by elective deferrals previously treated as catch-up contributions for the taxable year. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, except that an elective deferral will not be treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under all plans of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)).

These proposed regulations would include a timing rule for purposes of determining when elective deferrals in excess of an applicable limit are treated as catch-up contributions. This rule is necessary because the maximum amount of catch-up contributions is based on a participant's taxable year, but the determination of whether an elective deferral is in excess of an applicable limit is determined on the basis of a taxable year, plan year, or limitation year, depending on the underlying limit. Under the proposed regulations, whether these elective deferrals in excess of an applicable limit can be treated as catch-up contributions would be determined as of the last day of the relevant year, except that if the limit is determined on a taxable or calendar year basis, then whether elective deferrals in excess of the limit can be treated as catch-up contributions would be determined at the time they are deferred. This timing rule is most significant for a plan with a plan year that is not the calendar year. For example, in a plan with a plan year ending on June 30, 2005, elective deferrals in excess of the employer-provided limit or the ADP limit for the plan year ending June 30, 2005, would be treated as catch-up contributions as of the last day of the plan year, up to the catch-up contribution limit for 2005. Any amounts deferred after June 30, 2005, that are in excess of the section 401(a)(30) limit for the 2005 cal-

endar year would also be treated as catch-up contributions at the time they are deferred, up to the catch-up contribution limit for 2005 reduced by elective deferrals treated as catch-up contributions as of June 30, 2005.

C. Treatment of Catch-up Contributions

If an elective deferral is treated as a catch-up contribution, it is not subject to otherwise applicable limits under the plan and the plan will not be treated as failing otherwise applicable nondiscrimination requirements because of the making of catch-up contributions. The proposed regulations would provide guidance on how catch-up contributions under the plan are taken into account for purposes of these various requirements under the Code. Under the proposed regulations, catch-up contributions would not be taken into account in applying the limits of section 401(a)(30), 401(k)(11), 402(h), 402A(c)(2), 403(b), 404(h), 408(k), 408(p), 415, or 457 to other contributions or benefits under the plan offering catch-up contributions or under any other plan of the employer.

For purposes of ADP testing, the proposed regulations would provide that any elective deferral for the plan year that is treated as a catch-up contribution because it is in excess of a statutory limit or an employer-provided limit is disregarded for purposes of calculating the participant's actual deferral ratio (*i.e.*, catch-up contributions are subtracted from the participant's elective deferrals for the plan year prior to determining the participant's actual deferral ratio). This subtraction applies without regard to whether the catch-up eligible participant is a highly compensated employee or a nonhighly compensated employee. If, after running the ADP test, a plan needs to take corrective action under section 401(k)(8), the plan must determine the amount of elective deferrals that are catch-up contributions because they are in excess of the ADP limit. The elective deferrals that are treated as catch-up contributions must be retained by the plan. The plan would not be treated as failing section 401(k)(8) by reason of this retention of catch-up contributions. Excess contributions treated as catch-up contributions would nevertheless be treated as excess contributions for purposes of section 411(a)(3)(G). There-

fore, if the plan does not provide for matching contributions on catch-up contributions, any matching contributions related to excess contributions treated as catch-up contributions can be forfeited. The approach under the proposed regulations would exclude those catch-up contributions that can be identified before ADP testing, and allow the plan to treat elective deferrals as catch-up contributions for those participants who would be limited under the plan (because the plan otherwise would be required to distribute some of their elective deferrals), while minimizing changes to current plan administration.

Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416 or 410(b). However, catch-up contributions made to the plan in prior years are taken into account in determining whether a plan is top-heavy under section 416, and for purposes of average benefit percentage testing to the extent prior years' contributions are taken into account (*i.e.*, if accrued to date calculations are used).

A plan does not fail the requirements of section 401(a)(4) merely because it permits only catch-up eligible participants to make catch-up contributions. Similarly, if a plan applies a single matching formula to elective deferrals whether or not they are catch-up contributions, the matching formula as applied to catch-up eligible participants is not treated as a separate benefit, right, or feature under §1.401(a)(4)-4 from the matching formula as applied to the other participants. However, the matching contributions under the matching formula must satisfy the actual contribution percentage test under section 401(m)(2) taking into account all matching contributions, including matching contributions on catch-up contributions.

D. Universal Availability

Under the proposed regulations, a plan that offers catch-up contributions would satisfy the requirements of section 401(a)(4) only if all catch-up eligible participants are provided with the effective opportunity to make the same dollar amount of catch-up contributions. Therefore, if an employer provides for catch-up contributions under a section 401(k) plan, all other employer plans in the controlled

group that provide for elective deferrals, including plans not subject to section 401(a)(4), must provide catch-up eligible participants with the same effective opportunity to make catch-up contributions. This universal availability requirement applies solely with respect to catch-up eligible participants. Because the definition of catch-up eligible participants requires that the participant be eligible to make elective deferrals under a plan without regard to section 414(v), the universal availability requirement will not require plans that do not otherwise provide for elective deferrals to provide for catch-up contributions.

In order to provide catch-up eligible participants with an effective opportunity to make catch-up contributions, the plan would have to permit each catch-up eligible participant to make sufficient elective deferrals during the year so that the participant has the opportunity to make elective deferrals up to the otherwise applicable limit plus the catch-up contribution limit. An effective opportunity could be provided in several different ways. For example, a plan that limits elective deferrals on a payroll-by-payroll basis might also provide participants with an effective opportunity to make catch-up contributions that is administered on a payroll-by-payroll basis (*i.e.*, by allowing catch-up eligible participants to increase their deferrals above the otherwise applicable limit by a *pro-rata* portion of the catch-up limit for the year). However, as discussed above, whether these elective deferrals are treated as catch-up contributions would not be determined until the end of the year.

A plan would not fail the universal availability requirement solely because an employer-provided limit did not apply to all employees or different employer-provided limits apply to different groups of employees. As under current law, a plan could provide for different employer-provided limits for different groups of employees, as long as each limit satisfies the nondiscriminatory availability requirements of §1.401(a)(4)-4 for benefits, rights, and features. Thus, for example, a plan could provide for an employer-provided limit that applies to highly compensated employees, even though no employer-provided limit applies to nonhighly compensated employees.

However, a plan is not permitted to provide lower employer-provided limits for catch-up eligible participants.

The proposed regulations would provide several exceptions to this universal availability requirement. First, the proposed regulations would provide for coordination between catch-up contributions under section 414(v) and the provisions of section 457(b)(3) in accordance with section 414(v)(6)(C). The proposed regulations would also provide transition rules for collectively bargained employees and newly-acquired plans.

E. Participants in Multiple Plans

As discussed in Section B above, the intent of section 414(v) is to permit a catch-up eligible participant to make elective deferrals in an amount equal to the catch-up contribution limit for the year in addition to the amount of elective deferrals that the participant would otherwise have been allowed to defer under the plan or plans in which the catch-up eligible participant participated. Many of the statutory limits that would otherwise limit the participant's elective deferrals are applied on an aggregated basis, for example, across all plans within a controlled group. Accordingly, the proposed regulations would provide that, for purposes of determining whether elective deferrals are in excess of a statutory limit, all elective deferrals in excess of the statutory limit are aggregated in the same manner as the underlying limit and the aggregate amount of elective deferrals treated as catch-up contributions because they exceed the statutory limit must not exceed the applicable dollar catch-up limit.

For example, compliance with section 401(a)(30) is determined based on elective deferrals under all section 401(k) plans and all section 403(b) contracts sponsored by the employer. Therefore, all section 401(k) plans and section 403(b) contracts in the controlled group of the employer would be aggregated for purposes of determining the total amount of elective deferrals in excess of the section 401(a)(30) limit. The amount of elective deferrals treated as catch-up contributions by reason of exceeding the section 401(a)(30) limit under the aggregated plans or contracts must not exceed the dollar amount of the catch-up limit for the taxable year.

In calculating the actual deferral ratio (ADR) (as defined in §1.401(k)-1(g)) for a highly compensated employee who participates in more than one section 401(k) plan of the employer during the year, all section 401(k) plans are treated as one section 401(k) plan. Consistent with this approach, if a highly compensated employee participates in more than one section 401(k) plan of an employer, in determining the elective deferrals in excess of an employer-provided limit, the proposed regulations would take into account the elective deferrals and employer-provided limits under all section 401(k) plans in which the employee participates. In such a case, the proposed regulations would provide that in determining whether an employee's elective deferrals exceed an employer-provided limit, the applicable limit for the plan year is the sum of the dollar amounts of the limits under the separate plans and the employee's elective deferrals under all these plans are combined to determine if that aggregate employer-provided limit is exceeded.

When the elective deferrals in excess of a statutory or employer-provided limit would be determined based on more than one plan, the aggregate amount of elective deferrals in excess of that limit made under all section 401(k) plans of the employer in which a catch-up eligible participant who is a highly compensated employee participates would be treated as elective deferrals in excess of an applicable limit under each of those section 401(k) plans. In the case of a highly compensated employee, all elective deferrals that exceed a statutory or employer-provided limit and are treated as catch-up contributions under the section 401(k) plans of the employer in which the catch-up eligible participant participates are subtracted from the participant's elective deferrals for purposes of determining the participant's ADR. However, if any of the section 401(k) plans corrects through distribution of excess contributions under section 401(k)(8) in order to comply with section 401(k)(3), only the catch-up contributions made under that plan are permitted to be subtracted from elective deferrals for purposes of this correction.

When the elective deferrals in excess of a statutory or employer-provided limit are determined on an aggregated basis, it must be determined under which plan the

elective deferrals in excess of the limit were made. The plan under which the elective deferrals in excess of the limit were made may be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plans. For example, if a catch-up eligible participant participates in a section 401(k) plan only during the first 6 months of the year and during the second 6 months of the year, while participating in a section 403(b) contract, the participant's contributions reach and exceed the section 401(a)(30) limit for the year, then all elective deferrals in excess of the section 401(a)(30) limit for the year could be treated as made to the section 403(b) contract.

F. Excludability of Catch-up Contributions

Catch-up contributions are generally not treated as exceeding the applicable dollar amount of section 402(g)(1). The proposed regulations would also provide that a catch-up eligible participant who participates in multiple plans may treat an elective deferral as a catch-up contribution (up to the maximum amount of catch-up contributions permitted for the taxable year) because it exceeds the catch-up eligible participant's section 402(g) limit for the taxable year. This rule would allow a catch-up eligible participant who participates in plans of two or more employers an exclusion from gross income for elective deferrals that exceed the section 402(g) limit, even though the elective deferrals do not exceed an applicable limit for either employer's plan. The treatment by an individual of such elective deferrals as catch-up contributions will not have any impact on either employer's plan. This treatment is parallel to the treatment of excess deferrals for an individual under age 50 who exceeds the section 402(g) limit in the plans of two unrelated employers. Accordingly, the proposed regulations would not provide for the ADP test to be rerun to disregard elective deferrals that an individual treats as catch-up contributions because they exceed the section 402(g) limit. However, the total amount of elective deferrals in excess of the applicable dollar limit in section 402(g)(1)(B) that are not includible in income because they are treated as catch-up contributions cannot exceed that limit by

more than the catch-up contribution limit for the taxable year.

Proposed Effective Date

The regulations are proposed to apply to contributions in taxable years beginning on or after January 1, 2002. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 21, 2002, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues,

NW. 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 15 minutes before the hearing starts. For 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 written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 31, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad and John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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 1.414(v)–1 is added to read as follows:

§1.414(v)–1 *Catch-up contributions.*

(a) *Catch-up contributions*—(1) *General rule.* An applicable employer plan shall not be treated as failing to meet any requirement of the Internal Revenue Code solely because the plan permits a catch-up eligible participant to make catch-up contributions in accordance with section

414(v) and this section. With respect to an applicable employer plan, catch-up contributions are elective deferrals made by a catch-up eligible participant that exceed any of the applicable limits set forth in paragraph (b) of this section and that are treated under the applicable employer plan as catch-up contributions, but only to the extent they do not exceed the catch-up contribution limit described in paragraph (c) of this section (determined in accordance with the special rules for employers that maintain multiple applicable employer plans in paragraph (f) of this section, if applicable). The definitions in paragraphs (a)(2) through (5) of this section apply for purposes of this section.

(2) *Applicable employer plan.* The term applicable employer plan means a section 401(k) plan, a SIMPLE IRA plan as defined in section 408(p), a simplified employee pension plan as defined in section 408(k) (SEP), a plan or contract that satisfies the requirements of section 403(b), or a section 457 eligible governmental plan.

(3) *Elective deferral.* The term elective deferral means an elective deferral within the meaning of section 402(g)(3) or any contribution to a section 457 eligible governmental plan.

(4) *Catch-up eligible participant*—(i) *General rule.* The term catch-up eligible participant means an employee who—

(A) Is eligible to make elective deferrals during the plan year under an applicable employer plan (without regard to section 414(v) or this section); and

(B) Is age 50 or older.

(ii) *Projection of age 50.* For purposes of paragraph (a)(4)(i)(B) of this section, a participant who is projected to attain age 50 before the end of a calendar year is deemed to be age 50 as of January 1 of such year.

(5) *Other definitions.* (i) The terms employer, employee, section 401(k) plan, and highly compensated employee have the meanings provided in §1.410(b)–9.

(ii) The term section 457 eligible governmental plan means an eligible deferred compensation plan described in section 457(b) that is established and maintained by an eligible employer described in section 457(e)(1)(A).

(b) *Elective deferrals that exceed an applicable limit*—(1) *Applicable limits.* An applicable limit for purposes of deter-

mining catch-up contributions for a catch-up eligible participant is any of the following:

(i) *Statutory limit.* A statutory limit is a limit on elective deferrals or annual additions permitted to be made (without regard to section 414(v) and this section) with respect to an employee for a year provided in section 401(a)(30), 402(h), 403(b)(1)(E), 404(h), 408(k), 408(p), 415, or 457, as applicable.

(ii) *Employer-provided limit.* An employer-provided limit is any limit on the elective deferrals an employee is permitted to make (without regard to section 414(v) and this section) that is contained in the terms of the plan, but which is not required under the Internal Revenue Code. Thus, for example, a plan provision that limits highly compensated employees to a deferral percentage of 10% of compensation is an employer-provided limit that is an applicable limit with respect to the highly compensated employees.

(iii) *Actual deferral percentage (ADP) limit.* In the case of a section 401(k) plan that would fail the ADP test of section 401(k)(3) if it did not correct under section 401(k)(8), the ADP limit is the highest amount of elective deferrals that can be retained in the plan by a highly compensated employee under the rules of section 401(k)(8)(C). In the case of a SEP with a salary reduction arrangement (within the meaning of section 408(k)(6)) that would fail the requirements of section 408(k)(6)(A)(iii) if it did not correct in accordance with section 408(k)(6)(C), the ADP limit is the highest amount of elective deferrals that can be made by a highly compensated employee under the rules of section 408(k)(6).

(2) *Contributions in excess of applicable limit—(i) Plan year limits.* Except as provided in paragraph (b)(2)(ii) of this section, the amount of elective deferrals in excess of an applicable limit is determined as of the end of the plan year by comparing the total elective deferrals for the plan year with the applicable limit for the plan year. In the case of a plan that provides for separate employer-provided limits on elective deferrals for separate portions of plan compensation within the plan year, the applicable limit for the plan year is the sum of the dollar amounts of the limits for the separate portions. This

plan provision may occur, for example, when the plan sets a deferral percentage limit for each payroll period. If the plan limits elective deferrals for separate portions of the plan year, then, solely for purposes of determining the amount that is in excess of an employer-provided limit, the plan may provide, as an alternative rule, that the applicable limit for the plan year is the product of the employee's plan year compensation and the time-weighted average of the deferral percentage limits. Thus, for example, if a plan that provides for use of a time-weighted average limits deferrals to 8 percent of compensation during the first half of the plan year and 10 percent of compensation for the second half of the plan year, the applicable limit is 9 percent of each employee's plan year compensation.

(ii) *Other year limit.* In the case of an applicable limit which is applied on the basis of a year other than the plan year (e.g., the calendar year limit on elective deferrals under section 401(a)(30)), the determination of whether elective deferrals are in excess of the applicable limit is made on the basis of such other year.

(c) *Catch-up contribution limit—(1) General rule.* Elective deferrals with respect to a catch-up eligible participant in excess of an applicable limit under paragraph (b) of this section are treated as catch-up contributions under this section as of a date within a taxable year only to the extent that such elective deferrals do not exceed the catch-up contribution limit described in this paragraph (c), reduced by elective deferrals previously treated as catch-up contributions for the taxable year, determined in accordance with paragraph (c)(3) of this section. The catch-up contribution limit for a taxable year is generally the applicable dollar catch-up limit for such taxable year, as set forth in paragraph (c)(2) of this section. However, an elective deferral is not treated as a catch-up contribution to the extent that the elective deferral, when added to all other elective deferrals for the taxable year under any applicable employer plan of the employer, exceeds the participant's compensation (determined in accordance with section 415(c)(3)) for the taxable year.

(2) *Applicable dollar catch-up limit—(i) In general.* The applicable dollar catch-up limit for an applicable employer

plan, other than an applicable employer plan described in section 401(k)(11) or a SIMPLE IRA plan as defined in section 408(p), is determined under the following table:

For Taxable Years Beginning in	Applicable Dollar Catch-up Limit
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006	\$5,000

(ii) *SIMPLE plan.* The applicable dollar catch-up limit for an applicable employer plan described in section 401(k)(11) or a SIMPLE IRA plan as defined in section 408(p) is determined under the following table:

For Taxable Years Beginning in	Applicable Dollar Catch-up Limit
2002	\$ 500
2003	\$1,000
2004	\$1,500
2005	\$2,000
2006	\$2,500

(iii) *Cost of living adjustments.* For taxable years after 2006, the applicable dollar catch-up limit is the applicable dollar catch-up limit for 2006 described in paragraph (c)(2)(i) or (ii) of this section increased at the same time and in the same manner as adjustments under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase that is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.

(3) *Timing rules.* For purposes of determining the maximum amount of permitted catch-up contributions for a catch-up eligible participant during a taxable year, the determination of whether an elective deferral is a catch-up contribution is made as of the last day of the plan year (or in the case of section 415, as of the last day of the limitation year), except that, with respect to elective deferrals in excess of an applicable limit that is tested on the basis of the taxable year or calen-

dar year (e.g., the section 401(a)(30) limit on elective deferrals), the determination of whether such elective deferrals are treated as catch-up contributions is made at the time they are deferred.

(d) *Treatment of catch-up contributions*—(1) *Contributions not taken into account for certain limits.* Catch-up contributions shall not be taken into account in applying the limits of section 401(a)(30), 401(k)(11), 402(h), 402A(c)(2), 403(b), 404(h), 408(k), 408(p), 415, or 457 to other contributions or benefits under an applicable employer plan or any other plan of the employer.

(2) *Contributions not taken into account for certain nondiscrimination tests*—(i) *Application of ADP test.* Elective deferrals that are treated as catch-up contributions with respect to a section 401(k) plan because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the actual deferral ratio (ADR) (as defined in §1.401(k)-1(g)) of a catch-up eligible participant. Similarly, elective deferrals that are treated as catch-up contributions with respect to a SEP because they exceed a statutory or employer-provided limit described in paragraph (b)(1)(i) or (ii) of this section, respectively, are subtracted from the catch-up eligible participant's elective deferrals for the plan year for purposes of determining the deferral percentage under section 408(k)(6)(D) of a catch-up eligible participant.

(ii) *Adjustment of elective deferrals for correction purposes.* For purposes of the correction of excess contributions in accordance with section 401(k)(8)(C), elective deferrals under the plan treated as catch-up contributions for the plan year are subtracted from the catch-up eligible participant's elective deferrals under the plan for the plan year.

(iii) *Excess contributions treated as catch-up contributions.* A section 401(k) plan that satisfies the ADP test of section 401(k)(3) through correction under section 401(k)(8) must retain any elective deferrals that are treated as catch-up contributions pursuant to paragraph (c) of this section because they exceed the ADP limit in paragraph (b)(1)(iii) of this sec-

tion. In addition, a section 401(k) plan is not treated as failing to satisfy section 401(k)(8) merely because elective deferrals described in the preceding sentence are not distributed or recharacterized as employee contributions. Similarly, a SEP is not treated as failing to satisfy section 408(k)(6)(A)(iii) merely because catch-up contributions are not treated as excess contributions with respect to a catch-up eligible participant under the rules of section 408(k)(6)(C). Notwithstanding the fact that elective deferrals described in this paragraph (d)(2)(iii) are not distributed, such elective deferrals are still considered to be excess contributions under section 401(k)(8), and accordingly, matching contributions with respect to such elective deferrals may be forfeited under the rules of section 411(a)(3)(G).

(iv) *Application for top-heavy.* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 416. Thus, if the only contributions made for a plan year for key employees are catch-up contributions, the applicable percentage under section 416(c)(2) is 0%, and no top-heavy minimum contribution under section 416 is required for the year. However, catch-up contributions for prior years are taken into account for purposes of section 416. Thus, catch-up contributions for prior years are included in the account balances that are used in determining whether the plan is top-heavy under section 416(g).

(v) *Application for section 410(b).* Catch-up contributions with respect to the current plan year are not taken into account for purposes of section 410(b). Thus, catch-up contributions are not taken into account in determining the average benefit percentage under §1.410(b)-5 for the year if benefit percentages are determined based on current year contributions. However, catch-up contributions for prior years are taken into account for purposes of section 410(b). Thus, catch-up contributions for prior years would be included in the account balances that are used in determining the average benefit percentage if allocations for prior years are taken into account.

(3) *Availability of catch-up contributions.* An applicable employer plan does not violate §1.401(a)(4)-4 merely because the group of employees for whom catch-up contributions are currently avail-

able (i.e., the catch-up eligible participants) is not a group of employees that would satisfy section 410(b) (without regard to §1.410(b)-5). In addition, a catch-up eligible participant is not treated as having a right to a different rate of allocation of matching contributions merely because an otherwise nondiscriminatory schedule of matching rates is applied to elective deferrals that include catch-up contributions. The rules in this paragraph (d)(3) also apply for purposes of satisfying the requirements of section 403(b)(12).

(e) *Universal availability requirement*—(1) *General rule.* An applicable employer plan that offers catch-up contributions and that is otherwise subject to section 401(a)(4) (including a plan that is subject to section 401(a)(4) pursuant to section 403(b)(12)) will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided with the effective opportunity to make the same dollar amount of catch-up contributions. A plan does not fail to satisfy this effective opportunity requirement merely because the plan allows participants to defer an amount equal to a specified percentage of compensation for each payroll period and for each payroll period permits each catch-up eligible participant to defer a *pro-rata* share of the applicable dollar catch-up limit in addition to that amount. A plan does not fail the universal availability requirement of this paragraph (e) solely because an employer-provided limit does not apply to all employees or different limits apply to different groups of employees under paragraph (b)(2)(i) of this section. However, a plan may not provide lower employer-provided limits for catch-up eligible participants.

(2) *Exception for section 457 eligible governmental plans.* An applicable employer plan does not fail to comply with the universal availability requirement of this paragraph (e) merely because another applicable employer plan that is a section 457 eligible governmental plan does not provide for catch-up contributions to the extent set forth in section 414(v)(6)(C).

(3) *Exception for newly acquired plans.* An applicable employer plan does not fail to comply with the universal availability requirement of this paragraph (e) merely

because another applicable employer plan does not provide for catch-up contributions, if—

(i) The other applicable employer plan becomes maintained by the employer by reason of a merger, acquisition or similar transaction described in §1.410(b)–2(f); and

(ii) The other applicable employer plan is amended to provide for catch-up contributions as soon as practicable, but no later than by the end of the period described in section 410(b)(6)(C).

(f) *Special rules for an employer that sponsors multiple plans*—(1) *General rule.* If elective deferrals under more than one applicable employer plan of an employer are aggregated for purposes of applying a statutory limit under paragraph (b)(1)(i) of this section, then the aggregate elective deferrals treated as catch-up contributions by reason of exceeding that statutory limit under all such applicable employer plans must not exceed the applicable dollar catch-up limit for the taxable year. For example, since compliance with section 401(a)(30) is determined based on elective deferrals under section 401(k) plans and section 403(b) contracts sponsored by the employer, the total amount of elective deferrals under all section 401(k) plans and section 403(b) contracts of the employer treated as catch-up contributions by reason of exceeding the section 401(a)(30) limit for a calendar year under the aggregated plans must not exceed the applicable dollar catch-up limit for such taxable year.

(2) *Highly compensated employee in more than one section 401(k) plan.* If a highly compensated employee is a participant in more than one section 401(k) plan of an employer, in determining whether the employee's elective deferrals exceed an employer-provided limit under paragraph (b)(1)(ii) of this section, the employer-provided limit for the plan year is the sum of the dollar amounts of the limits under the separate plans for that employee and the employee's elective deferrals under all section 401(k) plans of the employer are combined to determine if the employer-provided limit is exceeded.

(3) *Allocation rules.* When the amount of elective deferrals in excess of an applicable limit under paragraph (b)(1) of this section is determined under the aggregation rules of paragraph (f)(1) or

(f)(2) of this section, the aggregate amount of the elective deferrals in excess of that applicable limit made under all section 401(k) plans that are aggregated for purposes of determining a highly compensated employee's ADR are treated as elective deferrals in excess of an applicable limit for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section with respect to each of these section 401(k) plans. However, the catch-up contributions are subtracted from elective deferrals for purposes of paragraph (d)(2)(ii) of this section only under the applicable employer plan under which the catch-up contributions are made. The applicable employer plan under which the elective deferrals in excess of an applicable limit are made for purposes of this paragraph (f)(3) may be determined in any manner that is not inconsistent with the manner in which such amounts were actually deferred under the plans.

(g) *Application of section 402(g)*—(1) *Exclusion of catch-up contributions.* In determining the amount of elective deferrals that are includible in gross income under section 402(g), except as provided in paragraph (g)(2) of this section, catch-up contributions are not treated as exceeding the applicable dollar amount of section 402(g)(1). For purposes of this paragraph (g), a catch-up eligible participant who makes elective deferrals under applicable employer plans of two or more employers that exceed the applicable dollar amount under section 402(g)(1) may treat the elective deferrals in excess of that applicable dollar amount as a catch-up contribution to the extent permitted in paragraph (g)(2) of this section, even though the elective deferrals do not exceed an applicable limit under either plan. Therefore, for a catch-up eligible participant who makes elective deferrals under applicable employer plans of two or more employers that exceed the applicable dollar amount under section 402(g)(1), the elective deferrals in excess of that applicable dollar amount are excludable from gross income as catch-up contributions to the extent permitted in paragraph (g)(2) of this section. Whether an elective deferral is treated as a catch-up contribution by an applicable employer plan is determined under paragraph (c) of this section and without regard to whether the employee

treats an elective deferral as a catch-up contribution under this paragraph (g).

(2) *Maximum excludable amount.* If a catch-up eligible participant participates in two or more applicable employer plans during a taxable year, the total amount of elective deferrals under all plans that are not includible in gross income under this paragraph (g) because they are catch-up contributions shall not exceed the applicable dollar catch-up limit under paragraph (c)(2)(i) of this section for the taxable year.

(h) *Coordination with other catch-up provisions*—(1) *Coordination with section 457(b)(3).* In the case of an applicable employer plan that is a section 457 eligible governmental plan, the catch-up contributions permitted under this section shall not apply to a catch-up eligible participant for any taxable year for which the additional contributions permitted under section 457(b)(3) applies to such participant. For additional guidance, see regulations under section 457.

(2) *Coordination with section 402(g)(7).* [Reserved].

(i) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, the limit under section 401(a)(30) is \$15,000 and the applicable dollar catch-up limit is \$5,000 and, except as specifically provided, the plan year is the calendar year. In addition, it is assumed that the participant's elective deferrals under all plans of the employer do not exceed the participant's section 415(c)(3) compensation and that any correction pursuant to section 401(k)(8) is made through distribution of excess contributions. The examples are as follows:

Example 1. (i) Participant A is eligible to make elective deferrals under a section 401(k) plan, Plan P. Plan P does not limit elective deferrals except as necessary to comply with sections 401(a)(30) and 415. In 2006, Participant A is 55 years old. Plan P also provides that a catch-up eligible participant is permitted to defer amounts in excess of the section 401(a)(30) limit up to the applicable dollar catch-up limit for the year. Participant A defers \$18,000 during 2006.

(ii) Participant A's elective deferrals in excess of the section 401(a)(30) limit (\$3,000) do not exceed the applicable dollar catch-up limit for 2006 (\$5,000). Under paragraph (a)(1) of this section, the \$3,000 is a catch-up contribution and, pursuant to paragraph (d)(2)(i) of this section, it is not taken into account in determining Participant A's ADR for purposes of section 401(k)(3).

Example 2. (i) Participants B and C, who are highly compensated employees earning \$120,000,

are eligible to make elective deferrals under a section 401(k) plan, Plan Q. Plan Q limits elective deferrals as necessary to comply with section 401(a)(30) and 415, and also provides that no highly compensated employee may make an elective deferral at a rate that exceeds 10% of compensation. However, Plan Q also provides that a catch-up eligible participant is permitted to defer amounts in excess of 10% during the plan year up to the applicable dollar catch-up limit for the year. In 2006, Participants B and C are both 55 years old and, pursuant to the catch-up provision in Plan Q, both elect to defer 10% of compensation plus a *pro-rata* portion of the \$5,000 applicable dollar catch-up limit for 2006. Participant B continues this election in effect for the entire year, for a total elective contribution for the year of \$17,000. However, in July 2006, after deferring \$8,500, Participant C discontinues making elective deferrals.

(ii) Once Participant B's elective deferrals for the year exceed the section 401(a)(30) limit (\$15,000), subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the catch-up contribution limit for the taxable year. Since the \$2,000 in elective deferrals made after Participant B reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire \$2,000 is treated as a catch-up contribution.

(iii) As of the last day of the plan year, Participant B has exceeded the employer-provided limit of 10% (10% of \$120,000 or \$12,000 for Participant B) by an additional \$3,000. Since the additional \$3,000 in elective deferrals does not exceed the \$5,000 applicable dollar catch-up limit for 2006, reduced by the \$2,000 in elective deferrals previously treated as catch-up contributions, the entire \$3,000 of elective deferrals is treated as a catch-up contribution.

(iv) In determining Participant B's ADR, the \$5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's ADR is 10% (\$12,000 / \$120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of \$12,000.

(v) Participant C's elective deferrals for the year do not exceed an applicable limit for the plan year. Accordingly, Participant C's \$8,500 of elective deferrals must be taken into account in determining Participant C's ADR for purposes of section 401(k)(3).

Example 3. (i) The facts are the same as in *Example 2*, except that Plan Q is amended to change the maximum permitted deferral percentage for highly compensated employees to 7%, effective for deferrals after April 1, 2006. Participant B, who has earned \$40,000 in the first 3 months of the year and has been deferring at a rate of 10% of compensation plus a *pro-rata* portion of the \$5,000 applicable dollar catch-up limit for 2006, reduces the 10% of pay deferral rate to 7% for the remaining 9 months of the year (while continuing to defer a *pro-rata* portion of the \$5,000 applicable dollar catch-up limit for 2006). During those 9 months, Participant B earns \$80,000. Thus, Participant B's total elective deferrals for the year are \$14,600 (\$4,000 for the first 3 months of the year plus \$5,600 for the last 9 months of the year plus an additional \$5,000 throughout the year).

(ii) The employer-provided limit for Participant B for the plan year is \$9,600 (\$4,000 for the first 3 months of the year, plus \$5,600 for the last 9 months of the year). Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are \$5,000 (the excess of \$14,600 over \$9,600), which does not exceed the applicable dollar catch-up limit of \$5,000.

(iii) Alternatively, Plan Q may provide that the employer-provided limit is determined as the time-weighted average of the different deferral percentage limits over the course of the year. In this case, the time-weighted average limit is 7.75% for all participants, and the applicable limit for Participant B is 7.75% of \$120,000, or \$9,300. Accordingly, Participant B's elective deferrals for the year that are in excess of the employer-provided limit are \$5,300 (the excess of \$14,600 over \$9,300). Since the amount of Participant B's elective deferrals in excess of the employer-provided limit (\$5,300) exceeds the applicable dollar catch-up limit for the taxable year, only \$5,000 of Participant B's elective deferrals may be treated as catch-up contributions. In determining Participant B's actual deferral ratio, the \$5,000 of catch-up contributions are subtracted from Participant B's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant B's actual deferral ratio is 8% (\$9,600 / \$120,000). In addition, for purposes of applying the rules of section 401(k)(8), Participant B is treated as having elective deferrals of \$9,600.

Example 4. (i) The facts are the same as in *Example 1*. In addition to Participant A, Participant D is a highly compensated employee who is eligible to make elective deferrals under Plan P. During 2006, Participant D, who is 60 years old, elects to defer \$14,000.

(ii) The ADP test is run for Plan P (after excluding the \$3,000 in catch-up contributions from Participant A's elective deferrals), but Plan P needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(B), the maximum deferrals which may be retained by any highly compensated employee in Plan P is \$12,500.

(iii) Pursuant to paragraph (b)(1)(iii) of this section, the ADP limit under Plan P of \$12,500 is an applicable limit. Accordingly, \$1,500 of Participant D's elective deferrals exceed the applicable limit. Similarly, \$2,500 of Participant A's elective deferrals (other than the \$3,000 of elective deferrals treated as catch-up contributions because they exceed the section 401(a)(30) limit) exceed the applicable limit.

(iv) The \$1,500 of Participant D's elective deferrals that exceed the applicable limit are less than the applicable dollar catch-up limit and are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant D's \$1,500 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant D.

(v) The \$2,500 of Participant A's elective deferrals that exceed the applicable limit are greater than the portion of the applicable dollar catch-up limit (\$2,000) that remains after treating the \$3,000 of elective deferrals in excess of the section 401(a)(30) limit as catch-up contributions. Accordingly, \$2000 of Participant A's elective de-

ferreds are treated as catch-up contributions. Pursuant to paragraph (d)(2)(iii) of this section, Plan P must retain Participant A's \$2,000 in elective deferrals and Plan P is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant A. However, \$500 of Participant A's elective deferrals can not be treated as catch-up contributions and must be distributed to Participant A in order to satisfy section 401(k)(8).

Example 5. (i) Participant E is a catch-up eligible employee under a section 401(k) plan, Plan R, with a plan year ending October 31, 2006. Plan R does not limit elective deferrals except as necessary to comply with section 401(a)(30) and section 415. Plan R permits all catch-up eligible participants to defer an additional amount equal to the applicable dollar catch-up limit for the year (\$5,000) in excess of the section 401(a)(30) limit. Participant E did not exceed the section 401(a)(30) limit in 2005. Participant E made \$3,200 of deferrals in the period November 1, 2005, through December 31, 2005, and an additional \$16,000 of deferrals in the first 10 months of 2006, for a total of \$19,200 in elective deferrals for the plan year.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed \$15,000, subsequent elective deferrals are treated as catch-up contributions at the time they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the \$1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for the calendar year does not exceed the applicable dollar catch-up limit for 2006, the entire \$1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, \$1,000 is subtracted from Participant E's \$19,200 in elective deferrals for the plan year ending October 31, 2006, in determining Participant E's ADR for that plan year.

(iii) The ADP test is run for Plan R (after excluding the \$1,000 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R for the plan year ending October 31, 2006, (the ADP limit) is \$14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed \$18,200 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is \$3,400 (\$18,200 minus \$14,800), which is less than the excess of the applicable dollar catch-up limit (\$5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year (\$1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's \$3,400 in elective deferrals and is not treated as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for the calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year have not exceeded the applicable dollar catch-up limit for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is \$600 (the \$5,000 applicable dollar catch-up limit for 2006, reduced by the \$4,400 (\$1,000 plus \$3,400) of elective deferrals previously treated as catch-up contributions during the taxable year).

Example 6. (i) The facts are the same as in *Example 5*, except that Participant E exceeded the section 401(a)(30) limit for 2005 by \$1,300 prior to October 31, 2005, and made \$600 of elective deferrals in the period November 1, 2005, through December 31, 2005 (which were catch-up contributions for 2005). Thus, Participant E made \$16,600 of elective deferrals for the plan year ending October 31, 2006.

(ii) Once Participant E's elective deferrals for the calendar year 2006 exceed \$15,000, subsequent elective deferrals are treated as catch-up contributions as they are deferred, provided that such elective deferrals do not exceed the applicable dollar catch-up limit for the taxable year. Since the \$1,000 in elective deferrals made after Participant E reaches the section 402(g) limit for calendar year 2006 does not exceed the applicable dollar catch-up limit for 2006, the entire \$1,000 is a catch-up contribution. Pursuant to paragraph (d)(2)(i) of this section, \$1,000 is subtracted from Participant E's elective deferrals in determining Participant E's actual deferral ratio for the plan year ending October 31, 2006. In addition, the \$600 of catch-up contributions from the period November 1, 2005, to December 31, 2005, are subtracted from Participant E's elective deferrals in determining Participant E's ADR. Thus, the total elective deferrals taken into account in determining Participant E's ADR for the plan year ending October 31, 2006, is \$15,000 (\$16,600 in elective deferrals for the current plan year, less \$1,600 in catch-up contributions).

(iii) The ADP test is run for Plan R (after excluding the \$1,600 in elective deferrals in excess of the section 401(a)(30) limit), but Plan R needs to take corrective action in order to pass the ADP test. After applying the rules of section 401(k)(8)(C) to allocate the total excess contributions determined under section 401(k)(8)(C), the maximum deferrals that may be retained by any highly compensated employee under Plan R (the ADP limit) is \$14,800.

(iv) Under paragraph (d)(2)(ii) of this section, elective deferrals that exceed the section 401(a)(30) limit under Plan R are also subtracted from Participant E's elective deferrals under Plan R for purposes of applying the rules of 401(k)(8). Accordingly, for purposes of correcting the failed ADP test, Participant E is treated as having contributed \$15,000 of elective deferrals in Plan R. The amount of elective deferrals that would have to be distributed to Participant E in order to satisfy section 401(k)(8)(C) is \$200 (\$15,000 minus \$14,800), which is less than the excess of the applicable dollar catch-up limit (\$5,000) over the elective deferrals previously treated as catch-up contributions under Plan R for the taxable year (\$1,000). Under paragraph (d)(2)(iii) of this section, Plan R must retain Participant E's \$200 in elective deferrals and is not treated

as failing to satisfy section 401(k)(8) merely because the elective deferrals are not distributed to Participant E.

(v) Even though Participant E's elective deferrals for calendar year 2006 have exceeded the section 401(a)(30) limit, Participant E can continue to make elective deferrals during the last two months of the calendar year, since Participant E's catch-up contributions for the taxable year 2006 have not exceeded the applicable dollar catch-up limit for the taxable year. However, the maximum amount of elective deferrals Participant E may make for the balance of the calendar year is \$3,800 (the \$5,000 applicable dollar catch-up limit for 2006, reduced by \$1,200 (\$1,000 plus \$200) in elective deferrals previously treated as catch-up contributions during taxable year 2006).

Example 7. (i) Participant F, who is 58 years old, is a highly compensated employee who earns \$100,000. Participant F participates in a section 401(k) plan, Plan S, for the first six months of the year and then transfers to another section 401(k) plan, Plan T, sponsored by the same employer, for the second six months of the year. Plan S limits highly compensated employees' elective deferrals to 6% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 6% during the plan year, up to the applicable dollar catch-up limit for the year. Plan T limits highly compensated employee's elective deferrals to 8% of compensation for the period of participation, but permits catch-up eligible participants to defer amounts in excess of 8% during the plan year, up to the applicable dollar catch-up limit for the year. Participant F, who earned \$50,000 in the first six months of the year, defers \$5,000 under Plan S. Participant F also deferred \$5,000 under Plan T.

(ii) Under paragraph (f)(2) of this section, the employer-provided limit for Participant F is \$7,000, the sum of the employer-provided limit for Plan S (\$3,000) and the employer-provided limit for Plan T (\$4,000). Participant F's elective deferrals for the year are \$10,000. Therefore, the amount of Participant F's elective deferrals in excess of the employer-provided limit is \$3,000. Under paragraph (f)(3) of this section, the \$3,000 in excess of the employer-provided limit is treated as an elective deferral in excess of that limit under both Plans S and T for purposes of applying the catch-up contribution limit under paragraph (c)(1) of this section.

(iii) Since the amount of Participant F's elective deferrals in excess of the employer-provided limit (\$3,000) does not exceed the applicable dollar catch-up limit for the taxable year, the entire \$3,000 of Participant F's elective deferrals are treated as catch-up contributions. In determining Participant F's actual deferral ratio, the entire \$3,000 of catch-up contributions is subtracted from Participant F's elective deferrals for the plan year under paragraph (d)(2)(i) of this section. Accordingly, Participant F's actual deferral ratio is 7% (\$7,000 / \$100,000) for both Plans S and T.

(iv) In accordance with paragraph (f)(3) of this section, it is determined that \$2,000 of the excess over the employer-provided limit was made under Plan S and \$1,000 of the excess over the employer-provided limit was made under Plan T. This determination is not inconsistent with the manner in which the elective deferrals were actually made. Therefore, under paragraph (d)(2)(ii) of this section,

for purposes of applying the rules of section 401(k)(8), Participant F is treated as having elective deferrals of \$3,000 (\$5,000–\$2,000) in Plan S and \$4,000 (\$5,000–\$1,000) in Plan T.

(v) If, after applying the ADP test of section 401(k)(3), Plan S or Plan T were to require correction under section 401(k)(8), the maximum amount of elective deferrals in excess of the ADP limit that could be treated as catch-up contributions for Participant F under the Plan could not exceed \$2,000, the applicable dollar catch-up limit of \$5,000, reduced by the \$3,000 in excess of the employer-provided limit previously treated as catch-up contributions for the taxable year.

(j) *Effective date and transition rule—*
(1) *Effective date.* Section 414(v) and this section apply to contributions in taxable years beginning on or after January 1, 2002.

(2) *Transition rule for collectively bargained employees.* An applicable employer plan will not fail to satisfy the requirements of paragraph (e) of this section merely because employees eligible to make elective deferrals who are included in a unit of employees covered by a collective bargaining agreement in effect on January 1, 2002, are not permitted to make catch-up contributions until the first plan year beginning after the termination of such agreement.

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on October 22, 2001, 8:45 a.m., and published in the issue of the Federal Register for October 23, 2001, 66 F.R. 53555)

Availability of Revised Determination Letter Forms

Announcement 2001–109

In Announcement 2001–77 (2001–30 I.R.B. 83), July 23, 2001, the Service described changes that were being made to simplify its application procedures for determination letters on the qualification of pension, profit-sharing, stock bonus and annuity plans under §§ 401(a) and 403(a) of the Internal Revenue Code. Part of the simplification of the application procedures described in Announcement 2001–77 involves the revision of the determination letter application forms.

The first four of those application forms used to request determination let-

ters for ongoing qualified employee benefit plans and a related schedule as well as the instructions to these forms and schedule are now available. These revised application forms and instructions will be available in late November 2001, from IRS distribution centers at 1-800-TAX FORM. In addition, these forms are **currently** available on the IRS Web Site at http://www.irs.gov/forms_pubs/forms.html. These 2001 application forms may be submitted as downloaded from the Service's Web Site, *i.e.*, the requirement to provide a duplicate front page (or pink copy) has been eliminated for these revisions. The currently revised application forms are:

Form 5300, *Application for Determination for Employee Benefit Plan (including collectively bargained plans formerly filed on Form 5303)* (Rev. September 2001)

Schedule Q (Form 5300), *Elective Determination Requests* (Rev. August 2001)

Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* (Rev. September 2001)

Form 5309, *Application for Determination of Employee Stock Ownership Plan* (Rev. August 2001)

Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan* (Rev. September 2001)

In addition to changing the titles of certain forms to reflect simplified methods and the elimination of one form, *i.e.*, Form 5303, *Application for Determination for Collectively Bargained Plan*, these revisions contain many of the changes described in Announcement 2001-77. For example, the Schedule Q is now optional and two questions previously on the Schedule Q have been moved to the Form 5300 and the Form 5307 and made optional. Moreover, while **applicants are strongly encouraged to use the 2001 revisions to these forms**, applicants may continue to submit determination letter applications on the prior versions of the revised forms (or on Form 5303) through December 31, 2001, consistent with the procedures in section I.G of Announcement 2001-77.

The other forms referred to in Announcement 2001-77 (Forms 5310, 5310-A, 6088, and 8717) are currently

undergoing revision. These forms are expected to be available on the IRS Web Site later this year. The Service will issue an announcement when these forms are available.

Drafting Information

The principal author of this announcement is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday. Mr. Rubin may be reached at (202) 283-9888 (not a toll-free number).

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

Announcement 2001-110

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) begins on November 5, 2001, and

ends on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Northwest Childrens Institute
Seattle, WA

Gasoline Tax Claims Under Section 6416(a)(4)

Announcement 2001-111

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to claims for credits or refunds of the gasoline tax. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be received by January 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-143219-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-143219-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit (202) 622-7180; concerning the proposals, Frank Boland (202) 622-3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Under section 6416(b)(2), the person that paid the gasoline tax imposed by section 4081 to the government may receive a credit or refund of the amount of the tax if the gasoline is, by any person, exported, used or sold for use as supplies for vessels or aircraft, sold to a state or local government for its exclusive use, sold to a non-profit educational organization for its exclusive use, or used or sold for use in the production of special fuels (exempt purposes).

Section 6102 of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100-647, 102 Stat. 3342) added section 6416(a)(4) to the Internal Revenue Code. Under section 6416(a)(4)(A), a wholesale distributor (described in section 6416(a)(4)(B)) that buys gasoline on which the tax imposed by section 4081 has been paid and sells the gasoline to its ultimate purchaser for an exempt purpose is treated as the person (and the only person) that paid the tax to the government and thus is the person eligible to claim a credit or refund of that tax.

Section 6416(a)(4)(B), as added by the 1988 Act, provides that the term wholesale distributor includes any person that sells gasoline to producers, retailers, or to users that purchase in bulk quantities and accept delivery into bulk storage tanks. For this purpose, the term producer includes a refiner, blender, or wholesale distributor of gasoline, or a dealer selling gasoline exclusively to producers of gasoline. The term wholesale distributor does not include any person that is an importer, refiner, or blender of gasoline, or is a dealer selling gasoline exclusively to producers. Section 905 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788) amended section 6416(a)(4)(B) of the Code by providing that the term wholesale distributor also includes any person that makes retail sales of gasoline at 10 or more retail motor fuel outlets.

Notice 89-29 (1989-1 C.B. 669) provides rules for implementing section 6416(a)(4), as added by the 1988 Act. These include rules that allow claims by the person that actually paid the tax to the government instead of claims by the wholesale distributor if (1) tax is not included in the price of the gasoline bought by the wholesale distributor or (2) the sale by the wholesale distributor is charged on an oil company credit card issued to an exempt person.

In response to questions that have arisen concerning the application of the rules in Notice 89-29, the IRS is considering proposing regulations under section 6416(a)(4) that, when finalized, would replace the guidance provided by Notice 89-29. The IRS invites comments from the public on issues that should be addressed in the regulations, including issues relating to refund claims by persons other than the wholesale distributor.

Paul Kugler,
Associate Chief Counsel
(Passthroughs and Special Industries).

(Filed by the Office of the Federal Register on October 22, 2001, 8:45 a.m., and published in the issue of the Federal Register for October 23, 2001, 66 F.R. 53564)

Notice of Disposition of Declaratory Judgment Proceedings Under Section 7428

This announcement serves notice to donors that on June 15, 2001, the United States Court of Appeals for the Eleventh Circuit entered judgment finding that there was no actual case or controversy and affirming the United States Tax Court's determination that the organization listed below lacked capacity to bring suit from the retroactive revocation of its tax exempt status as a section 501(c)(3) organization. Therefore the organization

listed below is not recognized as an organization described in section 501(c)(3) and is not exempt from tax under section 501(a) effective January 1, 1990.

Abraham Lincoln Opportunity
Foundation, Denver, CO

Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings

This announcement serves notice to potential donors that the organization listed below has 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 November 5, 2001, 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.

Endowment for Paso Del Norte Schools,
Inc., El Paso, TX

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 ap-

plies 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 law 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 the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

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