

## **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.

### **SPECIAL ANNOUNCEMENT**

#### **Notice 2010-23, page 441.**

This notice provides FBAR filing relief for some persons with signature authority and who own commingled funds. Notice 2009-62 modified and supplemented.

#### **Announcement 2010-16, page 450.**

This announcement temporarily suspends, for persons who are not United States citizens, United States residents, or domestic entities, the requirement to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), for the 2009 and earlier calendar years. Announcement 2009-51 supplemented and superseded.

### **EMPLOYEE PLANS**

#### **REG-148681-09, page 443.**

The Department of Labor and the Department of the Treasury (the "Agencies") are currently reviewing the rules under the Employer Retirement Income Security Act (ERISA) and the plan qualification rules under the Internal Revenue Code (Code) to determine whether, and, if so, how, the Agencies could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. The purpose of this notice is to solicit views, suggestions and comments from plan participants, employers and other plan sponsors, plan service providers, and members of the financial community, as well as the general public, on this important issue.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2010-14, page 449.**

The IRS has revoked its determination that Nat Turner Legal Defense of Garland, TX; The Arab American Cultural and Educational Center Inc., of Youngstown, OH; Debt Counseling and Solutions, Inc., of Metairie, LA; Ezekiel's House of Central Florida, Inc., of Salem, IN; Howell's International, Inc., of British West Indies; Moore's Burial Association of Fayetteville, AR; Mustard Seed Frey Family Foundation of Oakland, CA; River City Regiment of Sacramento, CA; Silver Point Assurance, Ltd., of Knoxville, TN; Skyward Resources of Honolulu, HI; Ward's Inc., of Fairfax, VA; Community Revitalization Group of Hermosa Beach, CA; Curtilage, Inc., of Salt Lake City, UT; Heritage Institute Inc., of St. George, UT; Residential Revitalization Group of Hermosa Beach, CA; and the United Management Systems Inc., of Columbus, MA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

### **ADMINISTRATIVE**

#### **T.D. 9480, page 439.**

#### **REG-117501-09, page 442.**

Final, temporary, and proposed regulations under section 6654 of the Code relate to reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009.

#### **Notice 2010-23, page 441.**

This notice provides FBAR filing relief for some persons with signature authority and who own commingled funds. Notice 2009-62 modified and supplemented.

**(Continued on the next page)**

Finding Lists begin on page ii.



**Announcement 2010–16, page 450.**

This announcement temporarily suspends, for persons who are not United States citizens, United States residents, or domestic entities, the requirement to file Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts (FBAR), for the 2009 and earlier calendar years. Announcement 2009–51 supplemented and superseded.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled 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 procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

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

## Section 6654.—Failure By Individual to Pay Estimated Income Tax

26 CFR 1.6654-2: Exceptions to imposition of the addition to the tax in the case of individuals.

T.D. 9480

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Reduced 2009 Estimated Income Tax Payments for Individuals with Small Business Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under section 6654 of the Internal Revenue Code (Code) relating to reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009. The temporary regulations implement changes to section 6654 made by the American Recovery and Reinvestment Act of 2009. The temporary regulations provide guidance for qualified individuals with small business income to certify that they satisfy the statutory gross income requirement for purposes of the reduction in their required 2009 estimated income tax payments. The text of the temporary regulations serves as the text of the proposed regulations (REG-117501-09) set forth in the notice of proposed rule-making on this subject in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective on March 1, 2010.

*Applicability Date:* These regulations apply for any taxable year beginning in 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Mikolashek, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

These temporary regulations contain amendments to the Income Tax Regulations (26 CFR part 1) under section 6654(d) of the Code relating to the addition to tax for failure by an individual to pay estimated income tax. Section 6654(d)(1)(D) was added by section 1212 of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (123 Stat. 336 (2009)), effective for taxable years beginning in 2009.

Section 6654 imposes an addition to tax in the case of an individual taxpayer's underpayment of estimated tax. Estimated tax is payable in four installments throughout the taxable year, and the amount of each required installment is generally 25 percent of the required annual payment of estimated tax. Under section 6654(d)(1)(B), the required annual payment is the lesser of (i) 90 percent of the tax shown on the income tax return for the taxable year (or, if no return is filed, 90 percent of the tax for the year) or (ii) 100 percent of the tax shown on the taxpayer's return for the preceding taxable year (or 110 percent if the taxpayer's adjusted gross income for the preceding taxable year exceeded \$150,000). The provision allowing for the payment of 100 (or 110) percent of the tax shown on the taxpayer's return for the preceding taxable year does not apply if the preceding taxable year was less than 12 months or if the taxpayer did not file a return for that year.

Under section 6654(d)(1)(D), the applicable percentage of tax shown on the return for the preceding taxable year (either 100 or 110 percent) is reduced to 90 percent for qualified individuals for taxable years beginning in 2009. In other words, for taxable years beginning in 2009, a qualified individual's annual required payment of estimated tax is the lesser of (i) 90 percent of the tax shown on the return for the 2009 taxable year (or, if no return is filed, 90 percent of the tax for the year) or (ii)

90 percent of the tax shown on the individual's return for taxable year 2008.

#### Explanation of Provisions

The temporary regulations explain who is a qualified individual under section 6654(d)(1)(D) and how a taxpayer establishes that the taxpayer is a qualified individual. A qualified individual is any individual (1) whose adjusted gross income shown on the individual's return for the preceding taxable year is less than \$500,000 and (2) who certifies that more than 50 percent of the gross income shown on that return was income from a small business. See section 6654(d)(1)(D)(ii). If an individual is married, within the meaning of section 7703, and files a separate return for a taxable year beginning in 2009, then to qualify, the individual's adjusted gross income shown on the preceding year's return must be less than \$250,000, rather than \$500,000. See section 6654(d)(1)(D)(iv). Pursuant to section 6654(d)(1)(D)(ii)(II), the Secretary shall prescribe by regulation the form, manner, and time for filing a certification. Additionally, section 6654(m) authorizes the Secretary to prescribe regulations as necessary to carry out the purposes of section 6654.

Income from a small business is defined in general terms in section 6654(d)(1)(D)(iii) as income from a trade or business the average number of employees of which was less than 500 for calendar year 2008. The temporary regulations specify that the trade or business must be a *bona fide* trade or business of which the individual was an owner. The temporary regulations provide that a trade or business may be organized as, or take the legal form of, a corporation, partnership, limited liability company, or sole proprietorship.

The temporary regulations also provide that a qualified individual shall file a certification with the IRS in the manner and at the time prescribed in forms, publications, or other guidance, such as Form 2210, "Underpayment of Estimated Tax by Individuals, Estates, and Trusts" (or any successor form and its instructions).

The temporary regulations will be applicable for taxable years beginning in 2009. The reduced percentage in section 6654(d)(1)(D) is limited to taxable years beginning in 2009 and does not apply to taxable years beginning before or after 2009.

### 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. For the applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rule-making published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, this regulation has been 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 Adrienne Mikolashek, Office of the Associate Chief Counsel, Procedure and Administration.

\* \* \* \* \*

### Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6654-2 is amended by:

1. Revising paragraph (a) introductory text.

2. Redesignating paragraph (a)(1) as paragraph (a)(1)(i).

3. Adding new paragraphs (a)(1)(ii) and (f).

The additions and revision read as follows:

*§1.6654-2 Exceptions to imposition of the addition to the tax in the case of individuals.*

(a) [Reserved]. For further guidance, see §1.6654-2T(a).

(1)(i) \* \* \*

(ii) [Reserved]. For further guidance, see §1.6654-2T(a)(1)(ii).

\* \* \* \* \*

(f) [Reserved]. For further guidance, see §1.6654-2T(f).

Par. 3. Section 1.6654-2T is added to read as follows:

*§1.6654-2T Exceptions to imposition of the addition to the tax in the case of individuals (temporary).*

(a) *In general.* The addition to the tax under section 6654 will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equals or exceeds the lesser of the amount in §1.6654-2(a)(1) or the amount in §1.6654-2(a)(2).

(1)(i) [Reserved]. For further guidance, see §1.6654-2(a)(1)(i).

(ii) *Special rule for taxable years beginning in 2009.* For any taxable year beginning in 2009, for a qualified individual, the amount described in §1.6654-2(a)(1)(i) is reduced to 90 percent of that amount.

(A) *Qualified individual* means any individual whose adjusted gross income shown on the individual's return for the preceding taxable year is less than

\$500,000 and who certifies, as prescribed in paragraph (a)(1)(ii)(D) of this section, that more than 50 percent of the gross income shown on the return for the preceding taxable year was income from a small business.

(B) *Income from a small business* means income from the operation of a *bona fide* trade or business of which the individual was an owner during calendar year 2009, and that on average had fewer than 500 employees in calendar year 2008.

(C) The trade or business may be organized as, or take the legal form of, a corporation, partnership, limited liability company, or sole proprietorship.

(D) A qualified individual shall file a certification of the individual's qualification in the manner and at the time prescribed by the Internal Revenue Service in forms, publications, or other guidance.

(a)(2) through (e) [Reserved]. For further guidance, see §1.6654-2(a)(2) through (e).

(f) *Effective/applicability date.* Paragraph (a) of this section applies to any taxable year beginning in 2009.

(g) *Expiration date.* The applicability of paragraph (a) of this section expires on or before February 26, 2013.

Steven T. Miller,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved February 18, 2010.

Michael F. Mundaca,  
*Acting Assistant Secretary  
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on February 26, 2010, 8:45 a.m., and published in the issue of the Federal Register for March 1, 2010, 75 F.R. 9101)

## Part III. Administrative, Procedural, and Miscellaneous

### **FBAR Filing Requirements — Administrative Relief For Persons Having Signature Authority Over, But No Financial Interest In, A Foreign Financial Account, And For Persons With A Financial Interest In, Or Signature Authority Over, Certain Foreign Commingled Funds**

#### **Notice 2010–23**

This notice provides administrative relief to certain persons who may be required to file Form TD F 90–22.1, Report of Foreign Bank and Financial Accounts (FBAR), for calendar year 2009 and earlier calendar years.

On August 31, 2009, the Internal Revenue Service published Notice 2009–62, 2009–35 I.R.B. 260, which extended the filing deadline for (i) persons with no financial interest in a foreign financial account but with signature or other authority over that account (hereinafter referred to as “signature authority”); and (ii) persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund (hereinafter referred to as “foreign commingled funds”). This extension was provided in order for the Treasury Department to have the time necessary to develop comprehensive FBAR guidance.

To assist in the development of comprehensive FBAR guidance, Notice 2009–62 also requested public comments regarding a person’s FBAR filing obligation, including (i) when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for that account; (ii) whether the exception from FBAR fil-

ing available for officers and employees of banks and certain publicly-traded domestic companies should be expanded; (iii) when an interest in a foreign entity should be subject to FBAR reporting; and (iv) whether a United States person should be relieved from an FBAR filing requirement with respect to a foreign commingled fund in other circumstances, such as when filing would be duplicative of other reporting.

Since the issuance of Notice 2009–62, and receipt of a significant number of public comments, the Treasury Department has published proposed FBAR regulations under 31 CFR Part 103, as well as proposed revisions that clarify instructions for the FBAR (Form TD F 90–22.1). To provide taxpayers with guidance on who is required to file FBARs due on June 30, 2010, and in particular to provide immediate guidance to taxpayers on how to answer FBAR-related 2009 federal income tax return questions (*e.g.*, Schedule B of Form 1040, the “Other Information” section of Form 1041, Schedule B of Form 1065, and Schedule N of Form 1120), the IRS and Treasury Department believe it is appropriate to provide the following administrative relief:

#### **1. Signature Authority.**

Persons with signature authority over, but no financial interest in, a foreign financial account for which an FBAR would otherwise have been due on June 30, 2010, will now have until June 30, 2011, to report those foreign financial accounts. The deadline of June 30, 2011, applies to FBARs reporting foreign financial accounts over which the person has signature authority, but no financial interest, for the 2010 and prior calendar years. When completing an FBAR that is subject to the extension provided in this paragraph, persons must adhere to FBAR guidance in effect at the time the FBAR is filed.

#### **2. Certain Foreign Commingled Funds.**

Persons with a financial interest in, or signature authority over, a foreign commingled fund that is a mutual fund are required to file an FBAR unless another filing exception, as provided in the FBAR instructions or other relevant guidance, applies. The IRS will not interpret the term “commingled fund” as applying to funds other than mutual funds with respect to FBARs for calendar year 2009 and prior years. Thus, the IRS has determined that it will not apply its enforcement authority adversely in the case of persons with a financial interest in, or signature authority over, any other foreign commingled fund with respect to that account for calendar year 2009 and earlier calendar years. A financial interest in, or signature authority over, a foreign hedge fund or private equity fund is included in the administrative relief provided in the preceding sentence.

#### **3. FBAR-Related Questions on Federal Tax Forms.**

Provided the taxpayer has no other reportable foreign financial accounts for the year in question, a taxpayer who qualifies for the filing relief provided in this notice should check the “no” box in response to FBAR-related questions found on federal tax forms for 2009 and earlier years that ask about the existence of a financial interest in, or signature authority over, a foreign financial account.

#### **EFFECT ON OTHER DOCUMENTS**

Notice 2009–62 is modified and supplemented.

The principal author of this notice is Mark E. Cottrell of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Emily M. Lesniak at (202) 622–4940 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## Reduced 2009 Estimated Income Tax Payments for Individuals with Small Business Income

### REG-117501-09

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations that provide guidance as to qualified individuals with small business income who certify that they satisfy the gross income requirement for purposes of claiming a reduction in their required 2009 estimated income tax payments. The temporary regulations implement section 1212 of the American Recovery and Reinvestment Act of 2009, which amended section 6654(d) of the Internal Revenue Code (Code) to provide for reduced 2009 estimated income tax payments for certain qualified individuals. The text of the temporary regulations (T.D. 9480) also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by June 1, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-117501-09), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-117501-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG-117501-09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Adrienne Mikolashek at (202) 622-4940; concerning submission of comments and a request for a public hearing, Regina Johnson at (202) 622-7180 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 6654. Section 6654 imposes an addition to tax in the case of an individual taxpayer's underpayment of estimated tax. The temporary regulations provide guidance on reduced estimated income tax payments for qualified individuals with small business income for any taxable year beginning in 2009. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

#### Proposed Effective Date

The regulations, as proposed, apply to any taxable year that begins in 2009 or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

#### 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 the 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 regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these proposed regulations is Adrienne Mikolashek, Office of the Associate Chief Counsel, Procedure and Administration.

\* \* \* \* \*

## 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 \* \* \*

Section 1.6654-2 also issued under 26 U.S.C. 6654(d) \* \* \*

Par. 2. Section 1.6654-2 is amended by revising paragraph (a) introductory text, and paragraphs (a)(1)(ii) and (f) to read as follows:

*§1.6654-2 Exceptions to imposition of the addition to the tax in the case of individuals.*

(a) [The text of the proposed amendment to §1.6654-2(a) is the same as the text of §1.6654-2T(a) published elsewhere in this issue of the Bulletin].

(1)(i) \* \* \*



(ii) [The text of the proposed amendment to §1.6654–2(a)(1)(ii) is the same as the text of §1.6654–2T(a)(1)(ii) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(f) [The text of the proposed amendment to §1.6654–2(f) is the same as the text of §1.6654–2T(f) published elsewhere in this issue of the Bulletin].

Steven T. Miller,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on February 26, 2010, 8:45 a.m., and published in the issue of the Federal Register for March 1, 2010, 75 F.R. 9141)

## Notice of Proposed Rulemaking

### Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans

**REG-148681-09**

**AGENCIES:** Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

**ACTION:** Request for information.

**SUMMARY:** The Department of Labor and the Department of the Treasury (the “Agencies”) are currently reviewing the rules under the Employee Retirement Income Security Act (ERISA) and the plan qualification rules under the Internal Revenue Code (Code) to determine whether, and, if so, how, the Agencies could or should enhance, by regulation or otherwise, the retirement security of participants in employer-sponsored retirement plans and in individual retirement arrangements (IRAs) by facilitating access to, and use of, lifetime income or other arrangements designed to provide a lifetime stream of income after retirement. The purpose of this notice is to solicit views, suggestions and comments from plan participants, employers and other plan sponsors, plan service providers, and members of the financial community, as

well as the general public, on this important issue.

**DATES:** Comments must be submitted on or before May 3, 2010.

**ADDRESSES:** You may submit written comments to any of the addresses specified below. Any comment that is submitted to either Agency will be shared with the other Agency. Please do not submit duplicates.

*Department of Labor.* Comments to the Department of Labor, identified by RIN 1210-AB33, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [e-ORI@dol.gov](mailto:e-ORI@dol.gov). Include RIN 1210-AB33 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: Lifetime Income RFI.

All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received will be posted without change to <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, and made available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Washington, DC 20210, including any personal information provided. Persons submitting comments electronically are encouraged not to submit paper copies.

*Internal Revenue Service.* Comments to the IRS, identified by REG-148681-09, by one of the following methods:

- *Mail:* CC:PA:LPD:PR (REG-148681-09), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- *Hand or courier delivery:* Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-148681-09), Courier’s Desk, Internal Revenue

Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments (IRS REG-148681-09).

All submissions to the IRS will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW, Washington, DC from 9 a.m. to 4 p.m.

### FOR FURTHER INFORMATION

**CONTACT:** Stephanie L. Ward or Luisa Grillo-Chope, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8500 or Peter J. Marks, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service, Department of the Treasury, at (202) 622-6090. These are not toll-free numbers.

### SUPPLEMENTARY INFORMATION:

#### A. Background

The Agencies are issuing this request for information in furtherance of their efforts to promote retirement security for American workers. The Secretary of Labor’s overarching vision for the work of the Department of Labor is to advance good jobs for everyone. Good jobs provide wages that support families, and rise with time and productivity. Good jobs also provide safe and healthy working conditions. Finally, good jobs, no matter the type or income level, provide retirement security. Consistent with these objectives, the Department of the Treasury strives to promote economic growth, stability, and economic security, including retirement security, for American workers, and oversees the federal tax expenditures for retirement savings and security.

Retirement security is provided to many workers through defined benefit pension plans sponsored by their employers. Employers that sponsor defined benefit pension plans are responsible for making contributions that are sufficient for funding the promised benefit, investing and managing plan assets (as fiduciaries), and bearing investment risks because the employer, as plan sponsor, is required to make enough contributions to the plan to fund benefit payments during retirement. In addition,

when the defined benefit pension plan pays (or offers to pay) a lifetime annuity, it provides (or offers to provide) protection against the risk of outliving one's assets in retirement (longevity risk).

Department of Labor data, however, show a trend away from sponsorship of defined benefit plans, toward sponsorship of defined contribution plans. The number of active participants in defined benefit plans fell from about 27 million in 1975 to approximately 20 million in 2006, whereas the number of active participants in defined contribution plans increased from about 11 million in 1975 to 66 million in 2006.<sup>1</sup>

While defined contribution plans have some strengths relative to defined benefit plans, participants in defined contribution plans bear the investment risk because there is no promise by the employer as to the adequacy of the account balance that will be available or the income stream that can be provided after retirement. Moreover, while defined benefit plans are generally required to make annuities available to participants at retirement, 401(k) and other defined contribution plans typically make only lump sums available. Furthermore, many traditional defined benefit plans have converted to lump sum-based hybrid plans, such as cash balance or pension equity plans, and many others have simply added lump sum options. Accordingly, with the continuing trend away from traditional defined benefit plans to 401(k) defined contribution plans and hybrid plans, including the associated trend away from annuities toward lump sum distributions, employees are not only increasingly responsible for the adequacy of their savings at the time of retirement, but also for ensuring that their savings last throughout their retirement years and, in many cases, the remaining lifetimes of their spouses and dependents.

In recognition of the foregoing, the Agencies are considering whether it would be appropriate for them to take future steps to facilitate access to, and use of, lifetime income or other arrangements designed to provide a stream of income after retirement. This includes a review of existing regulations and other guidance and consideration of whether any such steps

would enhance the retirement security of participants in retirement plans, taking into account potential effects on and trade-offs involving other policy objectives. To that end, this request for information (RFI) sets forth a number of questions that are generally organized into categories under which the Agencies may be able to provide additional guidance if appropriate. This RFI also includes a number of questions pertaining to the economic impact of rulemaking, and to impediments beyond the statutory requirements, if any. Commenters are not limited to these questions and are invited to respond to all or any subset of the questions, but the Agencies request that commenters relate their responses to specific questions when possible.

Similar considerations arise when participants decide how to take retirement distributions from an IRA (including an IRA that holds rollover distributions from qualified retirement plans). Further, participants often elect to take lump sum distributions where they are available from defined benefit plans, which may also be rolled over to an IRA. Commenters are encouraged to address these contexts as well, identifying the particular types of arrangements to which their comments relate.

All comments will be considered, and comments supported by references to empirical data will be particularly appreciated. In considering the questions set forth in this RFI, commenters are encouraged to take into account the following studies and commentary:

#### *2009 GAO Report*

In July 2009, the Government Accountability Office (GAO) published Report GAO-09-642 entitled, "Private Pensions: Alternative Approaches Could Address Retirement Risks Faced by Workers but Pose Trade-offs." The GAO found that workers face a number of risks in both accumulating and preserving pension benefits. The GAO found, in relevant part, that:

Workers that receive lump-sum distributions, in particular, face several risks related to how they withdraw, or 'draw down' their benefits, including:

- Longevity risk — retirees may draw down benefits too quickly and outlive their assets. Conversely, retirees may draw down their benefits too slowly, unnecessarily reduce their consumption, and leave more wealth than intended when they die.
- Investment risk — assets in which pension savings are invested may decline in value.
- Inflation risk — inflation may diminish the purchasing power of a retiree's pension benefits.

Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at [www.gao.gov/new.items/d09642.pdf](http://www.gao.gov/new.items/d09642.pdf).

#### *2007 GAO Report*

In November 2007, the GAO published Report GAO-08-8 entitled, "Private Pensions: Low Defined Contribution Plan Savings May Pose Challenges to Retirement Security, Especially for Many Low-Income Workers." The GAO concluded that only 36 percent of workers participated in a current defined contribution plan in 2004, with the total median account balance (for workers with a current or former DC plan, including rolled-over retirement funds) of only \$22,800. The median account balance was \$50,000 for workers age 55 to 64 and \$60,600 for those age 60 to 64. The report is relevant to this RFI because the need for lifetime income may be most acute among workers who have small but significant retirement savings balances. Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at [www.gao.gov/new.items/d088.pdf](http://www.gao.gov/new.items/d088.pdf).

#### *2003 GAO Report*

In July 2003, the General Accounting Office (GAO) published Report GAO-03-810 entitled, "Private Pensions: Participants Need Information on Risks They Face in Managing Pension Assets at and During Retirement." The GAO concluded that:

<sup>1</sup> The number of active participants in 1975 and 2006 are not directly comparable because of adjustments in the definition of a participant. Please see a detailed explanation of the adjustment in U.S. Department of Labor, Employee Benefits Security Administration, "Private Pension Plan Bulletin Historical Tables and Graphs," February 2009, p. 1-9. See [www.dol.gov/ebsa/pdf/1975-2006historicaltables.pdf](http://www.dol.gov/ebsa/pdf/1975-2006historicaltables.pdf).

The decreasing number of employer-sponsored pension plans that offer only life annuities at retirement and the increasing percentage of retiring participants who choose benefit payouts other than annuities suggest that, in the future, fewer retirees may receive pension income guaranteed to last throughout retirement. The growth in the number of DC plans, along with the increasing availability of lump sums from DB plans, means that retirees will face greater responsibility and choices for managing their pension and other assets at and throughout retirement. Depending on their choices, retirees could be at greater risk of outliving their pension and retirement savings plan assets or ultimately having insufficient income to maintain their standard of living through their retirement years.

Such risks underscore the need for providing enhanced information and education to participants about their available payout options, the issues they may face in managing retirement assets, and how different options may mitigate, or increase, these risks. As part of their responsibility, retirees will have to weigh certain pros and cons of different ways to manage and preserve pension assets. Currently, the notices that plan sponsors must furnish to retiring participants are not sufficient to help them choose payout options that suit their individual circumstances, while assuring adequate levels of such income to the extent possible. Our expert panel suggested that providing several types of information, such as on risks that could affect retirement income security, could help retiring participants make more informed decisions regarding how they balance income and expenditures during retirement.

This report, which did not recommend executive branch action, nonetheless recommended that the Congress may wish to consider amending ERISA to require plan sponsors to provide participants with a notice on risks that individuals face in managing their income and expenditures at and during retirement. Commenters are encouraged to consider this GAO report in reviewing the issues identified in this RFI. This report may be accessed at [www.gao.gov/new.items/d03810.pdf](http://www.gao.gov/new.items/d03810.pdf).

### *ERISA Advisory Council Reports*

In 2007, the ERISA Advisory Council's Working Group on Financial Literacy of Plan Participants and the Role of the Employer undertook a study of numerous issues relating to increasing the financial decision-making skills of plan participants. The Working Group issued a report containing, among others, the following recommendation: "The Working Group recommends that the Department of Labor expand the reach of [Interpretive Bulletin 96-1] by changing and updating it. As innovation continues in the financial marketplace, educational initiatives will need to address items heretofore not necessarily addressed in 96-1. 96-1 needs to address information, education, and advice in the de-accumulation stage as well as the accumulation phase. Further, as innovation continues in this area, 96-1 needs to be continually updated." Commenters are encouraged to consider this report in reviewing the issues identified in this RFI. This report may be accessed at [www.dol.gov/ebsa/publications/AC-1107a.html](http://www.dol.gov/ebsa/publications/AC-1107a.html).

In 2008, the ERISA Advisory Council's Working Group on the Spend Down of Defined Contribution Assets at Retirement undertook a study on the types of guidance that could help plan sponsors and plan participants make better informed decisions regarding plan investment and insurance vehicles that provide periodic or lifetime distributions. The Working Group issued a report containing, in relevant part, the following recommendations: (1) expand the reach of Interpretive Bulletin 96-1 by adapting it to the spend down phase; (2) clarify that products which are eligible qualified default investment alternatives while participants are actively participating in the plan will continue to so qualify; (3) encourage, authorize, endorse and facilitate plan communications that use retirement income replacement formulas based on final pay and other reasonable assumptions in employee benefit statements on an individual participant basis; and (4) enhance plan sponsor and participant education by publishing and regularly updating information about the distribution options available to participants in defined contribution plans. Commenters are encouraged to consider this report in reviewing the issues iden-

tified in this RFI. This report may be accessed at [www.dol.gov/ebsa/publications/2008ACreport3.html](http://www.dol.gov/ebsa/publications/2008ACreport3.html).

### **B. Request for Information**

The purpose of this notice is to solicit views, suggestions and comments from plan participants, plan sponsors, plan service providers and members of the financial community, as well as the general public, to assist the Agencies in evaluating what steps, if any, they could or should take, by regulation or otherwise, to enhance the retirement security of participants in employer-sponsored retirement plans and IRAs by facilitating access to, and use of, lifetime income or other arrangements designed to provide a stream of lifetime income after retirement. To facilitate consideration of the issues, the Agencies have set forth below a number of matters and specific questions with respect to which views, suggestions, comments and information are requested. In addition to addressing any or all of the matters and questions referred to below, interested persons are encouraged to address any other matters they believe to be germane to the Agencies' consideration of lifetime annuities and similar lifetime income issues, particularly as they relate to defined contribution plans and defined benefit plans that distribute benefits as lump sums.

#### **General**

1. From the standpoint of plan participants, what are the advantages and disadvantages for participants of receiving some or all of their benefits in the form of lifetime payments?

2. Currently the vast majority of individuals who have the option of receiving a lump sum distribution or ad hoc periodic payments from their retirement plan or IRA choose to do so and do not select a lifetime income option. What explains the low usage rate of lifetime income arrangements? Is it the result of a market failure or other factors (*e.g.*, cost, complexity of products, adverse selection, poor decision-making by consumers, desire for flexibility to respond to unexpected financial needs, counterparty risk of seller insolvency, etc.)? Are there steps that the Agencies could or should take to overcome at least some of the concerns that keep

plan participants from requesting or electing lifetime income?

3. What types of lifetime income are currently available to participants directly from plans (in-plan options), such as payments from trust assets held under a defined benefit plan and annuity payments from insurance contracts held under a defined contribution or defined benefit plan?

4. To what extent are the lifetime income options referenced in question 3 provided at retirement or other termination of employment as opposed to being offered incrementally during the accumulation phase, as contributions are made? How are such incremental or accumulating annuity arrangements structured?

5. To what extent are 401(k) and other defined contribution plan sponsors using employer matching contributions or employer nonelective contributions to fund lifetime income? To what extent are participants offered a choice regarding such use of employer contributions, including by default or otherwise?

6. What types of lifetime income or other arrangements designed to provide a stream of income after retirement are available to individuals who have already received distributions from their plans (out-of-plan options), such as IRA products, and how are such arrangements being structured (fixed, inflation adjusted, or other variable, immediate or deferred, etc.)? Are there annuity products under which plan accumulations can be rolled over to an individual retirement annuity of the same issuer to retain the annuity purchase rights that were available under the plan?

7. What product features have a significant impact on the cost of providing lifetime income or other arrangements designed to provide a stream of income after retirement, such as features that provide participants with the option of lifetime payments, while retaining the flexibility to accelerate distributions if needed?

8. What are the advantages and disadvantages for participants of selecting lifetime income payments through a plan (in-plan option) as opposed to outside a plan (e.g., after a distribution or rollover)?

9. What are the advantages and disadvantages from the standpoint of the plan sponsor of providing an in-plan option for lifetime income as opposed to leaving to participants the task of securing a lifetime

income vehicle after receiving a plan distribution?

10. How commonly do plan sponsors offer participants the explicit choice of using a portion of their account balances to purchase a lifetime annuity, while leaving the rest in the plan or taking it as a lump sum distribution or a series of ad hoc distributions? Why do some plan sponsors make this partial annuity option available while others do not? Would expanded offering of such partial annuity options — or particular ways of presenting or framing such choices to participants — be desirable and would this likely make a difference in whether participants select a lifetime annuity option?

11. Various “behavioral” strategies for encouraging greater use of lifetime income have been implemented or suggested based on evidence or assumptions concerning common participant behavior patterns and motivations. These strategies have included the use of default or automatic arrangements (similar to automatic enrollment in 401(k) plans) and a focus on other ways in which choices are structured or presented to participants, including efforts to mitigate “all or nothing” choices by offering lifetime income on a partial, gradual, or trial basis and exploring different ways to explain its advantages and disadvantages. To what extent are these or other behavioral strategies being used or viewed as promising means of encouraging more lifetime income? Can or should the 401(k) rules, other plan qualification rules, or ERISA rules be modified, or their application clarified, to facilitate the use of behavioral strategies in this context?

12. How should participants determine what portion (if any) of their account balance to annuitize? Should that portion be based on basic or necessary expenses in retirement?

13. Should some form of lifetime income distribution option be required for defined contribution plans (in addition to money purchase pension plans)? If so, should that option be the default distribution option, and should it apply to the entire account balance? To what extent would such a requirement encourage or discourage plan sponsorship?

14. What are the impediments to plan sponsors’ including lifetime income options in their plans, e.g., 401(k) or other qualification rules, other federal or state

laws, cost, potential liability, concern about counterparty risk, complexity of products, lack of participant demand?

15. What are the advantages and disadvantages of approaches that combine annuities with other products (reverse mortgages, long term care insurance), and how prevalent are these combined products in the marketplace?

16. Are there differences across demographic groups (for example men vs. women) that should be considered and reflected in any retirement security program? Can adjustments for any differences be made within existing statutory authority?

## Participant Education

The Department of Labor issued Interpretive Bulletin 96-1 (29 CFR 2509.96-1) to clarify that the provision of investment education, as described in the Bulletin, will not be considered the provision of “investment advice,” which would give rise to fiduciary status and potential liability under ERISA for plan participants’ and beneficiaries’ investment decisions.

17. What information (e.g., fees, risks, etc.) do plan participants need to make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement? When and how (i.e., in what form) should it be provided? What information currently is provided to participants, who typically provides it, and when and how is it provided to them?

18. Is there a need for guidance, regulatory or otherwise, regarding the extent to which plan assets can be used to pay for providing information to help participants make informed decisions regarding whether to select lifetime income or other arrangements designed to provide a stream of income after retirement, either via an in-plan or out-of-plan option?

19. What specific legal concerns do plan sponsors have about educating participants as to the advantages and disadvantages of lifetime income or other arrangements designed to provide a stream of income after retirement? What actions, regulatory or otherwise, could the Agencies take to address such concerns?

20. To what extent should plans be encouraged to provide or promote education about the advantages and disadvantages of

lifetime annuities or similar lifetime income products, and what guidance would be helpful to accomplish this?

### **Disclosing the Income Stream that Can be Provided from an Account Balance**

ERISA section 105 requires defined contribution plans to furnish to each participant an individual benefit statement, at least annually, that includes the participant's "accrued benefits," *i.e.*, the individual's account balance.

21. Should an individual benefit statement present the participant's accrued benefits as a lifetime income stream of payments in addition to presenting the benefits as an account balance?

22. If the answer to question 21 is yes, how should a lifetime stream of income payments be expressed on the benefit statement? For example, should payments be expressed as if they are to begin immediately or at specified retirement ages? Should benefit amounts be projected to a future retirement age based on the assumption of continued contributions? Should lifetime income payments be expressed in the form of monthly or annual payments? Should lifetime income payments of a married participant be expressed as a single-life annuity payable to the participant or a joint and survivor-type annuity, or both?

23. If the answer to question 21 is yes, what actuarial or other assumptions (*e.g.*, mortality, interest, etc.) would be needed in order to state accrued benefits as a lifetime stream of payments? If benefit payments are to commence at some date in the future, what interest rates (*e.g.*, deferred insurance annuity rates) and other assumptions should be applied? Should an expense load be reflected? Are there any authoritative tools or sources (online or otherwise) that plans should or could use for conversion purposes, or would the plan need to hire an actuary? Should caveats be required so that participants understand that lifetime income payments are merely estimates for illustrative purposes? Should the assumptions underlying the presentation of accrued benefits as a lifetime income stream of payments be disclosed to participants? Should the assumptions used to convert accounts into a lifetime stream of income payments be dictated by regulation, or should the Department issue as-

sumptions that plan sponsors could rely upon as safe harbors?

24. Should an individual benefit statement include an income replacement ratio (*e.g.*, the percentage of working income an individual would need to maintain his or her pre-retirement standard of living)? If so, what methodology should be used to establish such a ratio, such as pre-retirement and post-retirement inflation assumptions, and what are the impediments for plans to present the ratio in a meaningful way to participants on an individualized basis?

### **401(k) and Other Plan Qualification Rules**

Income Tax Regulations that apply specifically to lifetime annuities include: 26 CFR 1.401(a)-11, 26 CFR 1.401(a)-20, 26 CFR 1.401(a)(9)-1 through 26 CFR 1.401(a)(9)-9, 26 CFR 1.417(a)(3)-1, and 26 CFR 1.417(e)-1.

25. How do the 401(k) or other plan qualification rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives?

26. Could or should any changes be made to the rules relating to qualified joint and survivor annuities and spousal consents to encourage the use of lifetime income without compromising spousal protections?

27. Should further guidance clarify the application of the qualified joint and survivor annuity rules or other plan qualification rules to arrangements in which deferred in-plan insurance annuities accumulate over time with increasing plan contributions and earnings?

28. How do the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income? Are there changes to those rules that could or should be made to encourage lifetime income without prejudice to other important policy objectives? In particular, how are deferred annuities that begin at an advanced age (sometimes referred to as longevity insurance) affected by these rules? Are there changes to the rules that

could or should be considered to encourage such arrangements?

29. Are employers that sponsor both defined benefit and defined contribution plans allowing participants to use their defined contribution plan lump sum payouts to "purchase" lifetime income from the defined benefit plan? Could or should any actions be taken to facilitate such arrangements? Should plans be encouraged to permit retirees who previously took lump sums to be given the option of rolling it back to their former employer's plan in order to receive annuity or other lifetime benefits?

### **Selection of Annuity Providers**

The Department of Labor's regulation 29 CFR 2550.404a-4 contains a fiduciary safe harbor for the selection of annuity providers for the purpose of benefit distributions from defined contribution plans.

30. To what extent do fiduciaries currently use the safe harbor under 29 CFR 2550.404a-4 when selecting annuity providers for the purpose of making benefit distributions?

31. To what extent could or should the Department of Labor make changes to the safe harbor under 29 CFR 2550.404a-4 to increase its usage without compromising important participant protections? What are those changes and why should they be made?

32. To what extent could or should the safe harbor under 29 CFR 2550.404a-4 be extended beyond distribution annuities to cover other lifetime annuities or similar lifetime income products? To which products should or could the safe harbor be extended?

### **ERISA Section 404(c)**

ERISA section 404(c) and 29 CFR 2550.404c-1 provide defined contribution plan fiduciaries with limited relief from the fiduciary responsibility provisions of ERISA where a participant or beneficiary exercises control over the assets in his or her account.

33. To what extent are fixed deferred lifetime annuities (*i.e.*, incremental or accumulating annuity arrangements) or similar lifetime income products currently used as investment alternatives under ERISA 404(c) plans? Are they typically

used as core investment alternatives (alternatives intended to satisfy the broad range of investments requirement in 29 CFR 2550.404c-1) or non-core investment alternatives? What are the advantages and disadvantages of such products to participants? What information typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products?

34. To what extent do ERISA 404(c) plans currently provide lifetime income through variable annuity contracts or similar lifetime income products? What are the advantages and disadvantages of such products to participants? What information about the annuity feature typically is disclosed to the participant, in what form, and when? To what extent could or should the ERISA 404(c) regulation be amended to encourage use of these products?

#### **Qualified Default Investment Alternatives**

ERISA section 404(c)(5) provides that, for purposes of ERISA section 404(c)(1), a participant in a defined contribution plan will be treated as exercising control over the assets in his or her account with respect to the amount of contributions and earnings if, in the absence of an investment election by the participant, such assets are invested by the plan in accordance with regulations of the Department

of Labor. The Department of Labor's regulation 29 CFR 2550.404c-5 describes the types of investment products that are qualified default investment alternatives under ERISA section 404(c)(5).

35. To what extent are plans using default investment alternatives that include guarantees or similar lifetime income features ancillary to the investment fund, product or model portfolio, such as a target maturity fund product that contains a guarantee of minimum lifetime income? What are the most common features currently in use? Are there actions, regulatory or otherwise, the Agencies could or should take to encourage use of these lifetime income features in connection with qualified default investment alternatives?

#### **Comments Regarding Economic Analysis, Regulatory Flexibility Act, and Paperwork Reduction Act**

Executive Order 12866 (EO 12866) requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. In addition, the Regulatory Flexibility Act (RFA) may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. For this purpose, the Agencies consider a small entity to be an employee benefit plan with fewer than 100 participants. The Pa-

perwork Reduction Act (PRA) requires an estimate of how many "respondents" will be required to comply with any "collection of information" requirements contained in regulations and how much time and cost will be incurred as a result.

The Agencies in this section of the RFI are requesting comments that may contribute to any analyses that may eventually need to be performed under EO 12866, RFA, and PRA, both generally and with respect to specific areas identified in questions 36 through 39.

36. What are the costs and benefits to a plan sponsor of offering lifetime annuities or similar lifetime income products as an in-plan option? Please quantify if possible.

37. Are there unique costs to small plans that impede their ability to offer lifetime annuities or similar lifetime income products as an in-plan option to their participants? What special consideration, if any, is needed for these small entities?

38. Would making a lifetime annuity or other lifetime income product the default form of benefit payment have an impact on employee contribution rates? If so, in which direction and why?

39. For plans that offer lifetime annuities or similar lifetime income products, what percentage of eligible workers elect to annuitize at least some of their retirement assets and what percentage elect to annuitize all of their assets?

Signed at Washington, D.C., this 27th day of January, 2010.

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Phyllis C. Borzi  
Assistant Secretary  
Employee Benefits Security Administration  
Department of Labor

Signed at Washington, D.C., this 27th day of January, 2010.

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Nancy J. Marks  
Division Counsel/Associate Chief Counsel  
Tax Exempt and Government Entities  
Internal Revenue Service, Department of the  
Treasury

Signed at Washington, D.C., this 26th day of January, 2010.

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J. Mark Iwry  
Senior Advisor to the Secretary  
Deputy Assistant Secretary for Retirement and  
Health Benefits  
Department of the Treasury

(Filed by the Office of the Federal Register on February 1, 2010, 8:45 a.m., and published in the issue of the Federal Register for February 2, 2010, 75 F.R. 5253)

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

### **Announcement 2010-14**

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

170(c)(2) of the Internal Revenue Code of 1986.

Generally, the 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) would begin on March 15, 2010 and would end 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.

Nat Turner Legal Defense  
Garland, TX  
The Arab American Cultural and Educational Center Inc.  
Youngstown, OH  
Debt Counseling and Solutions, Inc.  
Metairie, LA  
Ezekiel's House of Central Florida, Inc.  
Salem, IN  
Howell's International, Inc.  
British West Indies  
Moore's Burial Association  
Fayetteville, AR  
Mustard Seed Frey Family Foundation  
Oakland, CA  
River City Regiment  
Sacramento, CA  
Silver Point Assurance, Ltd.  
Knoxville, TN  
Skyward Resources  
Honolulu, HI  
Ward's Inc.  
Fairfax, VA  
Community Revitalization Group  
Hermosa Beach, CA  
Curtilage, Inc.  
Salt Lake City, UT  
Heritage Institute Inc.  
St. George, UT  
Residential Revitalization Group  
Hermosa Beach, CA  
United Management Systems Inc.  
Columbus, MA

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## **FBAR Filing Requirements — Continuation Of Suspension Of FBAR Filing Requirements For Persons Who Are Not United States Citizens, United States Residents, Or Domestic Entities**

### **Announcement 2010-16**

This announcement suspends, for persons who are not United States citizens,

United States residents, or domestic entities (corporations, partnerships, trusts, or estates), the requirement to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), for the 2009 and earlier calendar years.

In October 2008, the Internal Revenue Service published a revised FBAR form together with accompanying instructions that changed the definition of "United States person." The IRS received numerous questions and comments from the public concerning the changed definition. In response, and to reduce the burden on the public, the IRS issued Announcement 2009-51, 2009-25 I.R.B. 1105, which directed people to refer to the definition of "United States person" in the July 2000 version of the FBAR instructions to determine if they had a filing obligation. This effectively suspended the filing of FBARs due on June 30, 2009, by persons who were not United States citizens, United States residents, or domestic entities. Announcement 2009-51 stated that additional FBAR guidance would be issued for subsequent filing years and invited public comments concerning the FBAR form and instructions.

Since the issuance of Announcement 2009-51, and receipt of a significant number of public comments, the Treasury Department has published proposed FBAR regulations under 31 CFR Part 103, as well as proposed revisions that clarify instructions for the FBAR (Form TD F 90-22.1). To provide taxpayers with guidance on who is required to file FBARs due on June 30, 2010, and in particular to provide immediate guidance to taxpayers on how to answer FBAR-related 2009 federal income tax return questions (*e.g.*, Schedule B of Form 1040, the "Other Information" section of Form 1041, Schedule B of Form 1065, and Schedule N of Form 1120), the IRS and Treasury Department believe it is appropriate to provide the following administrative relief:

The requirement to file an FBAR due on June 30, 2010, is suspended for persons who are not United States citizens, United States residents, or domestic entities. Additionally, all persons may rely on the def-

inition of "United States person" found in the July 2000 version of the FBAR instructions to determine if they have an FBAR filing obligation for the 2009 and earlier calendar years. The definition of "United States person" from the July 2000 version of the FBAR is:

**United States Person** The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

This substitution of the definition of "United States person" applies only with respect to FBARs for the 2009 calendar year and, as originally provided in Announcement 2009-51, to earlier calendar years.

All other requirements of the 2008 version of the FBAR form and instructions, as modified by Notice 2010-23, remain in effect until changed by subsequent guidance issued by the Treasury Department, including the IRS.

### **EFFECT ON OTHER DOCUMENTS**

Announcement 2009-51 is supplemented and superseded.

The principal author of this announcement is Emily M. Lesniak of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this announcement, contact Emily M. Lesniak at (202) 622-4940 (not a toll-free call).



# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

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

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

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

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

## Abbreviations

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

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

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

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

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