INTERNAL REVENUE BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2020–2
January 6, 2020

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.

EMPLOYEE PLANS

NOTICE 2020-1, page 290.

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for December 2019 used under § 417(e)(3)(D), the 24-month average segment rates applicable for December 2019, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

REV. PROC. 2020-9, page 294.

This revenue procedure clarifies which amendments are treated as integral to a plan provision that fails to satisfy the qualification requirements of the Internal Revenue Code by reason of a change to those requirements made by the recently published regulations under §§ 401(k) and 401(m) relating to hardship distributions of elective deferrals. This revenue procedure also extends the deadline, applicable to pre-approved plans, for adopting an interim amendment relating to those regulations.

REV. PROC. 2020-10, page 295.

Rev. Proc. 2017-41, 2017-29 I.R.B 92, sets forth procedures for providers of pre-approved plans to obtain opinion letters, once every six years, for qualified pre-approved plans submitted with respect to the third (and subsequent) six-year remedial amendment cycles. Defined benefit and defined contribution pre-approved plans are under different six-year remedial amendment cycles. This revenue procedure provides that the third six-year remedial amendment cycle for pre-approved defined benefit plans begins on May 1, 2020, and ends on January 31, 2025. It also provides that the on-cycle submission period for providers to submit opinion letter applications begins on August 1, 2020 and ends on July 31, 2021.

EXEMPT ORGANIZATIONS

T.D. 9886, page 285.

This final regulation provides guidance under § 512(a)(3) of the Code with regard to the calculation of unrelated business taxable income (UBTI) for § 501(c)(9) voluntary employees' beneficiary associations (VEBAs) and § 501(c)(17) supplemental unemployment benefit trusts (SUBs). This regulation makes a few changes to temporary regulations issued in 1986 to clarify statutory provisions on how to calculate UBTI for VEBAs and SUBs and generally follows proposed regulations issued in 2014, with the exception of a change to the applicability/effective date in response to comments.

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

Part I

26 CFR 1.512(a)-5: Questions and answers relating to the unrelated business taxable income of organizations described in paragraphs (9) or (17) of section 501(c).

T.D. 9886

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Calculation of UBTI for Certain Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation providing guidance on how certain organizations that provide employee benefits must calculate unrelated business taxable income (UBTI).

DATES: *Effective Date*: This regulation is effective on December 10, 2019.

Applicability Date: This regulation applies to taxable years beginning on or after December 10, 2019. For rules that apply to earlier periods, see §1.512(a)-5T as contained in 26 CFR part 1, revised April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Jennifer Solomon or Janet Laufer at (202) 317-5500 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 512(a) of the Code. Organizations that are otherwise exempt from tax under section 501(a) are subject to tax on their unrelated business taxable income (UBTI) under section 511(a). Section 512(a) of the Code generally defines UBTI of exempt organizations and provides special rules for calculating UBTI for organizations described in section 501(c)(7) (social and recreational clubs), voluntary employees' beneficiary associations described in section 501(c)(9) (VEBAs), and supplemental unemployment benefit trusts described in section 501(c)(17) (SUBs).

Section 512(a)(1) provides a general rule that UBTI is the gross income from any unrelated trade or business regularly carried on by the organization, less certain deductions. Under section 512(a)(3)(A), in the case of social and recreational clubs, VEBAs, and SUBs, UBTI is defined as gross income, less directly connected expenses, but excluding "exempt function income."

Exempt function income is defined in section 512(a)(3)(B) as gross income from two sources. The first type of exempt function income is amounts paid by members as consideration for providing the members or their dependents or guests with goods, facilities, or services in furtherance of the organization's exempt purposes. The second type of exempt function income is all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by the organization computed as if the organization were subject to section 512(a)(1)) that is set aside: (1) for a charitable purpose specified in section 170(c)(4); (2) in the case of a VEBA or SUB, to provide for the payment of life, sick, accident, or other benefits; or (3) for reasonable costs of administration directly connected with a purpose described in (1) or (2).

As described in greater detail below, section 512(a)(3)(E) generally limits the amount that a VEBA or SUB may set aside as exempt function income to an amount that does not result in an amount of total assets in the VEBA or SUB at the end of the taxable year that exceeds the section 419A account limit for the taxable year. As specified in section 512(a)(3)(E)(i), for this purpose, the account limit does not take into account any reserve under section 419A(c)(2)(A) for post-retirement medical benefits.

Section 512(a)(3)(E) was added to the Code under the Tax Reform Act of 1984, Public Law 98-369 (98 Stat. 598 (1984)). Congress enacted section 512(a)(3)(E) to limit the extent to which a VEBA's or SUB's income is exempt from tax, noting that "[p]resent law does not specifically limit the amount of income that can be set aside" by a VEBA or SUB on a tax-free basis. H.R. Rep. No. 98-432, pt. 2, at 1275.

To implement section 512(a)(3)(E), §1.512(a)-5T was published in the **Federal Register** as TD 8073 on February 4, 1986 (51 FR 4312), with an immediate effective date. A cross-referencing Notice of Proposed Rulemaking (the 1986 proposed regulation) was issued contemporaneously with the temporary regulation. Written comments were received on the 1986 proposed regulation, and a public hearing was held on June 26, 1986. The 1986 proposed regulation was withdrawn and replaced by a new proposed regulation (the 2014 proposed regulation) that was published in the **Federal Register** on February 6, 2014 (79 FR 7110). The Treasury Department and the IRS received two comments on the 2014 proposed regulation. No public hearing was held.

The Treasury Department and the IRS have considered the comments received in response to the 2014 proposed regulation. This final regulation adopts the provisions of the 2014 proposed regulation with no modifications other than the following changes: (1) a change in the applicability date to taxable years beginning on or after the date of publication of this final regulation; (2) the addition of a clause modifying the definition of covered entity to include certain corporations described in section 501(c)(2), as provided in section 512(a)(3)(C); (3) the addition of a clause which refers to the provision in section 512(a)(3)(D) addressing nonrecognition of gain in the case of sales of certain property; and (4) updates to the examples, formatting changes, and other minor changes in wording, which are nonsubstantive. The modifications to the definition of covered entity and the addition of the clause addressing nonrecognition of gain are described under the heading "Summary of Comments and Explanation of Provisions." The temporary regulation is removed.

Summary of Comments and Explanation of Provisions

Covered Entity

Consistent with the 2014 proposed regulation, this final regulation uses the uniform term "Covered Entity" to describe VEBAs and SUBs subject to the UBTI computation rules of section 512(a)(3).[1] For taxable years beginning after June 30, 1992, group legal services organizations (GLSOs) are no longer exempt as section 501(c)(20) organizations.[2] *See* section 120(e). Therefore, a GLSO is no longer a Covered Entity.

The 2014 proposed regulation did not reflect the provision of section 512(a)(3)(C), which provides that section 512(a)(3)(A) applies to a corporation described in section 501(c)(2), the income of which is payable to an organization described in section 501(c)(7), (9), or (17), as if the corporation were the organization to which the income is payable. For this purpose, the corporation is treated as having exempt function income for a taxable year only if it files a consolidated return with the organization described in section 501(c)(7), (9), or (17). In this final regulation, a clause has been added to clarify that the term "Covered Entity" includes a corporation described in section 501(c)(2) to the extent provided in section 512(a)(3)(C).

Nonrecognition of Gain

The 2014 proposed regulation did not reflect the provision of section 512(a)(3)(D) regarding nonrecognition of gain with respect to the sale of certain property. In this final regulation, a clause has been added to refer to that provision. Section 512(a)(3)(D) provides that, if property used directly in the performance of the exempt function of a Covered Entity is sold by the Covered Entity, and other property is purchased and used by the Covered Entity directly in the performance of its exempt function within a four-year period beginning one year before the date of the sale, and ending three years after the date of sale, gain (if any) from the sale is recognized only to the extent that the sales price of the old property exceeds the Covered Entity's cost of purchasing the other property.

Limitation on Amounts Set Aside for Exempt Purposes

Section 512(a)(3)(E)(i) limits the amount of investment income a Covered Entity may treat as nontaxable exempt function income in any given year to the extent such income "result[s] in" a year-end account balance "in excess of" the modified section 419A account limit. An account overage can be considered the result of, or essentially caused by, investment income only by considering all investment income earned during the year. Thus, in order to give an appropriate meaning to the term "result in", the total amount of investment income earned during the year should be considered when calculating whether an excess exists at the end of the year.

Certain taxpayers have taken a contrary position and asserted that investment income may be set aside and used separately before the end of a taxable year for current benefit payments and related administrative costs (collectively, "benefit expenditures") and thereby avoid the limit imposed by section 512(a)(3)(E)(i) on exempt function income. In *Sherwin-Williams Co. Employee Health Plan Trust v. Comm'r*, 330 F.3d 449 (6th Cir. 2003), *rev'g*, 115 T.C. 440 (2000), the Sixth Circuit Court of Appeals held that investment income that the VEBA earmarked and claimed was spent before year-end on reasonable costs of administration was not subject to the section 512(a)(3)(E)(i) limit on exempt function income. In contrast, in *CNG Transmission Mgmt. VEBA v. U.S.*, 588 F.3d 1376 (Fed. Cir. 2009), *aff'g*, 84 Fed. Cl. 327 (2008), the Federal Circuit Court of Appeals rejected this argument. The Court stated that the "language of section 512(a)(3)(E) is clear and unambiguous," and upheld the Court of Federal Claims' conclusion that a VEBA "may not avoid the limitation on exempt function income in [section] 512(a)(3)(E)(i) merely by allocating investment income toward the payment of welfare benefits during the course of the tax year." *CNG*, 558 F.3d at 1379, 1377-78; *accord Northrop Corp. Employee Insurance Benefit Plans Master Trust v. U.S.*, 99 Fed. Cl. 1 (2011), *aff'd*, 467 Fed. Appx. 886 (Fed. Cir. April 10, 2012), *cert. denied*, (Dec. 3, 2012).

The Treasury Department and the IRS have concluded that the decision in *Sherwin-Williams* is contrary to the statute, the legislative history of section 512(a)(3)(E), §1.512(a)-5T, and the 1986 and 2014 proposed regulations, and have determined that it is appropriate to issue this final regulation clarifying the proper calculation method.[3] Specifically, the Treasury Department and the IRS disagree with the Sixth Circuit's conclusion that investment income may be set aside and used separately before the end of a taxable year to pay the reasonable costs of administering health care benefits and thereby avoid the limit imposed by section 512(a)(3)(E)(i) on exempt function income.[4]

The fungible nature of money means that there is necessarily a connection between investment income that a Covered Entity earns during the year and the total amount of funds in the entity at year-end, even if the Covered Entity purports to apply all of that income to benefit expenditures. For example, a VEBA with a beginning balance of $1,000, investment income of $100, benefit expenditures of $3,000, and employer contributions of $3,000, will have a year-end balance of $1,100. This will be true regardless of whether the

[1] While section 501(c)(7) organizations are also subject to the UBTI computation rules of section 512(a)(3), this regulation addresses only computations for VEBAs and SUBs.

[2] The preamble of the 2014 proposed regulation referred to GLSOs. However, on December 19, 2014, the Tax Increase Prevention Act of 2014, Public Law 113-295 (128 Stat. 4010) repealed sections 120 and 501(c)(20) regarding GLSOs as "deadwood" provisions.

[3] The IRS's interpretation is set forth in its non-acquiescence to the *Sherwin-Williams* decision (AOD 2005-02, 2005-35 I.R.B. 422). In AOD 2005-02, the IRS recognized the precedential effect of the decision to cases appealable to the Sixth Circuit and indicated that it would follow the decision in *Sherwin-Williams* with respect to cases within that circuit if the opinion could not be meaningfully distinguished.

[4] Notably, the Sixth Circuit opinion in *Sherwin-Williams* concluded that section 512(a)(3)(E)(i) supported the interpretation adopted by the court, not that the interpretation was based on the unambiguous terms of the statute or even the best reading of the statute. The Sixth Circuit also erroneously considered the 1986 temporary regulation as consistent with that interpretation.

VEBA allocates the investment income to the benefit expenditures. Assume that the VEBA's year-end account limit under section 512(a)(3)(E)(i) is $1,010, so that there is an account overage of $90. Absent $90 of the investment income, the VEBA would have had a year-end account balance of $1,010 and no account overage. Thus, $90 of the investment income in the example "result[s] in" a year-end account balance "in excess of" the VEBA's year-end account limit and may not be set aside and excluded as exempt function income.

The analysis that all investment income earned during a year should be considered in determining whether there is an account overage is consistent with the Joint Committee on Taxation's report with respect to the legislation that enacted section 512(a)(3)(E). This report indicated that investment income is subject to UBTI in "an amount equal to the lesser of the income of the fund or the amount by which the assets in the fund exceed a specific limit on amounts set aside for exempt purposes." *See* Staff of the Joint Comm. on Taxation, 98th Cong., *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984*, at 790 (Comm. Print 1984) (JCS-41-84). Accordingly, the Treasury Department and the IRS continue to interpret section 512(a)(3)(E)(i) to mean that whether a VEBA or SUB allocated its investment income (rather than other funds) to current year expenditures is irrelevant to the application of the set aside limitation.

As discussed above, the statutory provisions are not dependent upon a determination as to whether particular sources of income were used for benefit expenditures in any particular year. Rather, the "result in" language of section 512(a)(3)(E)(i) means that amounts set aside for benefit expenditures are treated as exempt function income only to the extent the total amount set aside for such purposes as of the end of the year is equal to or less than "the account limit determined under section 419A. . . for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits)." Accordingly, the final regulations reflect this rule, and, for taxable years to which these regulations apply, the IRS will apply this final regulation to cases arising in the Sixth Circuit.

This final regulation retains the formula, description, and examples set forth in the 2014 proposed regulation. The 2014 proposed regulation retained the formula set forth in the 1986 proposed regulation and §1.512(a)-5T, but modified and clarified the description and added examples. Thus, consistent with the 2014 proposed regulation, this final regulation specifically states that any investment income a Covered Entity earns during the taxable year is subject to unrelated business income tax (UBIT) to the extent the Covered Entity's year-end assets exceed the account limit, and clarifies that this rule applies regardless of how that income is used.

The IRS received two comments on the 2014 proposed regulation. One of the commenters asked that the proposed regulation be withdrawn on the basis that it is inconsistent with the statute, while the other commenter indicated his view that the position taken in the proposed regulation is a fair interpretation of the statute. With respect to the request that the 2014 proposed regulation be withdrawn, the Treasury Department and the IRS have concluded that the position in the 2014 proposed regulation, and adopted in this final regulation, is not only consistent with the statute, but is correct for the reasons set forth in this preamble.

Both of the commenters expressed concern over the proposed applicability date in the 2014 proposed regulation because of its potential impact on VEBAs within the Sixth Circuit's jurisdiction. The 2014 proposed regulation proposes that it will apply to taxable years ending on or after the date of publication of the final regulation. One commenter argued that the proposed applicability date would be unfair to VEBAs that are within the Sixth Circuit's jurisdiction because these VEBAs and their sponsors have been operating in good faith under a tax regime that a federal court of appeals held is the law. The commenter suggested that if the 2014 proposed regulation were finalized as proposed, the regulation should apply only with respect to taxable years beginning six months after the date the final regulation is published in the **Federal Register**, at least for VEBAs within the Sixth Circuit's jurisdiction.

The other commenter stated that VEBAs that account for investment income in the manner approved by the Sixth Circuit have been operating in good faith and in accordance with a reasonable interpretation of the relevant Code provisions. The commenter expressed concern that if the regulation were finalized in the manner in which it was proposed, the investment income of those VEBAs would be retroactively taxed. The commenter therefore requested that the proposed applicability date be changed in the final regulation to the first taxable year beginning on or after the date of publication of the final regulation.

Taking into account these comments, the Treasury Department and the IRS have decided to modify the applicability date, so that this final regulation applies to taxable years beginning on or after the date of publication of the final regulation (and so for VEBAs within the Sixth Circuit's jurisdiction, the position reflected in AOD 2005-02 would apply through the end of the VEBA's taxable year in which the final regulation is issued).

Effective/Applicability Date

This regulation is effective on December 10, 2019. The regulation applies to taxable years beginning on or after December 10, 2019. For rules that apply to earlier periods, see §1.512(a)-5T as contained in 26 CFR part 1, revised April 1, 2019.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Because this regulation does 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, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of this regulation are Jennifer Solomon and Janet Laufer, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of this regulation.

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Adoption of 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 continues to read in part as follows:

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

* * * * *

Par. 2. Section 1.512(a)-5 is added to read as follows:

§1.512(a)-5 Questions and answers relating to the unrelated business taxable income of organizations described in paragraphs (9) or (17) of section 501(c).

(a)(1) *Q-1*. What does section 512(a)(3) provide with respect to organizations described in paragraphs (9) or (17) of section 501(c)?

(2) *A-1*. (i) In general, section 512(a)(3) provides rules for determining the unrelated business income tax of voluntary employees' beneficiary associations (VEBAs) and supplemental unemployment benefit trusts (SUBs). Under section 512(a)(3)(A), a Covered Entity's "unrelated business taxable income" (UBTI) means all income except exempt function income. Under section 512(a)(3)(B), exempt function income includes income that is set aside for exempt purposes, as described in paragraph (b) of this section, subject to certain limits, as described in paragraph (c) of this section.

(ii) For purposes of this section, a "Covered Entity" means a VEBA or a SUB, and, to the extent provided in section 512(a)(3)(C), a corporation described in section 501(c)(2).

(b)(1) *Q-2*. What is exempt function income?

(2) *A-2*. (i) Under section 512(a)(3)(B), the exempt function income of a Covered Entity for a taxable year means the sum of—

(A) Amounts referred to in the first sentence of section 512(a)(3)(B) that are paid by members of the Covered Entity and employer contributions to the Covered Entity (collectively "member contributions");

(B) Other income of the Covered Entity (including earnings on member contributions) that is set aside for a purpose specified in section 170(c)(4) and reasonable costs of administration directly connected with such purpose; and

(C) Other income of the Covered Entity (including earnings on member contributions) that, subject to the limitation of section 512(a)(3)(E) (as described in paragraph (c) of this section), is set aside for the payment of life, sick, accident, or other benefits and reasonable costs of administration directly connected with such purpose.

(ii) The other income described in paragraphs (b)(2)(i)(B) and (C) of this section does not include the gross income derived from any unrelated trade or business (as defined in section 513) regularly carried on by the Covered Entity, computed as if the organization were subject to section 512(a)(1).

(c)(1) *Q-3*. What are the limits on the amount that may be set aside?

(2) *A-3*. (i) Pursuant to section 512(a)(3)(E)(i), and except as provided in paragraph (c)(2)(ii) of this section, the amount of investment income (as defined in paragraph (c)(2)(iii) of this section) set aside by a Covered Entity as of the close of a taxable year of such Covered Entity to provide for the payment of life, sick, accident, or other benefits (and administrative costs associated with the provision of such benefits) is not taken into account for purposes of determining the amount of that income that constitutes "exempt function income" to the extent that the total amount of the assets of the Covered Entity at the end of the taxable year set aside to provide for the payment of life, sick, accident, or other benefits (and related administrative costs) exceeds the applicable account limit for such taxable year of the Covered Entity (as described in paragraph (c)(2)(iv) of this section). Accordingly, any investment income a Covered Entity earns during the taxable year is subject to unrelated business income tax to the extent the Covered Entity's year-end assets exceed the applicable account limit. The rule in this paragraph (c)(2) applies regardless of whether the Covered Entity spends or retains (or is deemed to spend or deemed to retain) that investment income during the course of the year. Thus, in addition to the unrelated business taxable income derived by a Covered Entity from any unrelated trade or business (as defined in section 513) regularly carried on by it, computed as if the organization were subject to section 512(a)(1), the unrelated business taxable income of a Covered Entity for a taxable year of such an organization includes the lesser of—

(A) The investment income of the Covered Entity for the taxable year; and

(B) The excess (if any) of—

(*1*) The total amount of the assets of the Covered Entity (excluding amounts set aside for a purpose described in section 170(c)(4)) as of the close of the taxable year; over

(*2*) The applicable account limit for the taxable year.

(ii) In accordance with section 512(a)(3)(E)(iii), a Covered Entity is not subject to the limits described in this paragraph (c) if substantially all of the contributions to the Covered Entity are made by employers who were tax exempt throughout the five year taxable period ending with the taxable year in which the contributions are made.

(iii) For purposes of this section, a Covered Entity's "investment income" —

(A) Means all income except –

(*1*) Member contributions described in paragraph (b)(2)(i)(A) of this section;

(*2*) Income set aside as described in paragraph (b)(2)(i)(B) of this section; or

(*3*) Income from any unrelated trade or business described in paragraph (b)(2)(ii) of this section; and

(B) Includes gain realized by the Covered Entity on the sale or disposition of any asset during such year (other than gain on the sale or disposition of assets of an unrelated trade or business described in paragraph (b)(2)(ii) of this section), except to the extent provided in section 512(a)(3)(D).

(C) For purposes of paragraph (c)(2)(iii)(B) of this section, the gain realized by a Covered Entity on the sale or disposition of an asset is equal to the amount realized by the organization over the basis of such asset in the hands of the organization reduced by any qualified direct costs attributable to such asset (under paragraphs (b), (c), and (d) of Q&A-6 of §1.419A-1T).

(iv) In calculating the total amount of the assets of a Covered Entity as of the close of the taxable year, certain assets with useful lives extending substantially beyond the end of the taxable year (for example, buildings and licenses) are not to be taken into account to the extent they are used in the provision of life, sick, accident, or other benefits. By contrast, cash and securities (and other similar investments) held by a Covered Entity are taken into account in calculating the total amount of the assets of a Covered Entity as of the close of the taxable year because they may be used to pay welfare benefits, rather than merely used in the provision of such benefits.

(v) The determination of the applicable account limit for purposes of this paragraph (c) is made under the rules of sections 419A(c) and 419A(f)(7), except that a reserve for post-retirement medical benefits under section 419A(c)(2)(A) is not to be taken into account. See §1.419A-2T for special rules relating to collectively bargained welfare benefit funds.

(vi) The limits of this paragraph (c) apply to a Covered Entity that is part of a 10 or more employer plan, as defined in section 419A(f)(6). For purposes of this paragraph (c), the account limit is determined as if the plan is not subject to the exception under section 419A(f)(6).

(vii) The following examples illustrate the calculation of a VEBA's UBTI.

(A) *Example 1*. (*1*) Employer *X* establishes a VEBA as of January 1, 2015, through which it provides health benefits to active employees. The plan year is the calendar year. The VEBA has no employee contributions or member dues, receives no income from an unrelated trade or business regularly carried on by the VEBA, and has no income set aside for a purpose specified in section 170(c)(4). The VEBA's investment income in 2020 is $1,000. As of December 31, 2020, the applicable account limit under section 512(a)(3)(E)(i) is $5,000 and the total amount of assets of the VEBA is $7,000.

(*2*) The VEBA's UBTI for 2020 is $1,000. This is because the UBTI is the lesser of the investment income for the year ($1,000) and the excess of the VEBA assets over the account limit at the end of the year ($7,000 over $5,000, or $2,000).

(B) *Example 2*. (*1*) The facts are the same as in the example in paragraph (c)(2)(vii)(A) of this section (*Example 1*), except that the VEBA's applicable account limit under section 512(a)(3)(E)(i) as of December 31, 2020, is $6,500.

(*2*) The VEBA's UBTI for 2020 is $500. This is because the UBTI for 2020 is the lesser of the investment income for the year ($1,000) and the excess of the VEBA assets over the account limit at the end of the year ($7,000 over $6,500, or $500).

(C) *Example 3*. (*1*) Employer *Y* contributes to a VEBA through which *Y* provides health benefits to active and retired employees. The plan year is the calendar year. At the end of 2020, there was no carryover of excess contributions within the meaning of section 419(d), the balance in the VEBA was $25,000, the Incurred but Unpaid (IBU) claims reserve was $6,000, the reserve for post-retirement medical benefits (PRMB) (computed in accordance with section 419A(c)(2)) was $19,000, and there were no existing reserves within the meaning of section 512(a)(3)(E)(ii). During 2021, the VEBA receives $70,000 in employer contributions and $5,000 in investment income, pays $72,000 in benefit payments and $7,000 in administrative expenses, and receives no income from an unrelated trade or business regularly carried on by the VEBA. All the 2021 benefit payments are with respect to active employees and the IBU claims reserve (that is, the account limit under section 419A(c)(1)) at the end of 2021 was $7,200. The reserve for PRMB at the end of 2021 is $20,000. All amounts designated as "administrative expenses" are expenses incurred in connection with the administration of the employee health benefits. "Investment income" is net of administrative costs incurred in the production of the investment income (for example, investment management and/or brokerage fees). Only employers contributed to the VEBA (that is, there were no employee contributions or member dues/fees). The VEBA does not set aside any income for the purpose specified in section 170(c)(4).

(*2*) The total amount of assets of the VEBA at the end of 2021 is $21,000 (that is, $25,000 beginning of year balance + $70,000 contributions + $5,000 investment income – ($72,000 in benefit payments + $7,000 in administrative expenses)).

(*3*) The applicable account limit under section 512(a)(3)(E)(i) (that is, the account limit under section 419A(c), excluding the reserve for post-retirement medical benefits) is the IBU claims reserve ($7,200).

(*4*) The total amount of assets of the VEBA as of the close of the year ($21,000) exceeds the applicable account limit ($7,200) by $13,800.

(*5*) The unrelated business taxable income of the VEBA is $5,000 (that is, the lesser of investment income ($5,000) and the excess of the amount of assets of the VEBA as of the close of the taxable year over the applicable account limit ($13,800)).

(D) *Example 4*. (*1*) The facts are the same as in the example in paragraph (c)(2)(vii)(C) of this section (*Example 3*) except that the 2020 year-end balance was $15,000.

(*2*) The total amount of assets in the VEBA at the end of 2021 is $11,000 (that is, $15,000 beginning of year balance + $70,000 contributions + $5,000 investment income – ($72,000 in benefit payments + $7,000 in administrative expenses)).

(*3*) The applicable account limit under section 512(a)(3)(E)(i) remains $7,200.

(*4*) The total amount of assets of the VEBA as of the close of the year ($11,000) exceeds the applicable account limit ($7,200) by $3,800.

(*5*) The VEBA's unrelated business taxable income is $3,800 (that is, the lesser of investment income ($5,000) and the excess of the total amount of assets of the VEBA at the close of the taxable year over the applicable account limit ($3,800)).

(d)(1) *Q-4*. What is the effective date of the amendments to section 512(a)(3) and what transition rules apply to "existing reserves for post-retirement medical or life insurance benefits"?

(2) *A-4*. (i) The amendments to section 512(a)(3), made by the Tax Reform Act of 1984, apply to income earned by a Covered Entity after December 31, 1985, in the taxable years of such an organization ending after such date.

(ii) Section 512(a)(3)(E)(ii)(I) provides that income that is attributable to "existing reserves for post-retirement medical or life insurance benefits" will not be treated as unrelated business taxable income. This includes income that is either directly or indirectly attributable to existing reserves. An "existing reserve for post-retirement medical or life insurance benefits" (as defined in section 512(a)(3)(E)(ii)(II)) is the total amount of assets actually set aside by a Covered Entity on July 18, 1984 (calculated in the manner set forth in paragraph (c) of this section, and adjusted under paragraph (c) of Q&A-11 of §1.419-1T), reduced by employer contributions to the fund on or before such date to the extent such contributions are not deductible for the taxable year of the employer including July 18, 1984, and for any prior taxable year of the employer, for purposes of providing such post-retirement benefits. For purposes of the preceding sentence only, an amount that was not actually set aside on July 18, 1984, will be treated as having been actually set aside on such date if the amount was—

(A) Incurred by the employer (without regard to section 461(h)) as of the close of the last taxable year of the Covered Entity ending before July 18, 1984; and

(B) Actually contributed to the Covered Entity within 8 ½ months following the close of such taxable year.

(iii) In addition, section 512(a)(3)(E)(ii)(I) applies to existing reserves for such post-retirement benefits only to the extent that such "existing reserves" do not exceed the amount that could be accumulated under the principles set forth in Revenue Rulings 69-382, 1969-2 CB 28; 69-478, 1969-2 CB 29; and 73-599, 1973-2 CB 40. Thus, amounts attributable to any such excess "existing reserves" are not within the transition rule of section 512(a)(3)(E)(ii)(I) even though they were actually set aside on July 18, 1984. See §601.601(d)(2)(ii)(*b*) of this chapter.

(iv) All post-retirement medical or life insurance benefits (or other benefits to the extent paid with amounts set aside to provide post-retirement medical or life insurance benefits) provided after July 18, 1984 (whether or not the employer has maintained a reserve or fund for such benefits) are to be charged, first, against the "existing reserves" within the transition rule of section 512(a)(3)(E)(ii)(I) (including amounts attributable to "existing reserves" within the transition rule of section 512(a)(3)(E)(ii)(I) for post-retirement medical benefits or for post-retirement life insurance benefits (as the case may be)) and, second, against all other amounts. For purposes of this paragraph (d)(2)(iv), the qualified direct cost of an asset with a useful life extending substantially beyond the end of the taxable year (as determined under Q&A-6 of §1.419-1T) will be treated as a benefit provided and thus charged against the "existing reserve" based on the extent to which such asset is used in the provision of post-retirement medical benefits or post-retirement life insurance benefits (as the case may be). All plans of an employer providing post-retirement medical benefits are to be treated as one plan for purposes of section 512(a)(3)(E)(ii)(III), and all plans of an employer providing post-retirement life insurance benefits are to be treated as one plan for purposes of section 512(a)(3)(E)(ii)(III).

(v) In calculating the unrelated business taxable income of a Covered Entity for a taxable year of such organization, the total income of the Covered Entity for the taxable year is reduced by the income attributable to "existing reserves" within the transition rule of section 512(a)(3)(E)(ii)(I) before such income is compared to the excess of the total amount of the assets of the Covered Entity as of the close of the taxable year over the applicable account limit for the taxable year.

(vi) The following example illustrates the calculation of UBTI for a VEBA that has existing reserves.

(A) *Example*. Assume that the total income of a VEBA for a taxable year is $1,000, and that the excess of the total amount of the assets of the VEBA as of the close of the taxable year over the applicable account limit is $600. Assume also that of the $1,000 of total income, $540 is attributable to "existing reserves" within the transition rule of section 512(a)(3)(E)(ii)(I). The unrelated business taxable income of this VEBA for the taxable year is $460, determined as the lesser of the following two amounts:

(*1*) The total income of the VEBA for the taxable year, reduced by the extent to which such income is attributable to "existing reserves" within the meaning of the transition rule of section 512(a)(3)(E)(ii)(I) ($1,000 - $540 = $460); and

(*2*) The excess of the total amount of the assets of the VEBA as of the close of the taxable year over the applicable account limit ($600).

(B) [Reserved]

(e)(1) *Q-5*. What is the applicability date of this section?

(2) *A-5*. Except as otherwise provided in this paragraph (e)(2), this section is applicable to taxable years beginning on or after December 10, 2019. For rules that apply to earlier periods, see §1.512(a)-5T, as contained in 26 CFR part 1, revised April 1, 2019.

§1.512(a)-5T [Removed]

Par. 3. Section 1.512(a)-5T is removed.

Sunita Lough,
Deputy Commissioner for Services and Enforcement.

Approved: November 19, 2019.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on December 9, 2019, 8:45 a.m., and published in the issue of the Federal Register for December 10, 2019, 84 F.R. 67370)

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

Notice 2020-1

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

YIELD CURVE AND SEGMENT RATES

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

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate

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

bond yield curve derived from November 2019 data is in Table 2019-11 at the end of this notice. The spot first, second, and third segment rates for the month of November 2019 are, respectively, 2.04, 3.09, and 3.68.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. For plan years beginning before 2021, the applicable minimum percentage is 90% and the applicable maximum percentage is 110%. The 25-year average segment rates for plan years beginning in 2018, 2019, and 2020 were published in Notice 2017-50, 2017-41 I.R.B. 280, Notice 2018-73, 2018-40 I.R.B. 526 and Notice 2019-51, 2019-41 I.R.B. 866, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for December 2019 without adjustment for the 25-year average segment rate limits are as follows:

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

Applicable Month	First Segment	Second Segment	Third Segment
December 2019	2.78	3.85	4.30

Based on § 430(h)(2)(C)(iv), the 24-month averages applicable for December 2019, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates, are as follows:

Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2018	December 2019	3.92	5.52	6.29
2019	December 2019	3.74	5.35	6.11
2020	December 2019	3.64	5.21	5.94

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for November 2019 is 2.28 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2049 determined each day through November 6, 2019 and the yield on the 30-year Treasury bond maturing in November 2049 determined each day for the balance of the month For plan years beginning in December 2019, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

Treasury Weighted Average Rates

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
December 2019	2.83	2.55 to 2.97

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for November 2019 are as follows:

Minimum Present Value Segment Rates			
Month	**First Segment**	**Second Segment**	**Third Segment**
November 2019	2.04	3.09	3.68

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Paul Stern at 202-317-8702 (not toll-free numbers).

Table 2019-11

Monthly Yield Curve for November 2019

Derived from November 2019 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	1.84	20.5	3.52	40.5	3.70	60.5	3.77	80.5	3.80
1.0	1.91	21.0	3.53	41.0	3.70	61.0	3.77	81.0	3.80
1.5	1.96	21.5	3.53	41.5	3.71	61.5	3.77	81.5	3.80
2.0	2.01	22.0	3.54	42.0	3.71	62.0	3.77	82.0	3.80
2.5	2.03	22.5	3.55	42.5	3.71	62.5	3.77	82.5	3.80
3.0	2.06	23.0	3.56	43.0	3.71	63.0	3.77	83.0	3.80
3.5	2.08	23.5	3.56	43.5	3.72	63.5	3.77	83.5	3.80
4.0	2.11	24.0	3.57	44.0	3.72	64.0	3.77	84.0	3.81
4.5	2.16	24.5	3.57	44.5	3.72	64.5	3.78	84.5	3.81
5.0	2.21	25.0	3.58	45.0	3.72	65.0	3.78	85.0	3.81
5.5	2.27	25.5	3.59	45.5	3.72	65.5	3.78	85.5	3.81
6.0	2.34	26.0	3.59	46.0	3.73	66.0	3.78	86.0	3.81
6.5	2.41	26.5	3.60	46.5	3.73	66.5	3.78	86.5	3.81
7.0	2.49	27.0	3.60	47.0	3.73	67.0	3.78	87.0	3.81
7.5	2.57	27.5	3.61	47.5	3.73	67.5	3.78	87.5	3.81
8.0	2.65	28.0	3.61	48.0	3.73	68.0	3.78	88.0	3.81
8.5	2.73	28.5	3.62	48.5	3.73	68.5	3.78	88.5	3.81
9.0	2.80	29.0	3.62	49.0	3.74	69.0	3.78	89.0	3.81
9.5	2.87	29.5	3.63	49.5	3.74	69.5	3.78	89.5	3.81
10.0	2.94	30.0	3.63	50.0	3.74	70.0	3.79	90.0	3.81
10.5	3.00	30.5	3.64	50.5	3.74	70.5	3.79	90.5	3.81
11.0	3.06	31.0	3.64	51.0	3.74	71.0	3.79	91.0	3.81
11.5	3.11	31.5	3.64	51.5	3.74	71.5	3.79	91.5	3.81
12.0	3.16	32.0	3.65	52.0	3.75	72.0	3.79	92.0	3.81
12.5	3.20	32.5	3.65	52.5	3.75	72.5	3.79	92.5	3.81
13.0	3.24	33.0	3.66	53.0	3.75	73.0	3.79	93.0	3.81
13.5	3.28	33.5	3.66	53.5	3.75	73.5	3.79	93.5	3.81
14.0	3.31	34.0	3.66	54.0	3.75	74.0	3.79	94.0	3.82
14.5	3.34	34.5	3.67	54.5	3.75	74.5	3.79	94.5	3.82
15.0	3.36	35.0	3.67	55.0	3.75	75.0	3.79	95.0	3.82
15.5	3.38	35.5	3.67	55.5	3.76	75.5	3.79	95.5	3.82
16.0	3.40	36.0	3.68	56.0	3.76	76.0	3.79	96.0	3.82
16.5	3.42	36.5	3.68	56.5	3.76	76.5	3.80	96.5	3.82
17.0	3.44	37.0	3.68	57.0	3.76	77.0	3.80	97.0	3.82
17.5	3.45	37.5	3.69	57.5	3.76	77.5	3.80	97.5	3.82
18.0	3.47	38.0	3.69	58.0	3.76	78.0	3.80	98.0	3.82
18.5	3.48	38.5	3.69	58.5	3.76	78.5	3.80	98.5	3.82
19.0	3.49	39.0	3.69	59.0	3.76	79.0	3.80	99.0	3.82
19.5	3.50	39.5	3.70	59.5	3.77	79.5	3.80	99.5	3.82
20.0	3.51	40.0	3.70	60.0	3.77	80.0	3.80	100.0	3.82

Part III

Rev. Proc. 2020-9

SECTION 1. PURPOSE

This revenue procedure clarifies which amendments are treated as integral to a plan provision that fails to satisfy the qualification requirements of the Internal Revenue Code (Code) by reason of a change to those requirements made by the recently published regulations under §§ 401(k) and 401(m) relating to hardship distributions of elective deferrals. This revenue procedure also extends the deadline, applicable to pre-approved plans, for adopting an interim amendment relating to those regulations. The deadline is extended to December 31, 2021.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2016-37, 2016-29 I.R.B. 136, as modified by Rev. Proc. 2017-41, 2017-29 I.R.B. 92, sets forth a six-year remedial amendment cycle system for pre-approved plans. Under this system, a pre-approved plan provider may apply for a new opinion letter from the Internal Revenue Service (IRS) once during each six-year remedial amendment cycle. Section 15.01 of Rev. Proc. 2016-37 provides that, in order to promote compliance with changes to plan qualification requirements during a six-year remedial amendment cycle, the adoption of an interim amendment generally will be required. Pursuant to section 4.02 of Rev. Proc. 2016-37, the requirement for interim amendments does not apply to individually designed plans.

.02 Section 15.02 of Rev. Proc. 2016-37 defines an interim amendment as an amendment with respect to a disqualifying provision that results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001, or that is integral to such a disqualifying provision.

.03 Final regulations under §§ 401(k) and 401(m) were published in the *Federal Register* (84 FR 49651) on September 23, 2019 (Final Regulations). The preamble to the Final Regulations states that the Department of the Treasury and the IRS expect that many plans' hardship distribution provisions will need to be amended to reflect certain provisions of the Final Regulations. Plan amendments required under the Final Regulations are: (1) an amendment to remove a plan provision suspending an employee's contributions following a hardship distribution of elective deferrals and (2) an amendment requiring an employee's representation relating to his or her need for a hardship distribution, if the plan does not already provide for such a representation. These "required amendments" must be effective for hardship distributions made on or after January 1, 2020 (although a required amendment may be implemented as early as the first day of the plan year that begins after December 31, 2018).

.04 The preamble to the Final Regulations provides that a plan amendment modifying a plan's hardship distribution provisions that is effective no later than the required amendment, including a plan amendment reflecting one or more of the following, will be treated as amending a provision that is integrally related to a qualification requirement that has been changed: (1) the change to § 165 (relating to casualty losses); (2) the addition of the new safe harbor expense (relating to expenses incurred as a result of certain federally declared disasters); and (3) the extension of the relief under Announcement 2017-15, 2017-47 I.R.B. 534, to victims of Hurricanes Florence and Michael that was provided in the preamble to the proposed regulations (83 FR 56763, (Nov. 14, 2018)).

.05 Generally, under section 15.04 of Rev. Proc. 2016-37, an interim amendment (described in section 2.02 of this revenue procedure) is timely adopted if it is adopted by the end of the remedial amendment period described in section 2.07 of Rev. Proc. 2016-37. The remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, the remedial amendment period ends on the later of: (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins; or (2) the last day of the plan year that includes the date on which the remedial amendment period begins.

.06 Under section 15.05 of Rev. Proc. 2016-37, the deadline for adoption of an interim amendment set forth in section 15.04 applies unless "a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under section 15.04."

SECTION 3. CLARIFICATION OF INTEGRAL AMENDMENT RULES AND EXTENSION OF INTERIM AMENDMENT DEADLINE

.01 This section 3 clarifies which amendments are treated as integral to a plan provision that fails to satisfy the Final Regulations and extends the plan amendment deadline provided in section 15.04 of Rev. Proc. 2016-37, applicable to interim amendments with respect to required amendments described in section 2.03 of this revenue procedure, and all amendments treated as integral to those amendments.

.02 All plan amendments that relate to a plan's hardship distribution provisions and that are effective no later than January 1, 2020, are treated as integral to the required amendments described in section 2.03 of this revenue procedure. This treatment applies even if the required amendments are implemented earlier than for hardship distributions made on or after January 1, 2020.

.03 Pursuant to section 15.05 of Rev. Proc. 2016-37, the deadline, applicable to pre-approved plans, for adopting interim amendments with respect to the required amendments described in section 2.03 of this revenue procedure and all amendments that are integral to those amendments (as described in section 3.02 of this revenue procedure) is extended to December 31, 2021.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective December 12, 2019.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

Rev. Proc. 2020-10

SECTION 1. PURPOSE

This revenue procedure provides that the third six-year remedial amendment cycle for pre-approved defined benefit plans begins on May 1, 2020, and ends on January 31, 2025. It further provides that the on-cycle submission period for providers to submit applications for opinion letters for pre-approved defined benefit plans begins on August 1, 2020, and ends on July 31, 2021.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides that every pre-approved plan has a regular, six-year remedial amendment cycle. It also sets forth schedules for the second six-year remedial amendment cycle for pre-approved defined benefit plans (beginning on February 1, 2013, and ending on January 31, 2019) and for the third six-year remedial amendment cycle for pre-approved defined benefit plans (beginning on February 1, 2019, and ending on January 31, 2025). However, it further provides that the Internal Revenue Service (IRS) may revise the schedules for remedial amendment cycles for pre-approved plans to respond to changing circumstances and the needs of plan sponsors and that any such revisions and the timing of the submission periods within each cycle will be announced in future guidance.

.02 Announcement 2018-05, 2018-13 I.R.B. 461, provides that the second six-year remedial amendment cycle for pre-approved defined benefit plans ends on April 30, 2020 (rather than on January 31, 2019, as originally set forth in Rev. Proc. 2016-37). Announcement 2018-05 also states that the IRS will announce in future guidance a delayed beginning date for the third six-year remedial amendment cycle for pre-approved defined benefit plans.

.03 Rev. Proc. 2017-41, 2017-29 I.R.B. 92, modifies the pre-approved letter program by combining the master and prototype and volume submitter programs into a new opinion letter program. Under this program, providers of pre-approved plans may apply for new opinion letters once every six years. Rev. Proc. 2017-41 sets forth the procedures for obtaining opinion letters for qualified pre-approved plans submitted with respect to the third (and subsequent) six-year remedial amendment cycles. Pre-approved defined contribution plans have different six-year remedial amendment cycles than pre-approved defined benefit plans. Thus, the same six-year remedial amendment cycle applies with respect to all pre-approved defined contribution plans, and a separate six-year remedial amendment cycle applies with respect to all pre-approved defined benefit plans.

.04 Rev. Proc. 2016-37 and Rev. Proc. 2017-41 provide that the IRS will review plans that have been submitted during the applicable on-cycle submission period for a six-year remedial amendment cycle, taking into account the applicable Cumulative List of Changes in Plan Qualification Requirements that identifies changes in the qualification requirements of the Internal Revenue Code as well as items of published guidance relating to the plan qualification requirements. Rev. Proc. 2017-41 provides that when the review of a remedial amendment cycle for pre-approved plans has neared completion, the IRS will announce the date by which adopting employers must adopt the newly approved plans.

SECTION 3. THIRD SIX-YEAR REMEDIAL AMENDMENT CYCLE AND ON-CYCLE SUBMISSION PERIOD FOR PROVIDERS OF PRE-APPROVED DEFINED BENEFIT PLANS

.01 The third six-year remedial amendment cycle for pre-approved defined benefit plans begins on May 1, 2020, and ends on January 31, 2025 (the same end date set forth in Rev. Proc. 2016-37).

.02 The on-cycle submission period for pre-approved defined benefit plan providers to submit applications for opinion letters with respect to the third six-year remedial amendment cycle begins on August 1, 2020, and ends on July 31, 2021.

.03 When the IRS review process for pre-approved defined benefit plans for the third six-year remedial amendment cycle has neared completion, the IRS will announce the date by which adopting employers must adopt the newly approved plans and, if they are otherwise eligible, apply for an individual determination letter.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-37 and Rev. Proc. 2017-41 are modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective December 16, 2019.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in Rev. Proc. 2017-41 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1674.

SECTION 7. DRAFTING INFORMATION

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

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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