

INTERNAL REVENUE BULLETIN



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.

EXEMPT ORGANIZATIONS

Rev. Proc. 2021-8, page 502.

This revenue procedure makes certain modifications to Rev. Proc. 2021-5 to allow for the new electronic submission process on www.pay.gov for the Form 1024-A, Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code. It also provides a 90-day transition relief period, during which paper Form 1024-A applications will be accepted by EO Determinations.

EMPLOYEE PLANS

T.D. 9937, page 495.

This document sets forth final regulations relating to amendments made to section 402(c) of the Internal Revenue Code (Code) by section 13613 of the Tax Cuts and Jobs Act, Public Law 115-97 (131 Stat. 2054) (TCJA). Section 13613 of TCJA provides an extended rollover period for a qualified plan loan offset, which is a type of plan loan offset.

INCOME TAX

Rev. Proc. 2021-10, page 503.

Rev. Proc. 2021-10 provides procedures for an issuer of tax-advantaged bonds to request an administrative appeal to

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the Independent Office of Appeals (Appeals) of a proposed adverse determination made by the office that is responsible for examinations of tax-advantaged bonds, presently the Office of Tax Exempt Bonds, with respect to issues within the scope of this revenue procedure.

Rev. Rul. 2021-2, page 495.

This revenue ruling obsoletes Notice 2020-32, 2020-21 I.R.B. 837 and Revenue Ruling 2020-27, 2050-50 I.R.B. 1552, relating to the deductibility of certain expenses paid for with proceeds from a Paycheck Protection Program loan, due to the enactment of section 276(a) of the COVID-related Tax Relief Act of 2020.

TAX CONVENTIONS

Ann. 2021-1, page 506.

The Competent Authorities of the United States and Italy entered into a Competent Authority Arrangement under paragraph 3 of Article 25 (Mutual Agreement Procedure) clarifying the application of subparagraph 1(b) of Article 19 (Government Services) with respect to remuneration paid by the United States to U.S. citizens or dual nationals who are residents of Italy and who are rendering services to the United States in U.S. embassies and consulates in Italy.

The IRS Mission

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

Introduction

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

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

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

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

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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Part I

Rev. Rul. 2021-2

This ruling obsoletes Notice 2020-32, 2020-21 I.R.B. 837 (May 18, 2020), and Rev. Rul. 2020-27, 2020-50 I.R.B. 1552 (Dec. 7, 2020), due to the enactment of § 276(a) of the COVID-related Tax Relief Act of 2020 (Act), enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020).

Notice 2020-32 and Rev. Rul. 2020-27 provide that certain taxpayers (eligible recipients) may not deduct certain otherwise deductible expenses to the extent that the payment of such expenses results (or is expected to result) in the forgiveness of a loan (covered loan) guaranteed under the Paycheck Protection Program authorized under § 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (SBA), as enacted by § 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281, 286-93 (Mar. 27, 2020). Section 1106(b) of the CARES Act provides for the forgiveness of covered loans and § 1106(i) of the CARES Act provides, for purposes of the Internal Revenue Code, that any amount that otherwise would be includible in an eligible recipient's gross income by reason of such forgiveness is excluded from gross income.

Section 1106(i) of the CARES Act was redesignated, and transferred to § 7A(i) of the SBA, and amended by the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act, which was enacted as Title III of Division N of the Consolidated Appropriations Act, 2021. Section 276(a) of the Act amended § 7A(i) of the SBA to provide that no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness described in § 7A(b) of the SBA. *See* § 7A(i)(1) of the SBA. In addition, § 276(a) provides that no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by § 7A(i)(1)

of the SBA. *See* § 7A(i)(2) of the SBA. The amendment made by § 276(a) of the Act applies to taxable years ending after March 27, 2020, the date of the enactment of the CARES Act. *See* § 276(a)(2) of the Act.

As a result of the amendment made by § 276(a) of the Act regarding the Federal income tax consequences of covered loan forgiveness, the conclusion stated in Notice 2020-32, and the holding stated in Rev. Rul. 2020-27, are no longer accurate statements of the law. Accordingly, Notice 2020-32 and Rev. Rul. 2020-27 are declared obsolete as of the effective date of the amendment made by § 276(a) of the Act.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Charles Gorham, Charles Magee and Bruce Chang, Office of the Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue ruling, please contact Mr. Chang at (202) 317-4870 or Patrick Clinton at (202) 317-4651 (not toll-free numbers).

26 CFR 1.402(c)-3

T.D. 9937

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Rollover Rules for Qualified Plan Loan Offset Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations relating to amendments

made to section 402(c) of the Internal Revenue Code (Code) by section 13613 of the Tax Cuts and Jobs Act (TCJA). Section 13613 of TCJA provides an extended rollover period for a qualified plan loan offset, which is a type of plan loan offset. These regulations affect participants, beneficiaries, sponsors, and administrators of qualified employer plans.

DATES: *Effective Date:* These regulations are effective on January 6, 2021.

Applicability Date: For date of applicability, see §1.402(c)-3(b)(2).

FOR FURTHER INFORMATION CONTACT: Naomi Lehr at (202) 317-4102, Vernon Carter at (202) 317-6799, or Pamela Kinard at (202) 317-6000 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1, by adding §1.402(c)-3 to the Income Tax Regulations to reflect changes to section 402(c) of the Code, as amended by section 13613 of TCJA (Public Law 115-97 (131 Stat. 2054)).

1. Plan Loans, Eligible Rollover Distributions, and Plan Loan Offset Amounts

Section 72(p)(1) of the Code provides that if, during any taxable year, a participant or beneficiary receives (directly or indirectly) any amount as a loan from a qualified employer plan (as defined in section 72(p)(4)(A)),¹ that amount shall be treated as having been received by the individual as a distribution from the plan. For certain plan loans, section 72(p)(2) provides an exception to the general treatment of loans as distributions under section 72(p)(1).

For the exception under section 72(p)(2) to apply so that a plan loan is not treated as a distribution under section 72(p)(1)

¹ Under section 72(p)(4), a qualified employer plan means a qualified plan, a section 403(a) annuity plan, a section 403(b) plan, and any governmental plan.

for the taxable year in which the loan is received, the loan generally must satisfy three requirements:

(1) The loan, by its terms, must satisfy the limits on loan amounts, as described in section 72(p)(2)(A);

(2) The loan, by its terms, generally must be repayable within 5 years, as described in section 72(p)(2)(B); and

(3) The loan must require substantial-level amortization over the term of the loan, as described in section 72(p)(2)(C).

Section 401(a)(31) requires that a plan qualified under section 401(a) provide for the direct transfer of eligible rollover distributions. A similar rule applies to section 403(a) annuity plans, section 403(b) tax-sheltered annuities, and section 457 eligible governmental plans. See generally sections 403(a)(1), 403(b)(10), and 457(d)(1)(C).

Sections 402(c)(3) and 408(d)(3) provide that any amount distributed from a qualified plan or individual retirement account or annuity (IRA) will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. A similar rule applies to section 403(a) annuity plans, section 403(b) tax-sheltered annuities, and section 457 eligible governmental plans. See generally sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B).

Sections 402(c)(3)(B) and 408(d)(3)(I) provide that the Secretary may waive the 60-day rollover requirement “where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.” See generally Rev. Proc. 2020-46, 2020-45 I.R.B. 995, which sets forth a self-certification procedure that taxpayers may use in certain circumstances to claim a waiver of the 60-day deadline for completing a rollover under section 402(c)(3)(B) or 408(d)(3)(I), and

Rev. Proc. 2020-4, 2020-1 I.R.B. 148, which sets forth procedures that taxpayers may use to request a waiver of the 60-day rollover deadline by submitting a request for a private letter ruling.²

Section 1.402(c)-2, Q&A-3(a), provides that, unless specifically excluded, an eligible rollover distribution means any distribution to an employee (or to a spousal distributee described in §1.402(c)-2, Q&A-12(a)) of all or any portion of the balance to the credit of the employee in a qualified plan. Section 1.402(c)-2, Q&A-3(b), provides that certain distributions (for example, required minimum distributions under section 401(a)(9)) are not eligible rollover distributions.

Section 1.402(c)-2, Q&A-9(a), provides that a distribution of a plan loan offset amount (as defined in §1.402(c)-2, Q&A-9(b)) is an eligible rollover distribution if it satisfies §1.402(c)-2, Q&A-3. Thus, an amount not exceeding the plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the 60-day period described in section 402(c)(3), unless the plan loan offset amount fails to be an eligible rollover distribution for another reason.

Section 1.402(c)-2, Q&A-9(b), provides that a distribution of a plan loan offset amount is a distribution that occurs when, under the plan terms governing the loan, the employee’s accrued benefit is reduced (offset) in order to repay the loan. This may occur when, for example, the terms governing a plan loan require that, in the event of an employee’s termination of employment or request for a distribution, the loan is to be repaid immediately or treated as in default. A plan loan offset may also occur when, under the terms of the plan loan, the loan is canceled, accelerated, or treated as if it is in default (for example, if the plan treats a loan as in default upon an employee’s termination of employment or within a specified period thereafter). See

also §1.72(p)-1, Q&A-13(a)(2). Because a plan loan offset is an actual distribution for purposes of the Code, not a deemed distribution under section 72(p), a plan loan offset cannot occur prior to a distributable event. See generally §1.72(p)-1, Q&A-13(b).

2. Qualified Plan Loan Offset Amounts

Section 13613 of TCJA amended section 402(c)(3) of the Code to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts (as defined in section 402(c)(3)(C)(ii)).³ Any portion of a QPLO amount (up to the entire QPLO amount) may be rolled over to an eligible retirement plan by the individual’s tax filing due date (including extensions) for the taxable year in which the offset occurs.

A QPLO amount is defined in section 402(c)(3)(C)(ii) as a plan loan offset amount that is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of:

- (1) The termination of the qualified employer plan, or
- (2) The failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee.

In addition, section 402(c)(3)(C)(iv) provides that the extended rollover period will not apply “to any plan loan offset amount unless such plan loan offset amount relates to a loan to which section 72(p)(1) does not apply by reason of section 72(p)(2).”

Section 301.9100-2(b) of the regulations provides rules for automatic six-month extensions to make regulatory or statutory elections. Under this rule, a taxpayer will receive an automatic extension of 6 months from the due date of a return, excluding extensions, to make elections that otherwise must be made by the due date of the return plus extensions, provided that:

²Note that the 60-day rollover deadline can also be extended to provide temporary relief during a disaster or an emergency response. For example, in response to the COVID-19 pandemic, Notice 2020-23, 2020-18 I.R.B. 742, extended the 60-day rollover deadline to July 15, 2020, for distributions made between April 1, 2020, and July 14, 2020.

³In addition to TCJA, other statutory provisions may extend the period to roll over a plan loan offset. For example, section 2202(a) of the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 134 Stat. 281 (2020) (CARES Act), permits an individual to receive from an eligible retirement plan up to \$100,000 for a coronavirus-related distribution (which may include a plan loan offset that otherwise meets the requirements to be a coronavirus-related distribution). A qualified individual with a coronavirus-related distribution (which may be included in gross income ratably over the 3-year period beginning with the taxable year of the distribution) may retribute up to the amount of the distribution to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made. For further information relating to the interaction of section 2202 of the CARES Act and plan loan offsets, see Notice 2020-50, 2020-28 I.R.B. 35.

(1) The taxpayer's return was timely filed for the year the election should have been made; and

(2) The taxpayer takes appropriate corrective action within the six-month period.

Section 301.9100-2(b) further provides that paragraph (b) does not apply to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

Notice of Proposed Rulemaking

1. In General

On August 20, 2020, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-116475-19) in the *Federal Register* (85 FR 51369) setting forth rules in new §1.402(c)-3 for qualified plan loan offsets (QPLO proposed regulations). As described in the background of the preamble to the QPLO proposed regulations, the Treasury Department and IRS anticipate providing separate guidance with respect to Division O of the Further Consolidated Appropriations Act of 2020, Public Law 116-94 (133 Stat. 2534), titled "Setting Every Community Up for Retirement Enhancement Act of 2019" (SECURE Act). As part of that guidance, the Treasury Department and IRS anticipate amending §1.402(c)-2 to reflect changes made by section 114 of the SECURE Act (relating to changes to section 401(a)(9) of the Code to the required beginning date applicable to section 401(a) plans and other eligible retirement plans described in section 402(c)(8)) and to add new level designations for each paragraph in the questions and answers to satisfy *Federal Register* requirements. It is anticipated that §1.402(c)-3, which includes both the new QPLO rules and already existing plan loan offset rules in Q&A-9 of §1.402(c)-2, will be combined with §1.402(c)-2 in connection with that project (including replacing Q&A-9 of §1.402(c)-2 with paragraph (a) of §1.402(c)-3).

As an initial matter, the QPLO proposed regulations confirm that a QPLO

is a type of plan loan offset; accordingly, most of the general rules relating to plan loan offset amounts apply to QPLO amounts. For example, the rule that a plan loan offset amount is an eligible rollover distribution applies to a QPLO amount. In addition, the rules in §1.401(a)(31)-1, Q&A-16 (guidance concerning the offering of a direct rollover of a plan loan offset amount), and §31.3405(c)-1, Q&A-11 (guidance concerning special withholding rules with respect to plan loan offset amounts), applicable to plan loan offset amounts in general, apply to QPLO amounts. The QPLO proposed regulations provide examples to illustrate the interaction of the special rules for QPLOs with the general rules for plan loan offsets.

2. Rollover Period for Plan Loan Offset Amounts, Including QPLO Amounts

Section 1.402(c)-3(a)(2)(ii)(A) of the QPLO proposed regulations provides that a distribution of a plan loan offset amount that is an eligible rollover distribution and *not* a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan (as defined in section 402(c)(8)(B)) within the 60-day period set forth in section 402(c)(3)(A). While a plan loan offset generally is subject to this 60-day rollover period, there are special rules for the waiver of the 60-day rollover deadline.

Section 1.402(c)-3(a)(2)(ii)(B) of the QPLO proposed regulations provides that a distribution of a plan loan offset amount that is an eligible rollover distribution and a QPLO amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan through the period ending on the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan. Thus, a taxpayer with an eligible rollover distribution that is a QPLO amount may roll over any portion of the distribution to an eligible retirement plan, including another qualified retirement plan (if that plan permits) or an IRA, by the taxpayer's

deadline for filing income taxes for the year of the distribution, including extensions.⁴

3. Definitions of Plan Loan Offset Amount, QPLO Amount, and Qualified Employer Plan

Section 1.402(c)-3(a)(2)(iii)(A) of the QPLO proposed regulations provides that a plan loan offset amount is the amount by which, under plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in the employee's accrued benefit). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

Section 1.402(c)-3(a)(2)(iii)(B) of the QPLO proposed regulations defines a QPLO amount as a plan loan offset amount that satisfies two requirements. First, the plan loan offset amount must be treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee. Second, the plan loan offset amount must relate to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

Section 1.402(c)-3(a)(2)(iii)(C) of the QPLO proposed regulations define a qualified employer plan, for purposes of the QPLO amount definition, as a qualified employer plan as defined in section 72(p)(4).

4. Special Rules for QPLO Determinations

Section 1.402(c)-3(a)(2)(iv) of the QPLO proposed regulations provides several special rules for purposes of determining whether a plan loan offset amount is a QPLO amount. First, the QPLO pro-

⁴For a detailed discussion of the application of §301.9100-2(b) (which provides rules for automatic six-month extensions to make regulatory or statutory elections) to the extended rollover period for QPLO amounts, see the preamble discussion in the Explanation of Provisions section of the QPLO proposed regulations, under the heading, *Rollover Period for Plan Loan Offset Amounts, Including QPLO Amounts*.

posed regulations provide that whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under §1.401(k)-1(d) (2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

Second, the QPLO proposed regulations provide that a plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the plan loan repayment terms because of severance from employment if the plan loan offset:

(1) Relates to a failure to meet the repayment terms of the plan loan, and

(2) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

Whether a plan loan offset amount is a QPLO amount is relevant to plan administrators because those administrators are responsible for reporting whether a distribution is a plan loan offset amount or a QPLO amount on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, and furnishing that form to the taxpayer.⁵ In the QPLO proposed regulations, the Treasury Department and the IRS indicated that the proposed 12-month rule would assist plan administrators in identifying QPLO amounts by providing a bright-line rule for determining whether a plan loan offset amount following a severance from employment satisfies the first requirement in §1.402(c)-3(a)(2)(iii)(B) to be a QPLO amount.

The QPLO proposed regulations proposed to apply the subsequent final regulations to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after the date of publication of a Treasury decision adopting the proposed rules as final regulations. The preamble to the QPLO proposed regulations also stated that taxpayers (including a filer of a Form 1099-R) may rely on

the proposed regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020, and before the date the regulations are published as final regulations in the *Federal Register*.

The Treasury Department and the IRS received one written comment relating to the QPLO proposed regulations. No request for a public hearing was made, and no public hearing was held. After consideration of the comment, this Treasury decision adopts the QPLO proposed regulations with one important modification relating to the applicability date.

Summary of Comments and Explanation of Revisions

The commenter stated that the bright-line 12-month rule in the QPLO proposed regulations is a helpful approach in determining whether a plan loan offset amount is a QPLO amount, but expressed concern that recordkeepers may not currently have procedures to track a terminated employee's date of severance or the one-year anniversary of that date. To address this concern, the commenter recommended that the Treasury Department and the IRS (i) consider an alternative bright-line rule under which a plan loan offset amount is treated as satisfying the requirement in §1.402(c)-3(a)(2)(iv)(B) if the plan loan offset occurs by the end of the year following the calendar year in which the employee has a severance from employment, and (ii) delay by one year the effective date of the final regulations (or, alternatively, provide for a one-year period of time during which a person responsible for reporting a QPLO amount on Form 1099-R will not be viewed as improperly reporting it, provided that a reasonable, good faith effort is made to determine if a plan loan offset is a QPLO).

With respect to the first recommendation, the Treasury Department and the IRS have considered the alternative bright-line rule suggested by the commenter, but have retained in the final regulations the 12-month rule in §1.402(c)-3(a)(2)(iv)

(B) of the QPLO proposed regulations. Although the 12-month rule is a bright-line rule that may assist plan administrators and recordkeepers in satisfying their reporting obligations, it is also an interpretation of a statutory requirement that should apply to all taxpayers in the same manner. The alternative rule recommended by the commenter could result in significantly different treatment of participants based solely on when during a calendar year each participant severs from employment. For example, Taxpayer A, who severs from employment on December 31, 2020, could experience a plan loan offset during a 366-day period following the severance and be treated as having a QPLO (and thus be eligible for the extended rollover rule), whereas Taxpayer B, who severs from employment one day later, on January 1, 2021, could experience a plan loan offset during a 729-day period and receive the same treatment.

With respect to the commenter's second recommendation to delay the effective date of the final regulations, the Treasury Department and the IRS agree that additional time to implement §1.402(c)-3 is appropriate. Accordingly, the applicability date in these final regulations is revised from the QPLO proposed regulations, which had proposed to apply the regulations to plan loan offset amounts treated as distributed on or after the date of publication of final regulations. Under the revised applicability date, the final regulations will apply to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after January 1, 2021. Thus, for example, the rules in §1.402(c)-3 will first apply to 2021 Form 1099-Rs required to be filed and furnished in 2022 (more than one year after the date of publication of the final regulations). This delayed applicability date will give plan administrators and recordkeepers additional time to program systems and otherwise establish procedures for obtaining the exact date of severance from employment of a plan participant and tracking the one-year anniversary of that date.

⁵The Instructions to the 2020 Form 1099-R provide that if an employee's accrued benefit is offset to repay a loan (a plan loan offset amount), the administrator should report the distribution as an actual distribution and not use Code L (for deemed distributions) in box 7. For a QPLO amount, the Instructions to the 2020 Form 1099-R provide that the administrator should enter Code M (for QPLO amounts) in box 7.

The applicability date in these final regulations is also revised to provide that taxpayers (including a filer of a Form 1099-R) may apply these regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020, which is the date of the publication of the QPLO proposed regulations.

Applicability Date

These regulations apply to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after January 1, 2021. Thus, for example, the rules in §1.402(c)-3 will first apply to 2021 Form 1099-Rs required to be filed and furnished in 2022. However, taxpayers (including a filer of a Form 1099-R) may apply these regulations with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020.

Statement of Availability for IRS Documents

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

Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

In addition, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulations reflect the statutory changes to section 402(c) made by section 13613 of TCJA. The regulations reflect the extended rollover period for QPLO amounts, as amended by TCJA. Specifically, the regulations reflect the statute in a manner that (i) is consistent with the statutory language,

(ii) provides certain clarifications, and (iii) eases and facilitates plan administration. Although the regulations might affect a substantial number of individuals, the economic impact of the regulations is not expected to be significant. The regulations do not impose any new compliance burdens on taxpayers and are not expected to result in any economically meaningful changes in behavior.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Naomi Lehr and Pamela R Kinard of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), although other persons in the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.402(c)-3 is added to read as follows:

§1.402(c)-3 Eligible rollover distributions; Qualified plan loan offsets.

(a)(1) *Q-1*. What special rollover rules apply to a plan loan offset amount (including a qualified plan loan offset amount)?

(2) *A-1*—(i) *In general*—(A) *Eligible rollover distribution*. A distribution of a

plan loan offset amount, as defined in paragraph (a)(2)(iii)(A) of this section (including a qualified plan loan offset amount, a type of plan loan offset amount defined in paragraph (a)(2)(iii)(B) of this section), is an eligible rollover distribution if it satisfies §1.402(c)-2, Q&A-3 and 4.

(B) *Other rules relating to plan loan offset amounts*. See §1.401(a)(31)-1, Q&A-16, for guidance concerning the offering of a direct rollover of a plan loan offset amount. See also § 31.3405(c)-1, Q&A-11, of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(ii) *Rollover period for a plan loan offset amount*—(A) *Plan loan offset amount that is not a qualified plan loan offset amount*. A distribution of a plan loan offset amount that is an eligible rollover distribution and not a qualified plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan (as defined in § 1.402(c)-2, Q&A-2) within the 60-day period set forth in section 402(c)(3)(A).

(B) *Plan loan offset amount that is a qualified plan loan offset amount*. A distribution of a plan loan offset amount that is an eligible rollover distribution and that is a qualified plan loan offset amount may be rolled over by the employee (or spousal distributee) to an eligible retirement plan within the period set forth in section 402(c)(3)(C), which is the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan.

(iii) *Definitions*—(A) *Plan loan offset amount*. For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan

loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(B) *Qualified plan loan offset amount.* For purposes of section 402(c), a qualified plan loan offset amount is a plan loan offset amount that satisfies the following requirements:

(1) The plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan because of the severance from employment of the employee; and

(2) The plan loan offset amount relates to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

(C) *Qualified employer plan.* For purposes of section 402(c) and this section, a qualified employer plan is a qualified employer plan as defined in section 72(p)(4).

(iv) *Special rules for qualified plan loan offset amounts—(A) Definition of severance from employment.* For purposes of paragraph (a)(2)(iii)(B)(1) of this section, whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under §1.401(k)-1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

(B) *Offset because of severance from employment.* A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:

(1) Relates to a failure to meet the repayment terms of the plan loan; and

(2) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

(v) *Examples.* The following examples illustrate the rules with respect to plan loan offset amounts, including qualified plan loan offset amounts, in this paragraph (a) and in §§1.401(a)(31)-1, Q&A-16, and 31.3405(c)-1, Q&A-11, of this chapter. For purposes of the examples in this paragraph (a)(2)(v), each reference to a plan refers to a qualified employer plan as described in section 72(p)(4).

(A) *Example 1. (1)* In 2020, Employee A has an account balance of \$10,000 in Plan Y, of which \$3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2020. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(II), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2020 (within the 12-month period beginning on the date that Employee A severed from employment), Employee A's outstanding loan is offset against the account balance.

(2) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying \$7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the \$3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to \$3,000) that is an eligible rollover distribution. However, under §1.401(a)(31)-1, Q&A-16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the \$3,000 plan loan offset amount.

(3) No withholding is required under section 3405(c) on account of the distribution of the \$3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(4) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(B) *Example 2. (1)* The facts are the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2021, at which time Employee A does not make the loan installment payment due on January 1, 2021. In accordance with §1.72(p)-1, Q&A-10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required

installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid \$3,000 loan balance against Employee A's account balance on July 1, 2021 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(2) The conclusion is the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that the \$3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that Employee A severed from employment). Accordingly, Employee A may roll over up to the \$3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(C) *Example 3. (1)* The facts are the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2020, by the amount of the \$3,000 unpaid loan balance.

(2) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(D) *Example 4. (1)* The facts are the same as in paragraph (a)(2)(v)(A) of this section (*Example 1*), except that Employee A elects to receive a cash distribution of the account balance that remains after the \$3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(2) The amount of the distribution received by Employee A is \$10,000 (\$3,000 relating to the plan loan offset and \$7,000 relating to the cash distribution). Because the amount of the \$3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of \$2,000 (20 percent of \$10,000) is required under section 3405(c). The \$2,000 is required to be withheld from the \$7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of \$5,000.

(3) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset to an eligible retirement plan within the period that ends on the Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to \$7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

(E) *Example 5. (1)* The facts are the same as in paragraph (a)(2)(v)(D) of this section (*Example 4*), except that the \$7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(2) No withholding is required under section 3405(c) because the distribution consists solely of the \$3,000 plan loan offset amount and the \$7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(3) Employee A may roll over up to the \$7,000 of employer securities to an eligible retirement plan within the 60-day period provided in section 402(c)(3). The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(F) *Example 6. (1)* Employee B, who is age 40, has an account balance in Plan Z. Plan Z provides for no after-tax employee contributions. In 2022, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2), and which is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(2) Employee B fails to make an installment payment due on April 1, 2023, or any other monthly payments thereafter. In accordance with §1.72(p)-1, Q&A-10, Plan Z allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2023). Employee

B does not make a plan loan installment payment during the cure period. On September 30, 2023, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to §1.402(c)-2, Q&A-4(d), the deemed distribution is not an eligible rollover distribution.

(3) Because Employee B has not severed from employment or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2023.

(G) *Example 7. (1)* The facts are the same as in paragraph (a)(2)(v)(F) of this section (*Example 6*), except that Employee B has a severance from employment on November 1, 2023. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(2) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (a)(2)(iii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2023 (prior to Employee B's severance from employment on November 1, 2023), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather

than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(b)(1) *Q-2*. When are the rules in this section applicable to plan loan offset amounts, including qualified plan loan offset amounts?

(2) *A-2*. The rules provided in paragraph (a) of this section are applicable to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after January 1, 2021. However, taxpayers (including a filer of a Form 1099-R) may choose to apply the regulations in this section with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after August 20, 2020.

Sunita Lough,
*Deputy Commissioner for Services
and Enforcement.*

Approved: December 1, 2020.

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

(Filed by the Office of the Federal Register on January 5, 2021, 8:45 a.m., and published in the issue of the Federal Register for January 6, 2021, 86 F.R. 464)

Part III

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2021-8

SECTION 1. PURPOSE

This revenue procedure modifies Revenue Procedure 2021-5, 2021-1 I.R.B. 250, by updating the procedures for Exempt Organizations determination letters with respect to the electronically submitted Form 1024-A, *Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code*, which is the application used to apply for recognition of exemption as an entity described in § 501(c)(4). The modifications to Rev. Proc. 2021-5 made by this revenue procedure provide that the electronic submission process is the exclusive means of submitting a completed Form 1024-A, except for submissions eligible for the 90-day transition relief provided in section 4 of this revenue procedure.

SECTION 2. CHANGED SUBMISSION PROCESS

The IRS has revised and updated Form 1024-A and provided for it to be electronically submitted at www.pay.gov. The electronic submission process for Form 1024-A replaces the paper submission process for Form 1024-A after January 5, 2021, subject to the transition relief provided in section 4 of this revenue procedure. Section 3 of this revenue procedure modifies Rev. Proc. 2021-5 to set forth procedures for issuing determination letters in response to electronically submitted Form 1024-A applications. Unless otherwise modified in this revenue procedure, the provisions of Rev. Proc. 2021-5 continue to apply.

SECTION 3. MODIFICATIONS TO REVENUE PROCEDURE 2021-5

.01 Section 4.01 of Rev. Proc. 2021-5 is modified to read as follows:

.01 This section explains the general instructions for requesting determination

letters. However, certain procedures do not apply to requests submitted on Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024-A, *Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code*, as indicated in this revenue procedure or in the forms and their instructions. In addition to these general instructions, specific procedures apply to requests submitted by letter (as described in section 5), applications for recognition of exemption from Federal income tax under § 501 or § 521 (as described in section 6), and to requests for determinations submitted on Form 8940, *Request for Miscellaneous Determination* (as described in section 7).

.02 Paragraph (4) of section 4.02 of Rev. Proc. 2021-5 is modified to read as follows:

(4) **Form 1024-A application.** An organization seeking a determination letter from the Service recognizing tax-exempt status under § 501(c)(4) must electronically submit a completed Form 1024-A at www.pay.gov. In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), see § 501(q).

Section 501(c)(4) organizations may choose to seek a determination letter recognizing tax-exempt status under § 501(c)(4) by filing Form 1024-A, but are not required to do so except in certain cases (see, for example, § 6033(j)(2) regarding failures to file annual information returns or annual electronic notifications required under § 6033(a) or (i)).

Submission of Form 1024-A does not relieve an organization of the requirement to submit Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*. For additional information about the electronic submission process, refer to Form 1024-A and its Instructions.

.03 Paragraph 4.04(3) of Rev. Proc. 2021-5 is modified to read as follows:

(3) **Individual or representative authorized to sign Form 1024-A.** In the

case of a request for a determination letter made by filing Form 1024-A, an officer, a director, a trustee, or other official who is authorized to sign for the organization must sign the application. The signature of a representative authorized by a power of attorney who is not an officer, director, trustee, or other official of the organization will not satisfy the signature requirement for Form 1024-A. See the instructions to the Form 1024-A for more information on who may sign the application on behalf of an organization.

.04 The first paragraph of section 4.09(1) of Rev. Proc. 2021-5 is modified to read as follows:

(1) **Procedures for requesting expedited handling.** Except for a request on the electronically submitted Form 1023 or Form 1024-A, the request for expedited handling must be made in writing, preferably in a separate letter sent with, or soon after filing, the request for the determination letter. If the request is not made in a separate letter, then the letter in which the determination letter request is made should say, at the top of the first page: **“Expedited Handling Is Requested. See page ___ of this letter.”**

In the case of the electronically submitted Form 1023 or Form 1024-A, a request for expedited handling must be indicated on the form and a supporting written statement must be submitted as an attachment with the completed application.

.05 Section 6.04 of Rev. Proc. 2021-5 is modified to read as follows:

.04 An organization applying for recognition of exemption must attach a completed Form 8718, User Fee for Exempt Organization Determination Letter Request, to its application, unless the organization is submitting Form 1023, Form 1023-EZ, or Form 1024-A. Form 8718 is an attachment related to user fees that is not, itself, a determination letter application.

.06 Section 6.06(1)(a) of Rev. Proc. 2021-5 is modified to read as follows:

(1) A completed application (other than a Form 1023-EZ), including a letter application, is one that:

(a) is signed or, in the case of a Form 1023 or Form 1024-A, is electronically

signed by an authorized individual under penalties of perjury (see sections 4.04 and 4.06 of this revenue procedure);

.07 Section 6.06(1)(c) of Rev. Proc. 2021-5 is modified to read as follows:

(c) (i) for organizations other than those described in § 501(c)(3) or § 501(c)(4), includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years), and if the organization has not yet commenced operations or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities;

(ii) for organizations described in § 501(c)(3) or § 501(c)(4), see Form 1023 and Instructions for Form 1023 or Form 1024-A and Instructions for Form 1024-A, respectively.

.08 Paragraph (2) of section 6.08 of Rev. Proc. 2021-5 is modified to read as follows:

(2) **When an application is not submitted within 27 months of formation.** An organization that otherwise meets the requirements for tax-exempt status and the issuance of a determination letter but does not meet the requirements for recognition from date of formation will be recognized from the postmark date of its application or the submission date of its Form 1023, Form 1023-EZ, or Form 1024-A, as applicable.

.09 Paragraph (1) of section 14.06 of Rev. Proc. 2021-5 is modified to read as follows:

(1) **Payment of user fees for applications of recognition of exemption on Form 1023, Form 1023-EZ, or Form 1024-A.** User fees for applications for recognition of exemption on Form 1023, Form 1023-EZ, or Form 1024-A must be paid through www.pay.gov.

.10 Section 14.07 of Rev. Proc. 2021-5 is modified to read as follows:

.07 Form 8718 is intended to be used as an attachment to applications other than Form 1023, Form 1023-EZ, or Form 1024-A for the attachment of the applicable user fee check.

.11 Section 15.01(1)(a) of Rev. Proc. 2021-5 is modified to read as follows:

(1) The following types of requests and applications handled by the EO Determi-

nations Office should be sent to the Internal Revenue Service Center, at the address in section 15.01(2):

(a) applications for recognition of exemption on Form 1024 and Form 1028;

.12 Section 15.02 of Rev. Proc. 2021-5 is modified to read as follows:

.02 Applications for recognition of exemption on Form 1023, Form 1023-EZ, and Form 1024-A are handled by the EO Determinations Office but must be submitted electronically online at www.pay.gov. Paper submissions of Form 1023, Form 1023-EZ, and Form 1024-A will not be accepted.

SECTION 4. TRANSITION RELIEF

.01 Except as provided in section 4.02, an organization seeking recognition of tax-exempt status under § 501(c)(4) using Form 1024-A must electronically submit the form and user fee online at www.pay.gov.

.02 The Internal Revenue Service will accept for processing a completed paper Form 1024-A accompanied by the correct user fee, as described in Rev. Proc. 2021-5, without applying the modifications of this revenue procedure, if the submission of the Form 1024-A is postmarked on or before the date that is 90 days after the effective date of this revenue procedure.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2021-5 is modified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 5, 2021, the date this revenue procedure was announced by news release.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Patrick Sternal of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure contact Mr. Sternal at (202) 317-5800 (not a toll-free number).

26 CFR 601.106: Appeals functions.
(Also Part I, § 1.148-3)

Rev. Proc. 2021-10

SECTION 1. PURPOSE

This revenue procedure provides procedures for an issuer of tax-advantaged bonds (as defined in § 1.150-1(b) of the Income Tax Regulations (Regulations)) to request an administrative appeal to the Independent Office of Appeals (Appeals) within the Internal Revenue Service (IRS) of a proposed adverse determination made by the office that is responsible for examinations of tax-advantaged bonds, presently the Office of Tax Exempt Bonds (and including any successor IRS office performing such examinations, the TEB Examination Office), with respect to issues within the scope of this revenue procedure.

SECTION 2. BACKGROUND

.01 *Appeals jurisdiction.* Section 3105 of the Internal Revenue Service Restructuring and Reform Act of 1998, P.L. 105-206, 112 Stat. 685 (1998 IRS Restructuring Act), directed the IRS to modify its administrative procedures to allow issuers an expeditious appeal of a proposed adverse determination by the IRS with respect to a bond issue to a senior officer in Appeals before the IRS proceeds to tax bondholders.

.02 *Bond appeals guidance.* Rev. Proc. 2006-40, 2006-2 C.B. 691, sets forth procedures for an issuer of bonds to appeal a proposed adverse determination regarding the qualification of an issue of bonds as tax-exempt bonds (as defined in § 150(a)(6) of the Internal Revenue Code (Code)) or a claim for recovery of asserted overpayments of arbitrage rebate under § 148. However, the procedures in Rev. Proc. 2006-40 do not apply to an appeal of a proposed adverse determination regarding the qualification of other types of tax-advantaged bonds, such as tax-credit bonds.

.03 *Other applicable appeals procedures.* Procedures under § 601.106 et seq. of the Statement of Procedural Rules, including those governing submissions and taxpayer conferences, apply to appeals regarding bond issues, bondholders, and

arbitrage rebate. A bondholder's appeal rights under § 601.106 of the Statement of Procedural Rules are independent and separate from an issuer's appeal rights under this revenue procedure. Section 1.148-3(i)(3)(iii) of the Regulations also applies to appeals concerning an Arbitrage Rebate Claim Denial (as defined in section 4.02 of this revenue procedure).

.04 *Issuers as taxpayers.* To conduct an examination (including any related administrative appeal) of a tax-advantaged bond expeditiously, the IRS generally treats an issuer as the taxpayer for the bond issue under examination.

.05 *Conduit borrowers as taxpayers.* In appropriate circumstances, Appeals may consider, concurrently with an issuer's appeal, issues relating to those raised in a Proposed Adverse Bond Determination (as defined in section 4.02 of this revenue procedure) that affect the tax liability (other than any potential penalties) of the borrower of bond proceeds of a conduit financing issue. Appeals will consider an issue relating to the borrower's tax liability only if the borrower is under examination with respect to the issue, the resolution of that issue is affected by the Proposed Adverse Bond Determination (for example, issues under § 150(b) or 168(g)), and the borrower agrees to resolve the issue concurrently with the issuer's appeal under this revenue procedure. See § 601.106 of the Statement of Procedural Rules for procedures applicable to the borrower.

.06 *Technical advice.* An issuer may submit a request to the TEB Examination Office or Appeals for referral of a tax matter to the IRS Office of Chief Counsel for technical advice while a tax-advantaged bond issue is under the jurisdiction of the TEB Examination Office or Appeals, respectively. See Rev. Proc. 2021-2, 2021-01 I.R.B. 116, or annual successor revenue procedure.

.07 *Alternative dispute resolution programs.* Alternative dispute resolution methods permit Appeals officers to mediate, facilitate, or propose settlements in the resolution of matters identified during the course of an examination prior to the issuance of a Proposed Adverse Bond Determination or an Arbitrage Rebate Claim Denial. Alternative dispute resolution methods within Appeals applicable to

bonds currently include TE/GE Fast Track Settlement (FTS) (Announcement 2012-34, 2012-36 I.R.B. 334), Post Appeals Mediation (Rev. Proc. 2014-63, 2014-53 I.R.B. 1014), and Early Referral (Rev. Proc. 99-28, 1999-2 C.B. 109).

SECTION 3. SCOPE

This revenue procedure applies to Proposed Adverse Bond Determinations and Arbitrage Rebate Claim Denials as defined in section 4.02 of this revenue procedure.

SECTION 4. INITIATING THE APPEAL PROCESS

.01 *In general.* Section 4.02 through 4.06 of this revenue procedure set forth the circumstances and procedures under which an issuer may request that certain adverse determinations by the TEB Examination Office be reviewed by Appeals.

.02 *Availability of appeal request to issuer.* An issuer is eligible to request an appeal under this revenue procedure upon the receipt from the TEB Examination Office of a: (1) proposed adverse determination that an issue of bonds fails to qualify for the exclusion of the interest on the bonds from the gross income of the bondholders under § 103 (a Proposed Adverse Bond Determination); (2) proposed adverse determination that an issue of bonds fails to qualify for the tax credits for the bondholders or direct payments to the issuer with respect to the bonds under provisions of the Code applicable to tax-advantaged bonds, such as former §§ 54, 54A, 54AA, 1397E, and 6431 (also a Proposed Adverse Bond Determination); or (3) proposed adverse determination that denies a claim for recovery of an asserted overpayment of arbitrage rebate under § 148 with respect to tax-exempt bonds or under § 148 as modified by relevant provisions of the Code with respect to other tax-advantaged bonds (an Arbitrage Rebate Claim Denial). Except as provided in alternate dispute resolution programs, including any applicable programs referenced in section 2.07 of this revenue procedure or in any subsequently issued published guidance, appeal rights are not available to an issuer prior to the receipt of a Pro-

posed Adverse Bond Determination or an Arbitrage Rebate Claim Denial.

.03 *Requesting an appeal.* An issuer's appeal request must be submitted in writing to the TEB Examination Office within 30 days of the date of the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial. The appeal request must include the information listed in section 4.04 of this revenue procedure. The TEB Examination Office may extend this 30-day submission period based on an issuer's written request to the TEB Examination Office within the 30-day submission period that justifies such extension.

.04 *Required information and signature.* An appeal request made under this revenue procedure must include the information listed in this section 4.04.

(1) A detailed written response to the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial, including a detailed explanation of the issuer's position regarding each issue in dispute.

(2) A declaration in the following form: "Under penalties of perjury, I declare that I have examined this request for an appeal, including accompanying documents, and that, to the best of my knowledge and belief, the facts presented are true, correct, and complete."

(3) The issuer or the issuer's authorized representative must sign an appeal request. An issuer may designate an authorized representative by submitting a duly executed Form 2848, Power of Attorney and Declaration of Representative, when making an appeal request under this revenue procedure.

.05 *Response to an appeal request.* Upon receipt of an appeal request, the TEB Examination Office will review the request to determine whether it meets the requirements of this revenue procedure. If the request does not meet such requirements, the TEB Examination Office will notify the issuer in writing of the request's deficiencies and the issuer will have 30 days from the date of the notification to correct the deficiencies. If the request meets the requirements of this revenue procedure and contains no new information or analysis of the taxpayer's position, the TEB Examination Office will transfer the case file to Appeals. If the request meets the require-

ments of this revenue procedure and contains new information or analysis of the taxpayer's position, the TEB Examination Office will notify the issuer that such new information or analysis may change the case's outcome and requires the TEB Examination Office's further consideration prior to transfer of the case file to Appeals.

.06 *Failure to make appeal request.* If an issuer does not submit a written appeal request in the manner and within the time periods described in section 4.03 through 4.05 of this revenue procedure, the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial will become final.

.07 *Jurisdiction over tax matters.* Once the TEB Examination Office sends the case file to Appeals, jurisdiction over the issues raised in the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial will transfer from the TEB Examination Office to Appeals. Except for matters considered by Appeals under section 2.05 of this revenue procedure (relating to the tax liability of the conduit borrower of the bond proceeds), the TEB Examination Office will retain jurisdiction over all tax matters related to the bond issue under examination that are not specifically raised as an issue in the Proposed Adverse Bond Determination or Arbitrage Rebate Claim Denial.

.08 *Notification to issuer.* Simultaneously with the transfer of the case file to Appeals, the TEB Examination Office will furnish to the issuer a copy of the TEB Examination Office's transmittal letter and response, if any, to the issuer's positions stated in its appeal request.

SECTION 5. ARBITRAGE REBATE CLAIM DENIAL FOR TIMELINESS

When an appeal of a claim described in either § 1.148-3(i)(3)(iii)(A) or (B) of the Regulations (regarding timeliness) is determined in favor of the issuer, Appeals will release jurisdiction and return the case to the TEB Examination Office for further consideration of the substance of the claim.

SECTION 6. EFFECT OF CERTAIN FINAL ADVERSE BOND DETERMINATIONS OR FINAL ARBITRAGE REBATE CLAIM DENIALS

.01 *Final Adverse Bond Determination.* If a Proposed Adverse Bond Determination becomes final under section 4.06 of this revenue procedure or because Appeals sustains the Proposed Adverse Bond Determination without entering into a closing agreement with the issuer, then, depending on the type of bond that was issued: (i) the interest on those bonds will no longer be treated as excludable from gross income under § 103 of the Code, (ii) holders will not be allowed any credit against income tax with respect to interest on those bonds, or (iii) issuers will not be allowed a direct payment. In addition, IRS functions other than Appeals may initiate procedures with respect to open years to, respectively, (i) impose tax on interest on the bonds, (ii) disallow the tax credits, or (iii) if it has not already done so, disallow direct payments with respect to the interest on the bonds. Further, a notice of deficiency may be issued to recover overpayments of direct payments.

.02 *Final Arbitrage Rebate Claim Denial.* If an Arbitrage Rebate Claim Denial becomes final under section 4.06 of this revenue procedure or Appeals sustains the Arbitrage Rebate Claim Denial in full, the IRS will notify the issuer of the final determination and the issuer's right to bring suit for recovery.

SECTION 7. NO USER FEE

No user fee applies to either a request for an appeal pursuant to this revenue procedure or a closing agreement resulting from the appeal.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006-40 is modified and superseded.

SECTION 9. EFFECTIVE DATE

This revenue procedure applies to Proposed Adverse Bond Determinations or Arbitrage Rebate Claim Denials issued by the TEB Examination Office on or after February 4, 2021.

SECTION 10. DRAFTING INFORMATION

The principal authors of this revenue procedure are B. Darrell Smelcer, Office of Tax-Exempt Bonds (Technical), and Lewis Bell, Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Mr. Smelcer at 470-639-2425 (not a toll-free number).

Part IV

Part II – Treaties and Tax Legislation
Subpart A – Tax Conventions and Other Related Items

U.S.-Italy Competent Authority Arrangement

Announcement 2021-1

The following is a copy of the Competent Authority Arrangement entered into by the competent authorities of the United States of America and Italy under paragraph 3 of Article 25 (Mutual Agreement Procedure) clarifying the application of subparagraph 1(b) of Article 19 (Government Services) with respect to remuneration paid by the United States to U.S. citizens or dual nationals who are residents of Italy and who are rendering services to the United States in U.S. embassies and consulates in Italy.

The text of the Competent Authority Agreement is as follows:

COMPETENT AUTHORITY ARRANGEMENT

The Competent Authorities of the United States and Italy enter into the following arrangement (“Arrangement”) regarding the application of paragraph 1 of Article 19 (Government Service) under the Convention Between the Government of the United States of America and the Government of the Italian Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fraud or Fiscal Evasion, signed at Washington on August 25, 1999 (the “Treaty”), and the Protocol, also signed at Washington on August 25, 1999 (the “Protocol”), both of which entered into force on December 16, 2009. The Arrangement is entered into under paragraph 3 of Article 25 (Mutual Agreement Procedure).

Paragraph 1 of Article 19 (Government Service) of the Treaty states:

- (a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State and is not a national of the other State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services;provided that the provisions of clause (ii) shall not apply to the spouse or dependent children of an individual who is receiving remuneration to which the provisions of subparagraph (a) apply and who does not come within the terms of clause (i) or (ii).

Thus, of particular relevance for purposes of this Arrangement, pursuant to subparagraph 1(b) of Article 19, remuneration shall be taxable only in the Contracting State where the services are rendered (i.e., the host State) if either clause (i) or (ii) of that subparagraph is satisfied, subject to the Treaty’s saving clause of paragraph 2 of Article 1 (Personal Scope).

It has come to the attention of the Competent Authorities, however, that difficulties have arisen as to the application of subparagraph 1(b) of Article 19 with respect to remuneration paid by the United States to U.S. citizens or dual nationals who are residents of Italy and who are rendering services to the United States in U.S. embassies and consulates in Italy. The U.S. Treasury Department’s Technical Explanation of paragraph 1 of Article 19 of the Treaty (“TE”) states:

Subparagraph (a) provides that remuneration paid by one of the States or its political subdivisions or local authorities to any individual who is rendering services to that State, political subdivision or local authority, is exempt from tax by the other State. Under subparagraph (b), such payments are, however, taxable exclusively in the other State (i.e., the host State) if the services are rendered in that other State and the individual is a resident of that State who is either (i) a national of that State who is not also a national of the other State, or (ii) a person who did not become resident of that State solely for purposes of rendering the services.

The Competent Authorities understand that an example that follows this explanation in the TE may cause confusion because it does not comprehensively describe the application of subparagraph 1(b) of Article 19 of the Treaty. The TE example at issue states:

[A]ssume that the U.S. Embassy in Rome hires a local resident who did not become a resident of Italy solely for purposes of rendering services to the Embassy. If that individual is an Italian national and not a U.S. citizen, the salary paid to him will be taxable

only by Italy. However, if the individual is not an Italian national, or is both an Italian national and a U.S. citizen, the salary will be taxable only by the United States.

The third sentence in the TE example illustrates the application of clause (i) of subparagraph 1(b) of Article 19. It is incomplete, however, because it does not consider nor provide guidance on the application of clause (ii) of subparagraph 1(b) of Article 19 which might modify the result. Because the TE does not consider nor provide an example of how to apply clause (ii) of subparagraph 1(b) of Article 19, there has been confusion regarding how, in particular, subparagraph 1(b) of Article 19 should be applied in the case of remuneration, other than a pension, paid by the United States to a resident of Italy who is also a U.S. citizen or dual national and who is a local hire who did not become an Italian resident solely for purposes of rendering services to the United States at a U.S. embassy or consulate in Italy.

Therefore, the Competent Authorities have entered into this Arrangement to clarify the application of subparagraph 1(b) of Article 19 of the Treaty. It is understood that under subparagraph 1(b)(ii) of Article 19, remuneration, other than a pension, paid by the United States to a resident of Italy who is also a U.S. citizen or dual national of the United States and Italy, who renders services to the United States in Italy, and who did not become an Italian resident (as determined under Article 4 (Resident)) solely for purposes of rendering services to the United States shall be taxable only in Italy, subject to the Treaty’s saving clause of paragraph 2 of Article 1 (Personal Scope).

Pursuant to the saving clause of paragraph 2 of Article 1, the United States retains its right to tax the income of its citizens and lawful permanent residents “as if there were no convention between the Government of the United States of America and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fraud or fiscal evasion.” As such, a U.S. citizen or lawful permanent resident would not be entitled to claim the benefit of subparagraph 1(b) of Article 19 to exempt remuneration from U.S. federal income tax. Rather, the individual would be subject to tax in both the United States and Italy.

Further, in the case where the United States asserts its right to tax its citizens solely under paragraph 2 of Article 1, the individual may be able to mitigate double taxation under Article 23 (Relief from Double Taxation) of the Treaty.

Douglas W. O’Donnell
United States Competent Authority
Internal Revenue Service

Fabrizia Lapecorella
Italian Competent Authority
Ministry of Economy and Finance

Date: _____

Date: _____

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.
FR.—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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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2020.

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