

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.

ADMINISTRATIVE

Rev. Proc. 2022-24, page 1075.

This revenue procedure provides the 2023 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3) (viii) of the Pension Excise Tax Regulations.

ADMINISTRATIVE, INCOME TAX

Notice 2022-23, page 1062.

This notice sets forth proposed changes to the qualified intermediary (QI) withholding agreement (QI agreement) described in §1.1441-1(e)(5) and (6) that will permit a QI to assume withholding and reporting responsibilities for purposes of sections 1446(a) and (f). Generally, the notice sets forth proposed changes to the QI agreement that apply to a QI effecting a transfer of an interest in a publicly traded partnership (PTP) or receiving a distribution made by a PTP on behalf of an account holder of the QI. The Treasury Department and the IRS anticipate that the proposed changes to the QI agreement described in this notice, subject to any modifications included in a revenue procedure containing the final QI agreement, will apply to the QI agreements that are in effect on or after January 1, 2023, to correspond with both the applicability date of final regulations relating to withholding under sections 1446(a) and (f) and the expiration of the existing QI agreement.

Bulletin No. 2022-20
May 16, 2022

EMPLOYEE PLANS

Notice 2022-22, page 1057.

This notice sets forth the updated mortality improvement rates and static mortality tables that are used for purposes of determining minimum funding requirements under § 430(h)(3) for 2023 and minimum present value under § 417(e)(3) for distributions with annuity starting dates that occur during stability periods beginning in the 2023 calendar year.

REG-106384-20, page 1076.

This document contains proposed regulations prescribing mortality tables to be used by most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. This information is used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for a defined benefit plan. These mortality tables are also relevant in determining the minimum required amount of a lump-sum distribution from such a plan. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

ESTATE TAX, GIFT TAX

REG-118913-21, page 1089.

Section 11061 of TCJA amended § 2010(c)(3) to provide that, for estates of decedents dying and gifts made beginning in 2018 and through 2025, the basic

exclusion amount (BEA) is \$10 million as adjusted for inflation. On January 1, 2026, the BEA will revert to \$5 million as adjusted for inflation. Treas. Reg. § 20.2010-1(c) provides a special estate tax rule applicable in cases where a decrease in the BEA occurring after a gift was made causes the credit that was allowable against the gift tax to exceed that allowable against the estate tax. In that case, the estate tax formula will result in the imposition of an estate tax on the gifts that were sheltered from gift tax when made. The special rule eliminates the problem by allowing a credit against the estate tax based on the larger of the credit allowable in computing the estate tax and the total of the credits

allowable in computing the gift tax payable on the decedent's post-1976 gifts. This NPRM proposes to limit the application of the special rule by excluding from its coverage certain gifts that are includible or treated as includible in the gross estate for estate tax purposes.

SPECIAL ANNOUNCEMENT

Notice 2022-21, page 1057.

Notice 2022-21 invites the public to submit recommendations for items to be included on the 2022-2023 Priority Guidance Plan.

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 III

Public Recommendations Invited on Items to be Included on the 2022-2023 Priority Guidance Plan

Notice 2022-21

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) invite the public to submit recommendations for items to be included on the 2022-2023 Priority Guidance Plan.

The Treasury Department's Office of Tax Policy and the IRS use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2022-2023 Priority Guidance Plan will identify guidance projects that the Treasury Department and the IRS intend to actively work on as priorities during the period from July 1, 2022, through June 30, 2023.

The Treasury Department and the IRS recognize the importance of public input in formulating a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law. The published guidance process is most successful if the Treasury Department and the IRS have the benefit of the experience and knowledge of taxpayers and practitioners who must apply the rules implementing the tax laws.

This solicitation reflects an emphasis on taxpayer engagement with the Treasury Department and the IRS through a variety of channels, consistent with the directive of the Taxpayer First Act, Pub. L. 116-25, 133 Stat. 981.

In reviewing recommendations and selecting additional projects for inclusion on the 2022-2023 Priority Guidance Plan, the Treasury Department and the IRS will consider the following:

1. Whether the recommended guidance resolves significant issues relevant to a broad class of taxpayers;
2. Whether the recommended guidance reduces controversy and lessens the burden on taxpayers or the IRS;
3. Whether the recommended guidance relates to recently enacted legislation;
4. Whether the recommendation involves existing regulations or other guidance that is outdated, unnecessary, ineffective, insufficient, or unnecessarily burdensome and that should be modified, streamlined, expanded, replaced, or withdrawn;
5. Whether the recommended guidance promotes sound tax administration;
6. Whether the IRS can administer the recommended guidance on a uniform basis; and
7. Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

Please submit recommendations for guidance by Friday, June 3, 2022, for possible inclusion on the original 2022-2023 Priority Guidance Plan. Taxpayers may, however, submit recommendations for guidance at any time during the year. The Treasury Department and the IRS will update the 2022-2023 Priority Guidance Plan periodically to reflect additional guidance that the Treasury Department and the IRS intend to publish or have published during the plan year. The periodic updates allow the Treasury Department and the IRS to respond in a timely manner to the need for additional guidance that may arise during the plan year.

Taxpayers are not required to submit recommendations for guidance in any particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved. For recommendations to modify, streamline, or withdraw existing regulations or other guidance, taxpayers should explain how the changes would reduce taxpayer cost and/or burden or benefit tax administration. It would be helpful if taxpayers suggesting more than one guidance

project prioritize the projects by order of importance. If a large number of projects are being suggested, it would be helpful if the projects were grouped by subject matter and then in terms of high, medium, or low priority. Requests for guidance in the form of petitions for rulemaking will be considered with other recommendations for guidance in accordance with the considerations described in this notice.

Taxpayers are strongly encouraged to submit recommendations for guidance electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0007 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit recommendations). Taxpayers submitting recommendations by mail should send them to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2022-21) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety. For further information regarding this notice, contact Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-5409 (not a toll-free number).

Updated Mortality Improvement Rates and Static Mortality Tables for Defined Benefit Pension Plans for 2023

Notice 2022-22

PURPOSE

This notice specifies updated mortality improvement rates and static mortality tables to be used for defined benefit pension

plans under § 430(h)(3)(A) of the Internal Revenue Code (Code) and section 303(h)(3)(A) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended (ERISA). These updated mortality improvement rates and static mortality tables, which are being issued pursuant to the regulations under section 430(h)(3)(A) of the Code, apply for purposes of determining present value and making any other computation under section 430 for valuation dates occurring during the 2023 calendar year.

This notice also includes a modified unisex version of the mortality tables for use in determining minimum present value under section 417(e)(3) of the Code and section 205(g)(3) of ERISA for distributions with annuity starting dates that occur during stability periods beginning in the 2023 calendar year.

BACKGROUND

Section 412 of the Code provides minimum funding requirements that generally apply for defined benefit plans. Section 412(a)(2) provides that section 430 sets forth the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans or CSEC plans. Section 430(a) defines the minimum required contribution for such a plan by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables that generally are used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those tables are to be based on the actual experience of pension plans and projected trends in that experience. Section 430(h)(3)(B) requires the Secretary to revise any table in effect under section

430(h)(3)(A) at least every 10 years to reflect the actual experience of pension plans and projected trends in that experience.

Section 430(h)(3)(C) provides that, upon request by a plan sponsor and approval by the Secretary, substitute mortality tables that meet the applicable requirements may be used in lieu of the standard mortality tables provided under section 430(h)(3)(A). Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability.

Mortality Tables for Purposes of § 430

Treas. Reg. § 1.430(h)(3)-1 provides rules regarding the mortality tables used under section 430(h)(3)(A) for plan years beginning on or after January 1, 2018. The mortality tables used under section 430(h)(3)(A) are based on the tables in the RP-2014 Mortality Tables Report,¹ adjusted for mortality improvement. Section 1.430(h)(3)-1(d) sets forth base mortality tables with a base year of 2006.

Section 1.430(h)(3)-1(a) permits plan sponsors to apply the projection of mortality improvement in one of two ways: through use of static tables that are updated annually to reflect expected improvements in mortality or through use of generational tables. Section 1.430(h)(3)-1(a)(2)(i)(C) provides that, for valuation dates occurring in calendar years after 2018, updated mortality improvement rates that take into account new data for mortality improvement trends of the general population, along with static mortality tables that reflect those updated mortality improvement rates, will be provided through guidance published in the Internal Revenue Bulletin.²

Treas. Reg. § 1.430(h)(3)-2 provides rules for the use of substitute mortality tables that are based on the mortality experience of the plan. Pursuant to § 1.430(h)(3)-2(c)(3)(ii), substitute mortality tables are developed using the mortality improvement rates used under § 1.430(h)(3)-1.

Application of These Tables for Other Funding Rules

Section 431 provides the minimum funding standards for multiemployer plans described in section 414(f) that are subject to section 412. Section 431(c)(6)(D)(iv) provides that the Secretary may by regulation prescribe mortality tables to be used in determining current liability for purposes of section 431(c)(6)(B). Treas. Reg. § 1.431(c)(6)-1 provides that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)-1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the full-funding rules of § 431(c)(6). For this purpose, a multiemployer plan may apply either the static mortality tables or the generational mortality tables (as updated pursuant to § 1.430(h)(3)-1(a)(2)(i)(C) and (a)(3)).

Section 433 provides the minimum funding standards for CSEC plans described in section 414(y). Section 433(h)(3)(B)(i) provides that the Secretary may by regulation prescribe mortality tables to be used in determining current liability for purposes of section 433(c)(7)(C). Treas. Reg. § 1.433(h)(3)-1(a) provides that the mortality tables described in section 430(h)(3)(A) are to be used to determine current liability under section 433(c)(7)(C).

Application of Mortality Tables for Minimum Present Value Requirements under Section 417(e)(3)

Section 417(e)(3) generally provides that the present value of certain accelerated forms of benefit under a qualified pension plan (including single-sum distributions) must not be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Section 417(e)(3)(B) defines the term "applicable mortality table" as the mortality table specified for the plan year under section 430(h)(3)(A) (without regard to section 430(h)(3)(C) or (D)), modified as appropriate by the Secretary.

¹The RP-2014 Mortality Tables Report, as revised November 2014, is available at <https://www.soa.org/Files/Research/Exp-Study/research-2014-rp-report.pdf>. <?> The RP-2014 Mortality Tables Report, as revised November 2014, is available at <https://www.soa.org/Files/Research/Exp-Study/research-2014-rp-report.pdf>.

²Notice 2018-2, 2018-2 IRB 281, Notice 2019-26, 2019-15 IRB 943, Notice 2019-67, 2019-52 IRB 1510, and Notice 2020-85, 2020-51 IRB 1645, provide mortality improvement rates and static mortality tables that apply for valuation dates occurring during 2019, 2020, 2021, and 2022, respectively.

Rev. Rul. 2007-67, 2007-2 CB 1047, provides that, except as otherwise stated in future guidance, the applicable mortality table under section 417(e)(3) is a static mortality table set forth in published guidance that is developed based on a fixed blend of 50 percent of the static male combined mortality rates and 50 percent of the static female combined mortality rates used under § 1.430(h)(3)-1. Rev. Rul. 2007-67 also provides that the applicable mortality table for a calendar year applies to distributions with annuity starting dates that occur during stability periods that begin during that calendar year.

MORTALITY IMPROVEMENT RATES FOR 2023

The mortality improvement rates for valuation dates occurring during 2023 are the mortality improvement rates in

the Mortality Improvement Scale MP-2021 Report (issued by the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries and available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2021/2021-mp-scale-report.pdf>).

STATIC MORTALITY TABLES FOR 2023

The static mortality tables that apply under section 430(h)(3)(A) for valuation dates occurring during 2023 are set forth in the appendix to this notice. The mortality rates in these tables have been developed from the methodology and base mortality rates set forth in § 1.430(h)(3)-1(c) and (d) using the mortality improvement rates specified in the previous section of this notice.

The static mortality table that applies under section 417(e)(3) for distributions

with annuity starting dates occurring during stability periods beginning in 2023 is set forth in the appendix to this notice in the column labeled “Unisex.” The mortality rates in this table are derived from the mortality tables specified under section 430(h)(3)(A) for 2023 in accordance with the procedures set forth in Rev. Rul. 2007-67.

Drafting Information

The principal authors of this notice are Arslan Malik and Linda S. F. Marshall of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Arslan Malik or Linda Marshall at (202) 317-6700 (not a toll-free number).

APPENDIX

Mortality Tables for 2023

Valuation Dates Occurring During 2023 and Distributions Subject to Section 417(e)(3) with Annuity Starting Dates During Stability Periods Beginning in 2023

Age	Male	Male	Male	Female	Female	Female	Unisex
	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Table for Distributions Subject to § 417(e)(3)
0	0.002575	0.002575	0.002575	0.002261	0.002261	0.002261	0.002418
1	0.000151	0.000151	0.000151	0.000142	0.000142	0.000142	0.000147
2	0.000104	0.000104	0.000104	0.000094	0.000094	0.000094	0.000099
3	0.000087	0.000087	0.000087	0.000071	0.000071	0.000071	0.000079
4	0.000069	0.000069	0.000069	0.000054	0.000054	0.000054	0.000062
5	0.000061	0.000061	0.000061	0.000050	0.000050	0.000050	0.000056
6	0.000056	0.000056	0.000056	0.000046	0.000046	0.000046	0.000051
7	0.000050	0.000050	0.000050	0.000043	0.000043	0.000043	0.000047
8	0.000043	0.000043	0.000043	0.000041	0.000041	0.000041	0.000042
9	0.000035	0.000035	0.000035	0.000038	0.000038	0.000038	0.000037
10	0.000030	0.000030	0.000030	0.000036	0.000036	0.000036	0.000033
11	0.000032	0.000032	0.000032	0.000038	0.000038	0.000038	0.000035
12	0.000048	0.000048	0.000048	0.000044	0.000044	0.000044	0.000046
13	0.000065	0.000065	0.000065	0.000051	0.000051	0.000051	0.000058

Age	Male	Male	Male	Female	Female	Female	Unisex
	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Table for Distributions Subject to § 417(e)(3)
14	0.000081	0.000081	0.000081	0.000057	0.000057	0.000057	0.000069
15	0.000097	0.000097	0.000097	0.000063	0.000063	0.000063	0.000080
16	0.000115	0.000115	0.000115	0.000068	0.000068	0.000068	0.000092
17	0.000133	0.000133	0.000133	0.000073	0.000073	0.000073	0.000103
18	0.000153	0.000153	0.000153	0.000078	0.000078	0.000078	0.000116
19	0.000174	0.000174	0.000174	0.000081	0.000081	0.000081	0.000128
20	0.000194	0.000194	0.000194	0.000082	0.000082	0.000082	0.000138
21	0.000221	0.000221	0.000221	0.000085	0.000085	0.000085	0.000153
22	0.000247	0.000247	0.000247	0.000088	0.000088	0.000088	0.000168
23	0.000268	0.000268	0.000268	0.000093	0.000093	0.000093	0.000181
24	0.000282	0.000282	0.000282	0.000097	0.000097	0.000097	0.000190
25	0.000276	0.000276	0.000276	0.000101	0.000101	0.000101	0.000189
26	0.000276	0.000276	0.000276	0.000107	0.000107	0.000107	0.000192
27	0.000280	0.000280	0.000280	0.000114	0.000114	0.000114	0.000197
28	0.000289	0.000289	0.000289	0.000121	0.000121	0.000121	0.000205
29	0.000303	0.000303	0.000303	0.000130	0.000130	0.000130	0.000217
30	0.000321	0.000321	0.000321	0.000143	0.000143	0.000143	0.000232
31	0.000342	0.000342	0.000342	0.000156	0.000156	0.000156	0.000249
32	0.000366	0.000366	0.000366	0.000171	0.000171	0.000171	0.000269
33	0.000391	0.000391	0.000391	0.000186	0.000186	0.000186	0.000289
34	0.000414	0.000414	0.000414	0.000202	0.000202	0.000202	0.000308
35	0.000436	0.000436	0.000436	0.000217	0.000217	0.000217	0.000327
36	0.000455	0.000455	0.000455	0.000231	0.000231	0.000231	0.000343
37	0.000474	0.000474	0.000474	0.000247	0.000247	0.000247	0.000361
38	0.000494	0.000494	0.000494	0.000263	0.000263	0.000263	0.000379
39	0.000516	0.000516	0.000516	0.000281	0.000281	0.000281	0.000399
40	0.000542	0.000542	0.000542	0.000299	0.000299	0.000299	0.000421
41	0.000570	0.000576	0.000570	0.000318	0.000316	0.000318	0.000444
42	0.000603	0.000656	0.000603	0.000339	0.000359	0.000339	0.000471
43	0.000644	0.000779	0.000646	0.000363	0.000425	0.000363	0.000505
44	0.000693	0.000943	0.000698	0.000391	0.000516	0.000391	0.000545
45	0.000750	0.001146	0.000759	0.000423	0.000631	0.000425	0.000592
46	0.000817	0.001390	0.000833	0.000459	0.000771	0.000464	0.000649
47	0.000891	0.001675	0.000916	0.000500	0.000939	0.000511	0.000714
48	0.000973	0.002004	0.001010	0.000546	0.001138	0.000566	0.000788
49	0.001066	0.002383	0.001120	0.000596	0.001371	0.000628	0.000874
50	0.001169	0.002817	0.001244	0.000654	0.001642	0.000704	0.000974
51	0.001284	0.003008	0.001370	0.000719	0.001733	0.000778	0.001074
52	0.001416	0.003218	0.001540	0.000795	0.001848	0.000873	0.001207
53	0.001556	0.003426	0.001734	0.000883	0.001994	0.000988	0.001361
54	0.001714	0.003652	0.001964	0.000985	0.002170	0.001126	0.001545

Age	Male	Male	Male	Female	Female	Female	Unisex
	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Table for Distributions Subject to § 417(e)(3)
55	0.001898	0.003903	0.002312	0.001100	0.002380	0.001343	0.001828
56	0.002115	0.004189	0.002773	0.001228	0.002624	0.001627	0.002200
57	0.002374	0.004515	0.003183	0.001370	0.002907	0.001893	0.002538
58	0.002685	0.004885	0.003653	0.001525	0.003225	0.002184	0.002919
59	0.003051	0.005302	0.004173	0.001690	0.003580	0.002514	0.003344
60	0.003483	0.005773	0.004773	0.001865	0.003965	0.002905	0.003839
61	0.003980	0.006292	0.005445	0.002050	0.004381	0.003403	0.004424
62	0.004550	0.006866	0.006195	0.002245	0.004825	0.003947	0.005071
63	0.005206	0.007514	0.007030	0.002456	0.005304	0.004598	0.005814
64	0.005945	0.008227	0.007852	0.002686	0.005826	0.005212	0.006532
65	0.006759	0.008992	0.008731	0.002929	0.006378	0.005879	0.007305
66	0.007575	0.009837	0.009683	0.003262	0.006994	0.006665	0.008174
67	0.008460	0.010755	0.010643	0.003628	0.007673	0.007417	0.009030
68	0.009432	0.011768	0.011684	0.004043	0.008438	0.008228	0.009956
69	0.010530	0.012926	0.012857	0.004516	0.009314	0.009135	0.010996
70	0.011740	0.014211	0.014147	0.005055	0.010311	0.010133	0.012140
71	0.013105	0.015669	0.015609	0.005670	0.011443	0.011267	0.013438
72	0.014651	0.017334	0.017278	0.006377	0.012744	0.012571	0.014925
73	0.016393	0.019222	0.019171	0.007184	0.014219	0.014052	0.016612
74	0.018381	0.021392	0.021345	0.008110	0.015905	0.015747	0.018546
75	0.020625	0.023860	0.023818	0.009171	0.017832	0.017685	0.020752
76	0.023153	0.026669	0.026632	0.010382	0.020029	0.019898	0.023265
77	0.026011	0.029884	0.029854	0.011771	0.022555	0.022445	0.026150
78	0.029220	0.033542	0.033520	0.013355	0.025456	0.025374	0.029447
79	0.032800	0.037690	0.037677	0.015162	0.028794	0.028748	0.033213
80	0.036804	0.042409	0.042409	0.017202	0.032611	0.032611	0.037510
81	0.038779	0.047564	0.047564	0.018997	0.036875	0.036875	0.042220
82	0.042471	0.053493	0.053493	0.022399	0.041763	0.041763	0.047628
83	0.047875	0.060210	0.060210	0.027462	0.047381	0.047381	0.053796
84	0.055112	0.067926	0.067926	0.034254	0.053827	0.053827	0.060877
85	0.064208	0.076650	0.076650	0.042829	0.061163	0.061163	0.068907
86	0.075247	0.086534	0.086534	0.053201	0.069445	0.069445	0.077990
87	0.088214	0.097631	0.097631	0.065455	0.078806	0.078806	0.088219
88	0.103217	0.110080	0.110080	0.079602	0.089236	0.089236	0.099658
89	0.120285	0.123982	0.123982	0.095631	0.100765	0.100765	0.112374
90	0.139404	0.139404	0.139404	0.113553	0.113553	0.113553	0.126479
91	0.155723	0.155723	0.155723	0.127432	0.127432	0.127432	0.141578
92	0.172495	0.172495	0.172495	0.142079	0.142079	0.142079	0.157287
93	0.189416	0.189416	0.189416	0.157436	0.157436	0.157436	0.173426
94	0.206322	0.206322	0.206322	0.173120	0.173120	0.173120	0.189721
95	0.222904	0.222904	0.222904	0.189259	0.189259	0.189259	0.206082

Age	Male	Male	Male	Female	Female	Female	Unisex
	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Non-Annuitant Table	2023 Annuitant Table	2023 Optional Combined Table for Small Plans	2023 Table for Distributions Subject to § 417(e)(3)
96	0.241036	0.241036	0.241036	0.206635	0.206635	0.206635	0.223836
97	0.259609	0.259609	0.259609	0.224625	0.224625	0.224625	0.242117
98	0.278783	0.278783	0.278783	0.243330	0.243330	0.243330	0.261057
99	0.298557	0.298557	0.298557	0.262575	0.262575	0.262575	0.280566
100	0.318715	0.318715	0.318715	0.282507	0.282507	0.282507	0.300611
101	0.339088	0.339088	0.339088	0.302631	0.302631	0.302631	0.320860
102	0.359387	0.359387	0.359387	0.323025	0.323025	0.323025	0.341206
103	0.379567	0.379567	0.379567	0.343404	0.343404	0.343404	0.361486
104	0.399139	0.399139	0.399139	0.363591	0.363591	0.363591	0.381365
105	0.417508	0.417508	0.417508	0.383361	0.383361	0.383361	0.400435
106	0.435423	0.435423	0.435423	0.402637	0.402637	0.402637	0.419030
107	0.452373	0.452373	0.452373	0.420905	0.420905	0.420905	0.436639
108	0.468127	0.468127	0.468127	0.438323	0.438323	0.438323	0.453225
109	0.483049	0.483049	0.483049	0.454656	0.454656	0.454656	0.468853
110	0.496973	0.496973	0.496973	0.469951	0.469951	0.469951	0.483462
111	0.501966	0.501966	0.501966	0.484210	0.484210	0.484210	0.493088
112	0.501208	0.501208	0.501208	0.497359	0.497359	0.497359	0.499284
113	0.500603	0.500603	0.500603	0.502764	0.502764	0.502764	0.501684
114	0.500001	0.500001	0.500001	0.501052	0.501052	0.501052	0.500527
115	0.499300	0.499300	0.499300	0.499500	0.499500	0.499500	0.499400
116	0.499600	0.499600	0.499600	0.499750	0.499750	0.499750	0.499675
117	0.499800	0.499800	0.499800	0.499850	0.499850	0.499850	0.499825
118	0.499950	0.499950	0.499950	0.500000	0.500000	0.500000	0.499975
119	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

26 CFR 1.1441-1(e)(5) and (6). Proposed Amendments to the Qualified Intermediary Agreement in Rev. Proc. 2017-15.

Notice 2022-23

SECTION 1. PURPOSE AND SCOPE

This Notice sets forth proposed changes to the qualified intermediary (QI)

withholding agreement (QI agreement) described in §1.1441-1(e)(5) and (6) that will permit a QI to assume withholding and reporting responsibilities for purposes of sections 1446(a) and (f). In general, the QI agreement allows foreign persons to enter into an agreement with the Internal Revenue Service (IRS) to simplify certain of their obligations as a withholding agent under chapters 3 and 4 and as a payor under chapter 61 and section 3406 for amounts paid to their account holders. The QI agreement currently in effect, as provided in Rev. Proc. 2017-15, 2017-3

I.R.B. 437 (the QI agreement), expires on December 31, 2022. This Notice sets forth proposed changes to the QI agreement that apply to a QI effecting a transfer of an interest in a publicly traded partnership (PTP) or receiving a distribution made by a PTP on behalf of an account holder of the QI. The Treasury Department and the IRS anticipate that the proposed changes to the QI agreement described in this Notice, subject to any modifications based on comments received, will be included in a revenue procedure containing the final QI agreement. The final QI agreement will

apply to QI agreements that are in effect on or after January 1, 2023, to correspond with both the applicability date of final regulations relating to withholding under sections 1446(a) and (f) and the expiration of the QI agreement.

Section 2 of this Notice provides background on the QI agreement and sections 1446(a) and (f). Section 3 of this Notice describes the highlights of the proposed changes to the QI agreement. Section 4 of this Notice contains the text of the proposed changes to the QI agreement. Section 5 of this Notice provides information on how to submit comments. Section 6 of this Notice provides drafting information.

SECTION 2. BACKGROUND

.01 Section 1446(f) Final Regulations.

Sections 864(c)(8) and 1446(f) were added to the Internal Revenue Code (the Code) by the Tax Cuts and Jobs Act, Pub. L. 115-97 on December 22, 2017. Section 864(c)(8) generally provides that gain or loss derived by a foreign person on the sale or exchange of an interest in a partnership engaged in a trade or business within the United States is treated as effectively connected gain or loss to the extent provided in that section. Section 1446(f)(1) generally provides that if any portion of the gain on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States, then the transferee of the interest must withhold a tax equal to 10 percent of the amount realized on the disposition.

On November 30, 2020, final regulations (TD 9926) were published in the Federal Register (85 FR 76910) to implement the withholding requirements of section 1446(f) (the final regulations). The final regulations include withholding and reporting requirements applicable to brokers that pay amounts realized on transfers made by foreign partners of interests in PTPs that are publicly traded on an established securities market or readily tradable on a secondary market (or the substantial equivalent thereof) (PTP interests). The final regulations allow brokers an exception from withholding on amounts realized paid to QIs that assume primary withholding responsibility for these amounts

and provide guidance for brokers paying amounts realized to QIs that do not assume primary withholding responsibility (generally allowing the broker to accept from the QI either payee specific or withholding rate pool information). The final regulations provide brokers other exceptions to the withholding requirements, including for a foreign partner's valid claim for exemption based on an income tax treaty or partner's claim of status as a U.S. person. The final regulations also allow an exception to withholding (applicable to any partner) when the PTP publishes a qualified notice stating the applicability of a "10-percent exception." A 10-percent exception applies when either (i) a PTP's net gain from a deemed sale of its assets under section 864(c)(8) that would be effectively connected with a trade or business in the United States is less than 10% of the total net gain as of a designation date applicable to a partner's transfer of an interest in the PTP, or (ii) the PTP is not engaged in a trade or business in the United States. See §1.1446(f)-4(b) for these exceptions to withholding. The final regulations generally define an amount realized as the gross proceeds (as defined in §1.6045-1(d)(5)) from a sale of a PTP interest and the amount of a PTP distribution that is in excess of the cumulative net income of the PTP. They also allow a broker to rely on a certification of a modified amount realized when a transferor that is a foreign partnership provides certain information with respect to its partners that are allocated gain from the transfer of a PTP interest. See §1.1446(f)-4(c)(2)(ii).

The final regulations also amend regulations under section 1446(a) relating to distributions by PTPs, which include an allowance for a QI to act as a nominee for purposes of assuming primary withholding responsibilities on a distribution from a PTP for purposes of section 1446(a) by assuming primary withholding responsibility for the entire distribution. Similar to an amount realized paid to a QI that does not assume primary withholding responsibility, the final regulations generally permit a PTP or a nominee to rely on either withholding rate pool information or specific payee information from a QI for purposes of section 1446(a) when the QI does not act as a nominee for a PTP distribution. The final regulations further

provide a withholding default rule that applies to a nominee when a PTP either does not issue a qualified notice for a distribution or issues a qualified notice that lacks information necessary to determine all withholding required on the distribution. Under Notice 2021-51, 2021-36 IRB 1, the provisions of the final regulations related to withholding on transfers of PTP interests and withholding on PTP distributions apply to transfers and distributions that occur on or after January 1, 2023.

As a result of the allowances in the final regulations for QIs to assume withholding and reporting responsibilities for purposes of sections 1446(a) and (f), this Notice proposes modifications to the QI agreement to incorporate the requirements for QIs with respect to sections 1446(a) and 1446(f). Highlights of the proposed modifications to the QI agreement are described in Section 3 of this Notice.

.02 Overview of QI Agreement.

The QI agreement provides that a QI may assume primary withholding responsibility under chapters 3 and 4 for certain payments of U.S. source FDAP income made to its foreign account holders or the foreign account holders of another intermediary by providing a valid qualified intermediary withholding certificate to its withholding agent and designating the account(s) for which the QI assumes primary withholding responsibility. A QI is not required to assume primary chapter 3 and chapter 4 withholding responsibility for all accounts it holds with a withholding agent. A QI that does not assume primary chapter 3 and chapter 4 withholding responsibility for an account provides to its withholding agent a valid QI withholding certificate that indicates that the QI does not assume primary withholding responsibilities under chapters 3 and 4 and attaches a withholding statement that includes withholding rate pool information (i.e., aggregate information about the account holders and the withholding rate applicable to each pool). Notwithstanding a QI's allowance not to assume primary withholding responsibilities, a QI is still required to withhold if it knows that the appropriate amount has not been withheld by another withholding agent or if the QI made an error that results in withholding at less than the correct amount. For determining the amount to withhold, a QI may

generally document account holders by obtaining either withholding certificates or documentary evidence under a country's approved "know your customer" rules. In a case in which overwithholding is applied on a payment, a QI is generally permitted to file a collective refund on behalf of its foreign account holders that are entitled to a refund of the tax withheld. Finally, a QI is generally permitted to report on Forms 1042-S on a pooled basis rather than file and furnish a Form 1042-S with respect to each account holder.

Withholding under section 1446(a) is not currently within the scope of a QI's requirements under the QI agreement. As a result, a QI is not currently permitted to act as a QI with respect to an amount subject to withholding under section 1446(a) on a PTP distribution received on behalf of an account holder. The proposed modifications set forth in Section 4 of this Notice would extend the scope of the QI agreement to include sections 1446(a) and 1446(f).

SECTION 3. HIGHLIGHTS OF THE PROPOSED MODIFICATIONS TO THE QI AGREEMENT

.01 Withholding under sections 1446(a) and (f).

The proposed modifications to section 3 of the QI agreement provide general requirements for QIs with respect to withholding under sections 1446(a) and (f). QIs are permitted to assume primary withholding responsibility under sections 1446(a) and (f) on a payment-by-payment basis based on a valid withholding certificate permitted under the modifications to section 6 of the QI Agreement and without regard to whether the QI assumes withholding under chapters 3 and 4 for payments other than PTP distributions. The modifications to section 3 of the QI agreement specifically provide that a QI that assumes primary withholding responsibility on any portion of a PTP distribution will be required to assume withholding responsibilities for the entire distribution. The modifications also reference each of the amounts subject to withholding on a PTP distribution and how a QI is to determine each amount for purposes of withholding. For cases in which a QI does not assume primary withholding under

section 1446(a) or (f) for a payment, a QI is permitted to provide to its withholding agent the withholding statements and other information described in the modifications to section 6 of the QI agreement and is subject to the same residual withholding requirement that applies to its withholding under chapter 3 or 4 when another withholding agent withholds less than the required amount.

.02 Documentation for purposes of sections 1446(a) and (f).

Under the modifications to section 5 of the QI agreement, a QI is permitted to document the status of an account holder that is a partner in a PTP as a foreign or U.S. person for purposes of sections 1446(a) and (f) under requirements generally similar to those for payments subject to chapter 3 or 4 withholding (that is, using either documentary evidence or withholding certificates). However, when a QI acts as a disclosing QI by providing specific partner documentation to a withholding agent for withholding under the final regulations, the QI is permitted to document the status of an account holder based on only a withholding certificate. See section 3.03 of this Notice. A QI must also document an account holder using only a withholding certificate for purposes of applying an exception to withholding under section 1446(a) or (f) based on an account holder's claim under an income tax treaty or for applying an exception to withholding under section 1446(a) for an entity described in section 501(c). The modifications also include requirements for QIs to document nonqualified intermediaries, flow-through entities, and other QIs to which a QI pays amounts realized or PTP distributions and describe how a QI reliably associates the documentation with payments made to account holders or interest holders in those entities. A limitation rule is added, however, that a QI may not reliably associate a payment of an amount realized under section 1446(f) with the account holders of a nonqualified intermediary regardless of whether specific information about the account holders of the nonqualified intermediary is provided to the QI. If a QI is unable to reliably associate a payment of an amount realized or an amount subject to withholding under section 1446(a) on a PTP distribution with valid documentation, the QI must

treat the account holder as a foreign person under the presumption rule added to section 5.13(C)(5) of the QI agreement and withhold at the applicable rate under section 1446(a) or (f) except when backup withholding under section 3406 would apply to an amount realized. See §1.1446(f)-4(b)(4) for coordinating withholding under sections 3406 and 1446(f).

.03 QI withholding certificates and withholding statements.

The modifications to section 6 of the QI agreement allow a QI to furnish a qualified intermediary withholding certificate when paid an amount realized or PTP distribution. When a QI does not assume primary withholding responsibility under section 1446(a) or (f), the QI must also provide to its withholding agent a withholding statement that includes either withholding rate pools or specific payee information (and associated payee documentation) in lieu of withholding rate pool information when acting as a disclosing QI. If a QI provides withholding rate pool information to a withholding agent with respect to an amount realized, however, the QI may combine the withholding rate pool information for its account holders with the account holders of another intermediary only if the intermediary is a QI. In the case of a PTP distribution, a QI must determine its withholding rate pools based on each amount subject to withholding on the distribution as determined by the QI's withholding agent.

.04 Reporting on Form 1042-S.

Under the modifications to section 8 of the QI Agreement, a QI may file Forms 1042-S on a pooled basis to report amounts realized and amounts subject to withholding on PTP distributions to the same extent generally permitted for other payments covered by the QI agreement. If a QI acts as a disclosing QI, however, the withholding agent or broker for the QI is required to file Forms 1042-S with respect to the account holders of the QI that are partners in a PTP, and the QI is not required to file a Form 1042-S unless it knows or has reason to know that a correct Form 1042-S was not issued to a partner. If a QI is provided account holder documentation from another QI acting as a disclosing QI, the QI is also required to report on Form 1042-S with respect to the account holder when the QI assumes primary withholding

responsibility. In cases in which a QI does not act as a disclosing QI it must also issue a separate Form 1042-S when requested by an account holder under the conditions specified in the modifications. The modifications also include the conditions for a QI to issue a separate Form 1042-S to report an amount realized paid to an account holder of a nonqualified intermediary rather than to an unknown recipient (despite that reliance on account holder documentation is not permitted for the withholding) and require a QI to issue a separate Form 1042-S to an account holder of a nonqualified intermediary to which the QI pays a PTP distribution.

.05 Requirements under §1.6031(c)-1T.

In general, under §1.6031(c)-1T(a), a nominee holding an interest in a partnership directly or indirectly on behalf of another person is required to provide to the partnership (or agent designated by the partnership or another nominee) certain information about the nominee and the person on whose behalf the nominee holds an interest (including the name, address, taxpayer identification number of the nominee and such other person, and a description of any interest in the partnership that the nominee holds, acquires, or transfers on behalf of such other person during the partnership taxable year). If a nominee does not provide the information described in the preceding sentence with respect to such other person, under §1.6031(c)-1T(h) the nominee is in general required to provide to the person a statement covering the person's distributive share of partnership income, gain, loss, deduction, or credit required to be shown on the partnership return, and any additional information as required under the Code with respect to items related to the person's interest in the partnership.

The provisions of §1.6031(c)-1T are incorporated into the QI agreement in new section 8.07 to facilitate the U.S. tax filings of foreign partners required to report effectively connected income from their holdings and sales of PTP interests (which apply regardless of whether the tax due is withheld). The modifications require a QI acting as a disclosing QI to provide to the PTP or QI's nominee the statement described in §1.6031(c)-1T(a) with respect to an account holder holding a PTP interest (including an account holder that

is an intermediary in certain cases). In other cases, a QI may provide the statement described in the preceding sentence to the PTP or may instead provide the statement to the account holder that is described in §1.6031(c)-1T(h) with respect to the account holder's PTP interest. The QI must also facilitate the account holder's receipt of deemed sale information for purposes of section 864(c)(8) when requested.

.06 Private arrangement intermediaries and agency and joint account options for partnerships and trusts.

The modifications add to the procedures under section 4 of the QI agreement for QIs that maintain arrangements with private arrangement intermediaries (PAIs) that hold PTP interests for account holders and provide the cases for which a QI may use the agency and joint options when paying a PTP distribution or amount realized to a partnership or trust. A QI is permitted to withhold on payments of amounts realized and PTP distributions made to a PAI under requirements similar to those that apply in the case of a disclosing QI that is an account holder of a QI (rather than allow the PAI to assume primary withholding or provide withholding rate pools). As a result of this treatment, a QI may determine its withholding on an amount realized paid to a PAI by reference to the statuses of the PAI's account holders (rather than treat the PAI as a nonqualified intermediary as described in section 3.02 of this Notice) and must satisfy the requirements of §1.6031(c)-1T(a) with respect to each PAI account holder to which a QI pays an amount realized or PTP distribution during the year. A QI may apply the agency option with respect to a foreign partnership providing a certification for a modified amount realized or for an amount subject to withholding under section 1446(a) on a PTP distribution unless the partnership is a PTP (as an upper-tier PTP is not permitted to provide partner information to a lower-tier PTP for section 1446(a) withholding). With respect to a trust, a QI may apply the agency option only for a trust that is a grantor trust given that a simple trust is not permitted to provide beneficiary information for section 1446(a) or (f) withholding. In cases for which the agency option is not specifically permitted, a QI is not otherwise required to provide information to a

withholding agent or report with respect to the interest holders in a partnership or trust under the regulations to sections 1446(a) and (f) (such that the agency option has no application). However, the modifications do not permit a QI to use the joint account option for payments of PTP distributions or amounts realized. As the use of this option is not otherwise permitted when a partnership or trust has a U.S. partner, owner or beneficiary, its use would be of limited application if applied to those payments.

.07 Refunds and underwithholding.

Given the filing requirements of foreign partners for reporting their effectively connected income referenced in section 3.05 of this Notice, a QI is not permitted to file a collective refund with respect to withholding under section 1446(a) or (f). If a QI overwithholds under section 1446(a) or (f), the QI may apply the reimbursement and set-off procedures to the same extent permitted for chapters 3 and 4 purposes. If a QI does not withhold at the rate required under section 1446(a) or (f), the QI may apply the procedures for underwithholding that apply for purposes of chapters 3 and 4.

.08 Events of default and material failures.

The modifications include material failures for cases in which a QI fails to withhold as required under sections 1446(a) and (f) or fails to comply with the reporting requirements of new section 8.07. The modifications include similar events of default for when a QI fails to comply materially with either of those requirements.

SECTION 4. TEXT OF PROPOSED CHANGES TO THE QI AGREEMENT

The text of the proposed changes to the QI agreement is set forth below and includes each section of the QI agreement that is proposed to be modified by this Notice (adding as applicable new sections and revising certain section headings). The Treasury Department and the IRS intend to incorporate the provisions of this Section 4 and additional requirements for QIs under sections 1446(a) and (f) (such as the periodic review requirements of QIs relevant to those sections) into the revised QI agreement that is to apply beginning with the 2023 calendar year. Comments

relating to this Section 4 are requested, in particular with respect to the procedures of proposed section 8.07. Comments are further requested with respect to additional compliance procedures that should be added to section 10 of the QI agreement for purposes of sections 1446(a) and (f) and to Appendices I and II to the QI agreement for this purpose. See Section 5 of this Notice.

* * *

SECTION 2. DEFINITIONS

* * *

Sec. 2.04. Amount Subject to Chapter 3 Withholding. An “amount subject to chapter 3 withholding” is an amount described in §1.1441-2(a) regardless of whether such amount is withheld upon. Unless indicated otherwise in this Agreement, an amount subject to chapter 3 withholding includes an amount subject to chapter 3 withholding on a PTP distribution. See section 2.92(C) of this Agreement.

Sec. 2.05. Amount Subject to Chapter 4 Withholding. An “amount subject to chapter 4 withholding” is a withholdable payment (as defined in §1.1473-1(a)) for which withholding is required under chapter 4 or an amount for which withholding was otherwise applied under chapter 4. Unless indicated otherwise in this Agreement, an amount subject to chapter 4 withholding includes such an amount subject to chapter 4 withholding on a PTP distribution. See section 2.92(C) of this Agreement

* * *

Sec. 2.08. Beneficial Owner. A “beneficial owner” has the meaning given to that term in §1.1441-1(c)(6) with respect to a payment subject to withholding under chapter 3.

* * *

Sec. 2.31. Flow-Through Entity. * * * For an amount realized or amount subject to withholding under section 1446(a) on a PTP distribution, a flow-through entity includes a U.S. grantor trust.

* * *

Sec. 2.92. Terms applicable to section 1446(a) and (f) requirements. The following terms apply in connection with QI’s requirements with respect to QI’s account holders holding PTP interests:

(A) Amount realized. For purposes of section 1446(f), an amount realized on a sale of a PTP interest is the amount of gross proceeds (as defined in §1.6045-1(d)(5)) paid or credited to the partner or broker that is the transferor of the interest. The amount realized on a PTP distribution is the amount of the distribution reduced by the portion of the distribution that is attributable to the cumulative net income of the partnership (as determined under §1.1446(f)-4(c)(2)(iii)).

(B) Amount subject to reporting under section 1446(f). An amount subject to reporting under section 1446(f) is the amount realized on the transfer of a PTP interest paid to a foreign partner (including a partner presumed to be foreign) unless an exception to withholding applies under §1.1446(f)-4(b)(2) through (4). See §1.1461-1(c)(2)(i)(Q).

(C) Amount subject to withholding on a PTP distribution. An amount subject to withholding on a PTP distribution is the amount of the distribution subject to withholding under chapter 3 or 4 and/or under section 1446(a) or (f).

(D) Broker. The term broker has the meaning described in §1.1446(f)-1(b)(1), when referenced in connection with the transfer of a PTP interest.

(E) Disclosing QI. For purposes of section 1446(a) or (f), a disclosing QI is a QI that does not assume the primary withholding obligation under section 1446(a) or (f) for a payment and that provides with its withholding statement the specific payee documentation referenced in §1.1446(f)-4(a)(7)(iii) (for an amount realized) or §1.1446-4(e)(4) (for withholding on a PTP distribution under section 1446(a)) instead of the chapter 3 withholding rate pool information otherwise permitted to be included on the withholding statement and, for an amount realized, a chapter 4 withholding rate pool of U.S. payees when permitted for chapter 4 purposes in lieu of specific payee documentation for those payees. A QI that acts as a disclosing QI for a payment must act as a disclosing QI for the entire payment.

(F) Modified amount realized. In the case of an amount realized paid to a transferor of a PTP interest that is a foreign partnership, the modified amount realized is the amount determined under §1.1446(f)-4(c)(2)(ii), as modified by

section 4.06 or 5 of this Agreement with respect to the partner information required for determining the amount.

(G) Nominee. The term nominee means a person that, under §1.1446-4(b)(3), holds an interest in a PTP on behalf of a foreign person and that is either a U.S. person or QI that assumes primary withholding responsibility for a PTP distribution, or a U.S. branch of a foreign person (or territory financial institution) that agrees to be treated as a U.S. person with respect to the distribution.

(H) Partner. When referenced in connection with sections 1446(a) and (f), a partner is a person holding a PTP interest, including a partnership or trust but excluding a grantor trust and including the trust’s grantors or owners to the extent of their respective interests in the trust, and excluding an intermediary. When referenced in connection with §1.6031(c)-1T, a partner is a person to whom a partnership is required to issue a statement under section 6031(b). See section 8.07 of this Agreement.

(I) PTP interest. A PTP interest is an interest in a publicly traded partnership if the interest is publicly traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof).

(J) PTP distribution. A PTP distribution is a distribution made by a publicly traded partnership.

(K) Publicly traded partnership (PTP). The term publicly traded partnership (PTP) has the same meaning as in section 7704 and §1.7704-1 through 1.7704-4 but does not include a publicly traded partnership treated as a corporation under that section.

(L) Qualified notice. A qualified notice is a notice issued by a PTP for a PTP distribution as described in §1.1446-4(b)(4).

(M) Transfer. A transfer is a sale, exchange, or other disposition of a PTP interest, and includes a distribution from a partnership to a partner, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B). With respect to a PTP distribution, however, see sections 2.92(A) and 3.01(C)(2) of this Agreement for the extent of an amount realized on the distribution for purposes of QI’s requirement to withhold under section 1446(f).

(N) Transferor. A transferor is any person, foreign or domestic, that transfers a PTP interest. In the case of a trust, to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679, the term transferor means the grantor or other person.

SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY

Sec. 3.01. Withholding Responsibilities under Chapters 3 and 4 and Withholding with respect to PTP Interests.

* * *

(C) Withholding under section 1446(f) and on PTP Distributions.

(1) Withholding on Amount Realized. If QI acts as a broker with respect to a payment of an amount realized from a transfer of a PTP interest, QI is required to withhold under section 1446(f) 10-percent of the amount realized paid to an account holder of QI that is the transferor and is (or is presumed to be) a foreign partner when QI assumes primary withholding responsibility for the payment under section 3.03(C)(1) of this Agreement. QI is further required to withhold on a payment of an amount realized made to a foreign broker to the extent provided in §1.1446(f)-4(a)(2). QI is not required to withhold on a payment of an amount realized when an exception to withholding under §1.1446(f)-4(b) applies. Thus, for example, QI is not required to withhold under section 1446(f) when it may rely on a qualified notice that states the applicability of the exception under §1.1446(f)-4(b)(3). See section 5 of this Agreement regarding documentation requirements for other exceptions to withhold under §1.1446(f)-4(b).

(2) Withholding under chapter 3, chapter 4, section 1446(a), and section 1446(f) on PTP distribution. If QI acts as a nominee for a PTP distribution under section 3.03(C)(2) of this Agreement, QI is a withholding agent for purposes of the distribution and is required to withhold as described in this section 3.01(C)(2). For an amount subject to withholding under section 1446(a) identified on a qualified notice for a PTP distribution, QI is required to withhold on the amount paid to

an account holder that is (or is presumed to be) a foreign partner except when an exception to withholding applies to an account holder that is a foreign entity described in section 501(c)(3) or that claims an exemption from withholding under an income tax treaty. See sections 5.03 and 5.06(A) of this Agreement for documentation requirements for these exceptions and section 1446(b) for the rate of withholding that applies under section 1446(a). For an amount subject to withholding under chapter 3 and 4 on a PTP distribution, QI is required to withhold under sections 3.01(A) and (B) of this Agreement to the extent such amounts are identified on a qualified notice for the distribution. For an amount realized on a PTP distribution, QI's requirement to withhold under section 1446(f) is limited to the amount identified on a qualified notice as in excess of the PTP's cumulative net income. If QI does not receive a qualified notice for a distribution or to the extent the qualified notice for the distribution does not specify an amount subject to withholding, QI is required to withhold only to the extent provided in the default rules in §1.1446-4(d)(1).

Sec. 3.02. Primary Withholding Responsibility Not Assumed under Chapters 3 and 4 or with respect to PTP interests. Notwithstanding anything in sections 1.01 and 3.01 of this Agreement to the contrary, QI is not required to withhold to the extent provided in this section 3.02.

(A) Withholding under Chapters 3 and 4. QI is not required to withhold with respect to a payment of U.S. source FDAP income if it: (a) does not assume primary withholding responsibility under section 3.03(A) of this Agreement by electing to be withheld upon under §1.1471-2(a)(2)(iii) for purposes of chapter 4, (b) provides the withholding agent from which QI receives the payment with a valid withholding certificate that indicates that QI does not assume primary withholding responsibility for chapters 3 and 4 purposes, and (c) provides correct withholding statements (including information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI, other than a QI that assumes primary withholding responsibility, or a WP

or WT) as described in section 6.02 of this Agreement.

(B) Withholding with respect to PTP interest. QI is not required to withhold on a payment of a PTP distribution or an amount realized from the sale of a PTP interest except when QI assumes primary withholding responsibility for either of those payments under section 3.03(C) (1) or (2) of this Agreement. QI does not assume primary withholding responsibility for a payment of a PTP distribution or amount realized from the sale of a PTP interest by providing to its withholding agent or broker a valid withholding certificate indicating that it is a QI that does not assume primary withholding responsibility for the payment and provides correct withholding statements as described in section 6.02 of this Agreement. See section 3.05(C) of this Agreement for when QI is not responsible for primary Form 1099 reporting and backup withholding for broker proceeds that are an amount realized.

(C) Residual Withholding Requirement. Notwithstanding its election not to assume primary withholding responsibility for a payment as described in section 3.02(A) or (B) of this Agreement, QI shall, however, withhold the difference between the amount of withholding required and the amount actually withheld by another withholding agent if QI—

(1) Actually knows that the appropriate amount has not been withheld by another withholding agent or broker; or

(2) Made an error which results in the withholding agent or broker's failure to withhold the correct amount due (*e.g.*, QI fails to provide an accurate withholding statement with respect to the payment, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement), and QI has not corrected the underwithholding under section 9.05 of this Agreement.

Sec. 3.03. Assumption of Primary Withholding Responsibilities under chapters 3 and 4 (including by QDDs) or with respect to PTP interest.

(A) Withholding Assumed under Chapters 3 and 4. QI may assume primary withholding responsibility for

purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility (if required). QI is not required to assume primary withholding responsibility for all accounts it holds with a withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account. Notwithstanding the preceding sentence, QI assumes primary withholding responsibility on a PTP distribution (which includes an amount subject to withholding under chapter 3 or 4 on the distribution) only as provided in section 3.03(C)(2) of this Agreement.

To the extent that QI assumes primary withholding responsibility under this section 3.03(A), QI shall withhold as described in section 3.01(A) and (B) of this Agreement. QI is not required to withhold on amounts it pays to another QI that has assumed primary withholding responsibility with respect to the payment under chapters 3 and 4 (including a QI acting as a QDD except for all payments with respect to underlying securities, other than dividend equivalents, paid to a QDD for which withholding is required) or to a WP or a WT.

(C) Withholding Assumed with respect to PTP Interest.

(1) Withholding Assumed on Amount Realized. QI may assume primary withholding responsibility for a payment of an amount realized from the sale of a PTP interest only when the QI provides to the broker making the payment to QI a valid withholding certificate described in section 6 of this Agreement stating that it assumes primary responsibility for the payment. In such a case, QI is required to withhold on the payment as described in section 3.01(C)(1) of this Agreement, excluding an amount realized paid to another QI that has assumed primary withholding

responsibility with respect to the amount realized.

(2) Withholding Assumed on PTP Distribution. QI may assume primary withholding responsibility for a payment of a PTP distribution only when the QI provides to the PTP or nominee paying the distribution to QI a valid withholding certificate described in section 6 of this Agreement stating that QI assumes primary responsibility by acting as a nominee for the distribution under §1.1446-4(b)(3). QI may act as a nominee for a PTP distribution only when QI assumes primary withholding responsibility for all of the amounts subject to withholding on the PTP distribution under sections 1446(a) and (f) and chapters 3 and 4. When acting as a nominee, QI is required to withhold on a PTP distribution as required under section 3.01(C)(2) of this Agreement, excluding a PTP distribution paid to another QI that has assumed primary withholding responsibility as a nominee with respect to the distribution or to a WP or WT with respect to an amount subject to withholding under chapter 3 or 4 on the distribution.

Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts.

(C) Special Procedure for Broker Proceeds.

Notwithstanding the preceding provisions, for a payment of broker proceeds that is an amount realized from the sale of a PTP interest, QI will not be excepted from responsibility for primary Form 1099 reporting and backup withholding (as otherwise permitted in this section 3.05(C)) if QI also provides a valid withholding certificate to the broker paying the proceeds to QI that indicates that QI assumes primary withholding responsibility for the amount realized.

Sec. 3.08. Deposit Requirements.

The deposit requirements of this section 3.08 that apply to amounts that QI withholds under chapter 3 and 4 also apply to the extent that QI assumes primary withholding responsibility for a payment

of a PTP distribution or amount realized from the sale of a PTP interest.

SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES AND CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 4.01. Private Arrangement Intermediaries—In General.

(G) *** The limitations on a PAI's disclosure of its direct account holders to QI described in this section 4.01(G) do not, however, apply with respect to the PAI's direct account holders' receipt of payments of PTP distributions or amounts realized from sales of PTP interests. For either such payment, a PAI is required to disclose to QI its direct account holders and provide any information requested by QI for QI to meet its withholding and reporting requirements specified in section 4.02(D) of this Agreement.

Sec. 4.02. Modification of Obligations for PAI Agreements.

(A) Payments Reportable under Chapters 3 and 4. ***

(2) A direct foreign account holder of the PAI for which no withholding is required under chapter 4 (other than an intermediary, custodian, nominee, agent, or flow-through entity described below), QI shall, except as otherwise provided in section 4.02(D) of this Agreement, report an amount subject to chapter 3 withholding using the chapter 3 reporting pools as described in section 8.03 of this Agreement with the PAI reported as the recipient.

(D) Payments of Amounts Realized or PTP Distributions. The agreement between QI and a PAI must provide that QI will satisfy the requirements of §1.6031(c)-1T as set forth in section 8.07 of this Agreement with respect to each account holder of PAI that is a partner receiving from QI a PTP distribution or amount realized from the sale of a PTP interest for which a statement under section 6031(b) is required for the taxable year (and for which the PAI will provide QI the necessary partner information). The agreement between QI and a PAI must further provide that QI shall treat PAI as if PAI were a disclosing QI with respect to both of the following—

(1) QI's reporting on Forms 1042 and 1042-S of an amount realized from the sale of a PTP interest or an amount subject to withholding on a PTP distribution paid to a direct account holder of PAI (as further described in section 8 of this Agreement), and

(2) QI's determination of the withholding required on any such amount.

Sec. 4.03. Other Requirements of PAI Agreements

Finally, nothing in the agreement between QI and a PAI shall permit the PAI to assume primary withholding responsibility for a PTP distribution or an amount realized from the sale of a PTP interest.

Sec. 4.05. Joint Account Treatment for Certain Partnerships and Trusts

(B) Modification of Obligations for QI.

(1) *** QI may not, however, rely on a Form W-8IMY that is associated with a PTP distribution or amount realized from the sale of a PTP interest for purposes of this section 4.05.

Sec. 4.06. Agency Option for Certain Partnerships and Trusts.

(A) In General.

(6) For a partnership or trust to which QI pays an amount subject to withholding under section 1446(a) on a PTP distribution, the partnership is not a PTP, and the trust is a grantor trust (with the partnership or trust providing its U.S. TIN to QI). For a partnership or trust to which QI pays an amount realized, the partnership is a partnership providing a certification for a modified amount realized, and the trust is a grantor trust (with the partnership or trust providing its U.S. TIN to QI).

SECTION 5. DOCUMENTATION REQUIREMENTS

Sec. 5.01. Documentation Requirements.

(A) General Documentation Requirements.

If QI makes a payment of an amount realized on a sale of a PTP interest or a PTP distribution, QI also agrees to use its

best efforts to obtain the documentation from a partner that is described in section 5.02 of this Agreement. QI further agrees to treat a partner as a foreign partner and a broker as a foreign broker when required under section 5.13(C)(5) of this Agreement for a payment of an amount realized or the amount of a PTP distribution subject to withholding under section 1446(a).

Sec. 5.02. Documentation for Foreign Account Holders. (A) Documentation for chapters 3 and 4. QI may treat an account holder as a foreign beneficial owner of an amount for purposes of chapter 3 or 4 if the account holder provides a valid Form W-8 (other than Form W-8IMY unless provided by a QI that is acting as a QDD or assuming primary withholding responsibility for a substitute interest payment) or valid documentary evidence that supports the account holder's status as a foreign person.

(B) Documentation for Section 1446(a). QI must treat an account holder that is a partner receiving a payment of a PTP distribution subject to withholding under section 1446(a) as a foreign partner if the account holder provides a valid Form W-8 other than a Form W-8IMY provided by an intermediary, grantor trust, or partnership (excluding a PTP) that includes the account holder's U.S. TIN. Alternatively, QI must treat an account holder described in the preceding sentence as a foreign partner when QI has both valid documentary evidence that supports the account holder's status as a foreign person and the account holder's U.S. TIN. See, however, §1.1446-4(e)(4) for QI's requirement to provide withholding certificates for the amount of a PTP distribution subject to withholding under section 1446(a) when acting as a disclosing QI.

(C) Documentation for Section 1446(f). QI must treat an account holder receiving a payment of an amount realized as a foreign partner if the account holder provides a valid Form W-8 (other than a Form W-8IMY provided by a grantor trust, broker, or a partnership providing the certification on Form W-8IMY for a modified amount realized) that includes the account holder's U.S. TIN. Alternatively, QI must treat an account holder described in the preceding sentence as a

foreign partner when QI has both valid documentary evidence that supports the account holder's status as a foreign person and the account holder's U.S. TIN. See, however, §1.1446(f)-4(a)(7)(iii) for QI's requirement to provide withholding certificates when acting as a disclosing QI for an amount realized. With respect to an amount realized QI pays to a broker, QI may rely on documentation that is permitted under §1.1446(f)-4(a)(5) for treating the broker as a foreign person.

Sec. 5.03. Beneficial Owner's or Partner's Claim of Treaty Benefits.

If an account holder that is a foreign partner receives an amount subject to withholding under section 1446(a) on a PTP distribution or an amount realized, the documentation described in section 5.03(A)(1) of this Agreement shall be permitted for the partner's claim of treaty benefits and sections 5.03(A)(2) and (3) of this Agreement shall not apply. See, however, section 5.07 of this Agreement in the case of an amount realized paid to a non-qualified intermediary.

Sec. 5.04. Documentation for International Organizations. ***

For example, an international organization may not claim benefits under this section 5.04 with respect to QI's requirement to withhold under section 1446(a) or (f).

Sec. 5.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.

(A) Documentation From a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption from Withholding Under Section 892 or Section 895. To the extent an account holder receives a payment subject to withholding under chapter 3 that is not subject to withholding under chapter 4, ***

(C) *** For example, a foreign government or foreign central bank of issue may not claim benefits under section 892 with respect to QI's requirement to withhold under section 1446(a) or (f).

Sec. 5.06. Documentation for Foreign Tax-Exempt Organizations. To the extent an account holder receives a payment that is subject to withholding under chapter 3 or section 1446(a) on a PTP

distribution but not under chapter 4, QI may not treat an account holder as a foreign tax-exempt organization and reduce the rate of or exempt the account holder from withholding unless it satisfies the requirements provided in section 5.06(A), (B), or (C) of this Agreement.

Sec. 5.07. Documentation from Intermediaries or Flow-Through Entities.

Notwithstanding the previous provisions of this section 5.07, for an amount realized paid to a nonqualified intermediary, QI is required to apply the presumption rule provided in section 5.13(C)(5) of this Agreement regardless of whether the nonqualified intermediary provides a valid Form W-8IMY and documentation with respect to the account holders receiving the amount realized.

(B) Reportable Payments Other than Withholdable Payments or Payments with respect to PTP interests Made to Nonqualified Intermediaries and Flow-Through Entities. With respect to a reportable payment that is not a withholdable payment or an amount realized made to a nonqualified intermediary or flow-through entity—***

(C) Payments with respect to PTP Interests Made to Nonqualified Intermediaries and Flow-Through Entities.

(1) Amount Realized. With respect to a payment by QI of an amount realized from the sale of a PTP interest made to a flow-through entity or nonqualified intermediary, the documentation that QI receives is a valid Form W-8IMY from the entity except for a foreign simple trust (for which a Form W-8BEN-E may instead be received) and a U.S. grantor trust (for which a document similar to Form W-8IMY may be received). In the case of a foreign partnership providing the certification on Form W-8IMY for a modified amount realized, QI is required to obtain from the partnership the documentation described in this section 5 with respect to the partners that QI can reliably associate with the payment. For a grantor trust to which QI pays an amount realized, QI is further required to obtain valid documentation described in this section 5 that QI can reliably associate with each grantor or owner of the trust.

(2) PTP distribution. With respect to a payment by QI of a PTP distribution to a nonqualified intermediary, the documentation that QI receives from the intermediary is a valid Form W-8IMY (including its chapter 4 status for an amount of a distribution attributable to a withholdable payment) and documentation for each of the account holders of the nonqualified intermediary that are partners in the PTP that QI can reliably associate with each amount subject to withholding on the distribution (including by applying section 5.13(B)(1) of this Agreement for any amount realized on the distribution). With respect to a payment by QI of a PTP distribution to a flow-through entity, the documentation that QI receives from the flow-through entity is as follows—

(i) For the amount of the distribution subject to withholding under section 1446(a) made to a foreign partnership, QI receives a valid Form W-8IMY from the partnership and, for a foreign partnership other than a PTP, valid documentation described in this section 5 on each of the partners in the partnership that QI can reliably associate with the distribution. See §§1.1446-4 and 1.1446-5(c). For the portion of the distribution subject to withholding under section 1446(a) made to a trust, QI receives a valid Form W-8BEN-E or W-8IMY from a simple trust or, in the case of a foreign grantor trust, a valid Form W-8IMY from the trust (or similar document from a U.S. grantor trust) and valid documentation on each grantor or owner of the trust permitted under this section 5 for a payment subject to section 1446(a) withholding that QI can reliably associate with the distribution.

(ii) For the amount of the distribution subject to withholding under chapter 3 or 4, QI receives a valid Form W-8IMY from the flow-through entity (which includes the entity's chapter 4 status with respect to any amount of a distribution attributable to a withholdable payment) and valid documentation on the interest holders in the entity (other than nonqualified intermediaries or flow-through entities) permitted under this section 5 for a payment subject to

chapter 3 or 4 withholding that QI can reliably associate with the distribution. **(iii)** For the amount realized on the distribution, QI receives from the flow-through entity valid documentation specified in section 5.07(C)(1) of this Agreement applicable to a flow-through entity that QI can reliably associate with the distribution.

(D) Reportable Payments and Payments with respect to PTP Interests Made to QIs, WPs, and WTs.

With respect to a payment of an amount realized on the sale of a PTP interest made by QI to a QI, QI receives a valid Form W-8IMY provided by the other QI that includes the QI's chapter 4 status if the QI provides a withholding statement allocating a payment to a chapter 4 withholding rate pool of U.S. payees. Additionally, for an amount realized for which the other QI does not assume primary withholding responsibility nor act as a disclosing QI, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for a U.S. partner not includible in a chapter 4 withholding rate pool of U.S. payees under chapter 4. See §1.1446(f)-4(a)(7)(iv). For an amount realized described in the preceding sentence that QI pays to a QI acting as a disclosing QI, QI receives valid documentation permitted under section 5.02(C) of this Agreement with respect to the account holders of the other QI, including a valid Form W-9 for a U.S. partner not includible in a chapter 4 withholding rate pool of U.S. payees permitted under chapter 4.

With respect to a PTP distribution paid by QI to a QI, QI receives a valid Form W-8IMY provided by the other QI that includes the QI's chapter 4 status for any portion of the PTP distribution attributable to a withholdable payment. Additionally, for a PTP distribution for which the other QI does not assume primary withholding responsibility nor act as a disclosing QI, QI can reliably associate the payment with withholding rate pools, as described in section 6.03 of this Agreement, or a valid Form W-9 for each partner that is a U.S. person. For a PTP distribution that QI pays to a QI acting as a disclosing QI, QI receives with respect to the account

holders of the other QI valid documentation required of a disclosing QI under section 5.02(B) of this Agreement for an amount subject to withholding under section 1446(a) on the distribution, valid documentation permitted under the preceding paragraph of this section 5.07(D) for an amount realized on the distribution and, for an amount subject to withholding under chapter 3 or 4 on the distribution, valid documentation described in section 5.07(A) or (B) of this Agreement.

With respect to a PTP distribution paid to a WP or WT, QI receives a valid Form W-8IMY provided by the WP or WT that QI can reliably associate with an amount subject to withholding under chapter 3 or 4 on the distribution.

(E) Payments Made to QIs Acting as QDDs. ***

(F) Private Arrangement Intermediaries. *** QI must also reliably associate a payment made to a PAI with valid documentation with respect to the account holders of the PAI for a payment of a PTP distribution or amount realized from the sale of a PTP interest as described in section 5.07(D) of this Agreement.

(G) Partnerships or Trusts to which QI Applies the Agency Option. ***

Sec. 5.10. Documentation Validity.

(A) In General. QI may not rely on documentation if QI has actual knowledge or, for a payment other than an amount realized, reason to know that the information or certifications contained in the documentation are unreliable or incorrect, or that there is a change in circumstances with respect to the information or statements contained in the documentation or account information that affects the reliability of the account holder's claim. See §1.1441-1(e)(4)(ii)(D) for the definition of change in circumstances and a withholding agent's obligation with respect to a change in circumstances for purposes of withholding under chapters 3 and 4 and section 1446(a). ***

Sec. 5.13. Application of Presumption Rules.

(A) ***

(B) Reliably Associating a Payment with Documentation.

See also §1.1471-3(e)(4)(vi)(B) for when a QI that is an FFI may rely on documentation and information permitted in an applicable IGA to document an account holder's chapter 4 status. For documentation reliance rules for purposes of sections 1446(a) and (f), see §§1.1446-1(c)(2)(iii) and 1.1446(f)-4(b). ***

(1) Reliably Associating a Payment with Documentation Provided by a Nonqualified Intermediary or Flow-Through Entity.

With respect to a payment of an amount realized from the sale of a PTP interest, QI can reliably associate the payment with documentation when QI can associate the payment with a valid Form W-8IMY provided by a flow-through entity except for a trust that is a simple trust (for which a valid Form W-8BEN-E may instead be provided). Additionally, QI can reliably associate the payment with documentation to permit a modified amount realized paid to a foreign partnership to the extent that QI can reliably associate the payment with a valid Form W-8IMY provided by the partnership that includes the certification for a modified amount realized and the partnership provides valid documentation for each partner allocated an amount of gain (if any) arising from the sale. For a payment of an amount realized made to a grantor trust, QI can reliably associate the payment with documentation when it can reliably associate the payment with a valid Form W-8IMY from the trust indicating its status as a foreign grantor trust (or similar document from a U.S. trust) and can determine the percentage of the amount realized that is associated with valid documentation provided by each grantor or owner of the trust.

With respect to QI's payment of an amount realized from the sale of a PTP interest made to a nonqualified intermediary, QI cannot reliably associate the payment with documentation regardless of whether a valid Form W-8IMY is provided by the nonqualified intermediary together with valid documentation for its account holders that QI can associate with the payment. See section 8.02(N) of this Agreement, however, for when a QI may rely on account holder documentation provided by a nonqualified intermediary for purposes of reporting under this Agreement.

With respect to a PTP distribution QI pays to a nonqualified intermediary, QI can reliably associate the distribution with documentation when QI can reliably associate the payment with a valid Form W-8IMY provided by the nonqualified intermediary (including its chapter 4 status for an amount of a distribution attributable to a withholdable payment) and can determine the portion of each amount subject to withholding on the distribution (as determined under section 3.01(C)(2) of this Agreement) that is associated with valid documentation for each partner or beneficial owner with respect to the distribution that is an account holder of the nonqualified intermediary (as applicable, depending on the amount subject to withholding on the distribution and taking into account the preceding paragraph of this section 5.13(B)(1) for an amount realized on the distribution).

With respect to a PTP distribution QI pays to a flow-through entity, QI can reliably associate the distribution with documentation to the extent it reliably associates with documentation each amount subject to withholding on the distribution as follows—

(i) For an amount subject to withholding under section 1446(a), QI can determine the portion of the amount associated with—

(a) A valid Form W-8IMY from a partnership and, for a partnership other than a PTP, when QI can determine the amount associated with valid documentation provided by each of the partners of the partnership;

(b) A valid Form W-8BEN-E or Form W-8IMY from a simple trust; or

(c) A valid Form W-8IMY from a trust that identifies itself as a foreign grantor trust (or similar document from a U.S. grantor trust), when QI can associate the portion of the amount with valid documentation provided by each grantor or owner of the trust.

(ii) For an amount subject to withholding under chapter 3 or 4 that QI can determine is reliably associated with a valid Form W-8IMY provided by the flow-through entity (which includes the

entity's chapter 4 status with respect to an amount of a distribution attributable to a withholdable payment) and the portion of the amount associated with valid documentation provided by each interest holder in the flow-through entity other than an intermediary or flow-through entity.

(iii) For an amount realized that QI can determine is reliably associated with valid documentation provided by the flow-through entity and the portion of the amount associated with an interest holder in the entity to the extent specified in this section 5.13(B)(1) for an amount realized paid to a flow-through entity.

(7) Reliably Associating a Payment with Documentation Provided by a QI that Assumes Primary Withholding Responsibility for a PTP Distribution or Amount Realized from the Sale of a PTP Interest.

QI can reliably associate with documentation a payment of a PTP distribution or amount realized from the sale of a PTP interest made to another QI that assumes withholding responsibility for the payment when QI can reliably associate the payment with a valid Form W-8IMY provided by the QI that indicates that the QI assumes primary responsibility for the amount realized or PTP distribution.

(8) Reliably Associating a Payment with Documentation Provided by a QI that Does not Assume Primary Withholding Responsibility for a PTP Distribution or Amount Realized from the Sale of a PTP Interest.

QI can reliably associate with documentation a payment of an amount realized from the sale of a PTP interest made to a QI that does not assume primary withholding responsibility for the payment when QI reliably associates the payment with a valid Form W-8IMY provided by the other QI and can determine the portion of the payment associated with a valid Form W-9 for the U.S. partner (or a chapter 4 withholding rate pool of U.S. payees when permitted under chapter 4) and, with respect to other partners, either withholding rate pools, as described in section 6.03(C) of this Agreement or, for a disclosing QI, when QI can determine the portion of the payment that is associated

with valid documentation for each of the account holders of the other QI not includable in a chapter 4 withholding rate pool of U.S. payees under chapter 4.

QI can reliably associate with documentation a payment of a PTP distribution made to another QI that does not assume primary withholding responsibility for the payment when QI can reliably associate the payment with a valid Form W-8IMY provided by the QI and can determine the portion of the distribution associated with withholding rate pools, as described in section 6.03(C) of this Agreement, or a valid Form W-9 for a U.S. partner, or, for a disclosing QI, when QI can determine the portion of each amount subject to withholding on the distribution that is associated with valid documentation for each of the account holders of the other QI as described in section 5.07(D) of this Agreement.

(C) Presumption Rules.

(5) Other Payments.

*** In the case of a payment of an amount realized, an account holder that is the partner or a broker receiving the payment shall be presumed a foreign person for which a reduced rate of withholding under section 1446(f) shall not apply. See, however, §1.1446(f)-4(b)(4) in the case of an amount realized for which withholding under section 3406 is required. In the case of an amount subject to withholding under section 1446(a) on a PTP distribution, an account holder that is a partner in the PTP receiving the distribution shall be presumed a foreign person, with the rate of withholding determined under §1.1446-4(d)(1)(iii).

SECTION 6. QUALIFIED INTERMEDIARY WITHHOLDING CERTIFICATE AND DISCLOSURE OF ACCOUNT HOLDERS TO WITHHOLDING AGENT

Sec. 6.01. Qualified Intermediary Withholding Certificate.

QI agrees to furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a QI or to each withholding agent or broker from which QI receives a PTP distribution or amount realized from the sale of a PTP interest

(including when QI acts as a disclosing QI for the distribution or amount realized). The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a QI, contains QI's QI-EIN, and provides all other information required by the form. If QI receives a withholdable payment (including on a PTP distribution), QI must certify to its chapter 4 status and provide its GIIN (if applicable). QI must also certify its chapter 4 status as a participating FFI or registered deemed-compliant FFI when QI provides a Form W-8IMY that certifies that it meets the requirements of §1.6049-4(c)(4)(iii) with respect to any account holder of an account it maintains that is included in a chapter 4 withholding rate pool of U.S. payees on QI's withholding statement for a payment subject to withholding under chapter 3 or 4 or an amount realized from the sale of a PTP interest.

Sec. 6.02. Withholding Statement.

(A) In General.

*** Notwithstanding the preceding provisions of this section 6.02(A) for a payment received by QI of a PTP distribution or an amount realized from the sale of a PTP interest, QI agrees to provide a withholding statement described in this section 6.02 when QI does not assume primary withholding responsibility for the payment.

(B) Content of Withholding Statement.

(5) Designate an account for which QI assumes primary withholding responsibility for a PTP distribution or an amount realized from the sale of a PTP interest, and

(6) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement, when necessary, except that section 6.03(C) of this Agreement shall not apply when QI acts as a disclosing QI for a payment, and references to a chapter 4 withholding rate pool of U.S. payees in section 6.03(B) of this Agreement shall not apply to an amount subject to withholding under section 1446(a) on a PTP distribution. See also section 2.92(E) of this Agreement for the extent of a disclosing QI's requirement to provide specific payee information on a withholding statement.

Sec. 6.03. Chapters 3 and 4 Withholding Rate Pools and Specific Payee Information.

(A) In General. QI shall provide as part of its withholding statement withholding rate pool information in a manner sufficient for the withholding agent to meet its chapters 3 and 4 and backup withholding responsibilities and its Form 1042-S and Form 1099 reporting responsibilities. QI's requirement for its withholding statement described in the preceding sentence also applies to a withholding statement QI provides to the withholding agent or broker for a payment of a PTP distribution or amount realized from the sale of a PTP interest. Additionally, for a PTP distribution, the withholding rate pool information provided by QI on its withholding statement must take into account each amount subject to withholding on the distribution as determined by the withholding agent that pays the distribution to QI.

(C) Chapter 3 Withholding Rate Pools.

*** For a payment of an amount realized, however, QI may combine its account holder information with the account holder information provided by an intermediary only if the intermediary is a QI other than a disclosing QI.

SECTION 8. INFORMATION REPORTING OBLIGATIONS

Sec. 8.01. Form 1042-S Reporting.

Sec. 8.02. Recipient Specific Reporting.

(J) If QI acts as a disclosing QI with respect to a payment of a PTP distribution or an amount subject to reporting under section 1446(f) made to an account holder that is a foreign partner, QI must file a Form 1042-S to report the payment when QI knows or has reason to know that the Form 1042-S has not been filed with respect to the partner. In the case of a PTP distribution for which a QI must report in accordance with the preceding sentence, QI must file a separate Form 1042-S for each amount paid to the foreign partner that is subject to withholding on the distribution to the extent required in the

instructions to Form 1042-S. Notwithstanding the preceding provisions of this section 8.02(J), see section 8.02(M) of this Agreement for the reporting of an amount subject to reporting under section 1446(f) paid to a nonqualified intermediary.

(K) If a QI makes a payment of a PTP distribution or an amount subject to reporting under section 1446(f) to an account holder that is a QI not acting as a disclosing QI for the payment, QI must file a Form 1042-S for the other QI. If QI instead receives information on a foreign partner from a QI that is an account holder and that acts as a disclosing QI for either such payment, QI must file a separate Form 1042-S to report the payment when QI assumes primary withholding responsibility for the payment or knows or has reason to know that the Form 1042-S has not been issued with respect to the foreign partner. In such a case, QI must file the Form 1042-S reporting the disclosing QI as an intermediary, with the foreign partner reported as the recipient. In the case of a payment of a PTP distribution made to a QI that acts as a disclosing QI for the distribution and that QI is required to report in accordance with this Section 8.02(K), QI must file a separate Form 1042-S to the extent required in the instructions to Form 1042-S.

(L) If QI receives specific information on a foreign partner that is a direct account holder of a PAI that receives from QI a payment of an amount subject to withholding on a PTP distribution or an amount subject to reporting under section 1446(f), QI must file a separate Form 1042-S to report each amount paid to the partner to the extent required in accordance with section 8.02(K) of this Agreement for a QI that is a disclosing QI (but as applied to a PAI instead of a disclosing QI).

(M) If QI acts as a nominee for a payment of a PTP distribution made to a nonqualified intermediary, QI must file a separate Form 1042-S for each foreign partner or beneficial owner of the distribution that is an account holder in the nonqualified intermediary. If QI makes a payment of an amount subject to reporting under section 1446(f) to a nonqualified intermediary for which QI must file Form 1042-S in accordance with section 8.02(J) of this Agreement, QI shall file the Form 1042-S for an unknown recipient except that QI

may instead file the Form 1042-S for an account holder of the nonqualified intermediary receiving the payment when—

(1) QI acknowledges to the nonqualified intermediary that it will report under section 1461 with respect to the amount allocated to each of the transferors of the PTP interest (and, if required, under section 6045) and that it will provide the nonqualified intermediary a copy of each Form 1042-S issued as a result of this reporting;

(2) QI can reliably associate the payment with documentation for each transferor under section 5.13 of this Agreement;

(3) QI receives from the nonqualified intermediary the statement described in §1.6031(c)-1T(a)(1) with respect to each partner that is an account holder of the nonqualified intermediary for which a statement under section 6031(b) is required to be issued with respect to the partner's PTP interest for the year in which the payment was made; and

(4) The nonqualified intermediary appoints the QI as its agent for providing the statement to the PTP (or PTP's agent). See §1.6031(c)-1T(f).

(N) QI must file a separate Form 1042-S for a grantor or owner of a grantor trust for purposes of section 1446(a) or (f), except when QI applies the provisions of section 4.06 of this Agreement with respect to the trust.

(O) QI must file a separate Form 1042-S for a partnership holding a PTP interest to the extent that QI determines a modified amount realized with respect to the partnership for purposes of section 1446(f) or, for purposes of section 1446(a), when the partnership is not a PTP, but excluding either case when QI applies the provisions of section 4.06 of this Agreement with respect to the partnership.

(P) QI must file a separate Form 1042-S with respect to a foreign partner that requests such form from QI to report a payment of an amount subject to withholding on a PTP distribution or amount subject to reporting under section 1446(f) when the partner provides its U.S. TIN to QI (or indicates in writing that it has applied for a U.S. TIN) and makes the request to QI within three full calendar years following the year in which QI made the payment for which the Form 1042-S is requested. If QI files a separate Form 1042-S with respect

to an amount paid to a foreign partner as described in the preceding sentence, QI must also file a separate Form 1042-S for each other amount paid to the foreign partner for the calendar year with respect to all accounts held by foreign partner with QI.

Sec. 8.03. Reporting Pools for Form 1042-S Reporting.

(A) Chapter 4 Reporting Pools.

* * * If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an account holder that is (or is presumed) a U.S. person and that QI reports as a U.S. account under its applicable FATCA requirements as a participating FFI or registered deemed-compliant FFI provided that QI is excepted from Form 1099 reporting with respect to the payment under section 8.06(A)(1) of this Agreement or section 8.06(A)(2) and (A)(3) of this Agreement if the payment is excepted from Form 1099 reporting, is not subject to withholding under chapter 4, and is not a PTP distribution. * * *

(B) Chapter 3 Reporting Pools. Except for amounts required to be reported under section 8.02 of this Agreement or when QI acts as a disclosing QI for a payment, QI shall report an amount subject to chapter 3 withholding or withholding under section 1446(a) or (f) for which no chapter 4 withholding is required and that is paid to a foreign account holder by reporting pools on a Form 1042-S if paid to a direct account holder of QI or to a direct account holder of a PAI of QI, or to a partnership or trust described in section 4 of this Agreement. * * *

Sec. 8.07. Section 6031 Reporting Responsibility with respect to Partner Holding PTP Interest.

(A) In General. A QI must comply with the requirements of this section 8.07 for each calendar year for purposes of QI's requirement to report under §1.6031(c)-1T with respect to its account holders. An account holder for purposes of this section 8.07 is a partner or intermediary that during a calendar year receives from QI a PTP distribution or sells a PTP interest for which QI pays to it an amount realized and is—

(1) A direct account holder of QI excluding an account holder that is a QI or nonqualified intermediary referenced in section 8.07(A)(2) or (3) of this Agreement;

(2) An account holder of another QI acting as a disclosing QI for the distribution or amount realized (including an account holder of the other QI that is itself a QI but not acting as a disclosing QI); or

(3) An account holder of a nonqualified intermediary when QI either receives the information required for reporting under this section 8.07 with respect to an account holder receiving the distribution or, for the amount realized paid to the account holder, satisfies the conditions of section 8.02(M) of this Agreement (or is otherwise a PAI).

(B) QI not Acting as Disclosing QI.

A QI that does not act as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest may provide the statement with respect to the account holder specified in §1.6031(c)-1T(a) to the PTP in which the interest is held (or PTP's agent). If QI does not provide the statement specified in §1.6031(c)-1T(a) as described in the preceding sentence, QI must issue to each account holder receiving the distribution or amount realized the statement that is described in §1.6031(c)-1T(h) for the calendar year with respect to the PTP interest for which the distribution or amount realized was paid. In such a case, QI is also required to request from the PTP the PTP's deemed sale information for purposes of §1.864(c)(8)-2(b)(2) with respect to an account holder requesting (directly or through another intermediary) this information from QI (which, in turn, QI must provide to the account holder).

(C) QI Acting as Disclosing QI.

A QI that acts as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest is required to provide the statement with respect to the account holder specified in §1.6031(c)-1T(a) to the PTP in which the interest is held (or PTP's agent) or QI's nominee for the payment. Additionally, in a case in which QI provides the statement to QI's nominee, QI must obtain from the nominee a written representation that the nominee is acting as an agent of the PTP for purposes of the statement unless QI otherwise appoints the nominee as its agent for providing

the statement to the PTP (or the PTP's agent). See §1.6031(c)-1T(f).

SECTION 9. ADJUSTMENTS FOR OVER- AND UNDER-WITHHOLDING; REFUNDS

Sec. 9.01. Adjustments for Overwithholding by Withholding Agent When QI Does not Assume Primary Withholding Responsibility.

* * *

The reimbursement and set-off procedures that apply to an amount overwithheld by QI's withholding agent under chapter 3 and 4 also apply to an amount overwithheld on an amount realized or on an amount subject to withholding under section 1446(a) on a PTP distribution by QI's broker (for an amount realized), or a nominee or PTP (for a PTP distribution).

Sec. 9.02. Adjustments for Overwithholding by QI Assuming Primary Withholding Responsibility.

* * *

The reimbursement and set-off procedures that apply to an amount QI overwithheld under chapter 3 and 4 also apply to an amount QI overwithheld on an amount realized or an amount subject to withholding under section 1446(a) on a PTP distribution.

Sec. 9.05. Adjustments for Underwithholding.

* * *

QI may withhold from future payments in a case in which QI underwithheld on an amount realized or PTP distribution to the same extent applicable to an amount QI underwithheld on under chapter 3 or 4.

Sec. 9.04. Collective Credit or Refund Procedures for Overwithholding.

* * *

(A) Payments for which a Collective Refund is Permitted.

* * *

QI is not permitted to use the collective refund procedures with respect to an amount withheld on an amount realized on a sale of a PTP interest or on a PTP distribution. * * *

* * *

SECTION 10. COMPLIANCE PROCEDURES

* * *

10.03. Certification of Internal Controls by Responsible Officer.

(B) Material Failures.

(1) Material Failures Defined.

(iv) ***

(i) Withhold an amount that QI was required to withhold on a payment of an amount realized from the sale of a PTP interest or on a PTP distribution as required under section 3 of this Agreement or provide correct information to a withholding agent or broker when QI does not assume primary withholding responsibility for either payment under section 3.02 of this Agreement; or

(j) Comply with the requirements of section 8.07 of this Agreement with respect to one or more account holders that are partners holding PTP interests (including account holders of another intermediary when QI acts as an agent for meeting these requirements).

SECTION 11. EXPIRATION, TERMINATION, MERGER AND DEFAULT

Sec. 11.06. Event of Default. ***

(B) QI underwithholds a material amount of tax that QI is required to withhold under chapter 3, section 1446(a), section 1446(f), or chapter 4, or backup withhold under section 3406 and fails to correct the underwithholding or to file an amended Form 1042 or 945 reporting, and paying, the appropriate tax;

(E) QI files Forms 945, 1042, 1042-S, 1099, or 8966 that are materially incorrect or fraudulent, or fails to comply materially with the requirements of section 8.07 of this Agreement with respect to account holders that are partners holding PTP interests (including account holders of another intermediary when QI acts as an agent for meeting these requirements).

SECTION 5. SUBMISSION OF PUBLIC COMMENTS

Written comments may be submitted by May 31, 2022. Comments should include a reference to Notice 2022-23. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2022-0010 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2022-23), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

All commenters are strongly encouraged to submit comments electronically, as access to mail may be limited. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

SECTION 6. DRAFTING INFORMATION

The principal author of this Notice is W. Shawver Adams of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact John Sweeney at (202) 317-3800 (not a toll-free number).

26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 223; Part III § 54.9831-1)

Rev. Proc. 2022-24

SECTION 1. PURPOSE

This revenue procedure provides the 2023 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code and the maximum amount that may be made newly available for excepted benefit health reimbursement arrangements (HRAs) provided under § 54.9831-1(c)(3)(viii) of the Pension Excise Tax Regulations.

SECTION 2. 2023 INFLATION ADJUSTED ITEMS

.01 HSA INFLATION ADJUSTED ITEMS

Annual contribution limitation. For calendar year 2023, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is \$3,850. For calendar year 2023, the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is \$7,750.

High deductible health plan. For calendar year 2023, a “high deductible health plan” is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than \$1,500 for self-only coverage or \$3,000 for family coverage, and for which the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed \$7,500 for self-only coverage or \$15,000 for family coverage.

.02 HRA INFLATION ADJUSTED ITEM

For plan years beginning in 2023, the maximum amount that may be made newly available for the plan year for an excepted benefit HRA under § 54.9831-1(c)(3)(viii) is \$1,950. See § 54.9831-1(c)(3)(viii)(B)(1) for further explanation of this calculation.

SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for HSAs for calendar year 2023 and for excepted benefit HRAs for plan years beginning in 2023.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Bill Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding § 223 and HSAs contact William Fischer at (202) 317-5500 (not a toll-free number). For further information regarding excepted benefit HRAs, contact Christopher Dellana at (202) 317-5500 (not a toll-free number). For further information regarding the calculation of the inflation adjustments in this revenue procedure, contact Mr. Ruane at (202) 317-4718 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

Mortality Tables for Determining Present Value under Defined Benefit Pension Plans

REG-106384-20

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document sets forth proposed regulations prescribing mortality tables to be used for most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. The tables are used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for the plan. These mortality tables are also relevant for determining the minimum required amount of a lump-sum distribution from such a plan. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain defined benefit pension plans.

DATES: Written or electronic comments must be received by June 9, 2022. A public hearing on these proposed regulations has been scheduled for June 28, 2022 at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by June 9, 2022. If no outlines are received by June 9, 2022, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. EST on June 24, 2022.

The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by June 23, 2022.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-106384-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (the Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LP-D:PR (REG-106384-20), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-106384-20).

Individuals who want to testify (by telephone) at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106384-20 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-106384-20. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend (by telephone) the public hearing must also send an email to publichearings@irs.gov to receive

the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106384-20 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-106384-20. To request special assistance during the telephonic hearing contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-5177 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Arslan Malik or Linda Marshall at (202) 317-6700; concerning submission of comments and outlines of topics for the public hearing, call Regina Johnson at (202) 317-6901 (not toll-free numbers) or email publichearings@irs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans, and section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.¹ Section 430(a) defines the minimum required contribution by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430.

¹ Section 302 of the Employee Retirement Income Security Act of 1974, Public Law No. 93-406, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

Those mortality tables are to be based on the actual mortality experience of pension plan participants and projected trends in that experience. In prescribing those mortality tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans. Under section 430(h)(3)(B), the Secretary is required to revise any mortality table in effect under section 430(h)(3)(A) at least every 10 years to reflect actual mortality experience of pension plan participants and projected trends in that experience. Under section 430(h)(3)(C), a plan sponsor is permitted to request the Secretary's approval to use plan-specific substitute mortality tables that meet requirements specified in the statute rather than the generally applicable mortality tables. If approved, these substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and for individuals with disabilities occurring in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Section 417(e)(3) generally provides that the present value of certain benefits under a qualified pension plan (including single-sum distributions) must not be less than the present value of the accrued benefit using applicable interest rates and the

applicable mortality table. Section 417(e)(3)(B) defines the term "applicable mortality table" as the mortality table specified for the plan year for minimum funding purposes under section 430(h)(3)(A) (without regard to the rules for substitute mortality tables under section 430(h)(3)(C) or mortality tables for disabled individuals under section 430(h)(3)(D)), modified as appropriate by the Secretary. The modifications made by the Secretary to the section 430(h)(3)(A) mortality table to determine the section 417(e)(3)(B) applicable mortality table are not addressed in these proposed regulations. Revenue Ruling 2007-67, 2007-2 CB 1047, describes the modifications that are currently applied to determine the section 417(e)(3)(B) applicable mortality table.

Final regulations under section 430(h)(3) were published in the **Federal Register** on October 5, 2017 in TD 9826, 82 FR 46388 (the 2017 regulations). Section 1.430(h)(3)-1 prescribes base mortality tables and a set of mortality improvement rates, which may be reflected through the use of either generational mortality tables or static mortality tables. The generational mortality tables are a series of mortality tables, one for each year of birth, each of which fully reflects projected trends in mortality rates. The static mortality tables (which are updated annually²) use a single mortality table for all years of birth to approximate the present value that would be determined using the generational mortality tables.

The mortality tables included in the 2017 regulations are based on the mortality tables included in the RP-2014 Mortality Tables Report³ (referred to in this preamble as the RP-2014 mortality tables), which was released by the Retirement Plan Experience Committee (RPEC) of the Society of Actuaries (SOA) in October 2014 (as revised in November 2014), and a set of mortality improvement rates (the Scale MP-2016 rates) as released by RPEC.⁴ In 2016, RPEC initiated a study of private-sector retirement plans in the U.S. in order to provide an update to RP-2014,

and in 2019, RPEC issued the Pri-2012 Private Retirement Plans Mortality Tables Report (Pri-2012 Report).⁵

In Notice 2019-67 (which provides mortality improvement rates and static mortality tables for 2021), the Treasury Department and the IRS asked for comments regarding future mortality tables under section 430(h)(3)(A). The notice identified the mortality tables in the Pri-2012 Report as a potential source for developing updated mortality tables under section 430(h)(3)(A) and requested comments regarding (1) whether there are other studies of actual mortality experience of individuals covered by pension plans and projected trends in that experience that should be considered for use in developing updated mortality tables under section 430(h)(3)(A), such as studies that examine the mortality experience of individuals covered by large public-sector pension plans, and (2) if the mortality tables in the Pri-2012 Report were to be used to develop updated mortality tables under section 430(h)(3)(A), which of the tables in that report should be used. In October 2021, RPEC published the Mortality Improvement Scale MP-2021 Report (MP-2021 Report), which is the latest update to its study on mortality improvement.⁶ In response to the request for comments in Notice 2019-67, the Treasury Department and the IRS received seven comments. The comments are discussed in the Explanation of Provisions.

The standards prescribed for developing the mortality tables under 430(h)(3)(A) are the same as the standards that are prescribed for developing mortality tables for multiemployer plans under section 431(c)(6)(D)(iv)(II) (which are used to determine current liability in order to determine the minimum full funding limitation under section 431(c)(6)(B)). See § 1.431(c)(6)-1 (providing that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)-1(a) are used to determine a multiemployer plan's current liability). These standards also apply for CSEC

² Static mortality tables were published in Notice 2017-60, 2017-43 IRB 365, Notice 2018-02, 2018-2 IRB 281, Notice 2019-26, 2019-15 IRB 943, Notice 2019-67, 2019-52 IRB 1510, and Notice 2020-85, 2020-51 IRB 1645.

³ This report is available at <https://www.soa.org/globalassets/assets/files/research/exp-study/research-2014-rp-report.pdf>.

⁴ This report is available at <https://www.soa.org/globalassets/assets/files/Research/Exp-Study/mortality-improvement-scale-mp-2016.pdf>.

⁵ This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2019/pri-2012-mortality-tables-report.pdf>.

⁶ This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2021/2021-mp-scale-report.pdf>.

plans described in section 414(y) for purposes of developing mortality tables that are used for purposes of section 433(h)(3)(B)(i) (to determine current liability in order to determine the minimum full funding limitation under section 433(c)(2)(C) and the funded current liability percentage under section 433(i)). See § 1.433(h)(3)-1 (providing that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)-1(a) are used to determine a CSEC plan's current liability).

Explanation of Provisions

These proposed regulations set forth the methodology that the Treasury Department and the IRS intend to use to update the generally applicable mortality tables that are used to determine present value or make any computation under section 430. Pursuant to section 417(e)(3)(B), a modified version of these updated tables would be used for purposes of determining the amount of a single-sum distribution (or another accelerated form of distribution). In addition, these tables would be used to determine current liability for multiemployer plans under section 431(c)(6) and CSEC plans under section 433(h).

The methodology for developing updated tables under section 430(h)(3)(A) is being proposed pursuant to the requirement under section 430(h)(3)(B) to revise the mortality tables used under section 430 to reflect the actual mortality experience of pension plan participants and projected trends in that experience. As under the 2017 regulations, the methodology involves the separate determination of base mortality tables and the projection of mortality improvement.

A. Base Mortality Tables

The base mortality tables proposed for use under section 430(h)(3)(A) are derived from the tables set forth in the Pri-2012 Report. After reviewing the Pri-2012 Report and comments received in response to Notice 2019-67, the Treasury Department and the IRS have determined that the experience study used to develop the Pri-2012 Report is the best available study of the actual mortality experience

of pension plan participants (other than disabled individuals). Accordingly, the mortality tables in the Pri-2012 Report are the foundation for the base mortality tables used to project the mortality of pension plan participants under these proposed regulations. Like the mortality tables provided in the 2017 regulations, the mortality tables set forth in these proposed regulations are gender-distinct and provide separate non-annuitant and annuitant mortality rates.

Unlike the Pri-2012 Report, these proposed regulations do not provide separate tables for annuitants who are retirees and annuitants who are contingent beneficiaries. In response to the request for comments in Notice 2019-67, most commenters recommended against the use of separate mortality tables for retirees and contingent beneficiaries because: (1) those separate mortality tables are complex to apply on an exact basis; (2) applying those mortality tables would require actuaries to use historical data that may be difficult to obtain; and (3) the use of those separate mortality tables would not have a significant effect in measuring a plan's liabilities. After reviewing the comments, the Treasury Department and the IRS concluded that the regulations should not provide separate mortality tables for annuitants who are retirees and annuitant who are contingent beneficiaries. Accordingly, these proposed regulations provide annuitant mortality tables that combine the mortality experience of retirees and contingent beneficiaries.

As under the 2017 regulations, these proposed regulations provide that the annuitant mortality tables are applied to determine the present value of benefits for an annuitant. For a non-annuitant, the non-annuitant mortality tables are applied for the periods before the participant is projected to commence receiving benefits, and the annuitant mortality tables are used for later periods. With respect to a beneficiary of a participant, the annuitant mortality tables apply for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality tables apply with respect to the beneficiary for the period beginning with each

assumed commencement of benefits for the beneficiary.

These proposed regulations set forth base tables that are to be used to develop the mortality tables for future years. These base tables have a base year of 2012 (the central year of the experience study used to develop the mortality tables in the Pri-2012 Report). These base tables generally have the same mortality rates as the employee and non-disabled annuitant mortality rates that were released by RPEC in connection with the Pri-2012 Report. However, these base tables also include non-annuitant mortality rates for ages below age 18 and above age 80 and annuitant mortality rates for ages below age 50. This generally is the same approach that was used to develop the base mortality tables in the 2017 regulations.

The non-annuitant mortality rates for ages above age 80 were developed by (1) using the annuitant rates from the base mortality tables for ages 90 and older, and (2) interpolating between the rates for age 80 and age 90 in order to produce a smooth transition between the age 80 rates from the non-annuitant tables to the age 90 rates from the annuitant tables. The interpolation uses increasing fractions with a denominator of 55 to allocate the total difference between the rates at ages 80 and 90 over those 10 years. Thus, the rate at age 81 is set equal to the rate at age 80 plus 1/55 of the total difference, the age 82 rate is equal to the rate at age 81 plus 2/55 of the total difference (so that the age 82 rate is equal to the rate at age 80 plus 3/55 of the total difference), and so on for other ages.

A similar approach was used to develop annuitant rates for ages below age 50 for males and 52 for females. The annuitant rates for ages under age 50 for males and 52 for females were determined by (1) using the non-annuitant rates from the base mortality tables for ages 18 to 40, and (2) interpolating between the rates for age 40 and a later age, using the same methodology described in the preceding paragraph. The later age for males was 50 and for females was 52 (requiring that a denominator of 78 be substituted for 55 when that methodology was applied for females). This method produces a smooth transition between the age 40 rates from the non-annuitant tables and the age 50

rates for males, and age 52 rates for females, from the annuitant tables. In addition, some anomalous rates for female annuitants at ages 55 and 56 in the Pri-2012 Report were smoothed by using a straight linear interpolation between the age 54 rates and the age 57 rates from the female annuitant table. For ages below age 18, both the non-annuitant and annuitant rates incorporate the juvenile rates from the Pri-2012 Report.

B. Mortality Improvement

These proposed regulations use the Scale MP-2021 Rates (the mortality improvement scale in the MP-2021 Report) for valuation dates in the 2023 calendar year. This mortality improvement scale was developed using the same underlying methodology used to develop earlier mortality improvement scales but reflects historical population data through 2019 and the change to the RPEC-selected assumptions for the long-term rate of mortality improvement that was first incorporated in the Mortality Improvement Scale MP-2020 Report.⁷ The Treasury Department and the IRS understand that RPEC expects to issue updated mortality improvement rates that reflect new data for mortality improvement trends for the general population on an annual basis. The Treasury Department and the IRS expect to take those updates into account in determining the mortality rates to be used under section 430(h)(3) for valuation dates in years after 2023. Those rates will be specified in guidance to be published in the Internal Revenue Bulletin. See § 601.601(d).

C. Use of Static Tables for Small Plans

The 2017 regulations provide for the use of separate generational non-annuitant and annuitant mortality tables and separate static non-annuitant and annuitant mortality tables. The preamble to those regulations explains that static mortality tables are permitted to be used (notwithstanding that generational mortality tables yield more accurate results) because of the limitations of some current actuarial software

that is not designed to use generational tables. Since the issuance of the 2017 regulations, the software needed to use generational mortality tables has become widely used and is often used for other business needs such as financial accounting. There is no longer a need to allow the use of static mortality tables for most plans because most actuarial firms have the capability to use generational mortality tables. Requiring most employers to use generational mortality tables also minimizes anti-selection by plan sponsors who determine that the use of static mortality tables results in lower minimum funding requirements. Accordingly, these proposed regulations eliminate the use of separate static non-annuitant and annuitant mortality tables and require the use of generational mortality tables for plans that are not considered small plans.

These proposed regulations continue to allow the use of static mortality tables for small plans (defined as plans with 500 or fewer participants), as well as for multiemployer and CSEC plans. However, the static mortality tables that may be used for these plans are combined tables reflecting non-annuitant and annuitant mortality rates. These tables are constructed from a blend of non-annuitant and annuitant mortality rates based on the underlying data used in developing the Pri-2012 Report.

Applicability Date

These regulations are proposed to apply to plan years beginning on or after January 1, 2023.

Other Matters

A. Effect of Regulations on Previously Approved Substitute Mortality Tables

The 2017 regulations also included rules regarding the use of plan-specific mortality tables under section 430(h)(3)(C), which are set forth in § 1.430(h)(3)-2.⁸ Section 1.430(h)(3)-2(c)(6)(ii) provides for the early termination of the use of substitute mortality tables in certain

circumstances, including pursuant to a replacement of the mortality tables specified in § 1.430(h)(3)-1. Under § 1.430(h)(3)-2(c)(6)(ii)(E), the early termination pursuant to such a replacement must be effective as of a date specified in guidance published in the Internal Revenue Bulletin. Except as described in the next paragraph, the Treasury Department and the IRS do not intend to require the early termination of previously approved substitute mortality tables in connection with the proposed replacement of the generally applicable mortality tables.

Under § 1.430(h)(3)-2(c)(6)(ii)(C), the use of substitute mortality tables is terminated early if there is a significant change in the individuals covered by the plan. As defined in § 1.430(h)(3)-2(c)(6)(iii)(A), a significant change is either an increase or decrease in the number of individuals covered by the substitute mortality table for the plan year of more than 20 percent of the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, under § 1.430(h)(3)-2(c)(6)(iii)(A), a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

When final regulations providing for the replacement of mortality tables under section 430 are issued, the Treasury Department and the IRS anticipate issuing guidance in the Internal Revenue Bulletin pursuant to § 1.430(h)(3)-2(c)(6)(ii)(E) that will require the early termination of a plan's previously approved substitute mortality table only if the plan has experienced a significant change in coverage under § 1.430(h)(3)-2(c)(6)(iii). The early termination would apply without regard to any plan actuary certification that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population.

⁷This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2020/mortality-improvement-scale-mp-2020.pdf>.

⁸Rev. Proc. 2017-55, 2017-43 IRB 373, sets forth the procedure by which a plan sponsor of a defined benefit plan may request and obtain approval for the use of plan-specific substitute mortality tables in accordance with section 430(h)(3)(C).

B. Impact of COVID-19 on Mortality Rates

The mortality improvement rates in these proposed regulations are based on the MP-2021 Report, which was prepared in 2021 based on the most recent data available at that time (estimated 2019 calendar year data). Accordingly, the MP-2021 mortality improvement scale does not take into account any mortality experience in calendar years 2020 and 2021, which are the first years affected by the COVID-19 pandemic. In selecting their assumed long-term improvement rates, RPEC did not make any adjustments to take into account any effects of COVID-19 on mortality rates in the long term because there was no consensus on COVID-19's effect on expected future mortality experience.⁹ Accordingly, the mortality improvement rates in these regulations do not take into account the impact of the COVID-19 pandemic.

The MP-2021 Report includes a review of actual mortality data from 2020 and a portion of 2021. For the 40-week period starting March 22, 2020, the review indicated that the number of deaths was approximately 120 percent of the expected number. For 2021, that ratio dropped to 110 percent in the spring, before increasing in the summer. The number of deaths attributable to the COVID-19 pandemic has remained high during the early part of 2022. These higher mortality rates do not indicate that the MP-2021 mortality improvement scale is flawed, but merely reflect that the model did not anticipate COVID-19 in projecting the mortality rates for these years.

The mortality rates provided in these proposed regulations would apply starting in 2023. If the impact of COVID-19 on mortality experience is viewed as only a short-term phenomenon, the mere fact that the model in the MP-2021 Report (upon which these proposed regulations are based) did not reflect the actual mortality experience for 2020 through 2022 does not mean that the mortality rates in these proposed regulations are inappropriate because it is not clear to what extent the increased mortality associated with

COVID-19 will continue for 2023 and later years. However, to the extent there is a long-term higher mortality rate from COVID-19, the Treasury Department and the IRS expect that RPEC will reflect the long-term impact of COVID-19 in future mortality improvement scales, which could be specified for use in future guidance. The Treasury Department and the IRS request comments about how the data for periods in which mortality experience for plan participants has been significantly affected by the COVID-19 pandemic should be taken into account in future mortality improvement rates under these regulations and future base mortality tables.

These proposed regulations do not change any of the rules or procedures required for employers to request substitute mortality tables. The Treasury Department and the IRS request comments about whether the rules and procedures relating to development of substitute mortality tables should be modified to recognize the potential that the mortality experience for the period of the COVID-19 pandemic is not accurately predictive of the future mortality experience for participants of a plan for which substitute mortality tables are requested.

Incorporation by Reference

Section 1.430(h)(3)-1(b)(1)(iii) of the proposed regulations provides that the mortality improvement rates used to construct generational tables to be used for valuation dates occurring during 2023 are the Scale MP-2021 Rates, which are included in the Mortality Improvement Scale MP-2021 Report. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that agencies must discuss in the preamble to a rule or proposed rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. 1 CFR 51.5(b).

The Scale MP-2021 Rates and the Mortality Improvement Scale MP-2021

Report are described in this preamble under the heading “B. Mortality Improvement” in the **Explanation of Provisions** section of this preamble. The Mortality Improvement Scale MP-2021 Report was issued by the Retirement Plans Experience Committee of the Society of Actuaries on October 27, 2021, and is available at <https://www.soa.org/resources/experience-studies/2021/mortality-improvement-scale-mp-2021>.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at 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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. The only provision that increases regulatory burden is § 1.430(h)(3)-1(b), which generally requires the use of generational mortality tables. However, under § 1.430(h)(3)-1(c), small entities are not required to use generational mortality tables. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

⁹RPEC cited uncertainty relating to the effectiveness of vaccines and treatments, severity of future variants, and the long-term effect of having recovered from COVID-19 on an employee's health.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the “ADDRESSES” section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations.

A public hearing is being held by teleconference on June 28, 2022, beginning at 10 a.m. EST. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments by telephone at the hearing must submit electronic or written comments and an outline of the topics to be addressed and the time to be devoted to each topic by June 9, 2022, as prescribed in the preamble under the “ADDRESSES” section.

A period of 10 minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at www.regulations.gov, search IRS and REG-106384-20. Copies of the agenda will also be available by emailing a request to publichearings@irs.gov. Please put “REG-106384-20 Agenda Request” in the subject line of the email.

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S. F. Marshall of the 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 these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.430(h)(3)-1 is revised to read as follows:

§ 1.430(h)(3)-1 Mortality tables used to determine present value.

(a) *Overview*—(1) *Standard mortality tables*. This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. These mortality tables include—

(i) Generational mortality tables described in paragraph (b) of this section; and

(ii) Static mortality tables for small plans described in paragraph (c) of this section.

(2) *Alternative tables*—(i) *Plan-specific mortality tables*. In lieu of using the mortality tables provided under this section, plan-specific substitute mortality tables are permitted to be used for purposes of section 430 pursuant to section 430(h)(3)(C), provided that the requirements of § 1.430(h)(3)-2 are satisfied.

(ii) *Disabled individuals*. In lieu of using the mortality tables provided under this section, mortality tables for disabled individuals are permitted to be used pursuant to section 430(h)(3)(D). These tables are provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(b) *Generational mortality tables*—(1) *In general*—(i) *Construction of generational mortality tables*. The generational mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1)(i) of this section are constructed from the base mortality tables described in paragraph (b)(1)(ii) of this section and the mortality improvement rates described in paragraph (b)(1)(iii) of this section.

(ii) *Base mortality tables*. The base mortality tables are set forth in paragraph (d) of this section. The base year for those tables is 2012.

(iii) *Mortality improvement rates*. The mortality improvement rates for valuation dates occurring during 2023 are the Scale MP-2021 Rates.

Note 1 to paragraph (b)(1)(iii): For later years, updated mortality improvement rates that take into account new data for mortality improvement trends of the general population will also be incorporated by reference.

(iv) *Incorporation by reference*. The material listed in this paragraph (b)(1)(iv) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the IRS and at the National Archives and Records Administration (NARA). Contact IRS at: Qualified Plans Branch 1, CC:EEE:QP1, 1111 Constitution Avenue NW, Washington, DC 20224; (202) 317-6700; www.irs.gov/retirement-plans/interest-rates-tables. For information on the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html. The material is available from the Society of Actuaries at: Society of Actuaries, 475 N. Martingale Rd., Suite 600, Schaumburg, IL 60173; (847) 706-3500; <https://www.soa.org/resources/experience-studies/2021/mortality-improvement-scale-mp-2021/>.

(A) The Scale MP-2021 Rates.

(B) [Reserved]

(2) *Application of mortality improvement rates*—(i) *In general*. Under the generational mortality tables described in this paragraph (b), the probability of an individual’s death at a particular age in the future is determined as the individual’s base mortality rate that applies at that age (that is, the applicable mortality rate from the tables set forth in paragraph (d) of this section for that age, gender, and status as an annuitant or a non-annuitant) multiplied by the cumulative mortality improvement factor for the individual’s gender and for that age for the period from 2012 through the calendar year in which the individual is projected to reach the particular age. Paragraph (b)(3) of this section shows how the base mortality tables in paragraph (d) of this section and the mortality improvement rates for valuation dates occurring during 2023 are combined to determine projected mortality rates.

(ii) *Cumulative mortality improvement factor*. The cumulative mortality improvement factor for an age and gender for a period is the product of the annual mortality

improvement factors for that age and gender for each year within that period.

(iii) *Annual mortality improvement factor.* The annual mortality improvement factor for an age and gender for a year is 1 minus the mortality improvement rate that applies for that age and gender for that year. If that annual mortality improvement

rate is greater than 1 (corresponding to a negative mortality improvement rate), then the projected mortality rate for that age and gender for that year is greater than the projected mortality rate for the same age and gender for the preceding year.

(3) *Example of calculation—(i) Calculation of mortality rate.* The mortality rate for 2023 that is

applied to male annuitants who are age 67 in 2023 is equal to the product of the mortality rate for 2012 that applied to male annuitants who were age 67 in 2012 (0.01288) and the cumulative mortality improvement factor for age 67 males from 2012 to 2023. The cumulative mortality improvement factor for age 67 males for the period from 2012 to 2023 is 0.9919, and the mortality rate for 2023 for male annuitants who are age 67 in that year would be 0.01278, as shown in the following table.

Table 1 to Paragraph (b)(3)(i)

Calendar Year	Mortality Improvement Rate	Annual Mortality Improvement Factor (1- Mortality Improvement Rate)	Cumulative Mortality Improvement Factor	Mortality Rate
2012	n/a	n/a	n/a	0.01288
2013	0.0052	0.9948	0.9948	
2014	0.0027	0.9973	0.9921	
2015	0.0009	0.9991	0.9912	
2016	(0.0003)	1.0003	0.9915	
2017	(0.0010)	1.0010	0.9925	
2018	(0.0016)	1.0016	0.9941	
2019	(0.0016)	1.0016	0.9957	
2020	(0.0010)	1.0010	0.9967	
2021	0.0000	1.0000	0.9967	
2022	0.0015	0.9985	0.9952	
2023	0.0033	0.9967	0.9919	0.01278

(ii) *Probability of survival for an individual.* After the projected mortality rates are derived for each age for each year, the rates are used to calculate the present value of a benefit stream that depends on the probability of survival year-by-year. For example, for purposes of calculating the present value (for a 2023 valuation date) of future payments in a benefit stream payable for a male annuitant who is age 67 in 2023, the probability of survival for the annuitant is based on the mortality rate for a male annuitant who is age 67 in 2023 (0.01278), and the projected mortality rate for a male annuitant who will be age 68 in 2024 (0.01378), age 69 in 2025 (0.01489), and so on.

(4) *Use of the tables—(i) Separate tables for annuitants and non-annuitants.* Separate mortality tables are provided for use for annuitants and non-annuitants. The non-annuitant mortality tables are applied to determine the probability of survival for a non-annuitant for the period before the non-annuitant is projected to commence receiving benefits. The annuitant mortality tables are applied to determine the present value of benefits for each annuitant. In addition, the annuitant mortality tables are applied for each non-annuitant with respect to each assumed commencement of benefits for the period beginning with that assumed commencement. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a non-annuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced

is treated as an annuitant with respect to the portion of the benefit that has commenced and treated as a non-annuitant with respect to the balance of the benefit. In addition, with respect to a beneficiary of a participant, the annuitant mortality tables apply for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality tables apply with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

(ii) *Examples of calculation using separate non-annuitant and annuitant tables.* With respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target is determined using the non-annuitant mortality tables for the period before the participant attains age 55 and using the annuitant mortality tables for the period ages 55 and above. Similarly, for a 45-year-old terminated vested participant who is projected to commence an annuity at age 65, the funding target is determined using the non-annuitant mortality tables for the period before the participant attains age 65 and using the annuitant mortality tables for ages 65 and above.

(c) *Static mortality tables—(1) Availability of alternative tables for small plans—(i) In general.* As an alternative to the generational mortality tables defined in paragraph (b) of this section, static mortality tables may be used for a small plan. The static mortality tables described in this paragraph

(c) are constructed from the separate non-annuitant and annuitant static mortality tables described in paragraph (c)(2)(i) of this section, combined using the procedure described in paragraph (c)(2)(ii) of this section.

(ii) *Definition of small plan.* For purposes of this paragraph (c), a small plan is defined as a plan with 500 or fewer total participants (including both active and inactive participants and beneficiaries of deceased participants) on the valuation date.

(iii) *Use of static mortality tables.* The static mortality tables that are used for a valuation date are the static mortality tables for the calendar year that includes the valuation date.

(iv) *Publication of mortality tables.* The static mortality tables for the 2023 calendar year are set forth in paragraph (e) of this section.

Note 2 to paragraph (c)(1)(iv): The static mortality tables for valuation dates for later calendar years will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(2) *Development of static mortality tables—(i) Non-annuitant and annuitant mortality tables.* The non-annuitant and annuitant static mortality tables are determined using the base mortality tables described in paragraph (b)(1)(ii) of this section. The rates in those base mortality tables are adjusted using the mortality improvement rates described in paragraph (b)(1)(iii) of this section, in accordance with the rules set forth in paragraph (c)(3) of this section.

(ii) *Combined static mortality tables.* The static mortality tables described in this paragraph (c) are

constructed from the separate non-annuitant and annuitant static mortality tables pursuant to paragraph (c)(2)(i) of this section, blended using the weighting factors in paragraph (d) of this section. The weighting factors are applied to develop these combined static tables using the following equation: Combined mortality rate = [non-annuitant rate * (1 - weighting factor)] + [annuitant rate * weighting factor].

(3) *Projection of mortality improvements*—(i) *General rule.* Except as provided in paragraph (c)(3)(iii) of this section, the static mortality tables for a calendar year are determined by multiplying the applicable mortality rate for each age from the base mortality tables by both—

(A) The cumulative mortality improvement factor (determined under paragraph (b)(2)(ii) of this section) for the period from 2012 through that calendar year; and

(B) The cumulative mortality improvement factor (determined under paragraph (b)(2)(ii) of this section) for the period beginning in that calendar year and continuing beyond that calendar year for the

number of years in the projection period described in paragraph (c)(3)(ii) of this section.

(ii) *Projection period for static mortality tables*—(A) *In general.* The projection period is 8 years for males and 9 years for females, as adjusted based on age as provided in paragraph (c)(3)(ii)(B) of this section.

(B) *Age adjustment.* For ages below 80, the projection period is increased by 1 year for each year below age 80. For ages above 80, the projection period is reduced (but not below zero) by ½ year for each year above 80.

(iii) *Fractional projection periods.* If for an age the number of years in the projection period determined under paragraph (c)(3)(ii) of this section is not a whole number, then the mortality rate for that age is determined by using linear interpolation between—

(A) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next lower whole number; and

(B) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section

if the number of years in the projection period were the next higher whole number.

(iv) *Example.* For example, at age 85 the projection period for a male is 6½ years (8 years minus ½ year for each of the 5 years above age 80). For a valuation date in 2023, the mortality rate in the static mortality table for an 85-year-old male is based on a projection of mortality improvement for 6½ years beyond 2023. Under paragraph (c)(3)(iii) of this section, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2023 is ⅔ times the projected mortality rate for a male annuitant that age in 2029 plus ⅓ times the projected mortality rate for a male annuitant that age in 2030. Accordingly, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2023 is 0.07967 (⅔ times the projected mortality rate for an 85-year-old male annuitant in 2029 (0.07986) plus ⅓ times the projected mortality rate for an 85-year-old male annuitant in 2030 (0.07928)).

(d) *Base mortality tables.* The following are the base mortality tables. The base year for these tables is 2012.

Table 2 to Paragraph (d)

Age	Males			Females		
	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
0	0.00650	0.00650	0.0000	0.00544	0.00544	0.0000
1	0.00045	0.00045	0.0000	0.00038	0.00038	0.0000
2	0.00030	0.00030	0.0000	0.00023	0.00023	0.0000
3	0.00022	0.00022	0.0000	0.00018	0.00018	0.0000
4	0.00019	0.00019	0.0000	0.00013	0.00013	0.0000
5	0.00016	0.00016	0.0000	0.00012	0.00012	0.0000
6	0.00014	0.00014	0.0000	0.00011	0.00011	0.0000
7	0.00013	0.00013	0.0000	0.00010	0.00010	0.0000
8	0.00011	0.00011	0.0000	0.00009	0.00009	0.0000
9	0.00009	0.00009	0.0000	0.00009	0.00009	0.0000
10	0.00008	0.00008	0.0000	0.00009	0.00009	0.0000
11	0.00009	0.00009	0.0000	0.00009	0.00009	0.0000
12	0.00013	0.00013	0.0000	0.00010	0.00010	0.0000
13	0.00017	0.00017	0.0000	0.00012	0.00012	0.0000
14	0.00022	0.00022	0.0000	0.00013	0.00013	0.0000
15	0.00028	0.00028	0.0000	0.00013	0.00013	0.0000
16	0.00034	0.00034	0.0000	0.00014	0.00014	0.0000
17	0.00040	0.00040	0.0000	0.00015	0.00015	0.0000
18	0.00046	0.00046	0.0000	0.00015	0.00015	0.0000
19	0.00053	0.00053	0.0000	0.00015	0.00015	0.0000
20	0.00056	0.00056	0.0000	0.00015	0.00015	0.0000
21	0.00056	0.00056	0.0000	0.00015	0.00015	0.0000
22	0.00056	0.00056	0.0000	0.00016	0.00016	0.0000
23	0.00055	0.00055	0.0000	0.00018	0.00018	0.0000
24	0.00055	0.00055	0.0000	0.00019	0.00019	0.0000
25	0.00054	0.00054	0.0000	0.00019	0.00019	0.0000
26	0.00054	0.00054	0.0000	0.00019	0.00019	0.0000

Age	Males			Females		
	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
27	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
28	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
29	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
30	0.00055	0.00055	0.0000	0.00021	0.00021	0.0000
31	0.00055	0.00055	0.0000	0.00022	0.00022	0.0000
32	0.00056	0.00056	0.0000	0.00023	0.00023	0.0000
33	0.00058	0.00058	0.0000	0.00025	0.00025	0.0000
34	0.00059	0.00059	0.0000	0.00026	0.00026	0.0000
35	0.00061	0.00061	0.0000	0.00028	0.00028	0.0000
36	0.00063	0.00063	0.0000	0.00031	0.00031	0.0000
37	0.00065	0.00065	0.0000	0.00034	0.00034	0.0000
38	0.00068	0.00068	0.0000	0.00036	0.00036	0.0000
39	0.00071	0.00071	0.0000	0.00040	0.00040	0.0000
40	0.00074	0.00074	0.0000	0.00043	0.00043	0.0000
41	0.00077	0.00082	0.0008	0.00047	0.00049	0.0010
42	0.00081	0.00099	0.0016	0.00051	0.00061	0.0020
43	0.00086	0.00124	0.0024	0.00055	0.00078	0.0030
44	0.00091	0.00158	0.0032	0.00060	0.00101	0.0040
45	0.00097	0.00200	0.0040	0.00065	0.00130	0.0051
46	0.00105	0.00251	0.0047	0.00071	0.00165	0.0061
47	0.00113	0.00310	0.0055	0.00077	0.00206	0.0071
48	0.00123	0.00378	0.0063	0.00083	0.00252	0.0081
49	0.00134	0.00454	0.0071	0.00090	0.00304	0.0091
50	0.00147	0.00539	0.0079	0.00098	0.00362	0.0101
51	0.00161	0.00544	0.0140	0.00107	0.00426	0.0185
52	0.00177	0.00565	0.0209	0.00116	0.00495	0.0262
53	0.00194	0.00588	0.0302	0.00126	0.00500	0.0349
54	0.00213	0.00616	0.0430	0.00137	0.00512	0.0449
55	0.00234	0.00647	0.0898	0.00148	0.00517	0.0853
56	0.00257	0.00686	0.1676	0.00161	0.00522	0.1535
57	0.00281	0.00728	0.2153	0.00175	0.00528	0.1923
58	0.00308	0.00770	0.2635	0.00190	0.00561	0.2291
59	0.00338	0.00811	0.3144	0.00206	0.00601	0.2680
60	0.00369	0.00848	0.3821	0.00224	0.00643	0.3192
61	0.00403	0.00882	0.4579	0.00243	0.00690	0.3731
62	0.00441	0.00918	0.5935	0.00264	0.00743	0.4705
63	0.00481	0.00960	0.7153	0.00287	0.00796	0.5668
64	0.00525	0.01014	0.7764	0.00312	0.00859	0.6230
65	0.00573	0.01087	0.8454	0.00339	0.00928	0.7172
66	0.00636	0.01178	0.9002	0.00380	0.01003	0.8006
67	0.00706	0.01288	0.9275	0.00427	0.01089	0.8414
68	0.00784	0.01418	0.9431	0.00480	0.01192	0.8658
69	0.00870	0.01564	0.9547	0.00540	0.01309	0.8857
70	0.00967	0.01729	0.9642	0.00606	0.01444	0.9046
71	0.01073	0.01914	0.9732	0.00681	0.01597	0.9240
72	0.01192	0.02121	0.9791	0.00765	0.01770	0.9365
73	0.01323	0.02354	0.9823	0.00860	0.01967	0.9437

Age	Males			Females		
	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
74	0.01469	0.02613	0.9847	0.00966	0.02192	0.9512
75	0.01632	0.02905	0.9868	0.01085	0.02445	0.9568
76	0.01812	0.03233	0.9889	0.01219	0.02727	0.9637
77	0.02012	0.03604	0.9906	0.01370	0.03042	0.9682
78	0.02234	0.04026	0.9920	0.01539	0.03391	0.9727
79	0.02480	0.04504	0.9935	0.01729	0.03775	0.9765
80	0.02754	0.05046	1.0000	0.01943	0.04198	1.0000
81	0.02989	0.05657	1.0000	0.02134	0.04663	1.0000
82	0.03460	0.06343	1.0000	0.02516	0.05178	1.0000
83	0.04166	0.07114	1.0000	0.03089	0.05754	1.0000
84	0.05108	0.07977	1.0000	0.03853	0.06401	1.0000
85	0.06285	0.08946	1.0000	0.04808	0.07132	1.0000
86	0.07698	0.10032	1.0000	0.05955	0.07954	1.0000
87	0.09346	0.11248	1.0000	0.07293	0.08879	1.0000
88	0.11229	0.12600	1.0000	0.08822	0.09936	1.0000
89	0.13348	0.14088	1.0000	0.10542	0.11124	1.0000
90	0.15703	0.15703	1.0000	0.12453	0.12453	1.0000
91	0.17401	0.17401	1.0000	0.13818	0.13818	1.0000
92	0.19151	0.19151	1.0000	0.15250	0.15250	1.0000
93	0.20936	0.20936	1.0000	0.16737	0.16737	1.0000
94	0.22742	0.22742	1.0000	0.18274	0.18274	1.0000
95	0.24569	0.24569	1.0000	0.19863	0.19863	1.0000
96	0.26415	0.26415	1.0000	0.21509	0.21509	1.0000
97	0.28281	0.28281	1.0000	0.23214	0.23214	1.0000
98	0.30169	0.30169	1.0000	0.24983	0.24983	1.0000
99	0.32077	0.32077	1.0000	0.26814	0.26814	1.0000
100	0.33996	0.33996	1.0000	0.28698	0.28698	1.0000
101	0.35910	0.35910	1.0000	0.30619	0.30619	1.0000
102	0.37794	0.37794	1.0000	0.32549	0.32549	1.0000
103	0.39633	0.39633	1.0000	0.34472	0.34472	1.0000
104	0.41415	0.41415	1.0000	0.36375	0.36375	1.0000
105	0.43131	0.43131	1.0000	0.38243	0.38243	1.0000
106	0.44771	0.44771	1.0000	0.40065	0.40065	1.0000
107	0.46329	0.46329	1.0000	0.41828	0.41828	1.0000
108	0.47800	0.47800	1.0000	0.43522	0.43522	1.0000
109	0.49181	0.49181	1.0000	0.45139	0.45139	1.0000
110	0.50000	0.50000	1.0000	0.46673	0.46673	1.0000
111	0.50000	0.50000	1.0000	0.48120	0.48120	1.0000
112	0.50000	0.50000	1.0000	0.49477	0.49477	1.0000
113	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
114	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
115	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
116	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
117	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
118	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
119	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
120	1.00000	1.00000	1.0000	1.00000	1.00000	1.0000

(e) *Static tables for 2023.* The following static mortality tables are used pursuant to paragraph

(a)(1)(ii) of this section for determining present value or making any computation under section

430 with respect to valuation dates occurring during 2023.

Table 3 to Paragraph (e)

Age	Male	Female
0	0.00226	0.00194
1	0.00016	0.00014
2	0.00011	0.00008
3	0.00008	0.00007
4	0.00007	0.00005
5	0.00006	0.00005
6	0.00005	0.00004
7	0.00005	0.00004
8	0.00004	0.00004
9	0.00004	0.00004
10	0.00003	0.00004
11	0.00004	0.00004
12	0.00005	0.00004
13	0.00007	0.00005
14	0.00009	0.00006
15	0.00012	0.00006
16	0.00015	0.00006
17	0.00017	0.00007
18	0.00020	0.00007
19	0.00024	0.00007
20	0.00026	0.00007
21	0.00026	0.00007
22	0.00027	0.00008
23	0.00027	0.00009
24	0.00028	0.00010
25	0.00029	0.00010
26	0.00030	0.00011
27	0.00032	0.00012
28	0.00033	0.00012
29	0.00035	0.00013
30	0.00037	0.00014
31	0.00038	0.00015
32	0.00040	0.00016
33	0.00043	0.00018
34	0.00045	0.00018
35	0.00048	0.00020
36	0.00051	0.00022
37	0.00053	0.00024
38	0.00055	0.00026
39	0.00058	0.00028
40	0.00059	0.00029
41	0.00061	0.00031
42	0.00063	0.00033
43	0.00065	0.00035

Age	Male	Female
44	0.00067	0.00037
45	0.00069	0.00039
46	0.00073	0.00042
47	0.00078	0.00046
48	0.00083	0.00049
49	0.00088	0.00053
50	0.00097	0.00059
51	0.00106	0.00065
52	0.00118	0.00074
53	0.00132	0.00084
54	0.00148	0.00094
55	0.00176	0.00113
56	0.00217	0.00140
57	0.00254	0.00161
58	0.00296	0.00188
59	0.00342	0.00218
60	0.00396	0.00254
61	0.00456	0.00294
62	0.00539	0.00354
63	0.00623	0.00418
64	0.00693	0.00476
65	0.00779	0.00555
66	0.00874	0.00640
67	0.00972	0.00717
68	0.01081	0.00798
69	0.01201	0.00893
70	0.01337	0.01002
71	0.01490	0.01130
72	0.01663	0.01276
73	0.01858	0.01442
74	0.02081	0.01636
75	0.02336	0.01858
76	0.02629	0.02115
77	0.02966	0.02406
78	0.03353	0.02736
79	0.03796	0.03106
80	0.04313	0.03557
81	0.04868	0.04000
82	0.05503	0.04498
83	0.06223	0.05058
84	0.07040	0.05694
85	0.07967	0.06416
86	0.09014	0.07229
87	0.10191	0.08147
88	0.11507	0.09197
89	0.12960	0.10372
90	0.14540	0.11681
91	0.16201	0.13032
92	0.17900	0.14437

Age	Male	Female
93	0.19623	0.15892
94	0.21351	0.17370
95	0.23063	0.18881
96	0.24879	0.20508
97	0.26725	0.22194
98	0.28591	0.23947
99	0.30502	0.25760
100	0.32431	0.27640
101	0.34372	0.29564
102	0.36307	0.31511
103	0.38223	0.33471
104	0.40097	0.35426
105	0.41863	0.37356
106	0.43581	0.39243
107	0.45234	0.41085
108	0.46796	0.42844
109	0.48288	0.44529
110	0.49240	0.46134
111	0.49374	0.47665
112	0.49507	0.49112
113	0.49651	0.49746
114	0.49795	0.49840
115	0.49930	0.49950
116	0.49960	0.49975
117	0.49980	0.49985
118	0.49995	0.50000
119	0.50000	0.50000
120	1.00000	1.00000

(f) *Applicability date.* This section applies for plan years beginning on or after January 1, 2023.

Par. 3. Section 1.431(c)(6)-1 is revised to read as follows:

§ 1.431(c)(6)-1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* In accordance with section 431(c)(6)(D), the mortality assumptions that apply to a single-employer defined benefit plan for the plan year pursuant to sections 430(h)(3)(A) and 430(h)(3)(D) and §§ 1.430(h)(3)-1(a)(1) and (a)(2)(ii) are used to determine a multiemployer plan’s current liability for purposes of applying the rules of section 431(c)(6). For purposes of this paragraph (a),

either the generational mortality tables used pursuant to § 1.430(h)(3)-1(b) or the static mortality tables used pursuant to § 1.430(h)(3)-1(c) are permitted to be used without regard to whether the plan is a small plan. However, substitute mortality tables under §§ 1.430(h)(3)-1(a)(2)(i) and 1.430(h)(3)-2 are not permitted to be used for purposes of this paragraph (a).

(b) *Applicability date.* This section applies for plan years beginning on or after January 1, 2023.

Par. 4. Section 1.433(h)(3)-1 is revised to read as follows:

§1.433(h)(3)-1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* In accordance with

section 433(h)(3)(B), the mortality assumptions that apply to a single-employer defined benefit plan for the plan year pursuant to sections 430(h)(3)(A) and 430(h)(3)(D) and §§ 1.430(h)(3)-1(a)(1) and (a)(2)(ii) are used to determine a cooperative and small-employer charity (CSEC) plan’s current liability under section 433(h). For purposes of this paragraph (a), either the generational mortality tables used pursuant to §1.430(h)(3)-1(b) or the static mortality tables used pursuant to §1.430(h)(3)-1(c) are permitted to be used without regard to whether the plan is a small plan. However, substitute mortality tables under §§ 1.430(h)(3)-1(a)(2)(i) and 1.430(h)(3)-2 are not permitted to be used for purposes of this paragraph (a).

(b) *Applicability date.* This section applies for plan years beginning on or after January 1, 2023.

Douglas W. O'Donnell,
*Deputy Commissioner for Services
and Enforcement.*

(Filed by the Office of the Federal Register on April 27, 2022, 8:45 a.m., and published in the issue of the Federal Register for April 28, 2022, 87 F.R. 25161)

Notice of Proposed Rulemaking Estate and Gift Taxes; Limitation on the Special Rule Regarding a Difference in the Basic Exclusion Amount

REG-118913-21

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the Estate Tax Regulations relating to the basic exclusion amount (BEA) applicable to the computation of Federal estate and gift taxes. The proposed regulations affect the estates of decedents dying after a reduction in the BEA who made certain types of gifts after 2017 and before a reduction in the BEA.

DATES: Written or electronic comments and requests for a public hearing must be received by July 26, 2022. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-118913-21) by following the online instructions for submitting comments. Once submitted to the Federal

eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-118913-21), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John D. MacEachen at (202) 317-6859; concerning submissions of comments, the public hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317-5177 (not toll-free numbers) or by sending an email to Publichearings@irs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 11061 of the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054, 2091 (2017) (TCJA), amended section 2010(c)(3) of the Internal Revenue Code (Code) to provide that, for decedents dying and gifts made after December 31, 2017, and before January 1, 2026, the BEA is increased by \$5 million to \$10 million as adjusted for inflation (increased BEA). Under the TCJA, on January 1, 2026, the BEA will revert to \$5 million as adjusted for inflation.

Section 11061 of the TCJA also added new section 2001(g)(2) to the general statute of the Code that imposes the Federal estate tax. Section 2001(g)(2) grants the Secretary of the Treasury or her delegate (Secretary) authority to prescribe such regulations as may be necessary or appropriate to carry out section 2001 with respect to any difference between the BEA applicable at the time of a decedent's death and the BEA applicable with

respect to any gifts made by the decedent. This specific authority is in addition to the Secretary's preexisting authority under section 2010(c)(6) to prescribe such regulations as may be necessary or appropriate to carry out section 2010(c).

On November 26, 2019, the Treasury Department and the IRS published final regulations under section 2010 (TD 9884) in the **Federal Register** (84 FR 64995) to address situations described in section 2001(g)(2) (final regulations). The final regulations adopted §20.2010-1(c), a special rule (special rule) applicable in cases where the credit against the estate tax that is attributable to the BEA is less at the date of death than the sum of the credits attributable to the BEA allowable in computing gift tax payable within the meaning of section 2001(b)(2) with regard to the decedent's lifetime gifts. In such cases, the portion of the credit against the net tentative estate tax that is attributable to the BEA is based on the sum of the credits attributable to the BEA allowable in computing gift tax payable regarding the decedent's lifetime gifts. The rule ensures that the estate of a donor is not taxed on completed gifts that, as a result of the increased BEA, were free of gift tax when made. The preamble to the final regulations stated that further consideration would be given to the issue of whether gifts that are not true inter vivos transfers, but rather are includible in the gross estate, should be excepted from the special rule, and that any proposal addressing this issue would benefit from notice and comment.

This document contains proposed amendments to the Estate Tax Regulations (26 CFR part 20) relating to the BEA described in section 2010(c)(3) of the Code (proposed regulations), for which purpose the final regulations reserved §20.2010-1(c)(3). The special rule currently does not distinguish between: (i) completed gifts that are treated as adjusted taxable gifts for estate tax purposes and that, by definition, are not included in the donor's gross estate; and (ii) completed gifts that are treated as testamentary transfers for estate tax purposes and are included in the donor's gross estate (includible gift). The Code and the regulations, however, do distinguish

between these two types of transfers. Section 2001(b) (flush language) excludes from the term “adjusted taxable gifts” gifts that are includible in the gross estate. Section 2701(e)(6) and §25.2701-5 similarly remove from adjusted taxable gifts transfers includible in the gross estate that previously were subject to the special valuation rules of section 2701. See also §25.2702-6 (excluding from adjusted taxable gifts certain transfers includible in the gross estate that previously were subject to the special valuation rules of section 2702) and Rev. Rul. 84-25, 1984-1 C.B. 191 (excluding from adjusted taxable gifts completed transfers that will be satisfied with assets includible in the gross estate). In keeping with the statutory distinction between completed gifts that are treated as adjusted taxable gifts and completed gifts that are treated as testamentary transfers, these proposed regulations generally would deny the benefit of the special rule to includible gifts.

Regardless of whether a gift is treated as an adjusted taxable gift or as an includible gift for estate tax purposes, the Code ensures that the gift is treated consistently with respect to the credits allowable in the year in which the gift was made. See discussion of the five statutory steps of the estate tax computation in part III, *Federal Estate Tax Computation Generally*, in the Background section of the preamble to the notice of proposed rulemaking under section 2010 (REG-106706-18) published in the **Federal Register** (83 FR 59343) on November 23, 2018. The exclusion from adjusted taxable gifts of transfers includible in the gross estate does not affect the second step of the estate tax computation, the determination of a hypothetical gift tax referred to as the gift tax payable. Gift tax payable is based upon all post-1976 taxable gifts, whether or not included in the gross estate. See sections 2001(b)(2) and (g)(1), requiring the determination of a hypothetical gift tax on all post-1976 taxable gifts, which is a gift tax reduced, but not to below zero, by the credit amounts allowable in the years of the gifts. Both the hypothetical gift tax and the credit amounts are computed using the gift tax rates in effect at the date of death. Thus, for purposes of computing the estate tax, an includible gift receives credit for all

credit amounts, including those attributable to the increased BEA, allowable in the years in which the gift was made.

A commenter recommended consideration of whether the special rule should apply to taxable gifts made during an increased BEA period that are essentially testamentary and thus are included in the gross estate rather than in adjusted taxable gifts. See discussion in part 6, *Anti-Abuse Rule*, of the Summary of Comments and Explanation of Revisions in the final regulations. If such transfers are subject to the special rule, they can be made in a manner designed to make the increased BEA available against the donor’s estate tax despite the fact that the donor has retained the beneficial use of or the control of the transferred property. Examples of such transfers include gifts subject to a retained life estate or subject to other powers or interests as described in sections 2035 through 2038 and 2042 of the Code, gifts made by enforceable promise as described in Rev. Rul. 84-25, *supra*, and gifts subject to the special valuation rules of sections 2701 and 2702. In recommending an exception to the special rule, the commenter cautioned that attention should also be given to the potential to work around an exception that relies solely on whether gifts are includible in the gross estate. For example, a donor may attempt to make the increased BEA available against the estate tax under the special rule by the removal shortly before the donor’s death of the donor’s beneficial use of or the control of the transferred property. Examples of these types of transfers include the elimination by a third party, shortly before the donor’s death, of the interests or powers that otherwise would have resulted in the inclusion of the transferred interest or property in the donor’s gross estate; the payment shortly before death of a gift made by enforceable promise as described in Rev. Rul. 84-25, *supra*; and the transfer shortly before death of a section 2701 interest within the meaning of §25.2701-5(a)(4) or a section 2702 interest within the meaning of §25.2702-6(a)(1).

The purpose of the special rule is to ensure that bona fide inter vivos transfers of property are consistently treated as a

transfer of property by gift for both gift and estate tax purposes. Bona fide inter vivos gifts are subject to the gift tax based on the values, gift tax rates, and exclusions applicable as of the date of the gift. While such a gift is treated as an adjusted taxable gift for purposes of determining the estate tax rate to be applied to the value of the taxable estate, the gift is not includible in the donor’s gross estate at death and is not subject to the estate tax. The special rule avoids the imposition of the estate tax on the gift by ensuring that the gifted property is treated solely as an adjusted taxable gift and not also as property includible in the gross estate.

Unlike an adjusted taxable gift, however, a gift of property that is includible in the donor’s gross estate is subject to estate tax based on the values, estate tax rates, and exclusions applicable as of the date of death. The Code itself ensures that an includible gift is not treated as both an adjusted taxable gift and an inclusion in the gross estate. See section 2001(b) (flush language), excluding from “adjusted taxable gifts” gifts that are includible in the gross estate. The Code also ensures that an includible gift receives credit for any credit amounts allowable in the years in which the gift was made. See sections 2001(b)(2) and (g)(1). The treatment of an includible gift for estate tax purposes results in the correct outcome without any application of the special rule: the property is included in the gross estate and subject to the BEA in effect at the donor’s death.

There is a subset of includible gifts that the Code treats in a different fashion, but still in a way that results in the correct outcome without the application of the special rule. That subset consists of gifts made during an increased BEA period that are essentially testamentary, but the entire value of which is deductible for gift tax purposes by reason of the charitable or marital deduction (or both). Such transfers are excluded from adjusted taxable gifts because they never were taxable gifts in the first place. See section 2503(a), defining taxable gifts as the total amount of gifts made during the calendar year less the deductions provided in sections 2522 and 2523 for charitable and marital gifts, respectively. As a result of the exclusion of charitable and marital gifts from taxable gifts, and thus from

adjusted taxable gifts, there would be no credits allocable to these gifts attributable to the BEA in computing gift tax payable within the meaning of section 2001(b)(2). Because no BEA is applicable to the deductible gifts, there will be no difference between the BEA applicable to these gifts attributable to the increased BEA and the BEA applicable to the decedent's estate. As a result, there is no possibility of inconsistent gift and estate taxation of such an includible gift, and thus no need for the application of the special rule.

Without additional rules, however, the application of the special rule to includible gifts results in securing the benefit of the increased BEA in circumstances where the donor continues to have the title, possession, use, benefit, control, or enjoyment of the transferred property during life. In those circumstances, there is no possibility of the inclusion of the gift in adjusted taxable gifts at the death of the donor, and therefore no need for the application of the special rule to transfers of such property. In those circumstances, it is appropriate that the amount includible or treated as includible as part of the gross estate (rather than as an adjusted taxable gift) is subject to estate tax with the benefit of only the BEA available at the date of death. Section 2001(g)(2) directs the Secretary to prescribe such regulations as may be necessary or appropriate to carry out section 2001 with respect to any difference between the BEA applicable at the time of the decedent's death and the BEA applicable with respect to any gifts made by the decedent. Given the plain language of the Code describing the computation of the estate tax and directing that certain transfers, including transfers made within three years of death that otherwise would have been includible in the gross estate, are treated as testamentary transfers and not as adjusted taxable gifts, it would be inappropriate to apply the special rule to includible gifts. This is particularly true where the inter vivos transfers are not true bona fide transfers in which the decedent "absolutely, unequivocally, irrevocably, and without possible reservations, parts with all of his title and all of his possession and all of his enjoyment of the transferred property." *Commissioner v. Church's Estate*, 335 U.S. 632, 645 (1949). To prevent this inappropriate result, these proposed

regulations would create an exception to the special rule applicable to includible gifts.

The same commenter suggested that any exception to the special rule relating to transfers within the scope of section 2701 be specifically addressed in §25.2701-5. This suggestion is not adopted. Section 25.2701-5(a)(3) provides rules under which the estate of a decedent who made a transfer subject to section 2701 may reduce the decedent's adjusted taxable gifts in a manner similar to that of section 2001(b) so as to eliminate the amount duplicated in the transfer tax base. The amount of the reduction in adjusted taxable gifts is determined under §25.2701-5(b). See also §25.2702-6(b), providing a similar rule for certain interests previously subject to section 2702. Both §§25.2701-5 and 25.2702-6 address only the amount of adjusted taxable gifts but, with the exception of §25.2701-5(e)(3), do not address the amount of the credits allowable in the multiple steps necessary to determine the estate tax. As previously discussed, the effect of the estate tax computation is to provide the decedent the benefit of any credit amounts allowable in the years of the gifts, determined at date of death gift tax rates, including the credit amount attributable to a section 2701 or 2702 transfer that was free of gift tax when made as a result of the increased BEA, regardless of whether the amount of adjusted taxable gifts is later reduced for estate tax purposes. Thus, while a reduction in the amount of adjusted taxable gifts eliminates amounts duplicated in the transfer tax base, it neither changes the existence of the transfer nor frees up the credit allocable to that transfer. See, e.g., the Background section of the preamble to Adjustments Under Special Valuation Rules (TD 8536), published in the **Federal Register** (59 FR 23152) on May 5, 1994, explaining that the §25.2701-5 regulations do not "purge" a section 2701 transfer as if it had not occurred, but rather mitigate the effect of double taxation through a reduction in a decedent's adjusted taxable gifts.

As noted earlier, §25.2701-5(e)(3) permits an adjustment to both the adjusted taxable gifts and gift tax payable of a consenting spouse. In the case of an election under section 2513 to split a section 2701 transfer with the donor's spouse, a

later testamentary transfer of the section 2701 interest is treated as made solely by the donor spouse. The consenting spouse's adjusted taxable gifts and gift tax payable are each reduced to eliminate any remaining effect of the section 2701 interest on the consenting spouse in a manner that is generally consistent with the principles of sections 2001(d) and (e) (pertaining to the treatment of split gifts in the computation of the estate tax). This exception has no application to the donor spouse, who remains subject to the general rule of §25.2701-5(a)(3). Thus, it is not necessary to address differences in the BEA in either §25.2701-5 or §25.2702-6(b).

Explanation of Provisions

Pursuant to sections 2010(c)(6) and 2001(g)(2) of the Code, the proposed regulations would add proposed §20.2010-1(c)(3) to provide an exception to the special rule for transfers that are includible in the gross estate or are treated as includible in the gross estate for purposes of section 2001(b), including for example gifts subject to a retained life estate or subject to other powers or interests as described in sections 2035 through 2038 and 2042 of the Code regardless of whether the transfer was deductible pursuant to section 2522 or 2523, gifts made by enforceable promise, and other amounts that are duplicated in the transfer tax base, including a section 2701 interest within the meaning of §25.2701-5(a)(4) and a section 2702 interest within the meaning of §25.2702-6(a)(1). The exception to the special rule also would apply to transfers that would be described in the preceding sentence but for the transfer, elimination, or relinquishment within 18 months of the donor's date of death of the interest or power that would have caused inclusion in the gross estate, effectively allowing the donor to retain the enjoyment of the property for life. In addition to transfers, eliminations, or relinquishments by the donor, examples include the elimination, by a third party having the power to eliminate or extinguish the interest or power, of the interests or powers that otherwise would have resulted in inclusion of transferred property in the donor's gross estate; the payment of a gift made by enforceable promise as described in Rev. Rul. 84-25, *supra*;

and the transfer of a section 2701 interest within the meaning of §25.2701-5(a)(4) or a section 2702 interest within the meaning of §25.2702-6(a)(1). For purposes of the preceding sentence, such transfers, eliminations, and relinquishments include those effectuated by the donor, the donor in conjunction with any other person, or by any other person, but do not include those effectuated by the expiration of the period described in the original instrument of transfer, whether by a death or the lapse of time.

The special rule, however, would continue to apply to transfers includible in the gross estate when the taxable amount of the gift is not material, that is, the taxable amount is 5 percent or less of the total amount of the transfer, valued as of the date of the transfer. Compare section 2037(a)(2), excluding from the gross estate property subject to a reversionary interest where the value of such interest immediately before death is 5 percent or less of the value of the transferred property; and section 2042(2), excluding from the term “incidents of ownership” reversionary interests where the value of such interest immediately before death is 5 percent or less of the value of the life insurance policy. See also section 673(a), treating the grantor as the owner for income tax purposes of any portion of a trust in which the grantor’s reversionary interest exceeds 5 percent of the value of such portion as of the date of inception of that portion of the trust. This bright-line exception to the special rule is proposed in lieu of a facts and circumstances determination of whether a particular transfer was intended to take advantage of the increased BEA without depriving the donor of the use and enjoyment of the property.

The proposed exception to the special rule may be illustrated by the following example. Assume that when the BEA was \$11.4 million, a donor gratuitously transferred the donor’s enforceable \$9 million promissory note to the donor’s child. The transfer constituted a completed gift of \$9 million. On the donor’s death, the assets that are to be used to satisfy the note are part of the donor’s gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b). Thus, the \$9 million gift is excluded from adjusted taxable gifts in

computing the tentative estate tax under section 2001(b)(1). Nonetheless, if the donor dies after a statutory reduction in the BEA to \$6.8 million, the credit to be applied in computing the estate tax is the credit based upon the \$6.8 million of the BEA allowable as of the date of death.

Applicability Date

Once these regulations have been published as final regulations, it is proposed that these regulations be applicable to the estates of decedents dying on or after April 27, 2022. The special rule will not be needed until the basic exclusion amount has been decreased by statute; under current law, that is scheduled to occur for the estates of decedents dying after 2025. However, if such a decrease is enacted on or after April 27, 2022 but before the issuance of final regulations, the best way to ensure that all estates will be subject to the same rules is to make this proposed exception to the special rule applicable to the estates of decedents dying on or after April 27, 2022.

Special Analyses

These proposed 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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations apply to donors of gifts made after 2017 and to the estates of donors dying after a reduction in the BEA, and implement a change in the amount that is excluded from estate tax. Neither an individual nor the estate of a deceased individual is a small entity within the meaning of 5 U.S.C. 601(6). Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely (in the manner described under the **ADDRESSES** heading) to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a hearing are strongly encouraged to be submitted electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Rev. Rul. 84-25, 1984-1 C.B. 191, and Announcement 2020-4, 2020-17 IRB 1, are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is John D. MacEachen, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and record-keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 20.2010-1 also issued under 26 U.S.C. 2001(g)(2) and 26 U.S.C. 2010(c)(6).

* * * * *

Par. 2. Section 20.2010-1 is amended by:

1. Adding paragraph (c)(3); and
2. Revising the first sentence of paragraph (f)(2) and adding a sentence after the second sentence.

The revision and additions read as follows:

§20.2010-1 Unified credit against estate tax; in general.

* * * * *

(c) * * *

(i) *Exception to the special rule*—(i) *Transfers to which the special rule does not apply.* Except as provided in paragraph (c)(3)(ii) of this section, the special rule of paragraph (c) of this section does not apply to transfers includible in the gross estate, or treated as includible in the gross estate for purposes of section 2001(b), including without limitation the following transfers:

(A) Transfers includible in the gross estate pursuant to section 2035, 2036, 2037, 2038, or 2042, regardless of whether all or any part of the transfer was deductible pursuant to section 2522 or 2523;

(B) Transfers made by enforceable promise to the extent they remain unsatisfied as of the date of death;

(C) Transfers described in §25.2701-5(a)(4) or §25.2702-6(a)(1) of this chapter; and

(D) Transfers that would have been described in paragraph (c)(3)(i)(A), (B), or (C) of this section but for the transfer, relinquishment, or elimination of an interest,

power, or property, effectuated within 18 months of the date of the decedent's death by the decedent alone, by the decedent in conjunction with any other person, or by any other person.

(ii) *Transfers to which the special rule continues to apply.* Notwithstanding paragraph (c)(3)(i) of this section, the special rule of paragraph (c) of this section applies to the following transfers:

(A) Transfers includible in the gross estate in which the value of the taxable portion of the transfer, determined as of the date of the transfer, was 5 percent or less of the total value of the transfer; and

(B) Transfers, relinquishments, or eliminations described in paragraph (c)(3)(i)(D) of this section effectuated by the termination of the durational period described in the original instrument of transfer by either the mere passage of time or the death of any person.

(iii) *Examples.* In each example, the basic exclusion amount on the date of the gift was \$11.4 million, the basic exclusion amount on the date of death is \$6.8 million, and both amounts include hypothetical inflation adjustments. The donor's executor does not elect to use the alternate valuation date and, unless otherwise stated, the donor never married and made no other gifts during life.

(A) *Example 1.* Individual A made a completed gift of A's promissory note in the amount of \$9 million. The note remained unpaid as of the date of A's death. The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b) and is not included in A's adjusted taxable gifts. Because the note is treated as includible in the gross estate and does not qualify for the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section, the exception to the special rule found in paragraph (c)(3) of this section applies to the gift of the note. The credit to be applied for purposes of computing A's estate tax is based on the \$6.8 million basic exclusion amount as of A's date of death, subject to the limitation of section 2010(d). The result would be the same if A or a person empowered to act on A's behalf had paid the note within the 18 months prior to the date of A's death.

(B) *Example 2.* Assume that the facts are the same as in paragraph (c)(3)(iii)(A) of this section (*Example 1*) except that A's promissory note had a value of \$2 million and, on the same date that A made the gift of the promissory note, A also made a gift of \$9 million in cash. The cash gift was paid immediately, whereas the \$2 million note remained unpaid as of the date of A's death. The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section

2001(b) and is not included in A's adjusted taxable gifts. Because the \$2 million note is treated as includible in the gross estate and does not qualify for the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section, the exception to the special rule found in paragraph (c)(3) of this section applies to the gift of the note. On the other hand, the \$9 million cash gift was paid immediately, and no portion of that gift is includible or treated as includible in the gross estate. Because the amount allowable as a credit in computing the gift tax payable on A's \$9 million cash gift exceeds the credit based on the \$6.8 million basic exclusion amount allowable on A's date of death, the special rule of paragraph (c) of this section applies to that gift. The credit to be applied for purposes of computing A's estate tax is based on a basic exclusion amount of \$9 million, the amount used to determine the credit allowable in computing the gift tax payable on A's \$9 million cash gift.

(C) *Example 3.* Assume that the facts are the same as in paragraph (c)(3)(iii)(A) of this section (*Example 1*) except that, prior to A's gift of the note, the executor of the estate of A's predeceased spouse elected, pursuant to §20.2010-2, to allow A to take into account the predeceased spouse's \$2 million DSUE amount. Assume further that A's promissory note had a value of \$2 million on the date of the gift, and that A made a gift of \$9 million in cash a few days later. The cash gift was paid immediately, whereas the \$2 million note remained unpaid as of the date of A's death. The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate for purposes of section 2001(b) and is not included in A's adjusted taxable gifts. Because A's DSUE amount was sufficient to shield the gift of the note from gift tax, no basic exclusion amount was applicable to the \$2 million gift pursuant to paragraph (c)(1)(ii)(A) of this section and the special rule of paragraph (c) of this section does not apply to that gift. On the other hand, the \$9 million cash gift was paid immediately, and no portion of that gift is includible or treated as includible in the gross estate. Because the amount allowable as a credit in computing the gift tax payable on A's \$9 million cash gift exceeds the credit based on the \$6.8 million basic exclusion amount allowable on A's date of death, the special rule of paragraph (c) of this section applies to that gift. The credit to be applied for purposes of computing A's estate tax is based on A's \$11 million applicable exclusion amount, consisting of the \$2 million DSUE amount plus the \$9 million amount used to determine the credit allowable in computing the gift tax payable on A's \$9 million cash gift.

(D) *Example 4.* Individual B transferred \$9 million to a grantor retained annuity trust (GRAT), retaining a qualified annuity interest within the meaning of §25.2702-3(b) of this chapter valued at \$8,550,000. The taxable portion of the transfer valued as of the date of the transfer was \$450,000. B died during the term of the GRAT. The entire GRAT corpus is includible in the gross estate pursuant to §20.2036-1(c)(2). Because the value of the taxable portion of the transfer was 5 percent or less of the total value of the transfer determined as of the date of the gift, the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section is met and the exception to the special rule found in paragraph (c)(3) of this

section does not apply to the gift. However, because the total of the amounts allowable as a credit in computing the gift tax payable on B's post-1976 gift of \$450,000 is less than the credit based on the \$6.8 million basic exclusion amount allowable on B's date of death, the special rule of paragraph (c) of this section does not apply to the gift. The credit to be applied for purposes of computing B's estate tax is based on the \$6.8 million basic exclusion amount as of B's date of death, subject to the limitation of section 2010(d).

(E) *Example 5.* Assume that the facts are the same as in paragraph (c)(3)(iii)(D) of this section (*Example 4*) except that B's qualified annuity interest is valued at \$8 million. The taxable portion of the transfer valued as of the date of the transfer was \$1 million. Because the value of the taxable portion of the transfer was more than 5 percent of the total value of the transfer determined as of the date of the gift, the 5 percent de minimis rule in paragraph (c)(3)(ii)(A) of this section is not met and the exception to the special rule found in paragraph (c)(3) of this section applies to the gift. The credit to be applied for purposes of computing B's estate tax is based on the \$6.8 million basic exclusion amount as of B's date of death, subject to the limitation of section 2010(d).

(F) *Example 6.* Assume that the facts are the same as in paragraph (c)(3)(iii)(D) of this section (*Example 4*) except that B's qualified annuity interest

is valued at \$2 million. The taxable portion of the transfer valued as of the date of the transfer was \$7 million. B survived the term of the GRAT. Because B survived the original unaltered term of the GRAT, no part of the value of the assets transferred to the GRAT is includible in B's gross estate, and the exception to the special rule found in paragraph (c)(3) of this section does not apply to the gift. Moreover, because the amount allowable as a credit in computing the gift tax payable on B's \$7 million gift exceeds the credit based on the \$6.8 million basic exclusion amount allowable on B's date of death, the special rule of paragraph (c) of this section applies to the gift. The credit to be applied for purposes of computing B's estate tax is based on a basic exclusion amount of \$7 million, the amount used to determine the credit allowable in computing the gift tax payable on B's transfer to the GRAT.

(G) *Example 7.* Individual C transferred \$9 million to a grantor retained income trust (GRIT), retaining an income interest valued at \$0 pursuant to section 2702(a)(2)(A). The taxable portion of the transfer valued as of the date of the transfer was \$9 million. C died during the term of the GRIT. The entire GRIT corpus is includible in C's gross estate pursuant to section 2036(a)(1) because C retained the right to receive all of the income of the GRIT. Because the transferred assets are includible in the gross estate and do not qualify for the 5 percent de

minimis rule in paragraph (c)(3)(ii)(A) of this section, the exception to the special rule found in paragraph (c)(3) of this section applies to the gift. The credit to be applied for purposes of computing C's estate tax is based on the \$6.8 million basic exclusion amount as of C's date of death, subject to the limitation of section 2010(d).

* * * * *

(f) * * *

(2) *Exceptions.* Except as specifically provided in this paragraph (f)(2), paragraphs (c) and (e)(3) of this section apply to estates of decedents dying on or after November 26, 2019. * * * Paragraph (c)(3) of this section is applicable to the estates of decedents dying on or after April 27, 2022. * * *

Douglas W. O'Donnell,
*Deputy Commissioner for Services
and Enforcement.*

(Filed by the Office of the Federal Register on April 26, 2022, 8:45 a.m., and published in the issue of the Federal Register for April 27, 2022, 87 F.R. 24918)

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.

Numerical Finding List¹

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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, 2021.

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Internal Revenue Service

Washington, DC 20224

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