

# 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.

**Bulletin No. 2023-30**  
**July 24, 2023**

### EMPLOYEE PLANS, INCOME TAX

#### **REG-124123-22, page 369.**

These proposed regulations set forth rules specifying the methodology for constructing the corporate bond yield curve that is used to derive the interest rates used in calculating present value and making other calculations under a defined benefit plan, as well as for discounting unpaid losses and estimated salvage recoverable of insurance companies. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans, as well as insurance companies.

### EXCISE TAX

#### **Announcement 2023-18, page 366.**

The purposes of this announcement are to announce that: (1) taxpayers will not be required to report the new excise tax imposed by section 4501 of the Internal Revenue Code on repurchases of corporate stock during a covered corporation's taxable year (stock repurchase excise tax) on any returns filed with the IRS, or to make any payments of such tax, before the time specified in forthcoming regulations; (2) there will be no addition to tax under section 6651(a) of the Internal Revenue Code (or any other provision of the Internal Revenue Code) for failure to file a return reporting the stock repurchase excise tax, or for failure to pay the stock repurchase excise tax, before the time specified in the forthcoming regulations; and (3) the forthcoming regulations will require covered corporations to keep complete and detailed records to establish accurately any amount of stock repurchases (including repurchases made after December 31, 2022, but before the forthcoming regulations are published) and to retain these records as long as their contents may become material.

### EXEMPT ORGANIZATIONS

#### **Announcement 2023-19, page 367.**

Revocation of IRC 501(c) (3) Organizations for failure to meet the code section requirements Contributions made to the Organizations by individual donors are no longer deductible under IRC 170 (b)(1)(A)

#### **Announcement 2023-20, page 368.**

Revocation of IRC 501(c) (3) Organizations for failure to meet the code section requirements Contributions made to the Organizations by individual donors are no longer deductible under IRC 170 (b)(1)(A)

### INCOME TAX

#### **Notice 2023-37, page 359.**

In response to the end of the Coronavirus Disease 2019 (COVID-19) public health emergency and the National Emergency Concerning the Novel Coronavirus Disease 2019 Pandemic, this notice modifies prior guidance regarding benefits relating to testing for and treatment of COVID-19 that can be provided by a health plan that otherwise satisfies the requirements to be a high deductible health plan under section 223(c)(2)(A). Specifically, this notice provides that the relief described in Notice 2020-15, 2020-14 IRB 559, applies only with respect to plan years ending on or before December 31, 2024. This notice also clarifies whether certain items and services are treated as preventive care under section 223(c)(2)(C). Specifically, this notice clarifies that the preventive care safe harbor, as described in Notice 2004-23, 2004-15 IRB 725, does not include screening (i.e., testing) for COVID-19, effective as of the date of publication of this notice. This notice also provides that items and services recommended with an "A" or "B" rating by the United States Preventive Services Task

Force on or after March 23, 2010, are treated as preventive care for purposes of section 223(c)(2)(C), regardless of whether these items and services must be covered, without cost sharing, under Public Health Service Act section 2713.

**Notice 2023-50, page 361.**

This notice announces that under § 613A(c)(6)(C) of the Internal Revenue Code, the applicable percentage for purposes of determining percentage depletion on marginal properties for calendar year 2023 is 15 percent. The format of the notice is identical to the format of notices previously published on this issue.

**Notice 2023-51, page 362.**

This notice publishes the inflation adjustment factor and reference price for calendar year 2023 for the renewable electricity production credit under section 45 of the Internal Revenue Code. The 2023 inflation adjustment factor and reference price are used in determining the availability of the credit and apply to calendar year 2023 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources. This notice also provides the credit amounts for calendar year 2023 under section 45.

**T.D. 9976, page 354.**

This document contains final regulations that finalize, in part, proposed regulations issued on Oct. 9, 2019. The proposed regulations were published to facilitate an orderly transition in connection with the discontinuation of London interbank offer rates (LIBOR) and other IBORs. One issue addressed by those proposed regulations was to propose an alternative interest rate (specifically, yearly average Secured Overnight Financing Rate (SOFR)) for the election provided by § 1.882-5(d)(5)(ii) (B) (the published rate election). Generally, § 1.882-5 provides rules for determining the amount of a foreign corporation's interest expense that is allocable to its income effectively connected with the conduct of a U.S. trade or business. The published rate election permits a foreign bank to elect to use the 30-day USD LIBOR rate to compute the interest expense attributable to its excess U.S.-connected liabilities. A comment to the proposed regulations asserted that SOFR was not an appropriate replacement for 30-day USD LIBOR and recommended that finalization be delayed until a suitable replacement could be identified. In July 2022, a comment recommended using the average published one-month Term SOFR plus a static spread adjustment of 0.11448%. This final regulation adopts that recommendation.

# 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.

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

# Part I

**T.D. 9976**

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

### **Additional Guidance on the Transition from Interbank Offer Rates to Other Reference Rates with Respect to the Interest Rates of a Foreign Bank**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains additional final regulations that provide guidance on the transition away from the use of interbank offer rates (“IBORs”) to other reference rates. Specifically, this regulation provides the replacement rate for the IBOR presently used in the published rate election, which may be used by taxpayers to determine the amount of interest expense attributable to their excess U.S.-connected liabilities and allocable to income that is effectively connected with the conduct of a trade or business within the United States (“ECI”). The final regulations will affect foreign banks that have income that is ECI.

DATES: *Effective date:* This regulation is effective on June 30, 2023.

*Applicability date:* For dates of applicability, see § 1.882-5(f)(3).

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel or Caleb

W. Trimm, (202) 317-6938 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

This document contains final regulations that provide for the replacement of the 30-day IBOR rate presently referenced by § 1.882-5(d)(5)(ii)(B) with the Secured Overnight Financing Rate (“SOFR”) of the same tenor, plus a fixed spread adjustment.

##### *I. Discontinuation of IBORs and Transition to SOFRs*

The London Interbank Offered Rate (“LIBOR”) is an interest rate benchmark that was the dominant reference rate used in financial contracts, at one point serving as the benchmark for more than \$200 trillion of contracts worldwide. On July 27, 2017, the Financial Conduct Authority, the United Kingdom regulator tasked with overseeing LIBOR, announced that publication of all currency and term variants of LIBOR, including the U.S. dollar LIBOR (“USD LIBOR”), may cease after the end of 2021. On March 5, 2021, the administrator of LIBOR, Intercontinental Exchange (ICE) Benchmark Association, announced that publication of the overnight, one-month, three-month, six-month, and 12-month USD LIBORs would cease following the LIBOR publication on June 30, 2023. The ICE Benchmark Association will continue to publish an unrepresentative synthetic USD LIBOR in one-month, three-month, and six-month tenors until September 30, 2024.<sup>1</sup> Publication of all other currency and tenor variants of LIBOR (including the one-week and two-month USD LIBOR) ceased following the LIBOR publication on December 31, 2021.

The Alternative Reference Rate Committee (“ARRC”), whose ex officio

members include the Board of Governors of the Federal Reserve System, the Department of the Treasury (“Treasury Department”), the Commodity Futures Trading Commission, and the Office of Financial Research, was convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York to identify alternative reference rates that would be both more robust than USD LIBOR and that would comply with standards such as the International Organization of Securities Commissions’ “Principles for Financial Benchmarks.” In 2017, the ARRC identified a SOFR-based rate as its recommended replacement for LIBOR.

In 2021, the ARRC recommended the forward-looking term SOFRs published by the Chicago Mercantile Exchange Group Benchmark Administration, Ltd. in one-month, three-month, and six-month tenors. The ARRC has also recommended static spread adjustments to each of those tenors to adjust for the fact that SOFRs are risk-free rates, while IBORs include an element of bank credit risk. The static spread adjustments are based on the historical median over a 5-year lookback period calculating the difference between USD LIBOR and compounded averages of SOFR, set on March 5, 2021.<sup>2</sup> The recommended static spread adjustment for one-month SOFR is 0.11448%.

To support the transition away from USD LIBOR, the ARRC has published recommended fallback language for inclusion in the terms of certain cash products. Contracts governed by U.S. law that reference USD LIBOR but that do not have any (or that have inadequate) fallback provisions are generally required by the Adjustable Interest Rate Act (“LIBOR Act”), Pub. L. 117-103, div. U, to use the SOFR of the same tenor, plus a static spread adjustment. The static spread adjustments to SOFR for each USD tenor

<sup>1</sup> The synthetic USD LIBOR will be the Term SOFR of the same tenor (published by the Chicago Mercantile Exchange Group Benchmark Administration, Ltd.), plus a fixed spread adjustment of 0.11448%, 0.26161%, or 0.42826% for the one-, three-, and six-month tenors, respectively. Financial Conduct Authority, *Article 23D Benchmarks Regulation Draft Notice of Requirements* (April 3, 2023), <https://www.fca.org.uk/publication/libor-notices/article-23d-benchmarks-regulation-usd-draft-notice-requirements.pdf>. This rate is not considered representative because it uses a synthetic methodology to determine rates instead of the panel bank methodology that has historically been used to determine IBORs.

<sup>2</sup> For an explanation of the SOFR averaging calculation, see Federal Reserve Bank of New York, *Additional Information About the Reference Rates Administered by the New York Fed*, <https://www.newyorkfed.org/markets/reference-rates/additional-information-about-reference-rates>.

required by the LIBOR Act are the same as those recommended by the ARRC.

## II. Regulatory Background

The transition from IBORs to SOFRs or other reference rates may give rise to various tax issues. To minimize market disruption and facilitate an orderly transition in connection with the discontinuation of LIBOR and other IBORs, the Treasury Department and IRS published proposed regulations (REG-118784-18) in the **Federal Register** (84 FR 54068) on October 9, 2019 (“2019 Proposed Regulations”).

One issue addressed by the 2019 Proposed Regulations was the election provided by § 1.882-5(d)(5)(ii)(B). A foreign corporation that has a U.S. branch or other trade or business within the United States applies § 1.882-5 to determine its interest expense allocable under section 882(c) to its ECI. If a foreign corporation uses the method described in § 1.882-5(b) through (d), that foreign corporation could have liabilities attributable to its U.S. branch (U.S.-connected liabilities) that exceed its U.S.-booked liabilities (excess U.S.-connected liabilities). When a foreign corporation has excess U.S.-connected liabilities, § 1.882-5(d)(5)(ii)(A) entitles the foreign corporation to increase its interest expense allocable to its ECI in an amount determined by reference to the average U.S.-dollar borrowing cost on all U.S.-dollar liabilities other than its U.S.-booked liabilities. If the foreign corporation is a bank, it may elect under § 1.882-5(d)(5)(ii)(B) to use a published average 30-day LIBOR for the year rather than the actual rate computed under § 1.882-5(d)(5)(ii)(A). Because use of that election will no longer be possible when LIBOR is phased out, the 2019 Proposed Regulations included a proposal to replace 30-day USD LIBOR referenced in § 1.882-5(d)(5)(ii)(B) with a yearly average SOFR. Because SOFR is an overnight risk-free rate, the Treasury Department and the IRS acknowledged that the yearly average SOFR was likely to result in a lower rate than the 30-day LIBOR calculation previously allowed under § 1.882-5(d)(5)(ii)(B) and requested comments on whether another rate might be more appropriate.

Following publication of the 2019 Proposed Regulations, the Treasury Department and the IRS received one comment regarding the proposal to use yearly average SOFR in place of 30-day USD LIBOR for the election available under § 1.882-5(d)(5)(ii)(B). The comment noted two key differences between 30-day LIBOR and the yearly average SOFR, which the commenter stated made the yearly average SOFR an inappropriate substitute for 30-day LIBOR. First, SOFR is a risk-free rate, while LIBOR is an unsecured rate. Second, SOFR is an overnight rate, while the 30-day LIBOR is a one-month rate. The comment noted that SOFR removes the credit risk premium and term liquidity premium from the cost of borrowing as compared to 30-day LIBOR. The comment, however, did not identify a more reasonable substitute for 30-day LIBOR at that time and recommended that the Treasury Department and the IRS defer finalizing the proposed rule under § 1.882-5(d)(5)(ii)(B) because a yearly average SOFR calculation was not a reasonable replacement rate for 30-day USD LIBOR.

On January 4, 2022, the Treasury Department and the IRS published final regulations (TD 9961) in the **Federal Register** (87 FR 166) relating to the transition from IBORs to other reference rates (“2022 Final Regulations”). The 2022 Final Regulations did not finalize the proposed change to § 1.882-5(d)(5)(ii)(B). Instead, the Treasury Department and the IRS sought additional comments regarding the appropriate replacement rate for 30-day USD LIBOR for the purpose of the election under § 1.882-5(d)(5)(ii)(B).

Following the publication of the 2022 Final Regulations, the Treasury Department and the IRS received one additional comment regarding the appropriate replacement rate for the 30-day USD LIBOR rate referenced by § 1.882-5(d)(5)(ii)(B).

This comment is available for public inspection at <https://www.regulations.gov> or upon request. No public hearing was requested, and none was held. After consideration of the comments, the Treasury Department and the IRS adopt the 2019 Proposed Regulation as amended by this Treasury decision (“final regulations”).

## Summary of Comments and Explanation of Revisions

### I. Appropriate Replacement Rate for 30-Day LIBOR

In response to the request for additional comments in TD 9961, one comment was received relating to the 30-day USD LIBOR replacement in § 1.882-5(d)(5)(ii)(B). The comment made three recommendations for the final regulations under § 1.882-5(d)(5)(ii)(B).

#### A. One-Month Term SOFR Plus a Static Spread Adjustment

First, the comment recommended finalizing the regulation using the one-month term SOFR plus static spread adjustment of 0.11448% as recommended by the ARRC (which endorsed Term SOFR rates in June of 2021 and spread adjustments in October of 2021) and codified in the LIBOR Act (enacted in December of 2021). The comment noted that the one-month term SOFR plus a fixed spread adjustment accounts for some of the differences between SOFR and LIBOR rates and implied that one-month term SOFR plus static spread adjustment of 0.11448% is a more appropriate replacement than yearly average SOFR. The published rate election provides eligible taxpayers with administrative relief from the burden of calculating their actual borrowing rate, which is based on data maintained outside the United States.

The final regulations adopt this recommendation. The ARRC, whose ex officio members include the Treasury Department, has generally recommended that contracts referencing USD LIBOR adopt fallback provisions that reference the term SOFR of the same tenor, plus a static spread adjustment. The Treasury Department has supported the recommendations of the ARRC in prior guidance issued in Revenue Procedure 2020–44, 2020–45 I.R.B. 991 and the 2022 Final Regulations. In addition, contracts governed by U.S. law that have not voluntarily adopted such fallback provisions are generally required by the LIBOR Act to use the SOFR of the same tenor, plus the ARRC-recommended static spread adjustment, as a matter of law. Pub. L. 117-103,

div. U. Accordingly, both the Treasury Department and the U.S. Congress have endorsed, or required, the use of a term SOFR of the same tenor, plus the ARRC-recommended static spread adjustment, as a replacement for term USD LIBORs. Because the published rate election available under § 1.882-5(d)(5)(ii)(B) references 30-day LIBOR, the one-month term SOFR (plus static spread adjustment) is the most appropriate replacement rate.

#### *B. Alternative Method Approximating Actual Rate*

The comment also recommended that the final regulations allow taxpayers to use a rate that reasonably approximates the bank's actual rate and that is consistently applied from year to year. This recommendation is based on the approach taken in regulations that were in effect from 1981 through 1996. TD 7749, 46 FR 1681 (Jan. 7, 1981) (codified at former § 1.882-5(b)(3)(i)(B)). This historical regulation provided that, if information needed to calculate the taxpayer's actual interest rate could not be reasonably obtained, then the taxpayer could determine its interest rate by applying any method that reasonably approximated its actual interest rate and that was consistently applied year over year, including, for example, approximating its interest rate by reference to 30-day LIBOR. *Id.* at 1684-85. The comment expressed concern that the one-month term SOFR plus static spread adjustment may be less than the actual cost of borrowing; however, for some taxpayers it may not be worthwhile or possible for the corporation to calculate its actual borrowing rate.

The final regulations do not adopt this recommendation. An approach based on a reasonable approximation of a taxpayer's actual interest would establish a different method for determining a taxpayer's borrowing rate that does not provide the certainty, accuracy, and simplicity of a published rate election. Additionally, the IRS would face significant challenges in administering such a rule. For example, the comment did not suggest any standard by which the IRS might determine whether a taxpayer's method is a reasonable approximation of its actual borrowing rate.

Finally, data from recent filing years indicates that the actual rate calculation is not a significant burden to taxpayers. For taxable years 2020 and 2021 (the most recent years for which data is available), a majority of foreign banks with excess U.S.-connected liabilities chose to calculate their actual rate rather than use the published rate election. In both years, approximately 80% of such taxpayers opted to calculate their actual rate, while less than 20% chose to use the published rate election available under § 1.882-5(d)(5)(ii)(B).

#### *C. Mechanism for Endorsing Additional Replacement Rates*

Finally, the comment recommended that the final regulations include a mechanism for identifying additional qualified alternative reference rates via Internal Revenue Bulletin, Revenue Procedure, or another similar notice. The final regulations do not adopt this recommendation. The Treasury Department and the IRS do not anticipate a need to name additional alternative reference rates, and, if the need does arise in the future, the Treasury Department and the IRS may prefer to propose any new alternative reference rate through the regulatory process.

#### *II. Application of the Published Rate Election by the IRS in an Examination*

If a taxpayer failed to file a timely return or incorrectly determined that it did not have excess U.S.-connected liabilities, § 1.882-5(d)(5)(ii)(B) allowed the Director of Field Operations to calculate the taxpayer's interest expense with respect to excess U.S.-connected liabilities using either the taxpayer's actual rate or the published rate provided by § 1.882-5(d)(5)(ii)(B). The final regulations amend this rule to require the Director of Field Operations to use the published rate in order to reduce the administrative burden of calculating the actual rate for both the IRS and taxpayers.

#### *III. Transitional Rule For Taxable Years Including the Date of LIBOR Cessation*

For a taxable year that begins before and ends after the USD LIBOR cessation

date of June 30, 2023, a taxpayer that makes the published rate election available under § 1.882-5(d)(5)(ii)(B) must calculate a blended published rate average for the taxable year which uses the 30-day USD LIBOR for the portion of its taxable year ending on June 30, 2023, and the one-month Term SOFR, plus static spread adjustment, for the portion of its taxable year beginning on July 1, 2023.

#### *IV. Applicability Date*

These final regulations apply to taxable years ending after June 30, 2023.

### **Special Analyses**

#### *I. Regulatory Planning and Review – Economic Analysis*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

#### *II. Regulatory Flexibility Act*

The final regulations affect any foreign bank that has ECI and that has excess U.S.-connected liabilities, but which cannot reasonably calculate its actual borrowing rate. The number of small entities potentially affected by the final regulations is unknown; however, it is unlikely to be a substantial number because the final regulations only affect foreign banks that operate in the United States. In addition, data collected from Forms 1120-F, Schedule I filed in recent taxable years indicates that fewer than 100 total taxpayers are foreign banks with both ECI and excess U.S.-connected liabilities. The data from Forms 1120-F, Schedule I shows that the number of foreign banks that elected to use the 30-day USD LIBOR rate to compute the interest expense attributable to their excess U.S.-connected liabilities varied from year to year. In some years, as many as 50 foreign banks made the

election on Schedule I to use the 30-day USD LIBOR rate; in other years, fewer than ten taxpayers made that election. The Secretary has determined that the economic impact on any small entities affected by the final regulations is not significant.

The final regulations provide that the annual published rate election available under § 1.882-5(d)(5)(ii)(B) will be modified by substituting the one-month term SOFR, plus a static spread adjustment, for 30-day USD LIBOR. The rule does not require taxpayers to collect additional information to determine whether the taxpayer is eligible for the election. Additionally, the rule does not impose any new costs on taxpayers because it only replaces the published rate used for the purpose of the election and does not affect a taxpayer's obligation with respect to the information to be gathered and reported.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the Secretary hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

### III. Section 7805(f)

Pursuant to section 7805(f), the proposed regulations (REG-118784-18) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business, and no comments were received.

### IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### V. Executive Order 13132: Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This regulation does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

### Statement of Availability of IRS Documents

IRS Notices and other guidance cited in this preamble 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 authors of these regulations are D. Peter Merkel and Caleb W. Trimm of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and IRS amend 26 CFR part 1 as follows:

### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.882-5 to read in part as follows:

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

\* \* \* \* \*

Section 1.882-5 also issued under 26 U.S.C. 882(c), 26 U.S.C. 864(e), 26 U.S.C. 988(d), and 26 U.S.C. 7701(l).

\* \* \* \* \*

**Par. 2.** Section 1.882-5 is amended by revising the fourth sentence of paragraph (a)(7)(i) and paragraphs (d)(5)(ii)(B) and (f) to read as follows:

### § 1.882-5 Determination of interest deduction.

(a) \* \* \*

(7) \* \* \*

(i) \* \* \* An elected method (other than the fair market value method under paragraph (b)(2)(ii) of this section, or the published rate election in paragraph (d)(5)(ii) of this section) must be used for a minimum period of five years before the taxpayer may elect a different method. \* \* \*

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) *Annual published rate election—*  
(I) *In general.* For each taxable year in which a taxpayer is a bank within the meaning of section 585(a)(2)(B) (without regard to the second sentence of section 585(a)(2)(B) or whether any such activities are effectively connected with a trade or business within the United States), the taxpayer may elect to compute the interest expense attributable to excess U.S.-connected liabilities by using the average published one-month Term Secured Overnight Financing Rate published by the Chicago Mercantile Exchange Group Benchmark Administration, Ltd. (or any successor administrator) ("Term SOFR") for the taxable year, plus a static spread adjustment of 0.11448%, rather than the interest rate provided in paragraph (d)(5)(ii)(A) of this section. A taxpayer may elect to apply the rate provided in this paragraph (d)(5)(ii)(B) on an annual basis and does not require the consent of the Commissioner to change this election in a subsequent taxable year. If a taxpayer that is eligible to make the published rate election either does not file a timely return or files a calculation with no excess U.S.-connected liabilities and it is later determined by the Director of Field Operations that the taxpayer has

excess U.S.-connected liabilities, then the Director of Field Operations will apply the interest rate provided under this paragraph (d)(5)(ii)(B) to the taxpayer's excess U.S.-connected liabilities in determining interest expense.

(2) *Transitional rule for taxable years including June 30, 2023.* For a taxable year that includes June 30, 2023, a taxpayer that makes the annual published rate election must compute the interest expense attributable to excess U.S.-connected liabilities by ratably using the average 30-day U.S. dollar London Interbank Offered Rate for the portion of its taxable year ending on June 30, 2023, and the average one-month Term

SOFR, plus a static spread adjustment of 0.11448%, for the portion of its taxable year beginning on July 1, 2023.

\* \* \* \* \*

(f) *Applicability date*—(1) *General rule.* Except as provided in paragraph (f) (3) of this section, this section is applicable for tax years ending on or after August 15, 2009. A taxpayer, however, may choose to apply § 1.882-5T, rather than applying the regulations in this section, for any taxable year beginning on or after August 16, 2008, but before August 15, 2009.

(2) [Reserved]

(3) *Applicability date for published rate election.* Paragraphs (a)(7)(i) and (d) (5)(ii)(B) of this section apply to taxable

years ending after June 30, 2023. For taxable years ending before July 1, 2023, see § 1.882-5(d)(5)(ii)(B) (as contained in 26 CFR part 1, revised as of April 1, 2023).

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

Approved: June 19, 2023.

**Lily Batchelder,**  
*Assistant Secretary of the Treasury  
(Tax Policy).*

(Filed by the Office of the Federal Register June 29, 2023, 8:45 a.m., and published in the issue of the Federal Register for June 30, 2023, 88 FR 42231)



## Part III

### EXPENSES RELATED TO COVID-19 AND PREVENTIVE CARE FOR PURPOSES OF HIGH DEDUCTIBLE HEALTH PLANS

#### Notice 2023-37

##### PURPOSE

In response to the end of the Coronavirus Disease 2019 (COVID-19) public health emergency (referred to in this document as the PHE) and the National Emergency Concerning the Novel Coronavirus Disease 2019 Pandemic<sup>1</sup> (referred to in this document as the COVID-19 National Emergency), this notice modifies prior guidance regarding benefits relating to testing for and treatment of COVID-19 that can be provided by a health plan that otherwise satisfies the requirements to be a high deductible health plan (HDHP) under section 223(c)(2)(A) of the Internal Revenue Code (Code). Specifically, this notice provides that the relief described in Notice 2020-15, 2020-14 IRB 559, applies only with respect to plan years ending on or before December 31, 2024.

This notice also clarifies whether certain items and services are treated as preventive care under section 223(c)(2)(C). Specifically, this notice clarifies that the preventive care safe harbor, as described in Notice 2004-23, 2004-15 IRB 725, does not include screening (i.e., testing) for COVID-19, effective as of the date

of publication of this notice.<sup>2</sup> This notice also provides that items and services recommended with an “A” or “B” rating by the United States Preventive Services Task Force (USPSTF) on or after March 23, 2010, are treated as preventive care for purposes of section 223(c)(2)(C), regardless of whether these items and services must be covered, without cost sharing, under Public Health Service Act<sup>3</sup> (PHS Act) section 2713.

##### BACKGROUND

Section 223 of the Code permits eligible individuals to deduct contributions to Health Savings Accounts (HSAs).<sup>4</sup> Among the requirements for an individual to qualify as an eligible individual under section 223(c)(1) is that the individual be covered under an HDHP and have no disqualifying health coverage. As defined in section 223(c)(2), an HDHP is a health plan that satisfies certain requirements, including requirements with respect to minimum deductibles and maximum out-of-pocket expenses.

Generally, under section 223(c)(2)(A), an HDHP is not permitted to provide benefits for any year until the minimum deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. Under section 223(c)(2)(C), “[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1861 of the Social Security Act, except as otherwise provided by the Secretary).”

Therefore, an HDHP may provide preventive care benefits without a deductible, or with a deductible below the minimum annual deductible otherwise required by section 223(c)(2)(A). To be a preventive care benefit as defined for purposes of section 223, the benefit must either be described as preventive care for purposes of section 1861 of the Social Security Act (SSA) or be determined to be preventive care in guidance issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS).<sup>5</sup> Notice 2013-57, 2013-40 IRB 293, provides that a health plan will not fail to qualify as an HDHP under section 223(c)(2) merely because it provides without a deductible the preventive care health services required under section 2713 of the PHS Act to be covered without cost sharing by a group health plan or a health insurance issuer offering group or individual health insurance coverage.

In March 2020, the Treasury Department and the IRS issued Notice 2020-15. The notice provides that due to the unprecedented public health emergency posed by COVID-19, and the need to eliminate potential administrative and financial barriers to testing for and treatment of COVID-19, a health plan that otherwise satisfies the requirements to be an HDHP under section 223(c)(2)(A) will not fail to be an HDHP merely because the health plan provides benefits for medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.<sup>6</sup> As a result, individuals covered by such a plan will not

<sup>1</sup> On March 13, 2020, by Proclamation 9994 (85 FR 15337 (March 18, 2020)), the President declared a national emergency concerning the COVID-19 pandemic beginning March 1, 2020, under both the National Emergencies Act (Pub. L. 94-412, 90 Stat. 1255 (1976)) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, 88 Stat. 143 (1974)) (the Stafford Act). The national emergency has since been extended, with the last announcement of continuation made by the President on February 10, 2023. See The White House, Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic (Feb. 10, 2023), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/>. Subsequently, the President signed H.J. Res. 7 (Pub. L. 118-3, 137 Stat. 6), ending the national emergency under the National Emergencies Act on April 10, 2023, and the Federal Emergency Management Agency gave notice in the Federal Register that the national emergency under the Stafford Act would end on May 11, 2023. See <https://www.govinfo.gov/content/pkg/FR-2023-02-10/pdf/2023-02964.pdf>.

<sup>2</sup> Although the preventive care safe harbor does not include testing for COVID-19, an HDHP may continue to provide benefits related to testing for COVID-19 before satisfaction of the applicable minimum deductible for plan years ending on or before December 31, 2024, pursuant to this notice.

<sup>3</sup> See Pub. L. 111-148, 124 Stat. 119 (March 23, 2010).

<sup>4</sup> Tax-favored contributions may also be made on behalf of eligible individuals by their employers. See Q&A 19 of Notice 2004-2 (2004-2 IRB 269).

<sup>5</sup> The determination of whether an item or service is preventive care for these purposes is unrelated to the determination of whether an amount paid for an item or service is medical care under section 213(d) of the Code as an amount paid for the prevention of disease. See Rev. Rul. 79-66 (1979-1 CB 114); *Daniels v. Commissioner*, 41 T.C. 324 (1963); and *Stringham v. Commissioner*, 12 T.C. 580 (1949), (acq. 1950-2 CB 4), *aff'd per curiam*, 183 F.2d 579 (6th Cir. 1950).

<sup>6</sup> Notice 2020-15 permitted, but not did require, an HDHP to provide these health benefits prior to the satisfaction of the applicable minimum deductible.

fail to be eligible individuals under section 223(c)(1) merely because of the provision of those health benefits prior to the satisfaction of the applicable minimum deductible.

On January 31, 2020, the Secretary of Health and Human Services (HHS) declared that a nationwide PHE existed as of January 27, 2020, as a result of COVID-19.<sup>7</sup> This declaration was continually renewed by the HHS Secretary, most recently effective February 11, 2023.<sup>8</sup> On January 30 and February 9, 2023, respectively, the President and the HHS Secretary announced their intent to end the COVID-19 National Emergency and the PHE on May 11, 2023.<sup>9</sup> On February 10, 2023, the Federal Emergency Management Agency gave notice in the **Federal Register** that the national emergency under the Stafford Act would end on May 11, 2023.<sup>10</sup> On April 10, 2023, the President signed H.J. Res. 7 ending the national emergency under the National Emergencies Act on April 10, 2023.<sup>11</sup>

On March 29, 2023, the Departments of Labor, HHS, and the Treasury (the Departments) issued Frequently Asked Questions (FAQs) under the heading, *FAQs About Families First Coronavirus Response Act, Coronavirus Aid, Relief, and Economic Security Act, and Health Insurance Portability and Accountability Act Implementation Part 58 (FAQs Part 58)*, which address changes in various rules as the result of the end of the COVID-19 National Emergency and the PHE.<sup>12</sup> Question and Answer 8 of FAQs Part 58 states that, while Notice 2020-15 applies until further guidance is issued,

the Treasury Department and the IRS are reviewing the appropriateness of continuing the relief in Notice 2020-15 given the anticipated end of the COVID-19 National Emergency and the PHE and anticipate issuing additional guidance in the near future.

## GUIDANCE

The Treasury Department and the IRS have determined that, with the end of the COVID-19 National Emergency and the PHE, the relief described in Notice 2020-15 is no longer needed. Accordingly, this notice modifies Notice 2020-15 to provide that the relief described in Notice 2020-15 applies only with respect to plan years ending on or before December 31, 2024. For subsequent plan years, an HDHP is not permitted to provide health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (for self-only or family coverage) for an HDHP, except as otherwise provided in this notice.

The Treasury Department and the IRS note that Notice 2004-23 provides that preventive care under section 223(c)(2)(C) includes, but is not limited to, screening services as specified in the Appendix to Notice 2004-23. However, preventive care does not generally include any service or benefit intended to treat an existing illness, injury, or condition. As part of the preventive care safe harbor, the Appendix to Notice 2004-23 includes Infectious Diseases Screening Services for the following infections: Bacteriuria,

Chlamydial Infection, Gonorrhea, Hepatitis B Virus Infection, Hepatitis C, Human Immunodeficiency Virus (HIV) Infection, Syphilis, and Tuberculosis Infection. Screenings for common and episodic illnesses, such as the flu, are not included on the list. Accordingly, the Treasury Department and the IRS are of the view that COVID-19 differs from the types of infectious diseases included in the preventive care safe harbor as specified in Notice 2004-23, and this notice clarifies that the preventive care safe harbor as described in Notice 2004-23 does not include screening (i.e., testing) for COVID-19, effective as of the date of publication of this notice.

In addition, the Treasury Department and the IRS note that on April 13, 2023, the Departments issued FAQs entitled, *FAQs About Affordable Care Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 59 (FAQs Part 59)*, which provide initial guidance on how the decision in *Braidwood Management Inc. v. Becerra*<sup>13</sup> affects the requirement to cover preventive services without cost sharing under PHS Act section 2713.<sup>14</sup> Question and Answer 7 of FAQs Part 59 states that, until further guidance is issued, items and services recommended with an “A” or “B” rating by the USPSTF on or after March 23, 2010, will be treated as preventive care for purposes of section 223(c)(2)(C) of the Code, regardless of whether these items and services must be covered, without cost sharing, under PHS Act section 2713.

Consistent with the position taken in Question and Answer 7 of FAQs Part

<sup>7</sup> See HHS Office of the Assistant Secretary for Preparedness and Response, Determination of the HHS Secretary that a Public Health Emergency Exists (Jan. 31, 2020), available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

<sup>8</sup> See HHS Office of the Assistant Secretary for Preparedness and Response, Renewal of Determination That A Public Health Emergency Exists (Feb. 9, 2023), available at <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-9Feb2023.aspx>.

<sup>9</sup> See Executive Office of the President, Office of Management and Budget, Statement of Administration Policy: H.R. 382 and H.J. Res. 7 (Jan. 30, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>; Letter to U.S. Governors from HHS Secretary Xavier Becerra on renewing COVID-19 Public Health Emergency (PHE) (Feb. 9, 2023), available at <https://www.hhs.gov/about/news/2023/02/09/letter-us-governors-hhs-secretary-xavier-becerra-renewing-covid-19-public-health-emergency.html>; Executive Office of the President, Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic (Feb. 10, 2023), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/>.

<sup>10</sup> See <https://www.govinfo.gov/content/pkg/FR-2023-02-10/pdf/2023-02964.pdf>.

<sup>11</sup> The April 10, 2023, end of the national emergency under the National Emergencies Act did not change the anticipated end date of the PHE or the end date of the national emergency under the Stafford Act.

<sup>12</sup> See <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-58> and <https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/faqs-part-58.pdf>. Question and Answer 5 of FAQs Part 58 states that the Treasury Department, the IRS, and the Department of Labor “anticipate that the Outbreak Period will end July 10, 2023 (60 days after the anticipated end of the COVID-19 National Emergency).” The Treasury Department and the IRS, in coordination with the Department of Labor, clarify that the Outbreak Period ends July 10, 2023, irrespective of the last day of the national emergency under the National Emergencies Act or the last day of the national emergency under the Stafford Act.

<sup>13</sup> Civil Action No. 4:20-cv-00283-O (N.D. Tex. March 30, 2023). On May 15, 2023, the Fifth Circuit issued an administrative stay of the decision pending appeal, and the Fifth Circuit issued a further Order regarding the stay pending appeal on June 13, 2023.

<sup>14</sup> See <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-59> and <https://www.cms.gov/files/document/faqs-part-59.pdf>.

59, this notice provides that items and services recommended with an “A” or “B” rating by the USPSTF on or after March 23, 2010, are treated as preventive care for purposes of section 223(c)(2)(C) of the Code, regardless of whether these items and services must be covered, without cost sharing, under PHS Act section 2713. Accordingly, if COVID-19 testing were to be recommended with an “A” or “B” rating by the USPSTF, then that testing would be treated as preventive care under section 223(c)(2)(C) of the Code, regardless of whether it must be covered, without cost sharing, under PHS Act section 2713.

**EFFECT ON OTHER GUIDANCE**

Notice 2020-15 is modified. Notice 2004-23 is clarified.

**DRAFTING INFORMATION**

The principal author of this notice is Jennifer Friedman of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), though other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact Jennifer Friedman at (202) 317-5500 (not a toll-free number).

**2023 Marginal Production Rates**

**Notice 2023-50**

This notice announces the applicable percentage under § 613A of the Internal

Revenue Code to be used in determining percentage depletion for marginal properties for the 2023 calendar year.

Section 613A(c)(6)(C) defines the term “applicable percentage” for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which \$20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2022 calendar year is \$93.97.

The following table contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2023.

Notice 2023-50	
APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION	
<i>Calendar Year</i>	<i>Applicable Percentage</i>
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent
2008	15 percent
2009	15 percent
2010	15 percent
2011	15 percent
2012	15 percent
2013	15 percent

Notice 2023-50  
APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

<i>Calendar Year</i>	<i>Applicable Percentage</i>
2014	15 percent
2015	15 percent
2016	15 percent
2017	15 percent
2018	15 percent
2019	15 percent
2020	15 percent
2021	15 percent
2022	15 percent
2023	15 percent

The principal author of this notice is Elimelech Brander of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Brander at (202) 317-6853 (not a toll-free number).

## Credit for Renewable Electricity Production and Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 2023

### Notice 2023-51

This notice publishes the inflation adjustment factor and reference price for calendar year 2023 for the renewable electricity production credit under section 45 of the Internal Revenue Code (section 45 credit). The 2023 inflation adjustment factor and reference price are used in determining the availability of the credit and apply to calendar year 2023 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

### BACKGROUND

Section 45 was amended by section 13101 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). The IRA changed the manner in which the section 45 credit amounts are calculated for any qualified facility placed in service after December 31, 2021. The IRA also removed the one-half reduction of the credit amount under section 45(b)(4)(A) for qualified hydropower facilities and marine and hydrokinetic renewable energy facilities placed in service after December 31, 2022. In the case of any qualified facility placed in service before January 1, 2022, the section 45 credit amounts are determined under the calculation rules provided by the prior version of section 45.

As amended by the IRA, section 45(b)(6)(A) provides that, in the case of any qualified facility that satisfies the requirements of section 45(b)(6)(B), the credit amount determined under section 45(a) (determined after the application of section 45(b)(1) through (5) and without regard to section 45(b)(6)) is equal to such amount multiplied by 5. A qualified facility satisfies the requirements of section 45(b)(6)(B) if it is placed in service after December 31, 2021, and it is one of the following: (i) a facility with a maximum

net output of less than 1 megawatt (as measured in alternating current); (ii) a facility the construction of which began prior to January 29, 2023, which is the date that is 60 days after the publication of the guidance with respect to the requirements of section 45(b)(7)(A) (prevailing wage requirements) and section 45(b)(8) (apprenticeship requirements);<sup>1</sup> or (iii) a facility that satisfies the requirements of section 45(b)(7)(A) and (8). The IRA also added bonus credit amounts with respect to qualified facilities placed in service after December 31, 2022, that meet domestic content requirements under section 45(b)(9)<sup>2</sup> or energy community requirements under section 45(b)(11).<sup>3</sup>

The IRA amended the phaseout of the section 45 credit for wind facilities under section 45(b)(5) such that it does not apply to facilities placed in service after December 31, 2021. The IRA also added a new phaseout of the section 45 credit under section 45(b)(10) in the case of qualified facilities placed in service after December 31, 2022, for taxpayers making an elective payment election under section 6417. The IRA also amended the credit amount reduction under section 45(b)(3) in the case of qualified facilities the construction of which began after August 16, 2022.

The IRA amended section 45(d)(4) to restore the section 45 credit for electricity

<sup>1</sup> See Notice 2022-61, 2022-52 I.R.B. 560 (Dec. 27, 2022), for additional information regarding the prevailing wage and apprenticeship requirements.

<sup>2</sup> See Notice 2023-38, 2023-22 I.R.B. 872 (May 12, 2023), for additional information regarding the domestic content bonus credit.

<sup>3</sup> See Notice 2023-45, 2023-29 I.R.B. 317 (July 17, 2023), for additional information regarding the energy community bonus credit.

produced in solar energy facilities in the case of qualified facilities placed in service after December 31, 2021, and the construction of which begins before January 1, 2025. Effective for facilities placed in service after December 31, 2022, the IRA amended the definition of marine and hydrokinetic renewable energy under section 45(c)(10) and the definition of a marine and hydrokinetic renewable energy facility under section 45(d)(11). The IRA extended certain deadlines in the definitions under section 45(d) for wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities.

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of the kilowatt hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year multiplied by 1.5 cents (in the case of a qualified facility placed in service before January 1, 2022) or 0.3 cents (in the case of a qualified facility placed in service after December 31, 2021). This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under section 45(a) is reduced by an amount which bears the same ratio to the amount of the credit as the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to 3 cents. Under section 45(b)(2), the 1.5 cent (or 0.3 cent) amount in section 45(a) and the 8 cent amount in section 45(b)(1) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of any qualified facility placed in service before January 1, 2022, if any amount as increased under section 45(b)(2) is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of any

qualified facility placed in service after December 31, 2021, if the 0.3 cent amount as increased under section 45(b)(2) is not a multiple of 0.05 cent, such amount is rounded to the nearest multiple of 0.05 cent.

In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (determined before rounding as required by section 45(b)(2)) to be reduced by one-half. As amended by the IRA, the one-half reduction under section 45(b)(4)(A) no longer applies to qualified hydropower facilities and marine and hydrokinetic renewable energy facilities placed in service after December 31, 2022.

Section 45(b)(5) provides that in the case of any qualified wind facility placed in service before January 1, 2022, the amount of the credit determined under section 45(a) (determined after the application of section 45(b)(1), (2), and (3) and without regard to section 45(b)(5)) shall be reduced by (A) in the case of any facility the construction of which began after December 31, 2016, and before January 1, 2018, 20 percent, (B) in the case of any facility the construction of which began after December 31, 2017, and before January 1, 2019, 40 percent, (C) in the case of any facility the construction of which began after December 31, 2018, and before January 1, 2020, 60 percent, and (D) in the case of any facility the construction of which began after December 31, 2019, and before January 1, 2022, 40 percent.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power,<sup>4</sup> municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy.

Section 45(d)(1) defines a qualified facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and the construction

of which begins before January 1, 2025. See section 45(e)(7) for rules relating to the inapplicability of the credit to electricity sold to utilities under certain contracts.

Section 45(d)(2)(A) defines a qualified facility using closed-loop biomass to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1992, and the construction of which begins before January 1, 2025, or owned by the taxpayer which before January 1, 2025, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 FR 63052. For purposes of section 45(d)(2)(A)(ii), a facility shall be treated as modified before January 1, 2025, if the construction of such modification begins before such date. Section 45(d)(2)(C) provides that in the case of a qualified facility described in section 45(d)(2)(A)(ii), the 10-year period referred to in section 45(a) is treated as beginning no earlier than the date of the enactment of section 45(d)(2)(C)(i) (October 22, 2004), and if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under section 45(a) is the lessee or the operator of such facility. A qualified facility using closed-loop biomass includes a new unit placed in service after the date of the enactment of section 45(d)(2)(B) (October 3, 2008) in connection with a qualified facility using closed-loop biomass, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(3)(A) defines a qualified facility using open-loop biomass to produce electricity as any facility owned by the taxpayer which in the case of a facility using agricultural livestock waste nutrients, is originally placed in service after the date of the enactment of section 45(d)(3)(A)(i)(I) (October 22, 2004) and the construction of which begins before January 1, 2025, and the nameplate capacity rating of which is not less than 150

<sup>4</sup>The section 45 credit is expired for small irrigation power facilities.

kilowatts, and in the case of any other facility, the construction of which begins before January 1, 2025. In the case of any facility described in section 45(d)(3)(A), if the owner of such facility is not the producer of the electricity, section 45(d)(3)(C) provides that the person eligible for the credit allowable under section 45(a) is the lessee or the operator of such facility. A qualified facility using open-loop biomass includes a new unit placed in service after the date of the enactment of section 45(d)(3)(B) (October 3, 2008) in connection with a qualified facility using open-loop biomass, but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(4) defines a qualified facility using geothermal energy to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(4) (October 22, 2004) and the construction of which begins before January 1, 2025. A qualified facility using geothermal energy does not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

As amended by the IRA and effective for solar energy facilities placed in service after December 31, 2021, section 45(d)(4) also defines a qualified facility using solar energy to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(4) (October 22, 2004) and the construction of which begins before January 1, 2025. A qualified facility using solar energy does not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

Section 45(d)(6) defines a qualified facility using gas derived from the biodegradation of municipal solid waste to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(6) (October 22, 2004) and the construction of which begins before January 1, 2025.

Section 45(d)(7) defines a qualified facility (other than a facility described in section 45(d)(6)) that uses municipal solid

waste to produce electricity as any facility owned by the taxpayer that is originally placed in service after the date of the enactment of section 45(d)(7) (October 22, 2004) and the construction of which begins before January 1, 2025. A qualified facility using municipal solid waste includes a new unit placed in service in connection with a facility placed in service on or before the date of the enactment of section 45(d)(7), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(9) defines a qualified facility producing qualified hydroelectric production described in section 45(c)(8) as (i) any facility producing incremental hydropower production, but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after the date of the enactment of section 45(d)(9) (August 8, 2005) and before January 1, 2025, and (ii) any other facility placed in service after the date of the enactment of section 45(d)(9) (August 8, 2005) and the construction of which begins before January 1, 2025. Section 45(d)(9)(B) provides that, in the case of a qualified facility described in section 45(d)(9)(A), the 10-year period referred to in section 45(a) shall be treated as beginning on the date the efficiency improvements or additions to capacity are placed in service. Section 45(d)(9)(C) provides that for purposes of section 45(d)(9)(A)(i), an efficiency improvement or addition to capacity shall be treated as placed in service before January 1, 2025, if the construction of such improvement or addition begins before such date.

As amended by the IRA, section 45(d)(11) provides in the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term “qualified facility” means any facility owned by the taxpayer which has a nameplate capacity rating of at least 150 kilowatts (or at least 25 kilowatts in the case of a facility placed in service after December 31, 2022), and is originally placed in service on or after the date of the enactment of section 45(d)(11) (October 3, 2008) and the construction of which begins before January 1, 2025.

Section 45(e)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factor and the reference price for such calendar year. The inflation adjustment factor and the reference price for the 2023 calendar year were published in the Federal Register at 88 FR 40400 on June 21, 2023.

Section 45(e)(2)(B) defines the inflation adjustment factor for a calendar year as a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term “GDP implicit price deflator” means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(e)(2)(C) provides that the reference price with respect to a calendar year is the Secretary’s determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989 are taken into account.

## **INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE**

The inflation adjustment factor for calendar year 2023 for qualified energy resources is 1.8909.

The reference price for calendar year 2023 for facilities producing electricity from wind (based upon information provided by the Department of Energy) is 3.74 cents per kilowatt hour. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy have not been determined for calendar year 2023.

## **PHASEOUT CALCULATION**

Because the 2023 reference price for electricity produced from wind (3.74 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment

factor (1.8909), the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2023. However, section 45(b)(5) provides an additional phaseout of the credit for wind facilities placed in service before January 1, 2022, and the construction of which began after December 31, 2016. For electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic energy, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2023.

#### **CREDIT AMOUNT FOR A QUALIFIED FACILITY PLACED IN SERVICE BEFORE JANUARY 1, 2022**

As required by section 45(b)(2), the 1.5 cent amount provided in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under section 45(b)(2) is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent as required by section 45(b)(2)) to be reduced by one-half.

Under the calculation required by section 45(b)(2), the credit for renewable

electricity production for calendar year 2023 determined under section 45(a) is 2.8 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service before January 1, 2022, from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.4 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service before January 1, 2022, from the qualified energy resources of open-loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic energy.

#### **CREDIT AMOUNT FOR A QUALIFIED FACILITY PLACED IN SERVICE AFTER DECEMBER 31, 2021**

As required by section 45(b)(2), the 0.3 cent amount provided in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If the 0.3 cent amount as adjusted for inflation is not a multiple of 0.05 cent, the amount is rounded to the nearest multiple of 0.05 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (determined before rounding as required by section 45(b)(2)) to be reduced by one-half.

Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2023 determined under section 45(a) is

0.55 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2021, from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 0.3 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2021, from the qualified energy resources of open-loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy.

#### **CREDIT AMOUNT FOR QUALIFIED HYDROPOWER FACILITIES AND MARINE AND HYDROKINETIC RENEWABLE ENERGY FACILITIES PLACED IN SERVICE AFTER DECEMBER 31, 2022**

Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2023 determined under section 45(a) is 0.55 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2022, from the qualified energy resources of qualified hydropower and marine and hydrokinetic renewable energy.

#### **DRAFTING AND CONTACT INFORMATION**

The principal author of this notice is Charles Hyde of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Hyde at (202) 317-6853 (not a toll-free number).

# Part IV

## Transitional Guidance with Respect to Stock Repurchase Excise Tax

### Announcement 2023-18

This announcement confirms that no taxpayer is required to report the new excise tax imposed by section 4501 of the Internal Revenue Code (Code) on repurchases of corporate stock during a covered corporation's taxable year (stock repurchase excise tax) on any returns filed with the Internal Revenue Service (IRS), or to make any payments of such tax, before the time specified in forthcoming regulations.

The stock repurchase excise tax applies to repurchases made after December 31, 2022. On January 17, 2023, the Department of the Treasury (Treasury Department) and the IRS published Notice 2023-2, 2023-3 I.R.B. 374, to provide initial guidance regarding the application of the stock repurchase excise tax. The notice announced that the Treasury Department and the IRS intend to issue forthcoming regulations addressing the application of the stock repurchase excise tax. The notice describes certain rules for determining the amount of stock repurchase excise tax

owed that the Treasury Department and the IRS intend to include in the forthcoming regulations and provides that taxpayers may rely on these rules until the publication of the forthcoming regulations.

Additionally, the notice describes anticipated procedures for reporting and paying any liability for the stock repurchase excise tax that the Treasury Department and the IRS intend to include in the forthcoming regulations. Specifically, the notice states that the forthcoming regulations are expected to provide that (i) the stock repurchase excise tax will be reported once per taxable year on the Form 720, *Quarterly Federal Excise Tax Return*, that is due for the first full quarter after the close of the taxpayer's taxable year, (ii) the deadline for payment of the stock repurchase excise tax will be the same as the filing deadline, and (iii) no extensions will be permitted for reporting or paying the stock repurchase excise tax.

For those taxpayers with a taxable year ending after December 31, 2022, but prior to publication of the forthcoming regulations, such regulations are expected to provide that any liability for the stock repurchase excise tax for such taxable year will be reported on the Form 720 that is due for the first full quarter after the date of publication of the forthcoming

regulations, and that the deadline for payment of the stock repurchase excise tax is the same as the filing deadline. There will be no addition to tax under section 6651(a) of the Code (or any other provision of the Code) for failure to file a return reporting the stock repurchase excise tax, or for failure to pay the stock repurchase excise tax, before the time specified in the forthcoming regulations.

The Treasury Department and the IRS expect the forthcoming regulations will require covered corporations to keep complete and detailed records to establish accurately any amount of stock repurchases (including repurchases made after December 31, 2022, but before the forthcoming regulations are published) and to retain these records as long as their contents may become material.

#### DRAFTING INFORMATION

The principal author of this announcement is Samuel G. Trammell of the Office of the Associate Chief Counsel (Corporate). For further information regarding this announcement contact Mr. Trammell at (202) 317-6975 (not a toll-free number).



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

### Announcement 2023-19

#### Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 24, 2023 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
AMERICAN CANCER OF SOCIETY FLORIDA	01/01/2018	New York, NY
AMERICAN CANCER SOCIETY OF WASHINGTON	01/01/2018	New York, NY
AMERICAN CANCER SOCIETY OF MASSACHUSETTS	01/01/2018	New York NY
AMERICAN CANCER SOCIETY OF BALTIMORE	01/01/2018	New York, NY
AMERICAN CANCER SOCIETY OF CINNCINATI	01/01/2018	New York, NY
AMERICAN CANCER PF OF GEORGIA	01/01/2018	New York, NY
AMERICAN CANCER SOCIETY OF MARYLAND	01/01/2018	New York, NY
AMERICAN CANCER SOCIETY OF OHIO	01/01/2018	New York, NY
CHILDREN'S CANCER SOCIETY OF TEXAS	01/01/2018	New York, NY

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

## Announcement 2023-20

### Table of Contents

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on July 24, 2023 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
AMERICAN CANCER SOCIETY OF GREEN BAY	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER SOCIETY OF DETROIT	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER SOCIETY FOR CHILDREN OF NEW YORK	01/01/2021	STATEN ISLAND, NY
COACHELLA VALLEY CHURCH	01/01/2017	SAN JOSE, CA
AMERICAN CANCER FDN OF BROOKLYN	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER FDN OF COLUMBUS INC.	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER FDN OF AMERICA INC	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER FDN OF GEORGIA	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER FDN OF GREEN BAY INC.	01/01/2021	STATEN ISLAND, NY
AMERICAN CANCER FDN OF FRESNO	01/01/2021	STATEN ISLAND, NY

# Notice of Proposed Rulemaking

## Corporate Bond Yield Curve for Determining Present Value

### REG-124123-22

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Proposed Rulemaking and Notice of Public Hearing.

**SUMMARY:** This document sets forth proposed regulations specifying the methodology for constructing the corporate bond yield curve that is used to derive the interest rates used in calculating present value and making other calculations under a defined benefit plan, as well as for discounting unpaid losses and estimated salvage recoverable of insurance companies. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans, as well as insurance companies.

**DATES:** Written or electronic comments must be received by **August 22, 2023**. A public hearing on this proposed regulation has been scheduled for August 30, 2023 at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by **August 22, 2023**. If no outlines are received by **August 22, 2023**, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on August 28, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the public hearing must be received by August 25, 2023.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-124123-22) by following the online instructions for submitting comments. Requests for a public

hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS’s public docket. Send paper submissions to: CC:PA:LPD:PR (REG-124123-22), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Arslan Malik or Linda S. F. Marshall at (202) 317-6700 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Vivian Hayes at (202) 317-5306 (not a toll-free number) or by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.<sup>1</sup> For a plan subject to section 430, section 430(a) defines the minimum required contribution for a plan year 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)(2) provides rules regarding the interest rates to be used under section 430. Section 430(h)(2)(B) provides that a plan’s funding target and target normal cost for a plan year are determined using three interest rates: (1) the first segment rate, which applies to benefits reasonably determined to be payable during the 5-year period beginning

on the valuation date; (2) the second segment rate, which applies to benefits reasonably determined to be payable during the next 15-year period; and (3) the third segment rate, which applies to benefits reasonably determined to be paid after that 15-year period. Under section 430(h)(2)(C)(i) through (iii), each of these segment rates is determined for a month on the basis of the corporate bond yield curve for the month, taking into account only that portion of the yield curve that is based on bonds maturing during the period for which the segment rate is used.

Section 430(h)(2)(C)(iv), which was added to the Code in 2012 by section 40211 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act, Pub. L. 112-141, 126 Stat. 405, and has been modified several times since then (most recently in 2021 by section 80602 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429), provides interest rate stabilization rules under which the segment rates are constrained by reference to the 25-year average segment rates. Under section 430(h)(2)(C)(iv), if a segment rate for a month is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the corresponding segment rates for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate for that month is equal to the applicable minimum percentage or the applicable maximum percentage of the corresponding 25-year average segment rate, whichever is closest. The last sentence of section 430(h)(2)(C)(iv)(I) provides that any 25-year average segment rate that is less than 5 percent is deemed to be 5 percent.

Under section 430(h)(2)(D)(i), the term “corporate bond yield curve” means, with respect to any month, a yield curve prescribed by the Secretary for the month that reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality

<sup>1</sup> Section 302 of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), 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 regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

levels available. Section 430(h)(2)(D)(ii) permits a plan sponsor to elect to use the corporate bond yield curve, rather than the segment rates, to determine the plan's minimum required contribution. The yield curve that applies pursuant to this election is determined without regard to 24-month averaging. This election, once made, may be revoked only with the consent of the Secretary.

Under section 430(h)(2)(F), the Secretary is instructed to publish for each month the corporate bond yield curve (without regard to the 24-month averaging specification), the segment rates described in section 430(h)(2)(C), and the 25-year averages of segment rates used under section 430(h)(4)(C)(iv). The Secretary is also instructed to publish a description of the methodology used to determine the yield curve and segment rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months based on the plan's projection of future interest rates.

Section 1.430(h)(2)-1 was issued in 2009 to provide rules regarding the interest rates to be used under section 430. T.D. 9467, 74 FR 53004. Section 1.430(h)(2)-1(d) provides that the methodology for determining the yield curve is provided in guidance that is published in the Internal Revenue Bulletin. Notice 2007-81, 2007-2 CB 899, describes the methodology used by the Department of the Treasury (Treasury Department) to develop the corporate bond yield curve. Section 1.430(h)(2)-1(d) also provides that the yield curve for each month will be set forth in guidance published in the Internal Revenue Bulletin. Monthly IRS notices set forth the corporate bond yield curve for the month (without regard to the 24-month averaging specification), the section 430 segment interest rates (before and after adjustment pursuant to section 430(h)(3)(C)(iv)), and the 25-year average segment rates (which are updated annually).

Section 417(e)(3) provides assumptions for determining minimum present

value for certain purposes, including the determination of a lump-sum that is the present value of an annuity, and prescribes an applicable interest rate for this purpose. Section 417(e)(3)(C) provides that the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of a distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

Under section 846(c), the Secretary determines the applicable interest rate to be used by insurance companies to discount unpaid losses on the basis of the corporate bond yield curve (as defined in section 430(h)(2)(D)(i), determined by substituting "60-month period" for "24-month period"). Under §1.832-4(c), the applicable interest rate determined under section 846(c) is also used by insurance companies to discount estimated salvage recoverable, unless the Commissioner publishes applicable discount factors to be used for that purpose.

### Explanation of Provisions

These proposed regulations specify the methodology used to develop the corporate bond yield curve. This methodology is generally the same as the methodology set forth in Notice 2007-81 but would include two refinements to take into account changes in the bond market since 2007. The proposed regulations would also amend the existing regulations under section 430(h)(2) to reflect the addition of the interest rate stabilization rules of section 430(h)(2)(C)(iv) and to eliminate transition rules that applied to plan years beginning before January 1, 2010.

Under these proposed regulations, as under Notice 2007-81, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years, and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average for each business day of that month of the spot rates at that duration on the daily corporate bond yield curves.

Under these proposed regulations, as under Notice 2007-81, each spot rate on the daily corporate bond yield curve is calculated using a discount function, which is derived from a forward interest rate function (that is, the projected instantaneous interest rate at each point in time). The forward interest rate function is defined by the selection of five coefficients of B-splines that are determined using the bond data and taking into account certain adjustment factors.

Two of those adjustment factors, which are included in the methodology set forth in Notice 2007-81, take into account the ratings of the bonds used to develop the daily corporate bond yield curve. The third adjustment factor, which was not included in the methodology set forth in that notice, is a hump adjustment variable that peaks at 20 years maturity<sup>2</sup> and serves to capture the effects of the hump in spot rates that is often seen around 20 years maturity.

These proposed regulations generally adopt the specification for the bond data set for a month in Notice 2007-81 but modify an exclusion from that bond data set. Under Notice 2007-81 and the proposed regulations, subject to certain exclusions, the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with the following characteristics: (1) maturities longer than a ½ year,<sup>3</sup> (2) at least two payment dates, (3) designated as corporate,

<sup>2</sup>The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction at 20 years maturity.

<sup>3</sup>Under Notice 2007-81 and the proposed regulations, the data for durations equal to or below ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

(4) high quality ratings (that is, AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations,<sup>4</sup> (5) at least \$250 million in par amount outstanding on at least one day during the month, (6) payment of fixed nominal semiannual coupons and the principal amount at maturity, and (7) maturity not later than 30 years after that day.

Under Notice 2007-81 and these proposed regulations, the following categories of bonds are excluded from the bond data set: (1) bonds not denominated in U.S. dollars, (2) bonds not issued by U.S. corporations, (3) bonds that are capital securities (sometimes referred to as hybrid preferred stock), (4) bonds having variable coupon rates, (5) convertible bonds, (6) bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association), (7) asset-backed bonds, (8) puttable bonds, (9) bonds with sinking funds, and (10) bonds with a par amount outstanding below \$250 million for the day for which the daily yield curve is constructed.

Notice 2007-81 also excluded callable bonds (unless the call feature is make-whole) from the bond data set used to construct the daily corporate bond yield curve. The proposed regulations generally retain this exclusion but narrow it. Under the proposed regulations, this exclusion does not apply if the call feature is exercisable only during the last year before maturity. This type of call feature has recently become more widely used, and the inclusion of bonds with this feature in the data set will result in a significantly larger pool of bonds that more accurately reflects the market for high quality corporate bonds.

### **Proposed Applicability Date**

The rules in the proposed regulations are proposed to apply for months that begin more than 15 days after the date final regulations specifying the methodology for constructing the corporate bond yield curve are published in the *Federal Register*.

### **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](http://www.irs.gov).

### **Special Analyses**

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

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.

#### **Regulatory Flexibility Act (5 U.S.C. chapter 6).**

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The vast majority of plan sponsors of defined benefit plans that are subject to section 430 choose to use the segment rates under section 430(h)(2)(C), rather than the corporate bond yield curve under section 430(h)(2)(D), to determine minimum required contributions. Furthermore, most of the plan sponsors who choose to use the corporate bond yield curve for this purpose are not small employers. Therefore, the methodology set forth in the proposed regulations for constructing the corporate bond yield curve will not have a significant effect on minimum required contributions for small employers. In addition, the insurance companies that are required to use a modified version of the corporate bond yield curve to discount unpaid losses are typically not small employers. Accordingly, a regulatory flexibility

analysis under the Regulatory Flexibility Act is not required.

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.

### **Comments and Requests for a Public Hearing**

Before these proposed amendments to the regulation are adopted as a final regulation, consideration will be given to comments regarding the notice of proposed rulemaking 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 the proposed regulation. All comments will be made available at [www.regulations.gov](http://www.regulations.gov). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for August 30, 2023 beginning at 10 a.m. ET in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR §601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit an outline of the topics to be addressed and the time to be devoted to each topic by **August 22, 2023**, as prescribed in the preamble under the ADDRESSES section. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the

<sup>4</sup>Although section 939A(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376, generally prohibits federal agencies from issuing regulations that apply a standard that is based on credit ratings from statistical rating organizations, this prohibition does not apply to the construction of the daily corporate bond yield curve because the use of those credit ratings is required by section 430(h)(2)(D) of the Code.

deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by **August 22, 2023**, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the *Federal Register*.

Individuals who want to testify in person at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG-124123-22 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-124123-22.

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto: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-124123-22 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-124123-22.

Individuals who want to attend the public hearing in person without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG-124123-22 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-124123-22. Requests to attend the public hearing must be received by 5:00 p.m. EST on August 28, 2023.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to [publichearings@irs.gov](mailto: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-124123-22 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-124123-22. Requests to attend the public hearing must be received by 5:00 p.m. EST on August 28, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-6901 (not a toll-free number) at least August 25, 2023.

#### 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.

#### Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 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. Amend § 1.430(h)(2)-1 as follows:

1. Amend paragraph (a)(1) by removing the phrase “and transition rules” in the last sentence.
2. Revise paragraph (b)(2).
3. Amend paragraph (c)(1) by removing the last sentence.
4. Amend paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) by removing the phrase “under the transition rule of paragraph (h)(4) of this section” and adding the phrase “under the interest rate stabilization rules in section 430(h)(2)(C)(iv)” in its place.
5. Revise paragraph (d).
6. Remove paragraph (e)(3) and redesignate paragraph (e)(4) as paragraph (e)

(3) and paragraph (e)(5) as paragraph (e)(4).

7. In newly redesignated paragraph (e)(3)(ii), remove the phrase “this paragraph (e)(4)” and add the phrase “this paragraph (e)(3)” in its place.

8. Revise paragraph (h).

The revisions and additions read as follows:

#### §1.430(h)(2)-1 Interest rates used to determine present value.

\* \* \* \* \*

(b) \* \* \*

(2) In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

\* \* \* \* \*

(d) *Monthly corporate bond yield curve*—(1) *In general*—(i) *Construction of monthly corporate bond yield curve*. For purposes of this section, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. The monthly corporate bond yield curve is constructed as the average of the spot rates from the set of daily corporate bond yield curves as specified in paragraph (d)(1)(ii) of this section. Each daily corporate bond yield curve is constructed using the methodology set forth in paragraph (d)(2) of this section based on the data described in paragraph (d)(3) of this section. Note 1 to paragraph (d)(1) of this section, the yield curve for each month will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(ii) *Monthly corporate bond yield curve constructed through averaging*. Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average, for each

business day of that month, of the spot rates at that duration on the daily corporate bond yield curves.

(2) *Construction of the daily corporate bond yield curve*—(i) *In general*—(A) *Calculation of spot rates*. Each spot rate at duration  $t$  on a daily corporate bond yield curve is calculated from the discount function described in paragraph (d)(2)(i)(B) of this section and the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section.

(B) *Derivation of discount function*. The discount function for a day at duration  $t$  is derived from the forward interest rate function as described in paragraph (d)(2)(ii) of this section (denoted  $f(z)$ ) using the following equation:

$$d(t) = \exp\left(-\int_0^t f(z)dz\right)$$

(ii) *Determination of forward interest rates*—(A) *In general*. The forward interest rate function used to derive the discount function is determined as a series of cubic polynomials (referred to as a cubic spline) that have a smooth junction at specified knot points (maturities of 0, 1.5, 3, 7, 15, and 30 years). The requirement that the polynomials have a smooth junction at a knot point is satisfied if the two polynomials that are meeting at the knot have the same value, the same derivative, and the same second derivative at that knot point.

(B) *Constraints on the forward interest function*. The following three constraints are placed on the forward interest rate function—

(1) The second derivative of the function is set to zero at maturity zero.

(2) The value of the forward interest rate function at and after 30 years is constrained to equal its average value from 15 to 30 years.

(3) The derivative of the forward interest rate function is set to zero at maturity 30 years.

(iii) *Parameters for daily bond price model*—(A) *B-spline coefficients*. The assumed cubic spline for the forward interest rate function can be described as a linear combination of B-splines, with five parameters, which are determined taking into account the two coefficients for the bond-quality adjustment variables

described in paragraphs (d)(2)(iii)(B) and (C) of this section and the coefficient for the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section. The five parameters and three coefficients are determined using the bond data weighted as described in paragraph (d)(2)(iv) of this section. After this weighting of the bond data, the five parameters and three coefficients are chosen to minimize the sum of the squared differences between the bid price for each of the bonds (or ask price for commercial paper) and the price estimated for each of those bonds determined using the specified parameters and coefficients, and taking into account the bond's coupon rate, number of years until maturity, and rating.

(B) *Adjustment factor for share of bonds that are AA-rated*. The first adjustment variable is based on the proportion of bonds that are rated AA within the universe of bonds in the data set that are rated AA or AAA, weighted by par value. In the case of an AAA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an AA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of (1- that proportion) and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(B) is set to 0.

(C) *Adjustment factor for share of bonds that are A-rated*. The second adjustment variable is based on the proportion of bonds rated A within the universe of bonds in the data set, weighted by par value. In the case of an AAA-rated bond or an AA-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an A-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of (1- that proportion) and the number of years until maturity for the bond.

(D) *Hump adjustment variable*. The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through

30 years maturity made up of two polynomials with a smooth junction (as described in paragraph (d)(2)(ii)(A) of this section) at 20 years maturity. The spline rises from zero at 10 years maturity to 1.0 at 20 years maturity, then falls back down to zero at 30 years maturity. The hump adjustment variable is zero for maturities less than 10 years and maturities greater than 30 years.

(iv) *Weighting of bond data*. The bond data are weighted in two steps. First, equal weights are assigned to the commercial paper rates at the short end of the curve, and the par amounts outstanding of all the bonds are rescaled so that their sum equals the sum of the weights for commercial paper. Then, the squared price difference for each bond is multiplied by the bond's rescaled par amount outstanding, and the squared difference for each commercial paper rate is multiplied by the commercial paper weight. In the second stage, applicable for bonds with duration greater than 1, the weighted squared price difference for each bond from the first stage is divided by the bond's duration.

(3) *Data used*—(i) *In general*. Except as otherwise provided in this paragraph (d)(3), the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with maturities longer than a ½ year, with at least two payment dates, and that:

(A) Are designated as corporate;

(B) Have high quality ratings (AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations;

(C) Have at least \$250 million in par amount outstanding on at least one day during the month;

(D) Pay fixed nominal semiannual coupons and the principal amount at maturity; and

(E) Mature not later than 30 years after that business day.

(ii) *Excluded bonds*. The following types of bonds are not used to construct the daily corporate bond yield curve for a date:

(A) Bonds not denominated in U.S. dollars;

(B) Bonds not issued by U.S. corporations;

(C) Bonds that are capital securities (sometimes referred to as hybrid preferred stock);

(D) Bonds having variable coupon rates;

(E) Convertible bonds;

(F) Bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association);

(G) Asset-backed bonds;

(H) Callable bonds unless the call feature is make-whole or the call feature is exercisable only during the last year before maturity;

(I) Puttable bonds;

(J) Bonds with sinking funds; and

(K) Bonds with a par amount outstanding below \$250 million for the day for which the daily yield curve is constructed.

(iii) *Durations equal to or below a ½ year.* The data for durations equal to or below a ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

\* \* \* \*

(h) *Applicability date of regulations.* This section applies to months that begin more

than 15 days after the date final regulations issued pursuant to these proposed regulations are published in the *Federal Register*. For rules that apply for earlier periods, see §1.430(h)(2)-1, as it appeared in the April 1, 2022, edition of 26 CFR part 1.

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

(Filed by the Office of the Federal Register June 22, 2023, 8:45 a.m., and published in the issue of the Federal Register for June 23, 2023, 88 FR 41047)



# Definition of Terms

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

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

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

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

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

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 27, 2023.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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