Internal Revenue
bulletin

Bulletin No. 2005-38
September 19, 2005

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.

INCOME TAX

Rev. Rul. 2005–61, page 538.

Fringe benefits aircraft valuation formula. The Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charges in effect for the second half of 2005 are set forth for purposes of determining the value of noncommercial flights on employer-provided aircraft under section 1.61–21(g) of the regulations.

Rev. Rul. 2005–62, page 557.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 2005, will be 7 percent for overpayments (6 percent in the case of a corporation), 7 percent for underpayments, and 9 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 4.5 percent.

Rev. Proc. 2005–65, page 564.

Specifications are set forth for the private printing of paper and laser-printed substitutes for tax year 2005 Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*. Rev. Proc. 2004–54 superseded.

EMPLOYEE PLANS

T.D. 9219, page 538.

Final regulations under section 411(d)(6) of the Code provide guidance relating to the anti-cutback rules and the notification requirements under section 4980F.

REG–156518–04, page 582.

Proposed regulations under section 411(d)(6) of the Code provide guidance relating to the anti-cutback rules. A public hearing is scheduled for December 6, 2005.

EXEMPT ORGANIZATIONS

Announcement 2005–65, page 587.

A list is provided of organizations now classified as private foundations.

EMPLOYMENT TAX

Rev. Proc. 2005–65, page 564.

Specifications are set forth for the private printing of paper and laser-printed substitutes for tax year 2005 Form W-2, *Wage and Tax Statement*, and Form W-3, *Transmittal of Wage and Tax Statements*. Rev. Proc. 2004–54 superseded.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. The Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charges in effect for the second half of 2005 are set forth for purposes of determining the value of noncommercial flights on employer-provided aircraft under section 1.61–21(g) of the regulations.

Rev. Rul. 2005–61

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61–21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61–21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61–21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charges and SIFL mileage rates:

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
7/1/05 – 12/31/05	$35.21	Up to 500 miles = $.1926 per mile 501–1500 miles = $.1468 per mile Over 1500 miles = $.1412 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 622–0047 (not a toll-free call).

Section 411.—Minimum Vesting Standards

26 CFR 1.411(d)–3: Section 411(d)(6) protected benefits.

T.D. 9219

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 54

Section 411(d)(6) Protected Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations providing guidance regarding the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code, which generally protect accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans. The regulations address the limited circumstances under which a qualified retirement plan is permitted to be amended to eliminate or reduce early retirement benefits, retirement-type subsidies, or optional forms of benefit. The final regulations also provide related guidance concerning the notice requirements of section 4980F. These final regulations generally affect sponsors of, and participants in, qualified retirement plans.

DATES: *Effective date*: These regulations are effective on August 12, 2005.

Applicability date: For dates of applicability of these regulations, see §1.411(d)–3(j) of these regulations.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR parts 1 and 54 under sections 411(d)(6) and 4980F of the Internal Revenue Code (Code). This Treasury Decision amends §1.411(d)–3 of the Treasury regulations to reflect changes to section 411(d)(6) made by the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (155 Stat. 38) (EGTRRA). In addition, this Treasury Decision includes rules relating to changes to section 411(d)(6) made by the Retirement Equity Act of 1984, Public Law 98–397 (98 Stat. 1426) (REA) and makes conforming amendments to §1.411(d)–4. This Treasury Decision also amends §54.4980F–1(b), relating to the notice requirement for certain plan amendments that eliminate or significantly reduce early retirement benefits or retirement-type subsidies.

Section 401(a)(7) provides that a trust does not constitute a qualified trust unless its related plan satisfies the requirements of section 411 (relating to minimum vesting standards). Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) of the Code or section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.

Section 411(a)(7)(A) defines the term *accrued benefit*. For a defined contribution plan, a participant's accrued benefit is the balance of the participant's account. For a defined benefit plan, a participant's accrued benefit is the participant's benefit under the terms of the plan expressed in the form of an annual benefit commencing at normal retirement age. Under section 411(c)(3), if a participant's accrued benefit under a defined benefit plan is to be determined as an amount other than an annual benefit commencing at normal retirement age, the participant's accrued benefit is the actuarial equivalent of such benefit.

Section 301(a) of REA amended Code section 411(d)(6) to add subparagraph (B), which provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. For a retirement-type subsidy, this protection applies only with respect to an employee who satisfies the preamendment conditions for the subsidy (either before or after the amendment). Section 411(d)(6)(B) also authorizes the Secretary of the Treasury to provide, through regulations, that section 411(d)(6)(B) does not apply to any plan amendment that eliminates optional forms of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

On July 11, 1988, final regulations (T.D. 8212, 1988–2 C.B. 83) under section 411(d)(6) were published in the **Federal Register** (53 FR 26050) (the 1988 regulations). Under those regulations, section 411(d)(6) protects certain benefits, to the extent they have accrued, so that such benefits cannot be reduced or eliminated by plan amendment, except to the extent permitted by regulations (see §1.411(d)–4, Q&A–1(a)). Section 1.411(d)–4 specifies circumstances under which a plan is permitted to be amended to reduce or eliminate an optional form of benefit.

Section 645(b)(1) of EGTRRA amended section 411(d)(6)(B) of the Code to direct the Secretary to issue regulations providing that the requirements of section 411(d)(6)(B) do not apply to any amendment that reduces or eliminates early retirement benefits or retirement-type subsidies that create significant burdens or complexities for the plan and plan participants unless such amendment adversely affects the rights of any participant in a more than *de minimis* manner. As amended by EGTRRA, section 4980F of the Code and section 204(h) of ERISA each require that a plan administrator give notice of a plan amendment to affected plan participants and beneficiaries when the plan amendment provides for a significant reduction in the rate of future benefit accrual or the elimination or significant reduction of an early retirement benefit or a retirement-type subsidy.

Section 204(g) of ERISA contains parallel rules to Code section 411(d)(6), including a similar directive to the Secretary of the Treasury to issue regulations providing that section 204(g) does not apply to any amendment that reduces or eliminates early retirement benefits or retirement-type subsidies that create significant burdens or complexities for the plan and plan participants unless such amendment adversely affects the rights of any participant in a more than *de minimis* manner. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 204(g) of ERISA, 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 final regulations issued under sections 411(d)(6) of the Code apply as well for purposes of section 204(g) of ERISA.

On March 24, 2004, proposed regulations (REG–128309–03, 2004–1 C.B. 800) under sections 411(d)(6) and 4980F of the Code were published in the **Federal Register** (69 FR 13769). On June 24, 2004, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury Decision. The revisions are discussed below.

Explanation of Provisions

I. *Overview*

These regulations respond to the EGTRRA directive for purposes of both section 411(d)(6) of the Code and section 204(g) of ERISA by specifying the circumstances under which a plan may be amended to reduce or eliminate early retirement benefits, retirement-type subsidies, and optional forms of benefit (section 411(d)(6)(B) protected benefits). The circumstances specified in the regulations are designed to implement the statutory directive to permit reduction or elimination of section 411(d)(6)(B) protected benefits that create significant burdens or complexities for the plan and its participants, but only if the elimination does not adversely affect the rights of any participant in a more than *de minimis* manner. These provisions relating to the permissible elimination of benefits protected by section 411(d)(6)(B) are in addition to the rules permitting a plan to be amended to eliminate optional forms of benefit under §1.411(d)–4.

These regulations provide 2 permitted methods for eliminating or reducing section 411(d)(6)(B) protected benefits under the EGTRRA directive: elimination of redundant optional forms of benefit and elimination of noncore optional forms of benefits where core options are offered. Either of these 2 alternative methods can be applied with respect to any optional form of benefit. A plan sponsor may determine that one method of elimination works for some plan participants or some optional forms of benefit, but not for the remaining plan participants or other optional forms of benefit. However, a plan must satisfy all of the requirements of the applicable method with respect to any optional form of benefit being eliminated.

These final regulations also include general guidance on section 411(d)(6), including the meaning of the terms used therein, the scope of the section 411(d)(6)(A) protection against plan

amendments decreasing a participant's accrued benefit, and the scope of section 411(d)(6)(B) protection for early retirement benefits, retirement-type subsidies, and optional forms of benefit. This Treasury Decision also makes conforming amendments to §1.411(d)–4, including amendments to the definition of optional form of benefit and the multiple amendment rule described in this preamble (under the heading *Multiple amendment rule*).

This Treasury Decision completely replaces the provisions in former §1.411(d)–3. However, the rules in former §1.411(d)–3 generally have been carried over to this Treasury Decision, except to the extent needed to reflect statutory changes (such as the elimination of class-year vesting and the enactment of section 411(d)(6)(B)).

II. *Scope of Section 411(d)(6) Protections*

A. *General rules under section 411(d)(6)*

These final regulations take into account and respond to judicial decisions interpreting section 411(d)(6) (or its parallel provision at section 204(g) of ERISA).[1] For example, the regulations provide that section 411(d)(6) protection applies to a participant's entire accrued benefit as of the applicable amendment date, without regard to whether the entire accrued benefit was accrued before a participant's severance from employment, or whether some portion of the accrued benefit was the result of an increase pursuant to a plan amendment adopted after the participant's severance from employment.[2]

The regulations generally retain the rules from former §1.411(d)–3. Thus, for purposes of determining whether or not any participant's accrued benefit is decreased, all plan amendments affecting, directly or indirectly, the computation of accrued benefits are taken into account and, in determining whether a reduction has occurred, all plan amendments with the same applicable amendment date (the later of the adoption date or the effective date of the amendment) are treated as one amendment. The regulations also provide that these rules apply to section 411(d)(6)(B) protected benefits. Thus, for example, if there are 2 amendments with the same applicable amendment date, one of which increases accrued benefits and the other of which decreases the early retirement factors that are used to determine the early retirement annuity, the 2 amendments are treated as one amendment and only violate section 411(d)(6) if, after the 2 amendments, the net dollar amount of any early retirement annuity, with respect to the accrued benefit of any participant as of the applicable amendment date, is lower on that applicable amendment date than it would have been without the 2 amendments.[3]

B. *Definitions of section 411(d)(6) protected benefits*

The legislative history of REA provides that:

> [T]he term 'retirement-type subsidy' is to be defined by Treasury regulations. The committee intends that under these regulations, a subsidy that continues after retirement is generally to be considered a retirement-type subsidy. The committee expects, however, that a qualified disability benefit, a medical benefit, a social security supplement, a death benefit (including life insurance), or a plant shutdown benefit (that does not continue after retirement age) will not be considered a retirement-type subsidy. The committee expects that Treasury regulations will prevent the recharacterization of retirement-type benefits as benefits that are not protected [under section 411(d)(6)].[4]

These final regulations reflect the rules in the 1988 regulations (see §1.411(d)–4, Q&A–1(d)) that ancillary benefits and other rights or features are not protected under section 411(d)(6). In addition, taking the REA legislative history into account, these regulations define the terms *early retirement benefit*, *retirement-type benefit*, and *retirement-type subsidy*. These definitions differ in several respects from the proposed regulations.

The definition of the term *ancillary benefit* in these regulations reflects changes from the proposed regulations regarding death benefits. Because the account balance is the accrued benefit in a defined contribution plan, the payment of the account balance upon the death of a participant is the payment of the accrued benefit rather than an ancillary benefit. Therefore, in contrast to the proposed regulations, the final regulations do not categorize a right to a death benefit under a defined contribution plan as an ancillary benefit, and this right is protected under section 411(d)(6). For a defined benefit plan, these regulations provide that a death benefit that is not part of an optional form of benefit is an ancillary benefit and, therefore, is not protected under section 411(d)(6), even if paid after retirement. The regulations also clarify when a death benefit under a defined benefit plan is part of an optional form of benefit. The definition of *optional form of benefit* is defined in §1.411(d)–3(g)(6)(ii) of these final regulations and in §1.411(d)–4, Q&A–1(b)(1), which has been revised by this Treasury Decision to coordinate with the definition of *optional form of benefit* in these final regulations.

The regulations also include changes to the definitions of *ancillary benefit* and *retirement-type benefit*, relating to benefits that are not permitted to be in a qualified plan. These changes are relevant for purposes of applying section 204(g) of ERISA (the parallel rule to section 411(d)(6)), which applies to both qualified and nonqualified plans. The final regulations provide that, in addition to social security supplements, disability benefits, life insurance benefits, medical benefits under section 401(h), and certain death benefits, the only other ancillary bene-

[1] See *Bellas v. CBS, Inc.*, 221 F.3d 517 (3rd Cir. 2000), *cert. denied*, 531 U.S. 1104 (2001) (holding early retirement benefit that is more valuable than actuarially reduced normal retirement benefit and that is payable on occurrence of unpredictable contingent event is retirement-type subsidy, and therefore is protected under section 204(g)), *Board of Trustees of the Sheet Metal Workers' National Pension Fund v. C.I.R.*, 318 F.3d 599 (4th Cir. 2003) (stating provision for automatic cost-of-living adjustments granted by plan amendment is not accrued benefit for participants who retired before effective date of amendment and, thus, holding subsequent plan amendment eliminating future adjustments did not violate anti-cutback rule of section 411(d)(6)), and *Michael v. Riverside Cement*, 266 F.3d 1023 (9th Cir. 2001) (holding plan amendment providing for actuarial offset of early retirement benefits previously received by rehire upon subsequent retirement violates ERISA section 204(g), even though net effect of amendment is increase in retirement benefit of participant).

[2] This is contrary to the analysis in *Board of Trustees of the Sheet Metal Workers' National Pension Fund v. C.I.R.*.

[3] This is contrary to the analysis in *Michael v. Riverside Cement*.

[4] S. Rep. 98–575, at 30 (1984).

fits are plant shutdown benefits and other similar benefits that do not continue past retirement age, do not affect the payment of the accrued benefit, and are permitted to be in a qualified pension plan. These regulations also provide that a retirement-type benefit is either the payment of a distribution alternative with respect to an accrued benefit or the payment of any other benefit under a defined benefit plan (including a QSUPP as defined in §1.401(a)(4)–12) that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit.

These regulations include a number of clarifications regarding section 411(d)(6)(B) protected benefits that were included in the proposed regulations with minor modifications. The regulations clarify that if, after a plan amendment, there is another optional form of benefit available to a participant under the plan that is of inherently equal or greater value, the plan amendment is not treated as eliminating an optional form of benefit, or eliminating or reducing an early retirement benefit or a retirement-type subsidy. For example, a change in the method of calculating a joint and survivor annuity from using a 90% adjustment factor on account of the survivorship payment at particular ages for a participant and a spouse to using a 91% adjustment factor at the same ages is treated as not eliminating an optional form of benefit.

C. *Multiple amendment rule*

Under the proposed regulations, a plan amendment would violate the requirements of section 411(d)(6) if it is one of a series of plan amendments made at different times that, when taken together, have the effect of reducing or eliminating a section 411(d)(6) protected benefit in a manner that would be prohibited under section 411(d)(6) if accomplished through a single amendment. The 1988 regulations contained a similar rule under which a plan amendment that modified an optional form of benefit with respect to benefits already accrued was evaluated in light of previous amendments (see §1.411(d)–4, Q&A–2(c), as in effect prior to amendment by these regulations).

Commentators raised concerns about the multiple amendment rule in the proposed regulations, including its complexity and the uncertainty as to when the rule would apply. In response to these comments, this multiple amendment rule has been revised to add an objective rule that generally only combines plan amendments adopted within a 3-year period. The final regulations also retain an application of the multiple amendment rule from the proposed regulations relating to restrictions against creating burdens or complexities. Under this rule, if a plan is amended to add a retirement-type subsidy in order to eliminate another retirement-type subsidy within 3 years, the plan amendment eliminating the retirement-type subsidy will not be treated as reducing or eliminating burdens and complexities for the plan and its participants, even if the elimination of the subsidy would not adversely affect the rights of any plan participant in a more than *de minimis* manner.

These final regulations also make a conforming change to §1.411(d)–4, Q&A–2(c), by replacing the serial amendment rule under those regulations with a revised version of the multiple amendment rule. These regulations do not modify the rule in §1.411(d)–4, Q&A–1(c)(1), which provides that if an employer establishes a pattern of repeated plan amendments providing for similar benefits in similar situations for substantially consecutive, limited periods of time, then those similar benefits will be treated as provided under the terms of the plan, without regard to the limited period of time, to the extent necessary to carry out the purposes of sections 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a), including section 401(a)(25).

D. *Application of section 411(d)(6) to certain amendments eliminating impermissible benefits*

Commentators suggested that the final regulations clarify that a plan is permitted under section 411(d)(6) to eliminate an optional form of benefit that is inconsistent with the plan qualification requirements of section 401(a) (*e.g.*, the requirements of section 401(a)(9)). In general, section 411(d)(6) does not permit the elimination or reduction of a section 411(d)(6) protected benefit solely because that benefit violates the plan qualification requirements. However, in the past, the IRS has exercised its authority to issue guidance that, in certain situations, permit certain plan amendments that eliminate or reduce certain optional forms of benefit that violate the plan qualification requirements. For example, §1.401(a)(9)–8, Q&A–12, provides that a plan will not fail to satisfy section 411(d)(6) merely because the plan is amended to eliminate the availability of an optional form of benefit to the extent that the optional form does not satisfy section 401(a)(9).[5]

III. *Elimination of Benefits of De Minimis Value Under EGTRRA*

A. *Elimination of redundant optional forms of benefit*

These regulations generally retain the rule from the proposed regulations that a plan is permitted to be amended to eliminate an optional form of benefit for a participant with respect to benefits accrued before the applicable amendment date if the optional form of benefit is redundant with respect to a retained optional form of benefit and certain conditions are satisfied. An optional form of benefit is considered redundant with respect to a retained optional form of benefit if the retained optional form of benefit is in the same family of optional forms of benefit as the optional form of benefit being eliminated and the participant's rights with respect to the retained optional form of benefit are not subject to materially greater restrictions than those that applied to the optional form of benefit being eliminated.

These regulations also contain new terminology to facilitate the application of certain rules. Various rules in these final regulations use the term *annuity commencement date* instead of the term *annuity starting date*, thereby accommodating the elimination of an optional form of benefit that includes a retroactive annuity starting date. The final regulations also define the term *generalized optional form*, which means a group of optional forms of benefit that are identical except for differences due to the actuarial factors that

[5] See also §1.401(a)(9)–1, Q&A–3, providing that, notwithstanding any other plan provision, a plan is not permitted to distribute benefits under any optional form of benefit that does not satisfy section 401(a)(9).

are used to determine the amount of the distributions under those optional forms of benefit and the annuity starting dates. The concept of a generalized optional form is used in several places in these regulations, including the redundancy rule and the rules concerning burdensome and *de minimis* benefits.

Under the proposed regulations, among the conditions for eliminating a section 411(d)(6)(B) protected benefit under the redundancy rule is that the plan amendment not apply to an optional form of benefit with an annuity starting date that is earlier than 90 days after the date the amendment is adopted. This 90-day waiting period is based on a rule relating to the timing for the written explanation of a qualified joint and survivor annuity under section 417(a)(3). Under that rule, the explanation cannot be provided more than 90 days before the annuity starting date. See §1.417(e)–1(b)(3)(ii). A commentator suggested that the regulations be revised to increase the waiting period before the elimination of a redundant optional form of benefit from 90 days after the amendment is adopted to 180 days after the amendment is adopted. The commentator reasoned that this increase would give participants more time to adjust to the elimination of the optional form of benefit and, thus, participants would have more time to select from among the preamendment optional forms of benefit. The commentator also noted that proposed legislation had been introduced that would increase the number of days before the annuity starting date that a QJSA explanation can be provided (the maximum QJSA explanation period) from 90 days to 180 days.

In light of this comment, the final regulations explicitly link the waiting period before the elimination of a redundant optional form of benefit with the maximum QJSA explanation period, which is currently a 90-day period. Thus, these regulations provide that, for purposes of the redundancy rule, a plan amendment cannot be applicable with respect to an optional form of benefit with an annuity commencement date for which a written explanation relating to a QJSA would have satisfied the timing requirements of section 417(a)(3) had it been provided on or before the date that the amendment is adopted. This ensures that no participant will receive a QJSA explanation describing an optional form of benefit which could be eliminated before the election has been made. The waiting period before the elimination of a redundant optional form of benefit under these final regulations would change automatically if, at any future date, the maximum QJSA explanation period were to be altered.

B. *Permissible elimination of noncore optional forms of benefit where core options are offered*

The final regulations retain the rule from the proposed regulations under which a plan is permitted to be amended to eliminate an optional form of benefit for plan participants with respect to benefits accrued before the applicable amendment date if, after the amendment, the plan offers a designated set of core options to plan participants with respect to benefits accrued both before and after the amendment. The core options are defined as a straight life annuity, a 75% joint and contingent annuity, a 10-year term certain and life annuity, and the most valuable option for a participant with a short life expectancy. As under the proposed regulations, the final regulations do not permit a plan amendment to apply to optional forms of benefit with annuity commencement dates that are earlier than 4 years after the date the amendment is adopted. In addition, the final regulations retain the rule that a plan may not be amended to eliminate an optional form of benefit that includes a single-sum distribution that applies with respect to at least 25% of a participant's accrued benefit as of the date the optional form of benefit is eliminated.

Several commentators suggested that the 75% joint and contingent annuity core option be replaced with a 50% joint and contingent annuity core option. One commentator argued that if the 50% joint and contingent annuity option is not available to participants, the higher actuarial charge associated with the 75% joint and contingent annuity option might discourage participants from electing any joint and contingent annuity option. Other commentators pointed out that §1.411(d)–4, Q&A–2(b)(2)(ii), allows a plan that provides a range of 3 or more actuarially equivalent joint and survivor annuity options to be amended to eliminate any of such options, other than the options with the largest and smallest optional survivor payment percentages (the bookends rule) and argued that the 75% joint and contingent annuity core option rule would require plans to add back the 75% joint and contingent annuity option that was eliminated under the bookends rule. In light of these comments and to accommodate the bookends rule, the final regulations retain the 75% joint and contingent annuity as a core option, but provide a special rule that a plan is permitted to treat both the 50% and 100% joint and contingent annuity options as core options for purposes of the core options rule (in lieu of offering a 75% joint and contingent annuity) if the plan otherwise satisfies the requirements of the core options rule.

As stated above, these regulations retain in the list of core options the most valuable option for a participant with a short life expectancy. This core option is defined as the optional form of benefit that is reasonably expected to result in payments that have the largest actuarial present value in the case of a participant who dies shortly after the annuity starting date. Like the proposed regulations, these regulations provide a safe harbor method for determining which optional form of benefit under the plan is the most valuable option for a participant with a short life expectancy. Under this safe harbor method, a plan is permitted to treat a single-sum distribution option with an actuarial present value that is not less than the actuarial present value of any optional form of benefit being eliminated as the most valuable option for a participant with a short life expectancy. If a plan does not offer such a single-sum distribution option, the plan is permitted to treat a joint and contingent annuity as the most valuable option for a participant with a short life expectancy if the continuation percentage under the amendment is at least 75% and is at least as great as the highest continuation percentage available before the amendment. In the event a plan has neither a single-sum distribution option nor a joint and contingent annuity with a continuation percentage of at least 75%, the plan is permitted to treat a term certain and life annuity with a term certain period of at least 15 years as the most valuable option for a participant with a short life expectancy.

Similar rules were in the proposed regulations, and a commentator argued that the rules would overprotect single-sum distribution options by providing 2 levels of protection: first, by not treating an amendment as satisfying the core options rule if it eliminates an optional form of benefit that includes a single-sum distribution that applies with respect to at least 25% of the participant's accrued benefit as of the date the optional form of benefit is eliminated; and, second, by providing that a plan is permitted to treat a single-sum distribution option with an actuarial present value that is not less than the actuarial present value of any optional form of benefit eliminated by the plan amendment as the most valuable option for a participant with a short life expectancy. This comment is based on the assumption that a single-sum distribution option will always be the most valuable option for a participant with a short life expectancy. However, as illustrated in an example in these regulations, a single-sum option is not always the most valuable option for a participant with a short life expectancy, *e.g.*, where the single-sum distribution does not take into account an early retirement subsidy available in another optional form of benefit (see §1.411(d)–3(h), *Example 4*). Accordingly, the final regulations retain the separate protection for single sum-distributions and the most valuable option for a participant with a short life expectancy. However, the final regulations clarify that the safe harbor hierarchy method for determining the most valuable option for a participant with a short life expectancy is available only if the single-sum distribution, joint and contingent annuity, or term certain and life annuity optional forms satisfy the conditions set forth in that rule at all relevant ages. Thus, when the safe harbor hierarchy rule applies, the most valuable option for a participant with a short life expectancy will be the generalized optional form for all participants.

These regulations also retain the requirement in the proposed regulations under which an amendment to eliminate an optional form of benefit under the core options rule cannot apply to an optional form of benefit with an annuity commencement date that is earlier than 4 years after the date the amendment is adopted. Several commentators argued that the waiting period before elimination of a noncore optional form of benefit be shortened, with one commentator suggesting 90 days, similar to the waiting period before the elimination of a redundant optional form of benefit. Other commentators argued that the waiting period before the elimination of a noncore optional form of benefit be increased to 5 years, similar to the 5-year cliff vesting rule. However, no commentator provided evidence that participants evaluate benefit choices over a shorter or longer period. Treasury and the IRS believe that the 4-year waiting period before elimination of a noncore optional form of benefit strikes the right balance between protecting participants' expectations about the various benefit choices in their plans in coordination with decisions relating to retirement planning, while reducing burdens on plans. Thus, the 4-year waiting period before the elimination of a noncore optional form of benefit has been retained in these regulations.

As stated earlier under the heading *Multiple amendment rule*, the final regulations provide that a plan amendment violates section 411(d)(6) if it is one of a series of plan amendments that, when taken together, have the effect of reducing or eliminating section 411(d)(6) protected benefits in a manner that would violate section 411(d)(6) if accomplished through a single amendment. These final regulations add a rule that, for purposes of the multiple amendment rule, only plan amendments made within a 3-year period are generally taken into account. Notwithstanding this 3-year rule, the final regulations also add a rule that if a plan is amended to eliminate an optional form of benefit using the core option rule, the employer must wait 3 years after the first annuity commencement date for which the optional form of benefit is no longer available before reducing or eliminating any core options offered under the plan.

C. *Elimination of early retirement benefits and retirement-type subsidies that are of de minimis value*

The final regulations retain from the proposed regulations the additional requirements that a plan amendment must satisfy if the retained optional form of benefit or each core option offered under the plan does not have the same annuity starting date or has a lower actuarial present value than the optional form of benefit being eliminated. In such a case, the plan amendment is only permitted to reduce or eliminate a section 411(d)(6)(B) protected benefit that creates significant burdens or complexities for the plan and its participants, but only if elimination does not adversely affect the rights of any participant in more than a *de minimis* manner.

The regulations generally retain the rule in the proposed regulations which provides that a reduction in actuarial present value is of no more than a *de minimis* amount if the reduction does not exceed the greater of 2% of the present value of the retirement-type subsidy under the eliminated optional form of benefit (if any) prior to the amendment or 1% of the participant's compensation for the prior plan year (as defined in section 415(c)(3)). Several commentators offered suggestions to change this *de minimis* value test. Some commentators suggested that the 2% threshold be increased in order to make the ability to eliminate the subsidy more meaningful. The commentators suggested an increase up to 5% of the retirement-type subsidy. In addition, other commentators argued that 2% threshold should be changed from a percentage of the retirement-type subsidy to a percentage of the eliminated optional form of benefit. Under this suggestion, the margin of difference would be permitted to be significantly greater. Other commentators argued that the 2% threshold should be lowered in order to reflect Congressional intent in the examples illustrating *de minimis* reductions in the EGTRRA conference report.[6] These suggestions ranged from 1.5% to 1% of the retirement-type subsidy. These commentators also recommended that the 1% of compensation *de minimis* threshold be reduced. In addition, some commentators suggested that a plan amendment eliminating a retirement-type subsidy should be required to satisfy both tests, instead of the 2 tests being alternatives.

These final regulations do not adopt these suggestions. The examples in the EGTRRA conference report are explicitly expressed as examples, not rules. The per-

[6] H.R. Conf. Rep. 107–84, at 254 (2001).

centage thresholds in the *de minimis* value test are rounded percentages based on the dollar amounts in the EGTRRA conference report, and, thus, they accurately reflect the intent of EGTRRA and the legislative history. Accordingly, the final regulations retain the percentage thresholds from the proposed regulations.

Several commentators also noted that the 1% of compensation test would have no application to terminated vested participants because terminated participants frequently have no current or prior year compensation from the employer. Other commentators argued that the 1% of compensation test does not accurately reflect all employment situations, such as those participants who may take a leave of absence or begin a reduced work schedule. In light of these comments, the regulations provide that the 1% of compensation test is applied using the greater of the participant's compensation (within the meaning of section 415(c)(3)) for the prior plan year or the participant's average compensation for his or her high 3 years (within the meaning of section 415(b)(1)(B) and (b)(3)).

These regulations retain the rule in the proposed regulations under which a facts and circumstances analysis applies to determine whether a plan amendment eliminates section 411(d)(6)(B) protected benefits that create significant burdens and complexities for a plan and its participants. Under this rule, for a plan amendment eliminating a retirement-type subsidy or changing actuarial factors, the facts and circumstances to consider include the number of different retirement-type subsidies and other actuarial factors available under the plan, whether the terms and conditions applicable to the plan's retirement-type subsidies are difficult to summarize in a manner that is concise and readily understandable to the average plan participant, whether those different retirement-type subsidies and other actuarial factors were added to the plan as a result of mergers, acquisitions, or other business transactions, and whether the effect of the plan amendment is to reduce the number of categories of retirement-type subsidies or other actuarial factors.

Several commentators stated that this facts and circumstances standard is vague and subjective. The commentators suggested that the standard should be revised to provide for more objective criteria to determine the circumstances under which a plan amendment is permitted to eliminate a section 411(d)(6)(B) protected benefit that creates significant burdens or complexities for a plan and its participants. The commentators also suggested that the final regulations include examples of the standard.

In light of these comments, the final regulations add 2 new factors to the facts and circumstances analysis for retirement-type subsidies and actuarial factors. These new factors are whether the plan amendment eliminates one or more generalized optional forms and whether the plan amendment replaces a complex optional form of benefit with a simpler form. An example has been added to the final regulations to illustrate this facts and circumstances analysis.

Like the proposed regulations, the final regulations provide a rebuttable presumption for plan amendments that eliminate a set of actuarial factors under the plan that, considered in the aggregate, are burdensome or complex. If this is the case, then the elimination of any set of actuarial factors is presumed to eliminate section 411(d)(6)(B) protected benefits that create significant burdens or complexities for the plan and its participants. However, the regulations also provide that if the effect of a plan amendment with respect to an optional form of benefit is merely to substitute one set of actuarial factors for another set of actuarial factors, without any reduction in the number of different actuarial factors, the plan amendment would not be permitted. Commentators stated that this "no substitution" rule in the proposed regulations would offer no relief to plans that wish merely to update their plans with actuarial assumptions that reflect more recent experience. Another commentator similarly suggested that the regulations should permit a plan to update its mortality tables. In response to these comments, the final regulations provide an exception to the "no substitution" rule for situations in which a plan is changing actuarial factors for determining optional forms of benefit with new actuarial factors that are based on more accurate mortality experience or more appropriate interest rates (*e.g.*, interest rates that reflect more recent rates of returns).

IV. *Other Issues*

A. *Contingent event benefits*

In Notice 2003–10, 2003–1 C.B. 369, Treasury and the IRS announced that regulations would be proposed that would provide guidance on benefits that are treated as early retirement benefits and retirement-type subsidies for purposes of section 411(d)(6)(B). Notice 2003–10 also provided that the regulations will be prospective and the IRS will not treat a plan as failing to satisfy the requirements of section 401 merely because of a plan amendment that eliminates or reduces an early retirement benefit or a retirement-type subsidy that is conditioned on the occurrence of an unpredictable contingent event (within the meaning of section 412(l)) if the amendment is adopted and effective prior to the occurrence of the contingent event and prior to the publication of the final regulations in the **Federal Register**.

These final regulations generally retain the rule in the proposed regulations which provided that benefits that are contingent on the occurrence of certain events, such as a plant shutdown or involuntary separation, and that continue after retirement are retirement-type subsidies that are protected under section 411(d)(6)(B), both before and after the occurrence of the contingency.[7] However, as noted above under the heading *Definitions of section 411(d)(6) protected benefits*, this rule is limited to benefits under a defined benefit plan that are permitted to be in a qualified plan. This rule applies to amendments adopted after December 31, 2005. For an amendment adopted before January 1, 2006, the IRS will not treat a plan as failing to be tax qualified under section 401(a) merely because the plan amendment eliminates or reduces an early retirement benefit or a retirement-type subsidy that is conditioned on the occurrence of an unpredictable contingent event (within the meaning of section 412(l)) if the amendment is adopted and effective prior to the occurrence of the contingent event.

[7] This rule follows the analysis in *Bellas v. CBS, Inc.*.

B. *Effect of Central Laborers' decision*

Since the issuance of the proposed regulations on March 24, 2004, the Supreme Court issued its opinion in *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 749 (June 7, 2004). This case addressed an issue that was reserved in the proposed regulations, pending the final decision in *Central Laborers'*, namely the interaction of the vesting rules in section 411(a) with the anti-cutback rules in section 411(d)(6). This topic is reserved in these final regulations and addressed in proposed regulations (REG–156518–04) that are being published elsewhere in this issue of the Bulletin.

C. *Utilization test*

Comments were made prior to the issuance of the proposed regulations requesting relief from section 411(d)(6) to enable plans to eliminate optional forms of benefit that participants rarely use. The preamble to the proposed regulations noted the difficulty in applying a utilization standard for plans where there are few retirements. However, comments on the proposed regulations asked Treasury and the IRS to consider adding a utilization test to the regulations as an acceptable method of eliminating optional forms of benefit, early retirement benefits, and retirement-type subsidies that are rarely used. The commentators argued that rarely used optional forms create a burden both for plans and their participants and that utilization of an optional form of benefit is a good measure of a benefit's value to participants in a plan. In light of these comments, Treasury and IRS are proposing a utilization standard, which is included in proposed regulations (REG–156518–04) being published elsewhere in this issue of the Bulletin. Accordingly, these final regulations provide a reserved paragraph for such a utilization test.

Effective Dates

These final regulations apply to amendments adopted and effective after August 12, 2005. However, there is a special effective date for certain plan amendments as described above (under the heading *Contingent Event Benefits*). Plan amendments adopted before August 12, 2005, are to be evaluated in light of the applicable authorities without regard to these regulations. No implication is intended concerning whether or not a rule adopted prospectively in these regulations is applicable law before the effective date in these regulations.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are amended as follows:

PART 1—INCOME TAXES

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

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

§1.411(d)–3 also issued under 26 U.S.C. 411(d)(6) and section 645(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38).* * *

Par. 2. Section 1.411(d)–3 is revised to read as follows:

§1.411(d)–3 Section 411(d)(6) protected benefits.

(a) *Protection of accrued benefits*—(1) *General rule*. Under section 411(d)(6)(A), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided in section 412(c)(8), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law (*e.g.*, section 1541(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 1085)). For purposes of this section, a plan amendment includes any changes to the terms of a plan, including changes resulting from a merger, consolidation, or transfer (as defined in section 414(l)) or a plan termination. The protection of section 411(d)(6) applies to a participant's entire accrued benefit under the plan as of the applicable amendment date, without regard to whether the entire accrued benefit was accrued before a participant's severance from employment or whether any portion was the result of an increase in the accrued benefit of the participant pursuant to a plan amendment adopted after the participant's severance from employment.

(2) *Plan provisions taken into account*—(i) *Direct or indirect reduction in accrued benefit*. For purposes of determining whether a participant's accrued benefit is decreased, all of the amendments to the provisions of a plan affecting, directly or indirectly, the computation of accrued benefits are taken into account. Plan provisions indirectly affecting the computation of accrued benefits include, for example, provisions relating to years of service and compensation.

(ii) *Amendments effective with the same applicable amendment date*. In determining whether a reduction in a participant's accrued benefit has occurred, all plan amendments with the same applicable amendment date are treated as one amendment. Thus, if two amendments have the same applicable amendment date and one amendment, standing alone, increases participants' accrued benefits and the other amendment, standing alone, decreases participants' accrued benefits, the amendments are treated as one amendment and will only violate section 411(d)(6) if, for any participant, the net effect is to de-

crease participants' accrued benefit as of that applicable amendment date.

(iii) *Multiple amendments*—(A) *General rule*. A plan amendment violates the requirements of section 411(d)(6) if it is one of a series of plan amendments that, when taken together, have the effect of reducing or eliminating a section 411(d)(6) protected benefit in a manner that would be prohibited by section 411(d)(6) if accomplished through a single amendment.

(B) *Determination of the time period for combining plan amendments*. For purposes of applying the rule in paragraph (a)(2)(iii)(A) of this section, generally only plan amendments adopted within a 3-year period are taken into account.

(3) *Application of section 411(a) nonforfeitability provisions with respect to section 411(d)(6) protected benefits*. [Reserved].

(4) *Examples*. The following examples illustrate the application of this paragraph (a):

Example 1. (i) *Facts*. Plan A provides an annual benefit of 2% of career average pay times years of service commencing at normal retirement age (age 65). Plan A is amended on November 1, 2006, effective as of January 1, 2007, to provide for an annual benefit of 1.3% of final pay times years of service, with final pay computed as the average of a participant's highest 3 consecutive years of compensation. As of January 1, 2007, Participant M has 16 years of service, M's career average pay is $37,500, and the average of M's highest 3 consecutive years of compensation is $67,308. Thus, Participant M's accrued benefit as of the applicable amendment date is increased from $12,000 per year at normal retirement age (2% times $37,500 times 16 years of service) to $14,000 per year at normal retirement age (1.3% times $67,308 times 16 years of service). As of January 1, 2007, Participant N has 6 years of service, N's career average pay is $50,000, and the average of N's highest 3 consecutive years of compensation is $51,282. Participant N's accrued benefit as of the applicable amendment date is decreased from $6,000 per year at normal retirement age (2% times $50,000 times 6 years of service) to $4,000 per year at normal retirement age (1.3% times $51,282 times 6 years of service).

(ii) *Conclusion*. While the plan amendment increases the accrued benefit of Participant M, the plan amendment fails to satisfy the requirements of section 411(d)(6)(A) because the amendment decreases the accrued benefit of Participant N below the level of the accrued benefit of Participant N immediately before the applicable amendment date.

Example 2. (i) *Facts*. The facts are the same as *Example 1*, except that Plan A includes a provision under which Participant N's accrued benefit cannot be less than what it was immediately before the applicable amendment date (so that Participant N's accrued benefit could not be less than $6,000 per year at normal retirement age).

(ii) *Conclusion*. The amendment does not violate the requirements of section 411(d)(6)(A) with respect to Participant M (whose accrued benefit has been increased) or with respect to Participant N (although Participant N would not accrue any benefits until the point in time at which the new formula amount would exceed the amount payable under the minimum provision, approximately 3 years after the amendment becomes effective).

(b) *Protection of section 411(d)(6)(B) protected benefits*—(1) *General rule*—(i) *Prohibition against plan amendments eliminating or reducing section 411(d)(6)(B) protected benefits*. Except as provided in this section, a plan is treated as decreasing an accrued benefit if it is amended to eliminate or reduce a section 411(d)(6)(B) protected benefit as defined in paragraph (g)(15) of this section. This paragraph (b)(1) applies to participants who satisfy (either before or after the plan amendment) the preamendment conditions for a section 411(d)(6)(B) protected benefit.

(ii) *Contingent benefits*. The rules of paragraph (b)(1)(i) of this section apply to participants who satisfy (either before or after the plan amendment) the preamendment conditions for the section 411(d)(6)(B) protected benefit even if the condition on which the eligibility for the section 411(d)(6)(B) protected benefit depends is an unpredictable contingent event (*e.g.*, a plant shutdown).

(iii) *Application of general rules in paragraph (a) of this section to section 411(d)(6)(B) protected benefits*. For purposes of determining whether a participant's section 411(d)(6)(B) protected benefit is eliminated or reduced, the rules of paragraph (a) of this section apply to section 411(d)(6)(B) protected benefits in the same manner as they apply to accrued benefits described in section 411(d)(6)(A). As an example of the application of paragraph (a)(2)(ii) of this section to section 411(d)(6)(B) protected benefits, if there are two amendments with the same applicable amendment date and one amendment increases accrued benefits and the other amendment decreases the early retirement factors that are used to determine the early retirement annuity, the amendments are treated as one amendment and only violate section 411(d)(6) if, after the two amendments, the net dollar amount of any early retirement annuity with respect to the accrued benefit of any participant as of the applicable amendment date is lower than it would have been without the two amendments. As an example of the application of paragraph (a)(2)(iii) of this section to section 411(d)(6)(B) protected benefits, a series of amendments made within a 3-year period that, when taken together, have the effect of reducing or eliminating early retirement benefits or retirement-type subsidies in a manner that adversely affects the rights of any participant in a more than *de minimis* manner violates section 411(d)(6)(B) even if each amendment would be permissible pursuant to paragraphs (c), (d), or (f) of this section.

(2) *Permissible elimination of section 411(d)(6)(B) protected benefits*—(i) *In general*. A plan is permitted to be amended to eliminate a section 411(d)(6)(B) protected benefit if the elimination is in accordance with this section or §1.411(d)–4.

(ii) *Increases in payment amounts do not eliminate an optional form of benefit*. An amendment is not treated as eliminating an optional form of benefit or eliminating or reducing an early retirement benefit or retirement-type subsidy under the plan, if, effective after the plan amendment, there is another optional form of benefit available to the participant under the plan that is of inherently equal or greater value (within the meaning of §1.401(a)(4)–4(d)(4)(i)(A)). Thus, for example, a change in the method of calculating a joint and survivor annuity from using a 90% adjustment factor on account of the survivorship payment at particular ages for a participant and a spouse to using a 91% adjustment factor at the same ages is not treated as an elimination of an optional form of benefit. Similarly, a plan that offers a subsidized qualified joint and survivor annuity option for married participants under which the amount payable during the participant's lifetime is not less than the amount payable under the plan's straight life annuity is permitted to be amended to eliminate the straight life annuity option for married participants.

(3) *Permissible elimination of benefits that are not section 411(d)(6) protected benefits*—(i) *In general*. Section 411(d)(6) does not provide protection for benefits that are ancillary benefits, other rights and features, or any other benefits that are not described in section 411(d)(6). See §1.411(d)–4, Q&A–1(d). However, a plan may not be amended to recharacterize

a retirement-type benefit as an ancillary benefit. Thus, for example, a plan amendment to recharacterize any portion of an early retirement subsidy as a social security supplement that is an ancillary benefit violates section 411(d)(6).

(ii) *No protection for future benefit accruals*. Section 411(d)(6) only protects benefits that accrue before the applicable amendment date. Thus, a plan is permitted to be amended to eliminate or reduce an early retirement benefit, a retirement-type subsidy, or an optional form of benefit with respect to benefits that accrue after the applicable amendment date without violating section 411(d)(6). However, section 4980F(e) of the Internal Revenue Code and section 204(h) of ERISA require notice of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or a retirement-type subsidy. See §54.4980F–1 of this chapter generally, and see §54.4980F–1, Q&A–7(b) and Q&A–8(c) of this chapter, with respect to the circumstances under which such notice is required for a reduction in an early retirement benefit or retirement-type subsidy.

(4) *Examples*. The following examples illustrate the application of this paragraph (b):

Example 1. (i) *Facts involving amendments to an early retirement subsidy*. Plan A provides an annual benefit of 2% of career average pay times years of service commencing at normal retirement age (age 65). Plan A is amended on November 1, 2006, effective as of January 1, 2007, to provide for an annual benefit of 1.3% of final pay times years of service, with final pay computed as the average of a participant's highest 3 consecutive years of compensation. Participant M is age 50, M has 16 years of service, M's career average pay is $37,500, and the average of M's highest 3 consecutive years of compensation is $67,308. Thus, M's accrued benefit as of the effective date of the amendment is increased from $12,000 per year at normal retirement age (2% times $37,500 times 16 years of service) to $14,000 per year at normal retirement age (1.3% times $67,308 times 16 years of service). (These facts are similar to the facts in *Example 1* in paragraph (a)(4) of this section.) Before the amendment, Plan A permitted a former employee to commence distribution of benefits as early as age 55 and, for a participant with at least 15 years of service, actuarially reduced the amount payable in the form of a straight life annuity commencing before normal retirement age by 3% per year from age 60 to age 65 and by 7% per year from age 55 through age 59. Thus, before the amendment, the amount of M's early retirement benefit that would be payable for commencement at age 55 was $6,000 per year ($12,000 per year minus 3% for 5 years and minus 7% for 5 more years). The amendment also alters the actuarial reduction factor so that, for a participant with at least 15 years of service, the amount payable in a straight life annuity commencing before normal retirement age is reduced by 6% per year. As a result, the amount of M's early retirement benefit at age 55 becomes $5,600 per year after the amendment ($14,000 minus 6% for 10 years).

(ii) *Conclusion*. The straight life annuity payable under Plan A at age 55 is an optional form of benefit that includes an early retirement subsidy. The plan amendment fails to satisfy the requirements of section 411(d)(6)(B) because the amendment decreases the optional form of benefit payable to Participant M below the level that Participant M was entitled to receive immediately before the effective date of the amendment. If instead Plan A had included a provision under which M's straight life annuity payable at any age could not be less than what it was immediately before the amendment (so that M's straight life annuity payable at age 55 could not be less than $6,000 per year), then the amendment would not fail to satisfy the requirements of section 411(d)(6)(B) with respect to M's straight life annuity payable at age 55 (although the straight life annuity payable to M at age 55 would not increase until the point in time at which the new formula amount with the new actuarial reduction factors exceeds the amount payable under the minimum provision, approximately 14 months after the amendment becomes effective).

Example 2. (i) *Facts involving plant shutdown benefits*. Plan B permits participants who have a severance from employment before normal retirement age (age 65) to commence distributions at any time after age 55 with the amount payable to be actuarially reduced using reasonable actuarial assumptions regarding interest and mortality specified in the plan, but provides that the annual reduction for any participant who has at least 20 years of service and who has a severance from employment after age 55 is only 3% per year (which is a smaller reduction than would apply under reasonable actuarial reductions). Plan B also provides two plant shutdown benefits to participants who have a severance of employment as a result of a plant shutdown. First, the favorable 3% per year actuarial reduction applies for commencement of benefits after age 55 and before age 65 for any participant who has at least 10 years of service and who has a severance from employment as a result of a plant shutdown. Second, all participants who have at least 20 years of service and who have a severance from employment after age 55 (and before normal retirement age at age 65) as a result of a plant shutdown will receive supplemental payments. Under the supplemental payments, an additional amount equal to the participant's estimated old-age insurance benefit under the Social Security Act is payable until age 65. The supplemental payments are not a QSUPP, as defined in §1.401(a)(4)–12, because the plan's terms do not state that the supplement is treated as an early retirement benefit that is protected under section 411(d)(6).

(ii) *Conclusion with respect to plant shutdown benefits*. The benefits payable with the 3% annual reduction are retirement-type benefits. The excess of the actuarial present value of the early retirement benefit using the 3% annual reduction over the actuarial present value of the normal retirement benefit is a retirement-type subsidy and the right to receive payments of the benefit at age 55 is an early retirement benefit. These conclusions apply not only with respect to the rights that apply to participants who have at least 20 years of service, but also to participants with at least 10 years of service who have a severance from employment as a result of a plant shutdown. Thus, the right to receive benefits based on a 3% annual reduction for participants with at least 10 years of service at the time of a plant shutdown is an early retirement benefit that provides a retirement-type subsidy and is a section 411(d)(6)(B) protected benefit (even though no plant shutdown has occurred). Therefore, a plan amendment cannot eliminate this benefit with respect to benefits accrued before the applicable amendment date, even before the occurrence of the plant shutdown. Because the plan provides that the supplemental payments cannot exceed the OASDI benefit under the Social Security Act, the supplemental payments constitute a social security supplement (but not a QSUPP as defined in §1.401(a)(4)–12), which is an ancillary benefit that is not a section 411(d)(6)(B) protected benefit and accordingly is not taken into account in determining whether a prohibited reduction has occurred.

(c) *Permissible elimination of optional forms of benefit that are redundant*—(1) *General rule*. Except as otherwise provided in paragraph (c)(5) of this section, a plan is permitted to be amended to eliminate an optional form of benefit for a participant with respect to benefits accrued before the applicable amendment date if—

(i) The optional form of benefit is redundant with respect to a retained optional form of benefit, within the meaning of paragraph (c)(2) of this section;

(ii) The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period (as defined in paragraph (g)(9) of this section) after the date the amendment is adopted; and

(iii) The requirements of paragraph (e) of this section are satisfied in any case in which either:

(A) The retained optional form of benefit for the participant does not commence on the same annuity commencement date as the optional form of benefit that is being eliminated, or

(B) As of the date the amendment is adopted, the actuarial present value of the retained optional form of benefit for the participant is less than the actuarial present value of the optional form of benefit that is being eliminated.

(2) *Similar types of optional forms of benefit are redundant*—(i) *General rule*. An optional form of benefit is redundant

with respect to a retained optional form of benefit if, after the amendment becomes applicable—

(A) There is a retained optional form of benefit available to the participant that is in the same family of optional forms of benefit, within the meaning of paragraphs (c)(3) and (4) of this section, as the optional form of benefit being eliminated; and

(B) The participant's rights with respect to the retained optional form of benefit are not subject to materially greater restrictions (such as conditions relating to eligibility, restrictions on a participant's ability to designate the person who is entitled to benefits following the participant's death, or restrictions on a participant's right to receive an in-kind distribution) than applied to the optional form of benefit being eliminated.

(ii) *Special rule for core options*. An optional form of benefit that is a core option as defined in paragraph (g)(5) of this section may not be eliminated as a redundant benefit under the rules of this paragraph (c) unless the retained optional form of benefit and the eliminated core option are identical except for differences described in paragraph (c)(3)(ii) of this section. Thus, for example, a particular 10-year term certain and life annuity may not be eliminated by plan amendment unless the retained optional form of benefit is another 10-year term certain and life annuity.

(3) *Family of optional forms of benefit*—(i) *In general*. Paragraph (c)(4) of this section describes certain families of optional forms of benefits. Not every optional form of benefit that is offered under a plan necessarily fits within a family of optional forms of benefit as described in paragraph (c)(4) of this section. Each optional form of benefit that is not included in any particular family of optional forms of benefit listed in paragraph (c)(4) of this section is in a separate family of optional forms of benefit with other optional forms of benefit that would be identical to that optional form of benefit but for differences that are disregarded under paragraph (c)(3)(ii) of this section.

(ii) *Certain differences among optional forms of benefit*—(A) *Differences in actuarial factors and annuity starting dates*. The determination of whether two optional forms of benefit are within a family of optional forms of benefit is made without regard to actuarial factors or annuity starting dates. Thus, any optional forms of benefit that are part of the same generalized optional form (within the meaning of paragraph (g)(8) of this section) are in the same family of optional forms of benefit. For example, if a plan has a single-sum distribution option for some participants that is calculated using a 5% interest rate and a specific mortality table (but no less than the minimum present value as determined under section 417(e)) and another single-sum distribution option for other participants that is calculated using the applicable interest rate as defined in section 417(e)(3)(A)(ii)(II) and the applicable mortality table as defined in section 417(e)(3)(A)(ii)(I), both single-sum distribution options are part of the same generalized optional form and thus in the same family of optional forms of benefit under the rules of paragraph (c)(3)(i) of this section. However, differences in actuarial factors and annuity starting dates are taken into account for purposes of the requirements in paragraph (e)(3) of this section.

(B) *Differences in pop-up provisions and cash refund features for joint and contingent options*. The determination of whether two optional forms of benefit are within a family of optional forms of benefit relating to joint and contingent families (as described in paragraph (c)(4)(i) and (ii) of this section) is made without regard to the following features—

(*1*) Pop-up provisions (under which payments increase upon the death of the beneficiary or another event that causes the beneficiary not to be entitled to a survivor annuity);

(*2*) Cash refund features (under which payment is provided upon the death of the last annuitant in an amount that is not greater than the excess of the present value of the annuity at the annuity starting date over the total of payments before the death of the last annuitant); or

(*3*) Term-certain provisions for optional forms of benefit within a joint and contingent family.

(C) *Differences in social security leveling features, refund of employee contributions features, and retroactive annuity starting date features*. The determination of whether two optional forms of benefit are within a family of optional forms of benefit is made without regard to social security leveling features, refund of employee contributions features, or retroactive annuity starting date features. But see paragraph (c)(5) of this section for special rules relating to social security leveling, refund of employee contributions, and retroactive annuity starting date features in optional forms of benefit.

(4) *List of families*. The following are families of optional forms of benefit for purposes of this paragraph (c):

(i) *Joint and contingent options with continuation percentages of 50% to 100%*. An optional form of benefit is within the 50% or more joint and contingent family if it provides a life annuity to the participant and a survivor annuity to an individual that is at least 50% and no more than 100% of the annuity payable during the joint lives of the participant and the participant's survivor.

(ii) *Joint and contingent options with continuation percentages less than 50%*. An optional form of benefit is within the less than 50% joint and contingent family if it provides a life annuity to the participant and a survivor annuity to an individual that is less than 50% of the annuity payable during the joint lives of the participant and the participant's survivor.

(iii) *Term certain and life annuity options with a term of 10 years or less*. An optional form of benefit is within the 10 years or less term certain and life family if it is a life annuity with a guarantee that payments will continue to the participant's beneficiary for the remainder of a fixed period that is 10 years or less if the participant dies before the end of the fixed period.

(iv) *Term certain and life annuity options with a term longer than 10 years*. An optional form of benefit is within the longer than 10 years term certain and life family if it is a life annuity with a guarantee that payments will continue to the participant's beneficiary for the remainder of a fixed period that is in excess of 10 years if the participant dies before the end of the fixed period.

(v) *Level installment payment options over a period of 10 years or less*. An optional form of benefit is within the 10 years or less installment family if it provides for substantially level payments to the participant for a fixed period of at least two years and not in excess of 10 years with a guarantee that payments will continue to the participant's beneficiary for the remainder of

the fixed period if the participant dies before the end of the fixed period.

(vi) *Level installment payment options over a period of more than 10 years*. An optional form of benefit is within the more than 10 years installment family if it provides for substantially level payments to the participant for a fixed period that is in excess of 10 years with a guarantee that payments will continue to the participant's beneficiary for the remainder of the fixed period if the participant dies before the end of the fixed period.

(5) *Special rules for certain features included in optional forms of benefit*. For purposes of applying this paragraph (c), to the extent an optional form of benefit that is being eliminated includes either a social security leveling feature or a refund of employee contributions feature, the retained optional form of benefit must also include that feature, and, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature or a refund of employee contributions feature, the retained optional form of benefit must not include that feature. For purposes of applying this paragraph (c), to the extent an optional form of benefit that is being eliminated does not include a retroactive annuity starting date feature, the retained optional form of benefit must not include the feature.

(d) *Permissible elimination of noncore optional forms of benefit where core options are offered*—(1) *General rule*. Except as otherwise provided in paragraph (d)(2) of this section, a plan is permitted to be amended to eliminate an optional form of benefit for a participant with respect to benefits accrued before the applicable amendment date if—

(i) After the amendment becomes applicable, each of the core options described in paragraph (g)(5) of this section is available to the participant with respect to benefits accrued before and after the amendment;

(ii) The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than 4 years after the date the amendment is adopted; and

(iii) The requirements of paragraph (e) of this section are satisfied in any case in which either:

(A) One or more of the core options are not available commencing on the same annuity commencement date as the optional form of benefit that is being eliminated, or

(B) As of the date the amendment is adopted, the actuarial present value of the benefit payable under any core option with the same annuity commencement date is less than the actuarial present value of benefits payable under the optional form of benefit that is being eliminated.

(2) *Special rules*—(i) *Treatment of certain features included in optional forms of benefit*. For purposes of applying this paragraph (d), to the extent an optional form of benefit that is being eliminated includes either a social security leveling feature or a refund of employee contributions feature, at least one of the core options must also be available with that feature, and, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature or a refund of employee contributions feature, each of the core options must be available without that feature. For purposes of applying this paragraph (d), to the extent an optional form of benefit that is being eliminated does not include a retroactive annuity starting date feature, each of the core options must be available without that feature.

(ii) *Eliminating the most valuable option for a participant with a short life expectancy*. For purposes of applying this paragraph (d), if the most valuable option for a participant with a short life expectancy (as defined in paragraph (g)(5)(iii) of this section) is eliminated, then, after the plan amendment, an optional form of benefit that is identical, except for differences described in paragraph (c)(3)(ii) of this section, must be available to the participant. However, such a plan amendment cannot eliminate a refund of employee contributions feature from the most valuable option for a participant with a short life expectancy.

(iii) *Single-sum distributions*. A plan amendment is not treated as satisfying this paragraph (d) if it eliminates an optional form of benefit that includes a single-sum distribution that applies with respect to at least 25% of the participant's accrued benefit as of the date the optional form of benefit is eliminated. But see §1.411(d)–4, Q&A–2(b)(2)(v), relating to involuntary single-sum distributions for benefits with a present value not in excess of the maximum dollar amount in section 411(a)(11).

(iv) *Application of multiple amendment rule to core option rule*. Notwithstanding paragraph (a)(2)(iii)(B) of this section, if a plan is amended to eliminate an optional form of benefit using the core options rule in this paragraph (d), then the employer must wait 3 years after the first annuity commencement date for which the optional form of benefit is no longer available before making any changes to the core options offered under the plan (other than a change that is not treated as an elimination under paragraph (b)(2)(ii) of this section). Thus, for example, if a plan amendment eliminates an optional form of benefit for a participant using the core options rule under this paragraph (d), with an adoption date of January 1, 2006 and an effective date of January 1, 2010, the plan would not be permitted to be amended to make changes to the core options offered under the plan (and the core options would continue to apply with respect to the participant's accrued benefit) until January 1, 2013.

(v) *Special rule for joint and contingent annuity core option*. If a plan offers joint and contingent annuities under which a participant is entitled to a life annuity with a survivor annuity for the individual designated by the participant (including a non-spousal contingent annuitant) with continuation percentage options of both 50% and 100% (after adjustments permitted under paragraph (g)(5)(ii) of this section to comply with applicable law), the plan is permitted to treat both of these options as core options for purposes of this paragraph (d), in lieu of a 75% joint and contingent annuity. Thus, such a plan is permitted to use the rules of this paragraph (d) if the plan satisfies all of the requirements of this paragraph (d) (taking into account the modification rule in paragraph (g)(5)(ii) of this section) other than the requirement of offering a 75% joint and contingent annuity as described in paragraph (g)(5)(i)(B) of this section.

(e) *Permissible plan amendments under paragraphs (c) and (d) eliminating or reducing section 411(d)(6)(B) protected benefits that are burdensome and of de minimis value*—(1) *In general*. A plan amendment that, pursuant to paragraph (c)(1)(iii) or (d)(1)(iii) of this section, is required to satisfy this paragraph (e) satisfies this paragraph (e) if—

(i) The amendment eliminates section 411(d)(6)(B) protected benefits that create significant burdens or complexities for the plan and its participants as described in paragraph (e)(2) of this section; and

(ii) The amendment does not adversely affect the rights of any participant in a more than *de minimis* manner as described in paragraph (e)(3) of this section.

(2) *Plan amendments eliminating section 411(d)(6)(B) protected benefits that create significant burdens and complexities*—(i) *Facts and circumstances analysis*—(A) *In general*. The determination of whether a plan amendment eliminates section 411(d)(6)(B) protected benefits that create significant burdens or complexities for the plan and its participants is based on facts and circumstances.

(B) *Early retirement benefits*. In the case of an amendment that eliminates an early retirement benefit, relevant factors include whether the annuity starting dates under the plan considered in the aggregate are burdensome or complex (*e.g.*, the number of categories of early retirement benefits, whether the terms and conditions applicable to the plan's early retirement benefits are difficult to summarize in a manner that is concise and readily understandable to the average plan participant, and whether those different early retirement benefits were added to the plan as a result of a plan merger, transfer, or consolidation), and whether the effect of the plan amendment is to reduce the number of categories of early retirement benefits.

(C) *Retirement-type subsidies and actuarial factors*. In the case of a plan amendment eliminating a retirement-type subsidy or changing the actuarial factors used to determine optional forms of benefit, relevant factors include whether the actuarial factors used for determining optional forms of benefit available under the plan considered in the aggregate are burdensome or complex (*e.g.*, the number of different retirement-type subsidies and other actuarial factors available under the plan, whether the terms and conditions applicable to the plan's retirement-type subsidies are difficult to summarize in a manner that is concise and readily understandable to the average plan participant, whether the plan is eliminating one or more generalized optional forms, whether the plan is replacing a complex optional form of benefit that contains a retirement-type subsidy with a simpler form, and whether the different retirement-type subsidies and other actuarial factors were added to the plan as a result of a plan merger, transfer, or consolidation), and whether the effect of the plan amendment is to reduce the number of categories of retirement-type subsidies or other actuarial factors.

(D) *Example*. The following example illustrates the application of this paragraph (e)(2)(i):

Example. (i) *Facts*. Plan A is a defined benefit plan under which employees may select a distribution in the form of a straight life annuity, a straight life annuity with cost-of-living increases, a 50% qualified joint and survivor annuity with a pop-up provision, or a 10-year term certain and life annuity. On January 15, 2007, Plan A is amended, effective June 1, 2007, to eliminate the 50% qualified joint and survivor annuity with a pop-up provision as described in paragraph (c)(3)(ii)(B)(*1*) of this section and replace it with a 50% qualified joint and survivor annuity without the pop-up provision (and using the same actuarial factor).

(ii) *Conclusion*. Plan A satisfies the requirements of paragraph (e)(2)(i)(B) of this section because, based on the relevant facts and circumstances (*e.g.*, the amendment replaces a complex optional form of benefit with a simpler form), the amendment eliminates section 411(d)(6)(B) protected benefits that create significant burdens and complexities. Accordingly, the plan amendment is permitted to eliminate the pop-up provision, provided that the plan amendment satisfies all the other applicable requirements in paragraph (c) or (d) of this section. For example, the plan amendment must not eliminate the most valuable option for a participant with a short life expectancy (as defined in paragraph (g)(5)(iii) of this section) and the plan amendment must not adversely affect the rights of any participant in a more than *de minimis* manner, taking into account the actuarial factors for the joint and survivor annuity with the pop-up provision and the joint and survivor annuity without the pop-up provision, as described in paragraph (e)(3) of this section.

(ii) *Presumptions for certain amendments*—(A) *Presumption for amendments eliminating certain annuity starting dates*. If the annuity starting dates under the plan considered in the aggregate are burdensome or complex, then elimination of any one of the annuity starting dates is presumed to eliminate section 411(d)(6)(B) protected benefits that create significant burdens or complexities for the plan and its participants. However, if the effect of a plan amendment with respect to a set of optional forms of benefit is merely to substitute one set of annuity starting dates for another set of annuity starting dates, without any reduction in the number of different annuity starting dates, then the plan amendment does not satisfy the requirements of this paragraph (e)(2).

(B) *Presumption for amendments changing certain actuarial factors*. If the actuarial factors used for determining benefit distributions available under a generalized optional form considered in the aggregate are burdensome or complex, then replacing some of the actuarial factors for the generalized optional form is presumed to eliminate section 411(d)(6)(B) protected benefits that create significant burdens or complexities for the plan and its participants. However, if the effect is merely to substitute one set of actuarial factors for another set of actuarial factors, without any reduction in the number of different actuarial factors or the complexity of those factors, then the plan amendment does not satisfy the requirements of this paragraph (e)(2) unless the change of actuarial factors is merely to replace one or more of the plan's actuarial factors for determining optional forms of benefit with new actuarial factors that are more accurate (*e.g.*, reflecting more recent mortality experience or more recent market rates of interest).

(iii) *Restrictions against creating burdens or complexities*. See paragraphs (a)(2)(iii) and (b)(1)(iii) of this section for general rules applicable to multiple amendments. In accordance with these rules, a plan amendment does not eliminate a section 411(d)(6)(B) protected benefit that creates burdens and complexities for a plan and its participants if, less than 3 years earlier, a plan was previously amended to add another retirement-type subsidy in order to facilitate the elimination of the original retirement-type subsidy, even if the elimination of the other subsidy would not adversely affect the rights of any plan participant in a more than *de minimis* manner as provided in paragraph (e)(3) of this section.

(3) *Elimination of early retirement benefits or retirement-type subsidies that are de minimis*—(i) *Rules for retained optional forms of benefit under paragraph (c) of this section*. For purposes of paragraph (c) of this section, the elimination of an optional form of benefit does not adversely affect the rights of any participant in a more than *de minimis* manner if—

(A) The retained optional form of benefit described in paragraph (c) of this section has substantially the same annuity

commencement date as the optional form of benefit that is being eliminated, as described in paragraph (e)(4) of this section; and

(B) Either the actuarial present value of the benefit payable in the optional form of benefit that is being eliminated does not exceed the actuarial present value of the benefit payable in the retained optional form of benefit by more than a *de minimis* amount, as described in paragraph (e)(5) of this section, or the amendment satisfies the requirements of paragraph (e)(6) of this section relating to a delayed effective date.

(ii) *Rules for core options under paragraph (d) of this section*. For purposes of paragraph (d) of this section, the elimination of an optional form of benefit does not adversely affect the rights of any participant in a more than *de minimis* manner if, with respect to each of the core options—

(A) The core option is available after the amendment with substantially the same annuity commencement date as the optional form of benefit that is being eliminated, as described in paragraph (e)(4) of this section; and

(B) Either the actuarial present value of the benefit payable in the optional form of benefit that is being eliminated does not exceed the actuarial present value of the benefit payable under the core option by more than a *de minimis* amount, as described in paragraph (e)(5) of this section, or the amendment satisfies the requirements of paragraph (e)(6) of this section.

(4) *Definition of substantially the same annuity starting dates*. For purposes of applying paragraphs (e)(3)(i)(A) and (ii)(A) of this section, annuity starting dates are considered substantially the same if they are within 6 months of each other.

(5) *Definition of de minimis difference in actuarial present value*. For purposes of applying paragraph (e)(3)(i)(B) and (ii)(B) of this section, a difference in actuarial present value between the optional form of benefit being eliminated and the retained optional form of benefit or core option is not more than a *de minimis* amount if, as of the date the amendment is adopted, the difference between the actuarial present value of the eliminated optional form of benefit and the actuarial present value of the retained optional form of benefit or core option is not more than the greater of—

(i) 2% of the present value of the retirement-type subsidy (if any) under the eliminated optional form of benefit prior to the amendment; or

(ii) 1% of the greater of the participant's compensation (as defined in section 415(c)(3)) for the prior plan year or the participant's average compensation for his or her high 3 years (within the meaning of section 415(b)(1)(B) and (b)(3)).

(6) *Delayed effective date*—(i) *General rule*. For purposes of applying paragraph (e)(3)(i)(B) and (ii)(B) of this section, an amendment that eliminates an optional form of benefit satisfies the requirements of this paragraph (e)(6) if the elimination of the optional form of benefit is not applicable to any annuity commencement date before the end of the expected transition period for that optional form of benefit.

(ii) *Determination of expected transition period*—(A) *General rule*. The expected transition period for a plan amendment eliminating an optional form of benefit is the period that begins when the amendment is adopted and ends when it is reasonable to expect, with respect to a section 411(d)(6)(B) protected benefit (*i.e.*, not taking into account benefits that accrue in the future), that the form being eliminated would be subsumed by another optional form of benefit after taking into account expected future benefit accruals.

(B) *Determination of expected transition period using conservative actuarial assumptions*. The expected transition period for a plan amendment eliminating an optional form of benefit must be determined in accordance with actuarial assumptions that are reasonable at the time of the amendment and that are conservative (*i.e.*, reasonable actuarial assumptions that are likely to result in the longest period of time until the eliminated optional form of benefit would be subsumed). For this purpose, actuarial assumptions are not treated as conservative unless they include assumptions that a participant's compensation will not increase and that future benefit accruals will not exceed accruals in recent periods.

(C) *Effect of subsequent amendments reducing future benefit accruals on the expected transition period*. If, during the expected transition period for a plan amendment eliminating an optional form of benefit, the plan is subsequently amended to reduce the rate of future benefit accrual (or otherwise to lengthen the expected transition period), thus that subsequent plan amendment must provide that the elimination of the optional form of benefit is void or must provide for the effective date for elimination of the optional form of benefit to be further extended to a new expected transition period that satisfies this paragraph (e)(6) taking into account the subsequent amendment.

(iii) *Applicability of the delayed effective date rule limited to employees who continue to accrue benefits through the end of expected transition period*. An amendment eliminating an optional form of benefit under this paragraph (e)(6) must be limited to participants who continue to accrue benefits under the plan through the end of the expected transition period. Thus, for example, the plan amendment may not apply to any participant who has a severance from employment during the expected transition period.

(iv) *Special rule for section 204(h) notice*. See §54.4980F–1(b), Q&A–8(c) of this chapter for a special rule relating to this paragraph (e)(6).

(f) *Utilization test*. [Reserved].

(g) *Definitions and use of terms*. The definitions in this paragraph (g) apply for purposes of this section.

(1) *Actuarial present value*. The term *actuarial present value* means actuarial present value (within the meaning of §1.401(a)(4)–12) determined using reasonable actuarial assumptions.

(2) *Ancillary benefit*. The term *ancillary benefit* means—

(i) A social security supplement under a defined benefit plan (other than a QSUPP as defined in §1.401(a)(4)–12);

(ii) A benefit payable under a defined benefit plan in the event of disability (to the extent that the benefit exceeds the benefit otherwise payable), but only if the total benefit payable in the event of disability does not exceed the maximum qualified disability benefit, as defined in section 411(a)(9);

(iii) A life insurance benefit;

(iv) A medical benefit described in section 401(h);

(v) A death benefit under a defined benefit plan other than a death benefit which is a part of an optional form of benefit; or

(vi) A plant shutdown benefit or other similar benefit in a defined benefit plan that does not continue past retirement age and does not affect the payment of the accrued benefit, but only to the extent that

such plant shutdown benefit, or other similar benefit (if any), is permitted in a qualified pension plan (see §1.401–1(b)(1)(i)).

(3) *Annuity commencement date*. The term *annuity commencement date* generally means the annuity starting date, except that, in the case of a retroactive annuity starting date under section 417(a)(7), *annuity commencement date* means the date of the first payment of benefits pursuant to a participant election of a retroactive annuity starting date, as defined in §1.417(e)–1(b)(3)(iv).

(4) *Applicable amendment date*. The term *applicable amendment date*, with respect to a plan amendment, means the later of the effective date of the amendment or the date the amendment is adopted.

(5) *Core options*—(i) *General rule*. With respect to a plan, the term *core options* means—

(A) A straight life annuity generalized optional form under which the participant is entitled to a level life annuity with no benefit payable after the participant's death;

(B) A 75% joint and contingent annuity generalized optional form under which the participant is entitled to a life annuity with a survivor annuity for any individual designated by the participant (including a non-spousal contingent annuitant) that is 75% of the amount payable during the participant's life (but see paragraph (d)(2)(v) of this section for a special rule relating to the joint and contingent annuity core option);

(C) A 10-year term certain and life annuity generalized optional form under which the participant is entitled to a life annuity with a guarantee that payments will continue to any person designated by the participant for the remainder of a fixed period of 10 years if the participant dies before the end of the 10-year period; and

(D) The most valuable option for a participant with a short life expectancy (as defined in paragraph (g)(5)(iii) of this section).

(ii) *Modification of core options to satisfy other requirements*. An annuity does not fail to be a core option (*e.g.*, a joint and contingent annuity described in paragraph (g)(5)(i)(B) of this section or a 10-year term certain and life annuity described in paragraph (g)(5)(i)(C) of this section) as a result of differences to comply with applicable law, such as limitations on death benefits to comply with the incidental benefit requirement of §1.401–1(b)(1)(i) or on account of the spousal consent rules of section 417.

(iii) *Most valuable option for a participant with a short life expectancy*—(A) *General definition*. Except as provided in paragraph (g)(5)(iii)(B) of this section, *most valuable option for a participant with a short life expectancy* means, for an annuity starting date, the optional form of benefit that is reasonably expected to result in payments that have the largest actuarial present value in the case of a participant who dies shortly after the annuity starting date, taking into account both payments due to the participant prior to the participant's death and any payments due after the participant's death. For this purpose, a plan is permitted to assume that the spouse of the participant is the same age as the participant. In addition, a plan is permitted to assume that the optional form of benefit that is the most valuable option for a participant with a short life expectancy when the participant is age 70½ also is the most valuable option for a participant with a short life expectancy at all older ages, and that the most valuable option for a participant with a short life expectancy at age 55 is the most valuable option for a participant with a short life expectancy at all younger ages.

(B) *Safe harbor hierarchy*—(*1*) A plan is permitted to treat a single-sum distribution option with an actuarial present value that is not less than the actuarial present value of any optional form of benefit eliminated by the plan amendment as the most valuable option for a participant with a short life expectancy for all of a participant's annuity starting dates if such single-sum distribution option is available at all such dates, without regard to whether the option was available before the plan amendment.

(*2*) If the plan before the amendment does not offer a single-sum distribution option as described in paragraph (g)(5)(iii)(B)(*1*) of this section, a plan is permitted to treat a joint and contingent annuity with a continuation percentage that is at least 75% and that is at least as great as the highest continuation percentage available before the amendment as the most valuable option for a participant with a short life expectancy for all of a participant's annuity starting dates if such joint and contingent annuity is available at all such dates, without regard to whether the option was available before the plan amendment.

(*3*) If the plan before the amendment offers neither a single-sum distribution option as described in paragraph (g)(5)(iii)(B)(*1*) of this section nor a joint and contingent annuity with a continuation percentage as described in paragraph (g)(5)(iii)(B)(*2*) of this section, a plan is permitted to treat a term certain and life annuity with a term certain period no less than 15 years as the most valuable option for a participant with a short life expectancy for each annuity starting date if such 15-year term certain and life annuity is available at all annuity starting dates, without regard to whether the option was available before the plan amendment.

(6) *Definitions of types of section 411(d)(6)(B) protected benefits*—(i) *Early retirement benefit*. The term *early retirement benefit* means the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. Different early retirement benefits result from differences in terms relating to timing.

(ii) *Optional form of benefit*—(A) *In general*. The term *optional form of benefit* means a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. Different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial factors or assumptions used to determine the amount distributed. Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (*e.g.*, in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies. Likewise, differences in the normal retirement ages of employees or in the form in which the accrued benefit of employees is payable at normal

retirement age under a plan are taken into account in determining whether a distribution alternative constitutes one or more optional forms of benefit.

(B) *Death benefits*. If a death benefit is payable after the annuity starting date for a specific optional form of benefit and the same death benefit would not be provided if another optional form of benefit were elected by a participant, then that death benefit is part of the specific optional form of benefit and is thus protected under section 411(d)(6). A death benefit is not treated as part of a specific optional form of benefit merely because the same benefit is not provided to a participant who has received his or her entire accrued benefit prior to death. For example, a $5,000 death benefit that is payable to all participants except any participant who has received his or her accrued benefit in a single-sum distribution is not part of a specific optional form of benefit.

(iii) *Retirement-type benefit*. The term *retirement-type benefit* means—

(A) The payment of a distribution alternative with respect to an accrued benefit; or

(B) The payment of any other benefit under a defined benefit plan (including a QSUPP as defined in §1.401(a)(4)–12) that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit.

(iv) *Retirement-type subsidy*. The term *retirement-type subsidy* means the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the accrued benefit commencing at normal retirement age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit commences. Examples of retirement-type subsidies include a subsidized early retirement benefit and a subsidized qualified joint and survivor annuity.

(v) *Subsidized early retirement benefit or early retirement subsidy*. The terms *subsidized early retirement benefit* or *early retirement subsidy* mean the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age where the actuarial present value of the optional forms of benefit available to the participant under the plan at that annuity starting date exceeds the actuarial present value of the accrued benefit commencing at normal retirement age (with such actuarial present values determined as of the annuity starting date). Thus, an early retirement subsidy is an early retirement benefit that provides a retirement-type subsidy.

(7) *Eliminate; elimination; reduce; reduction*. The terms *eliminate* or *elimination* when used in connection with a section 411(d)(6)(B) protected benefit mean to eliminate or the elimination of an optional form of benefit or an early retirement benefit and to reduce or a reduction in a retirement-type subsidy. The terms *reduce* or *reduction* when used in connection with a retirement-type subsidy mean to reduce or a reduction in the amount of the subsidy. For purposes of this section, an *elimination* includes a *reduction* and a *reduction* includes an *elimination*.

(8) *Generalized optional form*. The term *generalized optional form* means a group of optional forms of benefit that are identical except for differences due to the actuarial factors that are used to determine the amount of the distributions under those optional forms of benefit and the annuity starting dates.

(9) *Maximum QJSA explanation period*. The term *maximum QJSA explanation period* means the maximum number of days before an annuity starting date for a qualified joint and survivor annuity for which a written explanation relating to the qualified joint and survivor annuity would satisfy the timing requirements of section 417(a)(3) and §1.417(e)–1(b)(3)(ii).

(10) *Other right and feature*. The term *other right or feature* has the meaning set forth at §1.401(a)(4)–4(e)(3)(ii).

(11) *Refund of employee contributions feature*. The term *refund of employee contributions features* means a feature with respect to an optional form of benefit that provides for employee contributions and interest thereon to be paid in a single sum at the annuity starting date with the remainder to be paid in another form beginning on that date.

(12) *Retirement; retirement age*. For purposes of this section, the date of *retirement* means the annuity starting date. Thus, *retirement age* means a participant's age at the annuity starting date.

(13) *Retroactive annuity starting date feature*. The term *retroactive annuity starting date feature* means a feature with respect to an optional form of benefit under which the annuity starting date for the distribution occurs on or before the date the written explanation required by section 417(a)(3) is provided to the participant.

(14) *Section 411(d)(6) protected benefit*. The term *section 411(d)(6) protected benefit* means the accrued benefit of a participant as of the applicable amendment date described in section 411(d)(6)(A) and any section 411(d)(6)(B) protected benefit.

(15) *Section 411(d)(6)(B) protected benefit*. The term *section 411(d)(6)(B) protected benefit* means the portion of an early retirement benefit, a retirement-type subsidy, or an optional form of benefit attributable to benefits accrued before the applicable amendment date.

(16) *Social security leveling feature*. The term *social security leveling feature* means a feature with respect to an optional form of benefit commencing prior to a participant's expected commencement of social security benefits that provides for a temporary period of higher payments which is designed to result in an approximately level amount of income when the participant's estimated old age benefits from Social Security are taken into account.

(h) *Examples*. The following examples illustrate the application of paragraphs (c) through (g) of this section:

Example 1. (i) *Facts involving elimination of optional forms of benefit as redundant*. Plan C is a defined benefit plan under which employees may elect to commence distributions at any time after the later of termination of employment or attainment of age 55. At each potential annuity commencement date, Plan C permits employees to select, with spousal consent where required, a straight life annuity or any of a number of actuarially equivalent alternative forms of payment, including a straight life annuity with cost-of-living increases and a joint and contingent annuity with the participant having the right to select any beneficiary and any continuation percentage from 1% to 100%, subject to modification to the extent necessary to satisfy the requirements of the incidental benefit requirement of §1.401–1(b)(1)(i). The amount of any alternative payment is determined as the actuarial equivalent of the straight life annuity payable at the same age using reasonable actuarial assumptions. On June 2, 2006, Plan C is amended to delete all continuation percentages for joint and contingent options other than 25%, 50%, 75%, or 100%, effective with respect to annuity commencement dates that are on or after January 1, 2007.

(ii) *Conclusion*—(A) *Categorization of family members under the redundancy rule*. The optional forms of benefit described in paragraph (i) of this *Example 1* are members of 4 families: a straight life annuity; a straight life annuity with cost-of-living

increases; joint and contingent options with continuation percentages of less than 50%; and joint and contingent options with continuation percentages of 50% or more. The amendment does not affect either of the first two families, but affects the two families relating to joint and contingent options.

(B) *Conclusion for elimination of optional forms of benefit as redundant*. The amendment satisfies the requirements of paragraph (c) of this section. First, the eliminated optional forms of benefit are redundant with respect to the retained optional forms of benefit because each eliminated joint and contingent annuity option with a continuation percentage of less than 50% is redundant with respect to the 25% continuation option and each eliminated joint and contingent annuity option with a continuation percentage of 50% or higher is redundant with respect to any one of the retained 50%, 75%, or 100% continuation options. In addition, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature, return of employee contribution feature, or retroactive annuity starting date feature, the retained optional form of benefit does not include that feature. Second, the amendment is not effective with respect to annuity commencement dates before September 1, 2006, as required under paragraph (c)(1)(ii) of this section. Third, the plan amendment does not eliminate any available core option, including the most valuable option for a participant with a short life expectancy, treating a joint and contingent annuity with a 100% continuation percentage as this optional form of benefit pursuant to paragraph (g)(5)(iii)(B)(*2*) of this section. Finally, the amendment need not satisfy the requirements of paragraph (e) of this section because the retained optional forms of benefit are available on the same annuity commencement dates and have the same actuarial present value as the optional forms of benefit that are being eliminated.

Example 2. (i) *Facts involving elimination of optional forms of benefit as redundant if additional restrictions are imposed*. The facts are the same as *Example 1*, except that the plan amendment also restricts the class of beneficiaries that may be elected under the 4 retained joint and contingent annuities to the employee's spouse.

(ii) *Conclusion*. The amendment fails to satisfy the requirements of paragraph (c)(2)(i)(B) of this section because the retained joint and contingent annuities have materially greater restrictions on the beneficiary designation than did the eliminated joint and contingent annuities. Thus, the joint and contingent annuities being eliminated are not redundant with respect to the retained joint and contingent annuities. In addition, the amendment fails to satisfy the requirements of the core option rules in paragraph (d) of this section because the amendment fails to be limited to annuity commencement dates that are at least 4 years after the date the amendment is adopted, the amendment fails to include the core option in paragraph (g)(5)(i)(B) of this section because the participant does not have the right to designate any beneficiary, and the amendment fails to include the core option described in paragraph (g)(5)(i)(C) of this section because the plan does not provide a 10-year term certain and life annuity.

Example 3. (i) *Facts involving elimination of a social security leveling feature and a period certain annuity as redundant*. Plan D is a defined benefit plan under which participants may elect to commence distributions in the following actuarially equivalent forms, with spousal consent if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity; a 5-year, 10-year, or a 15-year term certain and life annuity; and an installment refund annuity (*i.e.*, an optional form of benefit that provides a period certain, the duration of which is based on the participant's age), with the participant having the right to select any beneficiary. In addition, each annuity offered under the plan, if payable to a participant who is less than age 65, is available both with and without a social security leveling feature. The social security leveling feature provides for an assumed commencement of social security benefits at any age selected by the participant between age 62 and 65. Plan D is amended on June 2, 2006, effective as of January 1, 2007, to eliminate the installment refund form of benefit and to restrict the social security leveling feature to an assumed social security commencement age of 65.

(ii) *Conclusion*. The amendment satisfies the requirements of paragraph (c) of this section. First, the installment refund annuity option is redundant with respect to the 15-year certain and life annuity (except for advanced ages where, because of shorter life expectancies, the installment refund annuity option is redundant with respect to the 5-year certain and life annuity and also redundant with respect to the 10-year certain and life annuity). Second, with respect to restricting the social security leveling feature to an assumed social security commencement age of 65, under paragraph (c)(3)(ii)(C) of this section, straight life annuities with social security leveling features that have different social security commencement ages are treated as members of the same family as straight life annuities without social security leveling features. To the extent an optional form of benefit that is being eliminated includes a social security leveling feature, the retained optional form of benefit must also include that feature, but it is permitted to have a different assumed age for commencement of social security benefits. Third, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature, a return of employee contribution feature, or retroactive annuity starting date feature, the retained optional form of benefit must not include that feature. Fourth, the plan amendment does not eliminate any available core option, including the most valuable option for a participant with a short life expectancy, treating a joint and contingent annuity with a 100% continuation percentage as this optional form of benefit pursuant to paragraph (g)(5)(iii)(B)(*2*) of this section. Fifth, the amendment is not effective with respect to annuity commencement dates before September 1, 2006, as required under paragraph (c)(1)(ii) of this section. The amendment need not satisfy the requirements of paragraph (e) of this section because the retained optional forms of benefit are available on the same annuity commencement dates and have the same actuarial present value as the optional forms of benefit that are being eliminated.

Example 4. (i) *Facts involving elimination of non-core options*. Employer N sponsors Plan E, a defined benefit plan that permits every participant to elect payment in the following actuarially equivalent optional forms of benefit (Plan E's uniformly available options), with spousal consent if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity with no restrictions on designation of beneficiaries; and a 5-, 10-, or 15-year term certain and life annuity. In addition, each can be elected in conjunction with a social security leveling feature, with the participant permitted to select a social security commencement age from age 62 to age 67. None of Plan E's uniformly available options include a single-sum distribution. The plan has been in existence for over 30 years, during which time Employer N has acquired a large number of other businesses, including merging over 20 defined benefit plans of acquired entities into Plan E. Many of the merged plans offered optional forms of benefit that were not among Plan E's uniformly available options, including some plans funded through insurance products, often offering all of the insurance annuities that the insurance carrier offers, and with some of the merged plans offering single-sum distributions. In particular, under the XYZ acquisition that occurred in 1990, the XYZ acquired plan offered a single-sum distribution option that was frozen at the time of the acquisition. On April 1, 2006, each single-sum distribution option applies to less than 25% of the XYZ participants' accrued benefits. Employer N has generally, but not uniformly, followed the practice of limiting the optional forms of benefit for an acquired unit to an employee's service before the date of the merger, and has uniformly followed this practice with respect to each of the early retirement subsidies in the acquired unit's plan. As a result, as of April 1, 2007, Plan E includes a large number of generalized optional forms which are not members of families of optional forms of benefit identified in paragraph (c)(4) of this section, but there are no participants who are entitled to any early retirement subsidies because any subsidies have been subsumed by the actuarially reduced accrued benefit. Plan E is amended in April of 2007 to eliminate all of the optional forms of benefit that Plan E offers other than Plan E's uniformly available options, except that the amendment does not eliminate any single-sum distribution option except with respect to XYZ participants and permits any commencement date that was permitted under Plan E before the amendment. Plan E also eliminates the single-sum distribution option for XYZ participants. Further, each of Plan E's uniformly available options has an actuarial present value that is not less than the actuarial present value of any optional form of benefit offered before the amendment. The amendment is effective with respect to annuity commencement dates that are on or after May 1, 2011.

(ii) *Conclusion*. The amendment satisfies the requirements of paragraph (d) of this section. First, Plan E, as amended, does not eliminate any single-sum distribution option as provided in paragraph (d)(2)(iii) of this section except for single-sum distribution options that apply to less than 25% of a plan participant's accrued benefit as of the date the option is eliminated (May 1, 2011). Second, Plan E, as amended, includes each of the core options as defined in paragraph (g)(5) of this section, including offering the most valuable option for a participant with a short life expectancy (treating the 100% joint and contingent annuity as this benefit, under paragraph (g)(5)(iii)(B)(*2*) of this section). The 100% joint and contingent annuity option (and not the grandfathered single-sum distribution option) is the most valuable option for a participant with a short life expectancy

because the grandfathered single-sum distribution option is not available with respect to a participant's entire accrued benefit. In addition, as required under paragraph (d)(2) of this section, to the extent an optional form of benefit that is being eliminated includes either a social security leveling feature or a refund of employee contributions feature, at least one of the core options is available with that feature and, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature or a refund of employee contributions feature, each of the core options is available without that feature. Third, the amendment is not effective with respect to annuity commencement dates that are less than 4 years after the date the amendment is adopted. Finally, the amendment need not satisfy the requirements of paragraph (e) of this section because the retained optional forms of benefit are available on the same annuity commencement date and have the same actuarial present value as the optional forms of benefit that are being eliminated. The conclusion that the amendment satisfies the requirements of paragraph (d) of this section assumes that no amendments are made to change the core options before May 1, 2014.

Example 5. (i) *Facts involving reductions in actuarial present value.* (A) Plan F is a defined benefit plan providing an accrued benefit of 1% of the average of a participant's highest 3 consecutive years' pay times years of service, payable as a straight life annuity beginning at the normal retirement age at age 65. Plan F permits employees to elect to commence actuarially reduced distributions at any time after the later of termination of employment or attainment of age 55. At each potential annuity commencement date, Plan F permits employees to select, with spousal consent, either a straight life annuity, a joint and contingent annuity with the participant having the right to select any beneficiary and a continuation percentage of 50%, 66 2/3%, 75%, or 100%, or a 10-year certain and life annuity with the participant having the right to select any beneficiary, subject to modification to the extent necessary to satisfy the requirements of the incidental benefit requirement of §1.401–1(b)(1)(i). The amount of any joint and contingent annuity and the 10-year certain and life annuity is determined as the actuarial equivalent of the straight life annuity payable at the same age using reasonable actuarial assumptions. The plan covers employees at 4 divisions, one of which, Division X, was acquired on January 1, 1999. The plan provides for distributions before normal retirement age to be actuarially reduced, but, if a participant retires after attainment of age 55 and completion of 10 years of service, the applicable early retirement reduction factor is 3% per year for the years between age 65 and 62 and 6% per year for the ages from 62 to 55 for all employees at any division, except for employees who were in Division X on January 1, 1999, for whom the early retirement reduction factor for retirement after age 55 and 10 years of service is 5% for each year before age 65. On June 2, 2006, effective January 1, 2007, Plan F is amended to change the early retirement reduction factors for all employees of Division X to be the same as for other employees, effective with respect to annuity commencement dates that are on or after January 1, 2008, but only with respect to participants who are employees on or after January 1, 2008, and only if Plan F continues accruals at the current rate through January 1, 2008 (or the effective date of the change in reduction factors is delayed to reflect the change in the accrual rate). For purposes of this *Example 5*, it is assumed that an actuarially equivalent early retirement factor would have a reduction shown in column 4 of the following table, which compares the reduction factors for Division X before and after the amendment:

1	2	3	4	5
Age	Old Division X Factor (as a %)	New Factor (as a %)	Actuarially Equivalent Factor (as a %)	Column 3 minus Column 2
65	NA	NA	NA	NA
64	95	97	91.1	+2
63	90	94	83.2	+4
62	85	91	76.1	+5
61	80	85	69.8	+5
60	75	79	64.1	+4
59	70	73	59.0	+3
58	65	67	54.3	+2
57	60	61	50.1	+1
56	55	55	46.3	0
55	50	49	42.8	-1

(B) On January 1, 2007, the employee with the largest number of years of service is Employee E, who is age 54 and has 20 years of service. For 2006, Employee E's compensation is $80,000 and E's highest 3 consecutive years of pay on January 1, 2007 is $75,000. Employee E's accrued benefit as of the January 1, 2007 effective date of the amendment is a life annuity of $15,000 per year at normal retirement age (1% times $75,000 times 20 years of service) and E's early retirement benefit commencing at age 55 has a present value of $91,397 as of January 1, 2007. It is assumed for purposes of this example that the longest expected transition period for any active employee does not exceed 5 months (20 years and 5 months, times 1% times 49% exceeds 20 years times 1% times 50%). Finally, it is assumed for purposes of this example that the amendment reduces optional forms of benefit which are burdensome or complex.

(ii) *Conclusion concerning application of section 411(d)(6)(B).* The amendment reducing the early retirement factors has the effect of eliminating the existing optional forms of benefit (where the amount of the benefit is based on preamendment early retirement factors in any case where the new factors result in a smaller amount payable) and adding new optional forms of benefit (where the amount of benefit is based on the different early retirement factors). Accordingly, the elimination must satisfy the requirements of paragraph (c) or (d) of this section if the amount payable at any date is less than would have been payable under the plan before the amendment.

(iii) *Conclusion concerning application of redundancy rules.* The amendment satisfies the requirements of paragraph (c)(1)(i) and (ii) of this section (see paragraphs (iv) through (vi) of this *Example 5* below for the requirements of paragraph (c)(1)(iii) of this section). First, with respect to each eliminated optional form of benefit (*i.e.*, with respect to each optional form of benefit with the Old Division X Factor), after the amendment there is a retained optional form of benefit that is in the same family of optional forms of benefit (*i.e.*, the optional form of benefit with the New Factor). Second, the amendment is not effective with respect to annuity commencement dates that are less than the time period required under paragraph (c)(1)(ii) of this section. Third, to the extent that the plan amendment eliminates the most valuable option for a participant with a short life expectancy, the retained optional form of benefit is identical except for differences in actuarial factors.

(iv) *Conclusion concerning application of the requirements under paragraph (e) of this section.* The plan amendment must satisfy the requirements of paragraph (e) of this section because, as of the

December 2, 2006 adoption date, the actuarial present value of the early retirement subsidy is less than the actuarial present value of the early retirement subsidy being eliminated. The plan amendment satisfies the requirements under paragraph (e)(1)(i) and (2) of this section because the amendment eliminates optional forms of benefit that create significant burdens or complexities for the plan and its participants. See below for the *de minimis* requirement under paragraph (e)(1)(ii) and (3) of this section.

(v) *Conclusion concerning application of de minimis rules under paragraph (e)(5) of this section*. In order to satisfy the requirements under paragraph (e)(1)(ii) and (3) of this section, the amendment must satisfy the requirements of either paragraph (e)(5) or paragraph (e)(6) of this section. The amendment does not satisfy the requirements of paragraph (e)(5) of this section because the reduction in the actuarial present value is more than a *de minimis* amount under paragraph (e)(5) of this section. For example, for Employee E, the amount of the joint and contingent annuity payable at age 55 is reduced from $7,500 (50% of $15,000) to $7,350 (49% of $15,000) and the reduction in present value as a result of the amendment is $1,828 ($91,397 - $89,569). In this case, the retirement-type subsidy at age 55 is the excess of the present value of the 50% early retirement benefit over the present value of the deferred payment of the accrued benefit, or $13,921 ($97,269 - $83,348) and the present value at age 54 of the retirement-type subsidy is $13,081. The reduction in present value is more than the greater of 2% of the present value of the retirement-type subsidy and 1% of E's compensation because the reduction in present value exceeds $800 (the greater of $262, which is 2% of the present value of the retirement-type subsidy for the benefit being eliminated, and $800, which is 1% of E's compensation of $80,000).

(vi) *Conclusion involving application of de minimis rules under paragraph (e)(6) of this section relating to expected transition period*. The amendment satisfies the requirements of paragraph (e)(6) of this section and, thus, satisfies the requirements of paragraph (c) of this section, including the requirement in paragraph (c)(1)(iii) of this section that paragraph (e) of this section be satisfied. First, as assumed under the facts above, the amendment reduces optional forms of benefit that are burdensome or complex. Second, the plan amendment is not effective for annuity commencement dates before January 1, 2008, and that date is not earlier than the longest expected transition period for any participant in Plan F on the date of the amendment. Third, the amendment does not apply to any participant who has a severance from employment during the transition period. If, however, a later plan amendment reduces accruals under Plan F, the initial plan amendment will no longer satisfy the requirements of paragraph (e)(6) of this section (and must be voided) unless, as part of the later amendment, the expected transition period is extended to reflect the reduction in accruals under Plan F.

(i) [RESERVED].

(j) *Effective dates*—(1) *General effective date*. Except as otherwise provided in this paragraph (j), the rules of this section apply to amendments adopted on or after August 12, 2005.

(2) *Effective date for rules relating to contingent event benefits*. Paragraph (b)(1)(ii) of this section applies to amendments adopted after December 31, 2005.

§1.411(a)–4 [Amended]

Par. 3. Section 1.411(a)–4 is amended by removing paragraph (b)(4)(ii) and redesignating paragraph (b)(4)(iii) as paragraph (b)(4)(ii).

Par. 4. Section 1.411(d)–4 is amended by:

1. Revising paragraph (a)(2) of Q&A–1.
2. Revising paragraph (b)(1) of Q&A–1.
3. Amending paragraph (b)(2) of Q&A–1 to remove *Example 2* and redesignate *Example 3* through *11* as *Example 2* through *10*.
4. Revising the first sentence of paragraph (a)(1) of Q&A–2.
5. Revising paragraph (c) of Q&A–2.

The revisions read as follows:

§1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–1. (a) * * *

(2) Early retirement benefits (as defined in §1.411(d)–3(g)(6)(i)) and retirement-type subsidies (as defined in §1.411(d)–3(g)(6)(iv)), and

* * *

(b) *Optional forms of benefit*—(1) *In general*. The term *optional form of benefit* has the same meaning as in §1.411(d)–3(g)(6)(ii). Under this definition, different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (*e.g.*, in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies.

* * * * *

A–2 * * *

(a) *Reduction or elimination of section 411(d)(6) protected benefits*—(1) *In general*. A plan is not permitted to be amended to eliminate or reduce a section 411(d)(6) protected benefit that has already accrued, except as provided in §1.411(d)–3 or this section. * * *

* * * * *

(c) *Multiple amendments*—(1) *General rule*. A plan amendment violates the requirements of section 411(d)(6) if it is one of a series of plan amendments that, when taken together, have the effect of reducing or eliminating a section 411(d)(6) protected benefit in a manner that would be prohibited by section 411(d)(6) if accomplished through a single amendment.

(2) *Determination of time period for combining plan amendments*. For purposes of paragraph (c)(1) of this Q&A–2, generally only plan amendments adopted within a 3-year period are taken into account. But see Q&A–1(c)(1) of this section for rules relating to repeated plan amendments.

* * * * *

PART 54—PENSION EXCISE TAXES

Par. 5. The authority citation for part 54 continues to read, in part, as follows:

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

Par. 6. Section 54.4980F–1 is amended by:

1. Revising paragraph (b) of Q&A–7.
2. Revising paragraph (c) of Q&A–8.
3. Revising paragraph (d) of Q&A–8.

The revisions read as follows:

§54.4980F–1 Notice requirements for certain pension plan amendments significantly reducing the rate of future benefit accrual.

* * * * *

A–7. * * *

(b) *Plan provisions not taken into account*. Plan provisions that do not affect the rate of future benefit accrual of participants or alternate payees are not taken into account in determining whether there has been a reduction in the rate of future benefit accrual. Further, any benefit that is not a section 411(d)(6) protected benefit as described in §§1.411(d)–3(g)(14) and 1.411(d)–4, Q&A–1(d) of this chapter, or that is a section 411(d)(6) protected benefit that may be eliminated or reduced as permitted under §1.411(d)–3 or §1.411(d)–4, Q&A–2(a), or (b) of this chapter, is not taken into account in determining whether

an amendment is a section 204(h) amendment. Thus, for example, provisions relating to the right to make after-tax deferrals are not taken into account.

* * * * *

A–8. * * *

(c) *Application to certain amendments reducing early retirement benefits or retirement-type subsidies*. Section 204(h) notice is not required for an amendment that reduces an early retirement benefit or retirement-type subsidy if the amendment is permitted under the third sentence of section 411(d)(6)(B) of the Internal Revenue Code and paragraphs (c), (d), and (f) of §1.411(d)–3 of this chapter (relating to the elimination or reduction of benefits or subsidies which create significant burdens or complexities for the plan and plan participants unless the amendment adversely affects the rights of any participant in a more than *de minimis* manner). However, in determining whether an amendment reducing a retirement-type subsidy constitutes a significant reduction because it reduces a retirement-type subsidy as permitted under §1.411(d)–3(e)(6) of this chapter, the amendment is treated in the same manner as an amendment that limits the retirement-type subsidy to benefits that accrue before the applicable amendment date (as defined at §1.411(d)–3(g)(4) of this chapter) with respect to each participant or alternate payee to whom the reduction is reasonably expected to apply.

(d) *Examples*. The following examples illustrate the rules in this Q&A–8:

Example 1. (i) *Facts*. Pension Plan A is a defined benefit plan that provides a rate of benefit accrual of 1% of highest–5 years pay multiplied by years of service, payable annually for life commencing at normal retirement age (or at actual retirement age, if later). An amendment to Plan A is adopted on August 1, 2009, effective January 1, 2010, to provide that any participant who separates from service after December 31, 2009, and before January 1, 2015, will have the same number of years of service he or she would have had if his or her service continued to December 31, 2014.

(ii) *Conclusion*. In this example, the effective date of the plan amendment is January 1, 2010. While the amendment will result in a reduction in the annual rate of future benefit accrual from 2011 through 2014 (because, under the amendment, benefits based upon an additional 5 years of service accrue on January 1, 2010, and no additional service is credited after January 1, 2010 until January 1, 2015), the amendment does not result in a reduction that is significant because the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later) under the terms of the plan as amended is not under any conditions less than the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later) to which any participant would have been entitled under the terms of the plan had the amendment not been made.

Example 2. (i) *Facts*. The facts are the same as in *Example 1*, except that the 2009 amendment does not alter the plan provisions relating to a participant's number of years of service, but instead amends the plan's provisions relating to early retirement benefits. Before the amendment, the plan provides for distributions before normal retirement age to be actuarially reduced, but, if a participant retires after attainment of age 55 and completion of 10 years of service, the applicable early retirement reduction factor is 3% per year for the years between the ages 65 and 62 and 6% per year for the ages from 62 to 55. The amendment changes these provisions so that an actuarial reduction applies in all cases, but, in accordance with section 411(d)(6)(B), provides that no participant's early retirement benefit will be less than the amount provided under the plan as in effect on December 31, 2009 with respect to service before January 1, 2010. For participant X, the reduction is significant.

(ii) *Conclusion*. The amendment will result in a reduction in a retirement-type subsidy provided under Plan A (*i.e.*, Plan A's early retirement subsidy). Section 204(h) notice must be provided to participant X and any other participant for whom the reduction is significant and the notice must be provided at least 45 days before January 1, 2010 (or by such other date as may apply under Q&A–9 of this section).

Example 3. (i) *Facts*. The facts are the same as in *Example 2*, except that, for participant X, the change does not go into effect for any annuity commencement date before January 1, 2011. Participant X continues employment through January 1, 2011.

(ii) *Conclusion*. The conclusion is the same as in *Example 2*. Taking into account the rule in the second sentence of Q&A–8(c) of this section, the reduction that occurs for participant X on January 1, 2011, is treated as the same reduction that occurs under *Example 2*. Accordingly, assuming that the reduction is significant, section 204(h) notice must be provided to participant X at least 45 days before the January 1, 2010 effective date of the amendment (or by such other date as may apply under Q&A–9 of this section).

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved August 1, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 11, 2005, 8:45 a.m., and published in the issue of the Federal Register for August 12, 2005, 70 F.R. 47109)

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 2005, will be 7 percent for overpayments (6 percent in the case of a corporation), 7 percent for underpayments, and 9 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 4.5 percent.

Rev. Rul. 2005–62

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621–3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621–3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88–59, 1988–1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of July 2005 is 4 percent. Accordingly, an overpayment rate of 7 percent (6 percent in the case of a corporation) and an underpayment rate of 7 percent are established for the calendar quarter beginning October 1, 2005. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning October 1, 2005, is 4.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 2005, is 9 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 4.5 percent, 6 percent, 7 percent, and 9 percent are published in Tables 14, 17, 19, and 23 of Rev. Proc. 95–17, 1995–1 C.B. 556, 568, 571, 573, and 577.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Crystal Foster of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Foster at (202) 622–7198 (not a toll-free call).

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT — Continued

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

		1995–1 C.B.	
	RATE	TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT — Continued

	RATE	1995–1 C.B. TABLE	PG
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 — PRESENT — Continued

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568

Part III. Administrative, Procedural, and Miscellaneous

NOTE: This revenue procedure will be reproduced as the next revision of IRS Publication 1141, *General Rules and Specifications for Substitute Forms W-2 and W-3*.

26 CFR 601.602: Tax forms and instructions.
(Also Part I, Sections 6041, 6051, 6071, 6081, 6091; 1.6041–1, 1.6041–2, 31.6051–1, 31.6051–2, 31.6071(a)–1, 31.6081(a)–1, 31.6091–1.)

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TABLE OF CONTENTS

Part A. General

Section 1. Purpose

.01 The purpose of this revenue procedure is to provide general rules and specifications from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) for paper substitute forms for Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for wages paid during the 2005 calendar year.

.02 For purposes of this revenue procedure, substitute Form W-2 (Copy A) and substitute Form W-3 are forms that are not printed by the IRS. Copy A or any other copies of a substitute Form W-2 or a substitute Form W-3 must conform to the specifications in this revenue procedure to be acceptable to the IRS and the SSA. No IRS office is authorized to allow deviations from this revenue procedure. Preparers should also refer to the separate 2005 Instructions for Forms W-2 and W-3 for details on how to complete these forms. See Part C, Section 4, for information on obtaining the official IRS forms and instructions. See Part B, Section 2, for requirements for the copies of substitute forms furnished to employees.

.03 For purposes of this revenue procedure, the official, IRS-printed red dropout ink Forms W-2 (Copy A) and W-3 and their exact substitutes are referred to as "red-ink." The SSA-approved, laser-printed, black-and-white Forms W-2 (Copy A) and W-3 are referred to as "laser-printed."

Any questions about the red-ink Form W-2 (Copy A) and Form W-3 should be emailed to **taxforms@irs.gov* or sent to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6406
1111 Constitution Ave., NW
Washington, DC 20224

Any questions about the black-and-white laser-printed Form W-2 (Copy A) and Form W-3 should be emailed to *laser.forms@ssa.gov* or sent to:

Social Security Administration
Data Operations Center
Attn: Laser Forms Approval, Room 359
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Also, see Sections 3.05 and 3.06 of Part A.

Note. You should receive a response within 30 days from either the IRS or the SSA.

.04 The IRS maintains a centralized call site at its Enterprise Computing Center — Martinsburg (ECC) to answer questions related to information returns (Forms W-2, W-3, 1099 series, 1096, etc.). You can reach the call site at 304-263-8700 (not a toll-free number) or 1-866-455-7438 (toll-free). The Telecommunication Device for the Deaf (TDD) number is 304-267-3367 (not a toll-free number). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m. Eastern time. You may also send questions to the call site via the Internet at *mccirp@irs.gov*. IRS/ECC does not process Forms W-2 (Copy A). Forms W-2 (Copy A) prepared on paper and/or electronically must be filed with the SSA. IRS/ECC does, however, process waiver requests (Form 8508, Request for Waiver From Filing Information Returns Electronically/Magnetically) and extension of time to file requests (Form 8809, Application for Extension of Time To File Information Returns) for Forms W-2 (Copy A) and requests for an extension of time to furnish the employee copies of Form W-2. See Publication 1220, Specifications for Filing Forms 1098, 1099, 5498 and W-2G Electronically or Magnetically, for information on waivers and extensions of time.

.05 The following publications provide detailed filing procedures for certain information returns:

- 2005 Instructions for Forms W-2 and W-3,
- Instructions for Forms W-2c and W-3c (Rev. December 2002), and
- Publication 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c.

Section 2. What's New

.01 Magnetic media is being eliminated as a filing method. The last year for filing Forms W-2 on tapes and cartridges was tax year 2004 (forms timely filed with the SSA in 2005). The last year for filing Forms W-2 on 3½ inch diskette is tax year 2005 (forms timely filed with the SSA in 2006). Diskettes will no longer be accepted after February 28, 2006.

.02 For timeliness, to save printing expenses, and because users of Publication 1141 have access to the Internet and the IRS website, Publication 1141 will now only be released for downloading from the IRS website. However, this revenue procedure will continue to be released as hard copy in the Internal Revenue Bulletin.

.03 The Martinsburg Computing Center's name was changed to the Enterprise Computing Center — Martinsburg (ECC).

.04 Payee statements (Copies B, C, and 2 of Form W-2) may be furnished electronically, if employees give their consent (as described in Treasury Regulations Section 31.6501–1(j)). See also Publication 15-A, Employer's Supplemental Tax Guide.

.05 We added three new codes (Q, Y, and Z) for use in box 12 of Form W-2. See the 2005 Instructions for Forms W-2 and W-3 for details.

.06 Form W-3PR is 7.0 inches wide and should be printed on 8.5 by 11-inch paper using **a .5-inch top margin with** .75- inch left and right margins.

.07 Editorial changes were made. Redundancies were eliminated as much as possible.

Section 3. General Rules for Paper Forms W-2 and W-3

.01 Employers not filing electronically or on diskette must file paper Forms W-2 (Copy A) along with Form W-3 with the SSA by using either the official IRS form or a substitute form that exactly meets the specifications shown in Parts B and C of this revenue procedure.

Note. Substitute territorial forms (W-2AS, W-2GU, W-2VI) should also conform to the specifications as outlined in this revenue procedure. These forms require the form designation ("W-2AS," "W-2GU," "W-2VI") on Copy A to be in black ink.

Employers who file with the SSA electronically, on diskette, or on paper may design their own statements to furnish to employees. These employee statements designed by employers must comply with the requirements shown in Parts B and C.

.02 Red-ink substitute forms that completely conform to the specifications contained in this revenue procedure may be privately printed without prior approval from the IRS or the SSA. Only the black-and-white laser-printed forms need to be submitted to the SSA for approval (see Section 1B of Part B).

.03 As in the past, Form W-2 (Copy A) and Form W-3 may be generated using a laser-printer by following all guidelines and specifications (also see Section 1B of Part B). In general, regardless of the method of entering data, using black ink on Forms W-2 and W-3 provides better readability for processing by scanning equipment. Colors other than black are not easily read by the scanner and may result in delays or errors in the processing of Forms W-2 (Copy A) and W-3. The printing of the data should be centered within the boxes. The size of the variable data must be printed in a font no smaller than 10-point.

Note. With the exception of the identifying number and the corner register marks, the preprinted form layout for the red-ink Forms W-2 (Copy A) and W-3, must be in Flint J-6983 red OCR dropout ink or an exact match. (See Section 1A.03 of Part B.)

.04 Substitute forms filed with the SSA and substitute copies furnished to employees that do not conform to these specifications are unacceptable. Forms W-2 (Copy A) and W-3 filed with the SSA that do not conform may be returned. In addition, penalties may be assessed for not complying with the form specifications.

.05 If you are uncertain of any specification and want it clarified:

(1) Submit a letter or email citing the specification to the appropriate address in section 3.06.

(2) State your interpretation of that specification.

(3) Enclose an example (if appropriate) of how the form would appear if produced using your understanding of the specification.

(4) Be sure to include your name, complete address, phone number, and if applicable, your email address with your correspondence.

.06 Any questions about the specifications, especially those for the red-ink Form W-2 (Copy A) and Form W-3, should be emailed to **taxforms@irs.gov* or sent to:

Internal Revenue Service
Attn: Substitute Forms Program
SE:W:CAR:MP:T:T:SP, IR 6406
1111 Constitution Ave., NW
Washington, DC 20224

Any questions about the black-and-white laser-printed Form W-2 (Copy A) and Form W-3 should be emailed to *laser.forms@ssa.gov* or sent to:

Social Security Administration
Data Operations Center
Attn: Laser Forms Approval, Room 359
1150 E. Mountain Drive
Wilkes-Barre, PA 18702–7997

Note. You should receive a response within 30 days from either the IRS or the SSA.

.07 Forms W-2 and W-3 are subject to annual review and possible change. Therefore, employers are cautioned against overstocking supplies of privately-printed substitutes.

.08 Separate instructions for Forms W-2 and W-3 are provided in the 2005 Instructions for Forms W-2 and W-3. Form W-3 should be used only to transmit paper Forms W-2 (Copy A). Form W-3 is a single sheet including only essential filing information. Be sure

to make a copy of your completed Form W-3 for your records. Copies of the current year official IRS Forms W-2 and W-3, and the instructions for those forms, may be obtained from most IRS offices or by calling 1-800-829-3676. The IRS provides only cutsheet sets of Forms W-2 and cutsheets of Form W-3. The instructions and information copies of the forms may also be found on the IRS website at *www.irs.gov*.

.09 Because substitute Forms W-2 (Copy A) and W-3 are machine-imaged and scanned by the SSA, the forms must meet the same specifications as the official IRS Forms W-2 and W-3 (as shown in the exhibits).

Section 4. General Rules for Filing Forms W-2 (Copy A) Electronically or On Magnetic Diskette

.01 Employers must file Forms W-2 (Copy A) with the SSA electronically or on magnetic diskette if they file 250 or more calendar year 2005 Forms W-2 (Copy A). The SSA publication MMREF-1, Magnetic Media Reporting and Electronic Filing, contains specifications and procedures for filing Form W-2 information with the SSA magnetically or electronically. Employers are cautioned to obtain the most recent revision of MMREF-1 (and supplements) due to any subsequent changes in specifications and procedures.

.02 You may obtain a copy of the MMREF-1 by:

- Accessing the SSA website at *www.socialsecurity.gov/employer/pub.htm*,
- Writing to:

  Social Security Administration
  OCO, DES; Attn: Employer Reporting Services Center
  300 North Greene Street
  Baltimore, MD 21290-0300

- Calling your local SSA Employer Services Liaison Officer (ESLO) (the ESLOs' phone numbers are available at *www.socialsecurity.gov/employer/empcontacts.htm*), or
- Calling the SSA's Employer Reporting Assistance staff at 1-800-772-6270.

.03 Magnetic diskette or electronic filers do not file a paper Form W-3. See the SSA publication MMREF-1 for guidance on transmitting Form W-2 (Copy A) information to SSA electronically.

.04 Employers who do not comply with the magnetic media or electronic filing requirements for Form W-2 (Copy A) and who are not granted a waiver by the IRS may be subject to penalties. Employers who file Form W-2 information with the SSA electronically or on magnetic diskette must not send the same data to the SSA on paper Forms W-2 (Copy A). Any duplicate reporting may subject filers to unnecessary contacts by the SSA or the IRS.

Part B. Specifications for Substitute Forms W-2 and W-3

Section 1A. Specifications for Red-Ink Substitute Form W-2 (Copy A) and Form W-3 Filed with the SSA

.01 The official IRS-printed red dropout ink Form W-2 (Copy A) and W-3 and their exact substitutes are referred to as red-ink in this revenue procedure. Employers may file substitute Forms W-2 (Copy A) and W-3 with the SSA. The substitute forms must be exact replicas of the official IRS forms with respect to layout and content because they will be read by scanner equipment.

.02 Paper used for cutsheets and continuous-pinfed forms for substitute Form W-2 (Copy A) and Form W-3 that are to be filed with the SSA must be white 100% bleached chemical wood, 18-20 pound paper only, optical character recognition (OCR) bond produced in accordance with the following specifications:

•	Acidity: Ph value, average, not less than	4.5
•	Basis weight: 17 x 22 inch 500 cut sheets, pound	18-20
•	Metric equivalent—gm./sq. meter	
	(a tolerance of +5 pct. is allowed)	68-75
•	Stiffness: Average, each direction, not less than—milligrams	
	Cross direction	50
	Machine direction	80
•	Tearing strength: Average, each direction, not less than—grams	40

- Opacity: Average, not less than—percent 82
- Reflectivity: Average, not less than—percent 68
- Thickness: Average—inch 0.0038

  Metric equivalent—mm 0.097

  (a tolerance of +0.0005 inch (0.0127 mm) is allowed) Paper cannot vary more than 0.0004 inch (0.0102 mm) from one edge to the other.
- Porosity: Average, not less than—seconds 10
- Finish (smoothness): Average, each side—seconds 20-55

  (for information only) the Sheffield equivalent—units 170-d200
- Dirt: Average, each side, not to exceed—parts per million 8

Note. Reclaimed fiber in any percentage is permitted, provided the requirements of this standard are met.

.03 All printing of substitute Forms W-2 (Copy A) and W-3 must be in Flint red OCR dropout ink except as specified below. The following must be printed in nonreflective black ink:

- Identifying number "22222" or "33333" at the top of the forms.
- Tax year at the bottom of the forms.
- The four (4) corner register marks on the forms.
- The jurat and "Signature, Title, Date" line at the bottom of Form W-3.
- The form identification number ("W-3") at the bottom of Form W-3.
- All the instructions below Form W-3 beginning with "Send this entire page...." line to the bottom of Form W-3.

.04 The vertical and horizontal spacing for all federal payment and data boxes on Forms W-2 and W-3 must meet specifications. On Form W-3 and Form W-2 (Copy A), all the perimeter rules must be 1-point (0.014-inch), while all other rules must be one-half point (0.007-inch). Vertical rules must be parallel to the left edge of the form; horizontal rules parallel to the top edge.

.05 The official red-ink Form W-3 and Form W-2 (Copy A) are 7.5 inches wide. Employers filing Forms W-2 (Copy A) with the SSA on paper must also file a Form W-3. Form W-3 must be the same width (7.5 inches) as the Form W-2. One Form W-3 is printed on a standard-size, 8.5 x 11-inch page. Two official Forms W-2 (Copy A) are contained on a single 8.5 x 11-inch page (exclusive of any snap-stubs).

.06 The top, left, and right margins for the Form W-2 (Copy A) and Form W-3 are .5 inches (1/2 inch). All margins must be free of printing except for the words "DO NOT STAPLE OR FOLD" on red-ink Form W-3. The space between the two Forms W-2 (Copy A) is 1.33 inches.

.07 The identifying numbers are "22222" for Form W-2 (Copies A (and 1)) and "33333" for Form W-3. No printing should appear anywhere near the identifying numbers. For both Form W-2 (Copy A) and Form W-3, the combination width of box a (Control number) and the box containing the identifying number must be 2.5 inches.

Note. The identifying number must be printed in nonreflective black ink in OCR-A font of 10 characters per inch.

.08 The depth of the individual scannable image on a page must be the same as that on the official IRS forms. The depth from the top line to the bottom line of an individual Form W-2 (Copy A) must be 4.17 inches and the depth from the top line to the bottom line of Form W-3 must be 4.67 inches. (See Exhibits A and B.)

.09 Continuous-pinfed Forms W-2 (Copy A) must be separated into 11-inch deep pages. The pinfed strips must be removed when Forms W-2 (Copy A) are filed with the SSA. The two Forms W-2 (Copy A) on the 11-inch page must not be separated (only the pages are to be separated (burst)). The words "Do Not Cut, Fold, or Staple Forms on This Page" must be printed twice between the two Forms W-2 (Copy A) in Flint red OCR dropout ink. Perforations are required on all other copies (Copies 1, B, C, 2, and D) to enable the separation of individual forms.

.10 Box 12 of Form W-2 (Copy A) contains four entry boxes – 12a, 12b, 12c, and 12d. Do not make more than one entry per box. Enter your first code in box 12a (for example, enter Code D in box 12a, not 12d, if it is your first entry). If more than four items need to be reported in box 12, use a second Form W-2 to report the additional items (see "Multiple forms" in the 2005 Instructions for Forms W-2 and W-3). Do not report the same federal tax data to the SSA on more than one Form W-2 (Copy A). However, repeat the identifying information (employee's name, address, and SSN; employer's name, address, and EIN) on each additional form.

.11 The checkboxes in box 13 of Form W-2 (Copy A) must be .14 inches each; the space before the first checkbox is .20 inches; the spacing on each remaining side of the 3 checkboxes is .36 inches (see Exhibit A). The checkboxes in box b of Form W-3 must also be .14 inches (see Exhibit B for other dimensions in box b).

Note. More than 50% of an applicable checkbox must be covered by an "X."

.12 All substitute Forms W-2 (Copy A) and W-3 in the red-ink format must have the tax year, form number, and form title printed on the bottom face of each form using type identical to that of the official IRS form. The red-ink substitute Form W-2 (Copy A) and Form W-3 must have the form producer's EIN entered directly to the left of "Department of the Treasury," in red.

.13 The words "For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D." must be printed in Flint red OCR dropout ink in the same location as on the official Form W-2 (Copy A). The words "For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D of Form W-2." must be printed at the bottom of the page of Form W-3 in black ink.

.14 The Office of Management and Budget (OMB) Number must be printed on substitute Forms W-3 and W-2 (on each ply) in the same location as on the official IRS forms.

.15 All substitute Forms W-3 must include the instructions that are printed on the same sheet below the official IRS form.

.16 The back of substitute Form W-2 (Copy A) and Form W-3 must be free of all printing.

.17 All copies must be clearly legible. Hot wax and cold carbon spots are not permitted for Form W-2 (Copy A). Interleaved carbon should be black and must be of good quality to assure legibility on all copies and to avoid smudging. Fading must be minimized to assure legibility.

.18 Chemical transfer paper is permitted for Form W-2 (Copy A) only if the following standards are met:

- Only chemically-backed paper is acceptable for Form W-2 (Copy A). Front and back chemically-treated paper cannot be processed properly by scanning equipment.
- Chemically-transferred images must be black.
- Carbon-coated forms are not permitted.

.19 The Government Printing Office (GPO) symbol and the Catalog Number (Cat. No.) must be deleted from substitute Form W-2 (Copy A) and Form W-3.

Section 1B. Specifications for Laser-Printed Substitute Form W-2 (Copy A) and Form W-3 Filed with the SSA

.01 The SSA-approved, laser-printed, black-and-white Forms W-2 (Copy A) and W-3 are referred to as laser-printed. Specifications for the laser-printed black-and-white Forms W-2 (Copy A) and W-3 are similar to the red-ink forms (Part B, Section 1A) except for the items that follow (see Exhibits E and F). Exhibits are samples only and must not be downloaded to meet tax obligations.

(1) Forms must be printed on 8.5 x 11-inch single-sheet paper only, not on continuous-feed using a laser printer. There must be two Forms W-2 (Copy A) printed on a page. There must be no horizontal perforations between the two Forms W-2 (Copy A) on each page.

(2) All forms and data must be printed in nonreflective black ink only.

(3) The data and forms must be programmed to print simultaneously. Forms cannot be produced separately from wage data entries.

(4) The forms must not contain corner register marks.

(5) The forms must not contain any shaded areas including those boxes that are entirely shaded on the red-ink forms.

(6) Identifying numbers on both Form W-2 ("22222") and Form W-3 ("33333") must be preprinted in 14-point Arial bold font or a close approximation.

(7) The form numbers ("W-2" and "W-3") must be in 18-point Arial font or a close approximation. The tax year ("2005") on Forms W-2 (Copy A) and W-3 must be in 20-point Arial font or a close approximation.

(8) No part of the box titles or the data printed on the forms may touch any of the vertical or horizontal lines, nor should any of the data intermingle with the box titles. The data should be centered in the boxes.

(9) Do not print any information in the margins of the laser-printed forms (for example, do not print "DO NOT STAPLE OR FOLD" in the top margin of Form W-3).

(10) The word "Code" must not appear in box 12 on Form W-2 (Copy A).

(11) A 4-digit vendor code preceded by four zeros and a slash (for example, 0000/1234) must appear in 12-point Arial font, or a close approximation, under the tax year in place of the Cat. No. on Form W-2 (Copy A) and in the bottom right corner of the "For Official Use Only" box at the bottom of Form W-3. Do not display the form producer's EIN to the left of "Department of the Treasury." The vendor code will be used to identify the form producer.

(12) Do not print Catalog Numbers (Cat. No.) on either form (10134D for Form W-2 (Copy A); 10159Y for Form W-3).

(13) Do not print the checkboxes in:

- Box (b) of Form W-3. The "X" should be programmed to be printed and centered directly below the applicable "Kind of Payer."
- The "Void" box of Form W-2 (Copy A). The "X" should be programmed to be printed to the right of "Void" because of space limitations.
- Box 13 of Form W-2 (Copy A). The "X" should be programmed to be printed and centered directly below the applicable box title.

(14) Do not print dollar signs. If there are no money amounts being reported, the entire field should be left blank.

(15) The space between the two Forms W-2 (Copy A) is 1.33 inches.

.02 You must submit samples of your laser-printed substitute forms to the SSA. Only laser-printed, black-and-white substitute Forms W-2 (Copy A) and W-3 for tax year 2005 will be accepted for approval by the SSA. Questions regarding other forms (that is, red-ink Forms W-2c, W-3c, 1099 series, 1096, etc.) must be directed to the IRS.

.03 You will be required to send one set of blank and one set of dummy-data, laser-printed substitute Forms W-2 (Copy A) and W-3 for approval. Sample data entries should be filled in to the maximum length for each box entry, preferably using numeric data or alpha data, depending upon the type required to be entered. Include in your submission the name, telephone number, fax number, and email address of a contact person who can answer questions regarding your sample forms.

.04 To receive approval, you may first contact the SSA at *laser.forms@ssa.gov* to obtain a template and further instructions in PDF or Excel format. You may also send your 2005 sample, laser-printed substitute forms to:

Social Security Administration
Data Operations Center
Attn: Laser Forms Approval, Room 359
1150 E. Mountain Drive
Wilkes-Barre, PA 18702-7997

Send your sample forms via private mail carrier or certified mail in order to verify their receipt. You can expect approval (or disapproval) by the SSA within 30 days of receipt of your sample forms.

.05 The 4-digit vendor code preceded by four zeros and a slash (0000/) must be preprinted on the sample, laser-printed substitute forms. Forms not containing a vendor code will be rejected and will not be submitted for testing or approval. If you do not have a vendor code, you may contact the National Association of Computerized Tax Processors via email at *president@nactp.org*.

.06 If you use forms produced by a vendor and have questions concerning approval, do not send the forms to the SSA for approval. Instead, you may contact the software vendor to obtain a copy of SSA's dated approval notice supplied to that vendor.

Section 2. Requirements for Substitute Forms Furnished to Employees (Copies B, C, and 2 of Form W-2)

Note. Printers are cautioned that the **rules in Part B, Section 2, apply only to employee copies of Form W-2 (Copies B, C, and 2).** Paper filers who send Forms W-2 (Copy A) to the SSA must follow the requirements in Part B, Sections 1A and/or 1B.

.01 All employers (including those who file on magnetic diskette or electronically) must furnish employees with at least two copies of Form W-2 (three or more for employees required to file a state, city, or local income tax return). The following rules are guidelines for preparing employee copies.

The dimensions of these copies (Copies B, C, and 2), but not Copy A, may differ from the dimensions of the official IRS form to allow space for reporting additional information, including additional entries such as withholding for health insurance, union dues, bonds, or charity in box 14. The limitation of a maximum of four items in box 12 of Form W-2 applies only to Copy A, which is filed with the SSA.

Note. Payee statements (Copies B, C, and 2 of Form W-2) may now be furnished electronically, if employees give their consent (as described in Treasury Regulations Section 31.6501–1(j)). See also Publication 15-A, Employer's Supplemental Tax Guide.

.02 The minimum dimensions for employee copies only (not Copy A) of Form W-2 should be 2.67 inches deep by 4.25 inches wide. The maximum dimensions should be no more than 6.5 inches deep by no more than 8.5 inches wide.

Note. The maximum and minimum size specifications are for tax year 2005 only and may change in future years.

.03 Either horizontal or vertical format is permitted (see Exhibit D).

.04 The paper for all copies must be white and printed in black ink. The substitute Copy B, which employees are instructed to attach to their federal income tax returns, should be at least 9-pound paper (basis 17 x 22-500). Other copies furnished to employees should also be at least 9-pound paper (basis 17 x 22-500).

.05 Employee copies of Form W-2 (Copies B, C, and 2), including those that are printed on a single sheet of paper, must be easily separated. Providing perforations between the individual copies satisfies this requirement, but using scissors to separate Copies B, C, and 2 does not.

Note. The perforation requirement in this section does not apply to printouts of copies of Forms W-2 that are furnished electronically to employees (as described in Treasury Regulations Section 31.6051–1(j)). However, these employees should be cautioned to carefully separate the copies of Form W-2. See Publication 15-A, Employer's Supplemental Tax Guide, for information on electronically furnishing Forms W-2 to employees.

.06 Interleaved carbon and chemical transfer paper employee copies must be clearly legible. Hot wax and cold-carbon spots are not permitted for employee copies. All copies must be able to be photocopied. Interleaved carbon should be black and must be of good quality to assure legibility on all copies and to avoid smudging. Fading must be minimized to assure legibility.

.07 The electronic tax logo on the IRS official employee copies is not required on any of the substitute form copies. To avoid confusion and questions by employees, employers are encouraged to delete the identifying number ("22222") and the word "Void" and its associated checkbox from the employee copies of Form W-2.

.08 All substitute employee copies must contain boxes, box numbers, and box titles that match the official IRS Form W-2. Boxes that do not apply can be deleted. However, certain core boxes must be included. The placement, numbering, and size of this information is specified as follows:

- The items and box numbers that constitute the core data are:

  Box 1 — Wages, tips, other compensation,

  Box 2 — Federal income tax withheld,

  Box 3 — Social security wages,

  Box 4 — Social security tax withheld,

  Box 5 — Medicare wages and tips, and

  Box 6 — Medicare tax withheld.

  The core boxes must be printed in the exact order shown on the official IRS form.

- The core data boxes (1 through 6) must be placed in the upper right of the form. Substitute vertical-format copies may have the core data across the top of the form (see Exhibit D). In no instance, will boxes or other information be permitted to the right of the core data.

- The form title, number, or copy designation (B, C, or 2) may be at the top of the form. Also, a reversed or blocked-out area to accommodate a postal permit number or other postal considerations is allowed in the upper-right.

- Boxes 1 through 6 must each be a minimum of $1\frac{1}{8}$ inches wide x $\frac{1}{4}$ inch deep.

- Other required boxes are:

  b) Employer identification number (EIN),

  c) Employer's name, address, and ZIP code,

  d) Employee's social security number,

  e) Employee's name, and

  f) Employee's address and ZIP code.

Identifying items must be present on the form and be in boxes similar to those on the official IRS form. However, they may be placed in any location other than the top or upper right. You do not need to use the lettering system (b-f) used on the official IRS form. The employer identification number (EIN) may be included with the employer's name and address and not in a separate box.

Note. Box a ("Control number") is not required.

.09 All copies of Form W-2 furnished to employees must clearly show the form number, the form title, and the tax year prominently displayed together in one area of the form. The title of Form W-2 is "Wage and Tax Statement." It is recommended (but not required) that this be located on the bottom left of substitute Forms W-2. The reference to the "Department of the Treasury — Internal Revenue Service" must be on all copies of substitute Forms W-2 furnished to employees. It is recommended (but not required) that this be located on the bottom right of Form W-2.

.10 If the substitute employee copies are labeled, the forms must contain the applicable description:

- "Copy B, To Be Filed With Employee's FEDERAL Tax Return."
- "Copy C, For EMPLOYEE'S RECORDS."
- "Copy 2, To Be Filed With Employee's State, City, or Local Income Tax Return."

It is recommended (but not required) that these be located on the lower left of Form W-2. If the substitute employee copies are not labeled as to the disposition of the copies, then written notification using similar wording must be provided to each employee.

.11 The tax year (2005) must be clearly printed on all copies of substitute Form W-2. It is recommended (but not required) that this information be in the middle at the bottom of the Form W-2. The use of 24-pt. OCR-A font is recommended (but not required).

.12 Boxes 1, 2, and 9 (if applicable) on Copy B must be outlined in bold 2-point rule or highlighted in some manner to distinguish them. If "Allocated tips" are being reported, it is recommended (but not required) that box 8 also be outlined. If reported, "Social security tips" (box 7) must be shown separately from "Social security wages" (box 3).

Note. Boxes 8 and 9 may be omitted if not applicable.

.13 If employers are required to withhold and report state or local income tax, the applicable boxes are also considered core information and must be placed at the bottom of the form. State information is included in:

- Box 15 (State, Employer's state ID number)
- Box 16 (State wages, tips, etc.)
- Box 17 (State income tax)

Local information is included in:

- Box 18 (Local wages, tips, etc.)
- Box 19 (Local income tax)
- Box 20 (Locality name)

.14 Boxes 7 through 14 may be omitted from substitute employee copies unless the employer must report any of that information to the employee. For example, if an employee did not have "Social security tips" (box 7), the form could be printed without that box. But if an employer provided dependent care benefits, the amount must be reported separately, shown in box 10, and labeled "Dependent care benefits."

.15 Employers may enter more than four codes in box 12 of substitute Copies B, C, and 2 (and 1 and D) of Form W-2, but each entry must use Codes A-Z (see the 2005 Instructions for Forms W-2 and W-3).

.16 If an employer has employees in any of the three categories in box 13, all checkbox headings must be shown and the proper checkmark made, when applicable.

.17 Employers may use box 14 for any other information that they wish to give to their employees. Each item must be labeled. (See the instructions for box 14 in the 2005 Instructions for Forms W-2 and W-3.)

.18 The front of Copy C of a substitute Form W-2 must contain the note "This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it."

.19 Instructions similar to those contained on the back of Copies B and C of the official IRS Form W-2 must be provided to each employee. An employer may modify or delete instructions that do not apply to its employees. (For example, remove Railroad Retirement Tier 1 and Tier 2 compensation information for nonrailroad employees or information about dependent care benefits that the employer does not provide.)

.20 Employers must notify their employees who have no income tax withheld that they may be able to claim a tax refund because of the earned income credit (EIC). They will meet this notification requirement if they furnish a substitute Form W-2 with the EIC notice on the back of Copy B, IRS Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC), or on their own statement containing the same wording. They may also change the font on Copy C so that the EIC notification and Form W-2 instructions fit entirely on the back. For more information about notification requirements, see Notice 1015, Have You Told Your Employees About the Earned Income Credit (EIC)?

Part C. Additional Instructions

Section 1. Additional Instructions for Form Printers

.01 If magnetic diskette or electronic media is not used for filing with the SSA, the substitute copies of Forms W-2 (either red-ink or laser-printed) should be assembled in the same order as the official IRS Forms W-2. Copy A should be first, followed sequentially by perforated sets (Copies 1, B, C, 2, and D).

.02 The substitute form to be filed by the employer with the SSA must carry the designation "Copy A."

Note. Magnetic diskette/electronic filers do not submit either red-ink or laser-printed paper Form W-2 (Copy A) or Form W-3 to the SSA.

.03 Substitute forms (red-ink or laser-printed) do not require a copy to be retained by employers (Copy D of Form W-2). However, employers must be prepared to verify or duplicate the information if it is requested by the IRS or the SSA. Paper filers who do not keep a Form W-2 (Copy D) should be able to generate a facsimile of Form W-2 (Copy A) in case of loss.

.04 Except for copies in the official assembly, no additional copies that may be prepared by employers should be placed ahead of Form W-2 (Copy C) "For EMPLOYEE'S RECORDS."

.05 Instructions similar to those contained on the back of Copies B and C of the official IRS Form W-2 must be provided to each employee. These instructions may be printed on the back of the substitute Copies B and C or may be provided to employees on a separate statement. Do not print these instructions on the back of Copy 1 or 2 that is to be filed with the employee's state, city, or local income tax return. Any Forms W-2 (Copy A) and W-3 that are filed with the SSA must have no printing on the reverse side. Instructions similar to those provided as part of the IRS official forms must be provided as part of any substitute Form W-2 (Copy A) or Form W-3.

Section 2. Instructions for Employers

.01 Only originals of Form W-2 (Copy A) and Form W-3 may be filed with the SSA. Carbon copies and photocopies are unacceptable.

.02 Employers should type or machine-print data entries on the non-laser-generated forms whenever possible. Ensure good quality by using a high-quality type face, inserting data in the middle of blocks that are well separated from other printing and guidelines, and taking any other measures that will guarantee clear, sharp images. Black ink must be used with no script type, inverted font, italics or dual-case alpha characters.

Note. 12-point Courier font is preferred by the SSA.

.03 Form W-2 (Copy A) requires decimal entries for wage data. Dollar signs should not be printed with money amounts on the Forms W-2 (Copy A) and W-3.

.04 The employer must provide a machine-scannable Form W-2 (Copy A). The employer must also provide employee copies (Copies B, C, and 2) that are legible and able to be photocopied (by the employee). Do not print any data in the top margin of the payee copies of the forms.

.05 Any printing in box a (Control number) on Forms W-2 or W-3 may not touch any vertical or horizontal lines and should be centered in the box.

.06 The filer's employer identification number (EIN) must be entered in box b of Form W-2 and box e of Form W-3. The EIN entered on Form(s) W-2 (box b) and Form W-3 (box e) must be the same as on Forms 941, 943, CT-1, Schedule H (Form 1040), or any other corresponding forms filed with the IRS. Be sure to use EIN format (00-0000000) rather than SSN format (000-00-0000).

.07 The employer's name, address, and EIN may be preprinted.

.08 If available, employers should use the official IRS-preprinted Form W-3 that they received with Publication 393 or Publication 2184 when filing red-ink Forms W-2 (Copy A) with the SSA.

Section 3. OMB Requirements for Both Red-Ink and Laser-Printed Substitute Forms

.01 The Paperwork Reduction Act (the Act) of 1995 (Public Law 104-13) requires that:

- The Office of Management and Budget (OMB) approves all IRS tax forms that are subject to the Act.
- Each IRS form contains (in or near the upper right corner) the OMB approval number, if assigned. (The official OMB numbers may be found on the official IRS printed forms and are also shown on the forms in Exhibits A, B, C, E, and F.)
- Each IRS form (or its instructions) states:

  (1) Why the IRS needs the information,

  (2) How it will be used, and

  (3) Whether or not the information is required to be furnished to the IRS.
  This information must be provided to any users of official or substitute IRS forms or instructions.

- Any substitute form or substitute statement to a recipient must show the OMB number as it appears on the official IRS form.

.02 The OMB requirements for substitute IRS Form W-2 (Copy A) and Form W-3 are:

- The OMB number (1545-0008) must appear exactly as shown on the official IRS form.
- For any copy of Form W-2 other than Copy A, the OMB number must use one of the following formats:

  (1) OMB No. 1545-0008 (preferred) or

  (2) OMB # 1545-0008 (acceptable).

.03 Any substitute Form W-2 (Copy A only) must state "For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D." Any substitute Form W-3 must state "For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D of Form W-2." If no instructions are provided to users of your forms, you must furnish them with the exact text of the Privacy Act and Paperwork Reduction Act Notice.

Section 4. Copies of Forms

.01 You can obtain official IRS forms and information copies of federal tax materials at local IRS offices or by calling the IRS Distribution Center at 1-800-829-3676. Other ways to get federal tax material include:

- The Internet at *www.irs.gov*.
- The IRS' CD-ROM (Publication 1796).
  Only contact the IRS, not the SSA, for forms.

Note. Many IRS forms are provided on the IRS website and on the Federal Tax Forms CD-ROM. But copies of Form W-2 (Copy A) and Form W-3 cannot be used for filing with the IRS or SSA when obtained by these methods because the forms do not meet the specific printing specifications as described in this publication. Copies of Forms W-2 and W-3 obtained from these sources are for information purposes only.

.02 You can access the IRS website at *www.irs.gov*.

.03 The IRS also offers an alternative to downloading electronic files and provides current and prior-year access to tax forms and instructions through its Federal Tax Forms CD-ROM. The CD will be available for the upcoming filing season. Order Publication 1796, IRS Federal Tax Products CD-ROM, by using the IRS website at *www.irs.gov/cdorders* or by calling 1-877-CDFORMS (1-877-233-6767).

Section 5. Effect on Other Documents

.01 Revenue Procedure 2004-54, 2004-34 I.R.B. 325, dated August 23, 2004 (reprinted as Publication 1141, Revised 8-2004), is superseded.

List of Exhibits

Exhibit A — Form W-2 (Copy A) (Red-Ink)

Exhibit B — Form W-3 (Red-Ink)

Exhibit C — Form W-2 (Copy B)

Exhibit D — Form W-2 (Alternative Employee Copies) (Illustrating Horizontal and Vertical Formats)

Exhibit E — Form W-2 (Copy A) (Laser-Printed)

Exhibit F — Form W-3 (Laser-Printed)

Exhibit A Form W-2 (Copy A)

(Red-Ink)

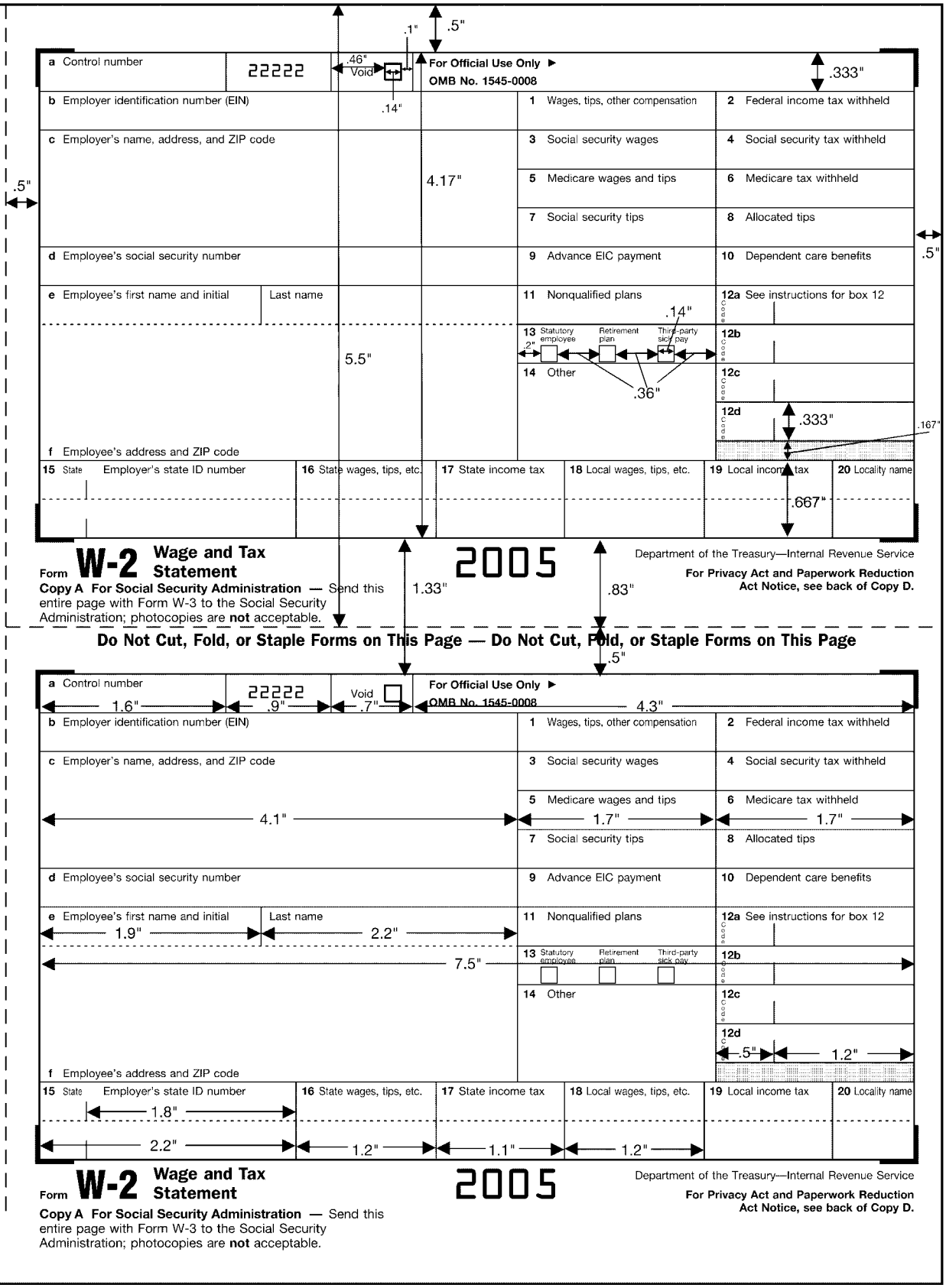
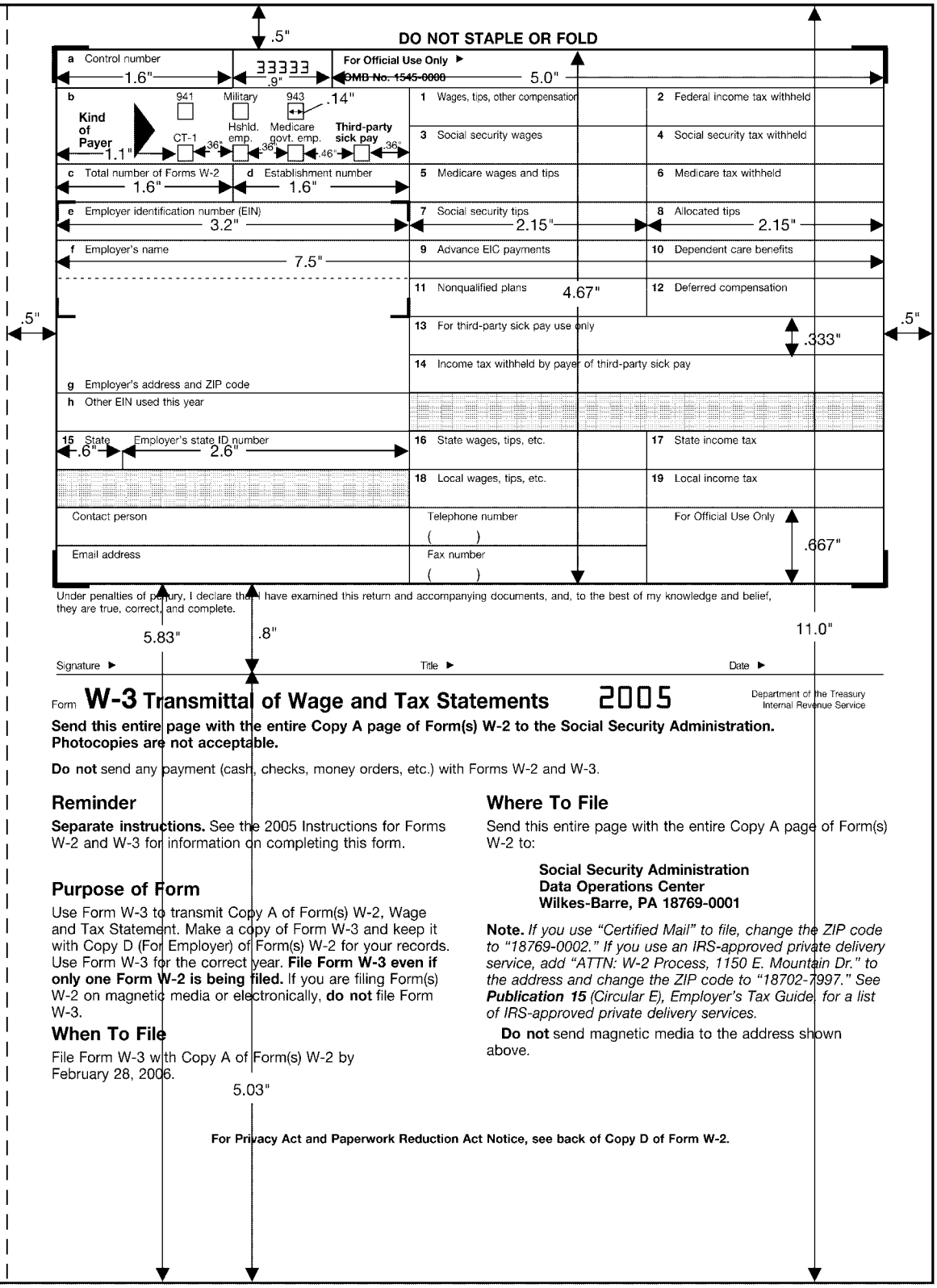


Exhibit B Form W-3

(Red-Ink)



Form **W-3 Transmittal of Wage and Tax Statements** 2005

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration. Photocopies are not acceptable.

Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

Reminder

Separate instructions. See the 2005 Instructions for Forms W-2 and W-3 for information on completing this form.

Purpose of Form

Use Form W-3 to transmit Copy A of Form(s) W-2, Wage and Tax Statement. Make a copy of Form W-3 and keep it with Copy D (For Employer) of Form(s) W-2 for your records. Use Form W-3 for the correct year. **File Form W-3 even if only one Form W-2 is being filed.** If you are filing Form(s) W-2 on magnetic media or electronically, **do not** file Form W-3.

When To File

File Form W-3 with Copy A of Form(s) W-2 by February 28, 2006.

Where To File

Send this entire page with the entire Copy A page of Form(s) W-2 to:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001

Note. *If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See* ***Publication 15*** *(Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.*

Do not send magnetic media to the address shown above.

5.03"

For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D of Form W-2.

Exhibit C Form W-2 (Copy B)

a Control number		OMB No. 1545-0008	**Safe, accurate, FAST! Use** IRS e-file	Visit the IRS website at *www.irs.gov/efile*.
b Employer identification number (EIN)			**1** Wages, tips, other compensation	**2** Federal income tax withheld
c Employer's name, address, and ZIP code			**3** Social security wages	**4** Social security tax withheld
			5 Medicare wages and tips	**6** Medicare tax withheld
			7 Social security tips	**8** Allocated tips
d Employee's social security number			**9** Advance EIC payment	**10** Dependent care benefits
e Employee's first name and initial Last name			**11** Nonqualified plans	**12a** See instructions for box 12 Code
			13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐	**12b** Code
			14 Other	**12c** Code
				12d Code
f Employee's address and ZIP code				

15 State	Employer's state ID number	**16** State wages, tips, etc.	**17** State income tax	**18** Local wages, tips, etc.	**19** Local income tax	**20** Locality name

Form **W-2** **Wage and Tax Statement** **2005** Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

Exhibit D Form W-2 Alternative Employee Copies

(Illustrating Horizontal and Vertical Formats)

Form W-2 Wage and Tax Statement

b Employer identification number	1 Wages, tips, other compensation	2 Federal income tax withheld
c Employer's name, address, and ZIP code	3 Social security wages	4 Social security tax withheld
	5 Medicare wages and tips	6 Medicare tax withheld
d Employee's social security number		
e Employee's name f Employee's address and ZIP code		

15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Copy C For EMPLOYEE'S RECORDS. 2005 Department of the Treasury—Internal Revenue Service

▲

Horizontal Format

1 Wages, tips, other compensation	2 Federal income tax withheld
3 Social security wages	4 Social security tax withheld
5 Medicare wages and tips	6 Medicare tax withheld
Employer identification number	
Employer's name, address, and ZIP code	
Employee's social security number	
Employee's name Employee's address and ZIP code	
15 State Employer's state ID number	18 Local wages, tips, etc.
16 State wages, tips, etc.	19 Local income tax
17 State income tax	20 Locality name
Copy B To Be Filed With Employee's FEDERAL Tax Return.	

Form W-2 Wage and Tax Statement 2005 ▲ Department of the Treasury—Internal Revenue Service

Vertical Format

Note: Exhibit D provides examples of employee copies of Form W-2 only. For examples of Copy A, see Exhibit A or Exhibit E. For the specifications of Copy A, which must be filed with the SSA, see Part B, sections 1A and 1B.

The core data boxes are 1 through 6 and, if applicable, 15 through 20. The core data must be similarly positioned, exactly numbered, and exactly titled as shown for each format. Other data may be placed in unoccupied areas based upon the employer's needs. Form identification may be placed before or after the core data. However, the employer's non-core elements may be positioned only between the sections of core data.

Exhibit E Form W-2 (Copy A)

(Laser-Printed)

This form may be subject to change.

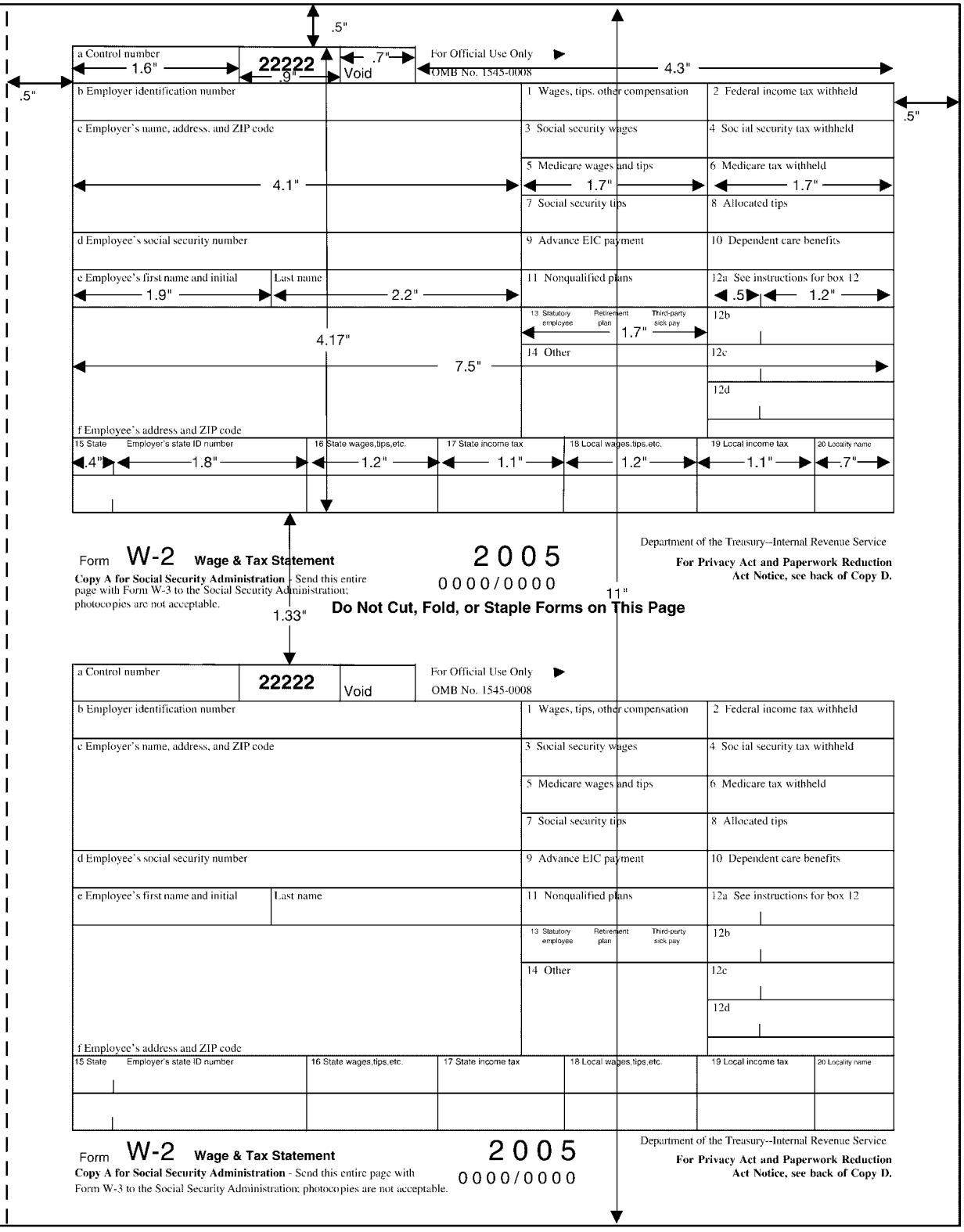
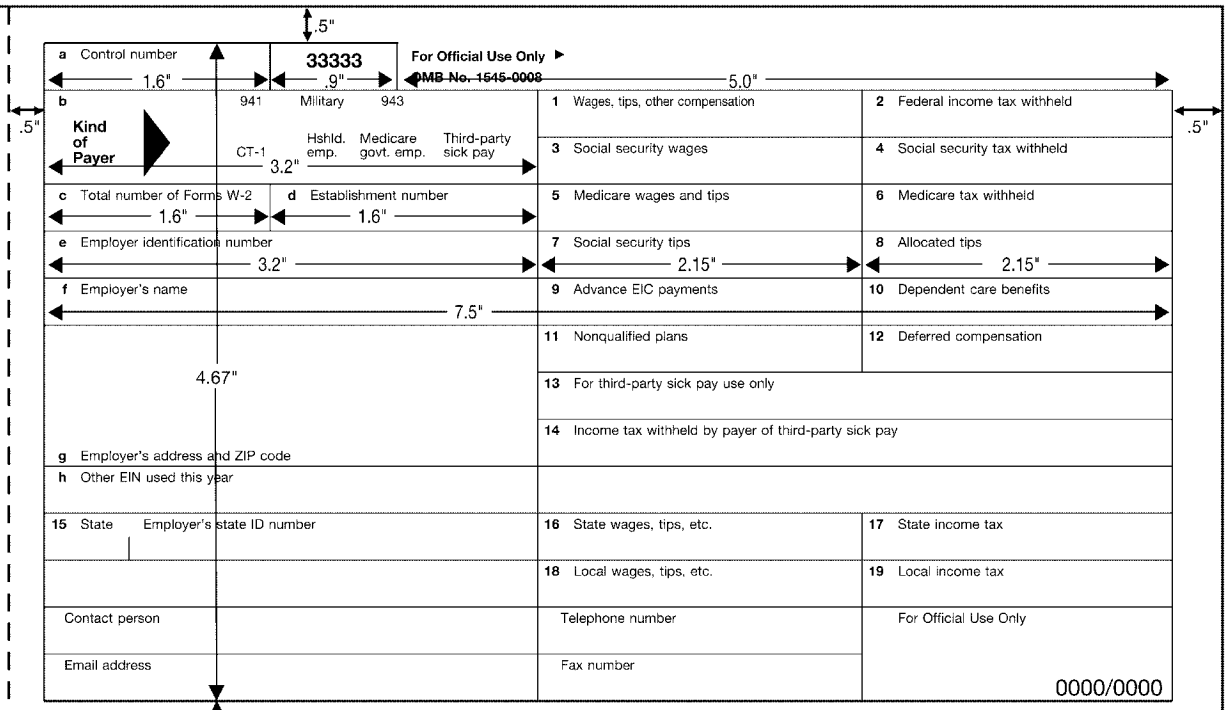


Exhibit F

Form W-3

(Laser-Printed)

This form may be subject to change.



Form **W-3 Transmittal of Wage and Tax Statements** **2005**

Department of the Treasury
Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration. Photocopies are not acceptable. DO NOT STAPLE OR FOLD.

Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

An Item To Note

Separate instructions. See the 2005 Instructions for Forms **W-2 and W-3** for information on completing this form.

5.03"

Purpose of Form

Use Form W-3 to transmit Copy A of **Form(s) W-2,** Wage and Tax Statement. Make a copy of Form W-3, and keep it with Copy D (For Employer) of Form(s) W-2 for your records. Use Form W-3 for the correct year. **File Form W-3 even if only one Form W-2 is being filed.** If you are filing Form(s) W-2 on magnetic media or electronically, **do not** file Form W-3.

When To File

File Form W-3 with Copy A of Form(s) W-2 by **February 28, 2006.**

Where To File

Send this entire page with the entire Copy A page of Form(s) W-2 to:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001

Note: *If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See* **Publication 15** *(Circular E), Employer's Tax Guide, for a list of IRS-approved private delivery services.*

Do **not** send magnetic media to the address shown above.

For Privacy Act and Paperwork Reduction Act Notice, see the back of Copy D of Form W-2.

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Section 411(d)(6) Protected Benefits

REG–156518–04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations providing guidance on certain issues relating to the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code, which generally protect accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit under qualified retirement plans. The proposed regulations would address the interaction between the anti-cutback rules of section 411(d)(6) and the nonforfeitability requirements of section 411(a), and would also provide a utilization test under which certain plan amendments would be permitted to eliminate or reduce certain early retirement benefits, retirement-type subsidies, or optional forms of benefit. These proposed regulations would generally affect sponsors of, and participants in, qualified retirement plans.

DATES: Written or electronic comments must be received by November 10, 2005.

Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for December 6, 2005, at 10 a.m. must be received by November 15, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–156518–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–156518–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–156518–04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela R. Kinard at (202) 622–6060; concerning submissions of comments, the hearing, and the requests to be placed on the building access list to attend the hearing, contact Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code (Code). These proposed regulations, when finalized, would revise Treasury Regulations §1.411(d)–3 to provide guidance on when a plan amendment may alter a benefit entitlement with respect to benefits accrued before the date of the amendment to add a condition that is permitted under section 411(a). These rules are intended to reflect the holding in *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (June 7, 2004). The proposed regulations would also provide a new method — a utilization test — under which a plan amendment is permitted to eliminate or reduce an early retirement benefit, a retirement-type subsidy, or an optional form of benefit.

Section 411(a) generally provides that an employee's right to the accrued benefit derived from employer contributions must become nonforfeitable within a specified period of service. Section 411(a)(3) provides circumstances under which an employee's benefit is permitted to be forfeited without violating section 411(a). Section 411(a)(3)(B) specifically provides that a right to an accrued benefit derived from employer contributions is not treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits: (1) in the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such benefits were being paid; and (2) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The definition of employment for which benefit payments are permitted to be suspended is further described in 29 CFR 2530.203–3 of the Department of Labor Regulations, which interprets section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, the counterpart to section 411(a)(3)(B) of the Code. Employment that satisfies the conditions described in section 203(a)(3)(B) of ERISA and the regulations thereunder is referred to as "section 203(a)(3)(B) service." See 29 CFR 2530.203–3(c).

Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) of the Code or section 4281 of ERISA. Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment is treated as impermissibly reducing accrued benefits. For a retirement-type subsidy, this protection applies only with respect to an employee who satisfies the preamendment conditions for the subsidy (either before or after the amendment). Section 411(d)(6)(B) also authorizes the Secretary of the Treasury to provide, through regulations, that section 411(d)(6)(B) does not apply to any plan amendment that eliminates optional forms of benefit (other than a plan amendment that has the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy).

Section 645(b)(1) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115

Stat. 38) (EGTRRA) amended section 411(d)(6)(B) of the Code to direct the Secretary of the Treasury to issue regulations providing that section 411(d)(6)(B) does not apply to any amendment that reduces or eliminates early retirement benefits or retirement-type subsidies that create significant burdens or complexities for the plan and plan participants unless such amendment adversely affects the rights of any participant in a more than *de minimis* manner.

Section 204(g) of ERISA contains parallel rules to section 411(d)(6) of the Code, including a similar directive to the Secretary of the Treasury to issue regulations providing that section 204(g) of ERISA does not apply to any amendment that reduces or eliminates early retirement benefits or retirement-type subsidies that create significant burdens or complexities for the plan and plan participants unless such amendment adversely affects the rights of any participant in a more than *de minimis* manner. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 204(g) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 411(d)(6) of the Code apply as well for purposes of section 204(g) of ERISA.

On July 11, 1988, final regulations (T.D. 8212, 1988–2 C.B. 83) under section 411(d)(6) were published in the **Federal Register** (53 FR 26050). These regulations are contained in §1.411(d)–4.

In conjunction with the publication of these proposed regulations, final regulations (T.D. 9219) under sections 411(d)(6) and 4980F are being published elsewhere in this issue of the Bulletin. Those final regulations are contained in §1.411(d)–3, which sets forth conditions under which a plan amendment is permitted to eliminate an optional form of benefit and to eliminate or reduce an early retirement benefit or a retirement-type subsidy that creates significant burdens or complexities for the plan and its participants, but only if the elimination does not adversely affect the rights of any participant in a more than *de minimis* manner. However, those regulations reserve 2 topics for later guidance — the utilization test (currently reserved in §1.411(d)–3(f)) and the interaction of the permitted forfeiture rules under section 411(a) with the anti-cutback rules under section 411(d)(6) (currently reserved in §1.411(d)–3(a)(3)). These proposed regulations would address these 2 topics as described below.

In *Central Laborers'*, the plaintiffs were 2 inactive participants in a multiemployer pension plan who commenced payment of their benefits in 1996 after qualifying for subsidized early retirement payments. The plan terms required that payments be suspended if a participant engaged in "disqualifying employment." At the time of their commencement of benefits, the plan defined disqualifying employment to include only employment covered by the plan, but not work as a construction supervisor. Both participants were employed as construction supervisors after they commenced payment of benefits. Although the 2 participants' benefit payments were not suspended in 1996, the plan was amended in 1998 to expand its definition of disqualifying employment to include any employment in the same trade or craft, industry, and geographic area covered by the plan, and the plan stopped payments to the 2 participants on account of their disqualifying employment as construction supervisors. The 2 participants sued to recover the suspended payments, claiming that the amendment expanding the plan's suspension provisions violated section 204(g) of ERISA (the counterpart to section 411(d)(6) of the Code).

The Supreme Court, holding for the 2 participants, ruled that section 204(g) of ERISA prohibits a plan amendment expanding the categories of post-retirement employment that result in suspension of the payment of early retirement benefits already accrued. The Court found that, while ERISA permits certain conditions that are elements of the benefit itself (such as suspensions under section 411(a)(3)(B) of the Code or section 203(a)(3)(B) of ERISA), such a condition may not be imposed after a benefit has accrued, and that the right to receive benefit payments on a certain date may not be limited by a new condition narrowing that right. The Court agreed with the 7th Circuit that "[a] participant's benefits cannot be understood without reference to the conditions imposed on receiving those benefits, and an amendment placing materially greater restrictions on the receipt of the benefit 'reduces' the benefit just as surely as a decrease in the size of the monthly benefit." *Central Laborers'* at 744, quoting *Heinz v. Central Laborers' Pension Fund*, 303 F.3d 802, 805 (7th Cir. 2002).

Rev. Proc. 2005–23, 2005–18 I.R.B. 991, limits the retroactive application of *Central Laborers'* for qualified plans under section 401(a) pursuant to the Commissioner's authority under section 7805(b)(8). The revenue procedure provides that the IRS will not disqualify a plan solely on account of a plan amendment adopted before June 7, 2004 that violated section 411(d)(6) by adding or expanding a suspension of benefit provision permitted under section 411(a)(3) if certain requirements are satisfied. These requirements include the adoption of a reforming amendment that provides for the payment of benefits retroactive to June 7, 2004, to affected plan participants. Rev. Proc. 2005–23 does not address participants' rights to recover benefits under Title I of ERISA.

Rev. Proc. 2005–23 states that Treasury and the IRS intend to propose regulations that reflect the holding in *Central Laborers'*. The revenue procedure provides that the proposed regulations will provide guidance on when an amendment may add a benefit entitlement condition that is permitted under the vesting rules with respect to benefits accrued before the date of the amendment. Those rules are contained in these proposed regulations.

Explanation of Provisions

Interaction of the Permitted Forfeiture Rules Under Section 411(a) with the Anti-Cutback Rules Under Section 411(d)(6)

The proposed regulations would address the interaction of the vesting rules in section 411(a) with the anti-cutback rules in section 411(d)(6), taking into account the decision in *Central Laborers'*. The regulations would provide that a plan amendment that decreases accrued benefits, or otherwise places greater restrictions on the rights to section 411(d)(6) protected benefits violates section 411(d)(6), even if the amendment merely adds a restriction or condition on receipt of section

411(d)(6) protected benefits that is otherwise permitted under the vesting rules in section 411(a)(3) through (11). The proposed regulations would further provide that such a plan amendment is permitted under section 411(d)(6) to the extent it applies with respect to benefits accruing after the applicable amendment date.

The proposed regulations include 3 examples illustrating this rule. One example includes facts similar to *Central Laborers'*. Another example illustrates the interaction of section 411(d)(6) with the rule of parity in section 411(a)(6)(D). The final example addresses how a plan amendment that changes the plan's vesting schedule would violate section 411(d)(6) if the amendment were to place greater restrictions on the rights to section 411(d)(6) protected benefits. This example illustrates that the application of this section 411(d)(6) rule to a plan amendment changing a plan's vesting schedule is in addition to the requirements under section 411(a)(10)(A) (requiring that the nonforfeitable percentage of a participant's accrued benefit as of the applicable amendment date not be decreased by the plan amendment) and under section 411(a)(10)(B) (requiring that the plan permit each participant having not less than 3 years of service to elect to have his or her nonforfeitable percentage computed without regard to the plan amendment). Thus, if a plan amendment changes the plan's vesting schedule, the amendment must not place greater restrictions (including vesting restrictions) on a participant's rights to previously accrued benefits, and must also comply with section 411(a)(10). As indicated in the example, both of these requirements are satisfied for an amendment changing a plan's vesting schedule if each plan participant is entitled to benefits based on the greater of the new and old vesting schedules.

While the proposed regulations address the addition of conditions specifically described in section 411(a), these rules would also apply in other situations. For example, if a plan provides section 411(d)(6) protected benefits that are conditioned on the reemployment of the participant, then a plan amendment adding additional restrictions with respect to benefits already accrued on those benefits is required to satisfy section 411(d)(6). However, a plan amendment is permitted to add restrictions with respect to future accruals.

Utilization Test

The proposed regulations would provide that a plan is permitted to be amended to eliminate optional forms of benefit that comprise a generalized optional form[1] for a participant with respect to benefits accrued before the applicable amendment date if certain requirements relating to the use of the generalized optional form are satisfied. However, under the utilization test, a plan is not permitted to be amended to eliminate core options (*i.e.*, a straight life annuity, a 75% joint and contingent annuity, a 10-year term certain and life annuity, and the most valuable option for a participant with a short life expectancy). In order to eliminate a noncore optional form of benefit under the proposed utilization test, 2 conditions must be satisfied: (1) the generalized optional form is available to a substantial number of participants during the relevant look-back period and (2) no participant must have elected any optional form of benefit that is within its generalized optional form during such relevant look-back period.

If the utilization test is satisfied, the plan could be amended to eliminate all of the optional forms of benefit that comprise a generalized optional form without having to satisfy the burdensome and *de minimis* requirements of §1.411(d)–3(e). Treasury and the IRS believe that the utilization test, by its nature, implicitly determines — by reference to participant's elections — which optional forms of benefit are considered valuable to plan participants. The fact that no participant in a substantial sample elected any optional form of benefit that is within a generalized optional form is a compelling indication that elimination of that the entire generalized optional form would not adversely affect the rights of any participant in a more than *de minimis* manner.

The utilization test would provide that the generalized optional form being eliminated must have been available to at least 100 participants who are taken into account during the look-back period. The look-back period under the utilization test in the proposed regulations is the 2 plan years immediately preceding the plan year in which the plan amendment eliminating the optional form of benefit is adopted. At least one of the plan years during the look-back period must be a 12-month plan year. If a plan does not have at least 100 participants who are taken into account during those 2 plan years, the look-back period is permitted to be expanded to be the 3, 4, or 5 plan years immediately preceding the plan year in which the plan amendment eliminating the optional form of benefit is adopted in order to have a look-back period that has at least 100 participants who are taken into account. If a plan does not have at least 100 participants who can be taken into account during the relevant 5-year period, the plan is not permitted to use the utilization test.

For purposes of the utilization test, a participant is generally taken into account only if during the look-back period the participant was eligible to elect to commence payment of an optional form of benefit that is part of the generalized optional form being eliminated. However, a participant would not be taken into account if the participant: did not elect any optional form of benefit with an annuity commencement date that is within the look-back period; elected an optional form of benefit that includes a single-sum distribution that applies with respect to at least 25% of the participant's accrued benefit; elected an optional form of benefit that was only available during a limited period of time that contained a retirement-type subsidy that was not extended to the generalized optional form being eliminated; or elected an optional form of benefit with an annuity commencement date that is more than 10 years before normal retirement age.[2] Treasury and the IRS believe that, in light of these restrictions on participants who are permitted to be taken into account in applying the utilization test, the sample size of 100 participants who are eligible to elect the generalized optional form is sufficiently large to demonstrate that elimination of the generalized optional form

[1] The term *generalized optional form* is defined in §1.411(d)–3(g)(8) as a group of optional forms of benefit that are identical except for differences due to the actuarial factors that are used to determine the amount of the distributions under those optional forms of benefit and the annuity starting dates.

[2] The term *annuity commencement date* is defined in §1.411(d)–3(g)(3) as the annuity starting date, except that, in the case of a retroactive annuity starting date, *annuity commencement date* is the date of the first payment of benefits pursuant to a participant election of a retroactive annuity starting date, as defined in §1.417(e)–1(b)(3)(iv).

would not adversely affect the rights of any plan participant in a more than *de minimis* manner.

Under the proposed regulations, a plan amendment eliminating a generalized optional form under the utilization rule cannot be applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period (as defined in §1.411(d)–3(g)(9)) after the date the amendment is adopted. This waiting period is the same as the waiting period for the elimination of an optional form of benefit under the redundancy rule in §1.411(d)–3(c)(1)(ii).

Proposed Effective Date

The rules relating to section 411(a) nonforfeitability provisions are proposed to be effective June 7, 2004, the date of the *Central Laborers'* decision. The rules relating to the utilization test are proposed to be effective for amendments adopted after December 31, 2006. With respect to the rules relating to the utilization test, these proposed regulations cannot be relied upon until they are adopted in final form in the **Federal Register**.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury and IRS specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 6, 2005, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. 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. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by November 15, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.411(d)–3 also issued under 26 U.S.C. 411(d)(6) and section 645(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (115 Stat. 38).* * *

Par. 2. Section 1.411(d)–3 is amended by:

1. Revising paragraph (a)(3).
2. Adding *Examples 3* and *4* to paragraph (a)(4).
3. Adding *Example 3* to paragraph (b)(4).
4. Revising paragraph (f).
5. Adding *Example 6* to paragraph (h).
6. Adding paragraphs (j)(3) and (j)(4).

The revisions and additions read as follows:

§1.411(d)–3 Section 411(d)(6) Protected Benefits.

* * * * *

(a) * * *

(3) *Application of section 411(a) nonforfeitability provisions with respect to section 411(d)(6) protected benefits*. The rules of this paragraph (a) apply to a plan amendment that decreases a participant's accrued benefits, or otherwise places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits, even if the amendment merely adds a restriction or condition that is otherwise permitted under the vesting rules in section 411(a)(3) through (11). However, such an amendment does not violate section 411(d)(6) to the extent it applies with respect to benefits that accrue after the applicable amendment date.

* * * * *

(4) * * *

Example 3. (i) *Facts*. Employer N maintains Plan C, a qualified defined benefit plan under which an employee participates upon completion of 1 year of service and is vested in 100% of the employer-derived accrued benefit upon completion of 5 years of service. Plan C provides that a former employee's years of service prior to a break in service will be reinstated upon completion of 1 year of service after being rehired. Plan C has participants who have fewer than 5 years of service and who are accordingly 0% vested in their employer-derived accrued benefits. On December 31, 2007, effective January

1, 2008, Plan C is amended, in accordance with section 411(a)(6)(D), to provide that any nonvested participant who has 5 consecutive 1-year breaks in service and whose number of consecutive 1-year breaks in service exceeds his or her number of years of service before the breaks will have his or her pre-break service disregarded in determining vesting under the plan.

(ii) *Conclusion*. Under paragraph (a)(3) of this section, the plan amendment does not satisfy the requirements of paragraph (a) of this section, and thus violates section 411(d)(6), because the amendment places greater restrictions or conditions on the rights to section 411(d)(6) protected benefits, as of January 1, 2008, for participants who have fewer than 5 years of service, by restricting the ability of those participants to receive further vesting protections on benefits accrued as of that date.

Example 4. (i) *Facts*—(A) Employer O sponsors Plan D, a qualified profit sharing plan under which each employee has a nonforfeitable right to a percentage of his or her employer-derived accrued benefit based on the following table:

Completed years of service	Nonforfeitable percentage
Fewer than 3	0%
3	20%
4	40%
5	60%
6	80%
7	100%

(B) In January 2005, Employer O acquires Company X, which maintains Plan E, a qualified profit sharing plan under which each employee who has completed 5 years of service has a nonforfeitable right to 100% of the employer-derived accrued benefit. In 2006, Plan E is merged into Plan D. On the effective date for the merger, Plan D is amended to provide that the vesting schedule for participants of Plan E is the 7-year graded vesting schedule of Plan D. In accordance with section 411(a)(10)(A), the plan amendment provides that any participant of Plan E who had completed 5 years of service prior to the amendment is fully vested. In addition, as required under section 411(a)(10)(B), the amendment provides that any participant in Plan E who has at least 3 years of service prior to the amendment is permitted to make an irrevocable election to have the vesting of his or her nonforfeitable right to the employer-derived accrued benefit determined under either the 5-year cliff vesting schedule or the 7-year graded vesting schedule. Participant G, who has an account balance of $10,000 on the applicable amendment date, is a participant in Plan E with 2 years of service as of the applicable amendment date. As of the date of the merger, Participant G's nonforfeitable right to G's employer-derived accrued benefit is 0% under both the 7-year graded vesting schedule of Plan D and the 5-year cliff vesting schedule of Plan E.

(ii) *Conclusion*. Under paragraph (a)(3) of this section, the plan amendment does not satisfy the requirements of paragraph (a) of this section and violates section 411(d)(6), because the amendment places greater restrictions or conditions on the rights to section 411(d)(6) protected benefits with respect to G and any participant who has fewer than 7 years of service and who elected (or was made subject to) the new vesting schedule. A method of avoiding a section 411(d)(6) violation with respect to account balances attributable to benefits accrued as of the applicable amendment date and earnings thereon, would be for Plan D to provide for the vested percentage of G and each other participant in Plan E to be no less than the greater of the 2 vesting schedules (*e.g.*, for G and each other participant in Plan E to be fully vested if the participant completes 5 years of service) for those account balances and earnings.

* * * * *

(b) * * *

(4)* * *

Example 3. (i) *Facts*. Plan C, a multiemployer defined benefit plan in a particular industry, provides that a participant may elect to commence distributions only if the participant is not currently employed by an employer maintaining the plan and provides that, if the participant has a specified number of years of service and attains a specified age, the distribution is without any actuarial reduction for commencement before normal retirement age. Since the plan's inception, Plan C has provided for suspension of pension benefits during periods of disqualifying employment (ERISA section 203(a)(3)(B) service). Before 2007, the plan defined disqualifying employment to include any job as an electrician in the particular industry and geographic location to which Plan C applies. This definition of disqualifying employment did not cover a job as an electrician supervisor. In 2005, Participant E, having rendered the specified number of years of service and attained the specified age to retire with a fully subsidized early retirement benefit, retires from E's job as an electrician with Employer Y and starts a position with Employer Z as an electrician supervisor. Employer Z is not a participating employer in Plan C but is an employer in the same industry and geographic location as Employer Y. When E left service with Employer Y, E's position as a electrician supervisor was not disqualifying employment for purposes of Plan C's suspension of pension benefit provision, and E elects to commence benefit payments in 2005. In 2006, effective January 1, 2007, Plan C, in accordance with section 411(a)(3)(B), is amended to expand the definition of disqualifying employment to include any job (including supervisory positions) as an electrician in the same industry and geographic location to which Plan C applies. On January 1, 2007, E's pension benefits are suspended because of E's disqualifying employment as an electrician supervisor. (These facts are generally comparable to the facts in *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (June 7, 2004).)

(ii) *Conclusion*. Under paragraphs (a)(3) and (b)(1) of this section, the 2007 plan amendment violates section 411(d)(6), because the amendment places greater restrictions or conditions on a participant's rights to section 411(d)(6) protected benefits to the extent it applies with respect to benefits that accrued before January 1, 2007. The result would be the same even if the amendment did not apply to former employees and instead applied only to participants who were actively employed at the time of the applicable amendment.

* * * * *

(f) *Utilization test*—(1) *General rule*. A plan is permitted to be amended to eliminate all of the optional forms of benefit that comprise a generalized optional form (as defined in paragraph (g)(8) of this section) for a participant with respect to benefits accrued before the applicable amendment date if—

(i) None of the optional forms of benefit being eliminated is a core option, within the meaning of paragraph (g)(5) of this section;

(ii) The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period (as defined in paragraph (g)(9) of this section) after the date the amendment is adopted;

(iii) The generalized optional form has been available to at least 100 participants who are taken into account during the look-back period; and

(iv) No participant has elected any optional form of benefit that is part of the generalized optional form with an annuity commencement date that is within the look-back period.

(2) *Look-back period.* For purposes of this paragraph (f), the look-back period is the 2 plan years immediately preceding the plan year in which the plan amendment eliminating the generalized optional form is adopted. At least one of the plan years during the look-back period must be a 12-month plan year. However, if a

plan does not have at least 100 participants who are taken into account under this paragraph (f) during those 2 plan years, the look-back period is permitted to be expanded to be the 3, 4, or 5 plan years immediately preceding the plan year in which the plan amendment eliminating the generalized optional form is adopted in order to have a look-back period that has at least 100 participants who are taken into account under this paragraph (f). If a plan does not have at least 100 participants who are taken into account under this paragraph (f) during the relevant 5-year period, the plan is not permitted to add more plan years to the look-back period and, accordingly, such a plan is not permitted to use the utilization test in this paragraph (f).

(3) *Participants taken into account*. Except as provided in this paragraph (f)(3), a participant is taken into account for purposes of this paragraph (f) only if the participant was eligible to elect to commence payment of an optional form of benefit that is part of the generalized optional form being eliminated with an annuity commencement date that is within the look-back period. However, a participant is not taken into account if the participant either—

(i) Did not elect any optional form of benefit with an annuity commencement date that was within the look-back period;

(ii) Elected an optional form of benefit that included a single-sum distribution that applied with respect to at least 25% of the participant's accrued benefit;

(iii) Elected an optional form of benefit that was only available during a limited period of time and that contained a retirement-type subsidy which at that annuity commencement date was not extended to the optional form of benefit with the same annuity commencement date that is part of the generalized optional form being eliminated; or

(iv) Elected an optional form of benefit with an annuity commencement date that was more than 10 years before normal retirement age.

(4) *Default elections*. For purposes of this paragraph (f), an election includes the payment of an optional form of benefit that applies in the absence of an affirmative election.

* * * * *

(h) * * *

Example 6. (i) *Facts involving elimination of noncore options using utilization test*—(A) *In general*. Plan G is a calendar year defined benefit plan under which participants may elect to commence distributions after termination of employment in the following actuarially equivalent forms, with spousal consent, if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity; or a 5-year, 10-year, or a 15-year term certain and life annuity. Participants whose benefits are under $5,000 are permitted to elect a single-sum distribution. The annuities offered under the plan are generally available both with and without a social security leveling feature. The social security leveling feature provides for an assumed commencement of social security benefits at any age selected by the participant between the ages of 62 and 67. Under Plan G, the normal retirement age is defined as age 65.

(B) *Utilization test*. In 2007, the plan sponsor of Plan G, after reviewing participants' benefit elections, determines that no participant in the 2 prior plan years (2005 and 2006) elected a 5-year term certain and life annuity with a social security leveling option. During the 2 prior plan years, Plan G has made the 5-year term certain and life annuity with a social security leveling option available to 142 participants who were at least age 55 and who elected an optional form of benefit with an annuity commencement date during that 2-year period. In addition, during 2005–06 plan years, 20 of the 142 participants elected a single-sum distribution and there was no retirement-type subsidy available for a limited period of time. Plan G, in accordance with paragraph (f)(1) of this section, is amended on September 1, 2007, effective as of January 1, 2008, to eliminate all 5-year term certain and life annuities with a social security leveling option for all annuity commencement dates on or after January 1, 2008.

(ii) *Conclusion*. The amendment satisfies the requirements of paragraph (f) of this section. First, the 5-year term certain and life annuity with a social security leveling option is not a core option as defined in paragraph (g)(5) of this section. Second, the plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period after the date the amendment is adopted. Third, the 5-year term certain and life annuity with a social security leveling option has been available to at least 100 participants who are taken into account for purposes of paragraph (f)(4) of this section during the look-back period of 2005 and 2006. Fourth, during that period, no participant elected any optional form that is part of the generalized optional form being eliminated (*i.e.*, the 5-year term and life annuity with a social security leveling option).

* * * * *

(j) * * *

(3) *Effective date for rules relating to section 411(a) nonforfeitability provisions*. The rules provided in paragraph (a)(3) of this section are effective June 7, 2004.

(4) *Effective date for rules relating to utilization test*. The rules provided in paragraph (f) of this section are effective for amendments adopted after December 31, 2006.

* * * * *

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on August 11, 2005, 8:45 a.m., and published in the issue of the Federal Register for August 12, 2005, 70 F.R. 47155)

Foundations Status of Certain Organizations

Announcement 2005–65

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

21st Century Womens Leadership Center, Inc., New York, NY
A Better Way Foundation ABWF, Inc., New Haven, CT
A C P D D, Inc., Setauket, NY
A Razvin Trust for Russian American Understanding, Great Neck, NY
Academie De Vie Charter School, Inc., Pasadena, TX
Acclaimed Dance Company, Inc., Baton Rouge, LA
Act Up, Inc., – Alternative Creative Theater, Vernon, CT
Affordable Home Care, Inc., Portsmouth, VA
Agape Net, Inc., Houston, TX
Alan Seabrooks Multi Service Center for Family Life, Inc., Brooklyn, NY
Allegro Performers Parents Association, Kent, WA
Alleyne School Alumni of the USA, Inc., Brooklyn, NY

Always Believe Foundation, Greensboro, NC
American Academy of Distance Learning & Training, Inc., Valley City, ND
American Friends for the Voice of Russian Jewry, Brooklyn, NY
American Friends of Dor Vador Institutions, Inc., Brooklyn, NY
American Friends of Etachadut Amosdos Bkiryat Sefer, Brooklyn, NY
American Friends of Machon MIFNE, Inc., New York, NY
American Friends of Z A K A, Inc., Brooklyn, NY
American Standard Bred Adoption Program of Michigan, Inc., Hillman, MI
Amigos De Apostoles Y Profetas, Inc., Uniondale, NY
Amsterdam Sports Foundation, Inc., New York, NY
Annie R. Thomas Foundation, Shreveport, LA
Aquarium Sea Cadets, Brooklyn, NY
Art Forum for Children, Inc., New York, NY
Arts From the Heart Arts Consortium, Richmond, VA
Asian Community Media Institute, Inc., Saint Paul, MN
A S K, Inc., Baltimore, MD
Ates Turkish Charity, Glen Burnie, MD
Aurora Women and Girls Foundation, Inc., Bristol, CT
Aviation Volunteer Fire Department Engine Company 3, Inc., Bronx, NY
Badger Aquatics Club, Inc., Madison, WI
Bainbridge High School Instrumental Music Boosters, Bainbridge Island, WA
Ballet Arts Dance Co., Inc., Endicott, NY
Bare Elements Theatre Group, Ltd., New York, NY
Bay Area Senior Resources, San Francisco, CA
Bernardo Yorba Choir and Handbell Music Boosters, Yorba Linda, CA
Best Beginnings, Inc., Franklin Square, NY
Betances Youth Program Advisory Board, Inc., Bronx, NY
Biltmore School Alumni Association, Asheville, NC
Bobbys Place, Inc., Birmingham, AL
Buffalo Philharmonic Orchestra Volunteer Foundation, Inc., Buffalo, NY
Buffalo Premier Futbol Club, Inc., N. Tonawanda, NY
Bulldog Conditioning Club, Inc., Silver Spring, MD
Caldwell County Cares Historical Society, Inc., Polo, MO
California Raisin Country Festival, Fresno, CA
Cambridge Area Chamber of Commerce Foundation, Cambridge, MN
Campus, Inc., Ann Arbor, MI
Cashmere Schools Foundation, Cashmere, WA
Casita Park Housing Development Fund Co., Inc., New York, NY
Catching Your Dreams, Inc., La Mesa, CA
Chamael Wrestling Club, San Jose, CA
Chano Pozo Foundation, Inc., New York, NY
Charitable Limb, Rogers, AR
Charlie Brown Foundation, Budd Lake, NJ
Chicago Oxford Society, Chicago, IL
Childrens A I R Foundation, New York, NY
Choral Sounds of Chicago, Inc., Chicago, IL
Christian Affordable Home Ministries, Stockbridge, GA
Christian Broadcasting Support Organization, Inc., Mena, AR
Christmas in April Cleveland, Cleveland, TN
Cire Foundation, Incorporated, Broomfield, CO
Collective for Social Services, Inc., Cheverly, MD
Communities in Schools of San Francisco, Inc., San Francisco, CA
Communities in Schools of Snohomish County, Everett, WA
Community Health Reach Foundation, Los Angeles, CA
Community of New Hope, Chapel Hill, NC
Comprehensive Allied Health Intervention Services, Inc., Fort Worth, TX
Computerized Training Institute of America, Inc., Far Rockaway, NY
County Line Riders of Catalina, Inc., Tucson, AZ
Creative Learning School, Inc., Burlingame, CA
Creative New York, Inc., New York, NY
Crescendo Productions, Murray, UT
Cross High Band Booster, Cross, SC
Crum Area Little League, Crum, WV
Custodians of Russian Culture, Inc., Brooklyn, NY
Dallas National 2003, Dallas, TX
Deborah Messi Memorial Fund, Inc., Garden City, NY
DeFranco Public Charity for the Enhancement of Education, Inc., Niagara Falls, NY
Dental Care International Foundation, Inc., Coram, NY
Diamond Gals of Ohio, Inc., Stow, OH
Dile Foundation, Inc., Randallstown, MD
Disability Network, Inc., Brooklyn, NY
Divide County Quarterback Club, Inc., Crosby, ND
Dolphin Whale & Marine Wildlife Foundation, Santa Cruz, CA
Dome Artist Outreach, New York, NY
Dylan Malamala Cystic Fibrosis Foundation, Palm Beach Gardens, FL
Earth Ecology Institute, Inc., Baton Rouge, LA
Emergency Medical Services Command Memorial Foundation, Inc., Brooklyn, NY
Emma Winograd Foundation, Inc., Suffern, NY
Esperanza Performing Arts Association, Inc., San Diego, CA
Extra Loud, Inc., New York, NY
Eya Foundation, San Antonio, TX
Faith in Action of Fannin County, Inc., Blue Ridge, GA
Faith Urban Ministries, Euclid, OH
Families United Performing Art Learning & Counseling Center, Long Beach, CA
Family Grief Center, Colorado Springs, CO
Fantod Theater, Chicago, IL
First Home Foundation, Inc., Rego Park, NY
Foundation for Intercultural Travel, Inc., White Plains, NY
Foundation of Moral and Ethical Development, Inc., Brooklyn, NY
Friends of A A M O R, Inc., Higganum, CT
Friends of Drama Foundation, Inc., White Plains, NY
General Service Industries, Tulia, TX
Generation Excellence, Inc., Flushing, NY
Global Emergency Org., Inc., Northport, NY
Grace Community Sports Program, Inc., Saint Albans, NY
Greater Mount Olive Missionary Community Development Learning Center, Hamilton Township, NJ
Greater South Loop Association, Chicago, IL
Green Cure, Inc., Ventura, CA
Greenfield Parent Teacher Organization, Greenfield, NH

Greg Evangelistic Ministries, Inc., North Miami, FL
Grifton Flood Relief, Grifton, NC
Healing Partners of Santa Fe, Inc., Santa Fe, NM
Heavensent 2000, Inc., Lithonia, GA
Help the Children Foundation, Inc., Brooklyn, NY
Helping Hands Ministry, Lyman, ME
Helpnet-USA, Inc., South Orange, NJ
Hereandnow Theatre Company, S. Pasadena, CA
Higher Mission Foundation, Kansas City, KS
Hughes Boys Center, Inc., Perris, CA
I-Gyan, Inc., Chestnut Hill, MA
Indian Nation, Coal Grove, OH
Indigenous Learning Institute, Cushing, OK
Inmate Families Organization, Inc., Manchaca, TX
Inner City Community Development Corp., Roosevelt, NY
Inner City Youth Alive, Philadelphia, PA
Interlink, Mankato, MN
International Committee for Preservation of Gravesites of Geonai Pressburg, Brooklyn, NY
International Multicultural Network of Southern California, Los Angeles, CA
International Outreach Ministries, Inc., Pearland, TX
ITAV, Inc., Teaneck, NJ
J. H. Omega Mission Center, Inc., Flushing, NY
Jewish Lifeline, Inc., Brooklyn, NY
John Kruk Charities, Keyser, WV
Jump Start NY, Inc., New York, NY
Junior Scratch Tour of America, Riverside, CA
Just Solutions, Brattleboro, VT
Kangaroo Kids a Corporation Caring for Children, Palm Desert, CA
Kansas City Blaze Softball Club, Olathe, KS
Key School of Vermont, Inc., Brownsville, VT
Kids First Educational Center, Southfield, MI
Kimberly Youth Basketball Association, Inc., Appleton, WI
Korean Association of Retired Persons, Inc., New York, NY
Kuljit Bindra Charitable Foundation, Inc., New York, NY
L A Village Recreation and Rehabilitation Center, Los Angeles, CA
La Costa Canyon High School Grad Nite Association, Encinitas, CA
Lathrop Baseball Softball Association, Lathrop, MO
Learning Adventures, Tigard, OR
Leesburg Summer Recreation League, Leesburg, IN
Lew E Learning Center, Chicago, IL
Liddies Family Daycare, Carson, CA
Lidia Matticchio Bastianich Foundation, New York, NY
Life International Mission, Inc., Dallas, TX
Lifeskills 101, Newcastle, CA
Lifeworks and Associates, Inc., Huntington Station, NY
Lincoln Charter School East PTO, Denver, NC
Lloyd A. Schneider/Daphne H. Schneider Mounds and Habitat Uniting Native Tribes Foundation, Inc., McFarland, WI
Logos Institute, Gladwyne, PA
Lone Star Summer Swim League, San Antonio, TX
Long Island Sound Sharks Football, Inc., Shoreham, NY
Lords Harvest, Inc., Lavallette, NJ
MaAfrika Tikkun USA, Inc., White Plains, NY
Macedonia Human Services Cultural Training Center, Inc., Punta Gorda, FL
Marietta Scrappers Used Baseball, Inc., Smyrna, GA
MCR Budget Counselors, Inc., Merrilville, IN
Medical Aid Foundation, Inc., New York, NY
Mercy Mountain Housing, Inc., Williamsburg, KY
Mercy Mountain Transportation, Inc., Williamsburg, KY
MIA K, New York, NY
Midwest Magic Basketball Association, Bartlett, IL
Ministry of Prayer, Praise and Provision, Zimmerman, MN
Mirror to the Soul, Dallas, TX
Missouri Epsilon Scholastic Foundation, Inc., Springfield, MO
Mochon Kocho Shel Halacha, Inc., Brooklyn, NY
Mosdot Chinuch Vchesed Dchasidei Gur, Inc., Brooklyn, NY
Muslims on Long Island, Inc., Bethpage, NY
NAEC Community Development Company, Inc., Amityville, NY
National Breast Cancer Directory, Inc., Hackensack, NJ
National Campaign Against Youth Violence, Washington, DC
National Debt Counseling Corp., Huntington, NY
National Homeschool Music Ensembles, Inc., Tecumseh, MI
National Sports Marketing Education Foundation, Manhattan Beach, CA
Navy Sailing Foundation, Chicago, IL
N B C — U S A Housing, Inc., Thirty, Cleveland, OH
New Avenue Theatre Project, Inc., New York, NY
New Creation Christian Camp, Inc., Hickman, NE
New Haven Healing Center and Hospice, Phoenix, AZ
New Horizon Track Club, Inc., Dobbs Ferry, NY
New York Aid Society, Jericho, NY
Newschelle Corporation, Brooklyn, NY
Nor Cal Baseball, Inc., Danville, CA
North Carolina Action for Youth, Goldsboro, NC
North Penn Panthers Wrestling Club, Lansdale, PA
Northeast Ohio Womens Hockey Organization, Columbia Station, OH
Omas Farm Food Unlimited, Incorporated, Brooklyn, NY
One Rose Foundation, Inc., Flushing, NY
One Step, Inc., Bakersfield, CA
Operations Reach Out Across Miami, Inc., Miami, FL
Orange After School Program, Inc., E. Barre, VT
Orange County Lutheran Youth Band, Orange, CA
Organization of Black Airline Pilots, Silver Spring, MD
Orland Park A Girls Fast Pitch Softball, Palos Heights, IL
Paul J. Tsang Foundation, Chapel Hill, NC
Penn Hills Multipurpose Service Corporation, Verona, PA
Permanent Rescue, Conway, SC
Perry Fund for Others, Charlottesville, VA
PFW Promotions, Inc., Princeton, NJ
Piney Woods Mental Health Consumers, Inc., Zavalla, TX
Pittsburg High School Crime Stoppers, Pittsburg, TX
Police Athletic League of North Huntingdon Umpire School, Inc., North Huntingdon, PA

Pool Hawks Booster Club, Kaneohe Bay, HI
Press Freedom Foundation, North Miami, FL
Princeton Youth Wrestling Club, Princeton, MN
Priority Methang, Inc., Sunrise, FL
Prospect Park Players, Minneapolis, MN
Prospect Plaza Development Corporation, Brooklyn, NY
PTO Massachusetts Parent-Teacher Organization Runkle School, Brookline, MA
R & R Foundation, Inc., Brooklyn, NY
Racing for the Cross Ministries, Elgin, SC
Reach Foundation, Shaker Heights, OH
Rescued Pet Foundation, Los Angeles, CA
Resources for Economic Development, Mesa, AZ
Rev. Samuel Powels Foundation, Blythe, CA
Richer Equine Sanctuary, Inc., Staten Island, NY
River of Life International Fisheries, White Bear Lake, MN
RMS Music Parents Association, Inc., Homestead, FL
Rose of Sharon Enterprises Society, Brooklyn, NY
Rough Cut Indians, Baton Rouge, LA
Saigon Childrens Charity USA, New York, NY
Samalitan Christian Childrens Fund, Inc., Pasadena, CA
Second Chance for a New Life, Inc., Roselle, NJ
Seeds for Self-Reliance, Inc., New York, NY
Shasta Works, Inc., Redding, CA
Shekinah Creatives Unlimited, Littlerock, CA
Shorewood Orchestra Boosters, Shorewood, WI
Sisters-N-Company, St. Louis, MO
Society for Research Into Enlightenment, Loon Lake, WA
St. Clair Athletic Booster Club, St. Clair, MO
St. Joseph County Family Investment Initiative Corporation, South Bend, IN
Star Community Development Corporation, Ossining, NY
Stephens Hope Foundation, Chetek, WI
Styleworks, Brooklyn, NY
Suburban Housing Holding Corp., Bay Shore, NY
Suzanne Stanway Memorial, Inc., Highland Mills, NY
Tale Spinners, Wasilla, AK
Tatra Foundation for Music, Inc., Reading, MA
Tears Foundation, Houston, TX
T E N Female Athletics, Montgomery, AL
Thunder Baseball, Pace, FL
Town of Ossining PBA, Inc., Montrose, NY
Tremont Settlement House, Inc., Bronx, NY
Trinidad & Tobago Hummingbird Forum, Inc., Brooklyn, NY
Trinity Social Justice Institute, Austin, TX
True Fruit Ministries, Inc., East Quogue, NY
True Light Day Care, Austin, TX
Union Day Care Center, Inc., Astoria, NY
United Albanian Appeal, Bronx, NY
United Confederation of Taino People, Inc., Corona, NY
University City East, Inc., University City, MO
Upstage at WRHS, Inc., Holden, MA
Vandegrift Institute, Phoenix, AZ
Veex Health & Information Service Corp., Oakland, CA
Vehicle Access Network VAN, Denton, TX
Village of New Hope, Fayetteville, GA
Villar-Hauser Theatre Development Fund, Inc., New York, NY
Warner Robins Resident Council, Inc., Warner Robins, GA
Water Valley Community Church, Greeley, CO
Waterman Wharf Rat Society, Inc., Galveston, TX
West Babylon Sunburst, West Babylon, NY
West End Neighborhood Association, Inc., Johnson City, TN
Western Technology Center Foundation, Burns Flat, OK
Weston Babe Ruth Softball League, Weston, CT
Whitnall 3–D Booster Club, Hales Corners, WI
William T. Mayo Educational Center, Inc., Baltimore, MD
Wilmington Bucs Baseball 16–U, Wilmington, NC
Women of Grace Ministries, Inc., Macon, GA
Women of Proverbs 8 Council, New York, NY
World Hope, Inc., Brooklyn, NY
World Peace Foundation, Brooklyn, NY
World Peace Through Technology Organization, San Francisco, CA
World Space Theatre Company, Chicago, IL
Wright Computer Connection, Dayton, OH
Yale Alley Cats, Inc., New Haven, CT
Yellow Jackets Softball Club, Westminster, CO
Youth Ballet of CNY, Inc., Scottsville, NY
Zoe Community Education & Empowerment, Los Angeles, CA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

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