

Internal Revenue bulletin

Bulletin No. 2004-47
November 22, 2004

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. 2004-107, page 852.

Section 1274A — inflation adjusted numbers for 2005. This ruling provides the dollar amounts, increased by the 2005 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2003-119 supplemented and superseded.

Rev. Rul. 2004-108, page 853.

CPI adjustment for below-market loans for 2005. The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for years 1987-2005. Rev. Rul. 2003-118 supplemented and superseded.

EMPLOYEE PLANS

REG-114726-04, page 857.

Proposed regulations under section 401(a) of the Code provide rules permitting distributions to be made from a pension plan under a phased retirement program and set forth requirements for a *bona fide* phased retirement program. These regulations will provide the public with guidance regarding distributions from qualified pension plans and will affect administrators of, and participants in, these plans.

Notice 2004-77, page 855.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities. The weighted average interest rate for November 2004 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

EMPLOYMENT TAX

Announcement 2004-96, page 872.

This announcement advises employers about a new Code Y for use on the 2005 Form W-2. This code will be used to identify annual deferrals of income under a nonqualified deferred compensation plan.

Announcements of Disbarments and Suspensions begin on page 866.
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 483.—Interest on Certain Deferred Payments

26 CFR 1.483-1: *Computation of interest on certain deferred payments.*

As defined by section 1274A, the definitions for both “qualified debt instruments” and “cash method debt instruments” have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 2005 calendar year. See Rev. Rul. 2004-107, page 852.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

26 CFR 1.1274A-1: *Special rules for certain transactions where stated principal amount does not exceed \$2,800,000.*

As defined by section 1274A, the definitions for both “qualified debt instruments” and “cash method debt instruments” have dollar ceilings on the stated principal amount. The limits to the stated principal amount are adjusted for inflation for sales or exchanges occurring in the 2005 calendar year. See Rev. Rul. 2004-107, page 852.

Section 1274A.—Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed \$2,800,000

(Also §§ 1274, 483; 1.1274A-1, 1.483-1.)

Section 1274A—inflation adjusted numbers for 2005. This ruling provides the dollar amounts, increased by the 2005 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2003-119 supplemented and superseded.

Rev. Rul. 2004-107

This revenue ruling provides the dollar amounts, increased by the 2005 inflation

adjustment, for § 1274A of the Internal Revenue Code.

BACKGROUND

In general, §§ 483 and 1274 determine the principal amount of a debt instrument given in consideration for the sale or exchange of nonpublicly traded property. In addition, any interest on a debt instrument subject to § 1274 is taken into account under the original issue discount provisions of the Code. Section 1274A, however, modifies the rules under §§ 483 and 1274 for certain types of debt instruments.

In the case of a “qualified debt instrument,” the discount rate used for purposes of §§ 483 and 1274 may not exceed 9 percent, compounded semiannually. Section 1274A(b) defines a qualified debt instrument as any debt instrument given in consideration for the sale or exchange of property (other than new § 38 property within the meaning of § 48(b), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of the instrument does not exceed the amount specified in § 1274A(b). For debt instruments arising out of sales or exchanges before January 1, 1990, this amount is \$2,800,000.

In the case of a “cash method debt instrument,” as defined in § 1274A(c), the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1, 1990, the stated principal amount does not exceed \$2,000,000; (B) the lender does not use an

accrual method of accounting and is not a dealer with respect to the property sold or exchanged; (C) § 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) an election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and lender. Section 1.1274A-1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

Section 1274A(d)(2) provides that, for any debt instrument arising out of a sale or exchange during any calendar year after 1989, the dollar amounts stated in § 1274A(b) and § 1274A(c)(2)(A) are increased by the inflation adjustment for the calendar year. Any increase due to the inflation adjustment is rounded to the nearest multiple of \$100 (or, if the increase is a multiple of \$50 and not of \$100, the increase is increased to the nearest multiple of \$100). The inflation adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1988. Section 1274A(d)(2)(B) defines the CPI for any calendar year as the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of that calendar year.

INFLATION-ADJUSTED AMOUNTS

For debt instruments arising out of sales or exchanges after December 31, 1989, the inflation-adjusted amounts under § 1274A are shown in Table 1.

Rev. Rul. 2004-107 Table 1

Inflation-Adjusted Amounts Under § 1274A

<u>Calendar Year of Sale or Exchange</u>	<u>1274A(b) Amount (qualified debt instrument)</u>	<u>1274A(c)(2)(A) Amount (cash method debt instrument)</u>
1990	\$2,933,200	\$2,095,100
1991	\$3,079,600	\$2,199,700
1992	\$3,234,900	\$2,310,600
1993	\$3,332,400	\$2,380,300
1994	\$3,433,500	\$2,452,500
1995	\$3,523,600	\$2,516,900
1996	\$3,622,500	\$2,587,500
1997	\$3,723,800	\$2,659,900
1998	\$3,823,100	\$2,730,800
1999	\$3,885,500	\$2,775,400
2000	\$3,960,100	\$2,828,700
2001	\$4,085,900	\$2,918,500
2002	\$4,217,500	\$3,012,500
2003	\$4,280,800	\$3,057,700
2004	\$4,381,300	\$3,129,500
2005	\$4,483,000	\$3,202,100

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index, 1982-1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2003-119, 2003-2 C.B. 1094, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is Avital Grunhaus of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, please contact Mrs. Grunhaus at (202) 622-3930 (not a toll-free call).

Section 7872.—Treatment of Loans With Below-Market Interest Rates

CPI adjustment for below-market loans for 2005. The amount that section 7872(g) of the Code permits a taxpayer to lend to a qualified continuing care facility without incurring imputed interest is published and adjusted for inflation for

years 1987-2005. Rev. Rul. 2003-118 supplemented and superseded.

Rev. Rul. 2004-108

This revenue ruling publishes the amount that § 7872(g) of the Internal Revenue Code permits a taxpayer to lend to a qualifying continuing care facility without incurring imputed interest. The amount is adjusted for inflation for the years after 1986.

Section 7872 generally treats loans bearing a below-market interest rate as if they bore interest at the market rate.

Section 7872(g)(1) provides that, in general, § 7872 does not apply for any calendar year to any below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract if the lender (or the lender's spouse) attains age 65 before the close of the year.

Section 7872(g)(2) provides that, in the case of loans made after October 11, 1985, and before 1987, § 7872(g)(1) applies only to the extent that the aggregate

outstanding amount of any loan to which § 7872(g) applies (determined without regard to § 7872(g)(2)), when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility to which § 7872(g)(1) applies, does not exceed \$90,000.

Section 7872(g)(5) provides that, for loans made during any calendar year after 1986 to which § 7872(g)(1) applies, the \$90,000 limit specified in § 7872(g)(2) is increased by an inflation adjustment. The inflation adjustment for any calendar year is the percentage (if any) by which the Consumer Price Index (CPI) for the preceding calendar year exceeds the CPI for calendar year 1985. Section 7872(g)(5) states that the CPI for any calendar year is the average of the CPI as of the close of the 12-month period ending on September 30 of that calendar year.

Table 1 sets forth the amount specified in § 7872(g)(2) of the Code. The amount is increased by the inflation adjustment for the years 1987-2005.

REV. RUL. 2004-108
TABLE 1
Limit under § 7872(g)(2)

<u>Year</u>	<u>Amount</u>
Before 1987	\$ 90,000
1987	\$ 92,200
1988	\$ 94,800
1989	\$ 98,800
1990	\$103,500
1991	\$108,600
1992	\$114,100
1993	\$117,500
1994	\$121,100
1995	\$124,300
1996	\$127,800
1997	\$131,300
1998	\$134,800
1999	\$137,000
2000	\$139,700
2001	\$144,100
2002	\$148,800
2003	\$151,000
2004	\$154,500
2005	\$158,100

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index 1982-1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2003-118, 2003-2 C.B. 1095, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is Avital Grunhaus of the Office of the Associate Chief Counsel (Financial Institutions

and Products). For further information regarding this revenue ruling, please contact Mrs. Grunhaus at (202) 622-3930 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rates Update

Notice 2004-77

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II), and the weighted average interest rate and permissible ranges of interest rates based on the 30-year Treasury securities rate.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004, provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 or 2005 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-18 I.R.B. 848, provides guidelines for determining the

corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices.

The composite corporate bond rate for October 2004 is 5.57 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in:		Corporate Bond Weighted Average	90% to 100% Permissible Range
Month	Year		
November	2004	6.17	5.56 to 6.17

30-YEAR TREASURY SECURITIES WEIGHTED AVERAGE INTEREST RATE

Section 417(e)(3)(A)(ii)(II) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)-1(d)(3) of the Income

Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

Section 404(a)(1) of the Code, as amended by the Pension Funding Equity Act of 2004, permits an employer to elect to disregard subclause (II) of § 412(b)(5)(B)(ii) to determine the max-

imum amount of the deduction allowed under § 404(a)(1).

The rate of interest on 30-year Treasury securities for October 2004 is 4.86 percent. Pursuant to Notice 2002-26, 2002-1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

The following 30-year Treasury rates were determined for the plan years beginning in the month shown below.

For Plan Years Beginning in:		30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
Month	Year			
November	2004	5.12	4.61 to 5.38	4.61 to 5.63

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For fur-

ther information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through

Friday. Mr. Stern may be reached at 1-202-283-9703. Mr. Montanaro may be reached at 1-202-283-9714. The telephone numbers in the preceding sentences are not toll-free.

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Distributions From a Pension Plan Under a Phased Retirement Program

REG-114726-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations under section 401(a) of the Internal Revenue Code. These proposed regulations provide rules permitting distributions to be made from a pension plan under a phased retirement program and set forth requirements for a *bona fide* phased retirement program. The proposed regulations will provide the public with guidance regarding distributions from qualified pension plans and will affect administrators of, and participants in, such plans.

DATES: Written or electronic comments and requests for a public hearing must be received by February 8, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-114726-04), 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-114726-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/reg or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-114726-04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations,

Cathy A. Vohs, 202-622-6090; concerning submissions and requests for a public hearing, contact Sonya Cruse, 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

As people are living longer, healthier lives, there is a greater risk that individuals may outlive their retirement savings. In addition, employers have expressed interest in encouraging older, more experienced workers to stay in the workforce. One approach that some employers have implemented is to offer employees the opportunity for "phased retirement."

While there is no single approach to phased retirement, these arrangements generally provide employees who are at or near eligibility for retirement with the opportunity for a reduced schedule or workload, thereby providing a smoother transition from full-time employment to retirement. These arrangements permit the employer to retain the services of an experienced employee and provide the employee with the opportunity to continue active employment at a level that also allows greater flexibility and time away from work.

During such a transition arrangement, employees may wish to supplement their part-time income with a portion of their retirement savings. However, phased retirement can also increase the risk of outliving retirement savings for employees who begin drawing upon their retirement savings before normal retirement age. Even though the annuity distribution options offered by defined benefit plans preclude outliving benefits, early distribution of a portion of the employee's benefit will reduce the benefits available after full retirement. On the other hand, phased retirement also can provide employees additional time to save for retirement because employees continue working while they are able to do so, and can accrue additional benefits and reduce or forgo early spending of their retirement savings.

In light of this background, Treasury and the IRS issued Notice 2002-43 in the Cumulative Bulletin (2002-2 C.B. 38 (July 8, 2002)), in which comments were requested regarding phased retirement. Notice 2002-43 specifically requested comments on a wide variety of issues, including the following:

- Under what circumstances, if any, would permitting distributions from a defined benefit plan before an employee attains normal retirement age be consistent with the requirement that a defined benefit plan be established and maintained primarily for purposes of providing benefits after retirement, such as the extent to which an employee has actually reduced his or her workload?
- If there are such circumstances, how should any early retirement subsidy be treated?

Comments Received

Sixteen written comments were formally submitted in response to Notice 2002-43. These comments are in addition to the substantial number of articles and other published materials addressing phased retirement.¹

While some of the comments expressed concerns over the potential for both dissipation of retirement funds and violation of age discrimination laws, commentators generally responded favorably to the proposal to provide guidance on facilitating phased retirement arrangements. These commentators noted that permitting pension distributions during phased retirement would be attractive to both employers and employees. Commentators also indicated that any guidance issued should provide that establishment of phased retirement arrangements be optional on the part of the employer and that participation in any such arrangement be voluntary on the part of the employee.

Most of the comments recommended that eligibility to participate in a phased

¹ See, for example, Pension & Welfare Benefits Administration, U.S. Department of Labor, "Report on Working Group on Phased Retirement to the Advisory Council on Employee Welfare & Pension Benefit Plans," 2000; Forman, Jonathan Barry, "How Federal Pension Laws Influence Individual Work and Retirement Decisions," 54 Tax Law. 143 (2000); Littler Mendelson, "Employers Consider 'Phased Retirement' to Retain Employees," Maryland Employment Law Letter, Vol 10, Issue 6 (April, 2000); Geisel, Jerry, "Rethinking Phased Retirement; IRS Call for Comment May Signal Pension Law Changes," Business Insurance (June 24, 2002); Flahaven, Brian, "Please Don't Go! Why Phased Retirement May Make Sense For Your Government," 18 Gov't Finance Review 24 (Oct. 1, 2002); NPR, Morning Edition, "Older Workers Turn to 'Phased' Retirement," (May 18, 2004) at www.npr.org/features/feature.php?wflid=1900465

retirement program be limited to employees who are eligible for immediately commencing retirement benefits under the plan (including those eligible for early retirement benefits). Other comments recommended that retirement benefits be permitted to start at a specific age or combination of age and service; however, they noted that current legislative constraints, notably the section 72(t) 10 percent additional income tax on early distributions, may limit the desirability of this option.

Some commentators advocated that any phased retirement arrangement should be cost neutral and not create additional funding obligations for employers. Others recommended that any early retirement subsidy available to an employee upon full retirement continue to be available if the employee participates in phased retirement. For example, one such commentator recommended not only that any early retirement subsidy be available upon phased retirement, but also that the subsidy so paid not be permitted to be applied to reduce the remainder of the benefit that is earned by the employee, particularly if the employee continues working past normal retirement age.

The comments were divided over what constituted phased retirement. Several recommended that phased retirement benefits be limited to cases in which there is a reduction in hours worked. Others recommended that a reduction in hours not be required and that a transition to a less stressful job also be considered phased retirement or that the full retirement benefit be payable after the attainment of a specified age or years of service without regard to any change in work.

The commentators who recommended that phased retirement benefits be limited to cases in which there is a reduction in hours worked generally recommended that the phased retirement benefits payable be proportionate to the reduction in work, based on a "dual status" approach. Under this dual status approach, an employee who reduces his or her work schedule to, for example, 80 percent of full-time would be considered to be 20 percent retired and thus entitled to 20 percent of his or her retirement benefit. The employee would continue to accrue additional benefits based on the actual hours he or she continues to work.

Several of the commentators discussed the implications of phased retirement benefits for purposes of the nondiscrimination rules of section 401(a)(4) and the anti-cutback rules of section 411(d)(6). Many of the comments said that phased retirement arrangements must be flexible and that it would be important for employers to be able to adopt a phased retirement arrangement on a temporary (even experimental) basis.

Many commentators expressed concern over the effect that a reduction in hours and the corresponding reduction in compensation would have on the final average pay of an individual for purposes of the benefit calculation when the employee fully retires. These comments generally requested guidance on this issue, including clarification as to whether an employee's final average pay is permitted to decline as a result of the employee's reduction in hours pursuant to participation in a phased retirement arrangement.

Explanation of Provisions

Overview

The proposed regulations would amend §1.401(a)-1(b) and add §1.401(a)-3 in order to permit a *pro rata* share of an employee's accrued benefit to be paid under a *bona fide* phased retirement program. The *pro rata* share is based on the extent to which the employee has reduced hours under the program. Under this *pro rata* approach, an employee maintains a dual status (*i.e.*, partially retired and partially in service) during the phased retirement period. This *pro rata* or dual status approach to phased retirement was one of the approaches recommended by commentators.

While all approaches suggested by commentators were considered, the *pro rata* approach is the most consistent with the requirement that benefits be maintained primarily for retirement. Other approaches, such as permitting benefits to be fully available if an employee works reduced hours as part of phased retirement or permitting distributions of the entire accrued benefit to be paid as of a specified age prior to normal retirement age, are fundamentally inconsistent with the §1.401(a)-1(b) principle that benefits be paid only after retirement. In addition, although a number of commentators

suggested that guidance address the practice of terminating an employee with a prearranged rehiring of the employee (or similar sham transactions), the proposed regulations do not address this topic because it involves additional issues outside the scope of this project.

Rules Relating to Phased Retirement

Under the proposed regulations, a plan would be permitted to pay a *pro rata* portion of the employee's benefits under a *bona fide* phased retirement program before attainment of normal retirement age. The proposed regulations define a *bona fide* phased retirement program as a written, employer-adopted program pursuant to which employees may reduce the number of hours they customarily work beginning on or after a retirement date specified under the program and receive phased retirement benefits. Payment of phased retirement benefits is permitted only if the program meets certain conditions, including that employee participation is voluntary and the employee and employer expect the employee to reduce, by 20 percent or more, the number of hours the employee works during the phased retirement period.

Consistent with the *pro rata* approach discussed above, the maximum amount that is permitted to be paid is limited to the portion of the employee's accrued benefit equal to the product of the employee's total accrued benefit on the date the employee commences phased retirement (or any earlier date selected by the plan for administrative ease) and the employee's reduction in work. The reduction in work is based on the employee's work schedule fraction, which is the ratio of the hours that the employee is reasonably expected to work during the phased retirement period to the hours that would be worked if the employee were full-time. Based in part on commentators' concerns regarding early retirement subsidies, the proposed regulations generally require that all early retirement benefits, retirement-type subsidies, and optional forms of benefit that would be available upon full retirement be available with respect to the phased retirement accrued benefit. However, the proposed regulations would not permit payment to be made in the form of a single-sum distribution (or other eligible rollover distribution) in order to prevent

the premature distribution of retirement benefits. The phased retirement benefit is an optional form of benefit protected by section 411(d)(6) and the election of a phased retirement benefit is subject to the provisions of section 417, including the required explanation of the qualified joint and survivor annuity.

Some comments suggested that phased retirement be limited to employees who have attained an age or service (or combination thereof) that is customary for retirement, *e.g.*, where the employer has reasonably determined in good faith that participants who cease employment with the employer after that age or service combination are typically not expected to continue to perform further services of a generally comparable nature elsewhere in the workforce. Such a retirement age might be considerably lower than age 65 in certain occupations (such as police or firefighters). As discussed further below (under the heading *Application to Plans Other Than Qualified Pension Plans*), the Treasury and IRS have concluded that they do not have the authority to permit payments to begin from a section 401(k) plan under a *bona fide* phased retirement program before the employee attains age 59½ or has a severance from employment.² Further, section 72(t)(3)(B) provides an additional income tax on early distributions if annuity distributions are made before the earlier of age 59½ or separation from service. Accordingly, in lieu of a customary retirement age, the proposed regulations adopt a rule that is consistent with section 401(k) and section 72(t)(3)(B), under which phased retirement benefits may not be paid before an employee attains age 59½.

Additional Accruals During Phased Retirement

The regulations provide that, during the phased retirement period, in addition to being entitled to the phased retirement benefit, the employee must be entitled to participate in the plan in the same manner as if the employee were still maintaining a full-time work schedule (including calculation of average earnings) and must be entitled to the same benefits (including early retirement benefits, retirement-type subsidies, and optional forms of benefits) upon

full retirement as a similarly situated employee who has not elected phased retirement, except that the years of service credited under the plan for any plan year during the phased retirement period is multiplied by the ratio of the employee's actual hours of service during the year to the employee's full-time work schedule, or by the ratio of the employee's compensation to the compensation that would be paid for full-time work. Thus, for example, under a plan with a 1,000 hours of service requirement to accrue a benefit, an employee participating in a phased retirement program will accrue proportionate additional benefits, even if the employee works fewer than 1,000 hours of service.

The requirement that full-time compensation be imputed, with a proportionate reduction based on an employee's actual service, is intended to ensure that a participant is not disadvantaged by reason of choosing phased retirement. This rule precludes the need for extensive disclosure requirements, *e.g.*, disclosure to alert participants to rights that may be lost as a result of participating in a phased retirement program. To be consistent with the requirement to use full-time compensation, the proposed regulations require an employee who was a highly compensated employee before commencing phased retirement to be treated as a highly compensated employee during phased retirement. See also §1.414(q)-1T, A-4 & A-5.

Under the proposed regulations, the employee's final retirement benefit is comprised of the phased retirement benefit and the balance of the employee's accrued benefit under the plan (*i.e.*, the excess of the total plan formula benefit over the portion of the accrued benefit paid as a phased retirement benefit). Upon full retirement, the phased retirement benefit can continue unchanged or the plan is permitted to offer a new election with respect to that benefit.

This bifurcation is consistent with commentators' recommendation that an employee who is in a phased retirement program has a dual status, under which the employee is treated as retired to the extent of the reduction in hours and is treated as working to the extent of the employee's continued work with the employer. This approach also ensures that a phased retire-

ment program offers an early retirement subsidy to the extent the employee has reduced his or her hours, and that the remainder of the employee's benefit rights is not adversely affected by participation in the phased retirement program.

Testing and Adjustment of Payments

Subject to certain exceptions, the proposed regulations require periodic testing to ensure that employees in phased retirement are in fact working at the reduced schedule, as expected. Thus, unless an exception applies, a plan must provide for an annual comparison between the number of hours actually worked by an employee during a testing period and the number of hours the employee was reasonably expected to work. If the actual hours worked during the testing period are materially greater than the expected number of hours, then the employee's phased retirement benefit must be reduced prospectively. For this purpose, the employee's hours worked are materially greater than the employee's work schedule if they exceed either 133⅓ percent of the work schedule or 90 percent of the hours that the employee would work under a full-time schedule.

This annual comparison is not required after the employee is within 3 months of attaining normal retirement age or if the amount of compensation paid to the employee by the employer during the phased retirement testing period does not exceed the compensation that would be paid to the employee if he or she had worked full time multiplied by the employee's work schedule fraction. Further, no comparison is required during the first year of an employee's phased retirement or if the employee has entered into an agreement with the employer that the employee will retire within 2 years.

In the event that the employer and employee agree to increase prospectively the hours that the employee will work, then the employee's phased retirement benefit must be adjusted based on a new work schedule. The date of the agreement to increase the employee's hours is treated as a comparison date for testing purposes.

In calculating the employee's benefit at full retirement, if an employee's phased re-

² Cf., *Edwards v. Commissioner*, T.C. Memo. 1989-409, *aff'd*, 906 F.2d 114 (4th Cir. 1990).

tirement benefits have been reduced during phased retirement, the employee's accrued benefit under the plan is offset by an amount that is actuarially equivalent to the additional payments made before the reduction. The potential for this offset, like other material features of the phased retirement optional form of benefit, must be disclosed as part of the QJSA explanation as required under §1.401(a)-20, Q&A-36, and §1.417(a)(3)-1(c)(1)(v) and (d)(1).

If the employee's phased retirement benefit is less than the maximum amount permitted or the employee's work schedule is further reduced at a later date, the proposed regulations allow a plan to provide one or more additional phased retirement benefits to the employee. The additional phased retirement benefit, commencing a later annuity starting date, provides flexibility to reflect future reductions in the employee's work hours.

Provisions Relating to Payment After Normal Retirement Age

The proposed regulations clarify that a pension plan (*i.e.*, a defined benefit plan or money purchase pension plan) is permitted to pay benefits upon an employee's attainment of normal retirement age. However, normal retirement age cannot be set so low as to be a subterfuge to avoid the requirements of section 401(a), and, accordingly, normal retirement age cannot be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce.³

Application to Plans Other Than Qualified Pension Plans

The regulations that limit distributions that are modified by these proposed regulations only apply to pension plans (*i.e.*, defined benefit or money purchase pension plans). Other types of plans may be subject to less restrictive rules regarding in-service distributions, including amounts held in or attributable to: (1) qualified profit sharing and stock bonus plans to the extent not attributable to elective deferrals under section 401(k); (2) insurance annuities under section 403(b)(1), and retirement income accounts under section 403(b)(9), to the extent not attributable to

elective deferrals; (3) custodial accounts under section 403(b)(7) to the extent not attributable to elective deferrals; and (4) elective deferrals under section 401(k) or 403(b). In general, these types of plans are permitted to provide for distributions after attainment of age 59½, without regard to whether the employee has retired or had a severance from employment. Accordingly, they may either provide for the same phased retirement rules that are proposed in these regulations or may provide for other partial or full in-service distributions to be available after attainment of age 59½. However, eligible governmental plans under section 457(b) are not generally permitted to provide for payments to be made before the earlier of severance from employment or attainment of age 70½. See generally §1.457-6.

Other Issues

The proposed regulations also authorize the Commissioner to issue additional rules in guidance of general applicability regarding the coordination of partial retirement under a phased retirement program and the plan qualification rules under section 401(a).

These proposed regulations do not address all of the issues that commentators raised in response to Notice 2002-43. Thus, as noted above, the proposed regulations do not address when a full retirement occurs and specifically do not endorse a prearranged termination and rehire as constituting a full retirement. Further, the proposed regulations only address certain tax issues. For example, although commentators pointed out that the continued availability of health coverage would be an important feature for employees in deciding whether to participate in phased retirement, the proposed regulations do not include any rules relating to health coverage. Similarly, the proposed regulations do not address any potential age discrimination issues, other than through the requirement that participation in a *bona fide* phased retirement program be voluntary.

Proposed Effective Date

The rules in these regulations are proposed to apply to plan years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. These proposed regulations cannot be relied on before they are adopted as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is 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 proposed regulations, and, 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 Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a 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. All comments will be available for public inspection and copying.

Comments are specifically requested on the following issues:

- Should eligibility to participate in a phased retirement program be extended to employees that reduce their workload using a standard, other than counting hours, to identify the reduction, and, if so, are there administrable methods for measuring the reduction?
- The proposed regulations require periodic testing of the hours an employee

³ While a low normal retirement age may have a significant cost effect on a traditional defined benefit plan, this effect is not as significant for defined contribution plans or for hybrid defined benefit plans.

actually works during phased retirement, and if the hours are materially greater than the employee's phased retirement work schedule, the phased retirement benefit must be adjusted. As discussed above (under the heading *Testing*), there are a number of exceptions to this requirement. Are there other, less complex alternatives that also would ensure that phased retirement benefits correspond to the employee's reduction in hours?

- The proposed regulations require an offset for the actuarial value of additional payments made before a reduction in phased retirement benefits. Should the regulations permit this offset to be calculated without regard to any early retirement subsidy and, if so, how should a subsidy be quantified?
- The proposed regulations clarify that the right to receive a phased retirement benefit as a partial payment is a separate optional form of benefit for purposes of section 411(d)(6) and, thus, is a benefit, right, or feature for purposes of the special nondiscrimination rules at §1.401(a)(4)-4. Comments are requested on whether there are facts and circumstances under which the age and service conditions for a particular employer's phased retirement program should be disregarded in applying §1.401(a)(4)-4 (even if the program may only be in place for a temporary period), or under which the rules at §1.401(a)(4)-4 should otherwise be modified with respect to phased retirement.
- Should any special rules be adopted to coordinate the rules regarding distributions and continued accruals during phased retirement with a plan's provisions regarding employment after normal retirement age, such as suspension of benefits?

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

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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 entries in numerical order to read in part as follows:

- Authority: 26 U.S.C. 7805 * * *
- Section 1.401(a)-1 also issued under 26 U.S.C. 401.
- Section 1.401(a)-3 also issued under 26 U.S.C. 401.

Par. 2. In §1.401(a)-1, paragraph (b)(1)(i) is amended by adding text before the period at the end of the current sentence and a new second sentence, and paragraph (b)(1)(iv) to read as follows:

§1.401(a)-1 Post-ERISA qualified plans and qualified trusts; in general.

- * * * * *
- (b) * * *
- (1) * * *
- (i) * * * or attainment of normal retirement age. However, normal retirement age cannot be set so low as to be a subterfuge to avoid the requirements of section 401(a), and, accordingly, normal retirement age cannot be earlier than the earliest age that is reasonably representative of a typical retirement age for the covered workforce.

* * * * *

(iv) Benefits may not be distributed prior to normal retirement age solely due to a reduction in hours. However, notwithstanding anything provided elsewhere in paragraph (b) of this section (including the pre-ERISA rules under §1.401-1), an employee may be treated as partially retired for purposes of paragraph (b)(1)(i) of this section to the extent provided under

§1.401(a)-3 relating to a *bona fide* phased retirement program.

* * * * *

Par. 3. Section 1.401(a)-3 is added to read as follows:

§1.401(a)-3 Benefits during phased retirement.

(a) *Introduction—(1) General rule.* Under section 401(a), a qualified pension plan may provide for the distribution of phased retirement benefits in accordance with the limitations of this paragraph (a) to the extent that an employee is partially retired under a *bona fide* phased retirement program, as defined in paragraph (c) of this section, provided the requirements set forth in paragraphs (d) and (e) of this section are satisfied.

(2) *Limitation on benefits paid during phased retirement period—(i) Benefits limited to pro rata retirement benefit.* The phased retirement benefits paid during the phased retirement period cannot exceed the phased retirement accrued benefit payable in the optional form of benefit applicable at the annuity starting date for the employee's phased retirement benefit.

(ii) *Availability of early retirement subsidies, etc.* Except as provided in paragraph (a)(2)(iii) of this section, all early retirement benefits, retirement-type subsidies, and optional forms of benefit available upon full retirement must be available with respect to the portion of an employee's phased retirement accrued benefit that is payable as a phased retirement benefit.

(iii) *Limitation on optional forms of payment.* Phased retirement benefits may not be paid in the form of a single sum or other form that constitutes an eligible rollover distribution under section 402(c)(4).

(3) *Limited to full-time employees who are otherwise eligible to commence benefits.* Phased retirement benefits are only permitted to be made available to an employee who, prior to the phased retirement period, normally maintains a full-time work schedule and who would otherwise be eligible to commence retirement benefits immediately if he or she were to fully retire.

(4) *Authority of Commissioner to adopt other rules.* The Commissioner, in revenue rulings, notices, or other guidance

published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter), may adopt additional rules regarding the coordination of partial retirement under a phased retirement program and the qualification rules of section 401(a).

(b) *Definitions*—(1) *In general*. The definitions set forth in this paragraph (b) apply for purposes of this section.

(2) *Phased retirement program*. The term *phased retirement program* means a written, employer-adopted program pursuant to which employees may reduce the number of hours they customarily work beginning on or after a date specified under the program and commence phased retirement benefits during the phased retirement period, as provided under the plan.

(3) *Phased retirement period*. The term *phased retirement period* means the period of time that the employee and employer reasonably expect the employee to work reduced hours under the phased retirement program.

(4) *Phased retirement accrued benefit*. The term *phased retirement accrued benefit* means the portion of the employee's accrued benefit equal to the product of the employee's total accrued benefit on the annuity starting date for the employee's phased retirement benefit, and one minus the employee's work schedule fraction.

(5) *Phased retirement benefit*. The term *phased retirement benefit* means the benefit paid to an employee upon the employee's partial retirement under a phased retirement program, based on some or all of the employee's phased retirement accrued benefit, and payable in the optional form of benefit applicable at the annuity starting date.

(6) *Work schedule*. With respect to an employee, the term *work schedule* means the number of hours the employee is reasonably expected to work annually during the phased retirement period (determined in accordance with paragraph (c)(4) of this section).

(7) *Full-time work schedule*. With respect to an employee, the term *full-time work schedule* means the number of hours the employee would normally work during a year if the employee were to work on a full-time basis, determined in a reasonable and consistent manner.

(8) *Work schedule fraction*. With respect to an employee, the term *work schedule fraction* means a fraction, the numer-

ator of which is the employee's work schedule and the denominator of which is the employee's full-time work schedule.

(c) *Bona fide phased retirement program*—(1) *Definition generally*. The term *bona fide phased retirement program* means a phased retirement program that satisfies paragraphs (c)(2) through (5) of this section.

(2) *Limitation to individuals who have attained age 59½*. A *bona fide* phased retirement program must be limited to employees who have attained age 59½. A plan is permitted to impose additional requirements for eligibility to participate in a *bona fide* phased retirement program, such as limiting eligibility to either employees who have satisfied additional age or service conditions (or combination thereof) specified in the program or employees whose benefit may not be distributed without consent under section 411(a)(11).

(3) *Participation must be voluntary*. An employee's participation in a *bona fide* phased retirement program must be voluntary.

(4) *Reduction in hours requirement*. An employee who participates in a *bona fide* phased retirement program must reasonably be expected (by both the employer and employee) to reduce, by 20 percent or more, the number of hours the employee customarily works. This requirement is satisfied if the employer and employee enter into an agreement, in good faith, under which they agree that the employee will reduce, by 20 percent or more, the number of hours the employee works during the phased retirement period.

(5) *Limited to employees who are not key-employee owners*. Phased retirement benefits are not permitted to be made available to a key employee who is described in section 416(i)(1)(A)(ii) or (iii).

(d) *Conditions for commencement of phased retirement benefit*—(1) *Imputed accruals based on full-time schedule*—(i) *General rule*. During the phased retirement period, in addition to being entitled to payment of the phased retirement benefit, the employee must be entitled to participate in the plan in the same manner as if the employee still maintained a full-time work schedule (including calculation of average earnings, imputation of compensation in accordance with §1.414(s)–1(f), and imputation of service in accordance with the service-crediting rules under

§1.401(a)(4)–11(d)), and must be entitled to the same benefits (including early retirement benefits, retirement-type subsidies, and optional forms of benefits) upon full retirement as a similarly situated employee who has not elected phased retirement, except that the years of service credited under the plan for any plan year during the phased retirement period is determined under paragraph (d)(1)(ii) or (iii) of this section, whichever is applicable.

(ii) *Method for crediting years of service for full plan years*. The years of service credited under the plan for any full plan year during the phased retirement period is multiplied by an adjustment ratio that is equal to the ratio of the employee's actual hours worked during that year to the number of hours that would be worked by the employee during that year under a full-time work schedule. Alternatively, on a reasonable and consistent basis, the adjustment ratio may be based on the ratio of an employee's actual compensation during the year to the compensation that would be paid to the employee during the year if he or she had maintained a full-time work schedule.

(iii) *Method for crediting years of service for partial plan years*. In the case of a plan year only a portion of which is during a phased retirement period for an employee, the method described in paragraphs (d)(1)(i) and (ii) of this section is applied with respect to that portion of the plan year. Thus, for example, if an employee works full time until October 1 of a calendar plan year and works one-third time from October 1 through December 31 of the year, then the employee is credited with 10 months for that year (9 months plus $\frac{1}{3}$ of 3 months).

(2) *Ancillary benefits during phased retirement period*—(i) *Death benefits*. If an employee dies while receiving phased retirement benefits, death benefits are allocated between the phased retirement benefit and the benefit that would be payable upon subsequent full retirement. See also §1.401(a)–20, A–9. Thus, if an employee dies after the annuity starting date for the phased retirement benefit, death benefits are paid with respect to the phased retirement benefit in accordance with the optional form elected for that benefit, and death benefits are paid with respect to the remainder of the employee's benefit in ac-

cordance with the plan's provisions regarding death during employment.

(ii) *Other ancillary benefits.* To the extent provided under the terms of the plan, ancillary benefits, other than death benefits described in paragraph (d)(2)(i) of this section, are permitted to be provided during the phased retirement period.

(3) *Calculation of benefit at full retirement—(i) In general.* Upon full retirement following partial retirement under a phased retirement program, the employee's total accrued benefit under the plan (including the employee's accruals during the phased retirement period, determined in accordance with paragraph (d)(1) of this section) is offset by the portion of the employee's phased retirement accrued benefit that is being distributed as a phased retirement benefit at the time of full retirement.

(ii) *Adjustment for prior payments.* If, before full retirement, the employee's phased retirement benefit has been reduced under paragraph (d)(4) of this section, then the employee's accrued benefit under the plan is also offset upon full retirement by an amount that is actuarially equivalent to the phased retirement benefit payments that have been made during the phased retirement period that were not made with respect to the portion of the phased retirement accrued benefit that is applied as an offset under paragraph (d)(3)(i) of this section at the time of full retirement.

(iii) *Election of optional form with respect to net benefit.* Upon full retirement, an employee is entitled to elect, in accordance with section 417, an optional form of benefit with respect to the net accrued benefit determined under paragraph (d)(3)(i) and (ii) of this section.

(iv) *New election permitted for phased retirement benefit.* A plan is permitted to provide that, upon full retirement, an employee may elect, in accordance with section 417 and without regard to paragraph (a)(2)(iii) of this section, a new optional form of benefit with respect to the portion of the phased retirement accrued benefit that is being distributed as a phased retirement benefit. Any such new optional form of benefit is calculated at the time of full retirement as the actuarial equivalent of the future phased retirement benefits (without offset for the phased retirement benefits previously paid).

(4) Prospective reduction in phased retirement benefit if hours are materially greater than expected—(i) *General rule.* Except as otherwise provided in this paragraph (d)(4), a plan must compare annually the number of hours actually worked by an employee during the phased retirement testing period and the number of hours the employee was reasonably expected to work during the testing period for purposes of calculating the work schedule fraction. For this purpose, the phased retirement testing period is the 12 months preceding the comparison date (or such longer period permitted under paragraph (d)(4)(iv) of this section, or any shorter period that applies if there is a comparison date as a result of an agreed increase under paragraph (d)(4)(vi) of this section). In the event that the actual hours worked (determined on an annual basis) during the phased retirement testing period exceeds the work schedule, then, except as provided in paragraph (d)(4)(ii) or (v) of this section, the employee's phased retirement benefit must be reduced in accordance with the method provided in paragraph (d)(4)(iii) of this section, effective as of an adjustment date specified in the plan that is not more than 3 months later than the comparison date.

(ii) *Permitted variance in hours.* A plan is not required to reduce the phased retirement benefit unless the hours worked during the phased retirement testing period are materially greater than the hours that would be expected to be worked under the work schedule. For this purpose, the employee's hours worked (determined on an annual basis) are materially greater than the employee's work schedule if either—

(A) The employee's hours worked (determined on an annual basis) are more than $133\frac{1}{3}$ percent of the employee's work schedule; or

(B) The employee's hours worked (determined on an annual basis) exceed 90 percent of the full-time work schedule.

(iii) *Adjustment method.* If a phased retirement benefit must be reduced under paragraph (d)(4) of this section, a new (*i.e.*, reduced) phased retirement benefit must be calculated as provided in this paragraph (d)(4)(iii). First, an adjusted work schedule is determined. The adjusted work schedule is an annual schedule based on the number of hours the employee actually worked during the phased retirement

testing period. The adjusted work schedule is applied to the employee's accrued benefit that was used to calculate the prior phased retirement benefit. This results in a new phased retirement accrued benefit for purposes of paragraph (b)(4) of this section. Second, a new phased retirement benefit is determined, based on the new phased retirement accrued benefit and payable in the same optional form of benefit (*i.e.*, using the same annuity starting date and the same early retirement factor and other actuarial adjustments) as the prior phased retirement benefit. If an employee is receiving more than one phased retirement benefit (as permitted under paragraph (e)(2) of this section) and a reduction is required under paragraph (d)(4) of this section, then the reduction is applied first to the most recently commencing phased retirement benefit (and then, if necessary, to the next most recent phased retirement benefit, etc.).

(iv) *Comparison date for phased retirement testing period.* The comparison date is any date chosen by the employer on a reasonable and consistent basis and specified in the plan, such as the last day of the plan year, December 31, or the anniversary of the annuity starting date for the employee's phased retirement benefit. As an alternative to testing the hours worked during the 12 months preceding the comparison date, the plan may, on a reasonable and consistent basis, provide that the comparison of actual hours worked to the work schedule be based on a cumulative period that exceeds 12 months beginning with either the annuity starting date for the employee's phased retirement benefit or any later date specified in the plan.

(v) *Exceptions to comparison requirement—(A) In general.* The comparison of hours described in paragraph (d)(4) of this section is not required in the situations set forth in this paragraph (d)(4)(v).

(B) *Employees recently commencing phased retirement.* No comparison is required for an employee who commenced phased retirement benefits within the 12-month period preceding the comparison date.

(C) *Employees with short phased retirement periods.* No comparison is required during the first 2 years of an employee's phased retirement period if—

(1) The employee has entered into an agreement with the employer under which

the employee's phased retirement period will not exceed 2 years and the employee will fully retire at the end of such period; and

(2) The employee fully retires after a phased retirement period not in excess of 2 years.

(D) *Employees with proportional pay reduction.* No comparison is required for any phased retirement testing period if the amount of compensation paid to the employee during that period does not exceed the compensation that would be paid to the employee if he or she had maintained a full-time work schedule multiplied by the work schedule fraction.

(E) *Employees at or after normal retirement age.* No comparison is required for any phased retirement testing period ending within 3 months before the employee's normal retirement age or any time thereafter.

(vi) *Agreement to increase hours—(A) General rule.* In the event that the employer and the employee agree to increase prospectively the hours under the employee's work schedule prior to normal retirement age, then, notwithstanding the exceptions provided in paragraphs (d)(4)(v)(B) through (D) of this section, the plan must treat the effective date of the agreement to increase the employee's hours as a comparison date for purposes of paragraph (d)(4)(iv) of this section. For purposes of this paragraph (d)(4)(vi), with respect to an employee, the term *new work schedule* means the greater of the actual number of hours the employee worked (determined on an annual basis) during the prior phased retirement testing period or the annual number of hours the employee reasonably expects to work under the new agreement.

(B) *Required adjustments.* If the employee's hours under the new work schedule are materially greater (within the meaning of paragraph (d)(4)(ii) of this section) than the hours the employee would be expected to work (based on the employee's prior work schedule), the employer is required to reduce the employee's phased retirement benefit, effective as of the date of the increase, based on the new work schedule. In this case, the employee's new work schedule is used for future comparisons under paragraph (d)(4) of this section.

(C) *Permitted adjustments.* If the employee's hours under the new work schedule are not materially greater (within the meaning of paragraph (d)(4)(ii) of this section) than the hours the employee would be expected to work (based on the employee's prior work schedule), the employer is permitted, but not required, to reduce the employee's phased retirement benefit, effective as of the date of the increase, based on the new work schedule. If the benefit is so reduced, the employee's new work schedule is used for future comparisons under paragraph (d)(4) of this section. If the employee's phased retirement benefit is not so reduced, future comparisons are determined using the employee's prior work schedule.

(e) *Other rules—(1) Highly compensated employees.* An employee who partially retires under a phased retirement program and who was a highly compensated employee, as defined in section 414(q), immediately before the partial retirement is considered to be a highly compensated employee during the phased retirement period, without regard to the compensation actually paid to the employee during the phased retirement period.

(2) *Multiple phased retirement benefits permitted—(i) In general.* A plan is permitted to provide one or more additional phased retirement benefits prospectively to an employee who is receiving a phased retirement benefit if the conditions set forth in paragraph (e)(2)(ii) of this section are satisfied. At the later annuity starting date for the additional phased retirement benefit, the additional phased retirement benefits may not exceed the amount permitted to be paid based on the excess of—

(A) The employee's phased retirement accrued benefit at the later annuity starting date, over

(B) The portion of the employee's phased retirement accrued benefit at the earlier annuity starting date that is being distributed as a phased retirement benefit.

(ii) *Conditions.* The additional phased retirement benefit described in paragraph (e)(2)(i) of this section may be provided only if—

(A) The prior phased retirement benefit was not based on the employee's entire phased retirement accrued benefit at the annuity starting date for the prior phased retirement benefit, or

(B) The employee's work schedule at the later annuity starting date is less than the employee's work schedule that was used to calculate the prior phased retirement benefit.

(3) *Application of section 411(d)(6).* In accordance with §1.411(d)-4, A-1(b)(1), the right to receive a partial distribution of an employee's accrued benefit as a phased retirement benefit is treated as an optional form of payment that is separate from the right to receive a full distribution of the accrued benefit upon full retirement.

(4) *Application of nondiscrimination rules.* The right to receive a phased retirement benefit is a benefit, right, or feature that is subject to §1.401(a)(4)-4.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) Employer's Plans. Plan X (as in effect prior to amendment to reflect the phased retirement program described below) is a defined benefit plan maintained by Employer M. Plan X provides an accrued benefit of 1.5% of the average of an employee's highest three years of pay (based on the highest 36 consecutive months of pay), times years of service (with 1,000 hours of service required for a year of service), payable as a life annuity beginning at age 65. Plan X permits employees to elect to commence actuarially reduced distributions at any time after the later of termination of employment or attainment of age 50, except that if an employee retires after age 55 and completion of 20 years of service, the applicable reduction is only 3% per year for the years between ages 65 and 62 and 6% per year for the years between ages 62 to 55. Plan X permits employees to select, with spousal consent, a single life annuity, a joint and contingent annuity with the employee having the right to select any beneficiary and a continuation percentage of 50%, 75%, or 100%, or a 10-year certain and life annuity.

(ii) *Phased Retirement Program.* Employer M adopts a voluntary phased retirement program that will only be available for employees who retire during the two-year period from February 1, 2006, to January 31, 2008. The program will not be available to employees who are not entitled to an immediate pension or who are 1 percent owners. Employer M has determined that employees typically begin to retire after attainment of age 55 with at least 15 years of service. Accordingly, to increase retention of certain employees, the program will provide that employees in certain specified work positions who have reached age 59½ and completed 15 years of service may elect phased retirement. The program permits phased retirement to be implemented through a reduction of 25%, 50%, or 75% in the number of hours expected to be worked for up to 5 years following phased retirement (other reduced schedules may be elected with the approval of M), with the employee's compensation during the phased retirement period to be based on what a similar full-time employee would be paid, reduced by the applicable percentage reduction in hours expected to be worked. In order to participate in the program, the employee and the employer must enter into an agreement under

which the employee will reduce his or her hours accordingly. The agreement also provides that the employee's compensation during phased retirement will be reduced by that same percentage. The program is announced to employees in the fall of 2005.

(iii) *Plan Provisions Regarding Phased Retirement Benefit.* (A) Plan X is amended, prior to February 1, 2006, to provide that an employee who elects phased retirement under M's phased retirement program is permitted to commence benefits with respect to a portion of his or her accrued retirement benefit (the employee's phased retirement accrued benefit), based on the applicable percentage reduction in hours expected to be worked. For example, for a 25% reduction in hours, the employee is entitled to commence benefits with respect to 25% of his or her accrued benefit. Plan X permits an employee who commences phased retirement to elect, with spousal consent, from any of the optional forms provided under the plan.

(B) During the phased retirement period, the employee will continue to accrue benefits (without regard to the plan's 1,000 hour requirement), with his or her pay for purposes of calculating benefits under Plan X increased by the ratio of 100 percent to the percentage of full-time pay that will be paid during phased retirement and with the employee's service credit to be equal to the product of the same percentage times the service credit that would apply if the employee were working full time. Upon the employee's subsequent full retirement, his or her total accrued benefit will be based on the resulting highest three years of pay and total years of service, offset by the phased retirement accrued benefit. The retirement benefit payable upon subsequent full retirement is in addition to the phased retirement benefit. Plan X does not provide for a new election with respect to the phased retirement benefit.

(C) In the case of death during the phased retirement period, the employee will be treated as a former employee to the extent of his or her phased retirement benefit and as an active employee to the extent of the retirement benefit that would be due upon full retirement.

(D) Because the terms of the phased retirement program provide that the employee's compensation during phased retirement will be reduced by that same percentage as applies to calculate phased retirement benefits, Plan X does not have provisions requiring annual testing of hours actually worked.

(iv) *Application to a Specific Employee—(A) Phased retirement benefit.* Employee E is age 59½ with 20 years of credited service. Employee E's compensation is \$90,000, and E's highest three years of pay is \$85,000. Employee E elects phased retirement on April 1, 2006, and elects to reduce hours by 50% beginning on July 1, 2006. Thus, E's annuity starting date for the phased retirement benefit is July 1, 2006. Employee E's total accrued benefit as of July 1, 2006, as a single life annuity payable at normal retirement age is equal to \$25,500 per year (1.5% times \$85,000 times 20 years of service). Thus, Employee E's phased retirement accrued benefit as of July 1, 2006, as a single life annuity payable at normal retirement age is equal to \$12,750 per year (\$25,500 times 1 minus E's work schedule fraction of 50%). Accordingly, Employee E's phased retirement benefit payable as a straight life annuity commencing on July 1, 2006, is equal to

\$9,690 per year (\$12,750 per year times 76% (100% minus the applicable reduction for early retirement equal to 3% for 3 years and 6% for an additional 2½ years)). Employee E elects a joint and 50% survivor annuity, with E's spouse as the contingent annuitant. Under Plan X, the actuarial factor for this form of benefit is 90%, so E's benefit is \$8,721 per year.

(B) *Death during phased retirement.* If Employee E were to die on or after July 1, 2006, and before subsequent full retirement, E's spouse would be entitled to a 50% survivor annuity based on the joint and 50% survivor annuity being paid to E, plus a qualified pre-retirement survivor annuity that complies with section 417 with respect to the additional amount that would be paid to E if he or she had fully retired on the date of E's death.

(C) *Subsequent full retirement benefit.* Three years later, Employee E fully retires from Employer M. Throughout this period, E's compensation has been 50% of the compensation that would have been paid to E if he or she were working full time. Consequently, no adjustment in E's phased retirement benefit is required. E's highest consecutive 36 months of compensation would be \$95,000 if E had not elected phased retirement and E has been credited with 1½ years of service credit for the 3 years of phased retirement (.50 times 3 years). Accordingly, prior to offset for E's phased retirement accrued benefit, E's total accrued benefit as of July 1, 2009, as a single life annuity commencing at normal retirement age is equal to \$30,637.50 per year (\$95,000 times 1.5% times 21.5 years of service) and, after the offset for E's phased retirement accrued benefit, E's retirement benefit as a single life annuity commencing at normal retirement age is equal to \$17,887.50 (\$30,637.50 minus \$12,750). Thus, the amount of E's additional early retirement benefit payable as a straight life annuity at age 62½ is equal to \$16,545.94 per year (\$17,887.50 per year times 92.5% (100% minus 3% for 2½ years)). Employee E elects, with spousal consent, a 10-year certain and life annuity that applies to the remainder of E's accrued benefit. This annuity is in addition to the previously elected joint and 50% survivor annuity payable as E's phased retirement benefit.

Example 2. (i) Same Plan and Phased Retirement Program, Except Annual Testing Required. The facts with respect to the Plan X and M's phased retirement program are the same as in *Example 1*, except that the program does not provide that the employee's compensation during phased retirement will be reduced by that same percentage as is applied to calculate phased retirement benefits, but instead the compensation depends on the number of hours worked by the employee. Plan X provides for annual testing on a calendar year basis and for an employee's phased retirement benefit to be reduced proportionately if the hours worked exceed a threshold, under provisions which reflect the variance permitted paragraph (d)(4)(ii) of this section.

(ii) *Employee Has Small Increase in Hours.* The facts with respect to Employee E are the same as in *Example 1*, except that E's full time work schedule would result in 2,000 hours worked annually, E's work schedule fraction is 50%, and E works 500 hours from July 1, 2006, through December 31, 2006, 1,000 hours in 2007, 1,200 hours in 2008, and 600 hours from January 1, 2009, through E's full retirement on June 30, 2009.

(iii) *Application of Testing Rules.* No comparison of hours is required for the partial testing period that occurs in 2006. For 2007, no reduction is required in E's phased retirement benefit as a result of the hours worked by E during 2007 because the hours did not exceed E's work schedule (50% of 2,000). For 2008, although the hours worked by E exceeded E's work schedule, no reduction is required because the hours worked in 2008 were not materially greater than E's work schedule (1,200 is not more than the variance permitted under paragraph (d)(4)(ii) of this section, which is 133⅓% of 1,000). E's total accrued benefit upon E's retirement on July 1, 2009, would be based on 21.65 years of service to reflect the actual hours worked from July 1, 2006, through June 30, 2009.

Example 3. (i) Same Plan and Phased Retirement Program, Except Material Increase in Hours. The facts with respect to the Plan X and M's phased retirement program are the same as in *Example 2*, except E works 1,400 hours in 2008 and 700 hours in the first half of 2009.

(ii) *Application of Testing Rules.* No comparison of hours is required for the partial testing period that occurs in 2006. For 2007, no reduction is required in E's phased retirement benefit as a result of the hours worked by E during 2007 because the hours did not exceed 50% of 2,000. However, the hours worked by E during 2008 exceed 133⅓% of E's work schedule (50% of 2,000), so that the phased retirement benefit paid to E during 2009 must be reduced. The reduction is effective March 1, 2009. The new phased retirement benefit of \$5,232.60 is based on 30% of the participant's accrued benefit as of July 1, 2006, payable as a joint and 50% survivor annuity commencing on that date (30% times \$25,500 times the early retirement factor of 76% times the joint and 50% factor of 90%). This is equivalent to reducing the previously elected joint and 50% survivor annuity payable with respect to E by 40% (400 "excess" hours divided by the 1,000 hour expected reduction). When E retires fully on July 1, 2009, E's total accrued benefit as of July 1, 2009, as a single life annuity commencing at normal retirement age is \$31,065 per year (\$95,000 times 1.5% times 21.8 years of service). This accrued benefit is offset by (A) E's phased retirement accrued benefit (which is \$7,650 (600 divided by 2,000 times \$25,500)) plus (B) the actuarial equivalent of 40% of the payments that were made to E from January 1, 2008, through February 28, 2009.

Example 4. (i) Same Plan and Phased Retirement Program, Except Employer and Employee Agree to Decrease Hours. The facts with respect to the Plan X and M's phased retirement program are the same as in *Example 2*, except before 2008, E enters into an agreement with M to decrease E's number of hours worked from 50% of full time to 25% of full time. E works 500 hours in 2008 and 250 hours in 2009.

(ii) *Application of Multiple Benefit Rule.* Under paragraph (e)(2) of this section, Plan M may provide for an additional phased retirement benefit to be offered to E for 2008. The maximum increase would be for the phased retirement benefit paid to E during 2009 to be increased based on a phased retirement accrued benefit equal to 75% of E's accrued benefit (1,500 divided by 2,000). Thus, the amount being paid to E would be increased, effective January 1, 2008, based on the excess of 75% of E's total accrued benefit on December 31, 2007, over E's original phased retirement accrued benefit of

\$12,750. Employee E would have the right to elect, with spousal consent, any annuity form offered under Plan X (with the actuarial adjustment for time of commencement and form of payment to be based on the age of E and any contingent beneficiary (and E's service, if applicable) on June 1, 2008), which would be in addition to the previously elected joint and 50% survivor annuity payable as E's original phased retirement benefit. When E retires fully on July 1, 2009, Employee E's total accrued benefit as of July 1, 2009,

would be offset by (A) E's original phased retirement accrued benefit plus (B) the phased retirement accrued benefit for which additional phased retirement benefits were payable beginning in 2008.

(g) *Effective date.* The rules of this section apply to plan years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on November 9, 2004, 8:45 a.m., and published in the issue of the Federal Register for November 10, 2004, 69 F.R. 65108)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2004-95

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may of-

fer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Sanchez, Wayne L.	Derby, KS	Attorney	Indefinite from July 12, 2004
Gatti, John T.	Orlando, FL	Enrolled Agent	Indefinite from July 16, 2004

Name	Address	Designation	Date of Suspension
Hall, Beverly J.	Newberg, OR	Enrolled Agent	Indefinite from July 26, 2004
Spencer, Robert E.	Wilmington, NC	Enrolled Agent	Indefinite from August 11, 2004
Lebaron, Betty J.	Mesa, AZ	Enrolled Agent	Indefinite from August 17, 2004
Worrell, Douglas	Streamwood, IL	Attorney	Indefinite from August 23, 2004
Singleton, Stan R.	Derby, KS	Attorney	Indefinite from August 30, 2004
Halpern, Barbara	Weston, CT	CPA	Indefinite from September 15, 2004
Johnson, Jeanne M.	Hoquiam, WA	Enrolled Agent	Indefinite from September 27, 2004
Fisher, Robert	Holbrook, AZ	Enrolled Agent	Indefinite from October 5, 2004
Valdez II, Arthur	Albuquerque, NM	CPA	Indefinite from October 19, 2004
Wilshire Jr., Raymond B.	Fort Worth, TX	Enrolled Agent	Indefinite from December 1, 2004

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Daly, Thomas J.	Elmsford, NY	CPA	Indefinite from August 20, 2004

Name	Address	Designation	Date of Suspension
Jewett, Jerry A.	Fremont, OH	Attorney	Indefinite from September 8, 2004
Kyllo, Harry N.	Portland, OR	CPA	Indefinite from September 9, 2004
Pearl, David S.	Reisterstown, MD	Attorney	Indefinite from September 21, 2004
Graugnard, Paul E.	Alexandria, LA	Attorney	Indefinite from September 21, 2004
Thomas, Robert C.	Natchitoches, LA	Attorney	Indefinite from September 21, 2004
Culver Jr., Allan J.	Bel Air, MD	Attorney	Indefinite from September 21, 2004
Christovich, Michael	New Orleans, LA	Attorney	Indefinite from September 27, 2004
Turner, Haiden W.	Farmers Branch, TX	CPA	Indefinite from September 27, 2004
Tuttle, Heidi	Unionville, CT	Attorney	Indefinite from September 27, 2004
Oberhauser Jr., Louis	Wayzata, MN	Attorney	Indefinite from September 27, 2004
Nelson, John A.	Wilmar, MN	Attorney	Indefinite from September 27, 2004
Judd Jr., John K.	Taft, CA	CPA	Indefinite from September 30, 2004
McGrady, Michael S.	Hankins, NY	Attorney	Indefinite from October 1, 2004
Wahl-Taylor, Kimberly	Council Bluffs, IA	Attorney	Indefinite from October 4, 2004
Haneberg III, Elmer C.W.	Chicago, IL	Attorney	Indefinite from October 6, 2004

Name	Address	Designation	Date of Suspension
McDonald, Michael G.	Methuen, MA	Attorney	Indefinite from October 6, 2004
Mason Jr., Maurice	Dracut, MA	Attorney	Indefinite from October 6, 2004
Aaron, Stanley R.	Baton Rouge, LA	Attorney	Indefinite from October 6, 2004
McFarland, Sheila E.	Chicago, IL	Attorney	Indefinite from October 6, 2004
Deutchman, Murray L.	Barnesville, MD	Attorney	Indefinite from October 6, 2004
Wolfert, Marvin L.	Foxboro, MA	Attorney	Indefinite from October 6, 2004
Andricopoulos, Maureen	Chelmsford, MA	Attorney	Indefinite from October 6, 2004
Ezuruike, Maurice	Austin, TX	Attorney	Indefinite from October 6, 2004
Jones, Thomas C.	Dekalb, IL	Attorney	Indefinite from October 6, 2004
Yopp, L. Gregory	Louisville, KY	Attorney	Indefinite from October 6, 2004
Waples, Alan N.	Burlington, IA	Attorney	Indefinite from October 6, 2004
Ghitelman, Gayle S.	Brookline, MA	Attorney	Indefinite from October 6, 2004
Bulas Jr., Luis	Hollywood, FL	Enrolled Agent	Indefinite from October 15, 2004
Earl, Thomas J.	Moses Lake, WA	Attorney	Indefinite from October 8, 2004
George, Gary R.	Milwaukee, WI	Attorney	Indefinite from October 8, 2004
Jordan, David M.	San Antonio, TX	Attorney	Indefinite from October 8, 2004

Name	Address	Designation	Date of Suspension
Young III, George G.	Havertown, PA	Attorney	Indefinite from October 8, 2004
Tanner, Martin	Salt Lake City, UT	Attorney	Indefinite from October 8, 2004
Jensen, Georg	Cheyenne, WY	Attorney	Indefinite from October 8, 2004
Slowiaczek, Peter A.	Lakewood, WA	Attorney	Indefinite from October 8, 2004
Fennell, David E.	New Castle, WA	Attorney	Indefinite from October 8, 2004
Gish, Robert	Basin, WY	Attorney	Indefinite from October 8, 2004
Ramirez, Silverio	Roselle, NJ	Attorney	Indefinite from October 8, 2004
Flaherty, Patrick J.	Traverse City, MI	CPA	Indefinite from October 19, 2004
Vanden Berg, Steven	Mason City, IA	Attorney	Indefinite from October 25, 2004
Johnson, Jamis M.	Salt Lake City, UT	Attorney	Indefinite from October 25, 2004
Braskey, James F.	Frostburg, MD	Attorney	Indefinite from October 25, 2004
Mills, Laurence A.	Wellesley, MA	Attorney	Indefinite from October 26, 2004

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent,

or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Dayandayan, Angel Y.	Irvine, CA	Enrolled Agent	July 27, 2004
Summers, Todd W.	Stockton, CA	Enrolled Agent	August 10, 2004
Barrett Sr., Jeffrey J.	Catskill, NY	CPA	August 31, 2004
Davis, Charles W.	San Francisco, CA	Enrolled Agent	September 28, 2004
Giles, Benjamin M.	Wichita, KS	CPA	September 30, 2004

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Lim, Edgar E.	St. Louis, MO	Attorney	August 2, 2004 to July 31, 2007

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the In-

ternal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Gleason, Daniel J.	Franklin, TN	September 30, 2004

Consent Disbarment From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice be-

fore the Internal Revenue Service, may offer his or her consent to disbarment from such practice. The Director, Office of Professional Responsibility, in his discretion, may disbar an attorney, certified public accountant, enrolled agent, or enrolled actu-

ary in accordance with the consent offered.

The following individuals have been placed under consent disbarment from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Disbarment
Fort, Gala J.	Las Vegas, NV	CPA	Indefinite from October 19, 2004

New Code Y for the 2005 Form W-2, Box 12

Announcement 2004-96

Purpose	The purpose of this announcement is to advise employers about an additional code for use on the 2005 Form W-2. This code will be used to identify annual deferrals of income under a nonqualified deferred compensation plan.
Reporting Income Deferrals Under a Nonqualified Deferred Compensation Plan	A new code (Code Y-Deferrals under a section 409A nonqualified deferred compensation plan), for use in box 12, has been added to the 2005 Form W-2 and the 2005 Instructions for Forms W-2 and W-3. The American Jobs Creation Act of 2004 added section 409A to the Internal Revenue Code. Section 409A generally takes effect after December 31, 2004, and requires employers to report annual deferrals under a nonqualified deferred compensation plan on each employee's Form W-2. The deferred amounts should be reported in box 12 of Form W-2, using Code Y.

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.

Numerical Finding List¹

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