

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.

EMPLOYEE PLANS

Rev. Rul. 2008-7, page 419.

Accrued benefits; cash balance defined benefit pension plans; section 411 of the Code. This ruling, which pertains to a traditional defined benefit pension plan that is amended in 2001 for the 2002 plan year into a cash balance defined benefit pension plan containing an accrued benefit formula that is a lump sum-based benefit, describes the application of the accrual rules of sections 411(b)(1)(A), (B), and (C) of the Code to the fact pattern.

Notice 2008-21, page 431.

Funding; effective date; proposed regulations under sections 430 and 436. This notice alerts taxpayers of a uniform effective date of certain proposed regulations under sections 430 and 436 of the Code. In addition, this notice provides 2008 transitional guidance under section 436 for small plans with end of the plan year valuation dates.

Notice 2008-23, page 433.

This notice provides a safe harbor with conditions under which supplemental health insurance is considered excepted from the requirements of HIPAA and related legislation under chapter 100 (sections 9801-9833) of the Code.

EXCISE TAX

Notice 2008-23, page 433.

This notice provides a safe harbor with conditions under which supplemental health insurance is considered excepted from the requirements of HIPAA and related legislation under chapter 100 (sections 9801-9833) of the Code.

ADMINISTRATIVE

T.D. 9370, page 428.

Final regulations under 31 USC 9701 implement new user fees for the initial and renewed enrollment to become an enrolled actuary. The new user fees established by the Treasury decision reflect the IRS's costs of overseeing the initial enrollment and renewal of enrollment processes. The regulations establish a \$250 user fee for initial enrollment and a \$250 user fee for renewal of enrollment.

Rev. Proc. 2008-14, page 435.

This procedure provides guidance concerning when information shown on a return in accordance with the applicable forms and instructions will be adequate disclosure for purposes of reducing an understatement of income tax under sections 6662(d) and 6694(a) of the Code.

Announcement 2008-9, page 444.

Announcement 2008-11, page 445.

Announcement 2008-12, page 446.

These documents contain corrections to temporary regulations (T.D. 9362, 2007-48 I.R.B. 1050) and proposed regulations (REG-209020-86, 2007-48 I.R.B. 1075) relating to a United States taxpayer's obligation under section 905(c) of the Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit. The regulations also relate to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

Announcement 2008-10, page 445.

This document contains corrections to final regulations (T.D. 9363, 2007-49 I.R.B. 1084) relating to the requirements for filing corporate income tax returns and returns of organizations required to file returns under section 6033 on magnetic media pursuant to section 6011(e) of the Code.

Announcements of Disbarments and Suspensions begin on page 438.
Finding Lists begin on page ii.



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 411.—Minimum Vesting Standards

26 CFR 1.411(b)-1: *Accrued benefit requirements.*
(Also, § 7805; § 301.7805-1.)

Accrued benefits; cash balance defined benefit pension plans; section 411 of the Code. This ruling, which pertains to a traditional defined benefit pension plan that is amended in 2001 for the 2002 plan year into a cash balance defined benefit pension plan containing an accrued benefit formula that is a lump sum-based benefit, describes the application of the accrual rules of sections 411(b)(1)(A), (B), and (C) of the Code to the fact pattern.

Rev. Rul. 2008-7

ISSUE

Does the defined benefit plan described below that was converted from a traditional benefit formula to a lump sum-based benefit formula satisfy the accrual rules of § 411(b)(1)(A), (B), and (C) of the Internal Revenue Code for the 2002 plan year?

FACTS

Plan A is a defined benefit pension plan that (prior to the amendment described be-

low) provided a normal retirement benefit payable in the form of a straight life annuity commencing at the age 65 normal retirement age under the plan equal to the product of 1.1% of average compensation for the three consecutive years of service with the highest such average multiplied by the number of years of service at normal retirement age. Under Plan A, the accrued benefit (prior to the amendment described below) of a participant at any point prior to attainment of normal retirement age is the benefit, payable in the form of a straight life annuity commencing at the age 65 normal retirement age, equal to the product of 1.1% of the participant's highest average compensation at such point multiplied by the participant's number of years of service at such point. Plan A provides that an employee commences participation in the plan on the first day of the first month after commencing employment, or, if later, the first day of the first month following attainment of age 21.

Plan A was amended in 2001 to change the plan's benefit formula effective for plan years beginning on or after January 1, 2002. The new benefit formula is a "lump sum-based" benefit formula as further described below. Under the lump sum-based benefit formula, a hypothetical account is

created for each participant. For participants who were employees on December 31, 2001, the opening account balance was equal to the actuarial present value of the participant's accrued benefit determined as of that date. Under Plan A, this actuarial present value was determined using the applicable interest rate, post-retirement mortality using the applicable mortality table specified under § 417(e)(3) for 2002, and no pre-retirement mortality. Thereafter, the hypothetical account balance is credited with hypothetical interest at the rate of interest on 3-year Treasury Constant Maturities for the month prior to the first day of the plan year plus 25 basis points (for the 2002 plan year, the rate of interest was determined as 3.87%, which is 3.62%, the yield on 3-year Treasury Constant Maturities for December 2001, plus 25 basis points). Additionally, the hypothetical account for each participant is credited at the end of each accrual computation period (which is the plan year) with pay credits that are determined as a percentage of compensation for the participant for the plan year. The percentage is determined, based upon the age of the participant at the beginning of the plan year, in accordance with the following table:

Age at Beginning of Year	Percentage
25 or less	3
26-40	4
41-50	5
51-60	6
61 or more	7

The annual benefit payable at the age 65 normal retirement age under the new benefit formula is determined by converting the hypothetical account balance at that time to a straight life annuity. The plan provides for the conversion to a straight life annuity to be made using the applicable interest rate and applicable mortality table, defined as the 30-year Treasury rate as published by the Commissioner of Internal Revenue under § 417(e)(3) for the month prior to the beginning of the plan year, and the mortality table published by the Commissioner under § 417(e)(3). For 2002, that applica-

ble interest rate was 5.48% and that applicable mortality table was the mortality table set forth in Revenue Ruling 2001-62, 2001-2 C.B. 632.

The amendment to Plan A also changed how the accrued benefit of a participant is determined under the plan. For participants who were employed on December 31, 2001, had completed 15 years of service, and had attained age 50 as of that date, Plan A provides that the accrued benefit will be the greater of the accrued benefit provided by the hypothetical account balance at the age 65 normal retirement

age (determined as described above) and the accrued benefit determined under the pre-conversion formula as in effect on December 31, 2001, taking into account compensation and years of service after December 31, 2001, but not taking into account compensation and years of service after December 31, 2005. Plan A refers to such participants as grandfathered participants. The accrued benefit provided by the hypothetical account balance at the age 65 normal retirement age is equal to the hypothetical account balance at that age (including projected interest credits under the

plan to age 65), converted to a straight life annuity commencing at age 65 using the applicable interest rate and applicable mortality table.

For participants who were employed on December 31, 2001, and who either had not completed 15 years of service or had not attained age 50 as of that date (*i.e.*, participants who are not grandfathered participants), Plan A provides that the accrued benefit at any point in time is determined as the greater of (1) the accrued benefit determined under the terms of the plan under the pre-conversion formula immediately before the amendment, but taking into account only service and compensation through December 31, 2001, and (2) the accrued benefit provided by the hypothetical account balance at the age 65 normal retirement age (determined as described above). Accordingly, compensation increases and years of service after December 31, 2001, are not taken into account in determining the accrued benefit under the pre-conversion formula.

For all new participants (*i.e.*, those employees who commenced participation on or after January 1, 2002), the accrued benefit at any point is the accrued benefit provided by the hypothetical account balance at the age 65 normal retirement age (determined as described above).

LAW

Section 401(a)(7) provides that a trust is not a qualified trust under § 401 unless the plan of which such trust is a part satisfies the requirements of § 411 (relating to minimum vesting standards).

Section 411(a) requires a qualified plan to provide that an employee's right to the normal retirement benefit is nonforfeitable upon attainment of normal retirement age and that an employee's right to his or her accrued benefit is nonforfeitable upon completion of the specified number of years of service under one of the vesting schedules set forth in § 411(a)(2). Section 411(a) also requires that a defined benefit plan satisfy the requirements of § 411(b)(1).

Section 411(a)(7)(A)(i) defines a participant's accrued benefit under a defined benefit plan as the employee's accrued benefit determined under the plan, expressed in the form of an annual benefit commencing at normal retirement age,

subject to an exception for § 411(c)(3). Under § 411(c)(3), the accrued benefit is the actuarial equivalent of the annual benefit commencing at normal retirement age in the case of a plan that does not express the accrued benefit as an annual benefit commencing at normal retirement age.

Section 1.411(a)-7(a)(1) of the Income Tax Regulations provides that, for purposes of § 411 and the regulations thereunder, the accrued benefit of a participant under a defined benefit plan is either (A) the accrued benefit determined under the plan if the plan provides for an accrued benefit in the form of an annual benefit commencing at normal retirement age or (B) an annual benefit commencing at normal retirement age which is the actuarial equivalent (determined under § 411(c)(3) and § 1.411(c)-1) of the accrued benefit under the plan if the plan does not provide for an accrued benefit in the form of an annual benefit commencing at normal retirement age.

Section 411(b)(1) provides that a defined benefit plan must satisfy one of the three accrual rules of § 411(b)(1)(A), (B), and (C) with respect to benefits accruing under the plan. The three accrual rules are the 3% method of § 411(b)(1)(A), the 133 $\frac{1}{3}$ % rule of § 411(b)(1)(B), and the fractional rule of § 411(b)(1)(C).

Section 411(b)(1)(A) provides that a defined benefit plan satisfies the requirements of the 3% method if, under the plan, the accrued benefit payable upon the participant's separation from service is not less than (A) 3% of the normal retirement benefit to which the participant would be entitled if the participant commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 and the normal retirement age under the plan, multiplied by (B) the number of years (not in excess of 33 $\frac{1}{3}$ years) of his or her participation in the plan. Section 411(b)(1)(A) provides that, in the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled is determined as if the participant continued to earn annually the average rate of compensation during consecutive years of service, not in excess of 10, for which his or her compensation was highest. Section 411(b)(1)(A) also provides that Social Security benefits and all other

relevant factors used to compute benefits are treated as remaining constant as of the current plan year for all years after the current year.

Section 411(b)(1)(B) provides that a defined benefit plan satisfies the requirements of the 133 $\frac{1}{3}$ % rule for a particular plan year if, under the plan, the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit, and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 $\frac{1}{3}$ % of the annual rate at which the individual can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year.

For purposes of applying the 133 $\frac{1}{3}$ % rule, § 411(b)(1)(B)(i) provides that any amendment to the plan which is in effect for the current year is treated as in effect for all other plan years. Section 411(b)(1)(B)(ii) provides that any change in an accrual rate which does not apply to any individual who is or could be a participant in the current plan year is disregarded. Section 411(b)(1)(B)(iii) provides that the fact that benefits under the plan may be payable to certain participants before normal retirement age is disregarded. Section 411(b)(1)(B)(iv) provides that Social Security benefits and all other relevant factors used to compute benefits are treated as remaining constant as of the current plan year for all years after the current year.

Section 411(b)(1)(C) provides that a defined benefit plan satisfies the fractional rule if the accrued benefit to which any participant is entitled upon his or her separation from service is not less than a fraction of the annual benefit commencing at normal retirement age to which the participant would be entitled under the plan as in effect on the date of separation if the participant continued to earn annually until normal retirement age the same rate of compensation upon which the normal retirement benefit would be computed under the plan, determined as if the participant had attained normal retirement age on the date on which any such determination is made (but taking into account no more than 10 years of service immediately preceding separation from service). The fraction is a fraction, not exceeding 1, the numerator of which is the total number of

the participant's years of participation in the plan (as of the date of separation from service) and the denominator of which is the total number of years the participant would have participated in the plan if the participant separated from service at normal retirement age. Section 411(b)(1)(C) also provides that Social Security benefits and all other relevant factors used to compute benefits are treated as remaining constant as of the current plan year for all years after the current year.

Section 1.411(b)-1(a)(1) provides that a defined benefit plan is not a qualified plan unless the method provided by the plan for determining accrued benefits satisfies at least one of the three alternative methods in § 1.411(b)-1(b) for determining accrued benefits with respect to all active participants under the plan. The three alternative methods are the 3% method, the 133 $\frac{1}{3}$ % rule, and the fractional rule. A defined benefit plan may provide that accrued benefits for participants are determined under more than one plan formula. Section 1.411(b)-1(a)(1) provides that, in such a case, the accrued benefits under all such formulas must be aggregated in order to determine whether or not the accrued benefits under the plan for participants satisfy one of these methods. Under § 1.411(b)-1(a)(1), a plan may satisfy different methods with respect to different classifications of employees, or separately satisfy one method with respect to the accrued benefits for each such classification, provided that such classifications are not so structured as to evade the accrued benefit requirements of § 411(b) and § 1.411(b)-1.

Section 1.411(b)-1(b)(1)(i) provides that a defined benefit plan satisfies the requirements of the 3% method for a plan year if, as of the close of the plan year, the accrued benefit to which each participant is entitled, computed as if the participant separated from service as of the close of such plan year, is not less than 3% of the 3% method benefit, multiplied by the number of years (not in excess of 33 $\frac{1}{3}$) of his or her participation in the plan, including years after normal retirement age. The 3% method benefit is the normal retirement benefit to which the participant would be entitled if the participant commenced participation at the earliest possible entry age for any individual who is or could be a participant under the plan

and served continuously until the earlier of age 65 and the normal retirement age under the plan.

Section 1.411(b)-1(b)(2)(i) provides that a defined benefit plan satisfies the 133 $\frac{1}{3}$ % rule for a particular plan year if (A) under the plan the accrued benefit payable at the normal retirement age (determined under the plan) is equal to the normal retirement benefit (determined under the plan), and (B) the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year cannot be more than 133 $\frac{1}{3}$ % of the annual rate at which the participant can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year.

Pursuant to § 411(b)(1)(B)(i), § 1.411(b)-1(b)(2)(ii)(A) provides that, for purposes of the 133 $\frac{1}{3}$ % rule, any amendment to the plan which is in effect for the current plan year is treated as if it were in effect for all other plan years. Pursuant to § 411(b)(1)(B)(ii), § 1.411(b)-1(b)(2)(ii)(B) provides that any change in an accrual rate which change does not apply to any individual who is or could be a participant in the current plan year is disregarded. The regulations provide an example illustrating this rule under which, for the plan year 1980, a plan provides an accrued benefit of 2% of the highest 3 years' compensation for each year of service and provides that, for the plan year 1981, the accrued benefit is 3% of the highest 3 years' compensation. The regulations then state that the change in rate does not cause the plan to fail to satisfy the 133 $\frac{1}{3}$ % rule because in the plan year 1980 the change in the accrual rate does not apply to any individual who is or could be a participant in the plan year 1980. However, the regulations further state that if, for example, a plan were to provide for an accrued benefit of 1% of the highest 3 years' compensation for each of the first 10 years of service and 1.5% of such compensation for each year of service thereafter, then the plan would fail to satisfy the 133 $\frac{1}{3}$ % rule for the plan year even though no participant is actually accruing at the 1.5% rate because an individual who could be a participant and who has over 10 years of service would

accrue at the 1.5% rate, which exceeds 133 $\frac{1}{3}$ % of the 1.0% rate.

Section 1.411(b)-1(b)(2)(ii) provides that the fact that certain benefits under the plan may be payable to certain participants before normal retirement age is disregarded. Section 1.411(b)-1(b)(2)(ii) further provides that a plan does not satisfy the requirements of § 1.411(b)-1(b)(2) if the base for the computation of retirement benefits changes solely by reason of an increase in the number of years of participation.

Section 1.411(b)-1(b)(2)(iii) provides examples illustrating the 133 $\frac{1}{3}$ % rule. One of these examples, Example (3), concludes that a plan fails to satisfy the 133 $\frac{1}{3}$ % rule where the plan provides for an annual benefit commencing at age 65 equal to a percentage of a participant's highest 3 years of compensation equal to 2% for each of the first 5 years of participation, 1% for each of the next 5 years of participation, and 1.5% for each subsequent year of participation (even though the average rate of accrual in this case is not less rapid than ratable).

Section 1.411(b)-1(b)(3)(i) provides that a defined benefit plan satisfies the fractional rule if the accrued benefit to which any participant is entitled is not less than the fractional rule benefit multiplied by a fraction (not exceeding one) (A) the numerator of which is the participant's total number of years of participation in the plan, and (B) the denominator of which is the total number of years the participant would have participated in the plan if he or she separated from service at the normal retirement age under the plan.

Section 1.411(b)-1(b)(3)(ii) provides that the "fractional rule benefit" is the annual benefit commencing at normal retirement age under the plan to which a participant would be entitled if the participant continued to earn annually until normal retirement age the same rate of compensation upon which the participant's normal retirement benefit would be computed. The rate of compensation is computed on the basis of compensation taken into account under the plan (but taking into account average compensation for no more than the 10 years of service immediately preceding the determination). For purposes of the fractional rule benefit, the normal retirement benefit is determined as if the participant had at-

tained normal retirement age on the date any such determination is made. Section 1.411(b)-1(b)(3)(ii) further provides that, for purposes of the fractional rule, for any plan year, Social Security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

Section 1.411(b)-1(b)(3)(iii) provides examples illustrating the fractional rule. One of these examples, Example (2), concludes that, in the case of a plan that provides a normal retirement benefit of 1% of average compensation multiplied by the number of years of plan participation completed by the participant, the plan fails to satisfy the fractional rule with respect to a participant whose annual compensation over an 11-year period varies from \$17,000 up to \$32,000. If the participant were to separate from service at the end of the period, the participant's annual benefit under the plan would be \$2,530 commencing at age 65 (based on the 11 years of compensation), which is less than \$2,561, which, taking into account only the last 10 years of compensation, is the minimum annual benefit under the fractional rule.

Notice 96-8, 1996-1 C.B. 359, states that benefits attributable to interest credits under a cash balance plan are in the nature of accrued benefits within the meaning of § 1.411(a)-7(a). Notice 96-8 further states that, in order for a plan's interest credits to satisfy the accrual rules of § 411(b)(1), the interest must be frontloaded. In order for interest to be frontloaded, the benefits attributable to future interest credits with respect to a hypothetical allocation accrue at the same time as the benefits attributable to the hypothetical allocation. Thus, in determining the accrued benefit of a participant under a cash balance plan at any time prior to normal retirement age, the balance in the cash balance account must be projected with interest credits to normal retirement age. (See, however, § 411(a)(13), as added by the Pension Protection Act of 2006, Public Law 109-280 (PPA '06), for special rules which apply to certain hybrid pension plans for purposes of the vesting and distribution rules of §§ 411(a)(2), 411(c), and 417(e), but which do not apply

for purposes of the benefit accrual rules of § 411(b)(1)(A)-(C).)

Notice 2007-6, 2007-3 I.R.B. 272, states that, on September 15, 1999, the Service's Director, Employee Plans, issued a field directive (the 1999 Field Directive) requiring that open determination letter applications and examination cases that involved the conversion of a defined benefit plan formula into a benefit formula commonly known as a cash balance formula be submitted for technical advice with respect to the conversion's effect on the qualified status of the plan. Notice 2007-6 further states that in Announcement 2003-1, 2003-1 C.B. 281, the Service announced that the cases that were the subject of the 1999 Field Directive would not be processed pending issuance of regulations addressing age discrimination. Further, Notice 2007-6 states that the Service will resume processing the determination letter and examination cases that were the subject of the 1999 Field Directive and Announcement 2003-1. Notice 2007-6 refers to these plans as "moratorium plans."

ANALYSIS

A plan satisfies the accrual rules of § 411(b)(1)(A), (B), and (C) if, for all participants, the accrued benefit of each participant satisfies one of the three alternative methods (the 3% method, the 133 $\frac{1}{3}$ % rule, or the fractional rule). In applying each of the three alternative methods to a participant (including, in the case of the 133 $\frac{1}{3}$ % rule, anyone who could be a participant), § 1.411(b)-1(a)(1) requires that the benefits under all formulas applicable to the participant must be aggregated. Therefore, even if one formula applicable to a participant by itself would produce a benefit that satisfies the 133 $\frac{1}{3}$ % rule, and another formula by itself would produce a benefit that satisfies the fractional rule, the total benefit provided by the interaction of the two formulas must accrue in a manner that satisfies at least one of the three alternative methods.

If the benefits of all participants do not satisfy the same accrual rule, the plan is permitted to satisfy one of the accrual rules for some participants and another accrual rule for other participants,

but only if the different classification of participants is not so structured as to evade the accrued benefit requirements of § 411(b)(1)(A), (B), and (C). Pursuant to § 1.411(b)-1(a)(1), this determination of whether the different classification of participants is not so structured as to evade the accrued benefit requirements is made with consideration of which classification of participants is satisfying which of the three accrual rules. Another consideration in this determination is whether the assignment of a participant to a classification will change merely because of the passage of time.

When determining the accrued benefit for purposes of whether a plan satisfies the accrued benefit requirements of § 411(b)(1)(A), (B), and (C), the accrued benefit as determined for purposes of § 411 is tested regardless of how the accrued benefit may be defined in the plan. Thus, if the plan does not define the accrued benefit as an annual benefit commencing at normal retirement age, the annual benefit commencing at normal retirement age that is the actuarial equivalent of the accrued benefit under the plan is tested to determine whether the plan satisfies the accrued benefit requirements of § 411(b)(1)(A), (B), and (C).

Analysis of 133 $\frac{1}{3}$ % Rule in General¹

Under the 133 $\frac{1}{3}$ % rule, the annual rate at which the retirement benefits payable at normal retirement age accrue under the plan (the annual rate of accrual) must be determined under the terms of the plan for anyone who is or could be a participant in the plan. The annual rate of accrual with respect to a participant is determined for the current plan year and all future plan years. Then the annual rate of accrual for any future plan year is compared to the annual rate of accrual for any year beginning on or after the current plan year, and before such future plan year, to see whether the ratio of the later annual rate of accrual to the earlier annual rate of accrual exceeds 133 $\frac{1}{3}$ %.

Pursuant to § 1.411(b)-1(a)(1), the annual rate of accrual for a plan year is determined by aggregating all benefit formulas. Furthermore, the value of all relevant factors used to determine benefits for the

¹ Because the benefits provided by Plan A, both before and after the conversion, accrue over a period of years in excess of 33 $\frac{1}{3}$ years, Plan A fails to satisfy the 3% method. Accordingly, the analysis starts with the 133 $\frac{1}{3}$ % rule.

current plan year is kept constant in determining the annual rates of accrual for future years. Thus, for example, for the plan year under consideration, which is 2002, the 3.87% interest crediting rate, the 5.48% applicable interest rate under § 417(e)(3), and the applicable mortality table under § 417(e)(3) are assumed to remain constant in determining the annual rate of accrual for each plan year after 2002.

If a plan has a single benefit formula, the annual rate of accrual for a plan year is generally determined as the increase in the accrued benefit under that benefit formula for the plan year. If a plan has more than one benefit formula applicable to a participant, the annual rate of accrual for the participant for the plan year must be determined using a single methodology, such as the increase in the dollar amount of the accrued benefit or the increase in the dollar amount of the accrued benefit expressed as a percentage of compensation for the plan year. Thus, the annual rate of accrual may be determined as the difference between (A) the dollar amount of the accrued benefit as a percentage of average compensation at the beginning of the plan year and (B) the dollar amount of the accrued benefit as a percentage of average compensation at the end of the plan year. In applying the 133¹/₃% rule for a plan year, whichever

methodology is used to determine the annual rate of accrual must be used consistently for all plan years (that is, the current plan year and all future plan years).

In applying the 133¹/₃% rule, the analysis considers at least three groups of employees. The three groups are (1) those who became employed after December 31, 2001 (who will accrue benefits solely under the lump sum-based benefit formula), (2) those who were not grandfathered participants but who were employed on December 31, 2001 (who will accrue some benefits under the lump sum-based benefit formula, but whose benefits were “frozen” under the pre-conversion formula), and (3) the grandfathered participants (who will accrue benefits for a time under both the pre-conversion formula and the lump sum-based benefit formula).

Analysis of the 133¹/₃% Rule for New Employees

For the group of new employees, the annual rate of accrual for a plan year is most easily determined as the increase in the dollar amount of the accrued benefit payable at the age 65 normal retirement age for a plan year expressed as a percentage of compensation for the plan year. Thus, for any year, the annual rate of accrual is determined by multiplying the

compensation of a participant for the plan year by the percentage from the table of pay credit percentages set forth under the facts above, accumulating such result with hypothetical interest to age 65, converting the accumulation at age 65 to a single life annuity, and dividing the result by compensation for the year. Accordingly, the annual rate of accrual for a year will depend on the pay credit for the year, future interest credits, and the conversion factor. For purposes of applying the 133¹/₃% rule to the plan, the interest crediting rate (the current year’s value of the three-year Treasury Constant Maturity rate plus 25 basis points) and the conversion factor for future years (using the applicable interest rate and the applicable mortality table under § 417(e)(3) for 2002) are assumed to be the same as for the current plan year.

For 2002, the three-year Treasury Constant Maturity rate is 3.62% (which is the rate for December 2001), and the resulting hypothetical interest crediting rate is 3.87%. For 2002, the 30-year Treasury rate is 5.48% (the rate for December 2001) and the applicable mortality table is the table set forth in Rev. Rul. 2001-62. The following table shows the annual rates of accrual for each age assuming that these values for 2002 remain the same for future plan years:

Age at Beginning of Plan Year	Annual Rate of Accrual
21	1.41%
22	1.35%
23	1.30%
24	1.26%
25	1.21%
26	1.55%
27	1.49%
28	1.44%
29	1.38%
30	1.33%
31	1.28%
32	1.24%
33	1.19%
34	1.15%
35	1.10%
36	1.06%
37	1.02%
38	0.98%
39	0.95%
40	0.91%
41	1.10%
42	1.06%
43	1.02%
44	0.98%

Age at Beginning of Plan Year	Annual Rate of Accrual
45	0.94%
46	0.91%
47	0.87%
48	0.84%
49	0.81%
50	0.78%
51	0.90%
52	0.87%
53	0.84%
54	0.80%
55	0.77%
56	0.75%
57	0.72%
58	0.69%
59	0.66%
60	0.64%
61	0.72%
62	0.69%
63	0.67%
64	0.64%

As may be seen by inspection of the table, the annual rate of accrual for any later year is not more than 133 $\frac{1}{3}$ % of the annual rate of accrual for any earlier year and, thus, the lump sum-based benefit formula standing alone satisfies the 133 $\frac{1}{3}$ % rule. For example, in considering a participant who is age 21 in 2002, the highest ratio of any future annual rate of accrual to any earlier rate is 128.1% (which is less than 133 $\frac{1}{3}$ %). This occurs at age 26, where the ratio of 1.55% (which also happens to be the highest rate of accrual) to the 1.21% rate for age 25 (which is the smallest rate between ages 21 and 26) is 128.1%.

Analysis of the 133 $\frac{1}{3}$ % Rule for Participants Who Are Not Grandfathered Participants

For participants who were employed on December 31, 2001, and who were not grandfathered participants, the accrued benefit under the pre-conversion formula does not increase after 2001, and the participants will only accrue benefits under the lump sum-based benefit formula. However, whether there is any increase in the accrued benefit of a participant will depend on the extent to which the new lump sum-based benefit formula provides a benefit that exceeds the benefit that had been accrued under the pre-conversion formula as of December 31, 2001. If, for a period of years, the lump sum-based benefit formula does not provide a greater benefit than the frozen accrued benefit

under the pre-conversion formula as of December 31, 2001, then there is a period where the annual rate of accrual is zero. After that period, there will be a period of a positive annual rate of accrual as the lump sum-based benefit formula begins to provide a benefit that exceeds the frozen accrued benefit under the pre-conversion formula.

Ordinarily, a period of a zero annual rate of accrual followed by a period of positive annual rates of accrual would result in a plan failing to satisfy the 133 $\frac{1}{3}$ % rule. However, because there is no ongoing accrual under the pre-conversion formula for these participants for service after the January 1, 2002 effective date of the conversion amendment, the lump sum-based benefit formula is the only formula under the plan (other than the § 411(d)(6) protected benefit), and, pursuant to the special rule of § 411(b)(1)(B)(i), that formula is treated as if it were in effect for all other plan years. Accordingly, the benefits under the lump sum-based benefit formula are the only benefits that need to be considered for purposes of applying the 133 $\frac{1}{3}$ % rule (and the § 411(d)(6) protected benefit under the pre-conversion formula accrued through the date of conversion is disregarded in applying § 411(b)(1)(B)). As illustrated above, the lump sum-based benefit formula standing alone satisfies the 133 $\frac{1}{3}$ % rule, and Plan A thus satisfies the rule for participants who are not grandfathered participants.

Analysis of the 133 $\frac{1}{3}$ % Rule for Grandfathered Participants Age 61 and Above

For participants who are grandfathered participants, the pre-conversion formula continues for a period of four years after the effective date of the amendment and thus is not disregarded pursuant to the special rule of § 411(b)(1)(B)(i). For grandfathered participants who are age 61 or above on January 1, 2002, the pre-conversion formula continues at least through normal retirement age (age 65), and, based upon calculations using the 3.87% crediting rate and the applicable interest rate and applicable mortality table, such participants have an annual rate of accrual of 1.1%, the rate of accrual under the pre-conversion formula (because the lump sum-based benefit formula never provides a higher benefit). Thus, the annual rate of accrual through normal retirement age will continue to be 1.1% of highest average compensation, and the plan satisfies the 133 $\frac{1}{3}$ % rule with respect to those participants.

Analysis of the 133 $\frac{1}{3}$ % Rule for Grandfathered Participants Below Age 61 Who Do Not Accrue Additional Benefits Under the Lump Sum-Based Benefit Formula Before Normal Retirement Age

For grandfathered participants who are at least age 50 and not yet age 61 on January 1, 2002, the pre-conversion formula

provides a greater benefit for the next four years after the amendment (assuming, as required under § 411(b)(1)(B)(iv), that the relevant factors used to compute benefits as of 2002 are held constant in the future). Thereafter, the accrued benefit under the pre-conversion formula does not increase, and the participants will only accrue benefits under the lump sum-based benefit formula. However, whether there is any increase in the accrued benefit of a participant after 2005 and before normal retirement age will depend on the extent to which the new lump sum-based benefit formula provides a benefit that exceeds the benefit that had been accrued as of December 31, 2005. If there is a period of time after December 31, 2005 when the benefit under the pre-conversion formula (taking into account service at least through December 31, 2005) remains larger than the benefit under the lump sum-based formula, then there will be a period of zero annual rates of accrual. Assuming that the relevant factors in effect for the 2002 plan year remain the same for all future plan years, for grandfathered participants who are at least age 55 and not yet age 61 on January 1, 2002, the period of zero annual rates of accrual extends at least through the age 65 normal retirement age, because the benefit payable at age 65 under the plan will be the accrued benefit under the pre-conversion formula as of December 31, 2005. Because the annual rate of accrual for these participants changes from 1.1% to zero, and then does not increase prior to normal retirement age, Plan A satisfies the 133 $\frac{1}{3}$ % rule with respect to these participants for 2002.

Analysis of the 133 $\frac{1}{3}$ % Rule for Grandfathered Participants Below Age 61 Who Do Accrue Additional Benefits Under the Lump Sum-Based Benefit Formula Before Normal Retirement Age (Age 50 to 55)

For grandfathered participants who are at least age 50 and not yet age 55 on January 1, 2002, assuming as required under § 411(b)(1)(B)(iv) that the relevant factors used to compute benefits as of 2002 remain constant in the future, the period of zero accruals after 2005 will be followed by a period of annual rates of accrual prior to normal retirement age greater than zero. In such a case, the later annual rate of ac-

crual which is greater than zero will exceed 133 $\frac{1}{3}$ % of the zero annual rate of accrual, and thus Plan A does not satisfy the 133 $\frac{1}{3}$ % rule with respect to these participants for 2002.

The effect on grandfathered participants who are at least age 50 and not yet age 55 on January 1, 2002, may be illustrated by a participant who commenced participation at age 35 with compensation of \$40,000. Assume that the participant's compensation increased at the rate of 3% per year in the years before 2002. The participant on December 31, 2001, was age 50, had 15 years of service, and had highest average compensation of \$58,758. Accordingly, the participant's accrued benefit at that date is \$9,695 per year (1.1% of \$58,758 multiplied by 15 years of service) payable at normal retirement age. At age 54, 4 years after the conversion, assuming the participant's compensation remains constant at the 2001 level, the participant would have an accrued benefit under the pre-conversion formula of \$12,645 per year (1.1% of \$60,504 multiplied by 19 years of service) payable at normal retirement age. The opening account balance at January 1, 2002, is \$49,352. Taking into account expected hypothetical contributions to the account in accordance with the table of pay credit percentages above, and assuming that the hypothetical account is credited with interest at 3.87%, the cash balance account would provide a benefit of less than \$12,645 for the first 9 plan years after conversion. Therefore, there would be a period of approximately 5 plan years (after the 4-year period of continued accruals under the pre-conversion formula) for which the participant has no increase in his or her accrued benefit (*i.e.*, effectively an annual rate of accrual of zero). In approximately the 10th plan year after the conversion, the participant would have a small annual rate of accrual and the participant would have a relatively larger annual rate of accrual in the remaining 5 plan years until age 65.

Thus, there are some grandfathered participants who are at least age 50 and not yet age 55 with respect to whom Plan A fails to satisfy the 133 $\frac{1}{3}$ % rule for 2002. Accordingly, Plan A cannot satisfy the accrual rules unless it can satisfy the accrual rules through the use of the fractional rule. While the fractional rule cannot effectively be used on a permanent basis for Plan

A (for the reasons discussed below), the post-conversion transitional accruals under the pre-conversion formula result in a pattern of accrued benefits that may satisfy the fractional rule on a temporary basis for the grandfathered participants who are at least age 50 and not yet age 55 on January 1, 2002. Therefore, Plan A may be able to satisfy the accrual rules using the fractional rule for these participants, and the 133 $\frac{1}{3}$ % rule for the other participants.

Analysis of Fractional Rule for Grandfathered Participants Age 50 to 55

In order to apply the fractional rule to the grandfathered participants in Plan A who do not satisfy the 133 $\frac{1}{3}$ % rule, the fractional rule benefit must be determined for each such participant. This benefit is determined under the terms of the plan by assuming that participation continues to normal retirement age, and that all relevant factors used to determine benefits are kept constant as of the current year for all years after the current year. The fractional rule benefit for a participant is also determined by reflecting all of the participant's prior compensation and years of participation, and assuming that the participant continues to earn the same rate of compensation in future years that is taken into account under the plan, but taking into account no more than 10 years of compensation. For this purpose, the number of years of compensation that would be taken into account under the plan, pursuant to § 411(b)(1)(C) and § 1.411(b)-1(b)(3)(ii)(A), is determined as if the participant had attained normal retirement age on the date the termination is made.

The fractional rule benefit, as so determined, is multiplied by a fraction, the numerator of which is the number of years of participation at each future point, and the denominator of which is the number of years of participation the participant will have if participation continues through normal retirement age. If, for the current plan year and each future plan year, the accrued benefit under the plan equals or exceeds the result obtained by multiplying the fractional rule benefit by the applicable fraction for that year, the plan satisfies the fractional rule with respect to that participant for the current plan year.

For grandfathered participants who are at least age 50 and not yet 55 on January

1, 2002, the fractional rule benefit is the greater of the benefit that is projected to be provided by the pre-conversion benefit formula and the benefit that will be provided by the hypothetical account of each participant, based upon the participation and compensation history of the participant. In determining the benefit that will be provided by the hypothetical account, future pay credits are determined by assuming that compensation for each future year is equal to the average of the compensation taken into account under the plan for the immediately preceding 10 years of participation (or for all years of participation for employees with less than 10 years of participation).

The fractional rule benefit for a participant may be determined at a date as illustrated by the following steps:

(1) Assuming that the participant had no additional service, participation, or compensation after the date of determination, determine which benefit formula would provide the benefit payable at normal retirement age under the plan (based on all other relevant factors on such date).

(2) For the formula determined in step (1), determine the number of years of service for which compensation is taken into account under that formula as of the determination date. For this purpose, where the lump sum-based benefit formula is the formula in step (1) and the plan provided for the establishment of an opening account balance equal to the present value of the accrued benefit determined under the pre-conversion formula, the number of

years of service is the number of years of service taken into account in determining that balance, plus one year for each year since the initial account balance was determined.

(3) Determine the participant's average compensation as of the determination date for the immediately 10 preceding years or, if less, the number of years determined in step (2).

(4) Assume that the participant's compensation for each future year of participation until attainment of normal retirement age is the average compensation determined in step (3).

(5) Determine the participant's fractional rule benefit as the benefit that would be payable upon attainment of normal retirement age under the plan by applying the plan formulas based on future participation using the compensation determined under step (4) and based on the assumption that all other relevant factors remain constant through normal retirement age at the values for the date on which the determination is being made.

Under these facts, where the pattern of accruals results from a transition from a final average pay formula that satisfies the fractional rule to an accumulation formula that satisfies the 133 $\frac{1}{3}$ % rule by providing the greater of the benefit under the final average pay formula or the benefit under the lump sum-based benefit formula during the transition period, the classification of participants between at least age 50 and not yet age 55 on January 1, 2002 (including the use of the fractional rule with respect to such partici-

pants) is not a classification that is structured to evade the accrued benefit requirements of § 411(b)(1)(A), (B), and (C) or § 1.411(b)-1. Accordingly, the grandfathered participants in Plan A whose annual rate of accrual fails the 133 $\frac{1}{3}$ % rule may pass the accrual rules of § 411(b)(1)(A), (B), and (C) by using the fractional rule.

To illustrate this, consider the grandfathered participant described above who commenced participation at age 35. For the plan year under consideration, which is 2002, this participant had a projected benefit at the age 65 normal retirement age under the pre-conversion 1.1% formula (based on service through the end of the grandfathering period and using the compensation determined under Steps 1 through 4 above, which is \$58,758) equal to \$12,281. The projected benefit from the hypothetical account balance at the age 65 normal retirement age (assuming the pay credit percentages under the table above and future compensation of \$58,758, and that the 3.87% interest crediting rate, the 5.48% applicable rate, and the applicable mortality table remain the same for future years) is \$13,999. Therefore, the fractional rule benefit is \$13,999. As may be seen from the following table, the accrued benefit under the plan (the greater of the \$12,281 benefit under the prior 1.1% formula and the benefit provided by the hypothetical account balance) is not less than the *pro rata* portion of the fractional rule benefit at the end of each future year. Accordingly, the benefit with respect to this participant satisfies the fractional rule for 2002.

Age ²	Fraction	Fraction times \$13,999	Accrued Benefit at End of Year Per Plan
51	16/30	\$7,466	\$10,341
52	17/30	\$7,933	\$10,998
53	18/30	\$8,399	\$11,634
54	19/30	\$8,866	\$12,281
55	20/30	\$9,333	\$12,281
56	21/30	\$9,799	\$12,281
57	22/30	\$10,266	\$12,281
58	23/30	\$10,733	\$12,281
59	24/30	\$11,199	\$12,281
60	25/30	\$11,666	\$12,281
61	26/30	\$12,132	\$12,461
62	27/30	\$12,599	\$12,867
63	28/30	\$13,066	\$13,259
64	29/30	\$13,532	\$13,636
65	30/30	\$13,999	\$13,999

² Age at the end of the plan year.

Because the accrued benefit of this participant at any future point will not be less than the result obtained by multiplying the fractional rule benefit by the ratio of the number of years of participation to that point to the total number of years of participation the participant will have at normal retirement age, Plan A satisfies the fractional rule for this participant for 2002.

If Plan A can make a similar demonstration for all grandfathered participants at least age 50 and not yet age 55 on January 1, 2002, then Plan A can satisfy the fractional rule for these participants and the 133 $\frac{1}{3}$ % rule for all other participants. Under the facts presented, it is expected that such a demonstration will show that, for 2002, the fractional rule is satisfied for all participants whose accrual patterns were unable to satisfy the 133 $\frac{1}{3}$ % rule.³

HOLDING

Plan A satisfies the 133 $\frac{1}{3}$ % rule of § 411(b)(1)(B) for 2002 for all participants except the grandfathered participants who are at least age 50, but not yet age 55, on January 1, 2002. Under the above facts, the class of grandfathered participants who are at least age 50, but not yet age 55, on January 1, 2002, is not a classification that is structured to evade the accrued benefit requirements of § 411(b)(1)(A), (B), and (C) and § 1.411(b)-1 so that the fractional rule may be used for these participants. With respect to the grandfathered participants who are at least age 50, but not yet age 55, on January 1, 2002, if the accrued benefits of these participants satisfy the fractional rule of § 411(b)(1)(C) as set forth in this revenue ruling, Plan A satisfies the accrual rules of § 411(b)(1)(A), (B), and (C) for 2002.

Satisfaction of Accrual Rules in Future Years

The analysis and holding in this revenue ruling only address the 2002 plan year. It is possible for a plan described in the facts of this revenue ruling to fail to satisfy the accrual rules of § 411(b)(1)(A), (B), and (C) for a subsequent year, either due to changes in relevant factors that are treated as constant for any given year or due to changes in facts relating to plan par-

ticipants. For example, in the facts addressed in this revenue ruling, whether the pattern of increasing pay credits results in an annual rate of accrual which is more than 133 $\frac{1}{3}$ % of the annual rate of accrual for any earlier year is affected by the rate of interest that is credited under the plan (which is treated as constant for all future years for purposes of applying the accrual rules of § 411(b)(1)(A), (B), and (C) to any year). In the year 2002, that interest rate is 3.87%. If the rate of interest credited under the plan for a later year were to be less than 1.58%, Plan A would not satisfy the 133 $\frac{1}{3}$ % rule for that later year for participants who are not grandfathered participants and thus would need to be amended in order to satisfy the 133 $\frac{1}{3}$ % rule.

As another example, if the grandfathered participant described above who did not satisfy the 133 $\frac{1}{3}$ % rule were to continue to have compensation increases in years after 2002 at an annual 3% rate, then by 2013 the fractional rule benefit would be so large that the aggregate accrued benefit of the participant for that year would be less than the result obtained by multiplying that larger fractional rule benefit by the applicable fraction (the number of years of participation to that time to the total number of years of participation the participant will have at normal retirement age). Accordingly, even compensation increases that are regular and predictable can result in Plan A failing to satisfy the fractional rule for the grandfathered participants. Moreover, the possible volatility resulting from unpredictable future compensation increases is a major reason why the fractional rule cannot effectively be used on a permanent basis for plans such as Plan A.

If changes to relevant factors such as a decrease in the interest crediting rate or an increase in future compensation were to result in a failure to satisfy the accrual rules, the plan's benefit formula would need to change. Some of the types of changes that may be used are outlined below with respect to Plan A. Any change would need to satisfy applicable qualification requirements, including satisfaction of the anti-cutback rules of § 411(d)(6) and the requirement that a plan provide benefits that are definitely determinable.

In order to bring the plan into compliance in the event of a decrease in the interest crediting rate, Plan A's benefit formula could be changed to increase the hypothetical pay credits at the earlier ages, reduce the hypothetical pay credits at the higher ages, or a combination of an increase at the lower ages and a reduction at the higher ages. The resulting pattern of pay credits would have to be less steep than before in order for the 133 $\frac{1}{3}$ % rule to be satisfied using the lower interest crediting rate. Plan A could also provide an interest crediting rate higher than 1.58% for that year and all future years for participants for whom the 133 $\frac{1}{3}$ % rule is not satisfied, but any such minimum rate could not result in a rate of interest which exceeds a market rate of interest under § 411(b)(5)(B)(i)(I), as added to the Code by PPA '06.

It may be possible that Plan A could be changed to adjust the hypothetical pay credits to ensure compliance with the accrual rules of § 411(b)(1)(A), (B), and (C) for future years. Such a provision would need to provide that if the interest crediting rate at the beginning of any plan year is less than 1.58%, the hypothetical pay credits are adjusted so that the resulting pattern of pay credits satisfies the 133 $\frac{1}{3}$ % rule using the interest crediting rate for the year. Any such possible provision would need to include specific rules on how the adjustment is made, which would typically be dependent on the extent to which the interest crediting rate is less than 1.58%. Furthermore, the provision would need to be clear as to what happens in future years should the interest crediting rate again change. Note that it may be difficult to design such provisions and, furthermore, difficult to put them into effect in actual plan operations on a timely basis.

With respect to the possibility that compensation increases for any future year may result in a plan failing to satisfy the fractional rule for that year, provisions would be necessary either to ensure that the plan could instead satisfy the 133 $\frac{1}{3}$ % rule for that year (as described in the preceding two paragraphs) or to provide a combination of increases in the accrued benefit for earlier years or decreases in the accruals for future years (but § 411(d)(6) would not permit decreases for service

³ It is similarly likely that a demonstration will show that, for 2002, the fractional rule is satisfied for all grandfathered participants age 55 or above on January 1, 2002. Also, the use of the fractional rule with respect to all such participants is not a classification that is so structured as to evade the accrued benefit requirements of § 411(b)(1)(A), (B), and (C) and § 1.411(b)-1.

before the applicable amendment date) in order to satisfy the fractional rule for that year. However, unlike the discussion above concerning interest crediting rates, it is not clear how a provision to alter accrual rates or accrued benefits could be implemented annually by a plan provision in the absence of relevant participant information such as the compensation history through the plan year. It may be possible to limit the compensation taken into account for any participant by providing that only compensation increases up to some specified percentage are taken into account. However, any such provision would be difficult to design and extremely difficult to put into effect in actual plan operations on a timely basis.

Section 7805(b) Relief

Under the authority of § 7805(b), this paragraph provides relief for plans under which a group of employees specified under the plan receives a benefit equal to the greatest of the benefits provided under two or more formulas (an applicable “greater-of” benefit), provided that each such formula standing alone would satisfy an accrual rule of § 411(b)(1)(A), (B), or (C) for the years involved. This relief applies to a plan only if either: (1) as of February 19, 2008, the plan provisions under which the applicable “greater-of” benefit is provided have been the subject of a favorable determination letter; (2) as of February 19, 2008, a remedial amendment period under § 401(b) for the plan provisions under which the applicable “greater-of” benefit is provided has not expired; or (3) the plan is otherwise a “moratorium plan” as defined in Notice 2007-6. Under the relief set forth in this paragraph, for plan years beginning before January 1, 2009, the Service will not treat a plan described in the preceding sentence as failing to satisfy the accrual rules of § 411(b)(1)(A), (B), and (C) solely because the plan provides an applicable “greater-of” benefit, where the separate formulas, standing alone, would satisfy an accrual rule of § 411(b)(1)(A), (B), and (C). For this purpose, a plan described in (2) that provides a group of employees specified under the plan an applicable “greater-of”

benefit can be retroactively amended⁴ so that each formula, standing alone, would satisfy an accrual rule of § 411(b)(1)(A), (B), and (C) for the years involved. For example, a moratorium plan that has a determination letter request pending under which the lump sum-based benefit formula standing alone fails to satisfy the accrual rules of § 411(b)(1)(A), (B), and (C) for a plan year beginning before January 1, 2009 (because the interest credits under the plan are insufficient to compensate for the effect of age-based or service-based pay credits) can be retroactively amended so that the lump sum-based benefit formula satisfies an accrual rule of § 411(b)(1)(A), (B), and (C) for the years involved.

The relief under the prior paragraph does not extend to other issues under § 411. Accordingly, before a favorable determination letter can be issued, the plan must otherwise satisfy the requirements of § 411.⁵ Thus, for example, in order to avoid a forfeiture of the accrued benefit under the plan for purposes of § 411, or to ensure compliance with the accrual rules of § 411(b)(1)(A), (B), and (C), the annual benefit payable at normal retirement age attributable to the lump sum-based benefit formula at the end of the current year must not change thereafter, assuming that no change were to occur in any relevant factor used to determine benefits and disregarding any future pay credits (*e.g.*, under the plan, the annual benefit payable at normal retirement age attributable to the lump sum-based benefit formula as of the end of a year cannot increase or decrease after that year due merely to operation of the plan and the passage of time, as opposed to additional pay credits or changes in a relevant factor used to determine benefits).

DRAFTING INFORMATION

The principal author of this revenue ruling is James E. Holland, Jr. of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Holland may be reached by e-mail at RetirementPlanQuestions@irs.gov.

Section 6662.—Imposition of Accuracy-Related Penalty on Underpayments

Guidance is provided concerning when information shown on a return in accordance with the applicable forms and instructions will be adequate disclosure under section 6662(d) for purposes of reducing an understatement of income tax. See Rev. Proc. 2008-14, page 435.

Section 6694.—Understatement of Taxpayer's Liability by Tax Return Preparer

Guidance is provided concerning when information shown on a return in accordance with the applicable forms and instructions will be adequate disclosure under section 6694(a) for purposes of reducing an understatement of income tax due to a return preparer's unrealistic position. See Rev. Proc. 2008-14, page 435.

Section 7805.—Rules and Regulations

26 CFR 301.7805-1: Rules and regulations.

Whether section 7805(b) relief applies for certain plans under which a group of employees specified under the plan receives a benefit equal to the greatest of the benefits provided under two or more formulas (an applicable “greater-of” benefit), provided that each such formula standing alone would satisfy an accrual rule of section 411(b)(1)(A), (B), or (C) for the years involved. See Rev. Rul. 2008-7, page 419.

Section 9701.—Definitions of General Applicability

26 CFR 300.7: Enrollment of enrolled actuary fee.

T.D. 9370

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 300

User Fees Relating to Enrollment to Perform Actuarial Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

⁴ Any such amendment must satisfy the anticutback rules of § 411(d)(6).

⁵ As provided by Notice 2007-6, issues as to whether the conversion satisfies the requirements of § 411(b)(1)(H) will generally not be considered for plans where the conversion is before June 30, 2005.

SUMMARY: This document contains final regulations relating to user fees for the initial and renewed enrollment to become an enrolled actuary. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952.

DATES: *Effective Date:* These regulations are effective on December 21, 2007.

Applicability Date: For date of applicability, see §300.0(c).

FOR FURTHER INFORMATION CONTACT: Concerning cost methodology, Eva J. Williams at (202) 435-5514; concerning the final regulations, Kimberly Mattonen at (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Employee Retirement Income Security Act of 1974 (Public Law 93-406) ordered the Secretary of Labor and the Secretary of Treasury to establish a Joint Board for the Enrollment of Actuaries. 29 U.S.C. 1241. The Joint Board shall, by regulation, establish reasonable standards and qualifications for persons performing actuarial services and the Joint Board shall enroll such individuals who, upon application, satisfy such standards and qualifications. 29 U.S.C. 1242(a). The regulations at 20 CFR Part 901, Subpart B address eligibility for enrollment and renewal of enrollment. Pursuant to the Joint Board's bylaws, the Secretary of the Treasury is to appoint an Executive Director to the Board who has the delegated authority to administer the Board's enrollment program. The Secretary of the Treasury has delegated these functions to the Internal Revenue Service and the costs of these activities are borne by the Service.

20 CFR 901.11(d)(4) provides for a reasonable non-refundable fee for applications for renewal of enrollment. Form 5434-A, "Application for Renewal of Enrollment" presently states that the renewal fee is \$25. Final 26 CFR 300.7 and 300.8 establish separate \$250 user fees for the enrollment and renewal of enrollment process. These fees represent the IRS's costs in administering the program, and the \$250 fee for renewal of enrollment will supplant the \$25 fee.

Authority

The IOAA of 1952 (31 U.S.C. 9701) authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA of 1952 provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, a user fee should be set at an amount in order for the agency to recover the cost of providing the special service, unless the Office of Management and Budget grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the enrolled actuaries program. The IRS has determined that the full cost of administering the enrollment and re-enrollment processes is \$250 per enrolled actuary per process.

The final user fees will be implemented under the authority of the IOAA of 1952 and the OMB Circular.

On October 31, 2007, a notice of proposed rulemaking (REG-134923-07, 2007-47 I.R.B. 1037) was published in the **Federal Register** [72 FR 61583]. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted by this Treasury decision.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic

impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These final rules affect enrolled actuaries, of which there are currently 4,600 active. The economic impact of these regulations on any small entity would result from a small entity, including a sole proprietor, being required to pay a fee prescribed by these regulations in order to obtain a particular service. The appropriate NAICS codes for enrolled actuaries relate to Insurance Other (524298) and Administrative and General Management Consulting, Including Financial Consulting (541611). Entities identified under these codes are considered small under the SBA size standards (13 CFR 121.201) if their annual revenue is less than \$6.5 million. The IRS estimates that as many as 2,070 enrolled actuaries may be operating as or employed by small entities. Therefore, the IRS has determined that these final rules will affect a substantial number of small entities. The dollar amounts of the fees are not, however, substantial enough to have a significant economic impact on any entity subject to the fees. The amounts of the fees are commensurate with, if not less than, the amount charged by professional organizations. Persons who elect to apply for enrollment or renewal of enrollment also receive benefits from obtaining the enrolled actuary designation. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Drafting Information

The principal author of these regulations is Kimberly A. Mattonen of the Office of the Associate Chief Counsel (Procedure & Administration).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended as follows:

1. Paragraphs (b)(7) and (b)(8) are added.

2. Paragraph (c) is revised.

The additions and revision read as follows:

§300.0 User fees, in general.

* * * * *

(b) * * *

(7) Enrolling an enrolled actuary.

(8) Renewing the enrollment of an enrolled actuary.

(c) *Effective/applicability date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003; the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006; the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007; the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is appli-

cable January 1, 2007; and the user fee for the enrollment and renewal of enrollment for enrolled actuaries is applicable January 22, 2008.

Par. 3. Section 300.7 is added to read as follows:

§300.7 Enrollment of enrolled actuary fee.

(a) *Applicability.* This section applies to the initial enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part 901.

(b) *Fee.* The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$250.00.

(c) *Person liable for the fee.* The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Par. 5. Section 300.8 is added to read as follows:

§300.8 Renewal of enrollment of enrolled actuary fee.

(a) *Applicability.* This section applies to the renewal of enrollment of enrolled ac-

tuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part 901.

(b) *Fee.* The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is \$250.00.

(c) *Person liable for the fee.* The person liable for the renewal of enrollment fee is the person renewing their enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Linda E. Stiff,
*Deputy Commissioner for
Services and Enforcement.*

Approved December 17, 2007.

Eric Solomon,
*Assistant Secretary of
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on December 18, 2007, 2:32 p.m., and published in the issue of the Federal Register for December 21, 2007, 72 F.R. 72606)

Part III. Administrative, Procedural, and Miscellaneous

Transition Guidance for New Funding Rules and Funding-Related Benefit Limitations Under PPA '06

Notice 2008-21

I. PURPOSE

This notice announces a later effective date than originally proposed for certain proposed regulations under §§ 430 and 436 of the Internal Revenue Code (Code), as added by the Pension Protection Act of 2006, Public Law 109-280 (PPA). In addition, this notice provides transitional guidance for 2008 under § 436 for small plans with end-of-year valuation dates.

II. BACKGROUND

Section 412 provides minimum funding requirements that generally apply for defined benefit pension plans. Section 430, which was added by PPA, specifies the minimum funding requirements that apply to single employer pension plans (including multiple employer plans) pursuant to § 412.

Section 430(h)(3) provides rules regarding the mortality tables to be used for purposes of determining any present value or making any other computation under § 430. Section 430(h)(3)(C) provides rules for a plan sponsor's use, with the approval of the Secretary, of employer-specific substitute mortality tables in lieu of the standard mortality tables that are otherwise used under § 430(h)(3)(A). On May 31, 2007, proposed regulations under § 430(h)(3)(C) were published in the Federal Register as § 1.430(h)(3)-2 (72 FR 29456). Rev. Proc. 2007-37, 2007-25 I.R.B. 1433, sets forth standards and procedures for obtaining approval to use substitute mortality tables.

Section 430(f) provides for certain funding balances referred to as the pre-funding balance and the funding standard carryover balance to be used to reduce the otherwise applicable minimum required contribution for a plan year. On August 31, 2007, proposed regulations under § 430(f)

were published in the Federal Register as § 1.430(f)-1 (72 FR 50544).

Section 401(a)(29) requires that a defined benefit plan (other than a multiemployer plan) satisfy the requirements of § 436. Section 436 sets forth a series of limitations on the accrual and payment of benefits under an underfunded plan. Section 436(b) places limitations on the payment of plant shutdown benefits and other unpredictable contingent event benefits, § 436(c) places limitations on plan amendments that increase liabilities for benefits, § 436(d) places limitations on the payment of accelerated benefit distributions, and § 436(e) places limitations on benefit accruals. These limitations are applied based on the plan's adjusted funding target attainment percentage (AFTAP) for the plan year, as certified by the plan's enrolled actuary.

Section 436(j) provides definitions that are used under § 436, including the definition of a plan's AFTAP. In general, a plan's AFTAP is based on the plan's funding target attainment percentage (FTAP) under § 430(d)(2) for the plan year. However, the plan's AFTAP is determined by adding the aggregate amount of purchases of annuities for employees other than highly compensated employees (within the meaning of § 414(q)) made by the plan during the two preceding plan years to the numerator and the denominator of the fraction used to determine the FTAP.

Section 436(h) sets forth a series of presumptions that apply during the portion of the plan year that is before the plan's enrolled actuary has certified the plan's AFTAP for the year. Under § 436(h)(3), if any of the § 436 limitations did not apply to the plan for the preceding year, but the AFTAP of the plan for the preceding year was not more than 10 percentage points greater than the percentage that would have caused a limitation to apply to the plan for the preceding year and, as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual AFTAP for the current plan year, then, until the enrolled actuary certifies the plan's actual AFTAP for the current plan year, the plan's AFTAP for the current plan year is presumed to

be equal to 10 percentage points less than the AFTAP of the plan for the preceding plan year. Under § 436(h)(2), if the plan's enrolled actuary has not certified the plan's AFTAP by the first day of the 10th month of the current plan year, the plan's AFTAP for the current plan year is conclusively presumed to be less than 60 percent as of that day.

Section 430(g)(1) provides that all determinations made under § 430 for a plan year (including the determination of a plan's FTAP and AFTAP) must be made as of the plan's valuation date. Section 430(g)(2) provides that, other than for small plans with 100 or fewer participants (determined as provided in § 430(g)(2)(B) and (C)), the valuation date for a plan year must be the first day of the plan year.

Section 436(k) provides that, for purposes of § 436, in the case of plan years beginning in 2008, the FTAP for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

Proposed regulations under § 436 were published as § 1.436-1 on August 31, 2007 (72 FR 50544).¹ Section 1.436-1(j)(2) and (3) of the proposed regulations would provide rules for determining the FTAP and AFTAP for purposes of applying the § 436 benefit limitations. Section 1.436-1(j)(3)(iii)(B) provides that, for purposes of determining the plan's AFTAP for the first year § 436 applies to the plan, the adjusted funding target is equal to the current liability determined pursuant to § 412(l)(7) as of the plan's valuation date for the plan year that precedes the first plan year for which § 436 applies to the plan, increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in § 414(q)) which were made by the plan during the preceding 2 plan years.

Proposed § 1.436-1(j)(3)(iv) provides that, in any case in which the plan's enrolled actuary has not issued a certification of the AFTAP of the plan for the plan year preceding the plan year § 436 first applies to the plan (the pre-effective plan year), the AFTAP of the plan for the plan year is presumed to be less than 60 percent un-

¹ A correction notice was published with respect to this notice of proposed rulemaking in the Federal Register dated November 9, 2007 (72 FR 63528).

til the AFTAP of the plan for that pre-effective plan year has been certified. Under the proposed regulations, this rule applies for purposes of § 1.436-1(b) and (c) at the beginning of the first plan year that § 436 applies to the plan and applies for purposes of § 1.436-1(d) and (e) as of the first day of the fourth month of the first plan year that § 436 applies to the plan. The guidance set forth in the proposed § 436 regulations with respect to application of these presumptions does not address how the rules of § 436(h) apply to a plan with a valuation date that is not the first day of the plan year. See proposed § 1.436-1(h)(5).

On December 31, 2007, proposed regulations under §§ 430(d), 430(g), 430(h), and 430(i) were published in the Federal Register (72 FR 74215). Those regulations are proposed to apply to plan years beginning on or after January 1, 2009.

III. TRANSITIONAL GUIDANCE

A. Delay of effective date of regulations under §§ 430(f), 430(h)(3)(C), and 436

In order to maintain a uniform effective date for guidance under § 430, this notice announces that, when regulations proposed under § 1.430(f)-1 (regarding maintenance of certain funding balances) and § 1.430(h)(3)-2 (regarding substitute mortality tables) are finalized, those final regulations will not apply to plan years beginning before January 1, 2009.² In addition, because of the close interaction between the § 430 and § 436 rules and requirements, when regulations proposed under § 1.436-1 are finalized, those final regulations also will not apply to plan years beginning before January 1, 2009. For plan years beginning during 2008, taxpayers must follow applicable statutory provisions and can rely on the proposed regulations for compliance with those statutory provisions. Taking into account the items with respect to which guidance is provided in this Part III(A), the Service will not challenge a reasonable interpretation of an applicable statutory provision under § 430 or 436 for plan years beginning during 2008.

In applying the statutory provisions of §§ 430 and 436 for plan years beginning during 2008, taxpayers should note the following:

- Although § 1.430(h)(3)-2 will not apply to plan years beginning before January 1, 2009, taxpayers can use substitute mortality tables for plan years beginning during 2008 only if those mortality tables are approved by the Service under the procedures set forth in Rev. Proc. 2007-37.
- Under § 430(g)(3)(B), the use of averaging methods in determining the value of plan assets is permitted only in accordance with methods prescribed in Treasury regulations. Accordingly, under current law, for plan years beginning in 2008, taxpayers cannot use asset valuation methods other than fair market value (as described in § 430(g)(3)(A)) except as provided in the Treasury regulations. The final regulations will permit the averaging method set forth in the proposed regulations to apply for plan years beginning during 2008.
- Under § 436(k), for purposes of § 436, in the case of plan years beginning in 2008, the FTAP for the preceding plan year may be determined using such methods of estimation as the Secretary may provide. Thus, methods of estimating the FTAP for the 2007 plan year can be used for purposes of applying the rules of § 436 for the 2008 plan year only if those methods are permitted in Treasury regulations. Final regulations will permit the estimation methods set forth in the proposed regulations to be used for the 2008 plan year, and will also permit the rules set forth in Part III(B) to be used for this purpose for small plans with end-of-year valuation dates. Taxpayers should not assume that other methods will be permitted except as set forth in published guidance.

For plan years beginning during 2008, benefit restrictions under § 436(d) and (e) will apply beginning with the first day of the fourth month of the plan year if no certification of the plan's AFTAP for either the prior plan year or the current plan year is received by that date. In addition, in the case of a plan amendment or plant shutdown or other unpredictable contin-

gent event occurring on or after the first day of a plan year beginning during 2008, the benefit limitations of § 436(b) and (c) must be applied based on the AFTAP certified for the current plan year, or, if no such certification has yet been received, on the AFTAP certified for the prior plan year except as provided under § 436(h)(2) or § 436(h)(3). Without the transition guidance provided in Part III(B) of this notice, the enrolled actuary's certification of the prior year AFTAP for a small plan with an end of year valuation date could not readily be made before these rules would apply. Therefore, in the absence of such transition guidance, the AFTAP of such a plan for the plan year beginning in 2008 would be presumed to be less than 60 percent as of the first day of the fourth month of that plan year for purposes of the limitations under § 436(d) and (e) (and the AFTAP of such a plan would generally be considered to be less than 60 percent in the case of a plan amendment or plant shutdown or similar event as of the first day of the 2008 plan year pursuant to the rules of § 436(b) and (c)).

B. Transition rule for application of § 436 benefit limitations by small plans with end of the plan year valuation dates

In the case of a plan that, under § 430(g), has a valuation date that is the last day of the plan year for each of the plan years beginning in 2006, 2007, and 2008, for purposes of applying the benefit limitations of § 436 for the plan year beginning during 2008, a certification of the plan's AFTAP for the prior plan year (the 2007 plan year) is permitted to be made by determining the FTAP for the 2007 plan year as follows:

- The FTAP for the 2007 plan year is equal to a fraction (expressed as a percentage), the numerator of which is the value of net plan assets as determined below, and the denominator of which is the plan's current liability determined pursuant to § 412(l)(7) on the valuation date for the second plan year that begins before 2008 (the 2006 plan year), including the increase in current liability for the 2006 plan year.

² It is planned that, when proposed § 1.430(h)(3)-1 (which provides generally applicable mortality tables) is finalized, that section will apply to plan years beginning on or after January 1, 2008, as originally proposed.

- For purposes of determining the FTAP for the 2007 plan year, the value of net plan assets is determined as the value of plan assets under § 412(c)(2) as in effect for the 2006 plan year, adjusted as follows: (1) contributions made for the 2006 plan year are taken into account, regardless of whether those contributions are made during the plan year or after the end of the plan year and within the period specified under § 412(c)(10); (2) the value of plan assets taking into account the amount of contributions made for the 2006 plan year is increased or decreased, as necessary, so that it is neither less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for the 2006 plan year (taking into account assets attributable to contributions for the 2006 plan year); and (3) the plan's funding standard account credit balance as of the end of the 2006 plan year is subtracted (unless the value of plan assets is greater than or equal to 90 percent of the plan's current liability determined under § 412(l)(7) on the valuation date for the 2006 plan year).

A plan that determines the prior year AFTAP for the 2008 plan year in accordance with the rules of this Part III(B) cannot increase plan assets for purposes of this computation through elective reduction of the 2008 prefunding balance. If the plan sponsor wishes to increase plan assets for purposes of determining the prior year AFTAP through elective reduction of the prefunding balance, the plan sponsor should use generally applicable rules for determination of the prior year AFTAP (which would require use of the plan's 2007 valuation rather than the plan's 2006 valuation).

IV. COMMENTS REQUESTED AND FUTURE REGULATIONS

The transitional guidance provided in Part III applies for plan years beginning in 2008. Section 2(c)(2)(F) of both S. 1974 (passed by the Senate on December 19, 2007) and H.R. 3361 (as introduced in the House of Representatives), which would provide technical corrections to provisions enacted under PPA, would add a new pro-

vision to § 436 to provide the Secretary of the Treasury with authority to prescribe rules for the application of § 436 to plans with valuation dates other than the first day of the plan year. If statutory authority similar to that in these technical correction provisions is enacted, the IRS and the Treasury Department are considering including rules in the final regulations substantially similar to those set forth in Part III(B) for the determination of the prior year AFTAP for a plan with an end-of-year valuation date with respect to plan years after 2008. Similarly, if such authority is enacted, the IRS and the Treasury Department are considering including rules in the final regulations under which the certification of an AFTAP as of the last day of the prior plan year will be treated as the certification of the AFTAP for the current plan year for a plan with an end-of-year valuation date. The IRS and the Treasury Department are not contemplating any additional special rules under § 436 for small plans that have a valuation date other than the first day of the plan year. Thus, a plan with a mid-year valuation date may have difficulty in obtaining the required actuarial certification in time to avoid the imposition of benefit limitations under § 436. Comments are requested regarding the proposals set forth in this Part IV and whether there is a need for any other special rules for plans with valuation dates other than the first day of the plan year.

Written comments should be submitted by April 21, 2008. Send submissions to CC:PA:LPD:DRU (Notice 2008-21), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, to CC:PA:LPD:DRU (Notice 2008-21), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking portal at <http://www.regulations.gov> (Notice 2008-21). All comments will be available for public inspection.

DRAFTING INFORMATION

The principal authors of this notice are David Ziegler of the Employee Plans, Tax Exempt and Government Entities Division, and Lauson C. Green

and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, please contact Mr. Ziegler via e-mail at RetirementPlanQuestions@irs.gov, or you may contact Mr. Green and Ms. Marshall at (202) 622-6090 (not a toll-free number).

Supplemental Health Insurance Coverage as Excepted Benefits Under HIPAA and Related Legislation

Notice 2008-23

PURPOSE

This notice provides a safe harbor for supplemental group health insurance to be considered excepted from the requirements that generally apply under Chapter 100 of the Internal Revenue Code (sections 9801 - 9833) to benefits provided under a group health plan. It is expected that the standards of this safe harbor will be incorporated as requirements (rather than just as a safe harbor) in a notice of proposed rulemaking in the future.

BACKGROUND

HIPAA Health Reform and Related Legislation

Titles I and IV of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936 (HIPAA) amended the Code, the Employee Retirement Income Security Act (ERISA), and the Public Health Service Act (PHS Act) to improve portability, access, and continuity with respect to group health plan coverage provided in connection with employment. These laws include limitations on preexisting condition exclusions, require issuance of certificates of creditable coverage, provide special enrollment rights, and prohibit discrimination on the basis of any health factor. Later amendments to these laws provide protections relating to mental health parity and hospital lengths of stay following childbirth. Regulations issued by the Departments of the Treasury, of Labor, and of

Health and Human Services (the Departments) on these group market provisions are contained in 26 CFR Part 54, 29 CFR Part 2590, and 45 CFR Parts 144 and 146. Additional reforms were provided in the PHS Act for health coverage in the individual market and are contained in 45 CFR Parts 144 and 148.

In general, these health reform provisions apply to group health plans (generally plans established or maintained by employers or employee organizations, or both) and health insurance issuers in the group or individual market. However, these provisions do not apply to certain excepted benefits. In general, if all benefits under a plan or coverage are excepted benefits, then the plan and any health insurance coverage under the plan do not have to comply with the health reform requirements, and the coverage may not qualify as creditable coverage.

Supplemental Health Insurance Coverage

One category of excepted benefits is supplemental excepted benefits. Benefits are supplemental excepted benefits only if they are provided under a separate policy, certificate, or contract of insurance and are either Medicare supplemental health insurance, TRICARE supplemental programs, or similar supplemental coverage provided to coverage under a group health plan. The phrase “similar supplemental coverage provided to coverage under a group health plan” is not defined in the statute or regulations. However, the regulations clarify that one requirement to be similar supplemental coverage is that the coverage must be specifically designed to fill gaps in primary coverage, such as coinsurance or deductibles (but similar supplemental coverage does not include coverage that becomes secondary or supplemental only under a coordination-of-benefits provision). § 54.9831-1(c)(5)(i)(C) of the Miscellaneous Excise Tax Regulations, 29 CFR 2590.732(c)(5)(i)(C), and 45 CFR 146.145(c)(5)(i)(C).

Coordination of Administration

Various situations have come to the attention of the Departments that raise concerns about whether all of the coverage

that is being marketed as similar supplemental coverage actually qualifies as such.

Section 104 of HIPAA requires the Secretaries of the Treasury, of Labor, and of Health and Human Services to ensure that guidance under HIPAA issued by the Departments that relates to the same matter be administered so as to have the same effect at all times. In accordance with section 104 of HIPAA, each of the Departments is issuing guidance for “similar supplemental coverage” to be considered benefits excepted from the requirements of HIPAA. The guidance being issued has been developed on a coordinated basis by the Departments. HHS is also issuing guidance on similar supplemental coverage for the individual market.

DISCUSSION

The section immediately below (SAFE HARBOR STANDARDS) provides that if the standards in that section are satisfied, the supplemental health insurance will be considered to satisfy the conditions for being excepted benefits for purposes of chapter 100. Supplemental health insurance not satisfying the conditions for the safe harbor is subject to further examination for a determination whether it is not “similar supplemental coverage to coverage under a group health plan” and thus is subject to all the requirements of chapter 100.

To fall within that safe harbor, the policy, certificate, or contract of insurance must be issued by an entity that does not provide the primary coverage under the plan and must be specifically designed to fill gaps in primary coverage.

To be “similar supplemental coverage to coverage under a group health plan”, the value of the supplemental coverage must be significantly less than the value of the primary coverage that it supplements. To fall within the safe harbor below, the cost of supplemental coverage may not exceed 15 percent of the cost of the plan’s primary coverage. Cost is determined in the same manner as the “applicable premium” is calculated under a COBRA continuation provision.¹ Some plans subject to HIPAA titles I or IV are not subject to the COBRA continuation coverage requirements, such as church plans and plans maintained by an employer with fewer than 20 employ-

ees. These plans should compute cost as if they were subject to COBRA. (For insured coverage — all supplemental coverage and primary coverage to the extent insured — the COBRA cost is, for purposes of this notice, the cost of the insurance coverage.)

Issuers of Medicare supplemental health insurance (commonly referred to as “Medigap”) generally are subject to prohibitions against discrimination based on enrollees’ or potential enrollees’ health status. Accordingly, to fall within the safe harbor below, supplemental health insurance also must not differentiate among individuals in eligibility, benefits, or premiums based upon any health factor of the individual.

SAFE HARBOR STANDARDS

Supplemental health insurance under a group health plan will be considered to be “similar supplemental coverage provided to coverage under a group health plan” under § 54.9831-1(c)(5)(i)(C) if it is provided through a policy, certificate, or contract of insurance separate from the primary coverage under the plan and if it satisfies all of the following requirements:

(1) *Independent of Primary Coverage.* The supplemental policy, certificate, or contract of insurance must be issued by an entity that does not provide the primary coverage under the plan. For this purpose, entities that are part of the same controlled group of corporations or part of the same group of trades or businesses under common control, within the meaning of section 52(a) or (b) of the Code, are considered a single entity.

(2) *Supplemental for Gaps in Primary Coverage.* The supplemental policy, certificate, or contract of insurance must be specifically designed to fill gaps in primary coverage, such as coinsurance or deductibles, but does not include a policy, certificate, or contract of insurance that becomes secondary or supplemental only under a coordination-of-benefits provision.

(3) *Supplemental in Value of Coverage.* The cost of coverage under the supplemental policy, certificate, or contract of insurance must not exceed 15 percent of the cost of primary coverage. Cost is determined in the same manner as the applicable pre-

¹ Under the COBRA rules, plans are generally permitted to charge up to 102 percent of the applicable premium. Thus, COBRA cost for purposes of this notice is 100 percent of the applicable premium, not 102 percent of the applicable premium that the plan is generally permitted to charge under the COBRA rules.

mium is calculated under a COBRA continuation provision.

(4) *Similar to Medicare Supplemental Coverage.* The supplemental policy, certificate, or contract of insurance that is group health insurance coverage must not differentiate among individuals in eligibility, benefits, or premiums based on any health factor of an individual (or any dependent of the individual).

DRAFTING INFORMATION

The principal author of this notice is Russ Weinheimer of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Russ Weinheimer at (202) 622-6080 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part 1, §§ 6662, 6694, 1.6662-4, 1.6694-2.)

Rev. Proc. 2008-14

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2006-48, 2006-47 I.R.B. 934, and identifies circumstances under which the disclosure on a taxpayer's return with respect to an item or a position is adequate for the purpose of reducing the understatement of income tax under section 6662(d) of the Internal Revenue Code (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the preparer penalty under section 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. This revenue procedure does not apply with respect to any other penalty provisions (including the disregard provisions of the section 6662 accuracy-related penalty, which are subject to an exception for adequate disclosure). Also, under this revenue procedure, no disclosure on a return other than an income tax return will be adequate with respect to a preparer penalty under section 6694(a).

This revenue procedure applies to any income tax return filed on 2007 tax forms for a taxable year beginning in 2007, and to any income tax return filed on 2007 tax

forms in 2008 for short taxable years beginning in 2008.

SECTION 2. CHANGES FROM REV. PROC. 2006-48

.01. Editorial changes and line reference changes to Form 1040, Schedule A, have been made in updating Rev. Proc. 2006-48.

.02. This revenue procedure has been updated to reflect changes made to section 170(f) by Public Law 109-280, section 1217, and to section 6694 by Public Law 110-28, section 8246.02.

.03. Section 4.02(3)(f) concerning difference in book and income tax reporting is expanded by adding Form 1120-F, Schedule M-3 (Form 1120-F), *Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of \$10 Million or More*: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

SECTION 3. BACKGROUND

.01 If section 6662 applies to any portion of an underpayment of tax required to be shown on a return, an amount equal to 20 percent of the portion of the underpayment to which the section applies is added to the tax. (The penalty rate is 40 percent in the case of gross valuation misstatements under section 6662(h).) Section 6662(b)(2) applies to the portion of an underpayment of tax that is attributable to a substantial understatement of income tax.

.02 Section 6662(d)(1) provides that there is a substantial understatement of income tax if the amount of the understatement exceeds the greater of 10 percent of the amount of tax required to be shown on the return for the taxable year or \$5,000. Section 6662(d)(1)(B) provides special rules for corporations. A corporation (other than an S corporation or personal holding company) has a substantial understatement of income tax if the amount of the understatement exceeds the lesser of 10 percent of the tax required to be shown on the return for a taxable year (or, if greater, \$10,000) or \$10,000,000. Section 6662(d)(2) defines an understatement as the excess of the amount of tax required to

be shown on the return for the taxable year over the amount of the tax that is shown on the return reduced by any rebate (within the meaning of section 6211(b)(2)).

.03 In the case of an item not attributable to a tax shelter, section 6662(d)(2)(B)(ii) provides that the amount of the understatement is reduced by the portion of the understatement attributable to any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of the item by the taxpayer.

.04 Section 6694(a) imposes a penalty on a tax return preparer for filing a return or claim for refund that results in an understatement of liability due to a position of which the preparer knew or should have known, if the preparer did not have a reasonable belief that the position would more likely than not be sustained on the merits and the position was not disclosed in accordance with section 6662(d)(2)(B)(ii). The penalty is equal to the greater of \$1,000 or 50% of the income derived (or to be derived) by the preparer with respect to the return or claim.

.05 In general, this revenue procedure provides guidance for determining when disclosure is adequate for purposes of section 6662(d)(2)(B)(ii) and section 6694(a)(2)(C)(i). For purposes of this revenue procedure, the taxpayer must furnish all required information in accordance with the applicable forms and instructions, and the money amounts entered on these forms must be verifiable. Annual guidance under Treas. Reg. § 1.6662-4(f)(2) and Treas. Reg. § 1.6694-3(e)(1) and (2) for returns filed on 2006, 2005, and 2004 tax forms is provided in Rev. Proc. 2006-48, 2006-47 I.R.B. 934, Rev. Proc. 2005-75, 2005-2 C.B. 1137, and Rev. Proc. 2004-73, 2004-2 C.B. 999, respectively.

.06 Fiscal and short tax year returns. (a) In general. This revenue procedure may apply to a return for a fiscal tax year that begins in 2007 and ends in 2008. This revenue procedure may also apply to a short year return for a period beginning in 2008 if the return is to be filed before the 2008 forms are available. (Note that individuals are generally not put in this position as a decedent's final return for a fractional part of a year is due the fifteenth day of

the fourth month following the close of the 12-month period which began with the first day of such fractional part of the year. See Treas. Reg. section 1.6072-1(b.) In the case of fiscal year and short year returns, the taxpayer must take into account any tax law changes that are effective for tax years beginning after December 31, 2007, even though these changes are not reflected on the form.

(b) Tax law changes effective after December 31, 2007. This document does not take into account the effect of tax law changes effective for tax years beginning after December 31, 2007. If a line referenced in this revenue procedure is affected by such a change and requires additional reporting, a taxpayer may have to file Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement* until the Service prescribes criteria for complying with the requirement.

SECTION 4. PROCEDURE

.01 General.

(1) Additional disclosure of facts relevant to, or positions taken with respect to, issues involving any of the items set forth below is unnecessary for purposes of reducing any understatement of income tax under section 6662(d) (except as otherwise provided in section 4.02(3) concerning Schedules M-1 and M-3), provided that the forms and attachments are completed in a clear manner and in accordance with their instructions.

(2) The money amounts entered on the forms must be verifiable, and the information on the return must be disclosed in the manner described below. For purposes of this revenue procedure, a number is verifiable if, on audit, the taxpayer can demonstrate the origin of the number (even if that number is not ultimately accepted by the Internal Revenue Service) and the taxpayer can show good faith in entering that number on the applicable form.

(3) The disclosure of an amount as provided in section 4.02 below is not adequate when the understatement arises from a transaction between related parties. If an entry may present a legal issue or controversy because of a related party transaction, then that transaction and the relationship must be disclosed on a Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*.

(4) When the amount of an item is shown on a line that does not have a preprinted description identifying that item (such as on an unnamed line under an "Other Expense" category) the taxpayer must clearly identify the item by including the description on that line. For example, to disclose a bad debt for a sole proprietorship, the words "bad debt" must be written or typed on the line of Schedule C that shows the amount of the bad debt. Also, for Schedule M-3 (Form 1120), Part II, line 25, Other income (loss) items with differences, or Part III, line 35, Other expense/deduction items with differences, the entry must provide descriptive language; for example, "Cost of non-compete agreement deductible not capitalizable." If space limitations on a form do not allow for an adequate description, the description must be continued on an attachment.

(5) Although a taxpayer may literally meet the disclosure requirements of this revenue procedure, the disclosure will have no effect for purposes of the section 6662 accuracy-related penalty if the item or position on the return: (1) Does not have a reasonable basis as defined in Treas. Reg. § 1.6662-3(b)(3); (2) Is attributable to a tax shelter item as defined in section 6662(d)(2) and Treas. Reg. § 1.6662-4(g); or (3) Is not properly substantiated or the taxpayer failed to keep adequate books and records with respect to the item or position. See I.R.C. § 6694(a), as amended by the Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, 121 Stat. 190, and any guidance published thereunder regarding limitations on the effectiveness of a disclosure on the applicability of the section 6694 return preparer penalty.

.02 Items.

(1) Form 1040, Schedule A, *Itemized Deductions*:

(a) Medical and Dental Expenses: Complete lines 1 through 4, supplying all required information.

(b) Taxes: Complete lines 5 through 9, supplying all required information. Line 8 must list each type of tax and the amount paid.

(c) Interest Expenses: Complete lines 10 through 15, supplying all required information. This section 4.02(1)(c) does not apply to (i) amounts disallowed under section 163(d) unless Form 4952, *Investment Interest Expense Deduction*, is com-

pleted, or (ii) amounts disallowed under section 265.

(d) Contributions: Complete lines 16 through 19, supplying all required information. Enter the amount of the contribution reduced by the value of any substantial benefit (goods or services) provided by the donee organization in consideration, in whole or in part. Entering the value of the contribution unreduced by the value of the benefit received will not constitute adequate disclosure. If a contribution of \$250 or more is made, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(8), is obtained from the donee organization. If contribution of cash of less than \$250 is made, this section will not apply unless a bank record or written communication from the donee, as required by section 170(f)(17), is obtained from the donee organization. If a contribution of property other than cash is made and the amount claimed as a deduction exceeds \$500, attach a properly completed Form 8283, *Noncash Charitable Contributions*, to the return. In addition to the Form 8283, if a contribution of a qualified motor vehicle, boat, or airplane has a value of more than \$500, this section will not apply unless a contemporaneous written acknowledgment, as required by section 170(f)(12), is obtained from the donee organization and attached to the return. An acknowledgment under section 170(f)(8) is not required if an acknowledgment under section 170(f)(12) is required.

(e) Casualty and Theft Losses: Complete Form 4684, *Casualties and Thefts*, and attach to the return. Each item or article for which a casualty or theft loss is claimed must be listed on Form 4684.

(2) Certain Trade or Business Expenses (including, for purposes of this section, the following six expenses as they relate to the rental of property):

(a) Casualty and Theft Losses: The procedure outlined in section 4.02(1)(e) must be followed.

(b) Legal Expenses: The amount claimed must be stated. This section does not apply, however, to amounts properly characterized as capital expenditures, personal expenses, or non-deductible lobbying or political expenditures, including amounts that are required to be (or that are) amortized over a period of years.

(c) Specific Bad Debt Charge-off: The amount written off must be stated.

(d) Reasonableness of Officers' Compensation: Form 1120, Schedule E, *Compensation of Officers*, must be completed when required by its instructions. The time devoted to business must be expressed as a percentage as opposed to "part" or "as needed." This section does not apply to "golden parachute" payments, as defined under section 280G. This section will not apply to the extent that remuneration paid or incurred exceeds the \$1 million-employee-remuneration limitation, if applicable.

(e) Repair Expenses: The amount claimed must be stated. This section does not apply, however, to any repair expenses properly characterized as capital expenditures or personal expenses.

(f) Taxes (other than foreign taxes): The amount claimed must be stated.

(3) Differences in book and income tax reporting.

(a) Form 1065. Schedule M-3 (Form 1065), *Net Income (Loss) Reconciliation for Certain Partnerships*: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(b) Form 1120. (i) Schedule M-1, *Reconciliation of Income (Loss) per Books With Income per Return*.

(ii) Schedule M-3 (Form 1120), *Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More*: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(c) Form 1120-L. Schedule M-3 (Form 1120-L), *Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of \$10 Million or More*: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(d) Form 1120-PC. Schedule M-3 (Form 1120-PC), *Net Income (Loss) Reconciliation for U.S. Property and Casualty*

Insurance Companies With Total Assets of \$10 Million or More: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(e) Form 1120S. Schedule M-3 (Form 1120S), *Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More*: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

(f) Form 1120-F. Schedule M-3 (Form 1120-F), *Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of \$10 Million or More*: Column (b), *Temporary Difference*, and Column (c), *Permanent Difference*, of Part II, (reconciliation of income (loss) items) and Part III (reconciliation of expense/deduction items).

For Schedule M-1 and all Schedules M-3, the information provided reasonably must be expected to apprise the Service of the nature of the potential controversy concerning the tax treatment of the item. If the information provided does not so apprise the Service, a Form 8275 or Form 8275-R, must be used to adequately disclose the item (see Part II of the instructions for those forms).

Note: An item reported on a line with a pre-printed description, shown on an attached schedule, or "itemized" on Schedule M-1 may represent the aggregate amount of several transactions producing that item (*i.e.*, a group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business). In some instances, the potentially controversial item may involve a portion of the amount disclosed on the schedule. The Service will not be reasonably apprised of the potential controversy by the amount disclosed. In these instances, the taxpayer must use Form 8275 or Form 8275-R regarding that portion of the item.

The combining of unlike items, whether on Schedule M-1 or Schedule M-3 (or on an attachment when directed by the instructions), will not constitute an adequate disclosure.

(4) Foreign Tax Items:

(a) International Boycott Transactions: Transactions disclosed on Form 5713, *International Boycott Report*. Schedule A, *International Boycott Factor (Section 999(c)(1))*; Schedule B, *Specifically Attributable Taxes and Income (Section 999(c)(2))*; and Schedule C, *Tax Effect of the International Boycott Provisions*, must be completed when required by their instructions.

(b) Treaty-Based Return Position: Transactions and amounts under section 6114 or section 7701(b) as disclosed on Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*.

(5) Other:

(a) Moving Expenses: Complete Form 3903, *Moving Expenses*, and attach to the return.

(b) Employee Business Expenses: Complete Form 2106, *Employee Business Expenses*, or Form 2106-EZ, *Unreimbursed Employee Business Expenses*, and attach to the return. This section does not apply to club dues, or to travel expenses for any non-employee accompanying the taxpayer on the trip.

(c) Fuels Credit: Complete Form 4136, *Credit for Federal Tax Paid on Fuels*, and attach to the return.

(d) Investment Credit: Complete Form 3468, *Investment Credit*, and attach to the return.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to any income tax return filed on a 2007 tax form for a taxable year beginning in 2007, and to any income tax return filed on a 2007 tax form in 2008 for a short taxable year beginning in 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jennifer Wagner of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Branch 2 of Procedure and Administration at (202) 622-4940 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2008-5

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.

Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, The Director, Office of Professional Responsibility, may entertain a petition for reinstatement for any attor-

ney, certified public accountant, enrolled agent, or enrolled actuary censured, suspended, or disbarred, from practice before the Internal Revenue Service.

The following individuals' eligibility to practice before the Internal Revenue Service has been restored:

Name	Address	Designation	Date of Reinstatement
Cohen, Peter	Edison, NJ	CPA	June 01, 2004
Brunelle, Roswell J.	Queensbury, NY	CPA	June 10, 2004
Cohick, Jeffrey S.	Newville, PA	Enrolled Agent	October 30, 2004
Cotroneo, Nicholas	McLean, VA	CPA	February 28, 2007
Layson, David A.	Corydon, IN	Attorney	October 06, 2007
Tomasulo, Maria V.	Wantagh, NY	CPA	October 16, 2007
Emeziem, Kelechi C.	Antioch, CA	Attorney	October 17, 2007
Johnston, Gregory A.	Muscatine, IA	Attorney	October 17, 2007
Shapiro, Sidney C.	West Palm Beach, FL	CPA	October 29, 2007
Hubbard, Cynthia A.	Geneva, IL	Attorney	October 31, 2007
Moss, Steve E.	Henderson, NC	CPA	November 29, 2007
Schaffer, Robert J.	Baiting Hollow, NY	CPA	December 04, 2007
Woods, Dalton C.	Carrollton, TX	Enrolled Agent	December 04, 2007
Brown, Arthur I.	Miami, FL	CPA	December 14, 2007

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 the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service,

may offer 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
Bauman, John J.	Battle Creek, MI	CPA	Indefinite from October 1, 2007
Montgomery, Dwight M.	Redlands, CA	Attorney	Indefinite from October 1, 2007
Deku, John V.	Toledo, OH	Attorney	Indefinite from October 8, 2007
Ying, William F.	Beverly Hills, CA	CPA	Indefinite from October 9, 2007
Brill, Ann M.	Sheboygan, WI	CPA	Indefinite from October 10, 2007
Benvin, Anne C.	Phoenix, AZ	Enrolled Agent	Indefinite from October 22, 2007
Kingman, William B.	San Antonio, TX	Attorney	Indefinite from October 22, 2007
Nurney, J. Christopher	Hatboro, PA	CPA	Indefinite from October 22, 2007
Wren, Gary M.	Redding, CA	Enrolled Agent	Indefinite from October 29, 2007
Beck, Brian S.	Boston, MA	CPA	Indefinite from November 1, 2007
Draper, Jeffrey L.	Olathe, KS	CPA	Indefinite from November 1, 2007
Ehrlich, Gary P.	Chevy Chase, MD	CPA	Indefinite from November 1, 2007

Name	Address	Designation	Date of Suspension
Garrison, John C.	Prairie Village, KS	CPA	Indefinite from November 1, 2007
Greenslit, Wayne	Keene, NH	CPA	Indefinite from November 1, 2007
Moran, Philip D.	Salem, MA	Attorney	Indefinite from November 1, 2007
Wright, Cory	Reno, NV	CPA	Indefinite from November 1, 2007
Turbeville, Mary A.	Geyserville, CA	Enrolled Agent	Indefinite from November 16, 2007
Saffold, Rodger P.	Cleveland, OH	CPA	Indefinite from December 1, 2007
Voss, Patrick W.	Metairie, LA	CPA	Indefinite from December 1, 2007
Rosner, Ronald I.	Manahawkin, NJ	CPA	Indefinite from December 13, 2007
Johnson, Jr., Stanley	Miami, FL	Attorney	Indefinite from December 14, 2007

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
Crotts, William P.	Phoenix, AZ	Attorney	Indefinite from October 16, 2007
Daugherty, Troy L.	Olathe, KS	Attorney	Indefinite from October 16, 2007

Name	Address	Designation	Date of Suspension
Driscoll, Jr., Wilfred C.	Somerset, MA	Attorney	Indefinite from October 16, 2007
Shah, Ashok S.	Manalapan, NJ	CPA	Indefinite from October 16, 2007
Sheline, Calvin L.	Camp Verde, AZ	CPA	Indefinite from October 16, 2007
Bosse, Leigh D.	Hillsborough, NH	Attorney	Indefinite from October 24, 2007
Webb, James E.	Nashville, TN	CPA	Indefinite from October 25, 2007
Gottschalk, Don E.	Cedar Falls, IA	Attorney	Indefinite from October 31, 2007
Joy, Steven B.	Paton, IA	Attorney	Indefinite from October 31, 2007
Smallwood, Teresa L.	Durham, NC	Attorney	Indefinite from November 2, 2007
Donaldson, James F.	Denver, CO	Attorney	Indefinite from November 15, 2007
Roux, Johnathan M.	Fair Oaks, CA	CPA	Indefinite from November 20, 2007
Linville, Wiley T.	Denver, CO	Attorney	Indefinite from December 4, 2007
Andrade, Sergio R.	Inver Grove Hghts, MN	Attorney	Indefinite from December 13, 2007
Arzani, Mitzi H.	Charlotte, NC	CPA	Indefinite from December 13, 2007
Catron, Stephen B.	Knoxville, TN	Attorney	Indefinite from December 13, 2007
Coulagouri, Louis A.	Moorestown, NJ	Attorney	Indefinite from December 13, 2007

Name	Address	Designation	Date of Suspension
Crown, Charles K.	Blakeslee, PA	CPA	Indefinite from December 13, 2007
George, Philip J.	Great Falls, VA	Attorney	Indefinite from December 13, 2007
Heitz, John P.	Oneill, NE	Attorney	Indefinite from December 13, 2007
Jones, William F.	Park Rapids, MN	Attorney	Indefinite from December 13, 2007
Khoury, Arthur M.	Lawrence, MA	Attorney	Indefinite from December 13, 2007
McGree, Charles A.	Fort Payne, AL	Attorney	Indefinite from December 13, 2007
Nason, George H.	Franklin, TN	Attorney	Indefinite from December 13, 2007
Owen, Thomas A.	Arlington, TX	Attorney	Indefinite from December 13, 2007
Ozulumba, Michael	Boston, MA	Attorney	Indefinite from December 13, 2007
Phillips, Mark A.	Elm Grove, WI	Attorney	Indefinite from December 13, 2007
Simpson, Joseph H.	Amite, LA	Attorney	Indefinite from December 13, 2007
Sipes, Laura A.	St. Charles, MO	Attorney	Indefinite from December 13, 2007
Sullivan, Joseph O.	Warwick, NY	Attorney	Indefinite from December 13, 2007
Szegda, Michael A.	Old Tappan, NJ	Attorney	Indefinite from December 13, 2007
Misch, Paul M.	Akron, OH	Attorney	Indefinite from December 17, 2007

Name	Address	Designation	Date of Suspension
Brenner, Allen L.	Long Beach, NY	Attorney	Indefinite from December 20, 2007
Cook, Rirchard B.	Cockeysville, MD	Attorney	Indefinite from December 20, 2007
Shang, Wade V.	S. San Francisco, CA	CPA	Indefinite from December 20, 2007

Suspensions From Practice Before the Internal Revenue Service After Appeal

Under Title 31, Code of Federal Regulations, Part 10, after a decision is issued by an Administrative Law Judge, either party may appeal to the Secretary of the Treasury. The following individuals have been placed under suspension from practice before the Internal Revenue Service **AFTER** an appeal:

Name	Address	Designation	Effective Date
Andrews, Ted E.	Avon, IN	CPA	Indefinite from October 19, 2007

Disbarments 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 administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Ruocchio, Raymond	Havertown, PA	CPA	April 30, 2007
Roseman, Eric W.	Scottsdale, AZ	CPA	August 20, 2007
Solomon, Stanley	Brooklyn, NY	CPA	September 04, 2007
Marks, Robert	Medfield, MA	Attorney	October 15, 2007

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
Villarreal, Ricardo	Houston, TX	EA	September 24, 2007
Meisgeier, Deborah K.	Richmond, TX	EA	October 16, 2007
O'Brien, Colleen D.	Winter Park, FL	CPA	October 24, 2007
Staver, Peter J.	Southgate, MI	Attorney	November 06, 2007
Weiss, Ira	Pittsburgh, PA	Attorney	November 29, 2007
Orr, William S.	Kerrville, TX	CPA	December 04, 2007
Whitsitt, Richard	Panama City, FL	CPA	December 04, 2007

Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction Announcement 2008-9

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to temporary regulations (T.D. 9362, 2007-48 I.R.B. 1050) that were published in the **Federal Register** on Wednesday, November 7, 2007 (72 FR 62771) relating to a United States taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer's foreign tax liability that may affect the taxpayer's foreign tax credit and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

DATES: The correction is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 9362) that are the subject of the correction are under section 905(c) of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (T.D. 9362) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following amendments:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.905-3T is amended by revising the eighth sentence of paragraph (d)(3)(iii) *Example*.(i), the first sentence of paragraph (d)(3)(iii) *Example*.(ii), and the third and last sentences of paragraph (d)(3)(iii) *Example*.(iii) as follows:

§1.905-3T Adjustments to United States tax liability and to the pools of post-1986

undistributed earnings and post-1986 foreign income taxes as a result of a foreign tax redetermination (temporary).

* * * * *

(d) * * *

(3) * * *

(iii) * * *

Example. * * *

(i) * * * In 2009, CFC paid its actual foreign tax liability for 2008 of 80u. * * *

(ii) *Result in 2009.* If the 20u overaccrual of tax for 2008 were taken into account in 2008, CFC's general category post-1986 undistributed earnings would be 1,020u, CFC's general category post-1986 foreign income taxes would be \$280, and P would be deemed to pay \$27.45 of tax with respect to the 2008 distribution of 100u ($100u/1020u \times \$280 = \27.45). * * *

(iii) * * * As determined in 2011, CFC's post-1986 undistributed earnings for 2009 are 1350u (1,100u as revised for 2008, less 100u distributed in 2008, plus 350u earned in 2009), and its post-1986 foreign income taxes for 2009 are \$281.82 (\$200 as revised for 2008, less \$18.18 deemed paid in 2008, plus \$100 accrued for 2009). As redetermined in 2011, P's deemed paid credit with respect to the 100u distribution from CFC in 2009 is \$20.88 ($100u/1350u \times \281.82).

* * * * *

Par. 3. Section 1.905-4T is amended by revising the last sentence of paragraph (b)(4) and the second sentence of paragraph (f)(2)(ii) as follows:

§1.905-4T Notification of foreign tax redetermination (temporary).

* * * * *

(b) * * *

(4) * * * Because the date for notifying the IRS of the foreign tax redetermination under paragraph (b)(1)(ii) of this section precedes the date of the opening conference concerning the examination of the return for X's 2008 taxable year, paragraph (b)(3) of this section does not apply, and X must notify the IRS of the foreign tax redetermination by filing an amended return, Form 1118, and the statement required in paragraph (c) of this section for the 2008 taxable year by September 15, 2010.

* * * * *

(f) * * *

(2) * * *

(ii) * * * Such notification must be filed no later than the due date (with extensions) of the original return for the taxpayer's first taxable year following the taxable year in which these regulations are first applicable. * * *

LaNita Van Dyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on December 18, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 19, 2007, 72 F.R. 71787)

Returns Required on Magnetic Media; Correction

Announcement 2008-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (T.D. 9363, 2007-49 I.R.B. 1084) that were published in the **Federal Register** on Tuesday, November 13, 2007 (72 FR 63807) relating to the requirements for filing corporate income tax returns and returns of organizations required to file returns under section 6033 on magnetic media pursuant to section 6011(e) of the Internal Revenue Code.

DATES: The correction is effective November 13, 2007.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (T.D. 9363) that are the subject of this correction are under sections 6011, 6033 and 6037 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (T.D. 9363) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9363), which was the subject of FR Doc. E7-22147, is corrected as follows:

1. On page 63808, column 2, in the preamble, under the paragraph heading "*1. Returns Covered*", line 11 from the bottom of the column, the language "990 series that are required to be filled" is corrected to read "990 series that are required to be filed".

2. On page 63809, column 2, in the preamble, under the paragraph heading "*4. Hardship Waiver*", lines 6 through 10 of the third paragraph of the column, the language "Providers for Form 1120/1120S; IRS Publication 4206, *Modernized e-file information for Authorized e-file Providers of Exempt Organization Filings*; and on the *IRS.gov* Internet site." is corrected to read "Providers for Form 1120/1120S; and on the *IRS.gov* Internet site."

LaNita Van Dyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on December 12, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 13, 2007, 72 F.R. 70779)

Foreign Tax Credit: Notification of Foreign Tax Redeterminations; Correction

Announcement 2008-11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG-209020-86, 2007-48 I.R.B. 1075) that was published in the **Federal Register** on Wednesday, November 7, 2007 (72 FR 62805) relating to a taxpayer's obligation under section 905(c) of the Internal Revenue Code to notify IRS of a foreign tax redetermination and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes at (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 905(c) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG-209020-86) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to the temporary regulations (REG-209020-86), which was the subject of FR Doc. E7-21727, is corrected as follows:

1. On page 62806, column 1, in the preamble, under the caption "AD-DRESSES:", line 8, the language

“CC:PA:LPD:PR (REG-209020-90),” is corrected to read “CC:PA:LPD:PR (REG-209020-86).”

[§1.905-5 Corrected]

2. On page 62807, column 2, §1.905-5, the word (temporary) is removed from the end of the section title.

LaNita Van Dyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

(Filed by the Office of the Federal Register on December 18, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 19, 2007, 72 F.R. 71842)

**Foreign Tax Credit:
Notification of Foreign Tax
Redeterminations; Correction
Announcement 2008-12**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations (T.D. 9362, 2007-48 I.R.B. 1050) that were published in the Federal Register on Wednesday, November 7, 2007 (72 FR 62771) relating to a United States taxpayer’s obligation under section 905(c) of the Internal Revenue Code to notify the IRS of a foreign tax redetermination, which is a change in the taxpayer’s foreign tax liability that may affect the taxpayer’s foreign tax credit and also relating to the civil penalty under section 6689 for failure to notify the IRS of a foreign tax redetermination as required under section 905(c).

DATES: The correction is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes, (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 9362) that are the subject of the correction are under section 905(c) of the Internal Revenue Code.

Need for Correction

As published, temporary regulations (T.D. 9362) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (T.D. 9362), which were the subject of FR Doc. E7-21766, is corrected as follows:

On page 62779, column 2, under the paragraph heading “Effective/Applicability Date”, last line of the first paragraph of the column, the language “are first effective.” is corrected to read “are first applicable.”.

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(Filed by the Office of the Federal Register on December 18, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 19, 2007, 72 F.R. 71787)

Definition of Terms

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

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

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

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

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

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

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

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

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

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

Abbreviations

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

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

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

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

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

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