

## **HIGHLIGHTS OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### **INCOME TAX**

#### **Notice 2008-25, page 484.**

This notice explains how the GO Zone bonus depreciation recapture provision of section 1400N(d)(5) of the Code applies to GO Zone property transferred in a like-kind exchange or as a result of an involuntary conversion. Notice 2006-77 clarified and amplified.

#### **Notice 2008-26, page 487.**

This notice updates and amplifies the qualifying advanced coal project program of section 48A of the Code by announcing an immediate beginning of a special allocation round to the pool of investment credits available for integrated gasification combined cycle (IGCC) projects using bituminous coal as primary feedstock.

#### **Rev. Proc. 2008-15, page 489.**

This document provides procedures under section 9037 of the Code for making payments from the Presidential Primary Matching Payment Account.

#### **Announcement 2008-15, page 511.**

This announcement contains corrections to Rev. Proc. 2008-13, 2008-6 I.R.B. 407, relating to maximum vehicle values for use with the special valuation rules under regulations section 1.61-21(d) and (e).

#### **Announcement 2008-17, page 512.**

This announcement invites comments from the public regarding transfer tax issues expected to be addressed in forthcoming proposed regulations (REG-127127-05). The document also requests comments on several income tax issues and on rules relating to the election to treat contributions to a Quali-

fied Tuition Program (QTP) as being made over a 5-year period. Comments must be submitted by March 18, 2008.

### **EMPLOYEE PLANS**

#### **REG-139236-07, page 491.**

Proposed regulations under section 430 of the Code provide guidance on the valuation of plan assets and the determination of benefit liabilities for purposes of the funding requirements that apply to single employer defined benefit plans pursuant to changes made by the Pension Protection Act of 2006. This guidance covers the determination of the plan's funding target and normal cost, rules regarding the plan's valuation date, the determination of the actuarial value of plan assets, rules regarding interest rates applied for minimum funding purposes, and special rules for at-risk plans.

### **ESTATE TAX**

#### **Announcement 2008-17, page 512.**

This announcement invites comments from the public regarding transfer tax issues expected to be addressed in forthcoming proposed regulations (REG-127127-05). The document also requests comments on several income tax issues and on rules relating to the election to treat contributions to a Qualified Tuition Program (QTP) as being made over a 5-year period. Comments must be submitted by March 18, 2008.

**(Continued on the next page)**

Actions Relating to Court Decisions is on the page following the Introduction.  
Finding Lists begin on page ii.



## **GIFT TAX**

### **Announcement 2008-17, page 512.**

This announcement invites comments from the public regarding transfer tax issues expected to be addressed in forthcoming proposed regulations (REG-127127-05). The document also requests comments on several income tax issues and on rules relating to the election to treat contributions to a Qualified Tuition Program (QTP) as being made over a 5-year period. Comments must be submitted by March 18, 2008.

## **ADMINISTRATIVE**

### **T.D. 9382, page 482.**

### **REG-149475-07, page 510.**

Final, temporary, and proposed regulations under section 9037 of the Code change the procedures for making payments from the Presidential Primary Matching Payment Account.

### **Announcement 2008-15, page 511.**

This announcement contains corrections to Rev. Proc. 2008-13, 2008-6 I.R.B. 407, relating to maximum vehicle values for use with the special valuation rules under regulations section 1.61-21(d) and (e).

### **Announcement 2008-16, page 511.**

This document contains corrections to final regulations (T.D. 9375, 2008-5 I.R.B. 344) regarding the disclosure and use of tax return information by tax return preparers.

# 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.

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

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# Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in

certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally,

will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner does NOT ACQUIESCE in the following decision:

**Herbert V. Kohler, Jr. et al. v. Commissioner,<sup>1</sup>**

T.C. Memo. 2006-152;  
92 T.C.M (CCH) 48;  
T.C. Dkt. Nos. 4621-03, 4622-03,  
4646-03, 4649-03

<sup>1</sup> Nonacquiescence relating to whether I.R.C. section 2032 allows a discount for transfer restrictions and a purchase option imposed on closely-held corporate stock pursuant to a post-death tax-free reorganization in determining the fair market value of the decedent's stock on the alternate valuation date.

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

## Section 9037.—Payments to Eligible Candidates

26 CFR 702.9037-2T: Payments from the Presidential Primary Matching Payment Account (temporary).

### T.D. 9382

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 702

#### Payments From the Presidential Primary Matching Payment Account

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the financing of presidential primary campaigns. The temporary regulations relate to Treasury procedures for making payments from the Presidential Primary Matching Payment Account (Primary Account). These temporary regulations affect all candidates eligible to receive payments from the Primary Account. The text of the temporary regulations also serves as the text for the proposed regulations (REG-149475-07) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on February 14, 2008.

*Applicability Date:* For dates of applicability, see §§702.9037-1(b), 702.9037-1T(b), 702.9037-2(e) and 702.9037-2T(c).

FOR FURTHER INFORMATION CONTACT: Karla M. Meola at (202) 622-4930 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 6096 of the Internal Revenue Code (Code), individuals whose

income tax liability for the taxable year is \$3 or more may designate \$3 for the Presidential Election Campaign Fund (Fund) on their tax returns. Section 9006(a) establishes the Fund and requires the Treasury Secretary (Treasury) to transfer amounts designated under section 6096 to the Fund. Three types of payments are made from the Fund: (1) payments to the national committee of each major and minor party, (2) payments to the eligible candidates of a political party for President and Vice President, and (3) payments to eligible candidates seeking nomination for election to be President. See sections 9008(b)(3), 9006(b) and 9037(b).

Section 9008 requires the Treasury to maintain a separate account in the Fund for payments to the national committee of each major and minor party for their presidential nominating conventions, to be made upon receipt of certification by the Federal Election Commission (Commission). Section 9008(a) directs the Treasury to fund this account before making payments under section 9006(b) to eligible candidates for President and Vice President. Section 9037(a) directs the Treasury to establish within the Fund an additional separate account, the Primary Account. Section 9037(a) also directs the Treasury to make deposits to the Primary Account only after funds “are available” for payments for the nominating conventions under section 9008 and the general election under section 9006. Section 9037(b) requires the Treasury to transfer amounts certified by the Commission from the Primary Account to candidates seeking nomination for President. Section 9037(b) also provides that in making such transfers to candidates of the same political party, the Treasury will seek to achieve an equitable distribution of available funds, and will take into account, in seeking to achieve an equitable distribution, the sequence in which certifications from the Commission are received. Under section 9032(6), primary candidates may receive payments under section 9037(b) beginning on the first day of the calendar year of the presidential general election.

Section 702.9037-2(c) establishes a “shortfall rule,” which provides that if the

amount certified by the Commission for primary candidates in a calendar month exceeds the balance in the Primary Account on the last day of the calendar month, the amount paid to a candidate for that month from the Primary Account is determined by multiplying the amount certified by the Commission for the candidate during that month by the ratio of the balance in the Primary Account on the last day of the calendar month over the total amount certified by the Commission for all the candidates during that month. Any amount certified by the Commission, but not paid to a candidate because of the operation of this shortfall rule, is treated as an amount certified by the Commission for that candidate during the succeeding calendar month.

Notice 96-13, 1996-1 C.B. 366, announced a change in the payment procedures contained in §702.9037-2(c). The notice stated that when the Primary Account is in a shortfall position, the Treasury may make an additional payment between regular payment dates promptly after funds are available. Such payment is determined by multiplying the amount certified by the Commission for the candidate in month 1 by the ratio of the balance in the Primary Account (but not to exceed the shortfall) on the 15th day of month 2 (or the first business day thereafter if the 15th is not a business day) over the total amount certified by the Commission for all the candidates in month 1. Notice 96-13 stated that the regulations would be amplified to reflect these changed procedures and that the revised regulations would have an effective date of February 2, 1996. See §601.601(d)(2)(ii)(b).

Notice 2007-96, 2007-49 I.R.B. 1091, superseded Notice 96-13 and announced that the procedures for making payments from the Primary Account would be changed. The notice also announced that the Treasury intended to modify the regulations under section 9037 to reflect the changed procedures. In compliance with section 7805(b)(1)(C), and as stated in Notice 2007-96, pursuant to Notice 96-13, the effective date of these amendments to the regulations would be February 2, 1996.

## Explanation of Provisions

The regulations under section 9037 were promulgated in 1991 and provide procedures for administering the Primary Account. The procedures specified in these regulations have not kept pace with technological changes that allow the Primary Account to be administered and operated more efficiently. For example, the regulations do not provide for more than monthly payments in the event of a shortfall as contemplated by Notice 96-13. Accordingly, the temporary regulations remove these outdated administrative procedures. Concurrently with the issuance of these temporary regulations the Internal Revenue Service is publishing a revenue procedure specifying revised procedures for administering the Primary Account. These revised procedures allow weekly payments from the Primary Account to candidates.

## Effective/Applicability Date

These temporary regulations apply to payments from the Primary Account on or after February 2, 1996.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analysis section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal author of these regulations is Karla M. Meola, Office of the Associate Chief Counsel (Income Tax and Accounting), IRS. However, other person-

nel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

## Amendments to the Regulations

Accordingly, 26 CFR part 702 is amended as follows:

### PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Paragraph 1. The authority citation for part 702 continues to read in part as follows:

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

Par. 2. Section 702.9037-1 is amended as follows:

1. The undesignated text is designated as paragraph (a).

2. Paragraph (b) is added.

The revision reads as follows:

*§702.9037-1 Transfer of amounts to the Presidential Primary Matching Payment Account.*

\* \* \* \* \*

(b) *Effective/applicability date.* These regulations apply to the Primary Account before February 2, 1996.

Par. 3. Section 702.9037-1T is added to read as follows:

*§702.9037-1T Transfer of amounts to the Presidential Primary Matching Payment Account (temporary).*

(a) *In general.* The Secretary will deposit amounts into the Presidential Primary Matching Payment Account (Primary Account) only to the extent that there are amounts in the Presidential Election Campaign Fund (Fund) after the transfers prescribed by §701.9006-1(c) and (d). The Secretary will make this deposit promptly from amounts that have actually been transferred to the Fund under §701.9006-1(a). Any amounts in the Primary Account after October 31 following a presidential election will be returned to the Fund for the purpose of making the transfers prescribed by §701.9006-1(c), (d), and (f) for the next presidential election.

(b) *Effective/applicability date.* (1) These regulations apply to the Primary Account on or after February 2, 1996.

(2) *Expiration Date.* This section expires on February 11, 2011.

Par. 4. Section 702.9037-2 is amended by adding paragraph (e) to read as follows:

*§702.9037-2 Payments from the Presidential Primary Matching Payment Account.*

\* \* \* \* \*

(e) *Effective/applicability date.* These regulations apply to the Primary Account before February 2, 1996.

Par. 5. Section 702.9037-2T is added to read as follows:

*§702.9037-2T Payments from the Presidential Primary Matching Payment Account (temporary).*

(a) *In general.* Pursuant to section 9036, the Federal Election Commission (Commission) will certify to the Secretary the full amount of payment to which a candidate is entitled under section 9034. The Secretary will pay promptly, but not before the start of the matching payment period under section 9032(6), the amounts certified by the Commission from the Presidential Primary Matching Payment Account (Primary Account) to the candidate.

(b) *Additional guidance.* The Internal Revenue Service may publish guidance in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) prescribing additional rules and procedures for the Primary Account.

(c) *Effective/applicability date.* (1) These regulations apply to the Primary Account on or after February 2, 1996.

(2) *Expiration Date.* This section expires on February 11, 2011.

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

Approved February 1, 2008.

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

(Filed by the Office of the Federal Register on February 11, 2008, 12:09 p.m., and published in the issue of the Federal Register for February 14, 2008, 73 F.R. 8608)

# Part III. Administrative, Procedural, and Miscellaneous

## GO Zone Bonus Depreciation Recapture

### Notice 2008–25

#### SECTION 1. PURPOSE

This notice provides guidance with respect to the recapture of the 50-percent additional first year depreciation deduction provided by § 1400N(d) of the Internal Revenue Code (GO Zone additional first year depreciation deduction) for qualified Gulf Opportunity Zone property (GO Zone property), including specified Gulf Opportunity Zone extension property (GO Zone extension property). Specifically, this notice explains how the recapture rules described in section 6 of Notice 2006–77, 2006–40 I.R.B. 590, apply to GO Zone property that is relinquished in a like-kind exchange or as a result of an involuntary conversion.

#### SECTION 2. BACKGROUND AND GO ZONE PROPERTY

.01 Section 1400N(d) generally allows a 50-percent additional first year depreciation deduction for GO Zone property. The GO Zone additional first year depreciation deduction is allowable in the taxable year in which the GO Zone property is placed in service by the taxpayer. The computation of the allowable GO Zone additional first year depreciation deduction and the otherwise allowable depreciation deduction for GO Zone property (including GO Zone extension property) is made in accordance with rules similar to the rules for 50-percent bonus depreciation property in § 1.168(k)–1(d)(1)(i), (1)(iii), and (2) of the Income Tax Regulations. Further, rules similar to the special rules in § 1.168(k)–1(f) apply for purposes of the GO Zone additional first year depreciation deduction.

.02 GO Zone property is depreciable property that meets all of the requirements in § 1400N(d)(2) and in section 2.02 of Notice 2006–77, as clarified, modified, and amplified by section 5 of Notice 2007–36, 2007–17 I.R.B. 1000. GO Zone extension property is depreciable property that meets all of the requirements in

§ 1400N(d)(6)(B) and in section 4 of Notice 2007–36. One of the requirements of GO Zone property and GO Zone extension property is that substantially all of the use of the property must be in the GO Zone and in the active conduct of a trade or business by the taxpayer in the GO Zone. Section 3.01 of Notice 2006–77 defines the term “substantially all” as meaning 80 percent or more during each taxable year. Depreciable property described in § 1400N(d)(2)(B) and in section 2.03 of Notice 2006–77 is not eligible for the GO Zone additional first year depreciation deduction.

.03 The counties and parishes in Alabama, Louisiana, and Mississippi that comprise the GO Zone are listed on page 2 of *IRS Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma*, under Gulf Opportunity (GO) Zone (Core Disaster Area).

.04 Section 1400N(d)(5) provides that for purposes of § 1400N(d), rules similar to the recapture rules under § 179(d)(10) apply with respect to any GO Zone property that ceases to be GO Zone property. Section 6 of Notice 2006–77 provides the rules for applying the recapture requirement described in § 1400N(d)(5). The Treasury Department and the Internal Revenue Service have learned that taxpayers are uncertain how to apply these recapture rules to GO Zone property (including GO Zone extension property) relinquished by a taxpayer in a like-kind exchange under § 1031 or as a result of an involuntary conversion under § 1033. This notice clarifies the application of the recapture rule in § 1400N(d)(5) to such property.

#### SECTION 3. RECAPTURE RULES UNDER § 1400N(d)(5)

.01 *In General.* Section 1400N(d)(5) provides that for purposes of § 1400N(d), rules similar to the recapture rules under § 179(d)(10) and § 1.179–1(e) apply with respect to any GO Zone property that ceases to be GO Zone property. For example, GO Zone property will cease to be GO Zone property when the property is no longer substantially used in the GO Zone or in the active conduct of a trade or business by the taxpayer in the GO Zone.

For purposes of this section 3, GO Zone property also includes GO Zone extension property.

#### .02 *Application.*

(1) *In general.* Except as provided in section 3.02(2) or (3) of this notice, if GO Zone property is no longer GO Zone property in the hands of the same taxpayer at any time before the end of the GO Zone property’s recovery period as determined under § 167(f)(1) or § 168, as applicable, then the taxpayer must recapture in the taxable year in which the GO Zone property is no longer GO Zone property (the recapture year) the benefit derived from claiming the GO Zone additional first year depreciation deduction for such property. The benefit derived from claiming the GO Zone additional first year depreciation deduction for the property is equal to the excess of the total depreciation claimed (including the GO Zone additional first year depreciation deduction) for the property for the taxable years before the recapture year over the total depreciation that would have been allowable for the taxable years before the recapture year as a deduction under § 167(f)(1) or § 168, as applicable, had the GO Zone additional first year depreciation deduction not been claimed (regardless of whether such excess reduced the taxpayer’s tax liability). The amount to be recaptured is treated as ordinary income for the recapture year. For the recapture year and subsequent taxable years, the taxpayer’s deductions under § 167(f)(1) or § 168, as applicable, are determined as if no GO Zone additional first year depreciation deduction was claimed with respect to the property. If, subsequent to the recapture year, a change in the use of the property results in the property again being GO Zone property, then the GO Zone additional first year depreciation deduction is not allowable for the property.

(2) *Coordination of recapture rules with § 1245 and § 1250.* Except as provided in section 3.02(3) of this notice, there is no recapture under this section 3 if § 1245(a) or § 1250(a) applies to the disposition of the property.

(3) *Application of recapture rules in a like-kind exchange or involuntary conversion.*

(a) If GO Zone property is transferred by a taxpayer in a like-kind exchange or as a result of an involuntary conversion (relinquished property) and the property acquired by the taxpayer in the like-kind exchange or involuntary conversion (replacement property) is GO Zone property in the hands of the taxpayer, there is no recapture under section 3.02(1) of this notice.

(b) If GO Zone property is transferred by a taxpayer in a like-kind exchange or as a result of an involuntary conversion (relinquished property) and the replacement property is not GO Zone property in the hands of the taxpayer and is not substantially used in the GO Zone or in the active conduct of a trade or business by the taxpayer in the GO Zone, there is recapture under section 3.02(1) of this notice. The amount to be recaptured and the resulting increase in basis under section 3.02(1) of this notice are determined before the application of § 1031, § 1033, § 1245, or § 1250. For purposes of this section 3.02(3), the term “substantially” means 80 percent or more during each taxable year.

(c) If GO Zone property is transferred by a taxpayer in a like-kind exchange or as a result of an involuntary conversion (relinquished property) and the replacement property is not GO Zone property in the hands of the taxpayer but is substantially used in the GO Zone and in the active conduct of a trade or business by the taxpayer in the GO Zone, there is no recapture under section 3.02(1) of this notice. However, if after the acquisition of the replacement property, that property ceases to be substantially used in the GO Zone or in the active conduct of a trade or business by the taxpayer in the GO Zone, there is recapture under section 3.02(1) of this notice. Similarly, there is recapture under section 3.02(1) of this notice if, after the acquisition of the replacement property, that property is transferred by the taxpayer in another like-kind exchange or another involuntary conversion and the subsequent replacement property is not GO Zone property in the hands of the taxpayer and is not substantially used in the GO Zone or in the active conduct of a trade or business by the taxpayer in the GO Zone.

If there is recapture under section 3.02(1) of the notice pursuant to this section 3.02(3)(c), the recapture year is the first taxable year in which the replace-

ment property (or subsequent replacement property) ceases to be substantially used in the GO Zone or in the active conduct of a trade or business by the taxpayer in the GO Zone. In determining the benefit derived from claiming the GO Zone additional first year depreciation deduction, the depreciation of both the relinquished property and replacement property is taken into account.

.03 *Examples.* The following examples illustrate the provisions of this section 3.

(a) *Example 1.* *H*, a calendar-year taxpayer, owns and operates a furniture store in the GO Zone. In December 2006, *H* purchases a new delivery truck for \$50,000 and places it in service for use in *H*'s business. For 2006, this delivery truck is GO Zone property and is 5-year property under § 168(e). *H* depreciates its 5-year property placed in service in 2006 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. During 2007, the delivery truck is used less than 80 percent in the GO Zone.

(i) For 2006, *H* is allowed the GO Zone additional first year depreciation deduction of \$25,000 for the delivery truck (unadjusted depreciable basis of \$50,000 multiplied by .50). In addition, *H*'s depreciation deduction allowable in 2006 for the remaining adjusted depreciable basis of \$25,000 for the delivery truck (the unadjusted depreciable basis of \$50,000 reduced by the GO Zone additional first year depreciation deduction of \$25,000) is \$5,000 (the remaining adjusted depreciable basis of \$25,000 multiplied by the annual depreciation rate of .20 for recovery year 1). Thus, *H*'s depreciation deduction allowable in 2006 for the delivery truck totals \$30,000.

(ii) For 2007, because the delivery truck does not meet the substantially all (80 percent) requirement described in section 3.01 of Notice 2006-77, the delivery truck is no longer GO Zone property. Accordingly, for 2007, *H* must recapture as ordinary income \$20,000 (\$30,000 depreciation claimed by *H* for the truck before 2007 less the \$10,000 depreciation that would have been allowable for the truck before 2007 had the GO Zone additional first year depreciation deduction not been claimed (unadjusted depreciable basis of \$50,000 multiplied by the cumulative annual depreciation rate of .20 before 2007)). In addition, *H*'s depreciation deduction allowable in 2007 for the delivery truck is \$16,000 (unadjusted depreciable basis of \$50,000 multiplied by the annual depreciation rate of .32 for recovery year 2) (determined as if no GO Zone additional first year depreciation deduction was claimed for the truck).

(b) *Example 2.* Assume the same facts as in *Example 1*, except that during 2008, the delivery truck is used 80 percent or more in the GO Zone. The GO Zone additional first year depreciation deduction is not allowable for the delivery truck even though the truck is GO Zone property in the hands of *H* in 2008. Thus, *H*'s depreciation deduction allowable in 2008 for the delivery truck is \$9,600 (unadjusted depreciable basis of \$50,000 multiplied by the annual depreciation rate of .1920 for recovery year 3) (determined as if no GO Zone additional first year depreciation deduction was claimed for the truck).

(c) *Example 3.* *J*, a calendar-year taxpayer, owns and operates a manufacturing plant in the GO Zone. In January 2007, *J* purchases new equipment for \$100,000 and places it in service for use in *J*'s business. The equipment is GO Zone property and is 5-year property under § 168(e). *J* depreciates its 5-year property placed in service in 2007 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. During 2008, *J* sells the equipment for \$65,000.

(i) For 2007, *J* is allowed the GO Zone additional first year depreciation deduction of \$50,000 for the equipment (unadjusted depreciable basis of \$100,000 multiplied by .50). In addition, *J*'s depreciation deduction allowable in 2007 for the remaining adjusted depreciable basis of \$50,000 for the equipment (the unadjusted depreciable basis of \$100,000 reduced by the GO Zone additional first year depreciation deduction of \$50,000) is \$10,000 (the remaining adjusted depreciable basis of \$50,000 multiplied by the annual depreciation rate of .20 for recovery year 1). Thus, *J*'s depreciation deduction allowable in 2007 for the equipment totals \$60,000.

(ii) For 2008, because the equipment is sold and § 1245(a) applies to this sale, there is no recapture under section 3.02(1) of this notice pursuant to section 3.02(2) of this notice. In addition, because the half-year convention applies to the equipment, *J* is entitled to 1/2 of the depreciation deduction allowable for 2008. Thus, *J*'s depreciation deduction allowable in 2008 for the equipment is \$8,000 (one half of the remaining adjusted depreciable basis of \$50,000 multiplied by the annual depreciation rate of .32 for recovery year 2). Consequently, the adjusted basis of the equipment for determining gain or loss is \$32,000 (the unadjusted depreciable basis of \$100,000 less the depreciation deduction allowable for 2007 and 2008 totaling \$68,000). Accordingly, *J* recognizes gain of \$33,000 from the sale of the equipment. All of this recognized gain is ordinary income pursuant to § 1245(a).

(d) *Example 4.* *K*, a calendar-year taxpayer, owns and operates restaurants. In February 2007, *K* completed construction of a new building in New Orleans (New Orleans building) and placed it in service for use in *K*'s business. The total cost of the building is \$4,000,000. For 2007, the New Orleans building is GO Zone property and is nonresidential real property under § 168(e). *K* depreciates its nonresidential real property placed in service in 2007 using the optional depreciation table that corresponds with the general depreciation system, the straight-line method of depreciation, a 39-year recovery period, and the mid-month convention. In March 2008, *K* exchanges the New Orleans building for a new building in Hancock County, Mississippi (Hancock building), in a transaction described in § 1031(a). The Hancock building is placed in service by *K* in March 2008 for use in *K*'s business, is GO Zone property in the hands of *K*, and is nonresidential real property under § 168(e).

(i) For 2007, *K* is allowed the GO Zone additional first year depreciation deduction for the New Orleans building in the amount of \$2,000,000 (unadjusted depreciable basis of \$4,000,000 multiplied by .50). In addition, *K*'s depreciation deduction allowable in 2007 for the remaining adjusted depreciable



basis of \$2,000,000 (the unadjusted depreciable basis of \$4,000,000 reduced by the GO Zone additional first year depreciation deduction of \$2,000,000) is \$44,940 (the remaining adjusted depreciable basis of \$2,000,000 multiplied by the annual depreciation rate of .02247 for the 2<sup>nd</sup> month in recovery year 1). Thus, *K*'s depreciation deduction allowable in 2007 for the New Orleans building totals \$2,044,940.

(ii) For 2008, because *K* exchanged GO Zone property for GO Zone property, there is no recapture under section 3.02(1) of this notice pursuant to section 3.02(3)(a) of this notice. Thus, for 2008, pursuant to § 1.168(i)-6(e)(2)(i), the depreciation deduction allowable for the New Orleans building is \$10,683 (the remaining adjusted depreciable basis of \$2,000,000 multiplied by the annual depreciation rate of .02564 for the recovery year 2, multiplied by 2.5/12). Consequently, the adjusted depreciable basis of the New Orleans building at the time of the like-kind exchange is \$1,944,377 (unadjusted depreciable basis of \$4,000,000, less the depreciation deduction allowable of \$2,044,940 in 2007, less the depreciation deduction allowable of \$10,683 in 2008).

(iii) For 2008, because the Hancock building is GO Zone property in the hands of *K*, *K* is allowed the GO Zone additional first year depreciation deduction for the Hancock building in the amount of \$972,189 (depreciable exchanged basis of \$1,944,377 multiplied by .50). *K* decides to use the optional depreciation table to calculate depreciation on the depreciable exchanged basis of the Hancock building. Consequently, pursuant to § 1.168(i)-6(e)(2)(ii), *K*'s depreciation deduction allowable in 2008 for the remaining depreciable exchanged basis of \$972,188 (the depreciable exchanged basis of \$1,944,377 reduced by the GO Zone additional first year depreciation deduction of \$972,189) is \$20,188 (the remaining depreciable exchanged basis of \$972,188 multiplied by the annual depreciation rate of .02564 for the recovery year 2 as modified by the transaction coefficient of 1.0230 [1 / (1 - .02247)], multiplied by 9.5/12). Thus, *K*'s depreciation deduction allowable in 2008 for the Hancock building totals \$992,377.

(e) *Example 5.* Assume the same facts as in *Example 4*, except that in March 2008, *K* exchanges the New Orleans building for a new building in Maryland (Maryland building), in a transaction described in § 1031(a). The Maryland building is placed in service by *K* in March 2008 for use in *K*'s business and is nonresidential real property under § 168(e).

(i) Because Maryland is not in the GO Zone, the Maryland building is not GO Zone property and is not substantially used in the GO Zone and in the active conduct of a trade or business by *K* in the GO Zone. Thus, pursuant to section 3.02(3)(b) of this notice, there is recapture under section 3.02(1) of this notice of the benefit derived from claiming the GO Zone additional first year depreciation deduction for the New Orleans building. Consequently, for 2008, *K* must recapture as ordinary income \$1,955,060 (\$2,044,940 depreciation claimed by *K* for the New Orleans building before 2008 less the \$89,880 depreciation that would have been allowable for the New Orleans building before 2008 had the GO Zone additional first year depreciation deduction not been claimed (unadjusted depreciable basis of \$4,000,000 multiplied by the cumulative annual depreciation rate of .02247 before 2008)). In addition,

pursuant to § 1.168(i)-6(e)(2)(i), *K*'s depreciation deduction allowable in 2008 for the New Orleans building is \$21,367 (the unadjusted depreciable basis of \$4,000,000 multiplied by the annual depreciation rate of .02564 for the recovery year 2, multiplied by 2.5/12) (determined as if no GO Zone additional first year depreciation deduction was claimed for the New Orleans building). The adjusted depreciable basis of the New Orleans building at the time of the like-kind exchange is \$3,888,753 (unadjusted depreciable basis of \$4,000,000, less the depreciation deduction allowable of \$2,044,940 in 2007, plus the recapture amount of \$1,955,060 in 2008, less the depreciation deduction allowable of \$21,367 in 2008).

(ii) For 2008, because the Maryland building is not GO Zone property, *K* is not allowed the GO Zone additional first year depreciation deduction for the Maryland building. *K* decides to use the optional depreciation table to calculate depreciation on the depreciable exchanged basis of the Maryland building. Thus, pursuant to § 1.168(i)-6(e)(2)(ii), *K*'s depreciation deduction allowable in 2008 for the depreciable exchanged basis of \$3,888,753 for the Maryland building is \$80,751 (the depreciable exchanged basis of \$3,888,753 multiplied by the annual depreciation rate of .02564 for the recovery year 2 as modified by the transaction coefficient of 1.0230 [1 / (1 - .02247)], multiplied by 9.5/12).

(f) *Example 6.* Assume the same facts as in *Example 4*, except the Hancock building is not a new building, but a building that has been used by another taxpayer in its business since 2003. As a result, the Hancock building is not GO Zone property.

(i) Even though the Hancock building is not GO Zone property, the Hancock building is substantially used in the GO Zone and in the active conduct of a trade or business by *K* in the GO Zone. Consequently, pursuant to section 3.02(3)(c) of this notice, there is no recapture under section 3.02(1) of this notice with respect to the New Orleans building. Thus, for 2008, pursuant to § 1.168(i)-6(e)(2)(i), the depreciation deduction allowable for the New Orleans building is \$10,683 (the remaining adjusted depreciable basis of \$2,000,000 multiplied by the annual depreciation rate of .02564 for the recovery year 2, multiplied by 2.5/12). Consequently, the adjusted depreciable basis of the New Orleans building at the time of the like-kind exchange is \$1,944,377 (unadjusted depreciable basis of \$4,000,000, less the depreciation deduction allowable of \$2,044,940 in 2007, less the depreciation deduction allowable of \$10,683 in 2008).

(ii) For 2008, because the Hancock building is not GO Zone property, *K* is not allowed the GO Zone additional first year depreciation deduction for the Hancock building. *K* decides to use the optional depreciation table to calculate depreciation on the depreciable exchanged basis of the Hancock building. Thus, pursuant to § 1.168(i)-6(e)(2)(ii), *K*'s depreciation deduction allowable for 2008 for the depreciable exchanged basis of \$1,944,377 is \$40,375 (the depreciable exchanged basis of \$1,944,377 multiplied by the annual depreciation rate of .02564 for the recovery year 2 as modified by the transaction coefficient of 1.0230 [1 / (1 - .02247)], multiplied by 9.5/12).

(g) *Example 7.* Assume the same facts as in *Example 6*, except that in March 2009, *K* exchanges the Hancock building for a new building in Texas (Texas building), in a transaction described in § 1031(a). The

Texas building is placed in service by *K* in March 2009 for use in *K*'s business and is nonresidential real property under § 168(e).

(i) Because Texas is not in the GO Zone, the Texas building is not GO Zone property and is not substantially used in the GO Zone and in the active conduct of a trade or business by *K* in the GO Zone. Consequently, pursuant to section 3.02(3)(c) of this notice, *K*'s exchange of the Hancock building (the replacement property) for the Texas building (subsequent replacement property) causes *K* to recapture the benefit derived from claiming the GO Zone additional first year depreciation deduction for the New Orleans building under section 3.02(1) of this notice. Thus, for 2009, *K* must recapture as ordinary income \$1,904,000 (\$2,095,998 depreciation claimed by *K* for the New Orleans and Hancock buildings before 2009 less the \$191,998 depreciation that would have been allowable for the New Orleans and Hancock buildings before 2009 had the GO Zone additional first year depreciation deduction not been claimed, which is the total of the amounts as determined in (a) and (b) below (\$89,880 for the 2007 depreciation allowable for the New Orleans building, plus \$21,367 for the 2008 depreciation allowable for the New Orleans building, plus \$80,751 for the 2008 depreciation allowable for the Hancock building)):

(a) For the New Orleans building, the depreciation that would have been allowable for the New Orleans building in 2007 had the GO Zone additional first year depreciation deduction not been claimed is \$89,880 (unadjusted depreciable basis of \$4,000,000 multiplied by the annual depreciation rate of .02247 for the 2<sup>nd</sup> month for recovery year 1). In addition, pursuant to § 1.168(i)-6(e)(2)(i), *K*'s depreciation that would have been allowable for the New Orleans building in 2008 had the GO Zone additional first year depreciation deduction not been claimed in 2007 is \$21,367 (the unadjusted depreciable basis of \$4,000,000 multiplied by the annual depreciation rate of .02564 for the recovery year 2, multiplied by 2.5/12). The adjusted depreciable basis of the New Orleans building at the time of the like-kind exchange (determined as if no GO Zone additional first year depreciation deduction was claimed for the New Orleans building) is \$3,888,753 (unadjusted depreciable basis of \$4,000,000, less the depreciation deduction allowable of \$89,880 in 2007, less the depreciation deduction allowable of \$21,367 in 2008).

(b) For the Hancock building, *K*'s depreciable exchanged basis would have been \$3,888,753 if the GO Zone additional first year depreciation deduction was not claimed for the New Orleans building. Thus, pursuant to § 1.168(i)-6(e)(2)(ii), *K*'s depreciation deduction allowable in 2008 for the depreciable exchanged basis of \$3,888,753 for the Hancock building is \$80,751 (the depreciable exchanged basis of \$3,888,753 multiplied by the annual depreciation rate of .02564 for the recovery year 2 as modified by the transaction coefficient of 1.0230 [1 / (1 - .02247)], multiplied by 9.5/12) (determined as if no GO Zone additional first year depreciation deduction was claimed for the New Orleans building).

(ii) For 2009, *K*'s depreciation deduction allowable for the Hancock building, pursuant to § 1.168(i)-6(e)(2)(i), is \$21,250 (the depreciable exchanged basis of \$3,888,753 multiplied by the annual depreciation rate of .02564 for the recovery year 3 as modified by the transaction coefficient of 1.0230

[ $1 / (1 - .02247)$ ], multiplied by 2.5/12) (determined as if no GO Zone additional first year depreciation deduction was claimed for the New Orleans building). Thus, the adjusted depreciable basis of the Hancock building at the time of the like-kind exchange for the Texas building is \$3,786,752 (depreciable exchanged basis of \$3,888,753, less the depreciation deduction allowable of \$80,751 in 2008, less the depreciation deduction allowable of \$21,250 in 2009) (determined as if no GO Zone additional first year depreciation deduction was claimed for the New Orleans building).

(iii) For 2009, *K* decides to use the optional depreciation table to calculate depreciation on the depreciable exchanged basis of the Texas building. Thus, pursuant to § 1.168(i)-6(e)(2)(ii), *K*'s depreciation deduction allowable in 2009 for the depreciable exchanged basis of \$3,786,752 for the Texas building is \$80,746 (the depreciable exchanged basis of \$3,786,752 multiplied by the annual depreciation rate of .02564 for the recovery year 3 as modified by the transaction coefficient of 1.0505 [ $1 / (1 - .02247 + .02564)$ ], multiplied by 9.5/12).

#### SECTION 4. EFFECT ON OTHER DOCUMENTS

Section 6 of Notice 2006-77, 2006-40 I.R.B. 590, is clarified and amplified to read as provided in section 3 of this notice.

#### SECTION 5. EFFECTIVE DATE

This notice is effective February 11, 2008.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Ruba Nasrallah of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Nasrallah or Douglas Kim at (202) 622-4930 (not a toll-free call).

## Qualifying Advanced Coal Project Program—Special Allocation Round

### Notice 2008-26

#### SECTION 1. PURPOSE

This notice updates and amplifies the procedures for the allocation of credits under the qualifying advanced coal program of § 48A of the Internal Revenue Code by announcing the immediate beginning of a special allocation round. This

special allocation round applies only to the pool of investment credits available for integrated gasification combined cycle (IGCC) projects using bituminous coal as primary feedstock. This notice provides that, except as specifically provided in this notice, this special allocation round will be conducted in the same manner and under the same procedures as provided under Notice 2007-52 (including Appendices A, B, and C), 2007-26 I.R.B. 1456, which updated and modified the advanced coal project program established under Notice 2006-24, 2006-1 C.B. 595. To be considered in this special allocation round, applications must be submitted to the Department of Energy (DOE) on or before May 2, 2008, and to the Internal Revenue Service before June 3, 2008. See section 3 of this notice for additional rules regarding applications for § 48A and DOE certification.

#### SECTION 2. BACKGROUND

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. This list includes the qualifying advanced coal project credit.

.02 Section 48A(a) provides that the qualifying advanced coal project credit for any taxable year includes 20 percent of the qualified investment (as defined in § 48A(b)) for that taxable year in certified qualifying advanced coal projects (as defined in § 48A(c)(1) and § 48A(e)) using an integrated gasification combined cycle (as defined in § 48A(c)(7)). Section 48A(d)(3) provides that \$800 million of credits are to be allocated to IGCC projects. Section 48A(e)(3)(A) provides that the credits for IGCC projects must be allocated in accordance with the procedures set forth in § 48A(d), and in relatively equal amounts to (i) projects using bituminous coal as a primary feedstock, (ii) projects using subbituminous coal as a primary feedstock, and (iii) projects using lignite as a primary feedstock. Further, § 48A(e)(3)(B) provides that IGCC projects that include (i) greenhouse gas capture capability (as defined in § 48A(c)(5)), (ii) increased by-product utilization, and (iii) other benefits must be given high priority in the allocation of credits for IGCC projects.

.03 Section 48A(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. The Treasury Department and the Service established this program in Notice 2006-24. Under section 4.02(2)(b) of Notice 2006-24, \$267 million of qualifying advanced coal project credit was available for allocation from the pool for IGCC projects using bituminous coal as a primary feedstock and the maximum amount that could be allocated to such a project was \$133.5 million.

.04 Section 4.02(2)(b) of Notice 2007-52 provides that no allocation round will be conducted in 2007-08 for IGCC projects using bituminous coal as a primary feedstock.

.05 At this time, \$133.5 million of credit is available for allocation from the pool for IGCC projects using bituminous coal as a primary feedstock. Under Notice 2007-52, the allocation of the credit for this pool would not occur before the allocation round conducted in 2008-09. To avoid this delay, this notice provides a special allocation round for IGCC projects using bituminous coal as a primary feedstock.

#### SECTION 3. SPECIAL ALLOCATION ROUND FOR IGCC PROJECTS USING BITUMINOUS COAL AS A PRIMARY FEEDSTOCK

.01 Except as otherwise specifically provided in this notice, this special allocation round will be conducted in the same manner and under the same procedures as provided under Notice 2007-52 including Appendices A, B, and C. This notice restates or references certain provisions in Notice 2007-52 as a convenience to taxpayers. The restatement or referencing of these provisions does not diminish the effect of provisions that are not restated or referenced.

.02 This special allocation round applies only to the pool of qualifying advanced coal project credit for IGCC projects using bituminous coal as a primary feedstock. The aggregate amount of credits available for allocation from this pool is \$133.5 million. The entire \$133.5 million is available for allocation in this

special allocation round and may be allocated to a single project.

.03 For this special allocation round, the application period begins on February 13, 2008 and ends on June 2, 2008. During the application period, an application for § 48A certification and a separate application for DOE certification must be submitted for each qualifying advanced coal project. See section 3.07 for the date by which the application for DOE certification must be submitted to the DOE. Any completed application for § 48A certification for an IGCC project using bituminous coal as a primary feedstock that is received by the Service on or after February 13, 2008, and before June 3, 2008, will be deemed to be submitted by the taxpayer on June 2, 2008.

.04 For this special allocation round, the Service will consider a project only if the application for § 48A certification for the project is submitted during the application period for this round and the DOE provides the DOE certification and the DOE ranking (if any) for the project before July 4, 2008.

.05 If an application for DOE certification does not include all of the information required by section 5.02 of Notice 2007–52 and meet the requirements in sections 7.01 and 7.02 of Notice 2007–52, the DOE may decline to accept the application. If an application for § 48A certification does not include all of the information listed in section 5.03 of Notice 2007–52 and meet the requirements in sections 7.01 and 7.02 of Notice 2007–52, the application will not be accepted by the Service.

.06 An application for § 48A certification must be submitted in the manner provided in section 5.04 of Notice 2007–52.

.07 For this special allocation round, the DOE will consider an application for DOE certification only if the application is postmarked on or before May 2, 2008. The DOE will determine the feasibility of each project for which it receives a timely application for DOE certification and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If the DOE certifies two or more projects, the DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects. The DOE will pro-

vide the DOE certification for projects determined to be feasible and the DOE ranking (if any) to the Service on or before July 3, 2008.

.08 By July 31, 2008, the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

.09 If the taxpayer's application for § 48A certification is accepted, the acceptance letter will state the amount of the credit allocated to the project. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute an agreement in substantially the form set forth in Appendix A to Notice 2007–52. By September 8, 2008, the taxpayer must execute and return the agreement to the Service at the appropriate address listed in section 5.04 of Notice 2007–52 or listed in later guidance published in the Internal Revenue Bulletin. The Service will execute and return the agreement to the taxpayer by September 29, 2008. The executed agreement applies only to the accepted taxpayer.

.10 If the amount available for allocation from the pool for IGCC projects using bituminous coal as a primary feedstock is not fully allocated in the special allocation round, the remaining amount in the pool will be treated for purposes of Notice 2007–52 as an amount that is not fully allocated in the 2007–08 allocation round. The remaining amount in the pool will be available for allocation in the allocation round conducted in 2008–09 under the provisions of Notice 2007–52. The provisions of Notice 2007–52 relating to the allocation round conducted in 2008–09 will be applied with respect to this pool by substituting June 3, 2008, for March 3, 2008. Thus, the application period for this pool begins on June 3, 2008, and ends on March 2, 2009, and any completed application for § 48A certification for IGCC projects using bituminous coal as a primary feedstock received by the Service after June 2, 2008, and before March 3, 2009, will be deemed to be submitted by the taxpayer on March 2, 2009. As under Notice 2007–52, an application to the DOE for IGCC projects using bituminous coal as a primary feedstock will not be considered in the allocation round conducted in 2008–09 unless it is postmarked by October 31, 2008.

#### SECTION 4. EFFECTIVE DATE

This notice is effective February 13, 2008.

#### SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section 3 (and in sections 4, 5, 6, 7, 8, and Appendix B of Notice 2007–52). This information is required to obtain an allocation of qualifying advanced coal project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying advanced coal project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 4,950 hours.

The estimated annual burden per respondent varies from 70 to 150 hours, depending on individual circumstances, with an estimated average of 110 hours. The estimated number of respondents is 45.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

#### DRAFTING INFORMATION

The principal author of this notice is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jaime C. Park at (202) 622–3110 (not a toll-free call).

## Rev. Proc. 2008-15

### SECTION 1. PURPOSE

This revenue procedure provides procedures under § 9037 of the Internal Revenue Code (26 U.S.C. § 9037 (2000)) and § 702.9037 of the Financing of Presidential Election Campaigns Regulations (26 CFR § 702.9037 (2007)) for making payments from the Presidential Primary Matching Payment Account (Primary Account). Under these procedures the Treasury Secretary (Treasury) will make payments of amounts due to primary candidates at least once a week if funds are available in the Primary Account. These payments will start during the first week of January of an election year and will continue through the end of September of the year following the presidential election. This revenue procedure also provides procedures for determining amounts paid to candidates when the balance in the Primary Account is not sufficient to pay all amounts certified by the Federal Election Commission (Commission). When the Primary Account is in shortfall, the Treasury will make payments *pro rata* from the Primary Account based on the amounts certified by the Commission for each candidate adjusted for the length of time between the Treasury's receipt of the certifications and the Treasury's making payments on the certifications (see Sequencing Adjustment, as defined in section 3.05 of this revenue procedure).

### SECTION 2. BACKGROUND

.01 Section 6096(a) permits individuals (other than nonresident aliens) whose income tax liability for the taxable year is \$3 or more to designate that \$3 be paid to the Presidential Election Campaign Fund (Fund) in accordance with the provisions of § 9006(a).

.02 Section 9006(a) establishes the Fund and provides that the Treasury will transfer to the Fund, from time to time, an amount not in excess of the sums designated by individual taxpayers under § 6096.

.03 Under § 9037(a), the Treasury is to maintain the Primary Account within the

Fund and will deposit amounts into the Primary Account from the Fund after determining that there are sufficient amounts available in the Fund to make payments described in § 9006 (payments for the general election) and § 9008 (payments for nomination conventions). The Primary Account contains amounts for Presidential primary candidates who are certified for payments by the Commission.

.04 Section 9037(b) specifies that the Treasury should pay certified primary candidates promptly.

.05 Notice 96-13, 1996-1 C.B. 366, indicated that payment procedures would be provided for payments from the Primary Account when the balance in the Primary Account is not sufficient to pay all amounts certified by the Commission. The notice states that when the Primary Account is in shortfall, the Treasury may make an additional payment between regular payment dates, promptly after funds become available.

.06 Notice 2007-96, 2007-49 I.R.B. 1091, superseded Notice 96-13 and announced that the Treasury intends to change the procedures for making payments from the Primary Account.

.07 Section 702.9037-2T(a) of the temporary Financing of Presidential Election Campaigns Regulations provides that, pursuant to § 9036, the Commission will certify to the Treasury the full amount of payment to which a candidate is entitled under § 9034. The Treasury will pay promptly, but not before the beginning of a Presidential election year, the amounts certified by the Commission from the Primary Account to the candidate.

.08 Section 702.9037-2T(b) provides that the Internal Revenue Service may provide additional rules and procedures for the Primary Account.

.09 This revenue procedure provides additional rules and procedures for making payments from the Primary Account.

### SECTION 3. DEFINITIONS

.01 *Payment Date*. A day on which the Treasury makes payments to candidates from the Primary Account.

.02 *Candidate's Actual Shortfall*. The difference, if any, between the amounts certified by the Commission for a candidate in certifications received by the Treasury as of one day prior to the Payment

Date, and the amount of payments previously received by the candidate on such certifications as of the Payment Date, without taking into account the Sequencing Adjustment.

.03 *Candidate's Adjusted Shortfall*. The sum of a Candidate's Actual Shortfall plus the Sequencing Adjustment.

.04 *Aggregate Adjusted Shortfall*. The sum of all Candidates' Adjusted Shortfalls on a Payment Date.

.05 *Sequencing Adjustment*. A factor used to compute a candidate's share of *pro rata* payments when the Primary Account is in shortfall. The Sequencing Adjustment is computed at the noncorporate overpayment rate specified under § 6621 starting with the day the Treasury receives certification from the Commission that the candidate is entitled to receive an amount of payment and ending on the Payment Date.

### SECTION 4. PAYMENT PROCEDURES

#### .01 *Timing of payments*.

(a) *Weekly payments*. The Treasury will make payments due to primary candidates at least once a week, to the extent funds are available in the Primary Account. Payments will be based on (1) certifications which the Treasury has received from the Commission, but not paid, as of one day prior to a Payment Date, and (2) the balance in the Primary Account, as of one day prior to a Payment Date.

(b) *Payment period*. The payments described in section 4.01(a) of this revenue procedure will commence during the first week of January of an election year and will continue through the end of September of the year following the presidential election.

#### .02 *Amount of payment*.

(a) *No shortfall*. If the amounts certified by the Commission in certifications received by the Treasury as of one day prior to a Payment Date do not exceed the balance in the Primary Account on a Payment Date, the Treasury will pay the certified amounts to the candidates.

(b) *Shortfall*. If the amounts certified by the Commission in certifications received by the Treasury as of one day prior to a Payment Date exceed the balance in the Primary Account on a Payment Date, the amount paid to a candidate is determined by multiplying the Candidate's Adjusted

Shortfall (as defined in section 3.03 of this revenue procedure) by the ratio of the balance in the Primary Account as of one day prior to the Payment Date over the Aggregate Adjusted Shortfall (as defined in section 3.04 of this revenue procedure).

(c) *Limitation.* In no event will the Treasury pay to a candidate more than the amounts certified by the Commission for the candidate in certifications received by the Treasury from the Commission.

.03 *Allocation of payments.* Payments described in section 4.02(b) of this revenue procedure will be allocated among the amounts certified by the Commission for a candidate based on the sequence in which the Treasury received certifications from the Commission. For example, if the Treasury receives on January 29, 2008, a certification from the Commission for a payment of \$100 to a candidate and receives on February 26, 2008, a certification for a payment of \$70 to the same candidate, and the Treasury makes a payment of \$60 to that candidate pursuant to section 4.02(b) of this revenue procedure, that

payment is allocated to the certification the Treasury received on January 29, 2008. In determining the Candidate's Adjusted Shortfall for the next payment, the Treasury will be considered to have received on January 29, 2008, a certification for a payment of \$40 to the candidate, and to have received on February 26, 2008, a certification for a payment of \$70 to the candidate.

#### SECTION 5. NOTIFICATION

The Treasury will notify the Commission of the amount paid to each candidate and the balance remaining in the Primary Account after making disbursements from the Primary Account. The Treasury will also notify the Commission if funds are not available in a week to make the payments to candidates described in section 4.02 of this revenue procedure.

#### SECTION 6. RETURN OF FUNDS

Any amounts in the Primary Account on October 31 of the year following a pres-

idential election will be returned to the Fund for use in the next presidential election.

#### SECTION 7. EFFECTIVE DATE

This revenue procedure provides procedures for payments from the Primary Account in or after 2008. See Notice 96-13 for rules for payments made to candidates when the Primary Account was in shortfall from February 2, 1996, through 2007.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Karla M. Meola of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information concerning this revenue procedure, please contact Ms. Meola at (202) 622-4930 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking

### Measurement of Assets and Liabilities for Pension Funding Purposes

#### REG-139236-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on the determination of plan assets and benefit liabilities for purposes of the funding requirements that apply to single employer defined benefit plans. These regulations affect sponsors, administrators, participants, and beneficiaries of single employer defined benefit plans.

DATES: Written or electronic comments and requests for a public hearing must be received by March 31, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139236-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-139236-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-139236-07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622-6090; concerning submissions and requests for a public hearing, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.430(h)(2)-1(e). This information is required in order for a plan sponsor to make an election to use an alternative interest rate for purposes of determining a plan's funding obligations under §1.430(h)(2)-1. This information is required to obtain or

retain benefits. The likely respondents are qualified retirement plan sponsors.

Estimated total annual reporting burden: 54,000 hours.

Estimated average annual burden hours per respondent: 0.75 hours.

Estimated number of respondents: 72,000.

Estimated annual frequency of responses: occasional.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

##### Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 430(d), 430(g), 430(h)(2), and 430(i), as added to the Internal Revenue Code (Code) by the Pension Protection Act of 2006 (PPA '06), Public Law 109-280 (120 Stat. 780).

Section 412 provides minimum funding requirements that generally apply for pension plans (including both defined benefit pension plans and money purchase pension plans). PPA '06 makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA '06, specifies the minimum funding requirements that apply to single employer defined benefit pension plans (including multiple employer plans) pursuant to section 412.<sup>1</sup>

Section 430(a) defines the minimum required contribution for a single employer plan as the sum of the plan's target normal cost and the shortfall and waiver amortization charges for the plan year. Under section 430(b), a plan's target normal cost for

<sup>1</sup> Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Internal Revenue Code (Code), and section 303 of ERISA sets forth additional funding rules for single employer plans that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

a plan year is the present value of all benefits expected to accrue or be earned under the plan during the plan year. For this purpose, section 430(b) provides that an increase in any benefit attributable to services performed in a preceding plan year by reason of a compensation increase during the current plan year is treated as having accrued during the current plan year.

One of the amortization charges used in determining the minimum required contribution, the shortfall amortization charge, is determined based on the difference between the plan's funding target and the value of plan assets. Under section 430(d), except as provided in section 430(i)(1) (regarding plans in at-risk status), a plan's "funding target" for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

Section 430(g)(1) provides that all determinations made with respect to minimum required contributions for a plan year (such as the value of plan assets and liabilities) must be made as of the plan's valuation date. Section 430(g)(2) provides that, other than for plans with 100 or fewer participants (determined as provided in section 430(g)(2)(B) and (C)), the valuation date for a plan year must be the first day of the plan year. Under section 430(g)(3), the value of plan assets is generally the fair market value of those assets. However, the value of plan assets may be determined on the basis of the averaging of fair market values, but only if the averaging method is permitted under regulations and satisfies certain other requirements.

Under section 430(g)(4), if a required contribution for a preceding plan year is made after the valuation date for the current plan year, the contribution is taken into account in determining the value of plan assets for the current plan year. For 2009 and future plan years, only the present value (determined as of the valuation date for the current plan year, using the plan's effective interest rate for the preceding plan year) of the contributions made for the preceding plan year is taken into account. If any contributions for the current plan year are made before the valuation date (which could only occur for a small plan with a valuation date that is not the first day of the plan year), plan assets as of the valuation date must exclude (1) those contributions, and (2) interest

on those contributions (determined at the plan's effective interest rate for the plan year) for the period between the date of the contribution and the valuation date. Under section 430(h)(2)(A), a plan's effective interest rate for a plan year is defined as the single interest rate that, if used to determine the present value of the benefits taken into account in determining the plan's funding target for the plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d).

Under section 430(h)(1), the determination of any present value or other computation under section 430 is to be made on the basis of actuarial assumptions and methods each of which is reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

Section 430(h)(2) specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under the provision, present value is determined using three interest rates (segment rates), each of which applies to benefit payments expected to be paid during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year. The second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial 5-year period. The third segment rate applies to benefits reasonably determined to be payable after the end of that 15-year period.

Each segment rate is a single interest rate determined monthly by the Treasury Department on the basis of a corporate bond yield curve. The corporate bond yield curve used for this purpose is to be prescribed monthly by the Treasury Department and is to reflect the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities that are in the top three quality levels available. Under section 430(h)(2)(F), the Secretary of the Treasury is directed to publish each month the corporate bond yield curve and each of the segment rates for the month. In addition, the Secretary is directed to publish a description of the

methodology used to determine the yield curve and segment rates to enable plans to make reasonable projections regarding the yield curve and segment rates for future months, based on a plan's projection of future interest rates.

Section 430(h)(2)(G) provides a transition rule for plan years beginning in 2008 and 2009 (other than for plans where the first plan year begins on or after January 1, 2008). Under this transition rule, the interest rates to be used in the valuation are based on a blend of the segment rates and the long-term corporate bond rates used for plan years prior to the effective date of PPA '06. Under section 430(h)(2)(G)(iv), a plan sponsor may elect to have this transition rule not apply. In addition, solely for purposes of determining minimum required contributions under section 430, in lieu of using the segment rates, an employer may elect under section 430(h)(2)(D)(ii) to use interest rates on a yield curve based on the yields on investment grade corporate bonds within the top three quality levels without regard to the 24-month averaging described above.

Section 430(i) requires the application of special assumptions in determining the funding target and target normal cost of a plan in at-risk status. Under section 430(i)(4), a plan is in at-risk status for a year if, for the preceding year: (1) the plan's funding target attainment percentage, determined without regard to the at-risk assumptions, was less than 80 percent (with a transition rule discussed below), and (2) the plan's funding target attainment percentage, determined using the at-risk assumptions (without regard to whether the plan was in at-risk status for the preceding year), was less than 70 percent. Under a transition rule applicable for plan years beginning in 2008, 2009, and 2010, the following percentages apply instead of 80 percent in the first part of the test for determining at-risk status: 65 percent for 2008, 70 percent for 2009, and 75 percent for 2010. In the case of plan years beginning in 2008, the plan's funding target attainment percentage for the preceding plan year is to be determined under rules provided by the Treasury Department.

Under section 430(i)(6), the at-risk rules do not apply if a plan had 500 or fewer participants on each day during the preceding plan year. For this purpose,

all defined benefit pension plans (other than multiemployer plans) maintained by the same employer (or a predecessor employer), or by any member of the employer's controlled group, are treated as a single plan.

If a plan is in at-risk status, the plan's funding target and normal cost are determined (under section 430(i)(1) and (2)) using special actuarial assumptions. Under these assumptions, all employees who are not otherwise assumed to retire as of the valuation date, but who will be eligible to elect to commence benefits in the current and 10 succeeding plan years, are assumed to retire at the earliest retirement date under the plan, but not before the end of the current plan year. All employees are assumed to elect the form of retirement benefit available under the plan at that assumed retirement age that results in the highest present value.

The funding target of a plan in at-risk status for a plan year is generally the sum of: (1) the present value of all benefits accrued or earned as of the beginning of the plan year, and (2) in the case of a plan that has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor. That loading factor is equal to the sum of: (1) \$700 multiplied by the number of participants in the plan, plus (2) 4% of the funding target determined without regard to the loading factor. The target normal cost of a plan in at-risk status for a plan year is generally the sum of: (1) the present value of benefits expected to accrue or be earned under the plan during the plan year, determined using the special assumptions described above, and (2) in the case of a plan that has been in at-risk status for at least 2 of the 4 preceding plans years, a loading factor of 4% of the target normal cost determined without regard to the loading factor. If a plan has been in at-risk status for fewer than 5 consecutive plan years, a phase-in rule applies to the determination of the "funding target" and "target normal cost" under section 430(i)(5).

## Explanation of Provisions

### I. Overview

These proposed regulations are the third in a series of proposed regulations under new section 430.<sup>2</sup> These proposed regulations would provide guidance on the determination of assets and liabilities for purposes of applying the new funding rules of section 430. The Treasury Department and the IRS intend to issue additional proposed regulations relating to other portions of the rules under section 430 (including sections 430(a), (c), and (j)) in the first part of 2008. It is expected that those regulations will be effective for plan years beginning on or after January 1, 2009.

### II. Section 1.430(d)-1 Determination of Funding Target and Target Normal Cost

Section 1.430(d)-1 would provide rules for determining the funding target and the target normal cost of a plan that is not in at-risk status (within the meaning of section 430(i)). The proposed regulations would provide that the funding target is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year, and that the target normal cost for the plan year is the present value of all benefits that accrue or are earned (or that are expected to accrue or to be earned) under the plan during the plan year. Thus, if the actuarial valuation date for the plan year is not the first day of the plan year, the target normal cost will include the benefits actually earned during the year through the valuation date for the plan year plus a projection of benefits that will be earned through the rest of the plan year.

In order to determine the funding target and target normal cost, the future benefits to be paid from the plan must be allocated among prior plan years (in which case they will be taken into account in determining the funding target for the current year), the current plan year (in which case they will be taken into account in determining the target normal cost of the plan for the plan year), and future years. If the amount of a benefit that is expected to be paid is a function of the accrued benefit at the time the benefit is expected to be

paid, then the amount taken into account in the funding target is determined by applying that function to the accrued benefit as of the beginning of the plan year and the amount of the benefit taken into account in the target normal cost is determined by applying that function to the increase in the accrued benefit for the plan year. If the amount of a benefit that is expected to be paid is not a function of the accrued benefit at the time the benefit is expected to be paid (for example, certain ancillary benefits), but is a function of the participant's service at that time, then the amount taken into account for purposes of determining the funding target for a plan year is based on a participant's service as of the first day of the plan year and the amount of the benefit that is taken into account in the target normal cost is the increase in that benefit for the plan year based on the additional year of service. If the amount of a benefit that is expected to be paid is neither a function of the accrued benefit at the time the benefit is expected to be paid nor a function of the participant's service at that time, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is based on the proportion of a participant's service as of the first day of the plan year relative to the service the participant will have when the participant meets the age and service eligibility requirement for the benefit, and the portion of the benefit that is taken into account in the target normal cost is the increase in the proportional benefit for the plan year.

The proposed regulations would provide that the determination of the funding target and the target normal cost for a plan year is not permitted to take into account any limitations or anticipated limitations under section 436. Also, the proposed regulations would provide that plan administrative expenses paid (or expected to be paid) from plan assets for a plan year are not taken into account in determining a plan's target normal cost and funding target for that plan year. With respect to benefits provided by insurance, the proposed regulations would provide that, in general, a plan must reflect the liability for benefits that are funded through insurance contracts held by the plan in the plan's

<sup>2</sup> Proposed regulation §§1.430(h)(3)-1 and 1.430(h)(3)-2, relating to the mortality tables used to determine liabilities under section 430(h)(3), were issued May 29, 2007 (REG-143601-06, 2007-24 I.R.B. 1398 [72 FR 29456]), and proposed regulation §1.430(f)-1, relating to prefunding and funding standard carryover balances under section 430(f), was issued August 31, 2007 (REG-113891-07, 2007-42 I.R.B. 821 [72 FR 50544]).



funding target and target normal cost, and must include the value of the corresponding insurance contracts in plan assets. However, an alternative rule is provided in the case of benefits that are funded through certain insurance contracts purchased from an insurance company licensed under the laws of a State. Under this rule, a plan is permitted to exclude benefits provided under such contracts from the plan's funding target and target normal cost and to exclude the corresponding insurance contracts from plan assets, but only to the extent that a participant's or beneficiary's right to receive those benefits is an irrevocable contractual right based on premiums paid to the insurance company prior to the valuation date under the insurance contracts.

The proposed regulations would provide that, except as provided in section 412(d)(2), the funding target and target normal cost are determined based on the plan terms that are adopted no later than the valuation date for the plan year and become effective during that plan year. Thus, the rules of Revenue Ruling 77-2, 1977-1 C.B. 120, would no longer apply. See §601.601(d)(2) of this chapter. For example, if an amendment that increases plan liabilities is adopted on or before the plan's valuation date and is effective during the plan year that includes the valuation date, the full increase in liability with respect to the amendment is taken into account as of that year's valuation date. However, with respect to the pre-PPA counterpart to section 412(d)(2) (section 412(c)(8) as in effect prior to amendments made by PPA '06), Rev. Rul. 79-325, 1979-2 C.B. 190, provides that section 412(c)(8) applies to plan amendments made during the plan year (as well as to plan amendments made within 2½ months after the end of the plan year), and this same rule applies under the identical statutory provisions of section 412(d)(2). See §601.601(d)(2) of this chapter. Thus, if an amendment that increases plan liabilities is adopted after the valuation date for a plan year but the amendment is effective during that plan year, the full increase in liability will be taken into account as of the valuation date for that plan year if a section 412(d)(2) election is made, and none of the increase in liability will be taken into account as of the valuation date for that plan year if no section 412(d)(2)

election is made. Regardless of whether a section 412(d)(2) election is made, the rules of section 436(c) must be applied in determining whether the amendment is permitted to take effect during the plan year. Section 430 does not contain a corresponding provision to former section 412(c)(12) under which the provisions of a collective bargaining agreement are taken into account for funding purposes before the corresponding plan amendments have been made.

The proposed regulations would require all currently employed plan participants, formerly employed plan participants (including retirees and terminated vested participants), and other individuals currently entitled to benefits under the plan to be included in the valuation. Unlike §1.412(c)(3)-1(c)(3)(ii), the proposed regulations would not permit exclusion from the valuation of those plan participants who could have been excluded from participation in the plan under the rules of section 410(a). However, the proposed regulations would continue to apply the rules of §1.412(c)(3)-1(c)(3)(iii) (relating to the exclusion of terminated employees who do not have a vested benefit under the plan but whose service might be taken into account in future years upon rehire) and the rules of §1.412(c)(3)-1(d)(2) (under which the future participation in the plan of current employees who are not yet participants is permitted to be anticipated).

Section 1.430(d)-1 of the proposed regulations would cross-reference other regulations for the details of the statutorily specified interest rates, mortality tables, and actuarial assumptions that apply to plans in at-risk status. With respect to the actuarial assumptions that are not specified by statute or regulations, the proposed regulations would require that the actuarial assumptions used to determine present value satisfy the section 430(h)(1) requirements to be individually reasonable (taking into account the experience of the plan and reasonable expectations) and, in combination, offer the plan's enrolled actuary's best estimate of anticipated experience under the plan.

The proposed regulations would provide that, once the actuarial assumptions for a plan year are established, they are not permitted to be changed for that plan year (unless the Commissioner determines that the assumptions are unreasonable). Simi-

larly, the proposed regulations would provide that, once the funding method for a plan year is established, it is not permitted to be changed for that plan year (unless the Commissioner determines that the use of the funding method for the plan year is impermissible).

In general, the actuarial assumptions and funding method used by a plan for a plan year are required to be established not later than the due date (with extensions) for the filing of Form 5500, "Annual Return/Report of Employee Benefit Plan," for that plan year (or not later than the last day of the seventh month after the end of the plan year in the case of a plan not required to file Form 5500). The proposed regulations would provide that the filing of the first actuarial report (Schedule SB) under section 6059 for a plan year that reflects the use of actuarial assumptions and a funding method is treated as the establishment of those assumptions and the funding method for that plan year.

In accordance with section 430(h)(4), the proposed regulations would provide that the plan's actuarial valuation must take into account the probability that future benefits will be paid in optional forms of benefit under the plan, including single sum distributions, determined on the basis of the plan's experience and other relevant assumptions. In addition, the plan's enrolled actuary must take into account any difference in the present value of those future benefit payments that results from the use of actuarial assumptions in determining benefit payments in any such optional forms of benefit that are different from those prescribed by section 430(h).

In the case of a distribution that is subject to section 417(e)(3) and that is determined using the applicable interest rate and applicable mortality table under section 417(e)(3), the proposed regulations would provide that the computation of the present value of that distribution will be treated as having taken into account any difference in present value that results from the use of actuarial assumptions that are different from those prescribed by section 430(h) only if the present value of the distribution is determined by valuing the annuity that corresponds to the distribution using special actuarial assumptions. Under these special assumptions, for the period beginning with the annuity starting date, the current applicable mortality table

under section 417(e)(3) is substituted for the mortality table under section 430(h)(3) that would otherwise apply. In addition, under these special actuarial assumptions, the valuation interest rates under section 430(h)(2) are used for all periods (as opposed to the interest rates under section 417(e)(3) which the plan uses to determine the amount of the benefit).

The proposed regulations provide two elective adjustments to this methodology for valuing distributions subject to section 417(e)(3). First, in determining the present value of such a distribution, if a plan uses the generational mortality tables under §1.430(h)(3)-1(a)(4) or under §1.430(h)(3)-2, the plan would be permitted to use a 50-50 male-female blend of the annuitant mortality rates under the §1.430(h)(3)-1(a)(4) generational mortality tables in lieu of the applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date. Second, a plan would be permitted to make adjustments to reflect differences between the phase-in of the section 430(h)(2) segment rates under section 430(h)(2)(G) and the adjustments to the segment rates under section 417(e)(3)(D)(iii).

In the case of a distribution that is subject to section 417(e)(3) but that is determined as the greater of the benefit determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and the benefit determined using some basis other than the section 417(e)(3) assumptions, the proposed regulations would provide that the computation of present value must take into account the extent to which the present value of the distribution is greater than the present value determined using the applicable interest rate and applicable mortality table.

In the case of an applicable defined benefit plan described in section 411(a)(13)(C) (such as a cash balance plan), the proposed regulations would provide that, if the distribution is determined under the rules of section 411(a)(13)(A), the amount of the future distribution must be determined by projecting the future interest credits or equivalent amounts under the plan's interest crediting rules to the expected date of payment using reasonable

actuarial assumptions. Thus, the present value of a future distribution is not necessarily the current amount of a participant's hypothetical account balance.

The proposed regulations would provide that any reasonable technique can be used to determine the present value of the benefits expected to be paid during a plan year, based on the interest rates and mortality assumptions applicable for the plan year. For example, the present value of a monthly retirement annuity payable at the beginning of each month can be determined using the standard actuarial approximation that reflects 13/24ths of the discounted expected payments for the year as of the beginning of the year and 11/24ths of the discounted expected payments for the year as of the end of the year, or by assuming that the payment is made in the middle of the year.

The proposed regulations would also reflect the provisions of section 430(h)(5), requiring approval of the Commissioner for large changes in actuarial assumptions. In general, this rule applies where the application of the changes in actuarial assumptions results in a decrease in the plan's funding shortfall for the current plan year (disregarding the effect on the plan's funding shortfall resulting from changes in interest and mortality assumptions) that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before the change. Thus, for example, if a plan leaves at-risk status and consequently makes changes to its actuarial assumptions (including a return to previously used assumptions) that result in a reduction in the funding shortfall that exceeds \$50,000,000, that change in actuarial assumptions would require approval of the Commissioner. In determining whether aggregate unfunded vested benefits exceed \$50,000,000, the proposed regulations would provide that multiemployer plans and plans with no unfunded vested benefits are disregarded. In addition, the proposed regulations would provide that the aggregate unfunded vested benefits used to determine premiums for the current plan year (as determined under section 4006(a)(3)(E)(iii) of ERISA) are used for purposes of calculating whether unfunded vested benefits exceed \$50,000,000.

### III. Section 1.430(g)-1 Valuation Date and Value of Plan Assets

Section 1.430(g)-1 would provide rules for a plan's valuation date and the value of plan assets.<sup>3</sup> Under the proposed regulations, except in the case of a small plan, a plan's valuation date is the first day of the plan year. For this purpose, a small plan is defined as a plan sponsored by an employer that had 100 or fewer participants in defined benefit plans (other than multiemployer plans as defined in section 414(f)) sponsored by the employer or members of the employer's controlled group, including active and inactive participants and all other individuals entitled to future benefits. A small plan is permitted to have a valuation date other than the first day of a plan year. The selection of a valuation date by a small plan is part of the plan's funding method and, thus, is permitted to be changed only with the Commissioner's consent. If a plan that was using a valuation date that was not the first day of the plan year is no longer eligible to use that date because the plan is no longer a small plan, the required change of the valuation date to the first day of the plan year is treated as automatically approved and no prior approval of the Commissioner is necessary.

The proposed regulations would provide that plan assets must be valued either at their fair market value on the valuation date or at the "average" value of assets on the valuation date. Under this average value, the value of plan assets is set equal to the average of the fair market value of assets on the valuation date and the adjusted fair market value of assets determined for one or more earlier determination dates. The proposed regulations would provide that the period of time between the valuation date and each of the earlier determination dates must be equal (with a period that is not more than 12 months), and the earliest of these determination dates cannot be earlier than the last day of the 25th month before the valuation date of the plan year. In a typical situation, the earlier determination dates will be the two immediately preceding valuation dates. The proposed regulations would provide that this average of fair market values is increased for contributions included

<sup>3</sup> The value of plan assets under these proposed regulations is referred to in Schedule SB of Form 5500 as "actuarial assets."

in the plan's asset balance on the current valuation date that were not included in the plan's asset balance on an earlier determination date, and reduced for benefits and administrative expenses paid from plan assets during the same period.<sup>4</sup> After these adjustments, as well as the adjustments described in the following two paragraphs, the resulting average value must be constrained so that it falls between 90 and 110 percent of the fair market value of plan assets.

The proposed regulations would implement the rules of section 430(g)(4) relating to the treatment of contributions for a prior plan year that are made after the valuation date for the current plan year. These rules work in conjunction with the rules of section 430(j)(2) in order to keep employers and plans neutral regarding the timing of contributions that are paid after the end of the plan year. Under section 430(j)(2), the amount of the contribution must be adjusted for interest at the effective interest rate under section 430(h)(2) in order to take into account the delay in contributions (including the period after the end of the year). For this purpose, section 430(g)(4) requires that only the present value of a prior year contribution paid after the valuation date be included in plan assets, so that the value of plan assets for the next plan year is not inflated by reflecting a delayed contribution at full value. This effectively means that the present value of the contribution is the same from the perspective of the employer and the plan, regardless of when it is made. Because the requirement to adjust contributions for delayed payment after the end of the plan year is first effective for plan years beginning in 2008 (except for certain plans with a delayed effective date), the corresponding requirement to include only the present value of a prior year contribution paid after the valuation date is not effective until the second plan year for which section 430 applies to the plan. Thus, this corresponding requirement will become effective in plan years beginning in 2009, except with respect to plans for which the effective date of section 430 is delayed.

The proposed regulations would specify the treatment of current year contri-

butions that are made before the valuation date (which could only occur for small plans with valuation dates other than the first day of the plan year). These contributions, adjusted for interest at the effective interest rate under section 430(h)(2) for the plan year, must be subtracted from plan assets in determining the actuarial value of plan assets. This is similar to the pre-PPA '06 requirement to subtract these contributions from plan assets after adjustment using the plan's valuation interest rate.

The proposed regulations would incorporate the provisions of section 430(l) (involving qualified transfers to health benefit accounts under section 420).

#### IV. Section 1.430(h)(2)-1 Interest Rates

Section 1.430(h)(2)-1 would specify the interest rates that are to be used to determine present value and to make other calculations under section 430. These rates are generally based on the 24-month moving averages of 3 separate segment rates for the month that includes the valuation date (the applicable month). The first segment rate, which is based on the portion of the corporate bond yield curve over the period from 0 to 5 years, applies for purposes of discounting benefits that are expected to be paid during the 5-year period beginning on the valuation date for a plan year. The second segment rate, which is based on the portion of the corporate bond yield curve over the period between 5 and 20 years, applies for purposes of discounting benefit payments that are expected to be paid at least 5 years after the valuation date, but before 20 years. The third segment rate applies to benefit payments that are expected to be paid at least 20 years after the valuation date. Thus, for example, if a series of monthly payments is assumed to be made beginning on the valuation date, the second segment rate will apply to the 61<sup>st</sup> such payment and the third segment rate will apply beginning with the 241<sup>st</sup> such payment.<sup>5</sup> Except in the case of a new plan, a transition rule applies for 2008 and 2009 under which these segment rates are blended with the long-term corporate bond rate that applies under pre-PPA law.

The monthly corporate bond yield curve is, with respect to any month, a yield curve that is prescribed by the Commissioner for that month based on yields for that month on investment grade corporate bonds with varying maturities that are in the top three quality levels available. Notice 2007-81, 2007-44 I.R.B. 899, provides guidance on the monthly corporate bond yield curve and related interest rates used to make certain computations related to the funding requirements that apply to single employer defined benefit plans under section 430(h)(2), including a description of the methodology for determining the monthly corporate bond yield curve. See §601.601(d)(2) of this chapter.

The proposed regulations would reflect the special interest rate for determining a plan's funding target in the case of airlines that make the 10-year amortization election described in section 402(a)(2) of PPA '06, in accordance with section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28 (121 Stat. 112). The special interest rate does not apply for other purposes such as the determination of the plan's target normal cost.

The proposed regulations describe several elections a plan sponsor is permitted to make in order to use an alternative interest rate rather than the segment rates. These elections are made by providing written notification of the election to the plan's enrolled actuary. Such an election is part of the plan's funding method and, accordingly, may only be adopted or changed with the consent of the Commissioner. Under one such election, a plan sponsor that is using segment rates may elect the use of an alternative month as the applicable month, provided that the alternative month is one of the 4 months that precede the month that includes the valuation date for the plan year. Under another such election, the plan sponsor may elect not to apply the transition rule under which the segment rates are blended with the 30-year Treasury rate for 2008 and 2009. Under the third such election, for purposes of determining the minimum required contribution under section 430 (including the determination of

<sup>4</sup> Note that this average of fair market values is different from the calculation of average value under §1.412(c)(2)-1(b)(7). For example, the adjusted value described in the proposed regulations does not include interest and dividends on plan assets attributable to the period between the earlier determination date and the valuation date in determining the adjusted fair market value of assets.

<sup>5</sup> The same interest rate timing rules apply for purposes of determining present values for purposes of section 417(e)(3).

shortfall amortization installments, waiver amortization installments, and the present value of those installments), the plan sponsor may elect to use interest rates under the monthly corporate bond yield curve — which is a set of spot rates for the month preceding the valuation date rather than a 24-month moving average for that month or an alternative applicable month — in lieu of the segment rates. The amount of the funding target calculated in accordance with any of these elections applies for all purposes, including determining the adjusted funding target attainment percentage under section 436 and the applicable limitations under section 404. In the case of the first plan year to which section 430 applies to a plan (the first plan year beginning in 2008 other than for a plan with a delayed section 430 effective date), any of these elections are treated as having been approved by the Commissioner and do not require the Commissioner's specific prior approval.

In the case of a plan sponsor that has elected to use interest rates under the monthly corporate bond yield curve, if with respect to a decrement the benefit is only expected to be paid for one-half of a year (because the decrement was assumed to occur in the middle of the year), the proposed regulations would provide that the interest rate for that year can be determined as if the benefit were being paid for the entire year.

Under the proposed regulations, the effective interest rate determined under section 430(h)(2)(A) is the single interest rate that, if used to determine the present value of the benefits taken into account in determining the plan's funding target for a plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d) as described in §1.430(d)-1(b)(2) (without regard to calculations for plans in at-risk status under section 430(i)). The effective interest rate is used to adjust plan contributions made on a date other than the valuation date.

Under the proposed regulations, the interest rates used to determine the amount of shortfall amortization installments and waiver amortization installments are determined based on the dates those install-

ments are assumed to be paid, using the same timing rules that apply for purposes of determining the target normal cost. Thus, for a plan that uses the segment rates, the first segment rate applies to the five shortfall amortization installments assumed to be paid during the first five years beginning on the valuation date for the plan year, and the second segment rate applies to the two shortfall amortization installments that are assumed to be paid after that period.

#### V. Section 1.430(i)-1 Plans in At-risk Status

The proposed regulations would provide rules and assumptions for determining the funding target and making other computations for certain defined benefit plans that are referred to as plans in "at-risk" status due to their significantly underfunded status. These rules apply to single employer defined benefit plans (including multiple employer plans) but do not apply to multiemployer plans. The at-risk rules do not apply to small plans. For this purpose, a small plan is defined as a plan sponsored by an employer that had 500 or fewer participants (including both active and inactive participants) in defined benefit plans (other than multiemployer plans) sponsored by the employer or any member of the employer's controlled group on each day during the preceding plan year.

In general, the proposed regulations would provide that a plan is in at-risk status for a plan year if the funding target attainment percentage (FTAP) for the preceding plan year is less than 80% (65%, 70%, and 75%, for plan years beginning in 2008, 2009, and 2010, respectively),<sup>6</sup> and the at-risk FTAP for the preceding plan year is less than 70 percent. For this purpose, the proposed regulations would provide that a plan's FTAP for a plan year is a fraction (expressed as a percentage) determined as: (i) the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B)), divided by (ii) the funding target of the plan for the plan year (determined without regard to section 430(i) and these proposed regulations). The proposed regulations would provide that the

at-risk FTAP of a plan for a plan year is determined similarly except that the denominator is the at-risk funding target of the plan for the plan year (but determined without regard to the loading factor discussed in the following paragraph). The proposed regulations would provide that, in the case of a newly established plan, this FTAP and at-risk FTAP determination are assumed to be 100% for years before the plan exists.

In general, in accordance with section 430(i)(1), the proposed regulations would provide that the at-risk funding target and the at-risk target normal cost of the plan for the plan year are generally determined in the same manner as for plans not in at-risk status but using special actuarial assumptions. In addition, the at-risk funding target and the at-risk target normal cost are increased to take into account a loading factor. In any case, the at-risk funding target and the at-risk target normal cost of a plan for a plan year cannot be less than the plan's funding target and target normal cost determined without regard to the at-risk rules. This minimum value is determined on a plan-wide (rather than a participant-by-participant) basis.

The actuarial assumptions used to determine a plan's at-risk funding target for a plan year are the actuarial assumptions that are applied under section 430, with certain modifications as set forth in the proposed regulations. Under these special actuarial assumptions, if an employee would be eligible to commence an immediate distribution upon termination of employment by the end of the plan year that begins 10 years after the end of the current plan year (that is, the end of the 11th plan year beginning with the current plan year), that employee is assumed to terminate and commence an immediate distribution at the earliest retirement date under the plan, or, if later, at the end of the current plan year. (However, the proposed regulations would provide that this special assumption does not apply to the extent the employee is otherwise assumed to retire during the current plan year. Thus, for example, if generally applicable retirement assumptions would provide for a 25% probability that an employee will retire during the current plan year, the special retirement age assumption

<sup>6</sup> This phase-in of the 80% rule applies solely for plan years beginning in 2008 through 2010 and is not adjusted for plans described in §1.430(i)-1(f)(2) for which the effective date of section 430 is delayed.

would require the plan to assume a 75% probability that the employee will retire at the end of the plan year.) For this purpose, the proposed regulations would define the earliest retirement age under the plan as the earliest age at which a participant could terminate employment and receive an immediate distribution. In addition, the special actuarial assumptions in the proposed regulations would provide that all employees are assumed to elect the optional form of benefit available under the plan at the assumed retirement age that would result in the highest present value of benefits.

If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's funding target for the plan year is determined as a blend of the funding target determined as if the plan were not in at-risk status and the funding target determined as if the plan had been in at-risk status for each of the previous 5 plan years. For this purpose, the funding target determined as if the plan had been in at-risk status for each of the previous 5 plan years is determined without applying the loading factor if the plan has not been in at-risk status for two of the last four plan years. The increase in the funding target to reflect the at-risk rules is phased in over 5 years at 20% per year. The proposed regulations provide similar rules for determining the at-risk target normal cost of a plan that has been in at-risk status for fewer than 5 consecutive plan years.

For purposes of applying the rules under section 430(i), the proposed regulations set forth rules for making certain calculations with respect to the first plan year to which section 430 applies to the plan. These rules are generally the same as the rules that apply for that plan year for purposes of section 436.

There is no special rule for determining the at-risk funding target for the plan year preceding the plan year section 430 first applies to the plan. This is because, for a plan to which section 430 applies beginning in 2008, if the plan's FTAP for the preceding plan year was less than the 65% needed to be in at-risk status (pursuant to the transition rule described in section 430(i)(4)(B)), then the at-risk FTAP would necessarily be below the 70% needed for the plan to be in at-risk status (because the at-risk funding target cannot be less than

the funding target for a plan that is not in at-risk status). However, plans for which the effective date of section 430 is delayed will have to determine the at-risk funding target for the plan year that precedes the plan year for which section 430 is first effective with respect to the plan.

#### **Effective/Applicability Dates**

Section 430 generally applies to plan years beginning on or after January 1, 2008. These regulations are proposed to apply to plan years beginning on or after January 1, 2009. However, in the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), the regulations are proposed to apply to plan years beginning on or after the date section 430 applies with respect to the plan. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in these proposed regulations for purposes of satisfying the requirements of section 430.

Under the proposed regulations, any change in a plan's funding method that is made for the first plan year section 430 applies to the plan and that is not inconsistent with the requirements of section 430 would be treated as having been approved by the Commissioner and would not require the Commissioner's specific prior approval. In addition, the Commissioner's specific prior approval is not required with respect to any actuarial assumptions that are adopted for the first plan year for which section 430 applies to the plan and that are not inconsistent with the requirements of section 430. Future guidance will cover procedures for obtaining the Commissioner's approval for changes in funding method and may provide for additional circumstances in which automatic approval is granted.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It

is hereby certified that the collection of information imposed by these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The estimated burden imposed by the collection of information contained in these proposed regulations is 0.75 hours per respondent. Moreover, this burden is attributable to the flexibility given under the applicable statutory requirements under which a plan sponsor may make any of several elections related to the interest rate used for minimum funding purposes. The written elections under these proposed regulations are made by the plan sponsor upon occasion and will require minimal time to prepare. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### **Drafting Information**

The principal authors of these regulations are Lauson C. Green and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

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## Proposed Amendments to the Regulations

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

### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.430(d)–1 is added to read as follows:

#### *§1.430(d)–1 Determination of target normal cost and funding target.*

(a) *In general*—(1) *Overview.* This section sets forth rules for determining a plan's target normal cost and funding target under sections 430(b) and 430(d), including guidance relating to the application of actuarial assumptions described in sections 430(h)(1) and 430(h)(4). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). For further guidance on actuarial assumptions, see §1.430(h)(2)–1 (relating to interest rates) and §§1.430(h)(3)–1 and 1.430(h)(3)–2 (relating to mortality tables). See also §1.430(i)–1 for the determination of the funding target and target normal cost for a plan that is in at-risk status.

(2) *Organization of regulation.* Paragraph (b) of this section sets forth definitions of target normal cost and funding target. Paragraph (c) of this section provides rules regarding which benefits are taken into account in determining a plan's target normal cost and funding target. Paragraph (d) of this section sets forth the rules regarding the plan provisions that are taken into account in making these determinations, and paragraph (e) of this section provides rules on which plan participants are taken into account for this purpose. Paragraph (f) of this section provides rules relating to the actuarial assumptions and the plan's funding method that are used to determine present values. Paragraph (g) of this section contains effective/applicability dates and transition rules.

(3) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) ap-

plies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the plan's funding target and target normal cost are computed separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Definition of target normal cost, funding target, and funding target attainment percentage*—(1) *Target normal cost*—(i) *In general.* For a plan that is not in at-risk status under section 430(i) for the plan year, the target normal cost of the plan for the plan year is the present value of all benefits that have accrued or have been earned (or that are expected to accrue or to be earned) under the plan during the plan year. See §1.430(i)–1(d) and (e)(2) for the determination of target normal cost for a plan that is in at-risk status.

(ii) *Benefits accruing for a plan year.* The benefits that have been accrued or have been earned (or that are expected to accrue or to be earned) under a plan during a plan year include any increase in benefits during the plan year that is a result of any actual or projected increase in compensation during the current plan year, even if that increase in benefits is with respect to benefits attributable to services performed in a preceding plan year.

(2) *Funding target.* For a plan that is not in at-risk status under section 430(i) for the plan year, the funding target of the plan for the plan year is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year. See §1.430(i)–1(c) and (e)(1) for the determination of the funding target for a plan that is in at-risk status.

(3) *Funding target attainment percentage.* See §1.430(i)–1(b)(3) and §1.436–1(j)(2) for rules relating to the determination of the funding target attainment percentage under section 430(d)(2).

(c) *Benefits taken into account*—(1) *In general*—(i) *Basic rule.* The benefits taken into account in determining the funding target and target normal cost under paragraph (b) of this section are all

benefits earned or accrued under the plan, including retirement-type and ancillary benefits.

(ii) *Allocation of benefits*—(A) *Benefits that are based on accrued benefits.* If the amount of a benefit that is expected to be paid is a function of the accrued benefit at the time the benefit is expected to be paid, then the amount of the benefit that is taken into account in the funding target is determined by applying that function to the accrued benefit as of the beginning of the plan year and the amount of the benefit that is taken into account in the target normal cost is determined by applying that function to the increase in the accrued benefit for the plan year. For example, a benefit that is assumed to be payable at a particular early retirement age in the amount of 90% of the accrued benefit is taken into account in the funding target in the amount of 90% of the accrued benefit as of the beginning of the plan year, and that benefit is taken into account in the target normal cost in the amount of 90% of the increase in the accrued benefit for the plan year.

(B) *Benefits that are based on service.* If the amount of a benefit that is expected to be paid is not a function of the accrued benefit at the time the benefit is expected to be paid, but is a function of the participant's service at that time, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is determined by applying that function to the participant's service as of the first day of the plan year and the amount of the benefit that is taken into account in the target normal cost is the increase in that benefit for the plan year based on the additional year of service. For example, if a plan provides a post-retirement death benefit of \$500 per year of service, then the funding target is determined based on a death benefit of \$500 multiplied by a participant's service at the beginning of the year and the target normal cost is based on the additional \$500 in death benefits earned for one more year of service.

(C) *Other benefits.* If the amount of a benefit that is expected to be paid is neither a function of the accrued benefit at the time the benefit is expected to be paid as described in paragraph (c)(1)(ii)(A) of this section nor a function of the participant's service at that time as described in paragraph (c)(1)(ii)(B) of this section, then the portion of the benefit taken into account

for purposes of determining the funding target for a plan year is based on the proportion of a participant's service as of the first day of the plan year relative to the service the participant will have when the participant meets the age and service eligibility requirements for the benefit, and the portion of the benefit that is taken into account in the target normal cost is the increase in the proportional benefit for the plan year. For example, if a plan provides a Social Security supplement for a participant who retires after 30 years of service that is equal to a participant's Social Security benefit, the funding target is determined based on the participant's Social Security benefit as of the beginning of the plan year multiplied by a fraction, the numerator of which is the participant's service as of the first day of the plan year and the denominator of which is 30 years. In such a case, the target normal cost is based on the increase in the proportional benefit taking into account one additional year of service and any changes in the participant's Social Security benefit.

(iii) *Application of section 436 limitations to funding target and target normal cost determination.* The determination of the funding target and target normal cost of a plan for a plan year is not permitted to take into account any limitations or anticipated limitations under section 436.

(2) *Payment of expenses from plan assets.* Plan administrative expenses paid (or expected to be paid) from plan assets for a plan year are not taken into account in the determination of a plan's target normal cost and funding target for that plan year.

(3) *Benefits provided by insurance.* A plan generally is required to reflect in the plan's funding target and target normal cost the liability for benefits that are funded through insurance contracts held by the plan, and to include in plan assets the value of the corresponding insurance contracts. Alternatively, in the case of benefits that are funded through insurance contracts purchased from an insurance company licensed under the laws of a State, the plan is permitted to exclude benefits provided under such contracts from the plan's funding target and target normal cost and to exclude the corresponding insurance contracts from plan assets, but only to the extent that a participant's or beneficiary's right to receive those benefits is an irrevocable contractual right, based

on premiums paid to the insurance company prior to the valuation date under the insurance contracts. Thus, for example, in the case of a retired participant receiving benefits from an annuity contract in pay status under which no premiums are required on or after the valuation date, a plan is permitted to exclude the benefits provided by the contract from the plan's funding target and target normal cost, provided that the value of the contract is also excluded from plan assets. Similarly, in the case of an active or deferred vested participant whose benefits are funded by a life insurance or annuity contract under which further premiums are required on or after the valuation date, a plan is permitted to exclude the benefits, if any, that would be paid from the contract if no further premiums were to be paid (for example, if the contract were to go on reduced paid-up status) from the plan's funding target and target normal cost, provided that the value of the contract is excluded from plan assets. A plan's treatment of benefits funded through insurance contracts pursuant to this paragraph (c)(3) is part of the plan's funding method. Accordingly, that treatment can be changed only with the consent of the Commissioner.

(d) *Plan provisions taken into account.* Except as provided in section 412(d)(2), the determination of a plan's funding target and target normal cost for a plan year is based on plan provisions that are adopted no later than the valuation date for the plan year and that become effective during that plan year. Section 412(d)(2) applies for purposes of determining whether a plan amendment is treated as having been adopted on the first day of the plan year (including a plan amendment adopted within 2½ months after the close of the plan year).

(e) *Plan population taken into account—(1) In general.* In making any determination of the funding target or target normal cost under paragraph (b) of this section, the plan population is determined as of the valuation date. The plan population must include three classes of individuals—

(i) Participants currently employed in the service of the employer;

(ii) Participants who are retired under the plan or who are otherwise no longer employed in the service of the employer; and

(iii) All other individuals currently entitled to benefits under the plan.

(2) *Special exclusion for "rule of parity" cases.* Certain individuals may be excluded from the class of individuals described in paragraph (e)(1)(ii) of this section. The excludable individuals are those former participants who, prior to the valuation date for the plan year, have terminated service with the employer without vested benefits and whose service might be taken into account in future years because the 'rule of parity' of section 411(a)(6)(D) does not permit that service to be disregarded. However, if the plan's experience as to separated employees returning to service has been such that the exclusion described in this paragraph (e)(2) would be unreasonable, the exclusion would no longer apply.

(3) *Anticipated future participants.* In making any determination of the funding target or target normal cost under paragraph (b) of this section, the actuarial assumptions and funding method used for the plan must not anticipate the affiliation with the plan of future participants not employed in the service of the employer on the plan valuation date. However, any such determination may anticipate the affiliation with the plan of current employees who have not yet satisfied the participation (age and service) requirements of the plan as of the valuation date.

(f) *Actuarial assumptions and funding method used in determination of present value—(1) Establishment of actuarial assumptions and funding method—(i) General rules—(A) Assumptions and method cannot be changed for a plan year once established.* The determination of any present value or other computation under section 430 must be made on the basis of actuarial assumptions and a funding method. Actuarial assumptions established for a plan year in accordance with paragraph (f)(1)(ii) of this section cannot subsequently be changed for that plan year unless the Commissioner determines that the assumptions that were used are unreasonable. Similarly, a funding method established for a plan year in accordance with paragraph (f)(1)(ii) of this section cannot subsequently be changed for that plan year unless the Commissioner determines that the use of that funding method for that plan year is impermissible.

(B) *Scope of funding method.* A plan's funding method includes not only the overall funding method used by the plan but also each specific method of computation used in applying the overall method. However, the choice of which actuarial assumptions are appropriate to the overall method or to the specific method of computation is not a part of the funding method.

(ii) *Timing rule for establishing actuarial assumptions and funding method.* The actuarial assumptions and the funding method used by a plan for a plan year must be established not later than the due date (with extensions) for the filing of Form 5500, "Annual Return/Report of Employee Benefit Plan," for that plan year (or the last day of the 7th month after the end of the plan year in the case of a plan not required to file Form 5500). The filing of the first actuarial report (Schedule SB) for a plan year under section 6059 that reflects the use of actuarial assumptions and a funding method is treated as the establishment of those assumptions and the funding method for that plan year.

(2) *Interest and mortality rates.* Section 430(h)(2) and §1.430(h)(2)-1 set forth the interest rates, and section 430(h)(3) and §§1.430(h)(3)-1 and 1.430(h)(3)-2 set forth the mortality tables, that must be used for purposes of determining any present value under this section.

(3) *Other assumptions.* In the case of actuarial assumptions other than those specified in sections 430(h)(2), 430(h)(3), and 430(i), each of those actuarial assumptions must be reasonable (taking into account the experience of the plan and reasonable expectations), and the actuarial assumptions, in combination, must offer the plan's enrolled actuary's best estimate of anticipated experience under the plan. See paragraph (f)(4)(iii) of this section for special rules for determining the present value of a single sum and similar distributions.

(4) *Probability of benefit payments in single sum or other optional forms—(i) In general.* This paragraph (f)(4) provides rules relating to the probability that benefit payments will be paid as single sums or other optional forms under a plan and the impact of that probability on the determination of the present value of those benefit payments under section 430.

(ii) *General rules of application.* Any determination of present value or any other

computation under this section must take into account—

(A) The probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including single sum distributions), determined on the basis of the plan's experience and other related assumptions; and

(B) Any difference in the present value of future benefit payments that results from the use of actuarial assumptions in determining benefit payments in any such optional form of benefits that are different from those prescribed by section 430(h).

(iii) *Single sum and similar distributions—(A) Distributions using section 417(e) assumptions.* In the case of a distribution that is subject to section 417(e)(3) and that is determined using the applicable interest rate and applicable mortality table under section 417(e)(3), for purposes of applying paragraph (f)(4)(ii) of this section, the computation of the present value of that distribution will be treated as having taken into account any difference in present value that results from the use of actuarial assumptions that are different from those prescribed by section 430(h) (as required under paragraph (f)(4)(ii)(B) of this section) if the present value of the distribution is determined in accordance with paragraph (f)(4)(iii)(B) of this section.

(B) *Substitution of annuity form—(1) In general.* Except as otherwise provided in this paragraph (f)(4)(iii)(B), the present value of a distribution is determined in accordance with this paragraph (f)(4)(iii)(B) if it is determined by valuing the annuity that corresponds to the distribution using special actuarial assumptions. Under these special assumptions, for the period beginning with the annuity starting date, the current applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date is substituted for the mortality table under section 430(h)(3) that would otherwise be used. In addition, under these special assumptions, the valuation interest rates under section 430(h)(2) are used for this purpose for all periods (as opposed to the interest rates under section 417(e)(3) which the plan uses to determine the amount of the benefit).

(2) *Optional application of generational mortality.* In determining the

present value of a distribution under this paragraph (f)(4)(iii)(B), if a plan uses the generational mortality tables under §1.430(h)(3)-1(a)(4) or §1.430(h)(3)-2, the plan is permitted to use a 50-50 male-female blend of the annuitant mortality rates under the §1.430(h)(3)-1(a)(4) generational mortality tables in lieu of the applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date.

(3) *Optional phase-in of section 417(e)(3) segment interest rates.* In determining the present value of a distribution under this paragraph (f)(4)(iii)(B), a plan is permitted to make adjustments to reflect differences between the phase-in of the section 430(h)(2) segment rates under section 430(h)(2)(G) and the adjustments to the segment rates under section 417(e)(3)(D)(iii).

(C) *Distributions subject to section 417(e)(3) using other assumptions.* In the case of a distribution that is subject to section 417(e)(3) but that is determined as the greater of the benefit determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and the benefit determined using some basis other than the section 417(e)(3) assumptions, for purposes of applying paragraph (f)(4)(ii)(B) of this section, the computation of present value must take into account the extent to which the present value of the distribution is greater than the present value determined using the rules of paragraph (f)(4)(iii)(B) of this section.

(D) *Distributions subject to section 411(a)(13).* In the case of an applicable defined benefit plan described in section 411(a)(13)(C), if the distribution is determined under the rules of section 411(a)(13)(A), the amount of the future distribution must be determined by projecting the future interest credits or equivalent amounts under the plan's interest crediting rules to the expected date of payment using reasonable actuarial assumptions.

(5) *Reasonable techniques permitted.* Any reasonable technique can be used to determine the present value of the benefits expected to be paid during a plan year, based on the interest rates and mortality assumptions applicable for the plan year. For example, the present value of a monthly re-



tirement annuity payable at the beginning of each month can be determined—

(i) Using the standard actuarial approximation that reflects 13/24ths of the discounted expected payments for the year as of the beginning of the year and 11/24ths of the discounted expected payments for the year as of the end of the year; or

(ii) By assuming that the payment is made in the middle of the year.

(6) *Approval of significant changes in actuarial assumptions for large plans—(i) In general.* A large plan as described in paragraph (f)(6)(ii) of this section cannot change any actuarial assumption used to determine the plan's funding target for a plan year without the approval of the Commissioner if the change in assumptions results in a decrease in the plan's funding shortfall (within the meaning of section 430(c)(4)) for the current plan year (disregarding the effect on the plan's funding shortfall resulting from changes in interest and mortality assumptions) that exceeds \$50,000,000, or that exceeds \$5,000,000 and is 5 percent or more of the funding target of the plan before such change.

(ii) *Affected plans.* A plan is a large plan as described in this paragraph (f)(6)(ii) if—

(A) The plan is a defined benefit plan (other than a multiemployer plan) to which Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) applies; and

(B) The aggregate unfunded vested benefits used to determine premiums for the plan year (as determined under section 4006(a)(3)(E)(iii) of ERISA) of the plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of ERISA) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of ERISA) which are covered by Title IV (disregarding multiemployer plans and disregarding plans with no unfunded vested benefits) exceed \$50,000,000.

(7) *Examples.* The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions: the normal retirement age is 65, the plan is subject to section 430 starting in 2008, the plan year is the calendar year, and the valuation date is January 1. The examples read as follows:

*Example 1.* (i) Plan P provides an accrued benefit equal to 1.0% of a participant's highest 3-year average compensation for each year of service. Plan P provides that an early retirement benefit can be received at age 60 equal to the participant's accrued benefit reduced by 0.5% per month for early commencement. On January 1, 2008, Participant A is age 60 and has 12 years of past service. Participant A's compensation for the years 2005 through 2007 was \$47,000, \$50,000, and \$52,000, respectively. Participant A's rate of compensation at December 31, 2007, is \$54,000 and A's rate of compensation for 2008 is assumed not to increase at any point during 2008.

(ii) Participant A's annual accrued benefit as of January 1, 2008, is \$5,960 [ $0.01 \times 12 \times (\$47,000 + \$50,000 + \$52,000)/3$ ]. Participant A's expected benefit accrual for 2008 is \$800 [ $0.01 \times 13 \times (\$50,000 + \$52,000 + \$54,000)/3 - \$5,960$ ].

(iii) The early retirement benefit, with respect to the decrement at age 60, that is taken into account when determining the 2008 funding target is \$4,172 [ $\$5,960 \text{ accrued benefit} \times (1 - 0.005 \times 60 \text{ months})$ ]. The annual accrual of the early retirement benefit, with respect to the decrement at age 60, that is taken into account when determining the 2008 target normal cost is \$560 [ $\$800 \text{ annual accrual} \times (1 - 0.005 \times 60 \text{ months})$ ].

(iv) The early retirement benefit, with respect to the decrement at age 61, that is taken into account when determining the 2008 funding target is \$4,529.60 [ $\$5,960 \text{ accrued benefit} \times (1 - 0.005 \times 48 \text{ months})$ ]. The annual accrual of the early retirement benefit, with respect to the decrement at age 61, that is taken into account when determining the 2008 target normal cost is \$608 [ $\$800 \text{ annual accrual} \times (1 - 0.005 \times 48 \text{ months})$ ].

*Example 2.* (i) The facts are the same as in *Example 1*. In addition, the plan offers a \$500 temporary monthly supplement to participants who complete 15 years of service and retire from active employment after attaining age 60. The temporary supplement is available for retirements occurring at ages 60 and 61, and is payable until the participant turns age 62. In addition, the supplement is limited so that it does not exceed the participant's social security benefit payable at age 62. On January 1, 2008, Participant B is age 55 and has 20 years of past service, and Participant C is age 60 and has 14 years of past service. For Participants B and C, the projected social security benefit is greater than \$500 per month.

(ii) For Participant B, the allocable portion of the annual temporary supplement that is taken into account when determining the funding target for 2008 is \$4,800, which applies for the decrement at age 60 until age 62 [ $(\$500 \times 12 \text{ months}) \times 20 \text{ years of past service} / 25 \text{ years of service at eligibility for the supplement}$ ]. This same dollar amount will apply for the assumed decrement at age 60 or age 61, but the period of time the amount will be paid is different for those two decrements.

(iii) For Participant C, the allocable portion of the annual temporary supplement that is taken into account when determining the funding target for 2008 is \$5,600, which is payable for the decrement at age 61 until age 62 [ $(\$500 \times 12 \text{ months}) \times 14 \text{ years of past service} / 15 \text{ years of service at eligibility for the supplement}$ ].

*Example 3.* (i) The facts are the same as in *Example 1*. In addition, the plan provides a disability ben-

efit to participants who become disabled after completing 15 years of service. The disability benefit is payable at normal retirement age. For purposes of calculating the disability benefit, service continues to accrue until normal retirement age (unless recovery or retirement occurs earlier). Further, compensation is deemed to continue to normal retirement age at the same rate as when the disability began.

(ii) Participant A will be eligible for the disability benefit at age 63 when he will have 15 years of service. Participant A's projected annual disability benefit at normal retirement age is \$9,180 (that is, 1% of highest 3-year average compensation of \$54,000 multiplied by 17 years of deemed service at normal retirement age).

(iii) The allocable portion of the disability benefit that is taken into account when determining the 2008 funding target with respect to the disability decrements occurring at age 63 and later is \$7,344 [ $\$9,180 \times (12 \text{ years of past service} / 15 \text{ years of service at eligibility for disability benefits})$ ].

(iv) The disability benefit accrual that is taken into account when determining the 2008 target normal cost with respect to the disability decrements occurring at age 63 and later is \$612 [ $\$9,180 \times (1 \text{ year of deemed service} / 15 \text{ years of service at eligibility for disability benefits})$ ].

*Example 4.* (i) Retiree D, a participant in Plan P, is a male age 72 and is receiving a \$100 monthly straight life annuity. The 2008 actuarial valuation is performed using the segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)), and the 2008 annuitant and nonannuitant (male and female) mortality tables (published in §1.430(h)(3)-1).

(ii) The present value of Retiree D's straight life annuity on the valuation date is \$10,624. This is equal to the sum of: \$5,005, which is the present value of payments expected to be made during the first 5 years, using the first segment interest rate of 5.26%; \$5,431, which is the present value of payments expected to be made during the next 15 years, using the second segment interest rate of 5.82%; and \$188, which is the present value of payments expected to be made after 20 years, using the third segment interest rate of 6.38%.

*Example 5.* (i) The facts are same as in *Example 4*, except Plan P does not provide for early retirement benefits or single sum distributions. The actuary assumes that no participants terminate employment prior to age 50 (other than by death), there is a 5% probability of withdrawal at age 50, and that those participants who do withdraw receive a deferred annuity starting at age 65. Participant E is a male age 46 on January 1, 2008, and has an annual accrued benefit of \$23,000 beginning at age 65.

(ii) After taking into account the 5% probability of withdrawal, the funding target associated with Participant E's assumed age 50 withdrawal benefit in the 2008 actuarial valuation is \$3,573.69. This is equal to the sum of: \$363.55, which is the present value of payments expected to be made during the year the participant turns age 65 (the 20<sup>th</sup> year after the valuation date), using the second segment interest rate of 5.82%; and \$3,210.14, which is the present value of payments expected to be made after the 20<sup>th</sup> year, using the third segment interest rate of 6.38%.

*Example 6.* (i) The facts are the same as in *Example 5*, except the plan offers a single sum distribution

payable at normal retirement age (age 65) determined based on the applicable interest rate and the applicable mortality table under section 417(e)(3). The actuary assumes that 70% of the participants will elect a single sum upon retirement and the remaining 30% will elect a straight life annuity.

(ii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed single sum payment, deferred to age 65, is \$2,564.86. This is calculated in the same manner as the present value of annuity payments, except that the 2008 applicable mortality rates are substituted for the 2008 male annuitant mortality rates. This portion of the 2008 funding target is equal to the sum of: \$254.63, which is the present value of annuity payments expected to be made between age 65 and 66 (during the 20<sup>th</sup> year after the valuation date), using the second segment interest rate of 5.82%; and \$2,310.23, which is the present value of annuity payments expected to be made after the 20<sup>th</sup> year following the valuation date, using the third segment interest rate of 6.38%. These present value amounts reflect the 2008 male nonannuitant mortality rates prior to the assumed commencement of benefits at age 65, the 100% probability of retiring at age 65, and the 70% probability that E will elect a single sum distribution.

(iii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed straight life annuity, deferred to age 65, is equal to 30% of the result obtained in *Example 5*.

*Example 7.* (i) The facts are the same as in *Example 6*, except the plan offers an immediate single sum upon withdrawal at age 50 determined based on the applicable interest rate and the applicable mortality table under section 417(e)(3). The actuary assumes that 70% of the participants will elect to receive a single sum distribution upon withdrawal.

(ii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed single sum payment is \$2,523.03. This is calculated in the same manner as the present value of annuity payments, except that the 2008 applicable mortality rates are substituted for the 2008 male annuitant and nonannuitant mortality rates after the annuity starting date. This portion of the 2008 funding target is equal to the sum of: \$250.48, which is the present value of annuity payments expected to be made between age 65 and 66 (during the 20<sup>th</sup> year after the valuation date), using the second segment interest rate at an interest rate of 5.82%; and \$2,272.55, which is the present value of annuity payments expected to

be made after the 20<sup>th</sup> year following the valuation date, using the third segment interest rate of 6.38%. These present value amounts reflect the 2008 male nonannuitant mortality rates prior to the assumed single sum distribution age of 50, and the 70% probability that E will elect a single sum distribution.

*Example 8.* (i) The facts are the same as in *Example 5*, except that the plan sponsor elects under section 430(h)(2)(D)(ii) to use the monthly corporate bond yield curve instead of segment rates. The enrolled actuary assumes payments are made monthly throughout the year and uses the interest rate from the middle of the monthly corporate bond yield curve because this mid-year yield rate most closely matches the average timing of benefits paid. Solely for purposes of this example, assume that the monthly yield curve derived from the August 2007 data is applicable (even though the plan would actually have to use the yield curve derived from the December 2007 data).

(ii) After taking into account the 5% probability of withdrawal, the funding target associated with Participant E's assumed age 50 withdrawal benefit in the 2008 actuarial valuation is \$3,359.69. This reflects the sum of each year's expected payments, discounted at the yield rates described in paragraph (i) of this *Example 8*, as shown below:

Age	Discount period	Yield rate	Present value
65	19.5	6.47%	\$322.75
66	20.5	6.49%	298.51
67	21.5	6.51%	275.62
68 and over	Varies	Varies	2,462.81
Total			\$3,359.69

*Example 9.* (i) Plan F is a cash balance plan that permits an immediate payment of a single sum equal to the participant's hypothetical account balance upon termination of employment. Plan terms provide that the hypothetical account is credited with interest at the 3rd segment rate. In the 2008 actuarial valuation, the enrolled actuary assumes that the hypothetical account balances will increase with annual interest credits of 5.0% until the participant commences receiving his or her benefit, that all participants will retire on the first day of the plan year in which they attain age 65 (that is, no participant will terminate employment prior to age 65 other than by death), and that 100% of participants will elect a single sum upon retirement. The 2008 actuarial valuation is performed using the 24-month average segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)), and the separate annuitant and non-annuitant mortality tables under §1.430(h)(3)-1 for 2008 for periods prior to commencement of benefits (however, the annuitant mortality table is never used because the only assumed payment is a single sum). No mortality table is required for the period after commencement of benefits because the single sum payment is equal to the account balance. Participant F is a male age 61 on January 1, 2008, and has a hypothetical account balance equal to \$150,000 on that date.

(ii) Participant F's hypothetical account balance projected to January 1, 2012 (the plan year in which F attains age 65) is \$182,326 based on the assumed annual interest crediting rate of 5%. The 2008 funding

target attributable to Participant F's benefit at age 65 is \$145,905, which is calculated by discounting the projected hypothetical account balance of \$182,326 using the first segment rate of 5.26% and the male non-annuitant mortality rates.

(iii) In contrast, if the enrolled actuary assumes that the hypothetical account balances increase with annual interest credits of 6.0%, the 2008 funding target attributable to Participant F's benefit at age 65 is \$151,544 calculated by discounting the projected hypothetical account balance of \$189,372 using the first segment rate of 5.26% and the male non-annuitant mortality rates.

(g) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), this section

applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *Approval for changes in funding method.* Any change in a plan's funding method that is made for the first plan year for which section 430 applies to the plan and that is not inconsistent with the requirements of section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

(4) *Approval for changes in actuarial assumptions.* The Commissioner's specific prior approval is not required with respect to any actuarial assumptions that are adopted for the first plan year for which section 430 applies to the plan and that are not inconsistent with the requirements of section 430.

Par. 3. Section 1.430(g)-1 is added to read as follows:

*§1.430(g)-1 Valuation date and valuation of plan assets.*

(a) *In general*—(1) *Overview*. This section provides rules relating to a plan's valuation date and the valuation of a plan's assets for a plan year under section 430(g). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to the rules of section 412, but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes valuation date rules. Paragraph (c) of this section describes rules regarding the determination of the asset value for purposes of a plan's actuarial valuation. Paragraph (d) of this section contains rules for taking employer contributions into account in the determination of the value of plan assets. Paragraph (e) of this section contains an example. Paragraph (f) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans*. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Thus, in such a case, the value of plan assets is determined separately for each employer under the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Valuation date*—(1) *In general*. The determination of the funding target, target normal cost, and asset value of a plan for a plan year is made as of the valuation date of the plan for that plan year. Except as provided in paragraph (b)(2) of this section, the valuation date of a plan for any plan year is the first day of the plan year.

(2) *Exception for small plans*—(i) *In general*. If, on each day during the preceding plan year, a plan had 100 or fewer participants (including active and inactive participants and all other individuals entitled to future benefits), the plan may designate any day during the plan year as its valuation date for that plan year and succeed-

ing plan years. For purposes of this paragraph (b)(2)(i), all defined benefit plans (other than multiemployer plans as defined in section 414(f)) maintained by an employer are treated as one plan, but only participants with respect to that employer or that employer's controlled group members are taken into account.

(ii) *Employer determination*. For purposes of this paragraph (b)(2), the employer includes all members of the employer's controlled group determined pursuant to sections 414(b), (c), (m), and (o).

(iii) *Application of exception in first plan year*. In the case of the first plan year of any plan, the exception for small plans under paragraph (b)(2)(i) of this section is applied by taking into account the number of participants that the plan is reasonably expected to have on each day during the first plan year.

(iv) *Valuation date is part of funding method*. The selection of a plan's valuation date is part of the plan's funding method and, accordingly, may only be changed with the consent of the Commissioner. The change of a plan's valuation date that is required by section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's prior specific approval.

(c) *Determination of asset value*—(1) *In general*—(i) *General use of fair market value*. Except as provided in this paragraph (c), the value of plan assets for purposes of section 430 is equal to the fair market value of plan assets on the valuation date. Prior year contributions made after the valuation date and current year contributions made before the valuation date are taken into account to the extent provided in paragraph (d) of this section.

(ii) *Fair market value*. The fair market value of an asset is determined as the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The Commissioner may, in guidance of general applicability, issue guidance on the valuation of insurance contracts. See §601.601(d)(2) of this chapter.

(2) *Averaging of fair market values*—(i) *In general*. Subject to the plan asset corridor rules of paragraph (c)(2)(iii) of this section, a plan is permitted to determine the value of plan assets on the valuation

date as the average of the fair market value of assets on the valuation date and the adjusted fair market value of assets determined for one or more earlier determination dates using the method described in this paragraph (c)(2). The period of time between the valuation date and each of the earlier determination dates must be equal and that period of time cannot exceed 12 months. In addition, the earliest such determination date cannot be earlier than the last day of the 25th month before the valuation date of the plan year. In a typical situation, the earlier determination dates will be the two immediately preceding valuation dates. The method of determining the value of assets is part of the plan's funding method and, accordingly, may only be changed with the consent of the Commissioner.

(ii) *Adjusted fair market value*. The adjusted fair market value of plan assets for a prior determination date is the fair market value of plan assets on that date, increased for contributions included in the plan's asset balance on the current valuation date that were not included in the plan's asset balance on the earlier determination date, and reduced for benefits and administrative expenses paid from plan assets during the same period.

(iii) *Restriction to 90-110 percent corridor*—(A) *Asset value less than 90 percent of fair market value*. If the value of plan assets determined under paragraph (c)(2)(i) of this section is less than 90 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (c)(2) is equal to 90 percent of the fair market value of plan assets.

(B) *Asset value greater than 110 percent of fair market value*. If the value of plan assets determined under paragraph (c)(2)(i) of this section is greater than 110 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (c)(2) is equal to 110 percent of the fair market value of plan assets.

(3) *Qualified transfers to health benefit accounts*. In the case of a qualified transfer (as defined in section 420), any assets so transferred are not treated as plan assets for purposes of section 430 and this section.

(d) *Accounting for contribution receipts*—(1) *Prior year contributions*—(i) *In general*. For purposes of determining

the value of plan assets under paragraph (c) of this section, if an employer makes a contribution to the plan after the valuation date for the plan year, and the contribution is for a preceding plan year, then the present value of the contribution determined as of that valuation date is taken into account as an asset of the plan as of the valuation date. For this purpose, the present value is determined using the effective interest rate under section 430(h)(2)(A) for the preceding plan year.

(ii) *Special rule for plan years beginning before plan's first effective plan year.* Notwithstanding paragraph (d)(1)(i) of this section, in the case of a plan's first effective plan year, if the plan sponsor

makes a contribution to the plan after the valuation date for the first effective plan year and that contribution is for a preceding plan year, then the contribution is taken into account as a plan asset under paragraph (d)(1)(i) of this section without applying any present value discount.

(2) *Current year contributions made before valuation date.* For purposes of determining the value of plan assets under paragraph (c) of this section, if an employer makes a contribution for a plan year before that year's valuation date, that contribution (and any interest on the contribution for the period between the contribution date and the valuation date, determined using the effective interest rate un-

der section 430(h)(2)(A) for the plan year) must be subtracted from plan assets in determining the value of plan assets as of the valuation date.

(e) *Example.* The following example illustrates the application of this section:

*Example.* (i) *Facts.* All assets of Plan F are invested in a trust fund, the plan year is the calendar year, and the valuation date is January 1. The actuarial value is determined by averaging fair market value over the valuation date and the preceding two valuation dates. For each plan year, all contributions for the plan year are made during that plan year. An actuarial valuation is performed as of January 1, 2019. The fair market value of assets, the plan contributions, the benefit payments, and other relevant items for 2017 through 2019 are as follows:

	2017	2018	2019
Fair market value: Jan. 1	\$196,500	\$238,000	\$228,000
Contributions	\$ 62,000	\$ 66,000	
Benefit payments	\$ (24,000)	\$ (25,000)	
Expenses	\$ (7,000)	\$ (7,500)	
Interest and dividends	\$ 7,500	\$ 7,000	
Net realized gains (losses)	\$ 6,000	\$ (8,500)	
Balancing item	\$ (3,000)	\$ (42,000)	
Fair market value: Dec. 31	\$238,000	\$228,000	

(ii) *Computation of average value.* The average value as of January 1, 2019, is computed as follows:

Adjusted values	2017	2018	2019
Fair market value: January 1	\$196,500	\$238,000	\$228,000
Net adjustments:			
Contributions	\$128,000	\$ 66,000	
Benefits Paid	\$ (49,000)	\$ (25,000)	
Expenses Paid	\$ (14,500)	\$ (7,500)	
Total	\$261,000	\$271,500	\$228,000
Average value as of January 1, 2019 equals:	$\$261,000 + \$271,500 + \$228,000 \div 3 = \$253,500$		

(iii) *Conclusion.* Having determined an average value as of January 1, 2019 equal to \$253,500, Plan F must confirm that this value satisfies the 90–110 percent corridor rules under paragraph (c)(2)(iii) of this section. Because 110% of \$228,000 equals \$250,800, the value of Plan F's assets under paragraph (c)(2) of this section must be limited to \$250,800 (rather than \$253,500) for this purpose. This valuation method meets the requirements of this section.

(f) *Effective/applicability dates and transition rules—(1) In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set

forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year to which section 430 applies to the plan.

(4) *Approval for changes in the valuation date and valuation method for first ef-*

*fective plan year.* Any change in a plan's valuation date or asset valuation method that is made for the first effective plan year and that is not inconsistent with the requirements of section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

Par. 4. Section 1.430(h)(2)–1 is added to read as follows:

*§1.430(h)(2)–1 Interest rates used to determine present value.*

(a) *In general—(1) Overview.* This section provides rules relating to the interest rates to be applied for a plan year under section 430(h)(2). Section 430(h)(2) and

this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes how the segment interest rates are used for a plan year. Paragraph (c) of this section describes those segment rates. Paragraph (d) of this section describes the monthly corporate bond yield curve that is used to develop the segment rates. Paragraph (e) of this section describes certain elections that are permitted to be made under this section. Paragraph (f) of this section describes other rules related to interest rates. Paragraph (g) contains effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Thus, each employer under such a multiple employer plan may make elections with respect to the interest rate rules under this section that are independent of the elections of other employers under the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Interest rates for determining plan liabilities—(1) In general.* For purposes of determining the target normal cost and the funding target for any plan year, the interest rates used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan are determined as set forth in this paragraph (b).

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

(3) *Benefits payable after 5 years and within 20 years.* In the case of benefits expected to be payable during the 15-year period beginning after the end of the period described in paragraph (b)(2) of this section, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the second segment rate with respect to the applicable month, as described in paragraph (c)(2)(ii) of this section.

(4) *Benefits payable after 20 years.* In the case of benefits expected to be payable after the period described in paragraph (b)(3) of this section, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the third segment rate with respect to the applicable month, as described in paragraph (c)(2)(iii) of this section.

(5) *Applicable month.* Except as provided in paragraph (e) of this section, the term “applicable month” for purposes of this paragraph (b) means the month that includes the valuation date of the plan for the plan year.

(6) *Special rule for certain airlines—(i) In general.* Pursuant to section 6615 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28 (121 Stat. 112), for a plan sponsor that makes the election described in section 402(a)(2) of the Pension Protection Act of 2006 (PPA ’06), Public Law 109–280 (120 Stat. 780), the interest rate required to be used to determine the plan’s funding target for each of the 10 years under that election is 8.25 percent (rather than the segment rates otherwise described in this paragraph (b)).

(ii) *Special interest rate not applicable for other purposes.* The special interest rate described in paragraph (b)(6)(i) of this section does not apply for other purposes such as the determination of the plan’s target normal cost.

(c) *Segment rates—(1) Overview.* This paragraph (c) sets forth rules for determining the first, second, and third segment rates for purposes of paragraph (b) of this section. The first, second, and third segment rates are set forth in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter. See

paragraph (g)(3) of this section for a transition rule under which the definition of the segment rates is modified for plan years beginning in 2008 and 2009.

(2) *Definition of segment rates—(i) First segment rate.* For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “first segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the first 5 years of each of those yield curves.

(ii) *Second segment rate.* For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “second segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the portion of each of those yield curves corresponding to the 15-year period that follows the end of the 5-year period described in paragraph (c)(2)(i) of this section.

(iii) *Third segment rate.* For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “third segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the portion of each of those yield curves corresponding to the 40-year period that follows the end of the 15-year period described in paragraph (c)(2)(ii) of this section.

(d) *Monthly corporate bond yield curve—(1) In general.* For purposes of this section, the “monthly corporate bond yield curve” is, with respect to any month, a yield curve that is prescribed by the Commissioner for that month based on yields for that month on investment grade corporate bonds with varying maturities

that are in the top three quality levels available.

(2) *Determination and publication of yield curve.* A description of the methodology for determining the monthly corporate bond yield curve is provided in guidance issued by the Commissioner that is published in the Internal Revenue Bulletin. The yield curve for a month will be set forth in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

(e) *Elections*—(1) *In general.* This paragraph (e) describes elections that a plan sponsor can make to use alternative interest rates under this section. Any election under this section must be made by providing written notification of the election to the plan's enrolled actuary. Any election in this paragraph (e) is part of the plan's funding method and, accordingly, may only be adopted or changed with the consent of the Commissioner.

(2) *Elections for alternative date.* A plan sponsor that is using segment rates as provided under paragraph (b) of this section may elect the use of an alternative month as the applicable month for purposes of paragraph (b)(5) of this section, provided that the alternative month is one of the 4 months that precede the month that includes the valuation date of the plan for the plan year.

(3) *Election not to apply transition rule.* The plan sponsor may elect not to apply the transition rule in paragraph (g)(3) of this section.

(4) *Election to use full yield curve*—(i) *In general.* For purposes of determining the minimum required contribution under section 430, the plan sponsor may elect to use interest rates under the monthly corporate bond yield curve described in paragraph (d) of this section for the month preceding the month that includes the valuation date in lieu of the segment rates determined under paragraph (c) of this section. These purposes include determining the installments and present values described in paragraph (f)(2) of this section. In order to address the timing of benefit payments during a year, reasonable approximations are permitted to be used to value benefit payments that are expected to be made during a plan year.

(ii) *Reasonable techniques permitted.* In the case of a plan sponsor using the

monthly corporate bond yield curve under this paragraph (e)(4), if with respect to a decrement the benefit is only expected to be paid for one-half of a year (because the decrement was assumed to occur in the middle of the year), the interest rate for that year can be determined as if the benefit were being paid for the entire year. See §1.430(d)–1(f)(5) for additional reasonable techniques that can be used in determining present value.

(5) *Plan sponsor.* For purposes of the elections described in this section, any reference to the plan sponsor generally means the employer or employers responsible for making contributions to or under the plan. In the case of plans that are multiple employer plans to which section 413(c)(4)(A) does not apply, any reference to the plan sponsor means the plan administrator within the meaning of section 414(g).

(f) *Interest rates used for other purposes*—(1) *Effective interest rate.* The effective interest rate determined under section 430(h)(2)(A) is the single interest rate that, if used to determine the present value of the benefits that are taken into account in determining the plan's funding target for a plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d) as described in §1.430(d)–1(b)(2) (without regard to calculations for plans in at-risk status under section 430(i)).

(2) *Interest rates used for determining shortfall amortization installments and waiver amortization installments.* The interest rates used to determine the amount of shortfall amortization installments and the present value of those installments are determined based on the dates those installments are assumed to be paid, using the same timing rules that apply in determining target normal cost as described in paragraph (b) of this section. Thus, for a plan that uses the segment rates described in paragraph (c) of this section, the first segment rate applies to installments assumed to be paid during the first five plan years beginning on the valuation date for the plan year, and the second segment rate applies to installments assumed to be paid during the subsequent 15-year period. For purposes of this paragraph (f)(2), the shortfall amortization installments for a plan year are assumed to be paid on the

valuation date for that plan year. Thus, for example, for a plan that uses the segment rates described in paragraph (c) of this section, the shortfall amortization installment for the fifth plan year following the current plan year (the sixth installment) is assumed to be paid on the valuation date for that year so that such shortfall amortization installment will be determined using the second segment rate.

(g) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA '06, this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) *Transition rule*—(i) *In general.* Notwithstanding the general rules for determination of segment rates under paragraph (c)(2) of this section, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month is equal to the sum of—

(A) The product of that rate for that month determined without regard to this paragraph (g)(3), multiplied by the applicable percentage; and

(B) The product of the weighted average interest rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as that provision was in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) *Applicable percentage.* For purposes of this paragraph (g)(3), the applicable percentage is 33<sup>1</sup>/<sub>3</sub> percent for plan years beginning in 2008 and 66-2/3 percent for plan years beginning in 2009.

(iii) *New plans ineligible.* The transition rule of this paragraph (g)(3) does not apply to a plan if the first plan year of the plan begins on or after January 1, 2008.

(4) *Approval to make elections in first effective plan year.* In the case of the first plan year to which section 430 ap-

plies to a plan, the plan sponsor's elections described in paragraph (e) of this section are treated as having been approved by the Commissioner and do not require the Commissioner's specific prior approval.

Par. 5. Section 1.430(i)-1 is added to read as follows:

*§1.430(i)-1 Special rules for plans in at-risk status.*

(a) *In general*—(1) *Overview.* This section provides special rules related to determining the funding target and making other computations for certain defined benefit plans that are in at-risk status for the plan year. Section 430(i) and this section apply to single employer defined benefit plans (including multiple employer plans) but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes rules for determining whether a plan is in at-risk status for a plan year, including the determination of a plan's funding target attainment percentage and at-risk funding target attainment percentage. Paragraph (c) of this section describes the funding target for a plan in at-risk status. Paragraph (d) of this section describes the target normal cost for a plan in at-risk status. Paragraph (e) of this section describes rules regarding how the funding target and target normal cost are determined for a plan that has been in at-risk status for fewer than 5 consecutive years. Paragraph (f) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, for example, at-risk status is determined separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Determination of at-risk status of a plan*—(1) *General rule.* Except as other-

wise provided in this section, a plan is in at-risk status for a plan year if—

(i) The funding target attainment percentage for the preceding plan year (determined under paragraph (b)(3) of this section) is less than 80 percent; and

(ii) The at-risk funding target attainment percentage for the preceding plan year (determined under paragraph (b)(4) of this section) is less than 70 percent.

(2) *Small plan exception.* If, on each day during the preceding plan year, a plan had 500 or fewer participants (including both active and inactive participants), the plan is not treated as in at-risk status for the plan year. For purposes of this paragraph (b)(2), all defined benefit plans (other than multiemployer plans as defined in section 414(f)) maintained by an employer (or any member of the employer's controlled group) are treated as one plan, but only participants with respect to that employer or member are taken into account. For this purpose, the rules of section 412(d)(3) and §1.430(g)-1(b)(2)(ii) apply.

(3) *Funding target attainment percentage.* The funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage)—

(i) The numerator of which is the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B)); and

(ii) The denominator of which is the funding target of the plan for the plan year (determined without regard to section 430(i) and this section).

(4) *At-risk funding target attainment percentage.* The at-risk funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage)—

(i) The numerator of which is the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B); and

(ii) The denominator of which is the at-risk funding target of the plan for the plan year (determined under paragraph (c) of this section, but without regard to the loading factor imposed under paragraph (c)(2)(ii) of this section).

(5) *Special rules*—(i) *Special rule for new plans.* In the case of a newly established plan, the funding target attainment percentage under paragraph (b)(3)

of this section and the at-risk funding target attainment percentage under paragraph (b)(4) of this section are assumed to be 100 percent for years before the plan exists. Except as otherwise provided in paragraph (b)(5)(ii) of this section, a plan that has a predecessor plan in accordance with section 414(a) or §1.415(f)-1(c) is not a newly established plan under this rule.

(ii) *Special rules for mergers, acquisitions, and spinoffs.* [Reserved]

(6) *Special rule for determining at-risk status of plans of specified automobile manufacturers.* See section 430(i)(4)(C) for special rules for determining the at-risk status of plans of specified automobile and automobile parts manufacturers.

(c) *Funding target for plans in at-risk status*—(1) *In general.* If the plan has been in at-risk status for 5 consecutive years, including the current plan year, then the funding target for the plan is the at-risk funding target determined under paragraph (c)(2) of this section. See paragraph (e) of this section for the determination of the funding target where the plan is in at-risk status for the plan year but was not in at-risk status for one or more of the 4 preceding plan years.

(2) *At risk funding target*—(i) *Use of modified actuarial assumptions.* Except as provided in this paragraph (c)(2), the at-risk funding target of the plan for the plan year is equal to the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined in accordance with §1.430(d)-1 but using the additional actuarial assumptions described in paragraph (c)(3) of this section.

(ii) *Funding target includes load.* The at-risk funding target is increased by the sum of—

(A) \$700 multiplied by the number of participants in the plan (including active participants, inactive participants, and beneficiaries); plus

(B) Four percent of the funding target (determined under §1.430(d)-1(b)(2) as if the plan was not in at-risk status) of the plan for the plan year.

(iii) *Minimum amount.* Notwithstanding any otherwise applicable provisions of this section, the at-risk funding target of a plan for a plan year is not less than the plan's funding target for the plan year determined without regard to this section.

(3) *Additional actuarial assumptions*—(i) *In general.* The actuarial assumptions used to determine a plan's at-risk funding target for a plan year are the actuarial assumptions that are applied under section 430, with the modifications described in this paragraph (c)(3).

(ii) *Special retirement age assumption*—(A) *Employees eligible to retire and collect benefits within 11 years.* Subject to paragraph (c)(3)(ii)(B) of this section, if an employee would be eligible to commence an immediate distribution by the end of the plan year that begins 10 years after the end of the current plan year (that is, the end of the 11th plan year beginning with the current plan year), that employee is assumed to commence an immediate distribution at the earliest retirement date under the plan, or, if later, at the end of the current plan year. The rule of this paragraph (c)(3)(ii)(A) does not affect the application of plan assumptions regarding an employee's termination of employment prior to the employee's earliest retirement date.

(B) *Employees otherwise assumed to retire immediately.* The special retirement age assumption of paragraph (c)(3)(ii)(A) of this section does not apply to an employee to the extent the employee is otherwise assumed to retire during the current plan year. Thus, for example, if generally applicable retirement assumptions would provide for a 25% probability that an employee will retire during the current plan year, the special retirement age assumption of paragraph (c)(3)(ii)(A) of this section will require the plan to assume a 75% probability that the employee will retire at the end of the plan year.

(C) *Definition of earliest retirement date.* For purposes of paragraph (c)(3)(ii) of this section, a plan's earliest retirement date is the earliest date on which a participant can commence receiving an immediate distribution. See §1.401(a)-20, Q&A-17(b).

(iii) *Requirement to assume most valuable benefit.* An employee who is assumed to retire at a date determined under paragraph (c)(3)(ii) of this section is assumed to elect the optional form of benefit available under the plan at that date that would result in the highest present value of benefits. The plan's actuary is permitted to use reasonable assumptions in determining the optional form of benefit under the plan that

would result in the highest present value of benefits for this purpose.

(d) *Target normal cost of plans in at-risk status*—(1) *General rule.* If the plan has been in at-risk status for 5 consecutive years, including the current plan year, then the target normal cost for the plan is the at-risk target normal cost determined under paragraph (d)(2) of this section. See paragraph (e) of this section for the determination of the target normal cost where the plan is in at-risk status for the plan year but was not in at-risk status for one or more of the 4 preceding plan years.

(2) *At-risk target normal cost*—(i) *Use of modified actuarial assumptions.* Except as provided in this paragraph (d)(2), the at-risk target normal cost of a plan for the plan year is equal to the present value of all benefits expected to be accrued or earned under the plan during the plan year, as determined in accordance with §1.430(d)-1 but using the additional actuarial assumptions described in paragraph (c)(3) of this section.

(ii) *Loading factor.* The at-risk target normal cost is increased by a loading factor equal to 4 percent of the target normal cost determined without regard to section 430(i) and this section.

(iii) *Minimum amount.* The at-risk target normal cost of a plan for a plan year is not less than the plan's target normal cost determined without regard to section 430(i) and this section.

(e) *Transition between applicable funding targets and applicable target normal costs*—(1) *Funding target.* If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's funding target for the plan year is determined as the sum of—

(i) The funding target determined without regard to this section; plus

(ii) The phase-in percentage for the plan year multiplied by the excess of—

(A) The at-risk funding target determined under paragraph (c)(2) of this section (determined taking into account paragraph (e)(4) of this section); over

(B) The funding target determined without regard to this section.

(2) *Target normal cost.* If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's target

normal cost for the plan year is determined as the sum of—

(i) The target normal cost determined without regard to section 430(i) and this section; plus—

(ii) The phase-in percentage for the plan year multiplied by the excess of—

(A) The at-risk target normal cost determined under paragraph (d)(2) of this section (determined taking into account paragraph (e)(4) of this section); over

(B) The target normal cost determined without regard to section 430(i) and this section.

(3) *Phase-in percentage.* For purposes of this paragraph (e), the phase-in percentage is 20 percent multiplied by the number of consecutive plan years that the plan has been in at-risk status (including the current plan year).

(4) *Transition funding target and target normal cost determined without load.* Notwithstanding paragraph (c)(2)(ii) of this section, if a plan has not been in at-risk status for 2 of the last 4 plan years, the plan's at-risk funding target that is used for purposes of paragraph (e)(1)(ii)(A) (to calculate the plan's funding target where the plan has been in at-risk status for fewer than 5 plan years) is determined without regard to the load set forth in paragraph (c)(2)(ii) of this section. Similarly, if a plan has not been in at-risk status for 2 of the last 4 plan years, the plan's at-risk target normal cost that is used for purposes of paragraph (e)(2)(ii)(A) (to calculate the plan's target normal cost where the plan has been in at-risk status for fewer than 5 plan years) is determined without regard to the load set forth in paragraph (d)(2)(ii) of this section.

(f) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), this section applies to plan years beginning on or after



the date section 430 applies with respect to the plan.

(3) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year to which section 430 applies.

(4) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before the first day of the first effective plan year. Thus, except for plans with a delayed effective date under paragraph (f)(2) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(5) *Transition rule for determining funding target attainment percentage for the plan's pre-effective date plan year—(i) In general.* In the case of the plan's first effective plan year, the funding target attainment percentage for the plan's pre-effective plan year is determined as the fraction (expressed as a percentage), the numerator of which is the plan assets determined under paragraph (f)(5)(ii) of this section, and the denominator of which is the plan's current liability determined pursuant to section 412(l)(7) on the valuation date for the plan's pre-effective plan year.

(ii) *General determination of value of net plan assets—(A) In general.* The value of net plan assets for purposes of this paragraph (f)(5)(ii) is determined under section 412(c)(2) as in effect for the plan's pre-effective plan year, except that the value of plan assets prior to subtracting the plan's funding standard account credit balance described in paragraph (f)(5)(ii)(B) of this section can neither be 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 that plan year. If the value of plan assets determined under this paragraph (f)(5)(ii) is less than 90 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (f)(5)(ii) is equal to 90 percent of the fair market value of plan assets. If the value of plan assets determined under this paragraph (f)(5)(ii) is greater than 110 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (f)(5)(ii) is equal to 110 percent of the fair market value of plan assets.

(B) *Subtraction of credit balance.* If a plan has a funding standard account credit balance as of the valuation date for the plan's pre-effective plan year, that balance is subtracted from the net asset value described in paragraph (f)(5)(ii)(A) of this section as of that valuation date.

(C) *Effect of funding standard carry-over balance reduction for first effective plan year.* Notwithstanding paragraph (f)(5)(ii)(B) of this section, if, for the first effective plan year, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with §1.430(f)–1(e), then the present value (determined as of the valuation date for the pre-effective plan year using the valuation interest rate for that pre-effective plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (f)(5)(ii)(B) of this section.

(6) *Transition rule for determining at-risk status.* In the case of plan years beginning in 2008, 2009, and 2010, paragraph (b)(1)(i) of this section is applied by substituting the following percentages for '80 percent'—

- (i) 65 percent in the case of 2008;
- (ii) 70 percent in the case of 2009; and
- (iii) 75 percent in the case of 2010.

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

(Filed by the Office of the Federal Register on December 28, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2007, 72 F.R. 74215)

## **Notice of Proposed Rulemaking by Cross-reference to Temporary Regulations**

### **Payments From the Presidential Primary Matching Payment Account**

**REG-149475-07**

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9382) under Part 702, Presidential Primary Matching Payment Account, of title 26 of the CFR, relating to the financing of presidential primary campaigns. The temporary regulations amend Treasury procedures for making payments from the Presidential Primary Matching Payment Account (Primary Account) to eligible primary candidates. The text of those regulations also serves as the text for these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 14, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-149475-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-149475-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-149475-07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Karla M. Meola, (202) 622-4930 (not a toll-free number); concerning the submission of comments and/or to request a public hearing, Oluwafunmilayo Taylor of the Publications and Regulation Branch at (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### **Background and Explanation of Provisions**

Temporary regulations in this issue of the Bulletin amend 26 CFR part 702 relating to section 9037 of the Internal Revenue Code (Code). The temporary regulations authorize the Treasury Department to devise procedures that ensure payments from

the Primary Account are made promptly to eligible primary candidates. The text of the temporary regulations also serves as the text for these proposed regulations. The preamble to the temporary regulations explains the amendment.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these regulations is Karla M. Meola, Office of the Associate Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 702 is proposed to be amended as follows:

#### PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Paragraph 1. The authority citation for part 702 continues to read in part as follows:

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

Par. 2. Section 702.9037-1 is revised to read as follows:

*§702.9037-1 Transfer of amounts to the Presidential Primary Matching Payment Account.*

[The text of the proposed §702.9037-1 is the same as the text of §702.9037-1T(a) through (b)(1) published elsewhere in this issue of the Bulletin.]

Par. 3. Section 702.9037-2 is revised to read as follows:

*§702.9037-2 Payments from the Presidential Primary Matching Payment Account.*

[The text of proposed §702.9037-2 is the same as the text of §702.9037-2T(a) through (c)(1) published elsewhere in this issue of the Bulletin.]

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

(Filed by the Office of the Federal Register on February 11, 2008, 12:09 p.m., and published in the issue of the Federal Register for February 14, 2008, 73 F.R. 8632)

### Maximum Vehicle Values for Use With the Special Valuation Rules Under Regulations Section 1.61-21(d) and (e); Correction

#### Announcement 2008-15

This announcement is a correction to Rev. Proc. 2008-13, 2008-6 I.R.B. 407, published February 11, 2008, relating to maximum vehicle values for use with the special valuation rules under regulations section 1.61-21(d) and (e).

Section 1.01 is amended by deleting the amounts “\$15,400” and “\$16,700” and by substituting therefore the amounts “\$15,000” and \$15,900,” respectively.

Section 3.01 is amended by deleting the amounts “\$15,400” and “\$16,700” and by substituting therefore the amounts “\$15,000” and \$15,900,” respectively.

The principal author of this announcement is Don M. Parkinson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this announcement, contact Don M. Parkinson at (202) 622-6040 (not a toll-free call).

### Guidance Necessary To Facilitate Electronic Tax Administration — Updating of Section 7216 Regulations; Correction

#### Announcement 2008-16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; Correction

SUMMARY: This document contains corrections to final regulations (T.D. 9375, 2008-5 I.R.B. 344) that were published in the **Federal Register** on Monday, January 7, 2008 (73 FR 1058) regarding the disclosure and use of tax return information by tax return preparers.

DATES: The correction is effective February 13, 2008.

FOR FURTHER INFORMATION CONTACT: Lawrence Mack, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

The final regulations (T.D. 9375) that are the subject of the correction are under section 7216 of the Internal Revenue Code.

#### Need for Correction

As published, final regulations (T.D. 9375) 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. 9375), which were the subject of FR Doc. 08-1, is corrected as follows:

1. On page 1058, column 3, in the preamble, under the paragraph heading “Background”, seventh line of the fifth paragraph of the column, the language “2005-52 I.R.B. 1204 (December 07,” is corrected to read “2005-52 I.R.B. 1204 (December 7,”.

2. On page 1062, column 1, in the preamble, under the paragraph heading “D. Disclosures to Other Tax Return Preparers”, thirteenth line of the column, the language “Service provider. The commentator’s” is corrected to read “service provider. The commentator’s”.

3. On page 1066, column 3, in the preamble, under the paragraph heading “H. Multiple Disclosures or Multiple Uses Within a Single Consent Form”, fifteenth line of the second paragraph, the language “Section 301-7216-3(c)(1) of the final” is corrected to read “Section 301.7216-3(c)(1) of the final”.

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 February 12, 2008, 8:45 a.m., and published in the issue of the Federal Register for February 13, 2008, 73 F.R. 8193)

## Guidance on Qualified Tuition Programs Under Section 529

### Announcement 2008-17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document invites comments from the public regarding rules under section 529 of the Internal Revenue Code (Code) that the IRS and the Treasury Department expect to propose in a notice of proposed rulemaking. The rules focus mainly on the transfer tax provisions applicable to accounts (section 529 accounts) in

Qualified Tuition Programs (QTPs). It is anticipated that these rules will generally apply to section 529 accounts after the effective date of final regulations. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by March 18, 2008.

ADDRESSES: Send written comments to: Internal Revenue Service, Attn: CC:PA:LPD:PR (REG-127127-05), room 5203, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-127127-05), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-127127-05).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or, (202) 622-7180; concerning rules relating to estate, gift, and generation-skipping transfer tax issues, Mary Berman, (202) 622-3090; concerning other proposed rules, Monice Rosenbaum, (202) 622-6070 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### Prior Administrative Guidance

A Notice of Proposed Rulemaking under section 529 was published in the **Federal Register** on August 24, 1998 (REG-106177-97, 1998-2 C.B. 344 [63 FR 45019]) (the 1998 proposed regulations). Additional guidance was published in Notice 2001-55, 2001-2 C.B. 299 and Notice 2001-81, 2001-2 C.B. 617. Notice 2001-55 provides guidance regarding the statutory restriction against investment direction. Notice 2001-81 provides guidance on recordkeeping, reporting and other requirements applicable to QTPs in light of certain amendments made to section 529 by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16, 115 Stat. 38) (EGTRRA). See §601.601(d)(2)(ii)(b).

Although the 1998 proposed regulations and these notices provide rules

regarding many issues arising under section 529, other issues remain unresolved. Current law regarding the transfer tax treatment of section 529 accounts is unclear and in some situations imposes tax in a manner inconsistent with generally applicable transfer tax provisions of the Code. In addition, current law raises the potential for abuse of section 529 accounts in certain situations.

#### Pension Protection Act of 2006

The Pension Protection Act of 2006 (Public Law 109-280, 120 Stat. 780) (the PPA) permanently extended the EGTRRA amendments to section 529, which previously were scheduled to expire at the end of 2010, including the provision that exempts from Federal income tax distributions made from section 529 accounts that are used to pay qualified higher education expenses (QHEEs). See section 1304(a) of the PPA. At the same time, section 1304(b) of the PPA enacted section 529(f). Section 529(f) provides that, notwithstanding any other provision of section 529, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 529 and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13.

In discussing new section 529(f), the Technical Explanation prepared by the Joint Committee on Taxation provides two examples of how present law creates the opportunity for abuse of section 529 accounts. See Joint Committee on Taxation, Technical Explanation of H.R. 4, The “Pension Protection Act of 2006,” as Passed by the House on July 28, 2006 and as Considered by the Senate on August 3, 2006, (JCX-38-06), at 369. Abuse may arise because of the ability to change designated beneficiaries (DBs) in certain circumstances without triggering transfer tax. For example, taxpayers may seek to establish and contribute to multiple accounts (taking advantage of the 5-year rule of section 529(c)(2)(B)) with different DBs with the intention of subsequently changing the DBs of such accounts to a single, common beneficiary and distributing the entire amount to such beneficiary without further transfer tax consequences. Abuse may also arise because taxpayers seek to use section 529 accounts as retirement accounts, with all of the tax benefits

but none of the restrictions and requirements of qualified retirement accounts.

### **Potential for Abuse of Section 529 Accounts**

The IRS and the Treasury Department are aware of other situations where current law raises the potential for abuse of section 529 accounts. For example, abuse may also arise if a person contributes a large sum to an account for himself or herself and then changes the DB to a member of his or her family who is in the same or a higher generation (as determined in accordance with section 2651) as the contributor. The contributor's contributions to his or her own account would not trigger the gift tax because an individual cannot make a gift to himself or herself. The contributor may claim that the subsequent change of DB to a member of the contributor's family who is in the same or a higher generation avoids the gift tax under the special transfer tax rules of section 529. Abuse may also arise because contributions to accounts are treated as completed gifts to the DB even though the account owner (AO) may be able to withdraw the money at his or her discretion.

### **Overview of Proposed Regulations**

Section 529(f) authorizes the IRS and the Treasury Department to promulgate regulations as needed to protect against these and other types of abuse. Accordingly, the IRS and the Treasury Department intend to issue a notice of proposed rulemaking to address the potential for abuse of section 529 accounts. The notice of proposed rulemaking will provide a general anti-abuse rule that will apply when section 529 accounts are established or used for purposes of avoiding or evading transfer tax or for other purposes inconsistent with section 529. In addition, the notice of proposed rulemaking will include rules relating to the tax treatment of contributions to and participants in QTPs, including rules addressing the inconsistency between section 529 and the generally applicable income and transfer tax provisions of the Code. The notice of proposed rulemaking also will include rules relating to the function and operation of QTPs and section 529 accounts.

With some exceptions, the 1998 proposed regulations will be repropounded in the

notice of proposed rulemaking. The guidance published in Notice 2001-55, Notice 2001-81, and the instructions and publications related to Form 1099-Q, "*Payments From Qualified Education Programs (Under Sections 529 and 530)*," also will be included in the forthcoming notice of proposed rulemaking. Taxpayers and QTPs may continue to rely on the information provided in existing published guidance, including any effective dates therein. See §601.601(d)(2)(ii)(b) of the regulations. The IRS and the Treasury Department anticipate that the forthcoming notice of proposed rulemaking also will address additional comments that have been received with regard to certain administrative, income tax, and other issues affecting QTPs and section 529 accounts.

The IRS and the Treasury Department anticipate that the new rules to be provided in the notice of proposed rulemaking will generally apply prospectively to all section 529 accounts. Transition rules will be provided if necessary. However, the anti-abuse rule may be applied on a retroactive basis pursuant to section 7805(b)(3).

The IRS and the Treasury Department also anticipate that the notice of proposed rulemaking may require some States (or agencies or instrumentalities thereof) and eligible educational institutions that have established and maintained QTPs to make changes to the terms and operating provisions of their programs in order to ensure that their programs remain qualified under section 529. The forthcoming notice of proposed rulemaking will provide a grace period of no less than 15 months to implement most changes.

The following discussion sets forth the rules expected to be included in the notice of proposed rulemaking and explains the rationale for these rules.

### **Explanation of Provisions**

#### *I. Anti-abuse Rule.*

The IRS and the Treasury Department are aware that the inconsistency between the section 529 transfer tax provisions and the generally applicable transfer tax provisions of the Code create the potential for abuse of section 529 accounts.

As described above, the Technical Explanation accompanying new section 529(f) provides two examples in which

present law creates the opportunity for abuse of section 529 accounts. Concern has also been raised as to the potential for abuse in other situations. For example, assume that in 2007, when the gift tax annual exclusion amount under section 2503(b) is \$12,000, Grandparents wish to give more than \$1 million to Child, free of transfer taxes. Grandparents open section 529 accounts for each of their 10 grandchildren, naming Child the AO of each account. Grandparents use the 5-year spread rule of section 529(c)(2)(B) to contribute \$120,000 (\$60,000 from each Grandparent) to each grandchild's account without triggering any gift or generation-skipping transfer (GST) tax liability. The earnings then accumulate on a tax-deferred basis in the accounts and Child may withdraw the balances at any time. If Grandparents survive for 5 years, the account balances will not be included in their gross estates at death. In effect, Grandparents have transferred \$1.2 million to Child while claiming that no transfer taxes are due and claiming to use none of their applicable credit amount (formerly the unified credit). As discussed more fully below, similar concerns have been raised where there is a change from one AO to a new AO, thus giving the new AO all rights to and control over the section 529 account, including the right to completely withdraw the entire account for the new AO's benefit.

The forthcoming notice of proposed rulemaking will contain an anti-abuse rule designed to prevent opportunities for abuse of section 529 accounts such as those set forth above. The anti-abuse rule generally will deny the favorable transfer tax treatment under section 529 if contributions to those accounts are intended or used for purposes other than providing for the QHEEs of the DB (except to the extent otherwise allowable under section 529 or the corresponding regulations). The IRS and the Treasury Department anticipate that the anti-abuse rule will generally follow the steps in the overall transaction by focusing on the actual source of the funds for the contribution, the person who actually contributes the cash to the section 529 account, and the person who ultimately receives any distribution from the account. If it is determined that the transaction, in whole or in part, is inconsistent with the intent of section 529 and the regulations,

taxpayers will not be able to rely on the favorable tax treatment provided in section 529. The anti-abuse rule will include examples such as those set forth above that provide clear guidance to taxpayers about the types of transactions considered abusive.

The IRS and the Treasury Department intend to monitor transactions involving section 529 accounts. If concerns regarding abuse continue, the IRS and the Treasury Department will consider adopting broader rules including, for example, rules limiting the circumstances under which a QTP may permit AOs to withdraw funds from accounts; limiting the circumstances under which there may be a change in DB; and limiting the circumstances under which the AO may name a different AO. These rules may be adopted in addition or as an alternative to the general anti-abuse rule.

## *II. Rules Relating to the Tax Treatment of Contributions to and Participants in Section 529 Accounts.*

### *A. AO's liability for any gift and/or GST tax imposed on a taxable change of DB.*

Section 529(c)(5)(B) provides that the gift and GST tax apply to a transfer by reason of a change in the DB of a section 529 account (or a rollover to the account of a new DB) unless the new DB is both: (1) assigned to the same or a higher generation (determined in accordance with section 2651) as the former DB, and (2) a member of the family of the former DB. The statute does not identify the individual who would be liable for the gift and/or GST tax in such a situation.

Section 1.529-5(b)(3) of the 1998 proposed regulations, in accordance with the legislative history (H.R. Rep. No. 148 at 328), provides that, if the AO changes the DB, or directs a rollover of credits or account balances from the account of one beneficiary to the account of another beneficiary, and if the new DB is not both a member of the family of the former DB and in the same or a higher generation (as determined under section 2651) as the former DB, the change of DB by the AO is treated as a taxable gift by the former DB to the new DB. This result follows

from generally applicable transfer tax provisions because each contribution to the section 529 account on behalf of the former DB was treated as a completed gift to the former DB. As a consequence, under the 1998 proposed regulations, the former DB is deemed to be the owner of the funds contributed to the account and, therefore, is the donor/transferor of the account to the new DB.

Because the AO rather than the DB has the power to change a beneficiary, several comments on the 1998 proposed regulations raised concerns about the imposition of tax on the former DB. In many cases, the DBs are minors who may not be aware of the existence of the account for their benefit.

The term "account owner" does not appear in section 529. The definition of account owner in §1.529-1(c) of the 1998 proposed regulations was included to reflect practices used at that time to facilitate the establishment of accounts for minor beneficiaries. In practice, the AO retains control over the selection of the DB and has personal access to the funds in the account.

In order to assign the tax liability to the party who has control over the account and is responsible for the change of any beneficiary, the forthcoming notice of proposed rulemaking will provide that a change of DB that results in the imposition of any tax will be treated as a deemed distribution to the AO followed by a new gift. Therefore, the AO will be liable for any gift or GST tax imposed on the change of the DB, and the AO must file gift and GST tax returns if required. This position comports with the income tax provision under §1.529-3(c)(1) of the 1998 proposed regulations that treats a change of DB to a new DB who is not a member of the family of the former DB as a distribution to the AO, provided the AO has the authority to change the DB. Special rules may be needed to address situations in which a trust or an entity such as a bank, rather than an individual, is the AO. The IRS and the Treasury Department welcome comments regarding such special rules and on possible alternative approaches to collecting any transfer taxes due upon a change of DB.

*B. AO's liability for tax imposed on any withdrawal by the AO from a section 529 account for the AO's own benefit and on a change in AO.*

Section 529(c)(3)(A) provides that, in general, any distribution from a section 529 account is includible in the gross income of the distributee in the manner provided under section 72, to the extent not excluded from gross income under any other provision of chapter 1 of the Code. Section 529(c)(3)(A) does not limit the class of potential distributees.

As discussed previously in this preamble, the AO of a section 529 account is the party with control over the account. Concerns have been raised regarding the potential tax consequences in situations where the AO withdraws part or all of the funds from the section 529 account for the AO's own benefit. For example, a contributor might attempt to avoid gift tax by making contributions that do not exceed the gift tax annual exclusion amount under section 2503(b) to multiple accounts having the same AO. The AO could then withdraw some or all of those funds for the AO's own benefit. The AO, as distributee, would claim to owe only the income tax and a 10-percent additional tax on the earnings portion of the withdrawal, while the taxpayer who contributed those funds would claim to owe no gift or GST tax.

Concerns also have been raised regarding the possible tax consequences in situations where an AO transfers control of the account to a new AO, or names himself or herself (or the AO's spouse) as the DB. The IRS and the Treasury Department expect to develop additional rules to address these and other similar transactions by AOs, including (1) limiting AOs to individuals; and, (2) making the AO liable for income tax on the entire amount of the funds distributed for the AO's benefit except to the extent that the AO can substantiate that the AO made contributions to the section 529 account and, therefore, has an investment in the account within the meaning of section 72. The IRS and the Treasury Department welcome comments on such additional rules and on any alternative approaches to preventing misuse by AOs of section 529 accounts.

*C. Application of transfer tax where permissible contributors to section 529 accounts include persons other than individuals.*

Under section 529(b)(1), a QTP is a program under which a person may purchase tuition credits or certificates on behalf of a DB which entitle the DB to the waiver or payment of QHEEs or, in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of paying the QHEEs of the DB of the account. Section 1.529-1(c) of the 1998 proposed regulations provides that, for purposes of section 529, the term “person” has the same meaning as under section 7701(a)(1). Section 7701(a)(1) provides that, when the term “person” is used in the Code and not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Since publication of the 1998 proposed regulations, this broad definition of “person” has raised questions concerning the application of the transfer tax and, in certain situations, the income tax and the employment tax.

With respect to transfer taxes, section 529(c)(2)(A) provides that any contribution to a section 529 account on behalf of a DB shall be treated as a completed gift of a present interest in property to the DB. Section 2501(a) imposes a tax on the transfer of property by gift by an “individual.” Under §25.2501-1(a) of the Gift Tax Regulations, the gift tax is not applicable to transfers by corporations or persons other than individuals, except as provided in §25.2511-1(h)(1). Section 25.2511-1(h)(1) provides that a transfer of property by a corporation to an individual is a gift to the individual by the stockholders of the corporation. If the individual is a stockholder, the transfer is a gift to the individual by the other stockholders to the extent it exceeds the individual’s own interest in such amount as a stockholder.

Because any contribution to a section 529 account is treated as a completed gift, and because the gift tax is imposed only on individuals, it can be argued that the definition of “person” in section 529(b)(1)

should be limited to individuals. Nevertheless, the IRS and the Treasury Department believe it may be possible to interpret sections 529(b)(1) and 529(c)(2)(A) consistently without limiting the class of permissible contributors to individuals by providing special rules for contributions made by corporations, partnerships, estates, trusts, and other entities. For example, based on §25.2511-1(h)(1), a contribution by a person other than an individual may be treated as a separate gift by each beneficiary, member, shareholder, partner, etc., in an amount representing that individual’s allocable share of the contribution.

Accordingly, the forthcoming notice of proposed rulemaking will follow the 1998 proposed regulations in providing that the definition of “person” as used in section 529(b)(1) will have the same meaning as under section 7701(a)(1).

The IRS and the Treasury Department welcome comments on whether the definition of “person” in section 529(b)(1) should be limited to individuals and on rules necessary to ensure appropriate transfer tax consequences in situations where persons other than individuals make contributions to section 529 accounts. In addition, comments are welcome as to whether the complexity of any special rules would outweigh the benefit of allowing non-individual contributors.

Comments are also welcome regarding potential income tax consequences when contributions are made by non-individuals, such as a trust or estate, and whether the complexity of any special rules would outweigh the benefit. For example, if a trust makes contributions to a section 529 account, how should the trust treat the contributions to and distributions from the account for income tax purposes? If the trustee of the trust is the AO, would the income tax treatment be the same?

The IRS and the Treasury Department also have considered the possibility that employers may consider funding section 529 accounts for employees’ children or that a debtor may fund an account for the lender’s child. Section 529 does not override (or permit avoidance of) federal taxes otherwise applicable to payments that are not in the nature of gifts. The IRS and the Treasury Department believe that if such contributions are made, all necessary procedures and reporting mechanisms must be

in place to ensure the assessment and collection of all appropriate income, employment, and gift taxes. The IRS and the Treasury Department welcome comments as to whether (and how) this could be accomplished without undue burden.

*D. Special rules apply in the case of individuals who contribute to section 529 accounts for their own benefit and in the case of Uniform Gifts to Minors Act (UGMA) and Uniform Transfers to Minors Act (UTMA) accounts that contribute to such accounts for the benefit of their minor beneficiaries.*

The 1998 proposed regulations do not address situations in which individuals contribute to section 529 accounts for their own benefit, or where UGMA and UTMA accounts make contributions for the benefit of their minor beneficiaries. (This situation should be distinguished from a section 529 account established with the program as an UGMA or UTMA account.) The IRS and the Treasury Department believe guidance is needed regarding contributions by individuals for their own benefit and by UGMA and UTMA accounts for the benefit of their minor beneficiaries in order to ensure consistent tax treatment with section 529 accounts set up by persons for the benefit of other DBs.

As stated in the previous paragraph, section 2501(a) imposes a tax on the transfer of property by gift by an individual. Section 529(c)(2)(A) provides that any contribution to a section 529 account on behalf of any DB shall be treated as a completed gift of a present interest in property to the DB. A contribution to a section 529 account by the contributor for the contributor’s own benefit cannot be treated as a completed gift because an individual cannot make a transfer of property to himself or herself, and a transfer of property is a fundamental requirement for a completed gift. Although there is no express statutory intent to prohibit the funding of a section 529 account for the contributor’s own QHEEs, the transfer tax provisions of section 529 do not appear to contemplate such a result.

Minor beneficiaries of UGMA and UTMA accounts are the beneficial owners of the accounts. In this respect, contributions to a section 529 account from an UGMA or UTMA account would be con-

sidered to be contributions to the section 529 accounts by the minor beneficiaries for their own benefit.

The IRS and the Treasury Department recognize that individuals may want to save for their higher education expenses by contributing to section 529 accounts and that individuals might not have parents or other benefactors who are able or willing to make such contributions on their behalf. The IRS and the Treasury Department also acknowledge that section 529 accounts provide an efficient method for UGMA and UTMA accounts to provide for the higher education expenses of their minor beneficiaries.

Accordingly, it is anticipated that the notice of proposed rulemaking will allow contributions to section 529 accounts by individuals for their own benefit and by UGMA and UTMA accounts for the benefit of their minor beneficiaries. In order to ensure consistent transfer and income tax treatment under section 529 for these accounts and accounts created by persons for the benefit of other DBs, special rules will apply in cases of a subsequent change of the DB.

When contributors set up section 529 accounts naming themselves as DB (or UGMA and UTMA accounts set up such accounts for their minor beneficiaries) and subsequently change the DB, the change of DB from the contributor to any other person will be deemed to be a distribution to the contributor followed by a new contribution (as described in section 529(c)(2)) of the account balance by the contributor to a new section 529 account for the new DB. It is anticipated that the deemed distribution to the contributor, followed by the new contribution of the account balance to a new section 529 account for the new DB, will be treated as a rollover (as described in section 529(c)(3)(C)) and thus will not be subject to income tax or the 10-percent additional tax imposed by section 529(c)(6) if the new DB is a member of the family of the former DB. The new contribution by the contributor will be treated in the same way for transfer tax purposes as all other contributions to section 529 accounts under section 529(c)(2). If the change of DB in these situations results in any gift and/or GST tax, the contributor will be liable for the tax and must file gift and/or GST tax returns. However, the contributor may elect

to take advantage of the special 5-year rule under section 529(c)(2)(B).

*E. Circumstances under which the account of a deceased DB will be distributed to, and includible in, the gross estate of the deceased DB for estate tax purposes.*

Section 529(c)(4) provides that, with two exceptions, no amount shall be includible in the gross estate of any individual for purposes of the estate tax by reason of an interest in a section 529 account. The exception relevant to this discussion is for amounts distributed on account of the death of the DB.

Under section 529(c)(4)(B), amounts distributed on account of the death of a DB are subject to estate tax. The legislative history (H.R. Rep. No. 148 at 328) makes no reference to the term “distributed” but provides that the value of any interest in a section 529 account will be includible in the estate of a DB. Section 1.529-5(d)(3) of the 1998 proposed regulations adopts the position stated in the legislative history. This position has raised several concerns because, under generally applicable transfer tax provisions, the gross estate of a decedent does not include property in which the decedent has no interest, or over which the decedent has no power or control.

It is anticipated that the forthcoming notice of proposed rulemaking will provide the following rules regarding the tax consequences arising from the death of a DB.

Rule 1. If the AO distributes the entire section 529 account to the estate of the deceased DB within 6 months of the death of the DB, the value of the account will be included in the deceased DB’s gross estate for federal estate tax purposes.

Rule 2. If a successor DB is named in the section 529 account contract or program and the successor DB is a member of the family of the deceased DB and is in the same or a higher generation (as determined under section 2651) as the deceased DB, the value of the account will not be included in the gross estate of the deceased DB for Federal estate tax purposes.

Rule 3. If no successor DB is named in the section 529 account contract or program, but the AO names a successor DB who is a member of the family of the deceased DB and is in the same or a higher generation (as determined under section

2651) as the deceased DB, the value of the account will not be included in the gross estate of the deceased DB for Federal estate tax purposes.

Rule 4. If no successor DB is named in the section 529 account contract or program, and the AO does not name a new DB but instead withdraws all or part of the value of the account, the AO will be liable for the income tax on the distribution, and the value of the account will not be included in the gross estate of the deceased DB for federal estate tax purposes.

Rule 5. If, by the due date for filing the deceased DB’s estate tax return, the AO has allowed funds to remain in the section 529 account without naming a new DB, the account will be deemed to terminate with a distribution to the AO, and the AO will be liable for the income tax on the distribution. The value of the account will not be included in the gross estate of the deceased DB for Federal estate tax purposes.

### III. Rules Governing the Function and Operation of QTPs and Section 529 Accounts

*A. Rules for making the election under section 529(c)(2)(B) to treat contributions to a section 529 account as being made over a 5-year period.*

The IRS and the Treasury Department have received numerous taxpayer inquiries regarding the operation of and the procedures for making the 5-year election provided in section 529(c)(2)(B). Section 529(c)(2)(B) provides that, if the aggregate amount of contributions to a section 529 account during the calendar year by a donor exceeds the gift tax exclusion amount for such year under section 2503(b), the donor may elect to have the aggregate amount taken into account, for purposes of section 2503(b), over the 5-year period beginning in such calendar year. The forthcoming notice of proposed rulemaking will provide the following rules that clarify the circumstances and manner in which the election may be made.

Rule 1. The election must be made on the last *United States Gift (and Generation-Skipping Transfer) Tax Return* (Form 709) filed on or before the due date of the return, including extensions actually granted, or, if a timely return is not filed, on

the first gift tax return filed by the donor after the due date. The election, once made, will be irrevocable, except that it may be revoked or modified on a subsequent return that is filed on or before the due date, including extensions actually granted.

Rule 2. The election applies to contributions to a section 529 account on behalf of a DB during a calendar year that exceed the gift tax exclusion amount for that year but are not in excess of five times the exclusion amount for the year. Any excess may not be taken into account ratably and is treated as a taxable gift in the calendar year of the contribution.

Rule 2 is illustrated by the following examples:

*Example A.* Assume the contributor makes contributions to a section 529 account on behalf of DB in 2007, when the gift tax annual exclusion amount under section 2503(b) is \$12,000. If the contributor's aggregate contributions on behalf of DB in 2007 are \$30,000, contributor may elect to account for the gift as 5 annual gifts of \$6,000 to DB, beginning in 2007. Assuming the gift tax annual exclusion amount remains at \$12,000 over the 5-year period covered by the election, the contributor could make additional gifts described in section 2503(b) of up to \$6,000 in each of the 5 years to the same beneficiary without the imposition of any gift tax.

*Example B.* Assume the contributor makes contributions to a section 529 account on behalf of DB in 2007, when the gift tax annual exclusion amount under section 2503(b) is \$12,000. If the contributor's aggregate contributions on behalf of DB in 2007 are \$65,000, contributor may make the election under section 529(c)(2)(B) only with respect to that portion of the contributions that is not in excess of \$60,000 (5 x \$12,000). The \$5,000 excess will be treated as a taxable gift by the contributor in 2007.

Rule 3. The election may be made by a donor and the donor's spouse with respect to a gift considered to be made one-half by each spouse under section 2513.

#### *B. Income tax issues related to section 529 accounts*

The IRS and the Treasury Department have received numerous inquiries relating to several income tax issues that will be ad-

ressed in the forthcoming notice of proposed rulemaking. The following items are illustrative of these inquiries and the IRS and the Treasury Department anticipate addressing additional income tax matters raised by comments.

The notice of proposed rulemaking will provide formal guidance on how to recognize a loss in a section 529 account. Direction on this issue was first provided in Publication 970 (*Tax Benefits for Education: For Use in Preparing 2002 Returns*). Losses in section 529 accounts may be deducted as miscellaneous itemized deductions subject to the 2% of adjusted gross income limit. Taxpayers will continue to be able to rely upon this interpretation.

Section 529 is silent regarding whether distributions must be made from a section 529 account in the same tax year as QHEEs were paid or incurred. Concerns have been raised that individuals could allow the account to grow indefinitely on a tax-deferred basis before requesting reimbursement or use distributions in earlier years to pay QHEEs in later years. Accordingly, the IRS and the Treasury Department propose to adopt a rule that, in order for earnings to be excluded from income, any distribution from a section 529 account during a calendar year must be used to pay QHEEs during the same calendar year or by March 31 of the following year. The IRS and the Treasury Department welcome comments on rules necessary to ensure that distributions from section 529 accounts are appropriately matched to the payment of QHEEs.

#### *C. Recordkeeping requirements and administrative procedures*

The forthcoming notice of proposed rulemaking may contain recordkeeping requirements designed to facilitate the implementation of these new rules, including the proposed anti-abuse rule. QTPs may

be required to collect and retain, and in some cases report to the IRS, certain information. Programs may also need to revise their program documents, administrative procedures, and promotional and required literature for AOs and DBs. The forthcoming notice of proposed rulemaking will provide a grace period of no less than 15 months to implement most changes.

The IRS and the Treasury Department welcome comments regarding the information that would be necessary to implement the proposed anti-abuse rule, including a discussion of how to minimize the burden on QTPs of collecting or reporting such information.

#### **Request for Comments**

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

#### **Drafting Information**

The principal authors of this advance notice of proposed rulemaking are Mary Berman of the Office of Chief Counsel (Passthroughs and Special Industries) and Monice Rosenbaum of the Office of Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in its development.

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

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# 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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