Internal Revenue
bulletin

Bulletin No. 2013-40
September 30, 2013

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2013–16, page 275.

Interest rates: underpayment and overpayments. The rates for interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 2013, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for the underpayments, and 5 percent for large corporation underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding $10,000 will be 0.5 percent.

Rev. Rul. 2013–20, page 272.

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the second half of 2013 are set forth.

T.D. 9634, page 272.

Final regulations and removal of temporary regulations under section 901 of the Code provide guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit.

T.D. 9635, page 273.

Temporary regulations provide that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle.

REG–111753–12, page 302.

Proposed regulations provide that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. Comments requested by November 4, 2013. A public hearing is scheduled for January 15, 2014.

Notice 2013–54, page 287.

This notice provides guidance on the application of the market reform provisions and other provisions of the Affordable Care Act to certain healthcare arrangements, including health reimbursement arrangements (HRAs), employer payment plans, and health flexible spending arrangements (health FSAs). The notice also provides guidance on section 125(f)(3) of the Code and on employee assistance programs or EAPs. The guidance in the notice is being issued in substantially identical form by the Department of Labor, and guidance is being issued by the Department of Health and Human Services to reflect that HHS concurs with the guidance in this notice.

Notice 2013–59, page 297.

This notice provides guidance to taxpayers that elect under §179(f) to treat as an expense the costs of certain real property placed in service during any taxable year beginning in 2010, 2011, 2012 or 2013.

Announcement 2013–41, page 322.

This announcement contains corrections to final regulations (TD 9610) that were published in the Federal Register on January 28, 2013 (78 FR 5874). Sections 1471 through 1474 of the Code, commonly known as FATCA, were added by the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111–147. The final regulations under FATCA provide guidance to persons making certain U.S.-related payments to foreign financial institutions (FFIs) and nonfinancial foreign entities and payments by FFIs to other persons.

(Continued on the next page)

Finding Lists begin on page ii.
Index for July through September begins on page iv.

Department of the Treasury
Internal Revenue Service

EMPLOYEE PLANS

Notice 2013–58, page 294.
This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in September 2013; the 24-month average segment rates; the funding segment rates applicable for September 2013; and the minimum present value rates for August 2013. The rates in this notice reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21).

EXCISE TAX

REG–136630–12, page 303.
Proposed regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Code, enacted by the Affordable Care Act. Comments requested by November 8, 2013. A public hearing is scheduled for November 18, 2013.

ADMINISTRATIVE

Notice 2013–57, page 293.
This notice clarifies that a health plan will not fail to qualify as a high deductible health plan under section 223(c)(2) of the Code merely because it provides without a deductible the preventive health services required under section 2713 of the Public Health Service Act to be provided by a group health plan or a health insurance issuer offering group or individual health insurance coverage.

The IRS Mission

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 61.—Gross Income Defined

26 CFR 1.61–21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. For purposes of section 1.61–21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the second half of 2013 are set forth.

Rev. Rul. 2013–20

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

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

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
7/1/13 - 12/31/13	$48.53	Up to 500 miles = $.2654 per mile 501-1500 miles = $.2024 per mile Over 1500 miles = $.1946 per mile

DRAFTING INFORMATION

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

Section 901.—Taxes of Foreign Countries and of Possessions of United States

T.D. 9634

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Determining the Amount of Taxes Paid for Purposes of the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations providing guidance relating to the determination of the amount of taxes paid for purposes of the foreign tax credit. These regulations address certain highly structured arrangements that produce inappropriate foreign tax credit results. The regulations affect individuals and corporations that claim direct and indirect foreign tax credits.

DATES: *Effective Date:* These regulations are effective on September 4, 2013.

Applicability Date: For dates of applicability, see §1.901–2(h)(3).

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Cowan, at (202) 622–3850.

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On July 18, 2011, a notice of proposed rulemaking (REG–126519–11) under section 901 of the Internal Revenue Code (Code) relating to the determination of the amount of taxes paid for purposes of the foreign tax credit was published in the **Federal Register** (76 FR 42076). In the same issue of the

Federal Register, final and temporary regulations were also issued. The text of those temporary regulations served as the text of the proposed regulations. No comments were received in response to the notice of proposed rulemaking. No public hearing was requested or held. This Treasury Decision adopts the proposed regulations with no substantive change, and the corresponding temporary regulations are removed.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have foreign operations, which tend to be larger businesses. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey P. Cowan, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 1.901–2 is amended by:

1. Adding a sentence at the end of paragraph (e)(5)(iv)(B)(*1*)(*ii*).

2. Removing paragraph (e)(5)(iv)(B)(*1*)(*iii*).

3. Revising the first sentence of paragraph (h)(2).

4. Revising paragraph (h)(3).

The revisions and addition read as follows:

§1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e) * * *

(5) * * *

(iv) * * *

(B) * * *

(*1*) * * *

(*ii*) * * * A foreign payment attributable to income of the entity also includes a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a dividend or other distribution (including distributions made by a pass-through entity or an entity that is disregarded as an entity separate from its owner for U.S. tax purposes) with respect to the equity of the entity.

* * * * *

(h) * * *

(2) Except as provided in paragraph (h)(3) of this section, paragraph (e)(5)(iv) of this section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under §1.901–2(f) on or after July 13, 2011. * * *

(3) The last sentence of paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section applies to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under §1.901–2(f) on or after September 4, 2013. See 26 CFR 1.901–2T(e)(5)(iv)(B)(*1*)(*iii*) (revised as of April 1, 2013) for rules applicable to foreign payments that, if such payments were an amount of tax paid, would be considered paid or accrued under §1.901–2(f) before September 4, 2013.

* * * * *

§1.901–2T [Removed]

Par. 3. Section 1.901–2T is removed.

Beth Tucker,
Deputy Commissioner for Operations Support.

Approved August 6, 2013.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 3, 2013, 8:45 a.m., and published in the issue of the Federal Register for September 4, 2013, 78 F.R. 54391)

Section 1092.—Straddles

T.D. 9635

DEPARTMENT OF TREASURY Internal Revenue Service 26 CFR Part 1

Debt That is a Position in Personal Property That is Part of a Straddle

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the application of the straddle rules to a debt instrument. The temporary regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The temporary regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property. The text of these temporary regulations also serves as the text of the proposed regulations (REG–111753–12) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on September 5, 2013.

Applicability Dates: For date of applicability, see §1.1092(d)–1T(e).

FOR FURTHER INFORMATION CONTACT: Mary Brewer, (202) 622–4695 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND AND EXPLANATION OF PROVISIONS

1. *Summary of Prior Notice of Proposed Rule Making*

This document contains amendments to 26 CFR part 1. On January 18, 2001, a notice of proposed rulemaking (REG–105801–00; RIN 1545–AX92) (the 2001 NPRM) was published in the **Federal Register** (66 FR 4746). The 2001 NPRM addresses the definition of personal property for purposes of section 263(g) of the Internal Revenue Code (Code), the types of expenses subject to capitalization, and the operation of the capitalization rules. Another portion of the 2001 NPRM (proposed regulation §1.1092(d)–1(d)) would clarify the circumstances under which an issuer's position under a debt instrument is treated as a position in personal property that is part of a straddle.

No public hearing was requested or held. Written and electronic comments responding to the 2001 NPRM were received, and the only commenter that substantively addressed proposed §1.1092(d)–1(d) urged its adoption. This Treasury Decision adopts proposed §1.1092(d)–1(d) (REG–105801–00) in the form proposed. As so adopted, this provision is designated as §1.1092(d)–1T(d). This Treasury Decision also adopts the 2001 NPRM's proposed amendment to the effective/applicability dates (proposed §1.1092(d)–1(e)). As so adopted, this effective/applicability date is designated as §1.1092(d)–1T(e)(2). The amendments are discussed in section 2 of this preamble. The remainder of the 2001 NPRM remains proposed.

2. *Overview of the Temporary Regulations*

The temporary regulations provide guidance under section 1092 regarding when an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, may be part of a straddle.

Definition of personal property for purposes of section 1092

Section 1092(d)(1) defines "personal property" to mean "personal property of a type that is actively traded." A debt or obligation generally is not property of the debtor or obligor. Nevertheless, if a debt instrument provides for payments that are (or are reasonably expected to be) linked to the value of personal property as so defined, then the obligor on the instrument has a position in the personal property referenced by the debt instrument.

Section 1092(d)(7) provides that if a debt instrument is denominated in a nonfunctional currency, the obligor's position under the debt obligation is a position in the nonfunctional currency. Some maintain that section 1092(d)(7) evidences an intent by Congress to limit the circumstances in which an obligor's interest in a debt instrument may be a position in a straddle, and that such treatment is proper only with respect to debt obligations denominated in nonfunctional currency. The IRS and the Treasury Department do not believe that section 1092(d)(7) describes the only circumstance in which an obligor's interest in a debt instrument may be treated as part of a straddle. The statute and the legislative history do not contain any indication that Congress intended to limit section 1092 in this manner; rather, the legislative history characterizes section 1092(d)(7) as a clarification of prior law:

> The Senate amendment clarifies that an obligor's interest in a foreign currency denominated obligation is a "position" for purposes of the loss deferral rule. The rationale for this treatment is that a foreign currency borrowing is economically similar to a short position in the foreign currency.

H. R. REP. NO. 99–841, pt. 2, at 670 (1986) (Conf. Rep.); 1986–3 (Vol. 4) CB 670. Moreover, it is clear that an economic exposure associated with an obligation that is not a debt instrument (such as a written option or the obligation created by a short sale) may be a straddle position. Similarly, a debt instrument may be a position in personal property, and accordingly subject to the straddle rules, if the obligation is linked to personal property. Therefore, §1.1092(d)–1T(d) of the temporary regulations expressly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle.

Dates of Applicability of the Regulations

The temporary regulations adopt the effective/applicability date set forth in the 2001 NPRM by providing that §1.1092(d)–1T(d) applies to straddles established on or after January 17, 2001 (the date on which the 2001 NPRM was filed with the **Federal Register**). No inference is intended with respect to straddles established prior to January 17, 2001. In appropriate cases, the IRS may take the position under section 1092(d)(2) that, even in the absence of a regulation, an obligation under a debt instrument was part of a straddle prior to the effective date of §1.1092(d)–1T(d) if the debt instrument functioned economically as an interest in actively traded personal property.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 Analyses 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, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Mary Brewer, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

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Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1092(d)–1T also issued under 26 U.S.C. 1092(b)(1). * * *

Par. 2. Section 1.1092(d)–1 is amended by redesignating paragraph (d) as newly-designated paragraph (e) and revising newly-designated paragraph (e), and adding new paragraph (d) to read as follows:

§1.1092(d)–1 Definitions and special rules.

* * * * *

(d) [Reserved]. For further guidance, see §1.1092(d)–1T(d).

(e) *Effective/applicability dates.* (1) Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

(2) [Reserved]. For further guidance, see §1.1092(d)–1T(e)(2).

Par. 3. Section 1.1092(d)–1T is added to read as follows:

§1.1092(d)–1T Definitions and special rules (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.1092(d)–1(a) through (c).

(d) *Debt instrument linked to the value of personal property.* If a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer's obligation under the debt instrument is a position with respect to personal property and may be part of a straddle.

(e) *Effective/applicability dates*—(1) [Reserved]. For further guidance, see §1.1092(d)–1(e)(1).

(2) Notwithstanding paragraph (e)(1) of this section, paragraph (d) of this section applies to straddles established on or after January 17, 2001.

(f) *Expiration date.* The applicability of this section expires on September 2, 2016.

Beth Tucker,
Deputy Commissioner for Operations Support.

Approved August 26, 2013.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 4, 2013, 8:45 a.m., and published in the issue of the Federal Register for September 5, 2013, 78 F.R. 54568)

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Interest rates: underpayment and overpayments. The rates for interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 2013, will be 3 percent for overpayments (2 percent in the case of a corporation), 3 percent for the underpayments, and 5 percent for large corporation underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding $10,000 will be 0.5 percent.

Rev. Rul. 2013–16

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

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

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

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

The federal short-term rate determined in accordance with section 1274(d) during July 2013 is the rate published in Revenue Ruling 2013–13, 2013–32 I.R.B. 124, to take effect beginning August 1, 2013. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of July 2013 is 0 percent. Accordingly, an overpayment rate of 3 percent (2 percent in the case of a corporation) and an underpayment rate of 3 percent are established for the calendar quarter beginning October 1, 2013. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning October 1, 2013, is 0.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 2013, is 5 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 3 percent rate also applies to estimated tax underpayments for the fourth calendar quarter in 2013.

Interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling. Interest factors for daily compound interest for annual rates of 2 percent, 3 percent and 5 percent are published in Tables 9, 11, and 15 of Rev. Proc. 95–17, 1995–1 C.B. 563, 565, and 569.

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

DRAFTING INFORMATION

The principal author of this revenue ruling is Deborah Colbert-James of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Colbert-James at (202) 622–3400 (not a toll-free call).

APPENDIX A

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815
42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779

365 Day Year

0.5% Compound Rate 184 Days – Continued

Days	Factor	Days	Factor	Days	Factor
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010
44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395

366 Day Year

0.5% Compound Rate 184 Days – Continued

Days	Factor	Days	Factor	Days	Factor
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES

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

OVERPAYMENTS AND UNDERPAYMENTS

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

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — DEC. 31, 1998 – Continued

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

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	RATE	1995–1 C.B. TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS – Continued

	RATE	1995–1 C.B. TABLE	PAGE
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	3%	59	613
Apr. 1, 2012—Jun. 30, 2012	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	3%	11	565

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007—Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008—Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008—Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008—Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008—Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009—Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009—Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009—Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009—Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010—Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010—Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010—Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010—Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011—Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011—Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011—Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011—Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012—Mar. 31, 2012	2%	57	611	3%	59	613

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 — PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS – Continued

	OVERPAYMENTS			UNDERPAYMENTS		
		1995–1 C.B.			1995–1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Apr. 1, 2012—Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012—Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012—Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013—Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013—Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013—Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013—Dec. 31, 2013	2%	9	563	3%	11	565

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT

		1995–1 C.B.	
	RATE	TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT – Continued

	RATE	1995–1 C.B. TABLE	PG
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579
Oct. 1, 2007—Dec. 31, 2007	10%	25	579
Jan. 1, 2008—Mar. 31, 2008	9%	71	625
Apr. 1, 2008—Jun. 30, 2008	8%	69	623
Jul. 1, 2008—Sep. 30, 2008	7%	67	621
Oct. 1, 2008—Dec. 31, 2008	8%	69	623
Jan. 1, 2009—Mar. 31, 2009	7%	19	573
Apr. 1, 2009—Jun. 30, 2009	6%	17	571
Jul. 1, 2009—Sep. 30, 2009	6%	17	571
Oct. 1, 2009—Dec. 31, 2009	6%	17	571
Jan. 1, 2010—Mar. 31, 2010	6%	17	571
Apr. 1, 2010—Jun. 30, 2010	6%	17	571
Jul. 1, 2010—Sep. 30, 2010	6%	17	571
Oct. 1, 2010—Dec. 31, 2010	6%	17	571
Jan. 1, 2011—Mar. 31, 2011	5%	15	569
Apr. 1, 2011—Jun. 30, 2011	6%	17	571
Jul. 1, 2011—Sep. 30, 2011	6%	17	571
Oct. 1, 2011—Dec. 31, 2011	5%	15	569
Jan. 1, 2012—Mar. 31, 2012	5%	63	617
Apr. 1, 2012—Jun. 30, 2012	5%	63	617
Jul. 1, 2012—Sep. 30, 2012	5%	63	617
Oct. 1, 2012—Dec. 31, 2012	5%	63	617
Jan. 1, 2013—Mar. 31, 2013	5%	15	569
Apr. 1, 2013—Jun. 30, 2013	5%	15	569
Jul. 1, 2013—Sep. 30, 2013	5%	15	569
Oct. 1, 2013—Dec. 31, 2013	5%	15	569

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

FROM JANUARY 1, 1995 — PRESENT

	RATE	1995–1 C.B. TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003—Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003—Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004—Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004—Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004—Sep. 30, 2004	1.5%	56	610
Oct. 1, 2004—Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005—Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005—Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005—Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005—Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007—Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008—Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008—Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008—Sep. 30, 2008	2.5%	58	612

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

FROM JANUARY 1, 1995 — PRESENT – Continued

	RATE	1995–1 C.B. TABLE	PG
Oct. 1, 2008—Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009—Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009—Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009—Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009—Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010—Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010—Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010—Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010—Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011—Mar. 31, 2011	0.5%*		
Apr. 1, 2011—Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011—Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011—Dec. 31, 2011	0.5%*		
Jan. 1, 2012—Mar. 31, 2012	0.5%*		
Apr. 1, 2012—Jun. 30, 2012	0.5%*		
Jul. 1, 2012—Sep. 30, 2012	0.5%*		
Oct. 1, 2012—Dec. 31, 2012	0.5%*		
Jan. 1, 2013—Mar. 31, 2013	0.5%*		
Apr. 1, 2013—Jun. 30, 2013	0.5%*		
Jul. 1, 2013—Sep. 30, 2013	0.5%*		
Oct. 1, 2013—Dec. 31, 2013	0.5%*		

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling.

Part III. Administrative, Procedural, and Miscellaneous

Application of Market Reform and other Provisions of the Affordable Care Act to HRAs, Health FSAs, and Certain other Employer Healthcare Arrangements

Notice 2013–54

I. PURPOSE AND OVERVIEW

This notice provides guidance on the application of certain provisions of the Affordable Care Act[1] to the following types of arrangements: (1) health reimbursement arrangements (HRAs), including HRAs integrated with a group health plan; (2) group health plans under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy, such as a reimbursement arrangement described in Revenue Ruling 61–146, 1961–2 C.B. 25, or arrangements under which the employer uses its funds to directly pay the premium for an individual health insurance policy covering the employee (collectively, an employer payment plan); and (3) certain health flexible spending arrangements (health FSAs). This notice also provides guidance on section 125(f)(3) of the Internal Revenue Code (Code) and on employee assistance programs or EAPs.

The Departments of the Treasury (Treasury Department), Health and Human Services (HHS), and Labor (DOL) (collectively, the Departments) are continuing to work together to develop coordinated regulations and other administrative guidance to assist stakeholders with implementation of the Affordable Care Act. The guidance in this notice is being issued in substantially identical form by DOL, and guidance is being issued by HHS to reflect that HHS concurs in the application of the laws under its jurisdiction as set forth in this notice.

II. BACKGROUND

A. *Health Reimbursement Arrangements*

An HRA is an arrangement that is funded solely by an employer and that reimburses an employee for medical care expenses (as defined under Code § 213(d)) incurred by the employee, or his spouse, dependents, and any children who, as of the end of the taxable year, have not attained age 27, up to a maximum dollar amount for a coverage period. IRS Notice 2002–45, 2002–02 C.B. 93; Revenue Ruling 2002–41, 2002–2 C.B. 75. This reimbursement is excludable from the employee's income. Amounts that remain at the end of the year generally can be used to reimburse expenses incurred in later years. HRAs generally are considered to be group health plans within the meaning of Code § 9832(a), § 733(a) of the Employee Retirement Income Security Act of 1974 (ERISA), and § 2791(a) of the Public Health Service Act (PHS Act) and are subject to the rules applicable to group health plans.

B. *Employer Payment Plans*

Revenue Ruling 61–146 holds that if an employer reimburses an employee's substantiated premiums for non-employer sponsored hospital and medical insurance, the payments are excluded from the employee's gross income under Code § 106. This exclusion also applies if the employer pays the premiums directly to the insurance company. An employer payment plan, as the term is used in this notice, does not include an employer-sponsored arrangement under which an employee may choose either cash or an after-tax amount to be applied toward health coverage. Individual employers may establish payroll practices of forwarding post-tax employee wages to a health insurance issuer at the direction of an employee without establishing a group health plan, if the standards of the DOL's regulation at 29 C.F.R. § 2510.3–1(j) are met.

C. *Health Flexible Spending Arrangements (Health FSAs)*

In general, a health FSA is a benefit designed to reimburse employees for medical care expenses (as defined in Code § 213(d), other than premiums) incurred by the employee, or the employee's spouse, dependents, and any children who, as of the end of the taxable year, have not attained age 27. See Employee Benefits—Cafeteria Plans, 72 Fed. Reg. 43938, 43957 (August 6, 2007) (proposed regulations; to be codified, in part, once final, at 26 C.F.R. § 1.125–5); Code §§ 105(b) and 106(f). Contributions to a health FSA offered through a cafeteria plan satisfying the requirements of Code § 125 (a Code § 125 plan) do not result in gross income to the employee. Code § 125(a). While employees electing coverage under a health FSA typically also elect to enter into a salary reduction agreement, employers may provide additional health FSA benefits in excess of the salary reduction amount. See Employee Benefits—Cafeteria Plans, 72 Fed. Reg. 43938, 43955–43957 (August 6, 2007) (proposed regulations; to be codified, in part, once final, at 26 C.F.R. §§ 1.125–1(r), 1.125–5(b)). For plan years beginning after December 31, 2012, the amount of the salary reduction is limited by Code § 125(i) to $2,500 (indexed annually for plan years beginning after December 31, 2013). See IRS Notice 2012–40, 2012–26 I.R.B. 1046, for more information about the application of the limitation. Additional employer contributions are not limited by Code § 125(i).

The Code, ERISA, and the PHS Act impose various requirements on group health plans, but certain of these requirements do not apply to a group health plan in relation to its provision of excepted benefits. Code § 9831(b), ERISA § 732(b), PHS Act §§ 2722(b) and 2763. Although a health FSA is a group health plan within the meaning of Code § 9832(a), ERISA § 733(a), and PHS Act § 2791(a), a health FSA may be considered to provide only excepted benefits if other group health plan coverage not limited to excepted

[1] The "Affordable Care Act" refers to the Patient Protection and Affordable Care Act (enacted March 23, 2010, Pub. L. No. 111–148) (ACA), as amended by the Health Care and Education Reconciliation Act of 2010 (enacted March 30, 2010, Pub. L. No. 111–152), and as further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112–10).

benefits is made available for the year to employees by the employer, but only if the arrangement is structured so that the maximum benefit payable to any participant cannot exceed two times the participant's salary reduction election for the arrangement for the year (or, if greater, cannot exceed $500 plus the amount of the participant's salary reduction election). 26 C.F.R. § 54.9831–1(c)(3)(v), 29 C.F.R. § 2590.732(c)(3)(v), and 45 C.F.R. § 146.145(c)(3)(v).

D. *Affordable Care Act Guidance*

1. Market Reforms — In General

The Affordable Care Act contains certain market reforms that apply to group health plans (the market reforms).[2] In accordance with Code § 9831(a)(2) and ERISA § 732(a), the market reforms do not apply to a group health plan that has fewer than two participants who are current employees on the first day of the plan year, and, in accordance with Code § 9831(b), ERISA § 732(b), and PHS Act §§ 2722(b) and 2763, the market reforms also do not apply to a group health plan in relation to its provision of excepted benefits described in Code § 9832(c), ERISA § 733(c) and PHS Act § 2791(c).[3] Excepted benefits include, among other things, accident-only coverage, disability income, certain limited-scope dental and vision benefits, certain long-term care benefits, and certain health FSAs.

The market reforms specifically addressed in this notice are:[4]

(a) PHS Act § 2711 which provides that a group health plan (or a health insurance issuer offering group health insurance coverage) may not establish any annual limit on the dollar amount of benefits for any individual—this rule does not prevent a group health plan, or a health insurance issuer offering group health insurance coverage, from placing an annual limit, with respect to any individual, on specific covered benefits that are not essential health benefits[5] to the extent that such limits are otherwise permitted under applicable law (the annual dollar limit prohibition); and

(b) PHS Act § 2713 which requires non-grandfathered group health plans (or health insurance issuers offering group health insurance plans) to provide certain preventive services without imposing any cost-sharing requirements for these services (the preventive services requirements).

2. Prior Guidance on the Application of the Market Reforms to HRAs

The preamble to the interim final regulations implementing the annual dollar limit prohibition states that if an HRA is integrated with other coverage as part of a group health plan and the other coverage alone would comply with the annual dollar limit prohibition, the fact that benefits under the HRA by itself are limited does not fail to comply with the annual dollar limit prohibition because the combined benefit satisfies the requirements. Further, the preamble states that in the case of a stand-alone HRA that is limited to retirees, the exemption from the requirements of the Code and ERISA relating to the Affordable Care Act for plans with fewer than two current employees means that the retiree-only HRA is not subject to the annual dollar limit prohibition. 75 Fed. Reg. 37188, 37190–37191 (June 28, 2010).

On January 24, 2013, the Departments issued FAQs that address the application of the annual dollar limit prohibition to certain HRA arrangements (HRA FAQs).[6] In the HRA FAQs, the Departments state that an HRA is not integrated with primary health coverage offered by an employer unless, under the terms of the HRA, the HRA is available only to employees who are covered by primary group health plan coverage that is provided by the employer and that meets the annual dollar limit prohibition. Further, the HRA FAQs indicate that the Departments intend to issue guidance providing that:

(a) for purposes of the annual dollar limit prohibition, an employer-sponsored HRA cannot be integrated with individual market coverage or with individual policies provided under an employer payment plan, and, therefore, an HRA used to purchase coverage on the individual market under these arrangements will fail to comply with the annual dollar limit prohibition; and

(b) an employer-sponsored HRA may be treated as integrated with other coverage only if the employee receiving the HRA is actually enrolled in the coverage, and any HRA that credits additional amounts to an individual, when the individual is not enrolled in primary coverage meeting the annual dollar limit prohibition provided by the employer, will fail to comply with the annual dollar limit prohibition.

The HRA FAQs also state that the Departments anticipate that future guidance will provide that, whether or not an HRA is integrated with other group health plan coverage, unused amounts credited before January 1, 2014 consisting of amounts credited before January 1, 2013, and amounts that are credited in 2013 under the terms of an HRA as in effect on January 1, 2013, may be used after December 31, 2013 to reimburse medical expenses in accordance with those terms without causing the HRA to fail to comply with the annual dollar limit prohibition. If the HRA terms in effect on January 1, 2013 did not prescribe a set amount or amounts to be credited during 2013 or the timing for

[2] Section 1001 of the ACA added new PHS Act §§ 2711–2719. Section 1563 of the ACA (as amended by ACA § 10107(b)) added Code § 9815(a) and ERISA § 715(a) to incorporate the provisions of part A of title XXVII of the PHS Act into the Code and ERISA, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The PHS Act sections incorporated by these references are sections 2701 through 2728. Accordingly, these referenced PHS Act sections (*i.e.*, the market reforms) are subject to shared interpretive jurisdiction by the Departments.

[3] See the preamble to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538, 34539 (June 17, 2010). See also Affordable Care Act Implementation FAQs Part III, Question 1, available at *http://www.dol.gov/ebsa/faqs/faq-aca3.html* and at *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs3.html.*

[4] The Departments previously addressed HRAs and the requirements under PHS Act § 2715 (summary of benefits and coverage and uniform glossary). See 77 Fed. Reg. 8668, 8670–8671 (February 14, 2012); see also Affordable Care Act Implementation FAQs Part VIII, Question 6, available at *http://www.dol.gov/ebsa/faqs/faq-aca8.html* and at *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.html* and see page 1 of the Instruction Guide for Group Coverage, available at *http://www.dol.gov/ebsa/pdf/SBCInstructionsGroup.pdf.*

[5] See ACA § 1302(b) for the definition of "essential health benefits".

[6] See Affordable Care Act Implementation FAQs Part XI, available at *http://www.dol.gov/ebsa/faqs/faq-aca11.html* and at *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs11.html.*

crediting such amounts, then the amounts credited may not exceed those credited for 2012 and may not be credited at a faster rate than the rate that applied during 2012.

3. Prior Guidance on the Application of the Market Reforms to Health FSAs

Under the interim final rules implementing the annual dollar limit prohibition, a health FSA, as defined in Code § 106(c)(2), is not subject to the annual dollar limit prohibition. See 26 C.F.R. § 54.9815–2711T(a)(2)(ii), 29 C.F.R. § 2590.715–2711(a)(2)(ii), and 45 C.F.R. § 147.126(a)(2)(ii). See Q&A 8 of this notice limiting the exemption from the annual dollar limit prohibition to a health FSA that is offered through a Code § 125 plan.

4. Prior Guidance on the Application of Code §§ 36B and 5000A

Section 36B of the Code allows a premium tax credit to certain taxpayers who enroll (or whose family members enroll) in a qualified health plan (QHP) through an Affordable Insurance Exchange (referred to in this notice as an Exchange, and also referred to in other published guidance as a Marketplace). The credit subsidizes a portion of the premiums for the QHP. In general, the premium tax credit may not subsidize coverage for an individual who is eligible for other minimum essential coverage. If the minimum essential coverage is eligible employer-sponsored coverage, however, an individual is treated as eligible for that coverage only if the coverage is affordable and provides minimum value or if the individual enrolls in the coverage.

Coverage provided through Code § 125 plans, employer payment plans, health FSAs, and HRAs are eligible employer-sponsored plans and, therefore, are minimum essential coverage, unless the coverage consists solely of excepted benefits. See Code § 5000A(f)(2) and Treas. Reg. § 1.5000A–2, 78 Fed. Reg. 53646, 53658 (August 30, 2013).

Amounts newly made available for the current plan year under an HRA that is integrated with an eligible employer-sponsored plan and that an employee may use to pay premiums are counted for purposes of determining affordability of an eligible employer-sponsored plan under Code § 36B. See Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit, 78 Fed. Reg. 25909, 25914 (May 3, 2013) (proposed regulations; to be codified, in part, once final, at 26 C.F.R. § 1.36B–2(c)(3)(v)(A)(5)). Amounts newly made available for the current plan year under an HRA that is integrated with an eligible employer-sponsored plan are counted toward the plan's minimum value percentage for that plan year if the amounts may be used only to reduce cost-sharing for covered medical expenses and the amount counted for this purpose is the amount of expected spending for health care costs in a benefit year. See Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit, 78 Fed. Reg. 25909, 25916 (May 3, 2013) (proposed regulations; to be codified, in part, once final, at 26 C.F.R. § 1.36B–6(c)(4), (c)(5)). See Q&A 11 of this notice for more explanation of the application of these rules to HRAs and other arrangements.

III. GUIDANCE

A. *Guidance on HRAs and Certain other Employer Healthcare Arrangements, Health FSAs, and Employee Assistance Programs or EAPs Under the Joint Jurisdiction of the Departments*

1. Application of the Market Reform Provisions to HRAs and Certain other Employer Healthcare Arrangements

***Question 1*:** The HRA FAQs provide that an employer-sponsored HRA cannot be integrated with individual market coverage, and, therefore, an HRA used to purchase coverage on the individual market will fail to comply with the annual dollar limit prohibition. May other types of group health plans used to purchase coverage on the individual market be integrated with that individual market coverage for purposes of the annual dollar limit prohibition?

***Answer 1*:** No. A group health plan, including an HRA, used to purchase coverage on the individual market is not integrated with that individual market coverage for purposes of the annual dollar limit prohibition.

For example, a group health plan, such as an employer payment plan, that reimburses employees for an employee's substantiated individual insurance policy premiums must satisfy the market reforms for group health plans. However the employer payment plan will fail to comply with the annual dollar limit prohibition because (1) an employer payment plan is considered to impose an annual limit up to the cost of the individual market coverage purchased through the arrangement, and (2) an employer payment plan cannot be integrated with any individual health insurance policy purchased under the arrangement.

***Question 2*:** How do the preventive services requirements apply to an HRA that is integrated with a group health plan?

***Answer 2*:** Similar to the analysis of the annual dollar limit prohibition, an HRA that is integrated with a group health plan will comply with the preventive services requirements if the group health plan with which the HRA is integrated complies with the preventive services requirements.

***Question 3*:** The HRA FAQs provide that an employer-sponsored HRA cannot be integrated with individual market coverage, and, therefore, an HRA used to purchase coverage on the individual market will fail to comply with the annual dollar limit prohibition. May a group health plan, including an HRA, used to purchase coverage on the individual market be integrated with that individual market coverage for purposes of the preventive services requirements?

***Answer 3*:** No. A group health plan, including an HRA, used to purchase coverage on the individual market is not integrated with that individual market coverage for purposes of the preventive services requirements.

For example, a group health plan, such as an employer payment plan, that reimburses employees for an employee's substantiated individual insurance policy premiums must satisfy the market reforms for group health plans. However, the employer payment plan will fail to comply with the preventive services requirements because (1) an employer payment plan does not provide preventive services without cost-sharing in all instances, and (2) an employer payment plan cannot be integrated with any individual health insurance policy purchased under the arrangement.

***Question 4*:** Under what circumstances will an HRA be integrated with another

group health plan for purposes of the annual dollar limit prohibition and the preventive services requirements?

***Answer 4*:** An HRA will be integrated with a group health plan for purposes of the annual dollar limit prohibition and the preventive services requirements if it meets the requirements under either of the integration methods described below. Pursuant to this notice, under both methods, integration does not require that the HRA and the coverage with which it is integrated share the same plan sponsor, the same plan document or governing instruments, or file a single Form 5500, if applicable.

Integration Method: Minimum Value Not Required

An HRA is integrated with another group health plan for purposes of the annual dollar limit prohibition and the preventive services requirements if (1) the employer offers a group health plan (other than the HRA) to the employee that does not consist solely of excepted benefits; (2) the employee receiving the HRA is actually enrolled in a group health plan (other than the HRA) that does not consist solely of excepted benefits, regardless of whether the employer sponsors the plan (non-HRA group coverage); (3) the HRA is available only to employees who are enrolled in non-HRA group coverage, regardless of whether the employer sponsors the non-HRA group coverage (for example, the HRA may be offered only to employees who do not enroll in the employer's group health plan but are enrolled in other non-HRA group coverage, such as a plan maintained by the employer of the employee's spouse); (4) the HRA is limited to reimbursement of one or more of the following—co-payments, co-insurance, deductibles, and premiums under the non-HRA group coverage, as well as medical care (as defined under Code § 213(d)) that does not constitute essential health benefits; and (5) under the terms of the HRA, an employee (or former employee) is permitted to permanently opt out of and waive future reimbursements from the HRA at least annually and, upon termination of employment, either the remaining amounts in the HRA are forfeited or the employee is permitted to permanently opt out of and waive future reimbursements from the HRA. This opt-out feature is required because the benefits provided by the HRA generally will constitute minimum essential coverage under Code § 5000A (see Q&A 10 of this notice) and will therefore preclude the individual from claiming a Code § 36B premium tax credit.

Integration Method: Minimum Value Required

Alternatively, an HRA that is not limited with respect to reimbursements as required under the integration method expressed above is integrated with a group health plan for purposes of the annual dollar limit prohibition and the preventive services requirements if (1) the employer offers a group health plan to the employee that provides minimum value pursuant to Code § 36B(c)(2)(C)(ii); (2) the employee receiving the HRA is actually enrolled in a group health plan that provides minimum value pursuant to Code § 36B(c)(2)(C)(ii), regardless of whether the employer sponsors the plan (non-HRA MV group coverage); (3) the HRA is available only to employees who are actually enrolled in non-HRA MV group coverage, regardless of whether the employer sponsors the non-HRA MV group coverage (for example, the HRA may be offered only to employees who do not enroll in the employer's group health plan but are enrolled in other non-HRA MV group coverage, such as a plan maintained by an employer of the employee's spouse); and (4) under the terms of the HRA, an employee (or former employee) is permitted to permanently opt out of and waive future reimbursements from the HRA at least annually, and, upon termination of employment, either the remaining amounts in the HRA are forfeited or the employee is permitted to permanently opt out of and waive future reimbursements from the HRA.

Example (Integration Method: Minimum Value Not Required)

Facts. Employer A sponsors a group health plan and an HRA for its employees. Employer A's HRA is available only to employees who are either enrolled in its group health plan or in non-HRA group coverage through a family member. Employer A's HRA is limited to reimbursement of co-payments, co-insurance, deductibles, and premiums under Employer A's group health plan or other non-HRA group coverage (as applicable), as well as medical care (as defined under Code § 213(d)) that does not constitute essential health benefits. Under the terms of Employer A's HRA, an employee is permitted to permanently opt out of and waive future reimbursements from the HRA both upon termination of employment and at least annually.

Employer A employs Employee X. Employee X chooses to enroll in non-HRA group coverage sponsored by Employer B, the employer of Employee X's spouse, instead of enrolling in Employer A's group health plan. Employer A and Employer B are not treated as a single employer under Code § 414(b), (c), (m), or (o). Employee X attests to Employer A that he is covered by Employer B's non-HRA group coverage. When seeking reimbursement under Employer A's HRA, Employee X attests that the expense for which he seeks reimbursement is a co-payment, co-insurance, deductible, or premium under Employer B's non-HRA group coverage or medical care (as defined under Code § 213(d)) that is not an essential health benefit.

Conclusion. Employer A's HRA is integrated with Employer B's non-HRA group coverage for purposes of the annual dollar limit prohibition and the preventive services requirements.

Example (Integration Method: Minimum Value Required)

Facts. Employer A sponsors a group health plan that provides minimum value and an HRA for its employees. Employer A's HRA is available only to employees who are either enrolled in its group health plan or in non-HRA MV group coverage through a family member. Under the terms of Employer A's HRA, an employee is permitted to permanently opt out of and waive future reimbursements from the HRA both upon termination of employment and at least annually.

Employer A employs Employee X. Employee X chooses to enroll in non-HRA MV group coverage sponsored by Employer B, the employer of Employee X's spouse, instead of enrolling in Employer A's group health plan. Employer A and Employer B are not treated as a single employer under Code § 414(b), (c), (m), or

(o). Employee X attests to Employer A that he is covered by Employer B's non-HRA MV group coverage and that the coverage provides minimum value.

Conclusion. Employer A's HRA is integrated with Employer B's non-HRA MV group coverage for purposes of the annual dollar limit prohibition and the preventive services requirements.

***Question 5*:** May an employee who is covered by both an HRA and a group health plan with which the HRA is integrated, and who then ceases to be covered under the group health plan that is integrated with the HRA, be permitted to use the amounts remaining in the HRA?

***Answer 5*:** Whether or not an HRA is integrated with other group health plan coverage, unused amounts that were credited to an HRA while the HRA was integrated with other group health plan coverage may be used to reimburse medical expenses in accordance with the terms of the HRA after an employee ceases to be covered by other integrated group health plan coverage without causing the HRA to fail to comply with the market reforms. Note that coverage provided through an HRA, other than coverage consisting solely of excepted benefits, is an eligible employer-sponsored plan and, therefore, minimum essential coverage under Code § 5000A.

***Question 6*:** Does an HRA impose an annual limit in violation of the annual dollar limit prohibition if the group health plan with which an HRA is integrated does not cover a category of essential health benefits and the HRA is available to cover that category of essential health benefits (but limits the coverage to the HRA's maximum benefit)?

***Answer 6*:** In general, an HRA integrated with a group health plan imposes an annual limit in violation of the annual dollar limit prohibition if the group health plan with which the HRA is integrated does not cover a category of essential health benefits and the HRA is available to cover that category of essential health benefits and limits the coverage to the HRA's maximum benefit. This situation should not arise for a group health plan funded through non-grandfathered health insurance coverage in the small group market, as small group market plans must cover all categories of essential health benefits, with the exception of pediatric dental benefits, if pediatric dental benefits are available through a stand-alone dental plan offered in accordance with 45 C.F.R. § 155.1065.[7]

However, under the integration method available for plans that provide minimum value described under Q&A 4 of this notice, if a group health plan provides minimum value under Code § 36B(c)(2)(C)(ii), an HRA integrated with that group health plan will not be treated as imposing an annual limit in violation of the annual dollar limit prohibition, even if that group health plan does not cover a category of essential health benefits and the HRA is available to cover that category of essential health benefits and limits the coverage to the HRA's maximum benefit.

2. Application of the Market Reforms to Certain Health FSAs

***Question 7*:** How do the market reforms apply to a health FSA that does not qualify as excepted benefits?

***Answer 7*:** The market reforms do not apply to a group health plan in relation to its provision of benefits that are excepted benefits. Health FSAs are group health plans but will be considered to provide only excepted benefits if the employer also makes available group health plan coverage that is not limited to excepted benefits and the health FSA is structured so that the maximum benefit payable to any participant cannot exceed two times the participant's salary reduction election for the health FSA for the year (or, if greater, cannot exceed $500 plus the amount of the participant's salary reduction election).[8] See 26 C.F.R. § 54.9831–1(c)(3)(v), 29 C.F.R. § 2590.732(c)(3)(v), and 45 C.F.R. § 146.145(c)(3)(v). Therefore, a health FSA that is considered to provide only excepted benefits is not subject to the market reforms.

If an employer provides a health FSA that does not qualify as excepted benefits, the health FSA generally is subject to the market reforms, including the preventive services requirements. Because a health FSA that is not excepted benefits is not integrated with a group health plan, it will fail to meet the preventive services requirements.[9]

The Departments understand that questions have arisen as to whether HRAs that are not integrated with a group health plan may be treated as a health FSA as defined in Code § 106(c)(2). Notice 2002–45, 2002–02 C.B. 93, states that, assuming that the maximum amount of reimbursement which is reasonably available to a participant under an HRA is not substantially in excess of the value of coverage under the HRA, an HRA is a health FSA as defined in Code § 106(c)(2). This statement was intended to clarify the rules limiting the payment of long-term care expenses by health FSAs. The Departments are also considering whether an HRA may be treated as a health FSA for purposes of the exclusion from the annual dollar limit prohibition. In any event, the treatment of an HRA as a health FSA that is not excepted benefits would not exempt the HRA from compliance with the other market reforms, including the preventive services requirements, which the HRA would fail to meet because the HRA would not be integrated with a group health plan. This analysis applies even if an HRA reimburses only premiums.

Question 8: The interim final regulations regarding the annual dollar limit prohibition contain an exemption for health FSAs (as defined in Code § 106(c)(2)). See 26 C.F.R. § 54.9815–2711T(a)(2)(ii), 29 C.F.R. § 2590.715–2711(a)(2)(ii), and 45 C.F.R. § 147.126(a)(2)(ii). Does this exemption apply to a health FSA that is not offered through a Code § 125 plan?

***Answer 8*:** No. The Departments intended for this exemption from the annual dollar limit prohibition to apply only to a health FSA that is offered through a Code § 125 plan and thus subject to a separate annual

[7] Small group market plans will not be considered to fail to meet qualified health plan certification standards based solely on the fact that they exclude coverage of pediatric dental benefits that are otherwise required under ACA § 1302(b)(1)(J) where a stand-alone dental plan is also available. See ACA § 1302(b)(4)(F) and Question 5, CMS QHP Dental Frequently Asked Questions, May 31, 2013, *https://www.regtap.info/uploads/library/PM_QHP_DentalFAQsV2_5cr_060313.pdf*.

[8] An HRA is paid for solely by the employer and not provided pursuant to salary reduction election or otherwise under a Code § 125 plan. IRS Notice 2002–45, 2002–02 C.B. 93.

[9] Under the interim final rules implementing the annual dollar limit prohibition, a health FSA is not subject to the annual dollar limit prohibition, regardless of whether the health FSA is considered to provide only excepted benefits. See 26 C.F.R. § 54.9815–2711T(a)(2)(ii), 29 C.F.R. § 2590.715–2711(a)(2)(ii), and 45 C.F.R. § 147.126(a)(2)(ii). See Q&A 8 of this notice regarding the restriction of the exemption from the annual dollar limit prohibition to a health FSA that is offered through a Code § 125 plan.

limitation under Code § 125(i). There is no similar limitation on a health FSA that is not part of a Code § 125 plan, and thus no basis to imply that it is not subject to the annual dollar limit prohibition.

To clarify this issue, the Departments intend to amend the annual dollar limit prohibition regulations to conform to this Q&A 8 retroactively applicable as of September 13, 2013. As a result, a health FSA that is not offered through a Code § 125 plan is subject to the annual dollar limit prohibition and will fail to comply with the annual dollar limit prohibition.

3. Guidance on Employee Assistance Programs

***Question 9*:** Are benefits under an employee assistance program or EAP considered to be excepted benefits?

***Answer 9*:** The Departments intend to amend 26 C.F.R. § 54.9831–1(c), 29 C.F.R. § 2590.732(c), and 45 C.F.R. § 146.145(c) to provide that benefits under an employee assistance program or EAP are considered to be excepted benefits, but only if the program does not provide significant benefits in the nature of medical care or treatment. Excepted benefits are not subject to the market reforms and are not minimum essential coverage under Code § 5000A. Until rulemaking is finalized, through at least 2014, the Departments will consider an employee assistance program or EAP to constitute excepted benefits only if the employee assistance program or EAP does not provide significant benefits in the nature of medical care or treatment. For this purpose, employers may use a reasonable, good faith interpretation of whether an employee assistance program or EAP provides significant benefits in the nature of medical care or treatment.

B. *Guidance Under the Sole Jurisdiction of the Treasury Department and the IRS on HRAs and Code § 125 Plans*

***Question 10*:** Is an HRA that has fewer than two participants who are current employees on the first day of the plan year (for example, a retiree-only HRA) minimum essential coverage for purposes of Code §§ 5000A and 36B?

***Answer 10*:** Yes. The Treasury Department and the IRS understand that some employers are considering making amounts available under standalone retiree-only HRAs to retired employees so that the employer would be able to reimburse medical expenses, including the purchase of an individual health insurance policy. For this purpose, the standalone HRA would constitute an eligible employer-sponsored plan under Code § 5000A(f)(2), and therefore the coverage would constitute minimum essential coverage under Code § 5000A, for a month in which funds are retained in the HRA (including amounts retained in the HRA during periods of time after the employer has ceased making contributions). As a result, a retiree covered by a standalone HRA for any month will not be eligible for a Code § 36B premium tax credit for that month. Note that unlike other HRAs, the market reforms generally do not apply to a retiree-only HRA and therefore would not impact an employer's choice to offer a retiree-only HRA.[10]

***Question 11*:** How are amounts newly made available under an HRA treated for purposes of Code § 36B?

***Answer 11*:** An individual is not eligible for individual coverage subsidized by the Code § 36B premium tax credit if the individual is eligible for employer-sponsored coverage that is affordable (premiums for self-only coverage do not exceed 9.5 percent of household income) and that provides minimum value (the plan's share of costs is at least 60 percent). If an employer offers an employee both a primary eligible employer-sponsored plan and an HRA that would be integrated with the primary plan if the employee enrolled in the plan, amounts newly made available for the current plan year under the HRA may be considered in determining whether the arrangement satisfies either the affordability requirement or the minimum value requirement, but not both. Amounts newly made available for the current plan year under the HRA that an employee may use only to reduce cost-sharing for covered medical expenses under the primary employer-sponsored plan count only toward the minimum value requirement. See Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit, 78 Fed. Reg. 25909, 25916 (May 3, 2013) (proposed regulations, to be codified, in part, once final, at 26 C.F.R. § 1.36B–6(c)(4), (c)(5)). Amounts newly made available for the current plan year under the HRA that an employee may use to pay premiums or to pay both premiums and cost-sharing under the primary employer-sponsored plan count only toward the affordability requirement. See Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit, 78 Fed. Reg. 25909, 25914 (May 3, 2013) (proposed regulations; to be codified, in part, once final, at 26 C.F.R. § 1.36B–2(c)(3)(v)(A)(5)).

Even if an HRA is integrated with a plan offered by another employer for purposes of the annual dollar limit prohibition and the preventive services requirements (see Q&A 4 of this notice), the HRA does not count toward the affordability or minimum value requirement of the plan offered by the other employer. Additionally, if an employer offers an HRA on the condition that the employee does not enroll in non-HRA coverage offered by the employer and instead enrolls in non-HRA coverage from a different source, the HRA does not count in determining whether the employer's non-HRA coverage satisfies either the affordability or minimum value requirement.

For purposes of the Code § 36B premium tax credit, the requirements of affordability and minimum value do not apply if an employee enrolls in any employer-sponsored minimum essential coverage, including coverage provided through a Code § 125 plan, an employer payment plan, a health FSA, or an HRA, but only if the coverage offered does not consist solely of excepted benefits. See 26 C.F.R. § 1.36B–2(c)(3)(vii). If an employee enrolls in any employer-sponsored minimum essential coverage, the employee is ineligible for individual coverage subsidized by the Code § 36B premium tax credit.

***Question 12*:** Section 125(f)(3) of the Code, effective for taxable years beginning after December 31, 2013, provides that the term "qualified benefit" does not

[10] See the preamble to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34538, 34539 (June 17, 2010).

include any QHP (as defined in ACA § 1301(a)) offered through an Exchange.[11] This prohibits an employer from providing a QHP offered through an Exchange as a benefit under the employer's Code § 125 plan. Some states have already established Exchanges and employers in those states may have Code § 125 plan provisions that allow employees to enroll in health coverage through the Exchange as a benefit under a Code § 125 plan. If the employer's Code § 125 plan operates on a plan year other than a calendar year, may the employer continue to provide the Exchange coverage through a Code § 125 plan after December 31, 2013?

***Answer 12*:** For Code § 125 plans that as of September 13, 2013 operate on a plan year other than a calendar year, the restriction under Code § 125(f)(3) will not apply before the first plan year of the Code § 125 plan that begins after December 31, 2013. Thus, for the remainder of a plan year beginning in 2013, a QHP provided through an Exchange as a benefit under a Code § 125 plan will not result in all benefits provided under the Code § 125 plan being taxable. However, individuals may not claim a Code § 36B premium tax credit for any month in which the individual was covered by a QHP provided through an Exchange as a benefit under a Code § 125 plan.

IV. APPLICABILITY DATE AND RELIANCE PERIOD

This notice applies for plan years beginning on and after January 1, 2014, but taxpayers may apply the guidance provided in this notice for all prior periods. If legislative action by any State, local, or Indian tribal government entity is necessary to modify the terms of a pre-existing HRA, a health FSA that does not qualify as excepted benefits, an employer payment plan, or other similar arrangement, sponsored by any State, local, or Indian tribal government entity, as an employer, to avoid a failure to comply with the market reforms (including action to terminate such arrangement) and such action may only be taken by a State, local, or Indian tribal government entity legislative body, the applicability date of the portions of this notice under which such arrangement would otherwise fail to comply with the market reforms is extended to the later of (1) January 1, 2014, or (2) the first day of the first plan year following the first close of a regular legislative session of the applicable legislative body after September 13, 2013.

V. FOR FURTHER INFORMATION

The Departments have coordinated on the guidance and other information contained in this notice. The guidance in this notice is being issued in substantially identical form by DOL, and guidance is being issued by HHS to reflect that HHS concurs in the application of the laws under its jurisdiction as set forth in this notice. Questions concerning the information contained in this notice may be directed to the IRS at 202–927–9639, the DOL's Office of Health Plan Standards and Compliance Assistance at 202–693–8335, or HHS at 410–786–1565. Additional information for employers regarding the Affordable Care Act is available at *www.healthcare.gov*, *www.dol.gov/ebsa/healthreform*, and at *www.business.usa.gov*.

Preventive Health Services Required under Public Health Service Act Section 2713 and Preventive Care for Purposes of Health Savings Accounts

Notice 2013–57

PURPOSE

This notice clarifies that a health plan will not fail to qualify as a high deductible health plan (HDHP) under section 223(c)(2) of the Internal Revenue Code (Code) merely because it provides without a deductible the preventive health services required under section 2713 of the Public Health Service Act (PHS Act) to be provided by a group health plan or a health insurance issuer offering group or individual health insurance coverage.

BACKGROUND

Section 223 of the Code permits eligible individuals to establish Health Savings Accounts (HSAs). Among the requirements for an individual to qualify as an eligible individual under section 223(c)(1) (and thus to be eligible to make, or for the individual's employer to make on their behalf, tax-favored contributions to a HSA) is that the individual be covered under a HDHP and have no disqualifying health coverage. A HDHP is a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses.

Generally, under section 223(c)(2)(A), a HDHP may not provide benefits for any year until the minimum deductible for that year is satisfied. However, section 223(c)(2)(C) provides a safe harbor for the absence of a deductible for preventive care. Section 223(c)(2)(C) states that "[a] plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for preventive care (within the meaning of section 1871 of the Social Security Act, except as otherwise provided by the Secretary)." A HDHP may therefore provide preventive care benefits without a deductible or, subject to any applicable constraints under section 2713 of the PHS Act, with a deductible below the minimum annual deductible otherwise required by section 223(c)(2)(A).

Notice 2004–23 (2004–15 I.R.B. 725), and Q&A 26 and 27 of Notice 2004–50 (2005–33 I.R.B. 196) provide guidance on preventive care benefits allowed to be provided by a HDHP without satisfying the minimum deductible requirement of section 223(c)(2)(A).

Section 1001 of the Affordable Care Act added section 2713 to the PHS Act, requiring group health plans and health insurance issuers offering group and individual health insurance coverage to provide benefits for certain preventive health services without imposing cost-sharing requirements. (42 U.S.C. 300gg–13). The Affordable Care Act also added section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act, including section 2713, into ERISA and the Code. Guidance under section 2713 of the PHS Act is published jointly by the Treasury Department

[11] This rule does not apply with respect to any employee if the employee's employer is a qualified employer (as defined in ACA § 1312(f)(2)) offering the employee the opportunity to enroll through an Exchange in a qualified health plan in a group market. See Code § 125(f)(3)(B).

and IRS and the Departments of Labor and Health and Human Services.

Temporary regulations issued by the Treasury Department and IRS implementing the requirements of section 2713 of the PHS Act under § 54.9815–2713T (and parallel regulations issued by the Departments of Labor and HHS) were published in the Federal Register on July 19, 2010 (75 FR 41726), later supplemented by regulations published in the Federal Register on August 3, 2011 (76 FR 46621), February 15, 2012 (77 FR 8725), March 21, 2012 (77 FR 16501) and February 6, 2013 (78 FR 8456). See also Q&A–8 of FAQ Part II (October 8, 2010) and Q&A–1 of FAQ Part V (December 22, 2010), both available at *http://www.dol.gov/ebsa/healthreform/*.

GUIDANCE

Under this notice, preventive care for purposes of section 223(c)(2)(C) of the Code is anything that is preventive care under Notice 2004–23 and Notice 2004–50 without regard to whether it would constitute preventive care for purposes of section 2713 of the PHS Act. Preventive care for purposes of section 223(c)(2)(C) also includes services required to be provided as preventive health services by a group health plan or a health insurance issuer offering group or individual health insurance coverage under section 2713 of the PHS Act and regulations and other administrative guidance issued thereunder. Accordingly, a health plan will not fail to qualify as an HDHP under section 223(c)(2) of the Code merely because it provides without a deductible the preventive care health services required under section 2713 of the PHS Act to be provided by a group health plan or a health insurance issuer offering group or individual health insurance coverage.

EFFECT ON OTHER DOCUMENTS

This notice generally provides that any goods or services that constitute preventive care under the guidance in Notice 2004–23 and Notice 2004–50 will continue to be treated as preventive care for purposes of section 223 and clarifies that any preventive services under section 2713 of the PHS Act will also be treated as preventive care under section 223.

DRAFTING INFORMATION

The principal author of this notice is Karen Levin of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Governmental Entities), though other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice, contact Karen Levin at (202) 927–9639 (not a toll-free number.)

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2013–58

This notice provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007. These rates reflect certain changes implemented by the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21). MAP–21 provides that for purposes of § 430(h)(2), the segment rates are limited by the applicable maximum percentage or the applicable minimum percentage based on the average of segment rates over a 25 year period.

YIELD CURVE AND SEGMENT RATES

Generally, except for certain plans under sections 104 and 105 of the Pension Protection Act of 2006, § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from August 2013 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2013 are, respectively, 1.36, 4.60, and 5.58. For plan years beginning on or after January 1, 2012, the 24-month average segment rates determined under § 430(h)(2)(C)(iv) must be adjusted by the applicable percentage of the corresponding 25-year average segment rates. The 25-year average segment rates for plan years beginning in 2012 and for plan years beginning in 2013 were published in Notice 2012–55, 2012–36 I.R.B. 332 and Notice 2013–11, 2013–11 I.R.B. 610, respectively. For plan years beginning in 2014, based on the segment rates applicable for October 1988 to September 2013, the 25-year averages for the period ending September 30, 2013, of the first, second, and third segment rates are 5.54, 7.02, and 7.77 percent, respectively. For plan years beginning in 2014, the applicable minimum and maximum percentages are 80 percent and 120 percent.

The 24-month average corporate bond segment rates applicable for September 2013 without adjustment, and the adjusted 24-month average segment rates taking into account the applicable percentages of the corresponding 25-year average segment rates, are as follows:

For Plan Years Beginning In	Applicable Month		24-Month Average Segment Rates Not Adjusted			Adjusted 24-Month Average Segment Rates, Based on Applicable Percentage of 25-Year Average Rates		
			First Segment	Second Segment	Third Segment	First Segment	Second Segment	Third Segment
2012	September	2013	1.37	4.05	5.06	5.54	6.85	7.52
2013	September	2013	1.37	4.05	5.06	4.94	6.15	6.76
2014	September	2013	1.37	4.05	5.06	4.43	5.62	6.22

30-YEAR TREASURY SECURITIES INTEREST RATES

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for August 2013 is 3.76 percent. The Service has determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in May 2043 determined each day through August 7, 2013, and the yield on the 30-year Treasury bond maturing in August 2043 determined each day for the balance of the month. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	*Year*		90%	to	105%
September	2013	3.43	3.09		3.61

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for August 2013 are as follows:

First Segment	Second Segment	Third Segment
1.36	4.60	5.58

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I

Monthly Yield Curve for August 2013
Derived from August 2013 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	0.31	20.5	5.39	40.5	5.60	60.5	5.68	80.5	5.72
1.0	0.52	21.0	5.40	41.0	5.60	61.0	5.68	81.0	5.72
1.5	0.75	21.5	5.40	41.5	5.60	61.5	5.68	81.5	5.72
2.0	0.98	22.0	5.41	42.0	5.61	62.0	5.69	82.0	5.73
2.5	1.22	22.5	5.42	42.5	5.61	62.5	5.69	82.5	5.73
3.0	1.46	23.0	5.42	43.0	5.61	63.0	5.69	83.0	5.73
3.5	1.71	23.5	5.43	43.5	5.62	63.5	5.69	83.5	5.73
4.0	1.96	24.0	5.44	44.0	5.62	64.0	5.69	84.0	5.73
4.5	2.20	24.5	5.44	44.5	5.62	64.5	5.69	84.5	5.73
5.0	2.45	25.0	5.45	45.0	5.62	65.0	5.69	85.0	5.73
5.5	2.68	25.5	5.46	45.5	5.63	65.5	5.69	85.5	5.73
6.0	2.92	26.0	5.46	46.0	5.63	66.0	5.70	86.0	5.73
6.5	3.14	26.5	5.47	46.5	5.63	66.5	5.70	86.5	5.73
7.0	3.35	27.0	5.48	47.0	5.63	67.0	5.70	87.0	5.73
7.5	3.56	27.5	5.48	47.5	5.64	67.5	5.70	87.5	5.73
8.0	3.75	28.0	5.49	48.0	5.64	68.0	5.70	88.0	5.73
8.5	3.92	28.5	5.49	48.5	5.64	68.5	5.70	88.5	5.73
9.0	4.09	29.0	5.50	49.0	5.64	69.0	5.70	89.0	5.74
9.5	4.24	29.5	5.51	49.5	5.64	69.5	5.70	89.5	5.74
10.0	4.38	30.0	5.51	50.0	5.65	70.0	5.70	90.0	5.74
10.5	4.51	30.5	5.52	50.5	5.65	70.5	5.71	90.5	5.74
11.0	4.62	31.0	5.52	51.0	5.65	71.0	5.71	91.0	5.74
11.5	4.72	31.5	5.53	51.5	5.65	71.5	5.71	91.5	5.74
12.0	4.82	32.0	5.53	52.0	5.65	72.0	5.71	92.0	5.74
12.5	4.90	32.5	5.54	52.5	5.66	72.5	5.71	92.5	5.74
13.0	4.97	33.0	5.54	53.0	5.66	73.0	5.71	93.0	5.74
13.5	5.03	33.5	5.55	53.5	5.66	73.5	5.71	93.5	5.74
14.0	5.09	34.0	5.55	54.0	5.66	74.0	5.71	94.0	5.74
14.5	5.13	34.5	5.56	54.5	5.66	74.5	5.71	94.5	5.74
15.0	5.17	35.0	5.56	55.0	5.66	75.0	5.71	95.0	5.74
15.5	5.21	35.5	5.56	55.5	5.67	75.5	5.72	95.5	5.74
16.0	5.24	36.0	5.57	56.0	5.67	76.0	5.72	96.0	5.74
16.5	5.27	36.5	5.57	56.5	5.67	76.5	5.72	96.5	5.74
17.0	5.29	37.0	5.58	57.0	5.67	77.0	5.72	97.0	5.74
17.5	5.31	37.5	5.58	57.5	5.67	77.5	5.72	97.5	5.75
18.0	5.33	38.0	5.58	58.0	5.67	78.0	5.72	98.0	5.75
18.5	5.34	38.5	5.59	58.5	5.68	78.5	5.72	98.5	5.75
19.0	5.35	39.0	5.59	59.0	5.68	79.0	5.72	99.0	5.75
19.5	5.37	39.5	5.59	59.5	5.68	79.5	5.72	99.5	5.75
20.0	5.38	40.0	5.60	60.0	5.68	80.0	5.72	100.0	5.75

Application of Section 179(f) for Qualified Real Property

Notice 2013–59

I. PURPOSE

This notice provides guidance with respect to issues related to the enactment of § 315(d) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (January 2, 2013) (ATRA), which extended the application of § 179(f) of the Internal Revenue Code from any taxable year beginning in 2010 or 2011 to any taxable year beginning in 2010, 2011, 2012, or 2013. For these years, § 179(f) expands the definition of property qualifying for § 179 to include qualified real property (as defined in § 179(f)(1) and (2)). This notice also provides allocation methodologies for determining the portion of the gain that is attributable to § 1245 property upon the sale or other disposition of qualified real property.

II. BACKGROUND

(1) *In general*. Section 179(a) allows a taxpayer to elect to treat the cost (or a portion of the cost) of any § 179 property as an expense for the taxable year in which the taxpayer places the property in service. Section 179(b)(1) and section 179(b)(2) prescribe a dollar limitation on the aggregate cost of § 179 property that can be treated as an expense under § 179(a). The dollar limitation is the amount under § 179(b)(1) (the § 179(b)(1) limitation), reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the taxable year exceeds the amount under § 179(b)(2) (the § 179(b)(2) limitation). Prior to the enactment of ATRA, the § 179(b)(1) limitation was $500,000 for taxable years beginning in 2010 and 2011, $125,000 for taxable years beginning in 2012, and $25,000 for taxable years beginning after 2012. The § 179(b)(2) limitation was $2,000,000 for taxable years beginning in 2010 and 2011, $500,000 for taxable years beginning in 2012, and $200,000 for taxable years beginning after 2012. ATRA changed the limitations for taxable years beginning in 2012 or 2013 to $500,000 under § 179(b)(1) and $2,000,000 under § 179(b)(2).

Section 179(b)(3)(A) provides that a taxpayer's § 179 deduction for any taxable year, after application of the § 179(b)(1) and (2) limitations, is limited to the taxpayer's taxable income for that taxable year that is derived from the taxpayer's active conduct of any trade or business during that taxable year ("taxable income limitation"). Section 179(b)(3)(B) provides that the amount of any cost of § 179 property elected to be expensed in a taxable year that is disallowed as a § 179 deduction under the taxable income limitation may be carried forward for an unlimited number of years ("carryover of disallowed deduction") and may be deducted under § 179(a) in a future taxable year subject to the same limitations.

Section 179(d)(1) defines § 179 property as meaning § 1245 property (as defined in § 1245(a)(3)) that is: (1) tangible property to which § 168 applies and that is acquired by purchase (as defined in § 179(d)(2) and § 1.179–4(c) of the Income Tax Regulations) for use in the active conduct of a trade or business; or (2) computer software described in § 179(d)(1)(A)(ii) and that is acquired by purchase for use in the active conduct of a trade or business. Section 179 property does not include any property described in § 50(b) or air conditioning or heating units.

(2) *Qualified real property*. If a taxpayer elects to apply § 179(f), § 179 property also includes qualified real property. Prior to the enactment of ATRA, § 179(f) applied to qualified real property placed in service in any taxable year beginning in 2010 or 2011. ATRA extended the application of § 179(f) to qualified real property placed in service in any taxable year beginning in 2010, 2011, 2012, or 2013. Qualified real property means property that is: (1) of a character subject to an allowance for depreciation; (2) acquired by purchase (as defined in §§ 179(d)(2) and 1.179–4(c)) for use in the taxpayer's active conduct of a trade or business; (3) not described in § 50(b); and (4) not air conditioning or heating units. In addition, qualified real property must be § 1250 property that is: (1) qualified leasehold improvement property as defined in §§ 168(e)(6), 168(k)(3), and 1.168(k)–1(c); (2) certain qualified restaurant property as defined in § 168(e)(7); or (3) qualified retail improvement property as defined in § 168(e)(8).

For purposes of applying the § 179(b)(1) limitation ($500,000) for any taxable year beginning in 2010, 2011, 2012, or 2013, § 179(f)(3) provides that not more than $250,000 of the aggregate cost (as defined in §§ 179(d)(3) and 1.179–4(d)) of § 179 property that is treated as an expense under § 179(a) for the taxable year can be attributable to qualified real property. Thus, the maximum amount of qualified real property that may be expensed under § 179(a) for any taxable year beginning in 2010, 2011, 2012, or 2013 is $250,000.

Prior to the enactment of ATRA, § 179(f)(4) provided that, notwithstanding § 179(b)(3)(B), a taxpayer that elected to apply § 179(f) and elected to expense under § 179(a) the cost (or a portion of the cost) of qualified real property placed in service during any taxable year beginning in 2010 or 2011 could not carryover to any taxable year beginning after 2011 the amount of any cost of such property that was disallowed as a § 179 deduction under the taxable income limitation of § 179(b)(3)(A). To the extent any disallowed § 179 deduction attributable to qualified real property for any taxable year beginning in 2010 (the 2010 disallowed § 179 deduction) was not used in any taxable year beginning in 2011, that amount was treated as not being subject to a § 179 election and instead was treated as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 for purposes of computing depreciation. Similarly, to the extent any disallowed § 179 deduction attributable to qualified real property for any taxable year beginning in 2011 (the 2011 disallowed § 179 deduction) was not used in the taxpayer's last taxable year beginning in 2011, that amount was treated as not being subject to a § 179 election and instead was treated as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 for purposes of computing depreciation.

ATRA amended § 179(f)(4) to provide that, notwithstanding § 179(b)(3)(B), the amount of any cost of qualified real property elected to be expensed under § 179(a) for any taxable year beginning in 2010, 2011, 2012, or 2013 that is disallowed as a § 179 deduction under the taxable income limitation of § 179(b)(3)(A) cannot be carried over to a taxable year begin-

ning after 2013. To the extent that any § 179 deduction attributable to qualified real property is not allowed to be carried over to a taxable year beginning after 2013, that amount is to be treated as an amount for which an election under § 179 was not made and that amount is treated as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013 for purposes of computing depreciation.

The amendments made by the ATRA are effective retroactively to taxable years beginning after December 31, 2011.

A deduction under § 179 is treated as an amortization deduction for purposes of the recapture rules that apply to dispositions of certain depreciable property. In general, § 1245(a)(1) provides that upon a disposition of § 1245 property, the amount by which the lower of (1) the recomputed basis of the property (as defined in § 1245(a)(2)), or (2) the amount realized on a sale, exchange, or involuntary conversion of the property (or the fair market value of the property on any other disposition), exceeds the adjusted basis of the property is treated as ordinary income. This gain must be recognized notwithstanding any other provision of the Code. For purposes of this notice, the term "total amount realized" refers to the amount realized on a sale, exchange, or involuntary conversion of the property, or the fair market value of the property on any other disposition, as applicable.

Pursuant to § 1245(a)(3)(C), the term "§ 1245 property" includes property that is or has been property of a character subject to the allowance for depreciation provided in § 167 and that is so much of any real property (other than property described in § 1245(a)(3)(B)) that has an adjusted basis in which there are reflected adjustments for amortization under § 179.

III. ELECTION TO APPLY § 179(f) TO QUALIFIED REAL PROPERTY

A taxpayer may elect to apply § 179(f) and elect to expense under § 179(a) the cost (or a portion of the cost) of qualified real property placed in service by the taxpayer during any taxable year beginning in 2010, 2011, 2012, or 2013 by filing an original or amended Federal tax return for that taxable year in accordance with procedures similar to those in § 1.179–5(c)(2) and section 7 of Rev. Proc. 2008–54, 2008–2 C.B. 722, 725. If a taxpayer elects or elected to apply § 179(f) and elects or elected to expense under § 179(a) a portion of the cost of qualified real property placed in service by the taxpayer during any taxable year beginning in 2010, 2011, 2012, or 2013, the taxpayer is permitted to increase the portion of the cost of such property expensed under § 179(a) by filing an amended Federal tax return for that taxable year. Any such increase in the amount expensed under § 179 is not deemed to be a revocation of the prior election for that taxable year.

IV. CARROVER OF 2010 OR 2011 DISALLOWED § 179 DEDUCTION FOR QUALIFIED REAL PROPERTY

The Treasury Department and the Internal Revenue Service (Service) recognize that a taxpayer that treated the amount of a 2010 disallowed § 179 deduction or a 2011 disallowed § 179 deduction as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 may want to carryover that amount to any taxable year beginning in 2012 or 2013 in accordance with § 179(f)(4) (as amended by ATRA). Accordingly, a taxpayer that treated the amount of a 2010 disallowed § 179 deduction or a 2011 disallowed § 179 deduction as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011 may either (1) continue that treatment, or (2) if the period of limitations for assessment under § 6501(a) is open, amend its Federal tax return for the last taxable year beginning in 2011 to carryover the 2010 disallowed § 179 deduction or the 2011 disallowed § 179 deduction to any taxable year beginning in 2012 or 2013. However, if the taxpayer's last taxable year beginning in 2011 is open under the period of limitations for assessment under § 6501(a) and an affected succeeding taxable year is closed under the period of limitations for assessment under § 6501(a), the taxpayer must continue to treat the amount of a 2010 disallowed § 179 deduction or a 2011 disallowed § 179 deduction as property placed in service on the first day of the taxpayer's last taxable year beginning in 2011.

The amended Federal tax return for the taxpayer's last taxable year beginning in 2011 must include any collateral adjustments to taxable income or the tax liability (for example, the amount of depreciation allowed or allowable in the last taxable year beginning in 2011 for the amount of the 2010 disallowed § 179 deduction or the 2011 disallowed § 179 deduction). Such collateral adjustments also must be made on amended Federal tax returns for any affected succeeding taxable years. The amended returns for the taxpayer's last taxable year beginning in 2011 and for any affected succeeding taxable years must be filed within the time prescribed by law for filing an amended return for such taxable years.

V. ALLOCATION OF CARRYOVER DISALLOWED AMOUNT

(1) *Section 179 property is only qualified real property*. If a taxpayer elects to expense under § 179(a) only qualified real property for any taxable year beginning in 2010, 2011, 2012, or 2013 and some or all of the cost of that qualified real property is disallowed as a § 179 deduction under the taxable income limitation for that taxable year, the aggregate amount of the carryover of disallowed deduction for that taxable year is attributed entirely to the qualified real property.

(2) *Section 179 property includes qualified real property and other properties*. If a taxpayer elects to expense under § 179(a) qualified real property and other types of § 179 property for any taxable year beginning in 2010, 2011, 2012, or 2013 and some or all of the cost of the § 179 property (including the qualified real property) is disallowed as a § 179 deduction under the taxable income limitation for that taxable year, the aggregate amount of the carryover of disallowed deduction for that taxable year must be allocated *pro rata* between the qualified real property and the other types of § 179 property. Pursuant to § 179(f)(4)(D), the aggregate amount of the carryover of disallowed deduction for the taxable year that is allocated to the qualified real property is determined by multiplying the aggregate amount of the carryover of disallowed deduction for the taxable year by a percentage that equals:

(a) the aggregate amount attributable to qualified real property placed in service during such taxable year, increased by the portion of any amount carried over to such taxable year from a prior taxable year

which is attributable to qualified real property, divided by

(b) the total amount of § 179 property placed in service during such taxable year, increased by the aggregate amount carried over to such taxable year from any prior taxable year.

(3) *Examples*.

(a) *Example 1 — Disallowed § 179 deduction and allocation of the carryover of disallowed deduction to qualified real property*. During 2012, Company Y, a calendar year taxpayer, purchased and placed in service equipment that costs $100,000 and is § 179 property, and qualified real property that costs $200,000. For 2012, Company Y did not have any other asset purchases and did not have any carryover of disallowed deduction from prior taxable years, and has a taxable income limitation of $180,000. For 2012, Company Y elected to apply § 179(f) and elected under § 179(a) to expense the entire cost of the equipment and the entire cost of the qualified real property. Because of the taxable income limitation, the maximum § 179 deduction Company Y can claim for 2012 is $180,000. As a result, Company Y has a $120,000 carryover of disallowed deduction to 2013. This $120,000 carryover amount is allocated *pro rata* between the qualified real property and equipment placed in service by Company Y during 2012. Thus, $80,000 of the carryover amount is allocated to the qualified real property and $40,000 of the carryover amount is allocated to the equipment.

2012 § 179 Carryover Amount	$120,000
Allocation Ratio ($200,000 QRP / $300,000 Total § 179 Property)	66.67%
Carryover Amount Allocated to Qualified Real Property	$80,000
2012 § 179 Carryover Amount	$120,000
Allocation Ratio ($100,000 Equipment / $300,000 Total § 179 Property)	33.33%
Carryover Amount Allocated to Equipment	$40,000

(b) *Example 2 — Treatment of the carryover of disallowed deduction attributable to qualified real property in a taxable year beginning after 2013*. The facts are the same as in *Example 1*. In 2013, Company Y did not have any asset purchases and did not have any taxable income. As a result, no portion of the $80,000 carryover of disallowed deduction from 2012 that is attributable to the qualified real property can be used by Company Y in its 2013 taxable year. Because disallowed § 179 deductions relating to qualified real property cannot be carried over to taxable years beginning after December 31, 2013, no portion of the $80,000 carryover of disallowed deduction from 2012 that is attributable to the qualified real property can be carried over to 2014 pursuant to § 179(f)(4)(A). Accordingly, Company Y is treated as if the § 179 election made in 2012 to expense $80,000 of the cost of the qualified real property placed in service in 2012 had not been made. The $80,000 cost of the qualified real property is treated as placed in service by Company Y on January 1, 2013 (the first day of Company Y's last taxable year beginning in 2013) for purposes of computing depreciation. The $40,000 carryover of disallowed deduction from 2012 that is allocated to the equipment is carried over to 2014 under § 179(b)(3)(B).

VI. DISPOSITION AND OTHER TRANSFERS OF QUALIFIED REAL PROPERTY

(1) *In general*. Upon a sale or other disposition of qualified real property in a taxable year beginning in 2010, 2011, 2012, or 2013, or a transfer of qualified real property in a taxable year beginning in 2010, 2011, 2012, or 2013 in a transaction in which gain or loss is not recognized in whole or in part (including transfers at death), immediately before the disposition or transfer, the adjusted basis of the qualified real property is increased by the amount of any outstanding carryover of disallowed deduction attributable to that property. Thus, the carryover of the disallowed deduction cannot be deducted by the transferor or the transferee of the qualified real property. *See* § 1.179–3(f). However, the preceding two sentences of this paragraph VI(1) do not apply to a sale or other disposition of qualified real property, or a transfer of qualified real property in a transaction in which gain or loss is not recognized in whole or in part (including transfers at death), in the taxpayer's last taxable year beginning in 2013 or any subsequent taxable year.

(2) *Applicability of § 1245 and § 1250*.

(a) *Amounts treated as §§ 1245 and 1250 property*. To the extent the unadjusted basis of the qualified real property is reduced by the § 179 deduction (after the application of paragraph VI(1) of this notice), the amount of that reduction is treated as § 1245 property. *See* § 1245(a)(3)(C). The remaining unadjusted basis of the qualified real property is treated as § 1250 property.

(b) *Allocation methodologies for determining § 1245 recapture*. A taxpayer may use any reasonable allocation methodology for determining the portion of the gain that is attributable to § 1245 property upon the sale or other disposition of qualified real property. Below are two examples of reasonable allocation methodologies. The Service will not challenge any other reasonable methodology used by a taxpayer for determining the portion of gain that is attributable to the § 1245 property upon the sale or other disposition of qualified real property. The two reasonable allocation methodologies operate as follows:

(i) *Pro rata allocation methodology*. Under the *pro rata* allocation methodology, the taxpayer allocates *pro rata* the total amount realized (*e.g.*, sales price) upon a sale or other disposition of qualified real property between the § 1245 property and the § 1250 property. The total amount realized that is allocated to the § 1245 property is determined by multiplying the total amount realized by the percentage that equals the amount that is treated as § 1245 property (as determined under paragraph VI(2)(a) of this notice), divided by the total unadjusted basis of the qualified real property. The remaining amount of the total amount realized is allocated to the § 1250 property.

Next, the taxpayer will determine the portion of the gain that is attributable to the § 1245 property. The gain attributable to the § 1245 property equals the total amount realized that is allocated to the § 1245 property (as determined under the preceding paragraph) less the adjusted basis of the amount that is treated as § 1245 property (as determined under paragraph VI(2)(a) of this notice). The remaining amount of the gain or loss is attributable to the § 1250 property.

Finally, the taxpayer will determine whether all or a portion of the gain that is attributable to the § 1245 property (as determined under the preceding paragraph) is treated as ordinary income under § 1245(a). Except as provided in § 1245(b), the amount treated as ordinary income under § 1245(a) is equal to the lower of (1) the recomputed basis of the § 1245 property, or (2) the total amount realized that is allocated to the

§ 1245 property (as determined under the first paragraph of the *pro rata* allocation methodology), less the adjusted basis of the § 1245 property.

(ii) *Gain allocation methodology*. Under the gain allocation methodology, the taxpayer allocates the gain from the sale or other disposition of qualified real property between the § 1245 property and the § 1250 property. The gain that is allocated to the § 1245 property is equal to the lower of (A) the amount of the gain, or (B) the amount of the unadjusted basis of the qualified real property that is treated as § 1245 property (as determined under paragraph VI(2)(a) of this notice). All of the gain that is allocated to the § 1245 property is treated as ordinary income under § 1245(a). The remaining amount of the gain is allocated to the § 1250 property.

(3) *Examples*.

(a) *Example 1 — Sale of qualified real property in 2014 that had a 2012 unused carryover of disallowed deduction.* During April 2012, Company Y purchased for $20,000 and placed in service qualified leasehold improvement property that is qualified real property ("2012 qualified real property"). For 2012, Company Y did not have any other asset purchases and did not have any carryover of disallowed deduction from prior taxable years, and has a taxable income limitation of $12,000. For 2012, Company Y elected to apply § 179(f) and elected under § 179(a) to expense the entire cost of the 2012 qualified real property. Because of the taxable income limitation, the maximum § 179 deduction Company Y claimed for 2012 is $12,000. As a result, Company Y has an $8,000 carryover of disallowed deduction to 2013. Pursuant to § 179(f)(4)(D), this $8,000 carryover amount is allocated entirely to the 2012 qualified real property. As a result of the § 179 election to expense the entire cost of the 2012 qualified real property, Company Y's adjusted basis in the 2012 qualified real property on December 31, 2012, was zero.

In 2013, Company Y did not have any asset purchases and did not have any taxable income. As a result, the $8,000 carryover of disallowed deduction from 2012 that is attributable to the 2012 qualified real property cannot be used by Company Y in its 2013 taxable year. Because disallowed § 179 deductions relating to qualified real property cannot be carried over to taxable years beginning after December 31, 2013, the $8,000 cannot be carried over to 2014. Accordingly, Company Y is treated as if it did not make the § 179 election in 2012 to expense $8,000 of the $20,000 cost of the 2012 qualified real property. The $8,000 of the $20,000 cost of the 2012 qualified real property is treated as placed in service by Company Y on January 1, 2013, for purposes of computing depreciation (the first day of Company Y's last taxable year beginning in 2013). *See* § 179(f)(4)(C).

Under § 168 Company Y depreciated its qualified leasehold improvement property placed in service in 2013 using the optional depreciation table that corresponds with the general depreciation system, the straight-line method of depreciation, a 15-year recovery period, and the half-year convention. Company Y also elected not to deduct the 50 percent additional first-year depreciation deduction provided by § 168(k) for any property placed in service during 2013. In December 2014, Company Y sells the 2012 qualified real property to an unrelated party for $15,000. The adjusted basis of this property for purposes of determining gain or loss is $7,467 (unadjusted basis of $20,000, less § 179 deduction of $12,000, less depreciation allowed and allowable of $533 for 2013 and 2014. The gain from the sale of the 2012 qualified real property is $7,533 (sales price of $15,000 less adjusted basis of $7,467).

(i) *Pro rata allocation methodology*. Company Y uses the *pro rata* allocation methodology provided in paragraph VI(2)(b)(i) of this notice. Pursuant to § 1245(a)(3)(C) and paragraph VI(2)(a) of this notice, $12,000 of the unadjusted basis of the 2012 qualified real property is treated as § 1245 property (the § 179 deduction of $12,000 claimed on the unadjusted basis of $20,000). This § 1245 property has an adjusted basis of zero as of the date of the sale and, pursuant to § 1245(a)(2), a recomputed basis of $12,000 (adjusted basis of $0 plus § 179 deduction of $12,000). The remaining unadjusted basis of $8,000 is treated as § 1250 property, which has an adjusted basis of $7,467, as of the date of the sale.

Under the *pro rata* allocation methodology, Company Y allocates *pro rata* the sales price of $15,000 between the § 1245 property and § 1250 property. Thus, $9,000 of the $15,000 sales price is allocated to the § 1245 property ($15,000 sales price multiplied by ($12,000 that is treated as § 1245 property divided by the $20,000 total unadjusted basis of the 2012 qualified real property)) and $6,000 of the $15,000 sales price is allocated to the § 1250 property.

As a result, of the total gain of $7,533, a gain of $9,000 is attributable to the § 1245 property ($9,000 sales price attributable to the § 1245 property less a zero adjusted basis for this § 1245 property) and a loss of $1,467 is attributable to the § 1250 property ($6,000 sales price attributable to the § 1250 property less the $7,467 adjusted basis for this § 1250 property). All of the $9,000 gain attributable to the § 1245 property is treated as ordinary income under § 1245. The loss of $1,467 attributable to the § 1250 property is subject to § 1231.

(ii) *Gain allocation methodology*. Company Y uses the gain allocation methodology provided in paragraph VI(2)(b)(ii) of this notice. Under the gain allocation methodology, Company Y allocates the gain of $7,533 from the sale of the 2012 qualified real property between § 1245 property and § 1250 property. The gain that is allocated to the § 1245 property is equal to the lower of (A) the amount of the gain of $7,533, or (B) $12,000, which is the amount of the unadjusted basis of the 2012 qualified real property that is treated as § 1245 property (the § 179 deduction of $12,000 claimed on the unadjusted basis of $20,000). Thus, all of the gain of $7,533 is allocated to the § 1245 property and is treated as ordinary income under § 1245(a). None of the gain is allocated to the § 1250 property.

(b) *Example 2 — Sale of qualified real property in 2014 that had a 2012 unused carryover of disallowed deduction.* The facts are the same as in *Example 1*, except that in December 2014, Company Y sells the 2012 qualified real property to an unrelated party for $25,000. The adjusted basis of this property for purposes of determining gain or loss is $7,467 (unadjusted basis of $20,000, less § 179 deduction of $12,000, less depreciation allowed and allowable of $533 for 2013 and 2014). The gain from the sale of the 2012 qualified real property is $17,533 (sales price of $25,000 less adjusted basis of $7,467).

(i) *Pro rata allocation methodology*. Company Y uses the *pro rata* allocation methodology provided in paragraph VI(2)(b)(i) of this notice. Pursuant to § 1245(a)(3)(C) and paragraph VI(2)(a) of this notice, $12,000 of the unadjusted basis of the 2012 qualified real property is treated as § 1245 property (the § 179 deduction of $12,000 claimed on the unadjusted basis of $20,000). This § 1245 property has an adjusted basis of zero as of the date of the sale and, pursuant to § 1245(a)(2), a recomputed basis of $12,000 (adjusted basis of $0 plus § 179 deduction of $12,000). The remaining unadjusted basis of $8,000 is treated as § 1250 property, which has an adjusted basis of $7,467, as of the date of the sale.

Under the *pro rata* allocation methodology, Company Y allocates *pro rata* the sales price of $25,000 between the § 1245 property and § 1250 property. Thus, $15,000 of the $25,000 sales price is allocated to the § 1245 property ($25,000 sales price multiplied by ($12,000 that is treated as § 1245 property divided by the $20,000 total unadjusted basis of the 2012 qualified real property)) and $10,000 of the $25,000 sales price is allocated to the § 1250 property.

As a result, of the total gain of $17,533, a gain of $15,000 is attributable to the § 1245 property ($15,000 sales price attributable to the § 1245 property less a zero adjusted basis for this § 1245 property) and a gain of $2,533 is attributable to the § 1250 property ($10,000 sales price attributable to the § 1250 property less the $7,467 adjusted basis for this § 1250 property). Of the $15,000 gain attributable to the § 1245 property, $12,000 is treated as ordinary income under § 1245 and $3,000 is subject to § 1231. Because Company Y depreciated the amount that is treated as § 1250 property ($8,000) using the straight-line method of depreciation, § 1250 recapture does not apply and all of the $2,533 gain attributable to the § 1250 property is subject to § 1231.

(ii) *Gain allocation methodology*. Company Y uses the gain allocation methodology provided in paragraph VI(2)(b)(ii) of this notice. Under the gain allocation methodology, Company Y allocates the gain of $17,533 from the sale of the 2012 qualified real property between § 1245 property and § 1250 property. The gain that is allocated to the § 1245 property is equal to the lower of (A) the amount of the gain of $17,533, or (B) $12,000, which is the amount of the unadjusted basis of the 2012 qualified real property that is treated as § 1245 property (the § 179 deduction of $12,000 claimed on the unadjusted basis of $20,000). Thus, of the total gain of $17,533, a gain of $12,000 is allocated to the § 1245 property and a gain of $5,533 is allocated to the § 1250 property.

All of the $12,000 gain attributable to the § 1245 property is treated as ordinary income under § 1245. Because Company Y depreciated the amount that is treated as § 1250 property ($8,000) using the straight-line method of depreciation, § 1250 recapture does not apply and all of the $5,533 gain attributable to the § 1250 property is subject to § 1231.

VII. DRAFTING INFORMATION

The principal author of this notice is Winston H. Douglas of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Douglas on (202) 622–4930 (not a toll free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Debt That Is a Position in Personal Property That Is Part of a Straddle

REG–111753–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearings.

SUMMARY: This document contains proposed regulations relating to the application of the straddle rules to a debt instrument. The proposed regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The proposed regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference the value of personal property or a position in personal property. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 4, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for January 15, 2014, at 10 a.m. must be received by November 4, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–111753–12), 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–111753–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–111753–12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mary Brewer, (202) 622–4695; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

BACKGROUND AND EXPLANATION OF PROVISIONS

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1092(d). The temporary regulations provide that if a taxpayer is the obligor under a debt instrument one or more payments on which are linked to the value of personal property or a position with respect to personal property, then the taxpayer's obligation under the debt instrument is a position with respect to personal property and may be part of a straddle. The temporary regulations apply to straddles established on or after January 17, 2001. The text of the temporary regulations also serves as the text of these proposed regulations and is identical to the text of regulations originally proposed under REG–105801–00.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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, 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 Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the "Addresses" heading. The Treasury Department and the IRS welcome comments on this proposed regulation. All comments will be available at *www.regulations.gov* for public inspection and copying.

A public hearing has been scheduled for January 15, 2014**,** beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic by November 4, 2013. Submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Mary Brewer, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.1092(d)–1 also issued under 26 U.S.C. 1092(b)(1). * * *

Par. 2. Section 1.1092(d)–1 is amended by revising paragraphs (d) and (e) to read as follows:

§1.1092(d)–1 Definitions and special rules.

* * * * *

(d) [The text of the proposed amendment to §1.1092(d)–1(d) is the same as the text for §1.1092(d)–1T(d) published elsewhere in this issue of the Bulletin.

(e) [The text of the proposed amendment to §1.1092(d)–1(e) is the same as the text for §1.1092(d)–1T(e) published elsewhere in this issue of the Bulletin.

Beth Tucker,
Deputy Commissioner for Operations Support.

(Filed by the Office of the Federal Register on September 4, 2013, 8:45 a.m., and published in the issue of the Federal Register for September 5, 2013, 2013, 78 F.R. 54598)

Notice of Proposed Rulemaking and Notice of Public Hearing

Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans

REG–136630–12

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations providing guidance to employers that are subject to the information reporting requirements under section 6056 of the Internal Revenue Code (Code), enacted by the Affordable Care Act. Section 6056 requires those employers to report to the IRS information about their compliance with the employer shared responsibility provisions of section 4980H of the Code and about the health care coverage they have offered employees. Section 6056 also requires those employers to furnish related statements to employees so that employees may use the statements to help determine whether, for each month of the calendar year, they can claim on their tax returns a premium tax credit under section 36B of the Code (premium tax credit). In addition, that information will be used to administer and ensure compliance with the eligibility requirements for the employer shared responsibility provisions and the premium tax credit. The proposed regulations affect applicable large employers (generally meaning employers with 50 or more full-time employees, including full-time equivalent employees, in the prior year), employees and other individuals.

This document also provides notice of a public hearing on these proposed rules.

DATES: Written or electronic comments must be received by November 8, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for November 18, 2013, at 10 a.m., must be received by November 8, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–136630–12), room 5205, 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–136630–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–136630–12). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ligeia Donis (202) 927–9639; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, please contact Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has 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 collection 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 November 8, 2013. Comments are specifically requested concerning:

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

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

How the burden of complying with the proposed collection 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 services to provide information.

The collection of information in these proposed regulations is in proposed regulation §§301.6011–9, 301.6056–1, and 301.6056–2. This information will be used by the IRS to verify compliance with the return and employee statement requirements under section 6056 for purposes of section 4980H, and with the eligibility requirements for the premium tax credit. This information will be used to determine whether the information has been reported and calculated correctly for purposes of section 4980H and section 6056, and whether claims for the premium

tax credit are correct. The likely respondents are employers that are applicable large employers, as defined under section 4980H(c)(2).

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

Sections I through V of the preamble ("Background") describe the statutory provisions governing the information reporting requirements, as well as related statutory provisions. Sections VI through XIII of the preamble ("Explanation of Provisions and Summary of Comments") describe and explain how these regulations propose to implement the statutory provisions of section 6056 and include a discussion of a variety of potential simplified reporting methods that are under consideration. As is typical with regulations on information reporting, these proposed regulations refer generally to additional information that may be required under the applicable forms and instructions. Sections IX.B and C of this preamble set forth the specific data elements that Treasury and the IRS anticipate will be included with the reporting, including the data elements that Treasury and the IRS anticipate will be provided through the use of an indicator code.

Section 6056[1] requires applicable large employers, as defined in section 4980H(c)(2), to file returns at the time prescribed by the Secretary with respect to each full-time employee and furnish a statement to each full-time employee by January 31 of the calendar year following the calendar year for which the return must be filed. Section 6056 specifies certain information that must be reported on the section 6056 return and related statement, and authorizes the Secretary to require additional information and determine the form of the return. Section 6056 is effective for periods beginning after December 31, 2013; however, Notice 2013–45 (2013–31 I.R.B. 116) provides transition relief for 2014 from the section 6056 information reporting requirements (as well as the section 6055 information reporting requirements relating to the section 5000A individual shared responsibility provisions and the section 4980H employer shared responsibility provisions).

I. *Shared Responsibility for Employers (Section 4980H)*

One of the purposes of section 6056 reporting is to assist with the administration of the employer shared responsibility provisions added by the Affordable Care Act as section 4980H of the Code. Section 4980H imposes an assessable payment on applicable large employers if certain requirements relating to the provision of health care coverage to full-time employees are not met and one or more full-time employees claim a premium tax credit. On December 28, 2012, Treasury and the IRS released proposed regulations under section 4980H. The proposed regulations under section 4980H were published in the **Federal Register** on January 2, 2013 (REG–138006–12 [78 FR 218]). Section 4980H is effective for months after December 31, 2013; however, Notice 2013–45, issued on July 9, 2013, provides transition relief for 2014 from the section 4980H employer shared responsibility provisions.

The reporting requirements under section 6056 apply only to employers that are subject to section 4980H (which the statute refers to as "applicable large employers"). Section 4980H(c)(2) defines the term "applicable large employer" as, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. Generally, for purposes of determining applicable large employer status, a full-time employee includes any employee who was employed on average at least 30 hours of service per week and any full-time equivalents determined pursuant to section 4980H(c)(2)(E). All employers treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status. Section 4980H contains rules for determining whether an employer qualifies as an applicable large employer, including special rules addressing an employer's first year of existence and predecessor and successor employers. See section 4980H(c)(2)(C) and proposed §54.4980H–2. Proposed regulations under section 4980H provide guidance on determining applicable large employer status and determining full-time employee status, including defining and providing rules for calculating hours of service. See proposed §§54.4980H–1(a)(21) (definition of hours of service), 54.4980H–2 (determination of applicable large employer status), and 54.4980H–3 (determination of full-time employee status).

II. *Premium Tax Credit (Section 36B)*

Section 6056 reporting will also be used for the administration of the premium tax credit, which was added by the Affordable Care Act as section 36B of the Code. Section 36B allows an advanceable and refundable premium tax credit to help individuals and families afford health insurance coverage purchased through an Affordable Insurance Exchange (Exchange). An employee is not eligible for a premium tax credit to subsidize the cost of Exchange coverage if the employee is offered affordable coverage under an employer-sponsored plan that provides minimum value, or if the employee enrolls in an employer-sponsored plan. For this purpose, an employer-sponsored plan is affordable if the employee's required contribution for the lowest-cost self-only minimum value coverage offered does not exceed 9.5% of the employee's household income. Thus, an employee (and in the case of an employer-sponsored plan that offers coverage to an employee's spouse or dependents, the employee's spouse and dependents) who does not accept an offer of affordable minimum value coverage under an employer-sponsored plan and who purchase coverage on an Exchange may not be eligible for a premium tax

[1] Section 6056 was enacted by section 1514(a) of the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)), and further amended by the Department of Defense and Full-Year Continuing Appropriations Act of 2011, Public Law 112–10 (125 Stat. 38 (2011)) (collectively, the Affordable Care Act).

credit. Individuals and the IRS will use the information on the cost of the lowest-cost employer-sponsored self-only coverage that provides minimum value to verify the individual's eligibility for the premium tax credit.[2]

III. *Individual Shared Responsibility (Section 5000A)*

In addition, the Affordable Care Act added section 5000A to the Code. Section 5000A provides nonexempt individuals with a choice: maintain minimum essential coverage for themselves and any nonexempt family members, or include an additional payment with their Federal income tax return. Section 5000A(f)(1)(B) provides that minimum essential coverage includes coverage under an eligible employer-sponsored plan. Under section 5000A(f)(2), an eligible employer-sponsored plan is, with respect to an employee, a group health plan or group health insurance coverage offered by an employer to the employee that is (1) a governmental plan, within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(8)), or (2) any other plan or coverage offered in the small or large group market within a State. An eligible employer-sponsored plan also includes a grandfathered health plan, as defined in section 5000A(f)(1)(D), offered in a group market. Group health plans within the meaning of section 1301(b)(3) of the Affordable Care Act (42 U.S.C. 18021(b)(3)) include both insured health plans and self-insured health plans. Accordingly, a self-insured group health plan is an eligible employer-sponsored plan. See the Questions and Answers on the Individual Shared Responsibility Provision available on the IRS website at *www.irs.gov*.

IV. *Information Reporting By Providers of Coverage (Issuers, Self-Insuring Employers, and Sponsors of Certain Government-Sponsored Programs) (Section 6055)*

The Affordable Care Act also added section 6055 to the Code, providing for information reporting for the administration of section 5000A. The section 6055 reporting requirements are effective for years beginning after December 31, 2013; however, Notice 2013–45 provides transition relief for 2014 from the section 6055 reporting requirements. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual during a calendar year, including coverage provided under an eligible employer-sponsored plan, and the furnishing to taxpayers of a related statement covering each individual listed on the section 6055 return. The information reported under section 6055 can be used by individuals and the IRS to verify the months (if any) in which they were covered by minimum essential coverage. Treasury and the IRS are issuing proposed regulations under section 6055 (REG–132455–11) concurrently with these proposed regulations.

V. *Reporting Requirements for Applicable Large Employers (Section 6056)*

Section 6056 directs an applicable large employer (within the meaning of section 4980H(c)(2)) to file a return with the IRS that reports for each employee who was a full-time employee for one or more months during the calendar year certain information described in section 6056(b) about the health care coverage the employer offered to that employee (or, if applicable, that the employer did not offer health care coverage to that employee). Section 6056 also requires such employers to furnish by January 31 of the calendar year following the calendar year for which the return must be filed a related statement described in section 6056(c) to each full-time employee for whom information is required to be included on the return.

Section 6056(b) describes the return required to be filed with the IRS under section 6056. It states that a return meets the requirements of section 6056 if the return is in such form as the Secretary may prescribe and contains (1) the name, date, and employer's employer identification number (EIN), (2) a certification as to whether the employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), (3) the number of full-time employees for each month during the calendar year, and (4) the name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which that employee (and any dependents) were covered under any such health benefits plans.

If the applicable large employer certifies that it offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), section 6056 specifies that the return must also include (1) the length of any waiting period (as defined in section 2701(b)(4) of the Public Health Service Act (42 USC 300gg(b)(4)) with respect to that coverage,[3] (2) the months during the calendar year for which coverage under the plan was available, (3) the monthly premium for the lowest cost option in each of the enrollment categories under the plan, and (4) the employer's share of the total allowed costs of benefits provided under the plan. Section 6056(b)(2)(F) provides that the return must include such other information as the Secretary may require. See section IX of this preamble for a discussion of the information proposed to be included in these proposed regulations as part of the reporting requirements, as well as additional information that may be required under the applicable forms and instructions, as is typical with regulations on information reporting.

Section 6056(c) requires that every person required to make a return under section

[2] In connection with providing advance payment of the premium tax credit, the Exchanges will employ a verification process. Because the information concerning household income and other relevant factors that are known to the individual and the Exchanges at that time may differ from the information used to file the tax return after the close of the coverage year, an individual who receives an advance payment of the premium tax credit will also need to calculate the appropriate amount of the credit when filing his or her tax return, and the credit may be more or less than the advance payment.

[3] While section 6056(b)(2)(C)(i) refers to the term "waiting period" as defined in section 2701(b)(4) of the PHS Act, amendments made by section 1201 of the Affordable Care Act moved this definition from section 2701(b)(4) of the PHS Act to section 2704(b)(4). Separately, section 2708 of the PHS Act prohibits a group health plan and a health insurance issuer offering group health insurance coverage from applying any waiting period that exceeds 90 days. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Code to incorporate the provisions of part A of title XXVII of the PHS Act (specifically, PHS Act sections 2701 through 2728) into ERISA and the Code, and to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans.

6056(a) furnish to each full-time employee whose name is required to be set forth in the return a written statement showing (1) the name and address of the person required to make that return and the phone number of the information contact for that person, and (2) the information required to be shown on the return with respect to that individual. The written statement must be furnished on or before January 31 of the year following the calendar year for which the return under section 6056(a) was required to be made.

As discussed in section IX.B of this preamble, the approach contemplated by these proposed regulations would give effect to these statutory provisions by limiting the information elements listed and other information that would be provided annually to those that are needed by individual taxpayers to accurately complete their tax returns or by the IRS to effectively administer other provisions of the Affordable Care Act. Treasury and the IRS seek comments on ways to achieve these goals efficiently and effectively.

Section 6056(d) provides that to the maximum extent feasible, the Secretary may permit combined reporting under section 6056, section 6051 (employers filing and furnishing Forms W–2, *Wage and Tax Statement*, with respect to employees) or section 6055, and in the case of an applicable large employer offering health insurance coverage of a health insurance issuer, the employer may enter into an agreement with the issuer to include information required under section 6056 with the return and statement required to be provided by the issuer under section 6055.

Section 6056(e) generally permits governmental units, or any agency or instrumentality thereof, to designate a person to comply with the section 6056 requirements on behalf of the governmental unit, agency or instrumentality.

Under section 6724(d), as amended by the Affordable Care Act, an applicable large employer that fails to comply with the filing and statement furnishing requirements of section 6056 may be subject to penalties for failure to file a correct information return (section 6721) and failure to furnish correct payee statements (section 6722). However, these penalties may be waived if the failure is due to reasonable cause and not to willful neglect (section 6724).

Notice 2012–32 (2012–20 I.R.B. 910) requested public comments on issues to be addressed in regulations under section 6055. Notice 2012–33 (2012–20 I.R.B. 912) requested public comments on issues to be addressed in regulations under section 6056. In developing these proposed regulations and the proposed regulations under section 6055, including the potential further simplified reporting methods described in section XI of this preamble, Treasury and the IRS have considered the written comments submitted in response to these notices and other written comments received.

In addition, consistent with Notice 2013–45, Treasury and the IRS have engaged in further dialogue with stakeholders in an effort to simplify section 6056 and section 6055 reporting consistent with effective implementation of the law. This process has included discussions with stakeholders representing a wide range of interests to assist in the consideration of effective information reporting rules that will be as streamlined, simple, and workable as possible. The effort to develop these proposed information reporting rules has reflected a considered balancing of the importance of (1) providing individuals the information to complete their tax returns accurately, including with respect to the individual responsibility provisions and eligibility for the premium tax credit, (2) minimizing cost and administrative tasks for the reporting entities and individuals, and (3) providing the IRS with information to use for effective and efficient tax administration. As noted elsewhere in this preamble, the proposed regulations will be the subject of public comments, including comments that are specifically invited regarding particular issues identified in the preamble.

Explanation of Provisions and Summary of Comments

VI. *Introduction*

The Explanation of Provisions that follows (Sections VII through XIII of the preamble) describes the regulatory provisions proposed to implement the statutory reporting provisions described in the Background portion of the preamble. Specifically, this section includes the following:

Section VII.....Key Terms

Section VIII.....ALE Member Subject to Section 6056 Requirements With Respect to Full-Time Employees

Section IX.....General Method — Content, Manner, and Timing of Information Required to be Reported to the IRS and Furnished to Full-Time Employees

Section X.....Combined Reporting Under Section 6056 and Section 6051 or 6055

Section XI.....Potential Simplified Methods for Section 6056 Information Reporting

Section XII.....Person Responsible for Section 6056 Reporting

Section XIII.....Applicability of Information Return Requirements

VII. *Key Terms*

These proposed regulations under section 6056 use a number of terms that are defined in other Code provisions or regulations. For example, section 6056(f) provides that any term used in section 6056 that is also used in section 4980H shall have the same meaning given to the term by section 4980H. Relevant terms include the following:

A. *Applicable Large Employer*

The proposed regulations provide that the term *applicable large employer* has the same meaning as in section 4980H(c)(2) and any applicable guidance. See proposed §54.4980H–1(a)(4).

B. *ALE Member*

All persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status.[4] Under the proposed regulations, the

[4] As explained in section 1.A.2 of the preamble to the proposed regulations under section 4980H (REG–138006–12 [78 FR 218]), until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer and whether a particular entity is an applicable large employer member. See proposed §54.4980H–1(a)(5).

section 6056 filing and furnishing requirements are applied separately to each person comprising the applicable large employer consistent with the approach taken in the section 4980H proposed regulations (REG–138006–12 [78 FR 218]) with respect to the determination of any assessable payment under section 4980H. The person or persons that comprise the applicable large employer are referred to as ALE members. The proposed regulations define the term *ALE member* as a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. For this purpose, if a person, together with one or more other persons, is treated as a single employer that is an applicable large employer on any day of a calendar month, that person is an ALE member for that calendar month. This definition is the same as the definition provided in the proposed regulations under section 4980H. See §54.4980H–1(a)(5).

C. *Dependent*

The proposed regulations provide that the term *dependent* has the same meaning as in section 4980H(a) and (b) and any applicable guidance. See proposed §54.4980H–1(a)(11).

D. *Eligible Employer-Sponsored Plan*

The proposed regulations provide that the term *eligible employer-sponsored plan* has the same meaning as in section 5000A(f)(2) and any applicable guidance.

E. *Full-time Employee*

The proposed regulations provide that the term *full-time employee* has the same meaning as in section 4980H(c)(4) and any applicable guidance as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee. See proposed §54.4980H–1(a)(18).

F. *Governmental Unit and Agency or Instrumentality of a Governmental Unit*

The proposed regulations define the term *governmental unit* as the government of the United States, any State or political subdivision thereof, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)). The proposed regulations do not define the term *agency or instrumentality of a governmental unit*, but rather reserve on the issue.

G. *Minimum Essential Coverage*

The proposed regulations provide that the term *minimum essential coverage* has the same meaning as in section 5000A(f)(1) and any applicable guidance.

H. *Minimum Value*

The proposed regulations provide that the term *minimum value* has the same meaning as in section 36B and any applicable guidance. See proposed §1.36B–6.

I. *Person*

The proposed regulations provide that the term *person* has the same meaning as provided in section 7701(a)(1) and the regulations thereunder.

VIII. *ALE Member Subject to Section 6056 Requirements with Respect to Full-Time Employees*

As discussed earlier in section VII.B of this preamble, an ALE member is any person that is an applicable large employer or a member of an aggregated group (determined under section 414(b), 414(c), 414(m) or 414(o)) that is determined to be an applicable large employer. Under the proposed regulations, the section 6056 filing and statement furnishing requirements apply on a member-by-member basis to each ALE member, even though the determination of whether an entity is an applicable large employer is made at the aggregated group level. For example, if an applicable large employer is comprised of a parent corporation and 10 wholly-owned subsidiary corporations, there are 11 ALE members (the parent corporation and each of the 10 subsidiary corporations). Under the proposed regulations, each ALE member with full-time employees, rather than the group of entities that comprise the applicable large employer, is the entity responsible for filing and furnishing statements with respect to its full-time employees under section 6056. This is consistent with the manner in which any potential assessable payments under section 4980H will be calculated and administered.

Treasury and the IRS understand that ALE members may benefit from the assistance of a third party in preparing these returns, for example a third-party plan administrator or a related ALE member tasked with preparing the returns for all the members of that applicable large employer. For a discussion of how these third parties may help an ALE member fulfill its reporting obligations, see section XII.C of this preamble.

Whether an employee is a full-time employee is determined under section 4980H(c)(4) and any applicable guidance. See proposed §§54.4980H–1(a)(18) and 54.4980H–3. This includes any full-time employees who may perform services for multiple ALE members within the applicable large employer.[5] Under the proposed regulations, only ALE members with full-time employees are subject to the filing and statement furnishing requirements of section 6056 (and only with respect to their full-time employees).

Generally, the ALE member providing the section 6056 reporting is the common law employer. Disregarded entities are treated for section 4980H purposes, and therefore for section 6056 purposes, similarly to the way they are treated for employment tax purposes, so that the reporting requirements under section 6056 are imposed on a disregarded entity that is an applicable large employer, and not on its owner.[6]

IX. *General Method — Content, Manner, and Timing of Information Required to be Reported to the IRS and Furnished to Full-Time Employees*

This section describes the general method for reporting to the IRS and furnishing statements to employees pursuant

[5] For example, if an employee performs services for two applicable large employer members within an applicable large employer and the combined hours of service for the two applicable large employer members are sufficient to trigger a reporting obligation under section 6056, each applicable large employer member is required to file and furnish a section 6056 return with respect to services performed by the employee for that applicable large employer member. See proposed §54.4980H–5(d).

[6] Specifically, the proposed regulations under section 7701 (REG–138006–12 [78 FR 218]) treat the disregarded entity (as defined in §301.7701–2) as a corporation with respect to the reporting requirements under section 6056. See proposed §301.7701–2(c)(2)(v)(A)(5). These rules would also apply to a qualified subchapter S subsidiary. See proposed §1.1361–4(a)(8)(i)(E).

to section 6056 that is set forth in the proposed regulations. This general method would be available for all employers and with respect to reporting for all employees. Treasury and the IRS are also considering certain simplified reporting methods, such as using codes on Form W–2 to report whether full-time employees, spouses, and their dependents have been offered coverage, which in some cases may be available only with respect to certain groups of employees. In those cases, with respect to those employees for whom the simplified reporting method was not available, the employer would use the general method. In any case, however, the simplified reporting methods under consideration would be optional so that an employer could choose to report for all of its full-time employees using the general method described in these proposed regulations even if a simplified reporting method is available. For a further description of the simplified reporting methods under consideration, see section XI of this preamble.

A. *Information Reporting to the IRS*

In accordance with section 6056, the proposed regulations provide for every ALE member to file a section 6056 return with respect to its full-time employees. Similar to the separate Form W–2, *Wage and Tax Statement*, filed by an employer for each employee and the Form W–3, *Transmittal of Wage and Tax Statements*, filed as a transmittal form for the Forms W–2, the proposed regulations provide that a separate return is required for each full-time employee, accompanied by a single transmittal form for all of the returns filed for a given calendar year.

As a general method, the proposed regulations further provide that the section 6056 return may be made by filing Form 1094–C (a transmittal) and Form 1095–C (an employee statement), or other forms the IRS designates. Alternatively, the section 6056 return may be made by filing other form(s) designated by the IRS or a substitute form. Under the proposed regulations, a substitute form must include all of the information required to be reported on Forms 1094–C and 1095–C or other forms the IRS designates and comply with applicable revenue procedures or other published guidance relating to substitute returns. See §601.601(d)(2). In accordance with usual procedures, these forms will be made available in draft form at a later date.

B. *Information Required to Be Reported and Furnished*

The proposed regulations provide that every ALE member will report on the section 6056 information return the following information: (1) the name, address, and employer identification number of the ALE member, the name and telephone number of the applicable large employer's contact person, and the calendar year for which the information is reported; (2) a certification as to whether the ALE member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), by calendar month; (3) the number of full-time employees for each month during the calendar year; (4) for each full-time employee, the months during the calendar year for which coverage under the plan was available; (5) for each full-time employee, the employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month; and (6) the name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under an eligible employer-sponsored plan. In addition, the proposed regulations provide, as with other information reporting, that the section 6056 information return may request such other information as the Secretary may prescribe or as may be required by the form or instructions.

As part of the effort to minimize the cost and administrative steps associated with the reporting requirements, Treasury and the IRS have sought to identify any information that would not be relevant to individual taxpayers or the IRS for purposes of administering the premium tax credit and employer shared responsibility provisions or that is already provided at the same time through other means. Specifically, the proposed regulations do not require the reporting of the following four data elements (a more detailed description of the data elements that Treasury and the IRS anticipate will be included is provided later in this section of the preamble).

First, the proposed regulations do not require the reporting of the length of any waiting period, because the length of the waiting period is not relevant for administration of the premium tax credit or employer shared responsibility provisions or for an individual in preparing his or her tax return. However, Treasury and the IRS anticipate that information will be requested, using an indicator code, regarding whether an employee's coverage was not effective during certain months because of a waiting period since this information is relevant to the administration of the employer shared responsibility provisions.

Second, the proposed regulations do not require reporting of the employer's share of the total allowed costs of benefits provided under the plan because this information also is not relevant to the administration of the premium tax credit and the employer shared responsibility provisions. In contrast, whether the employer-sponsored plan provides minimum value coverage is relevant information; accordingly, Treasury and the IRS anticipate that information will be requested, also using an indicator code.

Third, the proposed regulations do not require the reporting of the monthly premium for the lowest-cost option in each of the enrollment categories (such as self-only coverage or family coverage) under the plan. Rather, because only the lowest-cost option of self-only coverage offered under any of the enrollment categories for which the employee is eligible is relevant to the determination of whether coverage is affordable (and thus to the administration of the premium tax credit and employer shared responsibility provisions), that is the only cost information proposed to be requested.

Fourth, the proposed regulations do not require the reporting of the months, if any, during which any of the employee's dependents were covered under the plan. Instead, the proposed regulations require reporting only regarding whether the employee was covered under a plan. This is because information relating to the months during which any of the employee's dependents were covered under the plan will be reported on the section 6055 informa-

tion return associated with that employee's coverage.

Under the proposed regulations, each ALE member must file and furnish the section 6056 return and employee statement using its EIN. Any ALE member that does not have an EIN may easily apply for one online, by telephone, fax, or mail. See Publication 1635, Employer Identification Number, for further information at *www.irs.gov*.

Having considered the information required by section 6056 and the information needed to verify employer-sponsored coverage and to administer the employer shared responsibility provisions under section 4980H and the premium tax credit, Treasury and the IRS anticipate that as part of the general method for section 6056 reporting, the IRS will need certain information not specifically set forth under section 6056 but authorized under section 6056(b)(2)(F). Accordingly, the proposed regulations provide, in a manner similar to other information reporting guidance, that additional information may be prescribed by guidance, forms, or instructions. Treasury and the IRS are also considering potential simplified reporting methods that in certain situations may permit an employer to provide less information than all data elements required under the general method for reporting. See section XI of this preamble.

Under the general method of section 6056 reporting, the following information is expected to be requested, through the use of indicator codes for some information, as part of the section 6056 return (as well as an indication of how many individual employee statements are being submitted):

(1) information as to whether the coverage offered to employees and their dependents under an employer-sponsored plan meets minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage;

(2) the total number of employees, by calendar month;

(3) whether an employee's effective date of coverage was affected by a waiting period;

(4) if the ALE member was not conducting business during any particular month, by month;

(5) if the ALE member expects that it will not be an ALE member the following year;

(6) information regarding whether the ALE member is a person that is a member of an aggregated group, determined under section 414(b), 414(c), 414(m), or 414(o), and, if applicable, the name and EIN of each employer member of the aggregated group constituting the applicable large employer on any day of the calendar year for which the information is reported;

(7) if an appropriately designated entity is reporting on behalf of an ALE member that is a governmental unit or any agency or instrumentality thereof for purposes of section 6056, the name, address, and identification number of the appropriately designated person;

(8) if an ALE member is a contributing employer to a multiemployer plan, whether a full-time employee is treated as eligible to participate in a multiemployer plan due to the employer's contributions to the multiemployer plan; and

(9) if the administrator of a multiemployer plan is reporting on behalf of the ALE member with respect to the ALE member's full-time employees who are eligible for coverage under the multiemployer plan, the name, address, and identification number of the administrator of the multiemployer plan (in addition to the name, address, and EIN of the ALE member already required under the proposed regulations).

C. *Use of Indicator Codes to Provide Information With Respect to a Particular Full-Time Employee*

In an effort to simplify and streamline the section 6056 reporting process even under the general section 6056 reporting rules, Treasury and the IRS anticipate that certain of the information described above as applied to a particular full-time employee will be reported to the IRS, and furnished to the full-time employee, through the use of a code rather than by providing specific or detailed information. Specifically, it is contemplated that the following information will be reported with respect to each full-time employee for each calendar month using a code:[7]

(1) minimum essential coverage meeting minimum value was offered to:

a. the employee only;

b. the employee and the employee's dependents only;

c. the employee and the employee's spouse only; or

d. the employee, the employee's spouse and dependents;

(2) coverage was not offered to the employee and:

a. the employee was in a waiting period that complies with the requirements of PHS Act section 2708 and its implementing regulations;

b. the employee was not a full-time employee;

c. the employee was not employed by the ALE member during that month; or

d. no other code or exception applies;

(3) coverage was offered to the employee for the month although the employee was not a full-time employee during that month; and

(4) the ALE member met one of the affordability safe harbors under proposed §54.4980H–5(e)(2) with respect to the employee.

It is anticipated that if multiple codes apply with respect to a full-time employee for a particular calendar month, the reporting format will accommodate the necessary codes.

D. *Section 6056 Statements to Full-time Employees*

Under the general section 6056 reporting rules set forth in the proposed regulations, every ALE member required to file a section 6056 return must furnish a section 6056 employee statement to each of its full-time employees that includes the name, address and EIN of the ALE member and the information required to be shown on the section 6056 return with respect to the full-time employee. The section 6056 employee statement is not required to include a copy of the transmittal form that accompanies the returns. As part

[7] Treasury and the IRS have received comments regarding whether transition relief previously provided in the section 4980H proposed regulations (REG–138006–12 [78 FR 218]) with respect to the transition from 2013 to 2014 will be extended to the transition from 2014 to 2015. The issue is currently under consideration and will be addressed in future guidance under section 4980H. If further transition relief is provided under section 4980H, it is expected that additional indicator codes will be available on the section 6056 return to indicate that an employer is using the transition relief.

of the potential simplified reporting methods Treasury and the IRS are also considering whether, in certain circumstances, other methods of furnishing information to an employee may be sufficient (for example, through the use of a code on the Form W–2). For a detailed description of these potential simplified reporting methods, see section XI of this preamble.

Some employers may wish to have the flexibility to use a substitute type of statement to provide the necessary information to full-time employees. The proposed regulations provide that the section 6056 employee statement may be made by furnishing a copy of the section 6056 return on Form 1095–C (or another form the IRS designates) or a substitute employee statement for that full-time employee. Under the proposed regulations, a substitute statement must include the information required to be shown on the section 6056 return filed with the IRS with respect to that employee and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2). These proposed regulations provide that section 6056 employee statements filed using Form 1095–C or another form the IRS designates will be included in the proposed IRS truncated TIN program. Under this proposed program, an IRS truncated taxpayer identifying number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information return filed with the IRS. See the proposed regulations on IRS Truncated Taxpayer Identification Numbers (REG–148873–09 [78 FR 913]).

E. *Time for Filing Section 6056 Returns and Furnishing Employee Statements*

The proposed regulations provide that section 6056 returns must be filed with the IRS annually, no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. This is the same filing schedule applicable to other information returns with which employers are familiar such as Forms W–2 and 1099. Because Notice 2013–45 provided transition relief for section 6056 reporting for 2014, the first section 6056 returns required to be filed are for the 2015 calendar year and must be filed no later than March 1, 2016 (February 28, 2016, being a Sunday), or March 31, 2016, if filed electronically. In addition, the regulations propose that the section 6056 employee statements be furnished annually to full-time employees on or before January 31 of the year immediately following the calendar year to which the employee statements relate. This means that the first section 6056 employee statements (meaning the statements for 2015) must be furnished no later than February 1, 2016 (January 31, 2016, being a Sunday).

In preparation for the application of the section 4980H provisions beginning in 2015, employers are encouraged to voluntarily comply for 2014 (that is, for section 6056 returns and statements filed and furnished in 2015) with the information reporting provisions (once the information reporting rules have been issued) and to maintain or expand health coverage in 2014. Real-world testing of reporting systems and plan designs through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

Some commenters asked for use of an alternate filing date for employers whose health plan is not a calendar year plan. While Treasury and the IRS understand that employers may collect information on a plan year basis, employees generally will need to receive their section 6056 employee statements early in the calendar year in order to have the requisite information to correctly and completely file their income tax returns reflecting any available premium tax credit. For this reason, the proposed regulations do not adopt this suggestion. However, Treasury and the IRS are considering a simplified reporting method, described in section XI of this preamble, that in certain circumstances could permit the employer to report the required information on the Form W–2 which is already being furnished to an employee on the same schedule.

These proposed regulations do not include rules regarding extensions of the time to file section 6056 returns but this topic is addressed elsewhere. Specifically, the notice of proposed rulemaking under section 6055 (REG–132455–11) includes proposed amendments to the regulations under section 6081 relating to general rules on extensions of time to file to include returns under both sections 6055 and 6056. The final section 6056 regulations are expected to cross-reference the amendments to the regulations under section 6081. These proposed regulations reserve a paragraph for this cross-reference.

F. *Manner of Filing of Section 6056 Information Returns and Furnishing of Section 6056 Employee Statements.*

Treasury and the IRS understand that electronic filing is often easier and more efficient for taxpayers, and several commenters requested that employers be permitted to file section 6056 returns electronically. The proposed regulations require electronic filing of section 6056 information returns except for an ALE member filing fewer than 250 returns during the calendar year. Each section 6056 return for a full-time employee is a separate return. Although an ALE member filing fewer than 250 returns during the calendar year may always choose to make the section 6056 returns on the prescribed paper form, that member is permitted (and encouraged) to file section 6056 returns electronically. This proposed requirement for electronic filing is the same as the current requirements for other information returns.

The proposed regulations provide that all returns are aggregated for the purpose of applying the 250-return threshold so that, for example, an ALE member required to file 150 section 6056 returns and 200 Forms W–2 will be required to electronically file section 6056 returns. A reporting entity must submit the prescribed form(s) to request authorization and obtain a Transmitter Control Code from the IRS to be able to file an information return electronically.

In addition to electronic filing, Treasury and the IRS understand that electronic methods are often a simpler and more efficient method to supply employees with the required information, and several commenters requested that employers be permitted to electronically furnish section 6056 employee statements to full-time employees. In response, the proposed regulations permit electronic furnishing of section 6056 employee statements if certain notice, consent, and hardware or software requirements are met. To provide rules for electronic furnishing with which employers are already familiar, the proposed regulations adopt by analogy

the process currently in place for the electronic furnishing of employee statements (that is, Forms W–2) pursuant to section 6051 and applicable regulations.

X. *Combined Reporting Under Section 6056 and Section 6051 or 6055*

In addition to the reporting under section 6056, two other reporting provisions provide for annual reporting with respect to certain individuals and the furnishing of statements to those individuals. Specifically, section 6051 requires employers to provide Forms W–2 reporting wages paid and taxes withheld. Section 6055 requires information reporting by any person that provides minimum essential coverage to an individual. ALE members that provide minimum essential coverage on a self-insured basis are subject to the reporting requirements of all three sections (6051, 6055 and 6056). Notices 2012–32 and 2012–33 requested comments on how to minimize duplication in reporting under these provisions.

Several commenters recommended that the regulations allow combined information reporting under sections 6055 and 6056 for applicable large employers that sponsor self-insured plans and must report under both sections. Other commenters recommended that employers be permitted to use a single information return to report under sections 6051 (Form W–2) and 6055. Some commenters suggested adding section 6055 or section 6056 reporting to Form W–2.

Because not all employers are subject to each of these three reporting requirements, independent reporting methods under each section need to be available; otherwise, employers subject to only one reporting requirement may have to expend additional effort to use a combined reporting method. Optional combined reporting therefore would require development of multiple forms for each reporting requirement (some forms for combined reporting, other forms for separate reporting), which could create administrative complexity and create confusion for employees.

In addition, any consideration of combined reporting must take into account that sections 6051, 6055 and 6056 apply to different types of entities (subject to the various reporting requirements, which differ among the Code provisions), and require reporting of different types of information. Section 6051 requires reporting of certain wage and wage-related information on an annual basis by all employers for all employees (and only employees). Section 6055 requires reporting of certain health coverage information by various entities (issuers, employers sponsoring self-insured group health plans, and governmental units) only for individuals who are actually covered (and not for individuals who are offered coverage but do not enroll), and multiple covered individuals may be included on one return. Section 6056 requires reporting of information by applicable large employers on offers of coverage that have or have not been made only to full-time employees (whether or not the offer has been accepted). Further, unlike Form W–2 reporting under section 6051, which provides annual information, both sections 6055 and 6056 require reporting some information on a monthly basis. Accordingly, the general section 6056 reporting method under the proposed regulations does not assume overall combined reporting under sections 6051, 6055, and 6056.

However, as described more fully below in section XI of this preamble, Treasury and the IRS are considering whether it may be possible to permit a type of combined reporting under sections 6051 and 6056 by providing an option to use a code on the Form W–2 in certain circumstances to provide information needed by both the employee and the IRS rather than through the use of the section 6056 employee statement (with employer-level information being provided separately). In addition, in other limited circumstances involving no-cost or very low-cost coverage provided under a self-insured group health plan, Treasury and the IRS are considering whether the employee and the IRS could rely solely on the information provided by the employer on a section 6055 return and the Form W–2 without any further information reporting under section 6056. For further discussion of these potential approaches, see section XI of this preamble.

In response to comments, Treasury and the IRS also have considered suggestions to use, for section 6055 and 6056 reporting purposes, information that employers communicate to employees about employer-sponsored coverage prior to employees' potential enrollment in Exchange coverage. These comments have observed that, under the Affordable Care Act, employers are required to provide pre-enrollment information to employees by various means, including information in the Notice of Coverage Options provided to employees pursuant to the requirements under section 18B of the Fair Labor Standards Act[8] in the Exchanges and potentially via the Employer Coverage Tool developed by the Department of Health and Human Services (HHS) that supports the application for enrollment in a qualified health plan and insurance affordability programs.[9]

Treasury and the IRS have considered and coordinated with the Departments of HHS and Labor regarding the various reporting provisions with a view to identifying ways to make the entire process as effective and efficient as possible for all parties. That said, the various reports are designed for different purposes, and pre-enrollment reporting regarding anticipated employer coverage in an upcoming coverage year is unlikely to be helpful to individual taxpayers in accurately completing their tax returns more than a year later, after the coverage year. Among other issues, the pre-enrollment information may not be readily available to individuals at the time they are filing their tax returns, could be confused with the more recently received pre-enrollment information that applies to the subsequent year (not the year for which the tax return is being filed), and is in a format that does not facilitate easy transfer to the appropriate location on the Federal income tax return. Notwithstanding these challenges, Treasury and the IRS continue to work with the other Departments and stakeholders to consider approaches that might help minimize cost and administrative complexity and realize efficiencies in the reporting process.

[8] On May 8, 2013, the Department of Labor issued Technical Release 2013–02 providing temporary guidance under Fair Labor Standards Act section 18B, as well as model notices. *See* Technical Release 2013–02, model notice for employers who offer a health plan to some or all employees, and model notice for employers who do not offer a health plan, available at *http://www.dol.gov/ebsa/healthreform/*. Guidance on the Notice to Employees of Coverage

[9] Available at *https://www.healthcare.gov/downloads/ECT_Application_508_130615.pdf*

Both sections 6055 and 6056 require employers to furnish to employees information about health care coverage. Solely for the purpose of furnishing information to employees (as opposed to filing with the IRS), Treasury and the IRS are considering whether employers sponsoring self-insured group health plans could fulfill their obligation to furnish an employee statement under both sections 6055 and 6056 through the use of a single substitute statement, within the parameters of the rules provided in revenue procedures or other published guidance relating to substitute returns. See §601.601(d)(2) of this chapter.

XI. *Potential Simplified Methods for Section 6056 Information Reporting*

In developing these regulations, Treasury and the IRS have sought to develop simplified reporting methods that will minimize the cost and administrative tasks for employers, consistent with the statutory requirements to file an information return and furnish an employee statement to each full-time employee. Comments have suggested that, at least for some employers, the collection, assembling and processing of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because the employee will be ineligible for a premium tax credit. Treasury and the IRS have considered these comments in formulating the potential simplified reporting methods described in this section. If Treasury and the IRS adopt one or more of these simplified reporting methods, they would be optional alternatives to the general reporting method set forth in the proposed regulations, which could substantially reduce the data elements reported using the general method. It is anticipated that, if an employer uses one or more of the simplified reporting methods, the employer would indicate on its section 6056 transmittal which simplified reporting method(s) was used and the number of employees for which the particular method was used. Comments are invited on these potential simplified reporting methods and on other possible simplified approaches that would benefit employers while providing sufficient and timely information to individual taxpayers and the IRS.

The information provided to the IRS and the employee pursuant to section 6056 is important for administering the section 4980H shared employer responsibility provisions and the premium tax credit. However, in looking at the potential flow of information, Treasury and the IRS have determined that in some circumstances only some of the information required under the general method is necessary. Treasury and the IRS have attempted to identify the specific groups of employees for whom simplified reporting would provide sufficient information, and simplified reporting approaches for these groups are outlined below. In many situations, not every full-time employee of an employer would fit into the groups of employees for which simplified reporting would be available. In that case, the employer would continue to use the general reporting method in the proposed regulations for those full-time employees for whom the employers could not use a simplified method. However, it is anticipated that a significant number of employers will have a sufficient number of employees that fit into one or more of the categories described below to make use of the simplified reporting method preferable to the general reporting method.

Subsections A through F of this section XI of the preamble describe, and comments are invited on, possible simplified methods of reporting under section 6056. Each of these possible methods would be optional for the reporting employer, and, except where specifically noted, would not affect any reporting obligations under section 6055.

Subsection A.....Eliminating Section 6056 Employee Statements in Favor of Form W–2 Reporting for Certain Groups of Employees Offered Coverage

Subsection B..... No Need to Determine Full-Time Employees If Minimum Value Coverage Is Offered to All Potentially Full-Time Employees

Subsection C.....Self-Insured Employers Offering Employees, Their Spouses and Dependents Mandatory No-Cost Minimum Value Coverage

Subsection D.....Voluntarily Reporting Section 6056 Elements During or Prior to the Year of Coverage

Subsection E.....Reporting for Employees Potentially Ineligible for the Premium Tax Credit

Subsection F.....Combinations of Simplified Reporting Methods

A. *Eliminating Section 6056 Employee Statements in Favor of Form W–2 Reporting for Certain Groups of Employees Offered Coverage*

In response to stakeholder comments, Treasury and the IRS are considering allowing employers in certain circumstances to report offers of minimum value coverage on an employee's Form W–2, instead of reporting the offers to the IRS on a section 6056 employee statement or furnishing a section 6056 employee statement to the employee. The reporting is envisioned as using an existing box on the Form W–2 to provide the monthly dollar amount of the required employee contribution for the lowest cost minimum value self-only coverage offered to the employee and using a letter code to describe the offer of coverage. Specifically, Treasury and the IRS anticipate that this approach could be used for any employee employed by the employer for the entire calendar year when the offer, the individuals to whom the offer is made, and the employee contribution for the lowest-cost option for self-only coverage all remained the same for all twelve months of the calendar year. The letter code could be used to indicate that minimum value coverage was offered to: (1) the employee, the employee's spouse and the employee's dependents, (2) the employee and the employee's dependents but not the employee's spouse; (3) the employee and the employee's spouse but not the employee's dependents; (4) the employee, but not the employee's spouse or the employee's dependents; or that the employee was (5) only offered coverage that was not minimum value coverage; or (6)

not offered coverage. For this purpose, an employer is treated as offering coverage to the employee's spouse or dependents even if the employee does not have a spouse or dependent, if the employee could elect such coverage if the employee did have a spouse or dependent. If an employee was not offered coverage, it is anticipated that the dollar amount of the employee share of the lowest-cost employee-only coverage option would be shown as zero.

Example: Employer has 100 full-time employees, all of whom are employed for the entire year. Employer offers all of its full-time employees, spouses and dependents the opportunity to enroll in health care coverage that provides minimum value. Under the potential simplified reporting method, it is contemplated that, for all employees, Employer would be permitted to avoid filing or furnishing section 6056 employee statements if it used a letter code on the Form W–2 to report that an offer of coverage had been made to the employee, the employee's spouse (if any), and the employee's dependents (if any), and a dollar amount indicating the required monthly employee contribution to purchase the lowest cost option offered to the employee for self-only coverage.

Treasury and the IRS are also considering whether this or a similar simplified reporting method could be extended to cases in which the required monthly employee contribution is below a specified threshold. For example, if the annual employee cost of self-only coverage is $800 or less, the employer would be permitted to report zero as the employee cost. The $800 amount is less than 9.5 percent of the federal poverty line for a single individual. Thus, regardless of the size of the employee's household or the level of other income or loss of any member of the employee's household, either the employer's coverage will be affordable for purposes of section 36B(c)(2)(C)(i) or the employee's household income will be less than 100 percent of the federal poverty line and the employee will not be an applicable taxpayer under section 36B(c)(2) who is eligible for the credit. In addition, even if other income increases the employee's household income, the employee would not be entitled to the affordability exemption to the shared responsibility payment under section 5000A(e)(1) because the $800 amount would not exceed 8 percent of the employee's household income. Alternatively, if other losses reduce the employee's household income below the income tax filing threshold, the employee will qualify for the exemption under section 5000A(e)(2), and the information otherwise reported under section 6056 would not be required to determine whether the employee satisfied section 5000A. Comments are also requested on the extent to which this approach could reasonably be combined with the other simplified reporting methods described in this section XI of the preamble.

An employer that decides to use this simplified reporting method would not be required to file or furnish a section 6056 employee statement with respect to the employees for whom this method was used. Instead, the employer would simply indicate on a section 6056 transmittal that it had chosen to use this method. If the Form W–2 for an employee used an EIN other than the employer's EIN (for example, a third-party payor treated as an employer under section 3401(d)(1) of the Code filed the Form W–2), the employer (that is, the ALE member) may be required as part of the 6056 transmittal to identify those employees for whom a third party reported on Form W–2 without the employer's EIN and to list the employees' social security numbers.

Stakeholders have inquired whether a similar optional Form W–2 reporting method could be used for employees offered coverage under their employer's plan for less than a full calendar year (for example for a new employee hired during the year), but offered no coverage for the remainder of the year. Treasury and the IRS note that this type of reporting would leave gaps in information that would otherwise be used for tax administration purposes. For example, the reporting would not provide any information regarding the particular calendar months during which coverage was offered (or not offered). Even if the employer represented that the coverage was offered during all periods of employment, the reporting would not be able to be reconciled, for example, with another Form W–2 received by the employee from another employer using the same reporting method. That is because while both employers would report the number of months coverage was offered, that information would not be sufficient to determine whether offers of coverage were overlapping (because the employee was employed simultaneously at both employers).

Additionally, for months for which coverage was not offered, information as to whether the employee was employed and also the reason coverage was not offered during certain months of the calendar year would not be captured (for example, the employee was in a waiting period or employed but not as a full-time employee). The specific reason coverage was not offered is relevant to the administration of the employer shared responsibility provisions since the failure to offer coverage for certain reasons does not result in an assessable payment under the employer shared responsibility provisions for a calendar month, even if the full-time employee receives a premium tax credit for that month. Comments are requested on whether this approach to reporting would be useful for employers and, if so, on possible ways to address issues concerning the information gaps that would exist in reporting on employees offered coverage for less than a full calendar year.

B. *No Need to Determine Full-Time Employees If Minimum Value Coverage Is Offered to All Potentially Full-Time Employees*

Treasury and the IRS understand that some employers offer coverage to all or nearly all of their employees, and are able to accurately represent that the only employees not offered coverage are not full-time employees. In that case, the employer will have determined that it would not owe an assessable payment under section 4980H(a) because it would have made an offer of coverage to all of its full-time employees. However, the employer might not have determined whether every employee to whom coverage is offered is or is not a full-time employee. Treasury and the IRS are considering whether these employers may provide section 6056 reporting that does not identify the number of full-time employees and that does not specify whether a particular employee offered coverage is a full-time employee, provided that the employer certifies that all of its employees to whom it did not offer coverage during the calendar year were not full-time employees (or were otherwise ineligible for coverage, for example because they were in the initial permitted waiting period following the date of hire). This method would permit the employer to forgo identifying the full-time status of its employees prior to filing a section

6056 return. However, if an employee who was offered coverage claimed a premium tax credit, the employer could be asked to confirm at a later date (after the filing of the section 6056 return and the relevant Form 1040 return) whether that employee was a full-time employee during that calendar year (in the same manner that an employer reporting only on behalf of full-time employees might later be asked about the status of an employee claiming the premium tax credit if the employee was not listed on that employer's section 6056 return). Treasury and the IRS recognize that this method often would result in over-reporting of certain elements in the sense that reporting would occur with respect to one or more employees who may not be full-time employees during the calendar year. But some employers have indicated that they anticipate relatively few of their employees will claim the premium tax credit, and that determining those few employees' status as full-time employees later would be administratively easier than determining the full-time employee status of all employees at the time of the initial filing.

Example: Employer has 100 employees. Employer makes an offer of minimum value coverage to 90 of the employees. Employer has determined that the ten employees to whom coverage is not offered are not full-time employees for any calendar month during the year. Employer has not determined which of the remaining 90 employees were full-time employees for one or more calendar months during the year. Employer certifies as part of its section 6056 transmittal return that the only employees to whom it did not offer coverage were not full-time employees or were otherwise not required to be offered coverage for all months of employment (for example, a full-time employee was hired in November and, under the terms of the plan, which comply with the Affordable Care Act, would not be initially offered coverage until the following calendar year). Employer would file a section 6056 return and furnish an employee statement for each of the 90 employees, but would not be required to report either the total number of full-time employees for the year or whether any particular employee was a full-time employee for any calendar month during the year. If one of the employees included as part of the return declined the offer of coverage and properly claimed a premium tax credit with respect to coverage provided through an Exchange, and the employer were contacted by the IRS to determine whether the employer did or did not owe an assessable payment under section 4980H(b), the employer could determine at that point whether the employee was a full-time employee for one or more months during that calendar year and supply that information to the IRS.

C. *Self-Insured Employers Offering Employees, Their Spouses, and Dependents Mandatory No-Cost Minimum Value Coverage*

Some employers may provide mandatory minimum value coverage under a self-insured group health plan to an employee, an employee's spouse, and an employee's dependents, with no employee contribution. In that case, none of those individuals would be eligible for a premium tax credit for any month during which the coverage was provided, and the employer would indicate on the return required under section 6055 for the employee all months for which that coverage was provided with respect to each individual in the employee's family. Because the section 6055 return would provide the individual taxpayers the necessary information to accurately file the taxpayers' income tax returns, and would provide the IRS the information concerning those employees to administer the premium tax credit and employer shared responsibility provisions, Treasury and the IRS are considering whether for those employees the employer could file and furnish only the return required under section 6055, a code on the Form W–2, the summary information provided in the section 6056 transmittal form, and no further information reporting under section 6056.

D. *Voluntarily Reporting Section 6056 Elements During or Prior to the Year of Coverage*

Some employers have expressed an interest in voluntarily reporting information about the coverage they offer their employees prior to the end of a coverage year, for example at their open enrollment or before the open enrollment at the Exchanges, on the theory that earlier section 6056 reporting to the IRS could lead to greater efficiency in the employer verification system employed by Exchanges to determine eligibility for premium tax credits. Under such an arrangement, they believe that if some employers chose to provide part of their section 6056 reporting to the IRS earlier in the process, the IRS, in turn, would be able to transmit any pertinent data to the Exchanges.

A proposal of this kind would need to address a number of issues. First, the regulations under section 6103 do not authorize the IRS to share taxpayer information in this manner. Even if this information sharing were permitted, information reporting plays a role in enabling individuals to file complete and accurate tax returns. Under the proposal, individuals would not receive the information for their tax return preparation proximate to when they are completing their tax returns. Employees may bear less burden and prepare more accurate tax returns when their employer furnishes a statement at the start of the relevant tax season reflecting all the information the employee needs to file a correct tax return for the prior year. Gaps in complete and timely information increase the need for additional follow-up communication among employers, employees, and the IRS.

Also, offering two sets of reporting alternatives with filing occurring at different time periods would present challenges. Because the reporting options would be voluntary, different reporting protocols and regimes would need to be established and would need to accommodate employer choices to change the method of reporting from year to year. The multiple forms, procedures, and protocols could create complexity and be difficult to administer.

In addition, the information about the offer of coverage made before the year starts may change during the calendar year. For example, during the year, an employee may be hired or may terminate employment, a part-time employee may become full-time and be eligible for different coverage options, or an employee may change positions during the year and no longer be offered coverage. Accordingly, disclosure before the coverage year does not adequately substitute for disclosure to employees and reporting to the IRS after the coverage year.

Employers, employees, and the IRS share the goal of aligning eligibility for advance payments of premium tax credits as closely as possible with eligibility for the premium tax credit on the employee's annual tax return filed after the coverage year. This would reduce confusion and minimize the risk of employees owing advance payments back as liabilities on their tax returns. Regardless of the final rules on section 6056 information reporting, employers are encouraged to make their pre-enrollment disclosures to employees

and Exchanges as effective and helpful to individuals as possible.

Comments are invited on whether there could be a way to design such a voluntary partial early reporting arrangement that would reduce complexity and avoid confusion for employers and employees, be administrable for the IRS, and provide timely information to individuals so that they can meet their income tax filing obligation without undue burden or undue risk of inaccuracy.

E. *Reporting for Employees Potentially Ineligible for the Premium Tax Credit*

Some employers have indicated that, because many of their employees are relatively highly paid, they are unlikely to be eligible for a premium tax credit. The assumption is that the employee's household income is likely to exceed 400 percent of the Federal poverty line, and therefore the employee would not benefit from receiving the information otherwise included with a section 6056 employee statement. Further, because the employee is unlikely to qualify for a premium tax credit, employers have stated that the information will not be useful to the IRS in administering the employer shared responsibility provisions because the precondition of a section 4980H(b) assessable payment—that the employee receive a premium tax credit—is unlikely to be satisfied.

Treasury and the IRS have considered this request and welcome comments both on its potential usefulness to employers and its administrability. Employers would still need to report to the IRS the months during which the employee was a full-time employee, at least to the extent the employee was included in a full-time employee count. Additionally, employers will not be in a position to know the correlation between an employee's Form W–2 wages and household income with sufficient accuracy to determine whether an employee may be eligible for the premium tax credit. The only pertinent information the employer retains is the employee's annual wages, yet the poverty level from which the premium tax credit income threshold is determined varies considerably based on family size (which employers will not necessarily know). In addition, employees for whom an employer may use an affordability safe harbor based on wages for purposes of compliance with the employer shared responsibility provisions under section 4980H might still be eligible for a premium tax credit based on their household income. Employers generally do not know employees' household income, and will not have information as to whether the employee (or another member of the employee's household) has incurred losses or expenses (such as alimony, casualty losses, Schedule C business deductions, and the like) that reduce the employee's household modified adjusted gross income below 400 percent of the Federal poverty line. Accordingly, it is unclear whether Form W–2 wages alone would provide sufficient information to determine eligibility for the premium tax credit because the employee's household income may be well below the employee's Form W–2 wages. Comments are requested as to whether there is a level of Form W–2 wages at which such a determination might be made with sufficient confidence, and whether that level of wages is so high as not to be of practical use to employers.

F. *Combinations of Simplified Reporting Methods*

The potential simplified reporting methods described above would apply to particular groups of employees that in many cases would not overlap. In such cases, two different potential simplified reporting methods could not be applied to the same employee. Treasury and the IRS anticipate that, to the extent any of these potential reporting methods are adopted in final regulations or other administrative guidance, including forms and instructions, an employer would be permitted to use different simplified methods for different employees at the employer's election.

XII. *Person Responsible For Section 6056 Reporting*

Under the proposed regulations, in general, each ALE member must file a section 6056 return with respect to its full-time employees for a calendar year.

A. *Special Rules for Governmental Units: Designation*

In accordance with section 6056(e), the proposed regulations provide that in the case of any ALE member that is a governmental unit or any agency or instrumentality thereof (together referred to in this preamble as a governmental unit), that governmental unit may report under section 6056 on its own behalf or may appropriately designate another person or persons to report on its behalf.[10] For purposes of designation, another person is appropriately designated for purposes of the filing and furnishing requirements of section 6056 if that other person is part of or related to the same governmental unit as the ALE member. For example, a political subdivision of a state may designate the state, another political subdivision of the state, or an agency or instrumentality of the foregoing as the designated person for purposes of section 6056 reporting. The person designated might be the governmental unit that operates the relevant health plan or the governmental unit that does other information reporting on behalf of the designating governmental unit. Further, the governmental unit may designate more than one governmental unit to file and furnish under section 6056 on its behalf, such as, for example, if different categories of employees are offered coverage under different health plans operated by different governmental units. In addition, a governmental unit may designate another person to file and furnish with respect to all or some of its full-time employees. If the designation is accepted by the designee and is made before the filing deadline, the designated governmental unit is the designated entity responsible for section 6056 reporting.

The person (or persons) appropriately designated for this purpose would report under section 6056 on behalf of the ALE member. Accordingly, the person (or persons) appropriately designated is (are) the person(s) responsible for section 6056 reporting on behalf of the ALE member and subject to the penalties for failure to comply with information return requirements under sections 6721 and 6722. However, the ALE member remains subject to the requirements of section 4980H.

[10] Until further guidance is issued, government entities, churches, and a convention or association of churches may apply a reasonable, good faith interpretation of section 414(b), (c), (m), and (o) in determining whether a person or group of persons is an applicable large employer.

Under the proposed regulations, a separate section 6056 return and transmittal must be filed for each ALE member for which the appropriately designated person is reporting. The designated entity must report its name, address, and EIN on the section 6056 return to indicate it is the appropriately designated person.

The proposed regulations further provide that the designation under section 6056(e) must be in writing and must contain certain language. Specifically, under the proposed regulations, the designation must be signed by both the ALE member and the designated person, and must be effective under all applicable laws. The proposed regulations also require that the designation set forth the name and EIN of the designated person, and appoint that person as the person responsible for reporting under section 6056 on behalf of the ALE member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, provided that the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the ALE member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an ALE member, the designation should so indicate.

The designation must also contain language that the designated person agrees that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is responsible for reporting under section 6056 on behalf of the ALE member and subject to the requirements of section 6056, and the information reporting penalty provisions of sections 6721 and 6722. The designation must also set forth the name and EIN of the ALE member, identifying the ALE member as the person subject to the requirements of section 4980H. The proposed regulations provide that an equivalent applicable statutory or regulatory designation containing similar language will be treated as a written designation for purposes of section 6056(e).

B. *ALE Members Participating in Multiemployer Plans*

Several commenters suggested that administrators of multiemployer plans may be willing to file section 6056 returns reporting information for coverage offered to full-time employees under the multiemployer plan and recommended in such cases that an ALE member not be required to report coverage information for those employees.

Treasury and the IRS understand that the plan administrator of a multiemployer plan may have better access than a participating employer to certain information on participating employees required to be included as part of section 6056 reporting. For this reason, Treasury and the IRS anticipate that the section 6056 reporting with respect to full-time employees eligible to participate in a multiemployer plan will be permitted to be provided in a bifurcated manner. Under the bifurcated approach, one return would pertain to the full-time employees eligible to participate in the multiemployer plan (or, if the employer participates in more than one multiemployer plan, one return for each relevant multiemployer plan in which full-time employees are eligible to participate), and another return would pertain to the remaining full-time employees (those who are not eligible to participate in a multiemployer plan). As in the case of other third parties, as discussed in section XII.C of this preamble, the administrator (or administrators, in the case of an employer contributing to two or more multiemployer plans) of a multiemployer plan is permitted to report on behalf of an ALE member that is a contributing employer, and is permitted to report with respect to the ALE member's full-time employees who are eligible for coverage under the multiemployer plan (but not with respect to any other full-time employees of the ALE member). The administrator of the multiemployer plan would file a separate section 6056 return for any ALE member that is a contributing employer on behalf of whom it files using the ALE member's EIN. The administrator of the multiemployer plan would also provide its own name, address, and identification number (in addition to the name, address, and EIN of the ALE member already required). The ALE member would remain the responsible person under section 6056 with respect to all of its full-time employees and accordingly would be required to sign the section 6056 return filed on its behalf and be subject to any potential liability for failure to properly file returns or furnish statements. To the extent the plan administrator that prepares returns or statements required under section 6056 is a tax return preparer, it will be subject to the requirements generally applicable to return preparers.

C. *Section 6056 Reporting Facilitated by Third Parties*

Treasury and the IRS understand that third party administrators or other third party service providers are integral to the operation of many employers' health plans, including with respect to compliance with any reporting requirements. As requested by several commenters, ALE members are permitted to contract with and use third parties to facilitate filing returns and furnishing employee statements to comply with section 6056. The proposed regulations make clear, however, that ALE members are responsible for reporting under section 6056, with the exception of certain governmental unit applicable large employers that properly designate under section 6056(e). While the proposed regulations do not provide guidance on contractual or other reporting arrangements between private ALE members and other parties, they do not prohibit these arrangements. Such contractual arrangements would not transfer the potential liability of the ALE member for failure to report and furnish under section 6056 and the regulations, or the ALE member's potential liability under section 4980H.

As one example, an applicable large employer that is a member of an aggregated group of related entities (determined under section 414(b), 414(c), 414(m) or 414(o)), may file returns and furnish employee statements on behalf of one or more of the other ALE members of the aggregated group. Each other ALE member of the group, for example, could have the ALE member that operates the employer-sponsored plan file section 6056 returns and furnish section 6056 employee statements on its behalf. However, a separate section 6056 return must be filed for each ALE member, providing that ALE

member's EIN. Each ALE member in the aggregated group would continue to be the responsible person under section 6056, would be required to sign the return filed on its behalf, and would be subject to any potential liability for failure to properly file returns or furnish statements. To the extent the other party that prepares returns or statements required under section 6056 is a tax return preparer, it will be subject to the requirements generally applicable to return preparers.

XIII. *Applicability of Information Return Requirements*

The proposed regulations provide that an ALE member that fails to comply with the section 6056 information return and employee statement requirements may be subject to the general reporting penalty provisions under sections 6721 (failure to file correct information returns), and 6722 (failure to furnish correct payee statement). The proposed regulations also provide, however, that the waiver of penalty and special rules under section 6724 and the applicable regulations, including abatement of information return penalties for reasonable cause, apply. The proposed regulations under section 6055 (REG–132455–11) include proposed amendments to the regulations under sections 6721 and 6722 to include returns under both sections 6055 and 6056 in the definitions of information return and payee statement. Treasury and the IRS anticipate that the final regulations under section 6056 will cross-reference those amendments to the regulations under sections 6721 and 6722.

Proposed Effective/Applicability Dates

These regulations are proposed to be effective the date the final regulations are published in the **Federal Register**. These regulations are proposed to apply for calendar years beginning after December 31, 2014. Consistent with Notice 2013–45, reporting entities will not be subject to penalties for failure to comply with the section 6506 information reporting provisions for 2014 (including the furnishing of employee statements in 2015). Accordingly, a reporting entity will not be subject to penalties if it first reports beginning in 2016 for 2015 (including the furnishing of employee statements). Taxpayers are encouraged, however, to voluntarily comply with section 6056 information reporting for 2014 by using the general reporting method set forth in these regulations once finalized.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations are consistent with the requirements imposed by section 6056. Consistent with the statute, the regulations require applicable large employers, as defined in section 4980H(c)(2), to file a return with the IRS, using either the prescribed form or a substitute form, for each full-time employee reporting certain information regarding the health care coverage offered and provided to the employee for the year. Consistent with the statute, the proposed regulations further require applicable large employers to furnish to each full-time employee a copy of the return, or a substitute statement, required to be filed by the applicable large employer with respect to the employee. Accordingly, these regulations merely prescribe the method of filing and furnishing returns and employee statements as required under section 6056. Moreover, the proposed regulations attempt to minimize the burden associated with this collection of information by requiring that applicable large employers file and furnish only information that the IRS will utilize to administer the shared employer responsibility provisions under section 4980H and administer the premium tax credit under section 36B, and information employees will need in order to complete their tax returns.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. Treasury and the IRS specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection at *www.regulations.gov* or upon request. A public hearing has been scheduled for November 18, 2013, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by November 8, 2013 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 8, 2013.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Ligeia M. Donis of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel

from the IRS and Treasury participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6011–9 is added to read as follows:

§301.6011–9 Electronic filing of section 6056 returns.

(a) *Returns required under section 6056.* An applicable large employer member, as defined in §301.6056–1(b)(2), is required to file electronically an information return under section 6056 and §301.6056–1, except as otherwise provided in paragraph (b) of this section.

(b) *Exceptions*—(1) *Low-volume filers/250-return threshold*—(i) *In general.* An applicable large employer member will not be required to file electronically the section 6056 information return described in paragraph (a) of this section unless it is required to file 250 or more returns during the calendar year. Each section 6056 information return for a full-time employee is a separate return. For purposes of this section, an applicable large employer member is required to file at least 250 returns if, during the calendar year, the applicable large employer member is required to file at least 250 returns of any type, including information returns (for example, Forms W–2, Forms 1099), income tax returns, employment tax returns, and excise tax returns. An applicable large employer member filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form.

(ii) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Company X is an applicable large employer member. For the calendar year ending December 31, 2015, Company X is required to file 275 section 6056 returns. Company X is required to file section 6056 returns electronically for that calendar year because 275 section 6056 information returns exceed the 250-return threshold.

Example 2. Company Y is an applicable large employer member. For the calendar year ending December 31, 2015, Company Y is required to file 200 returns on Form W–2 and 150 section 6056 returns. Company Y is required to file the section 6056 returns electronically for that calendar year because it is required to file more than 250 returns (that is, the 200 Forms W–2 plus the 150 section 6056 returns).

(2) *Waiver*—(i) *In general.* The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (b)(2)(i). The principal factor in determining hardship will be the amount, if any, by which the cost of filing the section 6056 returns in accordance with this section exceeds the costs of filing the returns on other media. A request for waiver must be made in accordance with applicable revenue procedures or publications (see §601.601(d)(2)(ii)(*b*) of this chapter). Pursuant to these procedures, a request for waiver should be filed at least 45 days before the due date of the section 6056 return in order for the IRS to have adequate time to respond to the request for waiver. The waiver will specify the type of information return (that is, section 6056 information return) and the period to which it applies and will be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner.

(ii) *Supplemental rules.* The Commissioner may prescribe rules that supplement the provisions of paragraph (b)(2)(i) of this section.

(c) *Effective/applicability date.* The rules of this section are effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This section applies to returns on **"**Form 1095–C**"** or another form the IRS designates required to be filed after December 31, 2014. However, reporting entities will not be subject to penalties under sections 6721 or 6722 with respect to the reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

Par. 3. Section 301.6056–1 is added to read as follows:

§301.6056–1 Rules relating to reporting by applicable large employers on health insurance coverage offered under employer-sponsored plans.

(a) *In general.* Section 6056 requires an applicable large employer subject to the requirements of section 4980H to report certain health insurance coverage information to the Internal Revenue Service, and to furnish certain related employee statements to its full-time employees. Paragraph (b) of this section contains definitions for purposes of this section. Paragraph (c) of this section prescribes general rules for filing the required information with the IRS and furnishing the required employee statements to employees. Paragraphs (d) and (e) of this section describe the information required to be reported on a section 6056 information return and the time and place for filing. Paragraph (f) of this section sets forth the mandatory electronic filing requirements for applicable large employer members. Paragraph (g) of this section provides information about the statement required to be furnished to a full-time employee. Paragraph (h) of this section prescribes the time and manner of furnishing the statement, including extensions of time to furnish. Paragraph (i) of this section prescribes the method for correcting information included in a statement required by section 6056(d) that has been furnished to an employee. Paragraph (j) of this section describes the information return requirements applicable to section 6056 returns. Paragraph (k) of this section describes special rules for certain applicable large employers.

(b) *Definitions*—(1) *Applicable large employer.* The term *applicable large employer* has the same meaning as in section 4980H(c)(2) and any applicable regulations.

(2) *Applicable large employer member.* The term *applicable large employer member* means a person that, together with one or more other persons, is treated as a single employer that is an applicable large employer. For this purpose, if a person, together with one or more other persons, is treated as a single employer that is an applicable large employer on any day of a calendar month, that person is an applicable large employer member for that calendar month. If the applicable large employer comprises one person, that one person is the applicable large employer member. An applicable large employer member

does not include a person that is not an employer or only an employer of employees with no hours of service for the calendar year.

(3) *Dependent*. The term *dependent* has the same meaning as in section 4980H(a) and (b) and any applicable regulations.

(4) *Eligible employer-sponsored plan*. The term *eligible employer-sponsored plan* has the same meaning as in section 5000A(f)(2) and any applicable regulations.

(5) *Full-time employee*. The term *full-time employee* has the same meaning as in section 4980H and any applicable regulations, as applied to the determination and calculation of liability under section 4980H(a) and (b) with respect to any individual employee, and not as applied to the determination of status as an applicable large employer, if different.

(6) *Governmental unit.* The term *governmental unit* refers to the government of the United States, any State or political subdivision thereof, or any Indian tribal government (as defined in section 7701(a)(40)) or subdivision of an Indian tribal government (as defined in section 7871(d)).

(7) *Agency or instrumentality of a governmental unit*. [Reserved]

(8) *Minimum essential coverage*. The term *minimum essential coverage* has the same meaning as in section 5000A(f)(1) and any applicable regulations.

(9) *Minimum value*. The term *minimum value* has the same meaning as in section 36B and any applicable regulations.

(10) *Person*. The term *person* has the same meaning as in section 7701(a)(1) and applicable regulations.

(c) *Content and timing of reporting by applicable large employers*. Each applicable large employer member required to make a return and furnish a related statement to its full-time employees under section 6056 for a calendar year must make a return and furnish the related statement using such form(s) as may be prescribed by the Internal Revenue Service. An applicable large employer member will satisfy its reporting requirements under section 6056 if it files with the Internal Revenue Service a return for each full-time employee using Form 1095–C or another form the IRS designates, and a transmittal form using Form 1094–C or another form the IRS designates, as prescribed in this section and in the instructions to the forms.

(d) *Information required to be reported to the Internal Revenue Service*—(1) *In general*. Every applicable large employer member must make a section 6056 information return with respect to each full-time employee. Each section 6056 information return must show—

(i) The name, address, and employer identification number of the applicable large employer member,

(ii) The name and telephone number of the applicable large employer's contact person,

(iii) The calendar year for which the information is reported,

(iv) A certification as to whether the applicable large employer member offered to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)), by calendar month,

(v) The months during the calendar year for which coverage under the plan was available,

(vi) Each full-time employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that full-time employee under an eligible employer-sponsored plan, by calendar month;

(vii) The number of full-time employees for each month during the calendar year,

(viii) The name, address, and taxpayer identification number of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan, and

(ix) Such other information as the Secretary may prescribe or as may be required by the form or instructions.

(2) *Form of the return*. A return required under this paragraph (d) may be made on Forms 1094–C and 1095–C or other form(s) designated by the Internal Revenue Service, or a substitute form. A substitute form must include the information required to be reported on Forms 1094–C and 1095–C and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2) of this chapter.

(e) *Time and place for filing return*—(1) *In general*. An applicable large employer member must file each return and transmittal form required under paragraph (d)(2) of this section on or before February 28 (March 31 if filed electronically) of the year succeeding the calendar year to which it relates in accordance with any applicable guidance and the instructions to the form. An applicable large employer member must file the return and transmittal form at the address specified on the return form or its instructions.

(2) *Extensions of time for filing*. [Reserved]

(f) *Electronic filing of returns*. The section 6056 return is required to be filed electronically, except as otherwise provided in §301.6011–9.

(g) *Statements required to be furnished to full-time employees*—(1) *In general*. Every applicable large employer member required to file a return under section 6056 must furnish to each of its full-time employees identified on the return a written statement showing—

(i) The name, address and employer identification number of the applicable large employer member, and

(ii) The information required to be shown on the section 6056 return with respect to the full-time employee.

(2) *Form of the statement*. A statement required under this paragraph (g) may be made either by furnishing to the full-time employee a copy of Form 1095–C or another form the IRS designates as prescribed in this section and in the instructions to such forms, or a substitute statement. A substitute statement must include the information required to be shown on Form 1095–C or another form the IRS designates and must comply with applicable revenue procedures or other published guidance relating to substitute statements. See §601.601(d)(2). An Internal Revenue Service truncated taxpayer identification number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information return filed with the Internal Revenue Service.

(h) *Time and manner for furnishing statements*—(1) Each statement required by this section for a calendar year must be furnished to a full-time employee on or before January 31 of the year succeeding that calendar year in accordance with

applicable Internal Revenue Service procedures and instructions or as provided in §301.6056–2.

(2) *Extensions of time*—(i) *In general*. For good cause upon written application of the person required to furnish statements under this section, the Internal Revenue Service may grant an extension of time not exceeding 30 days in which to furnish such statements. The application must be addressed to the Internal Revenue Service, and must contain a full recital of the reasons for requesting the extension to aid the Internal Revenue Service in determining the period of the extension, if any, that will be granted. Such a request in the form of a letter to the Internal Revenue Service, signed by the applicant, will suffice as an application. The application must be filed on or before the date prescribed in paragraph (h)(1) of this section.

(ii) *Automatic extension of time*. The Commissioner may, in appropriate cases, prescribe additional guidance or procedures, published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*)), for automatic extensions of time to furnish to one or more full-time employees the statement required under section 6056.

(i) *Correction of information return*. If the information reported on a return required pursuant to section 6056 for a full-time employee for a prior year was incomplete or incorrect, a corrected return accompanied by a transmittal form must be filed with the Internal Revenue Service as soon as possible after the correction is made. The return must be identified as corrected. A copy of the corrected return for the prior year reflecting the correct data must be furnished to the employee as soon as possible after the correction is made.

(j) *Information reporting penalties*. Section 6724(d)(1)(B)(xxv) and (d)(2)(HH) provides that for purposes of Subtitle F, Chapter 68, Subchapter B, Part II (sections 6721 et seq.), the terms *information return* and *payee statement* include the return required under section 6056 and the statement required to be furnished under section 6056(c). An applicable large employer member who fails to comply with the filing and statement requirements under section 6056 is subject to the penalties under sections 6721 (failure to file correct information returns) and 6722 (failure to furnish correct payee statement), and the waiver and special rules provisions under section 6724, and the applicable regulations.

(k) *Special rules for governmental units*—(1) *Person appropriately designated*. In the case of any applicable large employer member that is a governmental unit or any agency or instrumentality thereof, the person or persons appropriately designated under section 6056(e) for purposes of the filing and furnishing requirements of section 6056 must be part of or related to the same governmental unit as the applicable large employer member. The applicable large employer member must make (or revoke) the designation before the earlier of the deadline for filing the returns or furnishing the statements required by this section. A person that has been appropriately designated under section 6056(e) must file a separate section 6056 return and transmittal for each applicable large employer member for which the person is reporting. The person appropriately designated under section 6056(e) assumes responsibility for the section 6056 requirements on behalf of the applicable large employer member for which the person is designated.

(2) *Written designation*. The designation under section 6056(e) must be made in writing, must be signed by both the applicable large employer member and the designated person, and must be effective under all applicable laws. The designation must set forth the name and employer identification number of the designated person, and appoint such person as the person responsible for reporting under section 6056 on behalf of the applicable large employer member. The designation must contain information identifying the category of full-time employees (which may be full-time employees eligible for a specified health plan, or in a particular job category, as long as the specific employees covered by the designation can be identified) for which the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member. If the designated person is responsible for reporting under section 6056 for all full-time employees of an applicable large employer member, the designation must so indicate. The designation must contain language that the designated person agrees and certifies that it is the appropriately designated person under section 6056(e), and an acknowledgement that the designated person is responsible for reporting under section 6056 on behalf of the applicable large employer member and subject to the requirements of section 6056, including for purposes of information reporting requirements under sections 6721, 6722, and 6724. The designation must also set forth the name and employer identification number of the applicable large employer member, identifying the applicable large employer member as the person subject to the requirements of section 4980H. An equivalent applicable statutory or regulatory designation containing the language described in this paragraph (k)(2) will be treated as a written designation for purposes of section 6056(e) and this section.

(l) *Additional guidance*. The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*)) to provide additional rules under section 6056, including rules permitting use of alternate optional methods to meet reporting requirements.

(m) *Effective/applicability date*. The rules of this section are effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under sections 6721 or 6722 with respect to the reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

Par 4. Section 301.6056–2 is added to read as follows:

§301.6056–2 Electronic furnishing of statements

(a) *Electronic furnishing of statements*—(1) *In general*. An applicable large employer member required by §301.6056–1 to furnish a statement (furnisher) to a full-time employee (a recipient) may furnish the statement in an electronic format in lieu of a paper format, provided that the employer meets the requirements of paragraphs (a)(2) through (a)(6) of this section. An applicable large employer member who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent*—(i) *In general*. The recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) *Withdrawal of consent*. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before the statement is furnished. The furnisher may provide that a withdrawal of consent takes effect either on the date it is received by the furnisher or on a subsequent date. The furnisher may also provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph (a)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive section 6056 statements electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive section 6056 statements electronically by accessing the Web site, downloading the consent document, completing the consent document and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished section 6056 statements. R reads the instructions and submits the consent to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive section 6056 statements electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive section 6056 statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished section 6056 statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive section 6056 statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its Web site stating that Recipient R may receive section 6056 statements electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive section 6056 statements electronically in the manner described in paragraph (a)(2)(i).

(3) *Required disclosures*—(i) *In general*. Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement*. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent*. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the first statement required to be furnished following the date on which the consent is given.

(iv) *Post-consent request for a paper statement*. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) *Withdrawal of consent*. The recipient must be informed that—

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement,

(B) The furnisher will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper), and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) *Notice of termination*. The recipient must be informed of the conditions under which a furnisher will cease furnishing statements electronically to the recipient (for example, termination of the recipient's employment with furnisher-employer).

(vii) *Updating information*. The recipient must be informed of the procedures for updating the information needed by the furnisher to contact the recipient. The furnisher must inform the recipient of any change in the furnisher's contact information.

(viii) *Hardware and software requirements*. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site. The recipient must be informed that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) *Format*. The electronic version of the statement must contain all required information and comply with applicable revenue procedures relating to substitute statements to recipients.

(5) *Notice*—(i) *In general*. If the statement is furnished on a Web site, the furnisher must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) *Undeliverable electronic address*. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher's records or from the recipient, then the furnisher must furnish the notice by

mail or in person within 30 days after the electronic notice is returned.

(iii) *Corrected statement*. If the furnisher has corrected a recipient's statement as directed in §301.6056–1(k) and the statement was furnished electronically, the furnisher must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the furnisher has corrected the statement, the furnisher must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if—

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable, and

(B) The recipient has not provided a new e-mail address.

(6) *Access period*. Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) *Paper statements after withdrawal of consent*. If a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished electronically, a paper statement must be furnished. A paper statement furnished after the statement due date under this paragraph (a)(7) will be considered timely if furnished within 30 days after the date the withdrawal of consent is received by the furnisher.

(b) *Effective/applicability date*. The rules of this section are effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This section applies for calendar years beginning after December 31, 2014. Reporting entities will not be subject to penalties under sections 6721 or 6722 with respect to the reporting requirements for 2014 (for information returns filed and for statements furnished to employees in 2015).

Heather C. Maloy,
Acting Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 5, 2013, 4:15 p.m., and published in the issue of the Federal Register for September 9, 2013, 78 F.R. 54996)

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

Announcement 2013–41

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9610), which were published in the **Federal Register** on Monday, January 28, 2013 (78 FR 5874). The regulations related to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

DATES: *Effective Date:* These corrections are effective September 10, 2013.

Applicability Date: These corrections are applicable on January 28, 2013.

FOR FURTHER INFORMATION CONTACT: John Sweeney, (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are §§ 1.1471–1 through 1.1474–7, promulgated under sections 1471 through 1474 of the Internal Revenue Code. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities, and affect payments by FFIs to other persons. Sections 1471 through 1474 were added to the Internal Revenue Code, as Chapter 4 of Subtitle A, by the Hiring Incentives to Restore Employment Act of 2010 (Public Law 111–147, 124 Stat. 71).

Need for Correction

As published, the final regulations contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. The correcting amendments also include the addition, deletion, or modification of regulatory language to clarify the relevant provisions to meet their intended purposes. Additions, deletions, and modifications are also made to ensure that the rules in the final regulations are coordinated with other rules contained in other relevant regulations (*e.g.*, under chapters 3 and 61). For example in § 1.1471–3(c)(3)(iii)(B)(*2*), the definition of an FFI withholding statement was modified to add an applicable cross reference to the reporting on the statement that is required under chapter 61 (in addition to the reporting required under chapters 3 and 4); to delete an incorrect reference to a pool of payees exempt from chapter 4 withholding; and to add the modified requirements of an FFI withholding statement provided by a Qualified Intermediary that should have been referenced in this paragraph.

* * * * *

Correction of Publication

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

PART 1 — INCOME TAXES

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

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

Par. 2. Section 1.1471–0 is amended by:

1. Revising paragraph (a)(2)(i) under § 1.1471–2.

2. Revising paragraphs (b)(7) and (c)(2)(v) under § 1.1471–4.

3. Revising paragraph (b)(2)(i)(E) under § 1.1471–5.

4. Revising paragraph (a)(5)(vii) and removing paragraph (b)(3)(iii) under § 1.1473–1.

The revisions read as follows:

§ 1.1471–0 Outline of regulation provisions for sections 1471 through 1474.

* * * * *

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs.

* * * * *

§ 1.1471–4 FFI agreement.

* * * * *

(b) * * *

(7) Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

(c) * * *

(2) * * *

(v) Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.

* * * * *

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(E) Account that is tax-favored.

* * * * *

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(5) * * *

(vii) Special rules for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.

* * * * *

Par. 3. Section 1.1471–1 is amended by revising paragraph (b)(23), the first sentence of paragraph (b)(34), and paragraph (b)(99) to read as follows:

§ 1.1471–1 Scope of chapter 4 and definitions.

* * * * *

(b) * * *

(23) *Customer master file*. A *customer master file* includes the primary files of a withholding agent, participating FFI, or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.

* * * * *

(34) * * * The term *electronically searchable information* means information that a withholding agent or FFI maintains in its tax reporting files, customer master files, or similar files, and that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. * * *

* * * * *

(99) *Pre-FATCA Form W–8*. The term *pre-FATCA Form W–8* means a version of a Form W–8 that was issued by the IRS prior to 2013 (including an acceptable substitute form based on such version) and that does not contain chapter 4 statuses but otherwise meets the requirements of § 1.1441–1(e)(1)(ii) applicable to such certificate (or substitute form) and has not expired.

* * * * *

Par. 4. Section 1.1471–2 is amended by:

1. Revising the heading and first two sentences of paragraph (a)(2)(i),

2. Revising the first sentence of paragraph (a)(2)(iii)(A),

3. Revising paragraphs (a)(2)(iii)(A)(*2*) and (a)(2)(iv),

4. Revising the third and fifth sentences of paragraph (a)(2)(v),

5. Revising the first sentence of paragraph (a)(4)(i)(A), and

6. Revising paragraph (a)(4)(viii).

The revisions read as follows:

§ 1.1471–2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(i) *Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWPs, or NWTs*. A withholding agent that, after December 31, 2013, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in § 1.1471–3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of § 1.1471–3(d)(4) and a withholding statement that meets the requirements of § 1.1471–3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. * * *

* * * * *

(iii) * * *

(A) * * * A withholding agent is required to withhold with respect to a payment, or portion of a payment, that is U.S. source FDAP income subject to withholding that is made after December 31, 2013, to a QI that has elected in accordance with this paragraph to be withheld upon, unless such withholding agent also makes an election to be withheld upon under this paragraph (a)(2)(iii)(A) or is an FFI that may not accept primary withholding responsibility for the payment. * * *

* * * * *

(*2*) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment;

* * * * *

(iv) *Withholding obligation of a territory financial institution*. A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment has an obligation to withhold (to the extent required under this section and § 1.1472–1(b)) if it agrees to be treated as a U.S. person with respect to the payment for purposes of both chapter 4 and § 1.1441–1(b)(2)(iv)(A). A territory financial institution that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment is not required

to withhold under paragraph (a)(1) of this section or § 1.1472–1(b), however, if it has provided the withholding agent that is a U.S. withholding agent, participating FFI, reporting Model 1 FFI, or QI with all of the documentation described in § 1.1471–3(c)(3)(iii) (in which it has not agreed to be treated as a U.S. person with respect to the payment), and it does not know, or have reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1474–1(d).

(v) * * * Accordingly, a QI branch of a U.S. financial institution must withhold in accordance with this section and § 1.1472–1(b) in addition to meeting its obligations under either § 1.1471–4(b) and its FFI agreement or § 1.1471–5(f). * * * Accordingly, a foreign branch of a U.S. financial institution that is a reporting Model 1 FFI must withhold in accordance with this section and § 1.1472–1(b). * * *

* * * * *

(4) * * *

(i) * * *

(A) * * * A withholding agent that is not related to the payee or beneficial owner has an obligation to withhold under chapter 4 only to the extent that, at any time between the date that the obligation to withhold would arise (but for the provisions of this paragraph (a)(4)(i)) and the due date for filing the return on Form 1042 (including extensions) for the year in which the payment occurs, it has control over or custody of money or property owned by the payee or beneficial owner from which to withhold an amount and has knowledge of the facts that give rise to the payment. * * *

* * * * *

(viii) *Payments to certain excepted accounts.* A withholding agent is not required to withhold under chapter 4 on a withholdable payment made to an account described in § 1.1471–5(b)(2).

* * * * *

Par. 5. Section 1.1471–3 is amended by:

1. Revising the fourth sentence of paragraph (b)(2),

2. Adding a sentence to the end of paragraph (c)(2)(i),

3. Revising paragraph (c)(3)(iii)(A)(*5*),

4. Revising the first two sentences of paragraph (c)(3)(iii)(B)(*2*),

5. Revising the first sentence of paragraph (c)(6),

6. Revising paragraphs (c)(6)(ii)(B)(*2*), (c)(6)(ii)(B)(*3*), and (c)(6)(ii)(C)(*2*)(*vi*),

7. Revising the second sentence of paragraph (c)(6)(v)(B),

8. Revising the second sentence of paragraph (c)(9)(iv)(A),

9. Revising the first sentence of paragraph (d)(1),

10. Revising the second sentence of paragraph (d)(2)(i),

11. Revising paragraph (d)(2)(ii),

12. Revising the second sentence of paragraph (d)(2)(iii),

13. Revising the second sentence of paragraph (d)(4)(i),

14. Revising paragraph (d)(6)(i)(F),

15. Revising the third sentence of paragraph (d)(6)(ii),

16. Revising the first sentence of paragraph (d)(6)(iii), and

17. Revising the first sentence of paragraph (d)(9)(i)(A).

The revisions and addition read as follows:

§ 1.1471–3 Identification of payee.

* * * * *

(b) * * *

(2) * * * A withholding agent that makes a payment with respect to an offshore obligation may also rely upon a written notification provided by the person who receives the payment, regardless of whether such notification is signed, that indicates the person's entity classification (other than as a QI, WP, or WT) unless the withholding agent knows or has reason to know that the entity classification indicated by the person who receives the payment is incorrect. * * *

* * * * *

(c) * * *

(2) * * *

(i) * * * With respect to the documentation provided for the owners of a foreign flow-through entity, the foreign flow-through entity is permitted to provide the documentary evidence described in paragraph (d) of this section applicable to each payee in lieu of a withholding certificate, regardless of whether the payment is made with respect to an offshore obligation.

* * * * *

(3) * * *

(iii) * * *

(A) * * *

(*5*) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity), and an EIN in the case of a QI, WP, or WT.

* * * * *

(B) * * *

(*2*) * * * An FFI withholding statement must include either pooled information that indicates the portion of the payment attributable to a class of U.S. persons, each class of recalcitrant account holders identified in § 1.1471–5(g)(2), or a class of nonparticipating FFIs; or payee-specific information, if payee-specific information is provided for purposes of chapter 3 or 61, which indicates both the portion of the payment attributable to each payee and each payee's chapter 4 status. Regardless of whether the FFI withholding statement provides information on a pooled or payee-specific basis, a withholding statement provided by an FFI other than an FFI acting as a QI with respect to the account must identify each intermediary or flow-through entity that receives the payment on behalf of a payee with such entity's chapter 4 status and GIIN, when applicable. * * *

* * * * *

(6) * * * The provisions in this paragraph (c)(6) describe standards generally applicable to withholding certificates on Forms W–8 (or substitute forms), written statements, and documentary evidence furnished to establish the payee's chapter 4 status. * * *

* * * * *

(ii) * * *

(B) * * *

(*2*) A beneficial owner withholding certificate and documentary evidence supporting the individual's claim of foreign status when both are provided together by an individual claiming foreign status, if the withholding agent does not have a current U.S. residence or U.S. mailing address for the payee and does not have one or more current U.S. telephone numbers that are the only telephone numbers the withholding agent has for the payee;

(*3*) A beneficial owner withholding certificate that is provided by an entity described in paragraph (c)(6)(ii)(C)(*2*) of

this section and documentary evidence establishing the entity's foreign status when both are provided together;

* * * * *

(C) * * *

(*2*) * * *

(*vi*) A territory financial institution;

* * * * *

(v) * * *

(B) * * * However, in addition to the name and address of the individual that is the payee or beneficial owner, the form must provide all countries for which the individual is a resident for tax purposes, the individual's city and country of birth, a tax identification number, if any, for each country of residence (or the individual's date of birth if the individual does not have a foreign tax identification number for the country of residence claimed), and must contain a signed and dated certification made under penalties of perjury that the information provided on the form is accurate and will be updated by the individual within 30 days of a change in circumstances that causes the form to become incorrect. * * *

* * * * *

(9) * * *

(iv) * * *

(A) * * * However, an agent that makes a payment pursuant to an agency arrangement (paying agent) is also a withholding agent with respect to the payment unless an exception under § 1.1473–1(d) applies. * * *

* * * * *

(d) * * *

(1) * * * To establish a payee's status as a foreign individual, foreign government, government of a U.S. territory, or international organization, a withholding agent may rely upon a pre-FATCA Form W–8 in lieu of obtaining an updated version of the withholding certificate. * * *

(2) * * *

(i) * * * Consistent with the presumption rules in paragraph (f)(3) of this section, a withholding agent must treat a payee that has provided a valid Form W–9 as a specified U.S. person unless the Form W–9 certifies that the payee is other than a specified U.S. person. * * *

(ii) *Reliance on documentary evidence*. A withholding agent may also treat the payee as a U.S. person that is other than a specified U.S. person if the withholding agent has documentary evidence described in paragraphs (c)(5)(i)(C) and (D) of this section or general documentary evidence (as described in paragraph (c)(5)(ii)(A) of this section) that both establishes that the payee is a U.S. person and establishes (either through the documentation or the application of the rules in § 1.6049–4(c)(1)(ii) or paragraph (f)(3) of this section) that the payee is an exempt recipient. For purposes of the previous sentence, an exempt recipient means with respect to a withholding agent other than a participating FFI or registered deemed-compliant FFI, an exempt recipient under § 1.6049–4(c)(1)(ii) or, with respect to a withholding agent that is a participating FFI or registered deemed-compliant FFI, a U.S. person other than a specified U.S. person as described under § 1.1473–1(c).

(iii) * * * A withholding agent, other than a participating FFI or registered deemed-compliant FFI, may also treat a payee as a U.S. person if it has previously reviewed a Form W–9 or documentary evidence that established that the payee is a U.S. person and established (through the documentation or the application of the rules in § 1.6049–4(c)(1)(ii)) that the payee is an exempt recipient for purposes of chapter 61.

* * * * *

(4) * * *

(i) * * * For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN.

* * * * *

(6) * * *

(i) * * *

(F) The withholding agent does not know or have reason to know that the payee is a member of an expanded affiliated group with any other FFI other than an FFI that is also treated as an owner-documented FFI by the withholding agent or that the FFI has any specified U.S. persons that own an equity interest in the FFI or a debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement described in paragraph (d)(6)(iv) of this section.

(ii) * * * A withholding agent may rely upon the letter described in this paragraph (d)(6)(ii) if it does not know or have reason to know that any of the information contained in the letter is unreliable or incorrect.

(iii) * * * Acceptable documentation for an individual owning an equity interest in the payee or a debt holder described in paragraph (d)(6)(iv) of this section means a valid withholding certificate, valid Form W–9 (including any necessary waiver), or documentary evidence establishing the foreign status of the individual as set forth in paragraph (d)(3)(ii) of this section (regardless of whether the payment is made with respect to an offshore obligation). * * *

* * * * *

(9) * * *

(i) * * *

(A) * * * A withholding agent may treat a payee as a foreign government, government of a U.S. territory, international organization, or foreign central bank of issue if it has a withholding certificate that identifies the payee as such an entity, indicates that the payee is the beneficial owner of the payment, and indicates that the payee is not engaged in commercial financial activities with respect to the payments or accounts identified on the form. * * *

* * * * *

Par. 6. Section 1471–4 is amended by:

1. Revising the seventh sentence of paragraph (b)(1),

2. Revising the first and third sentences of paragraph (b)(2),

3. Revising the fifth sentence of paragraph (b)(3),

4. Revising paragraph (b)(7),

5. Revising the first and third sentences of paragraph (c)(2)(iii)(B),

6. Revising the second sentence of paragraph (c)(2)(iii)(C),

7. Revising the heading and first sentence of paragraph (c)(2)(v),

8. Removing the language "this paragraph (c)(5)(iv)(D)" from paragraph (c)(5)(iv)(D)(*4*) and adding "paragraph (c)(5)(iv)(D)(*3*) of this section" in its place,

9. Revising the second, fourth, and eighth sentences of paragraph (c)(6) *Example 2*,

10. Revising the fourth sentence of paragraph (c)(7),

11. Revising paragraphs (d)(2)(iii)(B) introductory text, (d)(2)(iii)(B)(*4*), (d)(3)(iv)(B), and (d)(3)(iv)(D),

12. Revising the third sentence of paragraph (d)(4)(i),

13. Revising paragraph (d)(5)(iii)(B),

14. Revising the first sentence of paragraph (d)(6)(i),

15. Revising paragraph (d)(7)(ii)(A)(*1*),

16. Revising the first sentence of paragraph (e)(2)(ii),

17. Removing the language "as of February 15, 2012, and" from paragraph (e)(2)(iii),

18. Revising paragraph (e)(2)(iv)(B),

19. Revising the second sentence of paragraph (e)(3)(ii)(B),

20. Revising paragraph (e)(3)(iii)(B), and

21. Revising the first sentence of paragraph (i)(1).

The revisions read as follows:

§ 1.1471–4 FFI agreement.

* * * * *

(b) * * *

(1) * * * See § 1.1471–2 for the exceptions to and special rules for withholding and the exclusion from the definition of withholdable payment and foreign passthru payment that applies to any payment made under a grandfathered obligation or the gross proceeds from the disposition of such an obligation. * * *

(2) * * * Except as otherwise provided under § 1.1471–2 and, with respect to certain preexisting accounts, under paragraph (c) of this section, a participating FFI is required to determine whether withholding applies at the time a payment is made by reliably associating the payment with valid documentation described in paragraph (c) of this section for the payee of the payment. * * * For a payment made to an account held by an entity, except as otherwise provided in § 1.1471–3(a)(3), the payee is the account holder. * * *

(3) * * * See the QI, WP, or WT agreement for the withholding requirements of an FFI that is a QI, WP, or WT for purposes of chapter 4.

* * * * *

(7) *Withholding requirements for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts held at the U.S. branch by account holders that are payees treated as other than exempt recipients under chapter 61 will be treated as satisfying its withholding obligation with respect to such accounts under section 1471(b)(1) and this paragraph (b). See paragraph (d)(2)(iii)(B) of this section for the special reporting requirements applicable to U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons. See paragraphs (c)(2) and (d)(4) of this section for the reporting requirements of U.S. branches of participating FFIs (and reporting Model 1 FFIs) with respect to payments that are chapter 4 reportable amounts.

(c) * * *

(2) * * *

(iii) * * *

(B) * * * For purposes of this section, a change in circumstances (as defined in § 1.1471–3(c)(6)(ii)(E)) includes any change or addition of information to the account holder's account (including the addition, substitution, or other change of an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in § 1.1471–5(b)(4)(iii) or by treating the accounts as consolidated obligations) if such change or addition of information affects the chapter 4 status of the account holder. * * * With respect to a preexisting account that meets a documentation exception described in paragraphs (c)(3)(iii) and (c)(5)(iii) of this section, a change in circumstances also includes a change in account balance or value as of the end of the first subsequent year that causes the account no longer to meet the documentation exception.

(C) * * * With respect to an account held by an entity other than a passive NFFE described in the preceding sentence, following a change in circumstances, the participating FFI must retain a record of the appropriate documentation described in paragraph (c)(3) of this section by the date that is 90 days after the change in circumstances or, if unable to do so, must treat such account as held by a nonparticipating FFI.

* * * * *

(v) *Special rule for U.S. branches of participating FFIs (and reporting Model 1 FFIs) that are treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall apply, in lieu of the due diligence requirements of this paragraph (c), the due diligence requirements of § 1.1471–3 to determine the chapter 4 status of account holders and payees that are entities and shall apply the documentation requirements of chapter 3 or 61 (as applicable) with respect to individual account holders. * * *

* * * * *

(6) * * *

Example 2. * * * The balance in U's depository account on the effective date of CB's FFI agreement is $20,000. * * * The balance in Entity X's account on the effective date of CB's FFI agreement is $130,000, and the balance in Entity Y's account on the effective date of CB's FFI agreement is $110,000. * * * U's depository account qualifies for the § 1.1471–5(a)(4)(i) exception to U.S. account status because it does not exceed the $50,000 threshold, taking into account the aggregation rule described in § 1.1471–5(a)(4)(iii)(A). * * *

(7) * * * The responsible officer must also certify that the participating FFI has completed the account identification procedures and documentation requirements of this paragraph (c) for all other preexisting accounts or, if it has not retained a record of the documentation required under this paragraph (c) with respect to an account, treats such account in accordance with the requirements of this section and § 1.1471–5(g) or § 1.1471–3(f) (as applicable). * * *

(d) * * *

(2) * * *

(iii) * * *

(B) *Special reporting rules for U.S. branches treated as U.S. persons.* A U.S. branch of a participating FFI (and reporting Model 1 FFI) that is treated as a U.S. person shall be treated as having satisfied the reporting requirements described in paragraphs (d)(2)(i) and (d)(2)(ii)(C) of this section if it reports under—

* * * * *

(*4*) Section 1.1474–1(i) with respect to specified U.S. persons identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*) of owner-documented FFIs.

(3) * * *

(iv) * * *

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

* * * * *

(D) The account balance or value of the account held by the owner-documented FFI;

* * * * *

(4) * * *

(i) * * * In the case of an account held by an owner-documented FFI, the address to be reported is the address of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*).

* * * * *

(5) * * *

(iii) * * *

(B) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*); and

* * * * *

(6) * * *

(i) * * * Except as otherwise provided in a Model 2 IGA, a participating FFI, as part of its reporting responsibilities under this paragraph (d), shall report to the IRS for each calendar year the information described for each of the classes of account holders described in paragraphs (d)(6)(i)(A) through (E) of this section. * * *

* * * * *

(7) * * *

(ii) * * *

(A) * * *

(*1*) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

* * * * *

(e) * * *

(2) * * *

* * * * *

(ii) * * * For purposes of this section, a branch is a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a country or is otherwise regulated under the laws of such country as separate from other offices, units, or branches of the FFI. * * *

* * * * *

(iv) * * *

(B) Agree that each such branch will identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of the FFI agreement or for as long as the branch maintains the account or obligation, and report to the IRS with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the branch;

* * * * *

(3) * * *

(ii) * * *

(B) * * * See paragraph (e)(2)(iii)(B) of this section for when an account is considered blocked.

(iii) * * *

(B) Agree as part of such registration to identify its account holders under the due diligence requirements applicable to participating FFIs under paragraph (c) of this section, retain a record of account holder and payee documentation pertaining to those identification requirements for the longer of six years from the effective date of its registration as a limited FFI or for as long as the FFI maintains the account or obligation, and report with respect to accounts that it is required to treat as U.S. accounts to the extent permitted under the relevant laws pertaining to the FFI;

* * * * *

(i) * * *

(1) * * * Except to the extent otherwise provided in a Model 2 IGA, a participating FFI (or branch thereof) that is prohibited by foreign law from reporting the information required under paragraph (d) of this section with respect to a U.S. account must follow the procedures of paragraph (i)(2) of this section to obtain a valid and effective waiver of such law and, if such waiver is not obtained within a reasonable period of time, to close or transfer such account. * * *

* * * * *

Par. 7. Section 1.1471–5 is amended by:

1. Removing the language "(e)(3)(iv)" from paragraphs (b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C) and adding "(b)(3)(iv)" in its place,

2. Revising paragraphs (b)(2)(i)(C) and (b)(2)(v),

3. Revising the first sentence of and adding a new second sentence in paragraph (b)(3)(iv),

4. Revising the third sentence of paragraph (b)(4)(iv),

5. Revising the third, fourth, and fifth sentences of paragraph (e)(4)(v) *Example1*,

6. Revising the second sentence of paragraph (e)(5),

7. Adding the language "and income derived from transactions between members of the expanded affiliated group" to the end of the first parenthetical in paragraph (e)(5)(i)(B)(*1*),

8. Revising paragraphs (e)(5)(iv)(D), (f)(1)(i)(F)(*3*)(*i*), and (f)(1)(i)(F)(*3*)(*iii*),

9. Revising the first sentence of paragraph (f)(2),

10. Revising paragraph (f)(2)(iii)(B),

11. Revising the first sentence of paragraph (f)(3)(ii)(E),

12. Removing the language "§ 1.1471–4(c)(8)" in paragraph (g)(3)(i)(B) and adding "§ 1.1471–4(c)(5)(iv)(D)" in its place,

13. Revising the first sentence of paragraph (g)(3)(ii), and

14. Revising the first sentence of paragraph (g)(3)(iii).

The revisions read as follows:

§ 1.1471–5 Definitions applicable to section 1471.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) *Rollovers*. An account that otherwise satisfies the requirements of paragraph (b)(2)(i)(A) or (B) of this section will not fail to satisfy such requirements solely because such account may receive assets or funds transferred from one or more accounts that meet the requirements of paragraph (b)(2)(i)(A) or (B) of this

section, one or more retirement or pension funds that meet the requirements of § 1.1471–6(f), one or more accounts described in paragraph (b)(2)(vi) of this section, or one or more entities identified as nonreporting financial institutions under the terms of an applicable Model 1 or Model 2 IGA because they are retirement or pension funds.

* * * * *

(v) *Certain annuity contracts*. A non-investment linked, non-transferable, immediate life annuity contract (including a disability annuity) that monetizes a retirement or pension account described in paragraph (b)(2)(i)(A) or (b)(2)(vi) of this section.

* * * * *

(3) * * *

(iv) * * * To determine if debt or equity interests described in paragraph (b)(1)(iii) of this section are regularly traded, the principles of § 1.1472–1(c)(1)(i)(A)(*2*)(*i*) and (*ii*) shall apply with respect to the interests, and the principles of § 1.1472–1(c)(1)(i)(B)(*1*) shall apply for this purpose in the case of an initial public offering of such interests. See § 1.1472–1(c)(1)(i)(C) for the definition of an established securities market. * * *

* * * * *

(4) * * *

* * * * *

(iv) * * * In the case of an FFI determining whether an account meets (or continues to meet) a preexisting account documentation exception described in § 1.1471–4(c)(3)(iii) or (c)(5)(iii), or whether the account is an account described in paragraph (a)(4)(i) of this section, the spot rate must be determined on the date for which the FFI is determining the threshold amount as prescribed in those provisions.

* * * * *

(e) * * *

(4) * * *

(v) * * *

Example 1. * * * Fund Manager hires Investment Advisor, a foreign entity, to provide advice and discretionary management of a portion of the financial assets held by Fund A. Investment Advisor earned more than 50% of its gross income for the last three years from providing similar services. Because Investment Advisor primarily conducts a business of managing financial assets on behalf of clients, Investment Advisor is an investment entity under paragraph (e)(4)(i)(A) of this section and an FFI under paragraph (e)(1)(iii) of this section.

* * * * *

(5) * * * For the treatment of foreign entities described in this paragraph under section 1472, see § 1.1472–1(c)(1)(v).

* * * * *

(iv) * * *

(D) The entity has not agreed to report under § 1.1471–4(d)(2)(ii)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) * * *

(*3*) * * *

(*i*) Is authorized to act on behalf of the FFI (such as a fund manager, trustee, corporate director, or managing partner) to fulfill the requirements of the FFI agreement;

* * * * *

(*iii*) Has registered the FFI with the IRS by the later of January 1, 2016, or the date that the FFI identifies itself as qualifying under this paragraph (f)(1)(i)(F);

* * * * *

(2) * * * A certified deemed-compliant FFI means an FFI described in any of paragraphs (f)(2)(i) through (iv) of this section that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation described in § 1.1471–3(d)(5) applicable to the relevant deemed-compliant category. * * *

* * * * *

(iii) * * *

(B) A participating FFI, reporting Model 1 FFI, or U.S. financial institution agrees to fulfill all due diligence, withholding, and reporting responsibilities that the FFI would have assumed if it were a participating FFI.

* * * * *

(3) * * *

(ii) * * *

(E) The designated withholding agent agrees to report to the IRS (or, in the case of a reporting Model 1 FFI, to the relevant foreign government or agency thereof) all of the information described in § 1.1471–4(d) or § 1.1474–1(i) (as appropriate) with respect to any specified U.S. persons that are identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*). * * *

* * * * *

(g) * * *

(3) * * *

(ii) * * * An account holder of an account other than a preexisting account and that is described in paragraph (g)(2) of this section will be treated as a recalcitrant account holder beginning on the date that is the earlier of 90 days after the account is opened by the participating FFI or the date that a withholdable payment that is subject to withholding under § 1.1441–2(a) is made to the account. * * *

(iii) * * * An account holder holding an account that is described in paragraph (g)(2) of this section following a change in circumstances (other than a change in account balance or value in a subsequent year that causes an individual account to be identified as a high-value account) will be treated as a recalcitrant account holder beginning on the date that is 90 days after the change in circumstances. * * *

* * * * *

Par. 8. Section 1471–6 is amended by revising paragraph (h)(2)(ii) to read as follows:

§ 1.1471–6 Payments beneficially owned by exempt beneficial owners.

* * * * *

(h) * * *

(2) * * *

(ii) The entity has no outstanding debt that would be a financial account under § 1.1471–5(b)(1)(iii)(C); and

* * * * *

Par. 9. Section 1.1472–1 is amended by revising the fourth sentence of and adding a new fifth sentence to paragraph (a), and revising paragraphs (b)(1) introductory text, (b)(2), and (c)(2)(i) to read as follows:

§ 1.1472–1 Withholding on NFFEs.

(a) * * * See § 1.1473–1(a)(4)(vi), however, for rules excepting from the definition of withholdable payment certain payments of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation and § 1.1471–2(b) for rules excepting from the definition of withholdable payment a grandfathered obligation. See also § 1.1471–2(a)(2)(ii), (iv), (v), and (vi) for special rules of withholding that apply for purposes of this section and § 1.1471–2(a)(5) for withholding requirements if the source or character of a payment is unknown.

(b) * * *

(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section (providing transitional relief), paragraph (c) of this section (providing exceptions for payments to an excepted NFFE, a WP or WT, or an exempt beneficial owner), § 1.1471–2(a)(4)(i) (providing an exception to withholding if the withholding agent lacks control, custody, or knowledge), § 1.1471–2(a)(4)(vii) (providing an exception to withholding for payments made to an account held with or equity interests traded through a clearing organization with FATCA-compliant membership), or § 1.1471–2(a)(4)(viii) (providing an exception to withholding for payments to certain excepted accounts), a withholding agent must withhold 30 percent of any withholdable payment made after December 31, 2013, to a payee that is an NFFE unless—

* * * * *

(2) *Transitional relief.* For any withholdable payment made prior to January 1, 2016, with respect to a preexisting obligation to a payee that is not a prima facie FFI and for which a withholding agent does not have documentation indicating the payee's status as a passive NFFE when the NFFE has failed to provide the owner certification as required under § 1.1471–3(d)(12)(iii), the withholding agent is not required to withhold under this section or report under § 1.1474–1(i)(2) (describing the reporting obligations of withholding agents with respect to NFFEs).

(c) * * *

(2) * * *

(i) Treat the payee as an NFFE that is a WP or WT in accordance with § 1.1441–5(c)(2) (for a WP) or § 1.1441–5(e)(5)(v) (for a WT); or

* * * * *

Par. 10. Section 1.1473–1 is amended by:

1. Removing the second sentence of paragraph (a)(3)(iii)(A),

2. Revising the second sentence of paragraph (a)(4)(iii),

3. Revising the first sentence of paragraph (a)(4)(vi),

4. Revising the heading of paragraph (a)(5)(vii),

5. Removing the language "beneficiary" from paragraph (b)(3)(ii)(A) and adding "person" in its place, and

6. Removing the language "trust; or" from paragraph (b)(3)(ii)(B) and adding "trust as of the end of the prior calendar year; or" in its place.

The revisions read as follows:

§ 1.1473–1 Section 1473 definitions.

(a) * * *

(4) * * *

(iii) * * * Notwithstanding the preceding sentence, excluded nonfinancial payments do not include: payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in § 1.861–2(a)(7)) other than interest described in the preceding sentence; gross proceeds other than gross proceeds described in paragraph (a)(4)(iv) of this section; investment advisory fees; custodial fees; and bank or brokerage fees.

* * * * *

(vi) * * * A payment of U.S. source FDAP income made prior to January 1, 2017, with respect to an offshore obligation if such payment is made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. * * *

(5) * * *

(vii) *Special rules for determining when gross proceeds are treated as paid to a partner, owner, or beneficiary of a flow-through entity.* * * *

* * * * *

Par. 11. Section 1.1474–1 is amended by:

1. Revising paragraph (a)(2),

2. Revising the first sentence of paragraph (b)(1),

3. Removing the language "Except as otherwise provided under an FFI agreement, a" in the first sentence of paragraph (c)(2) and adding "A" in its place,

4. Removing the language "(including its U.S. branch that is not treated as a U.S. person)" from paragraphs (d)(1)(ii)(A)(*1*)(*iii*), (d)(1)(ii)(B)(*1*)(*i*), and (d)(1)(ii)(B)(*1*)(*iii*) and adding "(including a U.S. branch of a participating FFI that is not treated as a U.S. person)" in its place,

5. Revising the second and sixth sentences of paragraph (d)(4)(i)(B),

6. Revising paragraph (d)(4)(i)(C)(*1*),

7. Removing the language "If the U.S. branch is not treated" from paragraphs (d)(4)(i)(C)(*2*) and (d)(4)(i)(C)(*3*) and adding "If the U.S. branch of a participating FFI is not treated" in its place,

8. Removing the language "its reporting pools as described in paragraph (d)(4)(i)(B)" from paragraph (d)(4)(i)(C)(*2*) and adding "its reporting pools referenced in paragraph (d)(4)(i)(B)" in its place,

9. Revising the first sentence of paragraph (d)(4)(ii)(C),

10. Revising the first, second, and fifth sentences of paragraph (d)(4)(iii)(A),

11. Revising the first sentence of paragraph (d)(4)(iii)(B),

12. Revising paragraph (d)(4)(iii)(C),

13. Revising the first sentence of paragraph (i)(1), and

14. Revising paragraphs (i)(1)(ii), (i)(1)(iii), and (i)(2)(iii).

The revisions read as follows:

§ 1.1474–1 Liability for withheld tax and withholding agent reporting.

(a) * * *

(2) *Withholding agent liability.* A withholding agent that is required to withhold with respect to a payment under § 1.1471–2(a), 1.1471–4(b) (in the case of a participating FFI), or 1.1472–1(b) but fails either to withhold or to deposit any tax withheld as required under paragraph (b) of this section is liable for the amount of tax not withheld and deposited.

* * * * *

(b) * * *

(1) * * * Except as otherwise provided in this paragraph (b), every withholding agent who withholds tax pursuant to chapter 4 shall deposit such tax within the time provided in § 1.6302–2(a) by electronic funds transfer as provided under § 31.6302–1(h) of this chapter. * * *

* * * * *

(d) * * *

(4) * * *

(i) * * *

(B) * * * With respect to a payment of U.S. source FDAP income made to a participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT or QI that elects to be withheld upon under section 1471(b)(3) and from whom the withholding agent receives pooled information regarding such FFI's account holders and payees, a U.S. withholding agent must complete a separate Form 1042–S issued to the participating FFI, registered deemed-compliant FFI, or QI (as applicable) as the recipient with respect to each pool provided in an FFI withholding statement described in § 1.1471–3(c)(3)(iii)(B)(*2*). * * * See paragraph (d)(4)(ii)(A) of this section for reporting rules applicable if participating FFIs or deemed-compliant FFIs provide specific payee information for reporting to the recipient of the payment for Form 1042–S reporting purposes. * * *

(C) * * *

(*1*) If the U.S. branch is treated as a U.S. person, if the withholding agent treats amounts paid as effectively connected with the conduct of the branch's trade or business in the United States, or if the U.S. branch is the beneficial owner of the payment, the withholding agent must file Form 1042–S reporting the U.S. branch as the recipient;

* * * * *

(ii) * * *

(C) * * * If a U.S. withholding agent makes a payment to a disregarded entity and receives a valid withholding certificate or other documentary evidence from the person that is the single owner of such disregarded entity, the withholding agent must file a Form 1042–S treating the single owner as the recipient. * * *

(iii) * * *

(A) * * * Except as otherwise provided in paragraphs (d)(4)(iii)(B) (relating to NQIs, NWPs, NWTs, and FFIs electing under section 1471(b)(3)) and (d)(4)(iii)(C) of this section (relating to transitional payee-specific reporting for payments to nonparticipating FFIs), a participating FFI or deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) that makes a payment that is a chapter 4 reportable amount to a recalcitrant account holder or nonparticipating FFI, must complete a Form 1042–S to report such payments. A participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may report in pools consisting of its recalcitrant account holders and payees that are nonparticipating FFIs. * * * Alternatively, a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) may (and a certified deemed-compliant FFI is required to) perform payee-specific reporting to report a chapter 4 reportable amount made to a recalcitrant account holder or a nonparticipating FFI when withholding was applied (or should have applied) to the payment.

(B) * * * Except as otherwise provided in paragraph (d)(4)(iii)(C) of this section, a participating FFI or deemed-compliant FFI that is an NQI, NWP, NWT (including a U.S. branch of a participating FFI that is not treated as a U.S. person), or an FFI that has made an election under section 1471(b)(3) and has provided sufficient information to its withholding agent to withhold and report the payment is not required to report the payment on Form 1042–S as described in paragraph (d)(4)(iii)(A) of this section if the payment is made to a nonparticipating FFI or recalcitrant account holder and its withholding agent has withheld the correct amount of tax on such payment and correctly reported the payment on a Form 1042–S. * * *

(C) *Reporting by participating FFIs and registered deemed-compliant FFIs (including QIs, WPs, and WTs) for certain payments made to nonparticipating FFIs (transitional).* Except as otherwise provided in the instructions to Form 1042–S or under a Model 2 IGA, if a participating FFI or registered deemed-compliant FFI (including a QI, WP, WT, or U.S. branch of a participating FFI that is not treated as a U.S. person) makes a payment to a nonparticipating FFI of a foreign reportable amount as defined in paragraph (d)(2)(i)(D) of this section, the FFI must report on Form 1042–S on a payee-specific basis the aggregate amount of all foreign reportable amounts paid by the FFI to the nonparticipating FFI for each of the calendar years 2015 and 2016.

* * * * *

(i) * * *

(1) * * * Beginning in calendar year 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under § 1.1471–4(d)) makes during a calendar year a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under § 1.1471–3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person identified under § 1.1471–3(d)(6)(iv)(*A*)(*1*) or (*2*). * * *

* * * * *

(ii) The name, address, and TIN of each specified U.S. person identified in § 1.1471–3(d)(6)(iv)(A)(*1*) and (*2*);

(iii) The total of all withholdable payments made to the owner-documented FFI;

* * * * *

(2) * * *

(iii) The total of all withholdable payments made to the NFFE; and

* * * * *

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(Filed by the Office of the Federal Register on September 9, 2013, 8:45 a.m., and published in the issue of the Federal Register for September 10, 2013, 78 F.R. 55202)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

EMPLOYEE PLANS

EMPLOYMENT TAX

ESTATE TAX

EXCISE TAX

EXEMPT ORGANIZATIONS

Internal Revenue Service
Washington, DC 20224

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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