INTERNAL REVENUE BULLETIN

IRS

Bulletin No. 2016–30
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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

REG–109086–15, page 171.

These proposed regulations (REG–109086–15) primarily address issues under section 36B of the Internal Revenue Code relating to the health insurance premium tax credit. The proposed regulations amend the computation of the premium tax credit for families with children who enroll in health coverage through Exchanges offering qualified health plans that do not provide pediatric dental benefits, and address information reporting by Exchanges and other issues. These proposed regulations also address the effect of employer opt-out arrangements on the affordability of employer-provided health coverage for purposes of the premium tax credit and the section 5000A individual shared responsibility provision.

Rev. Proc. 2016–39, page 164.

This revenue procedure provides the procedures by which a taxpayer may obtain the automatic consent of the Commissioner to change to or from the net asset value method of accounting provided in section 1.446–7 for gain or loss on shares in a money market fund.

T.D. 9774, page 151.

These final regulations provide a permissible and simplified method of accounting for gains and losses on shares in money market funds. The final regulations also clarify that an exception to certain information reporting requirements applies to shares in all money market funds.

EXEMPT ORGANIZATIONS

REG–101689–16, page 170.

Final and temporary regulations published in the Rules and Regs section of this issue of the Internal Revenue Bulletin prescribe the manner in which an organization must notify the Internal Revenue Service of intent to operate under section 501(c)(4) of the Internal Revenue Code (Code), as required by section 506, added to the Code by the Protecting Americans from Tax Hikes Act of 2015. The text of the temporary regulations also serves as the text of these proposed regulations.
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Rev. Proc. 2016–41, page 165.

Rev. Proc. 2016–41 sets forth the procedure for an organization to notify the Internal Revenue Service, consistent with section 506 of the Internal Revenue Code (Code), that it is operating as an organization described in section 501(c)(4) of the Code.

T.D. 9775, page 159.

The regulations prescribe the manner in which an organization must notify the Internal Revenue Service of intent to operate under section 501(c)(4) of the Internal Revenue Code (Code), as required by section 506, added to the Code by the Protecting Americans from Tax Hikes Act of 2015. Specifically, the regulations provide that the notification must be submitted on Form 8976, "Notice of Intent to Operate Under Section 501(c)(4)," or its successor.

ADMINISTRATIVE

Announcement 2016–24, page 170.

This document contains corrections to Revenue Procedure 2016–34, as published on Monday, June 27, 2016 (I.R.B. 2016–26, 1072 In particular, this announcement corrects one administrative item.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and 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

26 CFR 1.446–7: Net asset value method for certain money market funds; 26 CFR 1.6045–1: Returns of information of brokers and barter exchanges

T.D. 9774

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Method of Accounting for Gains and Losses on Shares in Money Market Funds; Broker Returns with Respect to Sales of Shares in Money Market Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide a simplified method of accounting for gains and losses on shares in money market funds (MMFs). The final regulations also provide guidance regarding information reporting requirements for shares in MMFs. The final regulations respond to Securities and Exchange Commission (SEC) rules that change the amount for which certain MMF shares are distributed, redeemed, and repurchased. The final regulations affect MMFs and their shareholders.

DATES: *Effective Date*: These regulations are effective on July 8, 2016.

Applicability Dates: For the dates of applicability, see §§ 1.446–7(e) and 1.6045–1(c)(3)(vi)(B).

FOR FURTHER INFORMATION CONTACT: Grace Cho at (202) 317-6895 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 (Income Tax Regulations) under sections 446 and 6045 of the Internal Revenue Code (Code). The regulations provide a method of accounting for gain or loss on shares in MMFs and are intended to simplify tax compliance for holders of shares in MMFs affected by SEC regulations that impose liquidity fees or change how certain MMF shares are priced. *See* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 33–9616, Investment Advisers Act Release No. IA–3879, Investment Company Act Release No. IC–31166, Financial Reporting Codification No. FR–84 (August 14, 2014) (SEC MMF Reform Rules). The regulations also provide guidance regarding information reporting requirements for shares in MMFs.

An MMF is a type of investment company registered under the Investment Company Act of 1940 (1940 Act) and regulated as an MMF under Rule 2a–7 under the 1940 Act (17 CFR 270.2a–7). MMFs have historically sought to keep stable the prices at which their shares are distributed, redeemed, and repurchased. The securities that Rule 2a–7 permits an MMF to hold generally result in no more than minimal fluctuations in the MMF's net asset value per share (NAV).[1]

MMFs meeting the requirements of Rule 2a–7 have been permitted to value their assets based on the assets' cost, with certain adjustments (amortized cost method), and to price their shares by rounding the resulting NAV to the nearest 1 percent (penny rounding). These methods have enabled MMFs to maintain constant share prices in almost all circumstances. Because most MMFs target a $1.00 share price, an MMF that fails to maintain a constant share price is said to "break the buck."

The SEC MMF Reform Rules generally bar the use of the amortized cost method and penny rounding for certain MMFs (floating-NAV MMFs) and require a floating-NAV MMF to value its assets using market factors and to round its price per share to the nearest basis point (the fourth decimal place, in the case of a fund with a $1.0000 share price). Certain government-security-focused MMFs (government MMFs) and certain MMFs the beneficial owners of which are limited to natural persons (retail MMFs) may continue to use the amortized cost method and penny rounding. (A government MMF or retail MMF that continues to use the amortized cost method and penny rounding is called a stable-NAV MMF.)

The SEC MMF Reform Rules also establish circumstances under which an MMF is permitted or required to impose a liquidity fee or is permitted to impose a redemption gate. When an MMF has a liquidity fee in effect, the liquidity fee reduces the proceeds received by all redeeming shareholders. A redemption gate is the temporary suspension of redemptions of shares in the MMF. Liquidity fees and redemption gates may be imposed by both floating-NAV MMFs and stable-NAV MMFs. An MMF other than a government MMF is required to impose a liquidity fee in certain circumstances, unless the fund's board of directors determines that such a fee is not in the best interests of the fund.

The Treasury Department and the IRS published a notice of proposed rulemaking and notice of public hearing (REG–107012–14) in the **Federal Register** on July 28, 2014 (79 FR 43694). The proposed regulations described a simplified method of accounting for gain or loss on shares in a floating-NAV MMF (the net asset value method, or NAV method). Under the NAV method, a taxpayer's gain or loss on shares in an MMF is based on the change in the aggregate value of the taxpayer's shares during a computation period selected by the taxpayer and on the net amount of the purchases and redemptions during the computation period. The proposed regulations also provided guidance regarding information reporting requirements for shares in MMFs.

A request for a public hearing was received, and the hearing was held on November 19, 2014. The IRS received written comments responding to the proposed

[1]Note that the term "NAV" is used throughout this document to indicate the per-share amount that may be described elsewhere as "NAV per share."

regulations regarding the method of accounting for gains and losses on shares in MMFs. The written comments are available for public inspection at http://www.regulations.gov or upon request. After considering the comments, the Treasury Department and the IRS adopt the proposed regulations regarding the method of accounting as final regulations with the modifications described in this Treasury decision. No comments were received on the portion of the proposed regulations that would revise § 1.6045–1(c)(3)(vi) to clarify that the exceptions under sections 6045, 6045A, and 6045B continue to apply to all MMFs, including floating-NAV MMFs. The Treasury Department and the IRS adopt the proposed regulations revising § 1.6045–1(c)(3)(vi) as final regulations without substantive change.

Summary of Comments and Explanation of Revisions

1. *Application of the NAV Method to Stable-NAV MMFs*

Under the proposed regulations, the NAV method would apply only to floating-NAV MMF shares. In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments regarding whether the NAV method should be a permissible method of accounting for stable-NAV MMF shares.

Although stable-NAV MMFs seek to maintain constant share prices, there are circumstances in which shares in a stable-NAV MMF will give rise to gain or loss. On rare occasions, shares in a stable-NAV MMF may be redeemed at a price other than the target price, such as when the MMF breaks the buck. In addition, a stable-NAV MMF may impose liquidity fees, which will generally result in the realization of a loss by a redeeming shareholder. If the acquisition of other shares causes such a redemption to be a wash sale under section 1091, section 1091(d) will generally cause the basis of the acquired shares to exceed the cost of the shares. Because the price of a stable-NAV MMF share rarely changes, any disposition of those acquired, higher-basis shares will likely result in another loss, which also may be deferred by the wash sale rules. Therefore, even if a liquidity fee is in effect for only one redemption by a shareholder and the share price of the MMF remains constant, that fee may cause a difference between the basis and value of the shareholder's MMF shares that persists indefinitely. Determining gain or loss and basis on each transaction in a stable-NAV MMF, taking into account the wash sale rules, would impose significant burdens on shareholders under these circumstances. To eliminate those burdens, a shareholder might need to terminate the shareholder's entire interest in the affected MMF (and not initiate a new position until after the end of the period described in section 1091(a)).

Commenters recommended that the NAV method be applicable not only to shares in floating-NAV MMFs but also to shares in stable-NAV MMFs. The commenters added that many shareholders of stable-NAV MMFs may be retail shareholders (generally, individuals) who are likely to rely upon the cost basis reporting provided by funds or brokers for their other mutual funds. Those individuals are unlikely to have the systems necessary to record gains and losses and to track wash sales and the resulting basis adjustments.

The NAV method would reduce the complexity, and any tax-based motivation to terminate investments in MMFs, that would result from the imposition of a liquidity fee by a stable-NAV MMF. Under the NAV method, any loss that resulted from the imposition of a liquidity fee by an MMF would be determined for a shareholder's entire interest in the MMF (or in an account) for the appropriate taxable year (or computation period) rather than for a single transaction. Therefore, the wash sale rules would not defer the loss. The NAV method also requires fewer and simpler computations than traditional accounting, even if there are no wash sales. For the years after an MMF breaks the buck or imposes a liquidity fee, the NAV method simplifies recordkeeping, because the gain or loss for each year is based on changes in the NAV during that year. Therefore, the final regulations permit taxpayers to apply the NAV method to shares in stable-NAV MMFs.

2. *Consistency Requirement*

The proposed regulations would provide that if a taxpayer applies the NAV method to shares in any MMF for a taxable year, the taxpayer must apply the NAV method to its shares in all MMFs for which that method is permissible.

Commenters requested that the final regulations permit taxpayers to apply different methods to shares in different MMFs or to shares in a single MMF held in different accounts. Commenters said that some taxpayers may receive sufficient information about their shares in certain MMFs to compute gain or loss realized on each transaction and that those taxpayers should be permitted to compute gain or loss realized on each transaction for those MMFs.

Commenters also noted that taxpayers may hold shares in a single MMF through different kinds of accounts (for example, an account with a broker and an account with the MMF itself) and may receive different information for the different accounts. The commenters recommended that, because of that possibility, taxpayers should be permitted to use different accounting methods for shares held in different accounts. Commenters also noted that many MMF shareholders will be large institutional investors, which might hold shares in the same MMF through separate accounts controlled by different divisions.

In response to these comments, the final regulations permit MMF shareholders to use different methods of accounting for shares in different MMFs or for shares in a single MMF held in different accounts.

3. *Choosing NAV Method Computation Periods for RIC Excise Tax Purposes*

Under the NAV method, computation periods are the periods that a taxpayer selects for computing gain and loss for an MMF. The proposed regulations would provide that computation periods may be the taxpayer's taxable year or a shorter period, provided that (i) computation periods are of approximately equal duration, (ii) every day during the taxable year falls within one, and only one, computation period, and (iii) each computation period contains days from only one taxable year.

Most regulated investment companies (RICs) must pay an excise tax under section 4982 if they do not make the required distribution described in section 4982(b) for a calendar year. The required distribution is generally 98 percent of the RIC's ordinary income for the calendar year, plus 98.2 percent of the RIC's capital gain net income for the one-year period ending on October 31 of the calendar year. A commenter requested clarification that a RIC that holds MMF shares may use the NAV method for excise tax computations. That commenter also requested that the Treasury Department and the IRS confirm that a RIC that uses the NAV method is permitted to use the one-year period from November 1 to October 31 as its computation period for excise tax purposes. The commenter explained that RICs generally account for items that are marked to market using two different one-year periods for income tax and excise tax purposes. The commenter explained that, under section 4982(e)(2)(A), the term "capital gain net income" when used in section 4982 is determined by treating the one-year period ending on October 31 of any calendar year as the company's taxable year.

The Treasury Department and the IRS agree that the NAV method should be applicable for purposes of the computations required by section 4982 and that the taxable year for purposes of those computations should be the relevant period under section 4982(e). The final regulations adopt this change.

The final regulations, however, require a RIC to be consistent in applying the NAV method to MMF shares for income tax and excise tax purposes. For each MMF in each account, the final regulations generally require a RIC to use the NAV method either for both income tax and excise tax computations or for neither computation. The final regulations also clarify how a RIC may change to or from the NAV method.

The final regulations require a RIC to use the same computation periods for purposes of both excise tax and income tax computations. Therefore, under the final regulations, a RIC using the NAV method for its shares in an MMF generally treats the one-year period for which gain or loss from the MMF would be included in the amount determined under section 4982(e)(2) or (e)(6) (the section 4982 period) like a taxable year in applying the NAV method to determine the RIC's required distribution under section 4982(b).[2] The RIC, however, may not use the section 4982 period as a computation period for excise tax purposes if the section 4982 period contains days from more than one income tax year.[3] Instead, in this situation, the RIC must divide the section 4982 period into at least two computation periods so that each computation period contains days from only one income tax year. Similarly, the RIC may not use its full income tax year as a computation period for income tax purposes if the year contains days from more than one section 4982 period. These consistency requirements simplify and clarify the interaction of sections 852(b) and 4982.

The final regulations eliminate the requirement that computation periods be of approximately equal duration. The Treasury Department and the IRS do not believe that this requirement is essential to the operation of the NAV method, and eliminating the requirement will allow taxpayers more flexibility. In particular, permitting computation periods of unequal duration will reduce the burden on RICs of complying with the requirement of consistent computation periods for income and excise tax purposes. For example, a RIC that applies the NAV method to its shares in an MMF (held as a capital asset) and that has an income tax year ending on January 31 may meet the consistency requirements with two computation periods of unequal duration—one ending on January 31 and the other on October 31. The RIC also may use additional computation periods ending on other dates, such as December 31.

4. *Clarification of Certain Amounts*

A. *Fair market value of MMF shares*

Under the proposed regulations, gain and loss under the NAV method would be determined by reference to the fair market value of MMF shares. Commenters requested that the Treasury Department and the IRS clarify that the fair market value of an MMF share for this purpose is the NAV reported by the MMF. One commenter suggested that the fair market value of a share in an MMF should be the published NAV as of the end of the relevant day (or the next trading day, if the day in question is not a trading day). A second commenter suggested that, because MMFs may strike several NAVs throughout the day, the fair market value should be the next published NAV after a transaction.

In response to these comments, the final regulations clarify that the fair market value of a share in an MMF at the time of a transaction is presumed to be the published NAV (or other published amount for which the MMF would redeem the share, determined without regard to any liquidity fees (other redemption amount)). For purposes of computing the ending value for a computation period, the presumption applies to the last published NAV (or other redemption amount) in that computation period. For purposes of determining the fair market value of MMF shares surrendered or received in a redemption or exchange, the presumption generally applies to the NAV (or other redemption amount) used to determine the consideration received in the transaction, or if the consideration is not based on a published NAV (or other redemption amount), the first NAV (or other redemption amount) published for the MMF shares after the transaction. If no NAV (or other redemption amount) is published, or if facts and circumstances indicate that the NAV (or other redemption amount) does not represent the fair market value of a share in the MMF, the fair market value is determined on the basis of all the facts and circumstances.

B. *Aggregate amount received*

Under the proposed regulations, a taxpayer's net investment in an MMF for a computation period would equal the ag-

[2]If a RIC has not made an election under section 4982(e)(4), the RIC's section 4982 period is the one-year period ending on October 31, because that is the period for determining capital gain net income under section 4982(e)(2) and (because the final regulations concerning the NAV method constitute a specified mark to market provision for purposes of section 4982(e)(6)(B)) ordinary income under 4982(e)(6)(A).

[3]The section 4982 period will contain days from only one income tax year if (i) the RIC has in effect a valid election under section 4982(e)(4) or (ii) the RIC's income tax year ends on October 31.

gregate cost of shares in the MMF purchased during the computation period, minus the aggregate amount received during the computation period in redemption of shares in the MMF, subject to certain adjustments. A commenter suggested that the final regulations clarify that the aggregate amount received is based on: (i) if cash is received, the cash proceeds, (ii) if shares in another MMF are received, the published NAV of the shares received as of the end of the day on which the redemption or exchange occurs (or the next trading day, if the day in question is not a trading day), or (iii) if other non-cash property is received, the NAV of the redeemed or exchanged shares as of the end of the day on which the redemption or exchange occurs (or the next trading day if the day in question is not a trading day or, if the fund will not publish a NAV on or after the end of the day on which the redemption or exchange occurs, the fund's last published NAV).

The final regulations include provisions for determining the amount received for purposes of computing a taxpayer's net investment in an MMF for a computation period. If the consideration received in exchange for an MMF share consists only of cash, other MMF shares, or both, the amount received is the amount of any cash plus the fair market value of any MMF shares received. If the consideration includes any property other than cash or MMF shares, the amount received is determined by reference to the fair market value of the surrendered MMF shares.

The same commenter recommended that a phrase in § 1.446–7(b)(5)(i)(B) of the proposed regulations, "if the transaction is one in which gain or loss would be recognized," be clarified to indicate that it refers to recognition of gain or loss other than pursuant to the NAV method. The final regulations make this clarification.

C. *Substituted basis*

Under the proposed regulations, a taxpayer's net investment would increase if, during the computation period, the taxpayer acquired any shares in an MMF other than by purchase. In such cases, the net investment increases by the adjusted basis (for purposes of determining loss) of each such share immediately after its acquisition. The proposed regulations would also provide that if that adjusted basis would be determined by reference to the basis of one or more shares in an MMF that are being disposed of by the taxpayer in a transaction in which gain or loss is not recognized (exchanged basis), then the basis of each such disposed share is treated as being the fair market value of that share at the time of its disposition. A commenter noted that the proposed regulations do not address a situation in which the shareholder receives a transferred basis in MMF shares acquired from another person. The commenter suggested that, in that situation, if the person from whom the shareholder acquired the shares used the NAV method, then the adjusted basis of the acquired shares should be treated as the published NAV applicable to the acquisition date.

The final regulations clarify the effect on net investment of a share acquired from another person with a transferred basis. Similar to the commenter's suggestion, the final regulations provide that, if a shareholder receives a transferred basis in one or more acquired MMF shares and the person from whom the shareholder acquired the shares used the NAV method, then the adjusted basis of the acquired shares will be their fair market value at the time of the acquisition, which value is presumed to be the next NAV (or other redemption amount) published by the MMF.

5. *MMF Accounts with Shares of Mixed Character*

The proposed regulations would provide that if a taxpayer uses the NAV method for shares in an MMF and each of those shares otherwise would give rise to capital gain or loss if sold or exchanged in a computation period, then the gain or loss from the shares in the MMF is treated as capital gain or loss under the NAV method. Likewise, if each of the shares otherwise would give rise to ordinary gain or loss if sold or exchanged in a computation period, then the gain or loss is treated as ordinary gain or loss. If, however, the sale of all of the shares in the MMF would give rise to a combination of ordinary gain or loss and capital gain or loss if sold or exchanged in a computation period, then all gain or loss from the shares in the MMF is treated as capital gain or loss.

A commenter noted that the proposed regulations do not explain why all gain or loss should be treated as capital in the case of an account containing MMF shares of mixed character. The commenter recommended that the character of gain or loss with respect to a mixed character account be bifurcated based on the portion of the shares that would generate gain or loss of each character.

The Treasury Department and the IRS believe that it is rare for a shareholder to hold shares of a single MMF the disposition of which would produce a mix of ordinary income and capital gain. Under that circumstance, a taxpayer may use different accounts to preserve the character of the shares that would produce ordinary income and capital gain. The purpose of the NAV method is to provide an alternative to traditional accounting for taxpayers seeking simplicity. The rationale for offering a method solely for MMFs is that the value of MMFs fluctuates so little that simplicity is more important than tracking each individual gain or loss. A rule that bifurcates gain or loss based on the value of the shares in a single account, when those values may change during a computation period, would make the NAV method more complex. That additional complexity is not warranted in light of the rarity of the circumstance the proposed bifurcation would address and the ability of shareholders to prevent the treatment of all gain or loss as capital by using separate accounts. Therefore, the final regulations retain the simplifying rule for mixed-character accounts.

6. *Other Requests and Comments*

A. *Wash sale rules exemption for stable-NAV MMFs*

Concurrently with the release of the proposed regulations, the Treasury Department and the IRS released Rev. Proc. 2014–45 (2014–34 IRB 388), which provides that the wash sale rules in section 1091 will not be applied to redemptions of shares in floating-NAV MMFs. Commenters requested that the wash sale exemption, which is limited to floating-

NAV MMFs, be extended to stable-NAV MMFs that impose liquidity fees.

The final regulations permit shareholders of stable-NAV MMFs to use the NAV method. A shareholder who uses the NAV method would not require an exemption from the wash sale rules because under the NAV method, net gain or loss is determined for each computation period, and no gain or loss is determined for any particular redemption of a taxpayer's shares in an MMF. Without a determination of loss for a particular redemption, that redemption does not implicate the wash sale rules. Because taxpayers may use the NAV method to prevent wash sales, the Treasury Department and IRS are not extending the exemption in Rev. Proc. 2014–45 to stable-NAV MMFs.

B. *Other requests*

A commenter requested that the Treasury Department and the IRS issue guidance regarding the tax treatment of an MMF's receipt of financial support from an investment adviser to raise the NAV of the MMF (determined without the amortized cost method or penny rounding) to $1.0000. In addition, the commenter requested guidance regarding the diversification requirements of section 817(h) for a segregated asset account that qualifies as, or invests in, a government MMF. On May 5, 2016, the Treasury Department and the IRS released guidance related to both of these requests. *See* Rev. Proc. 2016–31 (2016–21 IRB 988); Notice 2016–32 (2016–21 IRB 878).

The commenter also requested (and later withdrew its request) that the Treasury Department and the IRS issue guidance providing tax-free treatment for certain divisions of MMFs into retail and institutional MMFs. The Treasury Department and the IRS have determined that this guidance does not appear essential to an orderly separation of different types of shareholders into different MMFs.

The commenter also requested that the Treasury Department and the IRS issue guidance setting forth the proper tax treatment by an MMF of liquidity fees that the MMF imposes. In addition, the commenter requested guidance providing that, if an MMF imposes liquidity fees and subsequently distributes to shareholders amounts that correspond to amounts that the MMF retained as liquidity fees, the MMF will be deemed to have sufficient earnings and profits to treat the distribution as a dividend. These requests do not relate directly to the NAV method or to the information reporting provision in the proposed regulations and so are not addressed in these final regulations. The Treasury Department and the IRS may consider guidance on these questions in the future.

7. *Accounting Method Changes*

As under the proposed regulations, a taxpayer may adopt the NAV method for shares in a floating-NAV MMF by use of the method in the Federal income tax return for the first taxable year in which both (1) the taxpayer holds shares in that MMF and (2) that MMF is a floating-NAV MMF.

The final regulations provide that a taxpayer seeking to change to or from the NAV method must secure the consent of the Commissioner in accordance with § 1.446–1(e). Simultaneously with the publication of these regulations, the Treasury Department and the IRS are issuing Rev. Proc. 2016–39 (2016–30 IRB 164), which provides the procedures by which a taxpayer may obtain automatic consent to change to or from the NAV method for shares in an MMF.

In certain circumstances, Rev. Proc. 2016–39 permits taxpayers to change to the NAV method on a federal tax return without filing a Form 3115, "Application for Change in Accounting Method." This simplified procedure applies to a taxpayer that holds shares in a stable-NAV MMF and wants to change to the NAV method for a taxable year if (1) the taxpayer has not used the NAV method for shares in the MMF for any taxable year prior to the year of change, and (2) prior to the beginning of the year of change, either (a) the taxpayer's basis in each share of the MMF has been at all times equal to the MMF's target share price, or (b) the taxpayer has not realized any gain or loss with respect to shares in the MMF.

For certain other changes, Rev. Proc. 2016–39 provides automatic consent procedures that require a short Form 3115. For example, these automatic consent procedures apply to a taxpayer that (1) has adopted a realization method for shares in a floating-NAV MMF and wants to change to the NAV method for shares in that MMF, or (2) has adopted the NAV method for shares in a floating-NAV MMF and wants to change to a permissible realization method for shares in that MMF.

Effective/Applicability Dates

The final regulations concerning the NAV method apply to taxable years ending on or after July 8, 2016. For taxable years ending on or after July 28, 2014, and beginning before July 8, 2016, however, shareholders of MMFs may rely either on the rules concerning the NAV method in the proposed regulations or on the final regulations.

The final regulations concerning information reporting apply to sales of shares in calendar years beginning on or after July 8, 2016. Taxpayers and brokers (as defined in § 1.6045–1(a)(1)), however, may rely on the rules in the regulations concerning information reporting for sales of shares in calendar years beginning before July 8, 2016.

Statement of Availability for IRS Documents

IRS Revenue Procedures cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses. No comments were received.

Drafting Information

The principal author of the final regulations is Grace Cho, IRS Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.446–7 also issued under 26 U.S.C. 446.

Par. 2. Section 1.446–7 is added to read as follows:

§ 1.446–7 Net asset value method for certain money market fund shares.

(a) *In general*. This section provides a permissible method of accounting (the net asset value method, or NAV method) for gain or loss on shares in a money market fund (or MMF).

(b) *Definitions*. For purposes of this section—

(1) *Computation period*. *Computation periods* are the periods (of either equal or varying length) that a taxpayer selects for computing gain and loss under the NAV method for shares in an MMF. Computation periods must possess all of the following attributes:

(i) Every day during the taxable year falls within one, and only one, computation period;

(ii) Each computation period contains days from only one taxable year; and

(iii) If the taxpayer is a regulated investment company (RIC) that is not described in section 4982(f)—

(A) The same computation periods are used for purposes of both income tax accounting under chapter 1 and excise tax computations under section 4982; and

(B) The requirements in paragraphs (b)(1)(i) and (ii) of this section are also satisfied if applied by substituting the RIC's section 4982 period for the RIC's taxable year.

(2) *Ending value*. The *ending value* of a taxpayer's shares in an MMF for a computation period is the aggregate fair market value of the taxpayer's shares at the end of that computation period.

(3) *Fair market value*. The *fair market value* of a share in an MMF is determined as follows:

(i) *Presumption based on applicable published redemption amount*. For purposes of this section, the fair market value of a share in an MMF is presumed to be the applicable published redemption amount for the share.

(ii) *Published redemption amount*. The *published redemption amount* for a share in an MMF is the published amount for which the MMF would redeem the share (usually, the net asset value per share (NAV)), taking into account any corrections and not taking into account any liquidity fee described in Rule 2a–7(c)(2) under the Investment Company Act of 1940 (17 CFR 270.2a–7(c)(2)).

(iii) *Applicable published redemption amount*. The *applicable published redemption amount* is—

(A) For purposes of determining the ending value of a taxpayer's shares in an MMF for a computation period under paragraph (b)(2) of this section, the last published redemption amount on the last day of that computation period;

(B) For purposes of determining the value of MMF shares received in a redemption or exchange described in paragraph (b)(5)(ii)(A) of this section, the published redemption amount for such MMF shares used to determine the consideration received in the redemption or exchange, or if the consideration received is not based on a published redemption amount, the first published redemption amount for such MMF shares after the redemption or exchange;

(C) For purposes of determining the amount received in a redemption or exchange described in paragraph (b)(5)(ii)(B) of this section in which the consideration received is based on a published redemption amount for the redeemed shares, that published redemption amount; and

(D) For purposes of determining the amount received in an exchange described in paragraph (b)(5)(ii)(B) of this section that is not described in paragraph (b)(3)(iii)(C) of this section, or the amount of any adjustment resulting from a disposition transaction described in paragraph (b)(5)(iii) of this section, the first published redemption amount for the exchanged or disposed of MMF shares after the exchange or other transaction.

(iv) *Facts and circumstances determination*. If there is no applicable published redemption amount or if circumstances indicate that the amount does not represent the fair market value of a share in the MMF, the fair market value is determined on the basis of all of the facts and circumstances.

(4) *Money market fund (or MMF)*. An *MMF* is a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a–7). See paragraph (c)(5) of this section for the treatment of shares in a single MMF held in more than one account.

(5) *Net investment*—(i) *In general*. The *net investment* in an MMF for a computation period may be a positive amount, a negative amount, or zero. Except as provided in paragraph (b)(5)(iii) of this section, the net investment is equal to—

(A) The aggregate cost of shares in the MMF purchased during the computation period (including purchases through reinvestment of dividends); minus

(B) The aggregate amount received during the computation period in redemption of (or otherwise in exchange for) shares in the MMF in transactions in which gain or loss would be recognized if the taxpayer did not apply the NAV method to the shares.

(ii) *Aggregate amount received*. For purposes of paragraph (b)(5)(i)(B) of this section, the amount received in a redemption or exchange of an MMF share is—

(A) If no property other than cash and shares in one or more other MMFs is received, the amount of any cash plus the fair market value of any MMF shares received; or

(B) If any property other than cash or shares in one or more other MMFs is received, the fair market value of the redeemed MMF share.

(iii) *Adjustments*—(A) *Dispositions in which gain or loss is not recognized*. If, during the computation period, any shares in an MMF are disposed of in transactions in which gain or loss would not be recognized if the taxpayer did not apply the NAV method to the shares, the net investment in the MMF for the computation period is decreased by the fair market value of each such share at the time of its disposition.

(B) *Acquisitions other than by purchase*. If, during the computation period, any shares in an MMF are acquired other than by purchase, the net investment in the MMF for the computation period is increased by the adjusted basis (for purposes of determining loss) of each such share immediately after its acquisition. If the adjusted basis of an acquired share would be determined by reference to the basis of a share or shares in an MMF that are being disposed of by the taxpayer in a transaction that is governed by paragraph (b)(5)(iii)(A) of this section, then the adjusted basis of each such disposed share is treated for purposes of this section as being the fair market value of that share at the time of its disposition. If the adjusted basis of an acquired share would be determined by reference to the basis of that share in the hands of the person from whom the share is acquired and that person was applying the NAV method to the share at the time of the transaction, then the adjusted basis of the share in the hands of the person from whom the share is acquired is treated for purposes of this section as being the fair market value of that share at the time of the transaction.

(6) *Section 4982 period*. If a taxpayer using the NAV method is a RIC to which section 4982 applies, the *section 4982 period* is the one-year period with respect to which gain or loss is determined for purposes of section 4982(e)(2) and (e)(6). The preceding sentence is applied taking into account the application of section 4982(e)(4). See paragraph (c)(8) of this section regarding the application of section 4982(e)(6).

(7) *Starting basis*. The *starting basis* of a taxpayer's shares in an MMF for a computation period is—

(i) Except as provided in paragraph (b)(7)(ii) of this section, the ending value of the taxpayer's shares in the MMF for the immediately preceding computation period; or

(ii) For the first computation period in a taxable year, if the taxpayer did not use the NAV method for shares in the MMF for the immediately preceding taxable year, the aggregate adjusted basis of the taxpayer's shares in the MMF at the end of the immediately preceding taxable year.

(c) *NAV method*—(1) *Scope*. A taxpayer may use the NAV method described in this section to determine the gain or loss for a taxable year on the taxpayer's shares in an MMF. A taxpayer may have different methods of accounting, different computation periods, and gains or losses of differing character, for its shares in different MMFs. See paragraph (c)(5) of this section for the treatment of shares in a single MMF held in more than one account. See paragraph (c)(6) of this section for rules applicable to RICs to which section 4982 applies. See paragraph (c)(8) of this section for rules applicable to accounting method changes.

(2) *Net gain or loss for a taxable year*—(i) *Determination for each computation period*. Subject to any adjustment under paragraph (c)(2)(ii) of this section, the net gain or loss for each computation period with respect to the shares in an MMF to which the NAV method applies equals the ending value, minus the starting basis, minus the net investment in the MMF for the computation period. If the computation produces a result that is greater than zero, the taxpayer has a gain for the computation period with respect to the shares in the MMF; if the computation produces a result that is less than zero, the taxpayer has a loss for the computation period with respect to the shares in the MMF; and if the computation produces a result that is equal to zero, the taxpayer has no gain or loss for the computation period with respect to the shares in the MMF.

(ii) *Adjustment of gain or loss to reflect any basis adjustments*. If, during a computation period, there is any downward (or upward) adjustment to the taxpayer's basis in the shares in the MMF under any provision of internal revenue law, then the net gain or loss for the computation period on shares in the MMF determined under paragraph (c)(2)(i) of this section is increased (or decreased) by the amount of the adjustment.

(iii) *Timing of gains and losses*. Gain or loss determined under the NAV method with respect to a taxpayer's shares in an MMF during a computation period is treated as arising on the last day of the computation period.

(iv) *Determination of net gain or loss for each taxable year*. The taxpayer's net gain or loss for a taxable year on shares in an MMF is the sum of the net gains or losses on shares in the MMF for the computation period (or computation periods) that comprise the taxable year.

(3) *Character*—(i) In the case of a taxpayer that applies the NAV method to shares in an MMF, the gain or loss with respect to those shares for a computation period is treated as gain or loss from a sale or exchange of a capital asset provided the sale or exchange of one or more of those shares during the computation period would give rise to capital gain or loss if the taxpayer did not apply the NAV method to the shares.

(ii) In the case of a taxpayer that applies the NAV method to shares in an MMF, the gain or loss with respect to those shares for a computation period is treated as ordinary gain or loss provided the sale or exchange of every one of those shares during the computation period would give rise to ordinary gain or loss if the taxpayer did not apply the NAV method to the shares.

(iii) See paragraph (c)(5) of this section for the treatment of shares in a single MMF held in more than one account.

(4) *Holding period*. Capital gains and losses determined under the NAV method are treated as short-term capital gains and losses.

(5) *More than one account*. If a taxpayer holds shares in an MMF through more than one account, the taxpayer must treat its holdings in each account as a separate MMF for purposes of this section. A taxpayer therefore may have different methods of accounting, different computation periods, and gains or losses

of differing character, for its shares of a single MMF held in different accounts.

(6) *Consistency requirement for MMF shareholders that are RICs*. If the taxpayer is a RIC that is not described in section 4982(f) (and therefore is subject to the section 4982 excise tax), then, for each MMF, the taxpayer must use the NAV method for both income tax and excise tax computations or for neither computation. See paragraph (c)(5) of this section for the treatment of shares in a single MMF held in more than one account. See paragraph (c)(8)(ii) of this section for changes to or from the NAV method by a RIC.

(7) *Treatment of ordinary gains and losses under section 4982(e)(6)*. Under section 4982(e)(6)(B), this section is a specified mark to market provision, and therefore any ordinary gains and losses determined under the NAV method are governed by section 4982(e)(6)(A).

(8) *Accounting method changes*—(i) *In general*. A change to or from the NAV method is a change in method of accounting to which the provisions of section 446 and the accompanying regulations apply. A taxpayer seeking to change to or from the NAV method must secure the consent of the Commissioner in accordance with § 1.446–1(e) and follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to change the taxpayer's accounting method. Any such change will be made on a cut-off basis. Because there will be no duplication or omission of amounts as a result of such a change to or from the NAV method, no adjustment under section 481(a) will be required or permitted.

(ii) *RICs*—(A) *In general*. A RIC that is subject to the excise tax under section 4982 and that changes to or from the NAV method for its shares in an MMF for income tax purposes must apply the new method for excise tax purposes starting with the first day of the RIC's income tax year of change. If that first day is not the first day of the RIC's section 4982 period that ends in or with the RIC's income tax year, then solely for purposes of applying the NAV method to compute the RIC's required distribution for the calendar year that ends with or within the RIC's income tax year of change, the section 4982 period is bifurcated into two portions, each of which is treated as a separate taxable year. The first portion begins on the first day of the section 4982 period and ends on the last day of the RIC's income tax year that precedes the year of change. The second portion begins on the first day of the income tax year of change and ends on the last day of the section 4982 period.

(B) *Example*. If a RIC that holds MMF shares as capital assets changes from a realization method to the NAV method for its income tax year ending January 31, 2019, the section 4982 period is bifurcated into two portions that are treated as separate taxable years solely for purposes of applying this section. For the portion starting on November 1, 2017, and ending on January 31, 2018, the RIC applies its realization method for excise tax purposes. For the portion starting on February 1, 2018, and ending on October 31, 2018, the RIC applies the NAV method for excise tax purposes, treating February 1, 2018, as the first day of the RIC's tax year for purposes of paragraphs (b)(1) and (6) of this section. The RIC's net gain or loss for this later portion is determined under paragraph (c)(2)(iii) of this section. This net gain or loss and any gains and losses for the earlier portion determined under the realization method are taken into account in determining the RIC's capital gain net income for the full one-year period described in section 4982(b)(1)(B).

(d) *Example*. The provisions of this section may be illustrated by the following example:

Example. (i) Fund is an MMF. Shareholder is a person whose taxable year is the calendar year. On January 1 of Year 1, Shareholder owns 5,000,000 shares in Fund with an adjusted basis of $5,000,000.00. The price of Fund shares has not varied from $1.00 from the date Shareholder acquired the shares through January 1 of Year 1. During that period, Shareholder has engaged in multiple purchases and redemptions of Fund shares, but Shareholder has reported no gains or losses with respect to the shares because Shareholder realized an amount in each redemption equal to Shareholder's basis in the redeemed shares. During Year 1, the price of Fund shares begins to float. During Year 1, Shareholder receives $32,158.23 in taxable dividends from Fund and makes 120 purchases of additional shares in Fund (including purchases through the reinvestment of those dividends) totaling $1,253,256.37 and 28 redemptions totaling $1,124,591.71. The fair market value of Shareholder's shares in Fund at the end of Year 1 is $5,129,750.00. All of Shareholder's shares in Fund are held in a single account and as capital assets. There is no adjustment to the basis in Shareholder's shares in Fund under any provision of internal revenue law during Year 1.

(ii) Prior to Year 1, Shareholder has had no gains or losses to report with respect to the Fund shares under a realization method and no changes in fair market value that would have been reported under the NAV method. Therefore, Shareholder may use the NAV method for the shares in Fund for Year 1. Shareholder uses the NAV method for the shares with its taxable year as the computation period. Shareholder's net investment in Fund for Year 1 equals $128,664.66 (the $1,253,256.37 in purchases, minus the $1,124,591.71 in redemptions). Shareholder's Year 1 gain therefore is $1,085.34, which is the ending value of Shareholder's shares ($5,129,750.00), minus the starting basis of Shareholder's shares ($5,000,000.00), minus Shareholder's net investment in the fund for the taxable year ($128,664.66). The gain of $1,085.34 is treated as short-term capital gain. Shareholder's starting basis for Year 2 is $5,129,750.00. Shareholder also must include the $32,158.23 in dividends in its income for Year 1 in the same manner as if Shareholder did not use the NAV method.

(iii) If Shareholder had instead adopted the calendar month as its computation period, it would have used the NAV method for every month of Year 1, even though prices of Fund shares may have been fixed for some months.

(e) *Effective/applicability date*. Except as provided in the following sentence, this section applies to taxable years ending on or after July 8, 2016. For taxable years ending on or after July 28, 2014, and beginning before July 8, 2016, however, shareholders of MMFs may rely either on this section or on § 1.446–7 of the 2014 proposed regulations REG–107012–14 (79 FR 43694).

Par. 3. Section 1.6045–1 is amended by revising paragraph (c)(3)(vi) to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(c) * * *

(3) * * *

(vi) *Money market funds*—(A) *In general*. No return of information is required with respect to a sale of shares in a regulated investment company that is permitted to hold itself out to investors as a money market fund under Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a–7).

(B) *Effective/applicability date*. Paragraph (c)(3)(vi)(A) of this section applies to sales of shares in calendar years beginning on or after July 8, 2016. Taxpayers and brokers (as defined in § 1.6045–

1(a)(1)), however, may rely on paragraph (c)(3)(vi)(A) of this section for sales of shares in calendar years beginning before July 8, 2016.

* * * * *

John Dalrymple
Deputy Commissioner for Services and Enforcement.

Approved: June 15, 2016

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

(Filed by the Office of the Federal Register on July 7, 2016, 8:45 a.m., and published in the issue of the Federal Register for July 8, 2016, 81 F.R. 44508)

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26 CFR 1.506–1: Requirement to Notify the IRS of Intent to Operate as a Section 501(c)(4) Organization

T.D. 9775

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Requirement to Notify the IRS of Intent to Operate as a Section 501(c)(4) Organization; Final and Temporary Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the requirement, added by the Protecting Americans from Tax Hikes Act of 2015, that organizations must notify the IRS of their intent to operate under section 501(c)(4) of the Internal Revenue Code (Code). The regulations affect organizations described in section 501(c)(4) (section 501(c)(4) organizations) that are organized after December 18, 2015, and certain section 501(c)(4) organizations existing on that date. The text of the temporary regulations serves as the text of the proposed regulations set forth in the related notice of proposed rulemaking (REG–101689–16) published in the Proposed Rules section in this issue of the **Internal Revenue Bulletin.**

DATES: *Effective Date*: These regulations are effective on July 8, 2016.

Applicability Date: For date of applicability, see § 1.506–1T(f).

FOR FURTHER INFORMATION CONTACT: Chelsea Rubin at (202) 317-5800 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final and temporary regulations will be reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2268.

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

For further information concerning this collection of information, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Internal Revenue Bulletin.**

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

Background

This Treasury decision contains temporary regulations under section 506 of the Code. Section 405 of the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114–113, div. Q) (the PATH Act), enacted on December 18, 2015, added section 506 to the Code and amended sections 6033 and 6652. Because the statutory provisions were effective upon enactment and certain section 501(c)(4) organizations must notify the IRS within 60 days of formation, these temporary regulations are necessary to provide prompt guidance to enable section 501(c)(4) organizations to satisfy the new statutory notification requirement and provide appropriate transition relief.

1. *Section 501(c)(4) Organizations*

Section 501(a) of the Code generally provides that an organization described in section 501(c) is exempt from federal income tax. Section 501(c)(4) describes certain civic leagues or organizations operated exclusively for the promotion of social welfare and certain local associations of employees. An organization is described in section 501(c)(4) and exempt from tax under section 501(a) if it satisfies the requirements applicable to such status. Subject to certain exceptions, section 6033, in part, requires organizations exempt from taxation under section 501(a) to file annual information returns or notices, as applicable.

Although an organization may apply to the IRS for recognition that the organization qualifies for tax-exempt status under section 501(c)(4), there is no requirement to do so (except as provided in section 6033(j)(2), which requires organizations that lose tax-exempt status for failure to file required annual information returns or notices and want to regain tax-exempt status to apply to obtain reinstatement of such status). Accordingly, a section 501(c)(4) organization that files annual information returns or notices, as required under section 6033, need not seek an IRS determination of its qualification for tax-exempt status in order to be described in and operate as a section 501(c)(4) organization.

2. *The PATH Act*

Section 405(a) of the PATH Act added section 506 to the Code, requiring an organization to notify the IRS of its intent to operate as a section 501(c)(4) organization. In addition, section 405(b) and (c) of the PATH Act amended sections 6033(f) and 6652(c), relating to information that section 501(c)(4) organizations may be required to include on their annual information returns and penalties for certain failures by tax-exempt organizations to comply with filing or disclosure requirements, respectively.

Section 506(a) requires a section 501(c)(4) organization, no later than 60 days after the organization is established, to notify the Secretary of the Department of the Treasury (Secretary) that it is operating as a section 501(c)(4) organization (the notification). Section 506(b) provides that the notification must include: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the state under the laws of which, the organization was organized; and (3) a statement of the purpose of the organization. Section 506(c) requires the Secretary to send the organization an acknowledgment of the receipt of its notification within 60 days. Section 506(d) permits the Secretary to extend the 60-day notification period for reasonable cause. Section 506(e) provides that the Secretary shall impose a reasonable user fee for submission of the notification. Section 506(f) provides that, upon request by an organization, the Secretary may issue a determination with respect to the organization's treatment as a section 501(c)(4) organization and that the organization's request will be treated as an application for exemption from taxation under section 501(a) subject to public inspection under section 6104.[1]

In addition, the PATH Act amended section 6033(f) to require a section 501(c)(4) organization submitting the notification to include with its first annual information return after submitting the notification any additional information prescribed by regulation that supports the organization's treatment as a section 501(c)(4) organization.

The PATH Act also amended section 6652(c) to impose penalties for failure to submit the notification by the date and in the manner prescribed in regulations. In particular, section 6652(c)(4)(A) imposes a penalty on an organization that fails to submit the notification equal to $20 per day for each day such failure continues, up to a maximum of $5,000. Additionally, section 6652(c)(4)(B) imposes a similar penalty on persons who fail to timely submit the notification in response to a written request by the Secretary.

Section 405(f) of the PATH Act provides that, in general, the requirement to submit the notification and the related amendments to sections 6033 and 6652 apply to section 501(c)(4) organizations that are established after December 18, 2015, the date of enactment of the PATH Act. Section 405(f)(2) of the PATH Act provides that these provisions also apply to any other section 501(c)(4) organizations that had not, on or before the date of enactment of the PATH Act: (1) applied for a written determination of recognition as a section 501(c)(4) organization (using Form 1024, "Application for Recognition of Exemption Under Section 501(a)"); or (2) filed at least one annual information return or notice required under section 6033(a)(1) or (i) (that is, a Form 990, "Return of Organization Exempt From Income Tax," or, if eligible, Form 990–EZ, "Short Form Return of Organization Exempt From Income Tax," or Form 990–N (e-Postcard)). Organizations described in section 405(f)(2) of the PATH Act must submit the notification within 180 days after the date of enactment of the PATH Act.

3. *Notice 2016–09*

The Treasury Department and the IRS issued Notice 2016–09 (2016–6 IRB 306 (February 8, 2016)) to provide interim guidance regarding section 405 of the PATH Act. Specifically, Notice 2016–09 extended the due date for submitting the notification until at least 60 days from the date that implementing regulations are issued in order to provide adequate transition time for organizations to comply with the new requirement to submit the notification. Notice 2016–09 further stated that no penalties under section 6652(c)(4) would apply to a section 501(c)(4) organization that submits the notification by the due date provided in the regulations.

With respect to the separate procedure by which an organization may request a determination from the IRS that it qualifies for tax-exempt status under section 501(c)(4), Notice 2016–09 stated that organizations seeking IRS recognition of section 501(c)(4) status should continue using Form 1024 until further guidance is issued. Notice 2016–09 also clarified that the filing of Form 1024 does not relieve an organization of the requirement to submit the notification. The Treasury Department and the IRS received a public comment in response to Notice 2016–09, which was considered in drafting these temporary regulations.

Explanation of Provisions

1. *Overview of Temporary Regulations*

The temporary regulations prescribe the manner in which an organization must notify the IRS, consistent with section 506, that it is operating as a section 501(c)(4) organization. In addition, the temporary regulations clarify that the submission of the notification does not constitute a request by an organization for a determination from the IRS that it qualifies for tax-exempt status.

2. *The Notification*

The IRS has developed a new electronic form, Form 8976, "Notice of Intent to Operate Under Section 501(c)(4)," for use by organizations submitting the notification. In accordance with section 506(a), the temporary regulations generally require a section 501(c)(4) organization to submit the notification to the IRS on Form 8976 (or its successor) no later than 60 days after the date the organization is organized. The Form 8976 must be submitted in accordance with the form and its instructions.

Consistent with section 506(b), the temporary regulations specify that the notification must include: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the state or other jurisdiction under the laws of which, the organization was organized; and (3) a statement of the purpose of the organization. In addition, the temporary regulations provide that the notification must include such additional information as may be specified in published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. To ensure that the statutorily required items of information in the notification are correlated accurately within existing IRS systems, Form 8976

[1]The separate procedure by which an organization may request a determination of tax-exempt status is prescribed in Rev. Proc. 2016–5, 2016–1 IRB 188, or its successor.

requires organizations to provide their annual accounting period.

The temporary regulations also provide that the notification must be accompanied by payment of the reasonable user fee authorized by section 506(e), which will be set forth by published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. Consistent with section 506(d), the temporary regulations state that the 60-day period for submitting the notification may be extended for reasonable cause.

Further, the temporary regulations provide that, within 60 days after receipt of the notification, the IRS will send the organization an acknowledgment of such receipt. The temporary regulations clarify that this acknowledgment is not a determination with respect to tax-exempt status. Thus, it is not a determination on which an organization may rely or a determination or a failure to make a determination with respect to which the organization may seek declaratory judgment under section 7428. For further information regarding the interaction of the section 506 notification requirement with the separate procedure by which an organization may request an IRS determination that it qualifies for tax-exempt status under section 501(c)(4), see section 5 of this Explanation of Provisions.

Finally, the temporary regulations provide that additional guidance on the procedures for submitting the notification may be provided in published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. On July 8, 2016, the IRS released Rev. Proc. 2016–41, 2016–30 IRB 165, which provides additional information on the procedure for submitting the Form 8976.

A public comment submitted in response to Notice 2016–09 suggested that section 506(a) should not apply to foreign organizations that do not conduct significant activities (other than investment activities) in the United States, even if the organizations may be required to submit a Form 990 to the IRS. As the commenter notes, foreign section 501(c)(4) organizations generally are required to file an annual information return or notice with the IRS under section 6033. *See* Rev. Proc. 2011–15, § 3 (2011–3 IRB 322). Section 506(a) does not include an exception from the requirement to submit the notification for foreign section 501(c)(4) organizations. The Treasury Department and the IRS have determined that the regulations should not create such an exception because the requirement to submit the notification is intended to replace the former practice under which section 501(c)(4) organizations (both domestic and foreign) might not notify the IRS that they claim section 501(c)(4) status until they file a Form 990 return or notice. Accordingly, the temporary regulations clarify that a section 501(c)(4) organization must submit the notification whether it is organized in the United States or outside the United States. However, a foreign organization may be eligible for relief from penalties under section 6652 if it submits the notification promptly after first commencing activities or receiving income that would cause it to have a filing requirement under section 6033. Rev. Proc. 2016–41 includes an example to illustrate the availability of this relief.

3. *Special Rules for Organizations Organized on or Before July 8, 2016*

Under section 405(f)(2) of the PATH Act, the requirement to submit the notification does not apply to certain organizations that notified the IRS of their existence on or before December 18, 2015. The Treasury Department and the IRS recognize that, since the enactment of the PATH Act but before the availability of the new electronic Form 8976 for submitting the notification, additional section 501(c)(4) organizations may have notified the IRS of their existence by applying for a written determination of tax-exempt status or filing a required annual information return or notice. Accordingly, to reduce the burden on these organizations and the IRS, the temporary regulations provide relief from the requirement to submit the notification for any section 501(c)(4) organization that, on or before July 8, 2016, either: (1) applied for a written determination of recognition as a section 501(c)(4) organization (using Form 1024); or (2) filed at least one annual return or notice required under section 6033(a)(1) or (i) (that is, a Form 990 or, if eligible, Form 990–EZ or Form 990–N).

In order to allow adequate transition time for organizations that do not qualify for this transition relief to submit the notification in the manner prescribed by these regulations, the temporary regulations provide that an organization that was organized on or before July 8, 2016, will have until September 6, 2016, which is 60 days from the date that the regulations are filed with the **Federal Register**, to submit the notification.

4. *Failure to Submit the Notification*

For information on the applicable penalties for failure to submit the notification, the temporary regulations refer to section 6652(c)(4), which imposes penalties on the organization and on persons who fail to timely submit the notification in response to a written request by the Secretary, as well as section 6652(c)(5), which provides a reasonable cause exception, and section 6652(c)(6), which provides other special rules that generally apply for purposes of section 6652(c) penalties.

Under section 6652(c)(5), no penalty will be imposed with respect to a failure to submit the notification if it is shown that such failure is due to reasonable cause. Rev. Proc. 2016–41 addresses reasonable cause for abating a section 6652(c)(4) penalty.

Under section 6652(c)(6), the section 6652(c)(4)(B) penalty imposed on "persons" who fail to timely submit the notification in response to a written request by the Secretary applies to any officer, director, trustee, employee, or other individual who is under a duty to submit the notification. In addition, under section 6652(c)(6), if more than one person is liable for the section 6652(c)(4)(B) penalty, all such persons will be jointly and severally liable with respect to the failure to submit the notification.

5. *Separate Procedure by Which an Organization May Request an IRS Determination That It Qualifies for Section 501(c)(4) Exempt Status*

Section 506(f) provides that an organization subject to the section 506 notification requirement may request a determination to be treated as an organization described in section 501(c)(4). This indicates that the procedure by which an organization may request a determination that it is described in section 501(c)(4) is separate from the procedure for submitting the notification. Accordingly, the temporary regulations provide that submission of the notification does not constitute a request for an IRS determination that the organization qualifies for tax-exempt status under section 501(c)(4). Rather, an organization that seeks IRS recognition of tax-exempt status under section 501(c)(4) must separately request a determination in the manner prescribed in Rev. Proc. 2016–5, or its successor.

If an organization receives a determination from the IRS recognizing tax-exempt status, the organization's application, supporting papers, and final determination letter are open to public inspection under section 6104(a)(1) and (d). The notification, by contrast, is not open for public inspection because it is not an application within the meaning of section 6104.

6. *No Additional Information Required on Form 990 or 990–EZ at this Time*

Section 6033(f)(2), as amended by the PATH Act, provides that the IRS may require an organization that submits the notification to include additional information in support of the organization's treatment as an organization described in section 501(c)(4) on the first Form 990 or 990–EZ, as applicable, filed by the organization after submitting the notification. The temporary regulations do not prescribe any additional information to be reported on Form 990 or 990–EZ at this time. The IRS will monitor the notification process to determine whether additional information is needed.

Statement of Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *http://www.irs.gov*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It 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 applicability of the Regulatory Flexibility Act, please refer to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Internal Revenue Bulletin.** Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Chelsea R. Rubin, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 1.506–1T is added to read as follows:

§ 1.506–1T Organizations required to notify Commissioner of intent to operate under section 501(c)(4) (temporary).

(a) *Notification requirement*—(1) *In general*. Except as provided in paragraph (b) of this section, an organization (whether domestic or foreign) described in section 501(c)(4) must, no later than 60 days after the date the organization is organized, notify the Commissioner that it is operating as an organization described in section 501(c)(4) by submitting a completed Form 8976, "Notice of Intent to Operate Under Section 501(c)(4)," or its successor (the notification). The notification must be submitted in accordance with the form and its instructions. The notification must include the information specified in paragraph (a)(2) of this section and be accompanied by payment of the user fee described in paragraph (a)(3) of this section. Additional guidance on the procedure for submitting the notification may be provided in published guidance in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) or in other guidance, such as forms or instructions, issued with respect to the notification.

(2) *Contents of the notification*. The notification must include the following information:

(i) The name, address, and taxpayer identification number of the organization.

(ii) The date on which, and the state or other jurisdiction under the laws of which, the organization was organized (that is, formed as a legal entity). For an organization formed outside the United States, the jurisdiction is the foreign country under the laws of which it is organized.

(iii) A statement of the purpose of the organization.

(iv) Such additional information as may be specified in published guidance in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) or in other guidance, such as forms or instructions, issued with respect to the notification.

(3) *User fee*. The notification must be accompanied by payment of the user fee set forth by published guidance in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) or in other guidance, such as forms or instructions, issued with respect to the notification.

(4) *Extension for reasonable cause*. The Commissioner may, for reasonable cause, extend the 60-day period for submitting the notification.

(b) *Special rules for organizations that were organized on or before July 8, 2016*—(1) *Notification requirement does not apply to organizations that filed with the IRS on or before December 18, 2015*. The requirement to submit the notification does not apply to any organization described in section 501(c)(4) that, on or before December 18, 2015, either—

(i) Applied for a written determination of recognition as an organization described in section 501(c)(4) in accordance with § 1.501(a)–1 and all applicable guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), forms, and instructions; or

(ii) Filed at least one annual information return or annual electronic notification required under section 6033(a)(1) or (i).

(2) *Transition relief available for organizations that filed with the IRS on or before July 8, 2016*. An organization described in section 501(c)(4) is not required to submit the notification if, on or before July 8, 2016, the organization either—

(i) Applied for a written determination of recognition as an organization described in section 501(c)(4) in accordance with § 1.501(a)–1 and all applicable guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), forms, and instructions; or

(ii) Filed at least one annual information return or annual electronic notification required under section 6033(a)(1) or (i).

(3) *Extended due date*. An organization that was organized on or before July 8, 2016, and is not described in paragraph (b)(1) or (2) of this section, will satisfy the requirement to submit the notification if the notification is submitted on or before September 6, 2016.

(c) *Failure to submit the notification*. For information on the penalties for failure to submit the notification, the applicable reasonable cause exception, and applicable special rules, see section 6652(c)(4) through (6).

(d) *Acknowledgment of receipt*. Within 60 days after receipt of the notification, the Commissioner will send the organization an acknowledgment of such receipt. This acknowledgment is not a determination by the Commissioner that the organization qualifies for exemption under section 501(a) as an organization described in section 501(c)(4). See paragraph (e) of this section.

(e) *Separate procedure by which an organization may request an IRS determination that it qualifies for section 501(c)(4) tax-exempt status*. Submission of the notification does not constitute a request by an organization for a determination by the Commissioner that the organization qualifies for exemption under section 501(a) as an organization described in section 501(c)(4). An organization seeking IRS recognition of its tax-exempt status must separately request such a determination in accordance with § 1.501(a)–1 and all applicable guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), forms, and instructions.

(f) *Effective/applicability date*. This section applies on and after July 8, 2016.

(g) *Expiration date*. The applicability of this section expires on or before July 8, 2019.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

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

Par. 4. In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where Identified and described	Current OMB control no.
* * * * *	
1.506–1T	1545-2268
* * * * *	

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: June 24, 2016.

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

(Filed by the Office of the Federal Register on July 8, 2016, 11:15 a.m., and published in the issue of the Federal Register for July 12, 2016, 81 F.R. 45008)

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Changes in accounting periods and in methods of accounting.
(Also: Part I, § 446; 1.446–1 1.446–7)

Rev. Proc. 2016–39

SECTION 1. PURPOSE

This revenue procedure provides the procedures by which a taxpayer may obtain the automatic consent of the Commissioner of Internal Revenue (Commissioner) to change to or from the net asset value (NAV) method of accounting provided in § 1.446–7 of the Income Tax Regulations for gain or loss on shares in a money market fund (MMF). This revenue procedure modifies Rev. Proc. 2016–29, 2016–21 I.R.B. 1.

SECTION 2. BACKGROUND

.01 Concurrently with the release of this revenue procedure, the Department of the Treasury (Treasury Department) and the Internal Revenue Service are issuing final regulations under § 446 (T.D. 9774) (the final regulations). The final regulations respond to the adoption by the Securities and Exchange Commission of certain amendments to Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940. *See* 79 FR 47736 (August 14, 2014). The amendments establish circumstances in which MMFs may impose liquidity fees and change how certain MMF shares are priced. The final regulations are intended to simplify tax compliance for holders of shares in MMFs affected by the amendments. Specifically, § 1.446–7 provides a permissible method of accounting (the NAV method) for gain or loss on shares in an MMF. Under the NAV method, a taxpayer's gain or loss on shares in an MMF is based on the change in the aggregate value of the taxpayer's shares during a computation period selected by the taxpayer and on the net amount of the purchases and redemptions during the computation period. The final regulations generally apply to taxable years ending on or after July 8, 2016.

.02 Except as otherwise expressly provided by the Internal Revenue Code or the regulations thereunder, § 446(e) and § 1.446–1(e)(2) require a taxpayer to secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the terms and conditions necessary for a taxpayer to obtain consent to a change in method of accounting. Rev. Proc. 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067, and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B. 1, provides the general procedures by which a taxpayer may obtain automatic consent of the Commissioner to a change in method of accounting described in Rev. Proc. 2016–29.

.03 Section 1.446–7(c)(8) provides that a change to or from the NAV method is a change in method of accounting to which the provisions of § 446 and the regulations thereunder apply and that any such change will be made on a cut-off basis. This revenue procedure provides that, under certain circumstances, such a change must be made under the automatic change procedures in Rev. Proc. 2015–13.

SECTION 3. CHANGE IN METHOD OF ACCOUNTING

.01 *In general*. A taxpayer that wants to change to or from the NAV method of accounting described in § 1.446–7 must use the automatic change procedures in Rev. Proc. 2015–13, or its successor, and Rev. Proc. 2016–29, or its successor, as modified by section 3.02 of this revenue procedure.

.02 *Automatic change*. Rev. Proc. 2016–29 is modified to add new section 15.17 to read as follows:

.17 *Change to or from the net asset value (NAV) method.*

(1) *Description of change.* This change applies to a taxpayer that holds shares in a money market fund (MMF) as defined in § 1.446–7(b)(4) (giving effect to § 1.446–7(c)(5), under which MMF holdings in different accounts are treated as different MMFs) and that wants to change its method of accounting for gain or loss on the shares from a realization method to the NAV method described in § 1.446–7 or from the NAV method to a realization method.

(2) *Certain eligibility requirements inapplicable.* The eligibility rules in sections 5.01(1)(c), (d), and (f) of Rev. Proc. 2015–13 do not apply to this change.

(3) *Definitions.*

(a) "Rule 2a–7" means Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940.

(b) "Floating-NAV MMF" means an MMF that is required to value its assets using market factors and to round its price per share to the nearest basis point (the fourth decimal place, in the case of a fund with a $1.0000 share price) under Rule 2a–7.

(c) "Stable-NAV MMF" means an MMF that is not a floating-NAV MMF.

(4) *Manner of making change.*

(a) A change to or from the NAV method is made on a cut-off basis. *See* § 1.446–7(c)(8). Accordingly, a § 481(a) adjustment is neither permitted nor required. A taxpayer making a change to or from the NAV method for shares in an MMF applies the new method only to the computation of gain or loss on the shares beginning with the year of change. Under § 1.446–7(b)(7)(ii), a taxpayer changing to the NAV method takes a starting basis (as defined in § 1.446–7(b)(7)) in those shares for the year of change equal to the aggregate adjusted basis of the taxpayer's shares in the MMF at the end of the immediately preceding taxable year. A taxpayer changing from the NAV method to a realization method for shares in an MMF must adjust the basis in the shares beginning on the first day of the year of change to account for gain or loss previously recognized under the NAV method. Accordingly, the taxpayer generally takes a basis in each MMF share at the beginning of the year of change equal to the fair market value of that share under § 1.446–7(b)(3) used in computing the ending value (as defined in § 1.446–7(b)(2)) of the shares in that MMF for the final computation period (as defined in § 1.446–7(b)(1)) of the taxable year prior to the year of change.

(b) *Short Form 3115 in lieu of a Form 3115.* In accordance with § 1.446–1(e)(3)(ii), the requirement of § 1.446–1(e)(3)(i) to file a Form 3115 is waived and, pursuant to section 6.02(2) of Rev.

Proc. 2015–13, a short Form 3115 is authorized for a taxpayer changing from a realization method to the NAV method, or changing from the NAV method to a realization method, for shares in an MMF. Unless the change meets the requirements of section 15.17(4)(c) of this revenue procedure, the taxpayer must file a short Form 3115 that includes the following information:

(i) the identification section of page 1 (above Part I);

(ii) the signature section at the bottom of page 1;

(iii) Part I, line 1(a);

(iv) a statement specifying whether the taxpayer is changing from a realization method to the NAV method or from the NAV method to a realization method; and

(v) a statement specifying the MMF or MMFs to which the change applies, if the change does not apply to all MMFs in which the taxpayer holds shares (and, to the extent applicable, whether the change applies only to shares of the MMF or MMFs held in a particular account).

(c) *No Form 3115 Required.* In accordance with § 1.446–1(e)(3)(ii), a taxpayer changing to the NAV method for shares in a stable-NAV MMF may change to the NAV method on a federal tax return without filing a Form 3115 if the following requirements are satisfied:

(i) the taxpayer has not used the NAV method for shares in the MMF for any taxable year prior to the year of change; and

(ii) prior to the year of change, either

(A) the taxpayer's basis in each share of the MMF has been at all times equal to the MMF's target share price, or

(B) the taxpayer has not realized any gain or loss with respect to shares in the MMF.

(5) *Multiple changes*. A taxpayer making multiple changes under this section 15.17 for the same year of change on a short Form 3115 should file a single short Form 3115. The short Form 3115 will be treated as applying to all shares that the taxpayer holds in any MMF unless the taxpayer specifies the MMFs to which the change applies. If the taxpayer specifies an MMF, the short Form 3115 will be treated as applying to all shares in that MMF held in any account by the taxpayer, unless the short Form 3115 specifies the accounts to which the change applies.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under this section 15.17 is "227."

(7) *Contact Information.* For further information regarding a change under this section 15.17, contact Jason Kurth at (202) 317-6842 (not a toll-free number).

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016–29 is modified to include a new section 15.17 that sets forth the accounting method change provided in section 3.02 of this revenue procedure.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after July 8, 2016.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jason Kurth of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. Kurth at (202) 317-6842 (not a toll free number).

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26 CFR 1.506. Requirement to notify the IRS of intent to operate as a section 501(c)(4) organization.

Rev. Proc. 2016–41

SECTION 1. PURPOSE

This revenue procedure sets forth the procedure for an organization to notify the Internal Revenue Service (IRS), consistent with section 506 of the Internal Revenue Code (Code), that it is operating as an organization described in section 501(c)(4) of the Code (a section 501(c)(4) organization).

.01 *In general*. Section 506, added to the Code on December 18, 2015, by the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114–113, div. Q) (the PATH Act), requires a section 501(c)(4) organization, no later than 60 days after the organization is established, to notify the Secretary of the Treasury (the Secretary) that it is operating as a section 501(c)(4) organization. The requirement to submit this notification applies to section 501(c)(4) organizations organized after December 18, 2015, and to certain section 501(c)(4) organizations existing on that date.

.02 *Terms used in this revenue procedure*. For purposes of this revenue procedure—

(1) "Form 8976" means the Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*, which is used by an organization to notify the IRS that it is operating as a section 501(c)(4) organization, as required by section 506 of the Code.

(2) "Date of Organization" means the date on which the organization was formed as a legal entity. Generally, for corporations formed in the United States, the date of organization refers to the date that the charter or articles of incorporation were approved by the appropriate state official. For unincorporated organizations, the date of organization refers to the date that the constitution or articles of association were adopted.

(3) "State or other jurisdiction of organization" means the jurisdiction, foreign or domestic, under the laws of which the organization was organized.

(4) "Determination Letter" means a written statement issued in response to an application for recognition of exemption from federal income tax under sections 501 or 521 by EO Rulings and Agreements (the office in IRS Exempt Organizations (EO) that is primarily responsible for determinations of exempt status, taxpayer assistance, and assistance to other EO offices) or an Appeals Office (any office under the direction and control of the Chief, Appeals).

(5) "Form 1024" means the Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, which is the form submitted by an organization seeking a Determination Letter recognizing exemption under section 501(a) as an organization described in section 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), or (25).

SECTION 2. BACKGROUND

.01 Section 405 of the PATH Act added section 506 to the Code, requiring an organization to notify the IRS that it is operating as a section 501(c)(4) organization. In addition, section 405(b) and (c) of the PATH Act amended sections 6033(f) (relating to information that section 501(c)(4) organizations may be required to include on their annual information returns) and 6652(c) of the Code (relating to penalties for certain failures by tax-exempt organizations to comply with filing or disclosure requirements). See §§ 6033(f)(2), 6652(c)(4).

.02 Under section 405(f) of the PATH Act, section 506 and the related amendments to sections 6033 and 6652 of the Code apply to section 501(c)(4) organizations except for any organization that had, on or before December 18, 2015—

(1) Applied for a Determination Letter that recognizes the organization as a section 501(c)(4) organization (using Form 1024); or

(2) Filed at least one annual information return or notice required under section 6033(a)(1) or (i) (a Form 990, *Return of Organization Exempt From Income Tax*, or, if eligible, Form 990–EZ, *Short Form Return of Organization Exempt From Income Tax*, or Form 990–N (e-Postcard)).

.03 Section 506(a) provides that the notification is due no later than 60 days after the organization is established. Section 405(f)(2) of the PATH Act provides, for organizations in existence on December 18, 2015, that must submit the notification, that the notification is due no later than June 15, 2016, 180 days after the date of enactment of the PATH Act.

.04 Section 6033(f)(2) requires a section 501(c)(4) organization submitting the notification under section 506(a) to include with its first annual information return after submitting the notification any additional information prescribed by regulation that supports the organization's treatment as an organization described in section 501(c)(4). As amended, section 6652(c)(4) imposes penalties for failure to submit the notification under section 506(a) by the date and in the manner prescribed in regulations.

.05 The Treasury Department and the IRS issued Notice 2016–09, 2016–6 I.R.B. 306, to provide interim guidance regarding section 405 of the PATH Act. Specifically, Notice 2016–09 extended the due date for submitting the notification under section 506 until at least 60 days from the date that implementing regulations are issued in order to provide adequate transition time for organizations to comply with the new requirement. Notice 2016–09 further stated that no penalties under section 6652(c)(4) would apply to a section 501(c)(4) organization that submits the notification by the due date provided in the regulations.

.06 On July 12, 2016, the Treasury Department and the IRS published TD 9775 (81 FR 45008) containing temporary regulations that prescribe the manner in which a section 501(c)(4) organization must submit the notification under section 506. The temporary regulations provide that the notification must be submitted on Form 8976, or its successor. In addition, the temporary regulations clarify that submission of the notification does not constitute a request by an organization for a Determination Letter from the IRS that it qualifies for tax-exempt status.

.07 As noted in section 2.02 of this revenue procedure, any section 501(c)(4) organization that had applied for a Determination Letter that recognizes the organization as described in section 501(c)(4) or filed a Form 990 (or, if eligible, Form 990–EZ, or Form 990–N) on or before December 18, 2015, is excepted under section 405 of the PATH Act from the requirement to submit the notification under section 506. Since the enactment of the PATH Act but prior to the availability of the new electronic Form 8976 for submitting the notification, additional section 501(c)(4) organizations may have filed with the IRS in the same manner. To reduce the burden on these section 501(c)(4) organizations and the IRS, the temporary regulations relieve these organizations from the requirement to submit the notification. Specifically, the temporary regulations provide that an organization is not required to submit the notification if it applied for a Determination Letter that recognizes the organization as described in section 501(c)(4) (using Form 1024) or filed a Form 990 (or, if eligible, Form 990–EZ or Form 990–N) after December 18, 2015, but on or before July 8, 2016. For organizations that do not qualify for this relief, the temporary regulations also provide a transition rule that extends the due date of the notification until September 6, 2016.

SECTION 3. APPLICABILITY AND TIMING OF REQUIREMENT TO SUBMIT NOTIFICATION ON FORM 8976

.01 *General rule*. Except as provided in paragraph 3.02 of this revenue procedure, a section 501(c)(4) organization must submit a completed Form 8976 to the IRS within 60 days after its Date of Organization.

.02 *Special rules for organizations that were organized on or before July 8, 2016*.

(1) A section 501(c)(4) organization is not required to submit the Form 8976 if, on or before July 8, 2016, the organization either—

(a) Applied on Form 1024 for a Determination Letter that recognizes the organization as a section 501(c)(4) organization; or

(b) Filed at least one annual information return or notice required under section 6033(a)(1) or (i) (a Form 990, or, if eligible, Form 990–EZ or Form 990–N).

(2) An organization that has a Date of Organization on or before July 8, 2016, and is not described in section 3.02(1) of this revenue procedure must submit a completed Form 8976 to the IRS on or before September 6, 2016.

SECTION 4. PROCEDURE FOR SUBMITTING FORM 8976

.01 *Method of Submission*.

(1) Form 8976 must be submitted online at *https://services.irs.gov/registration/*. Paper submissions will not be accepted and will be treated as incomplete Forms 8976 as described in section 4.05(4) of this revenue procedure. Only Forms 8976 that are complete and properly submitted within the meaning of this revenue procedure will be accepted for processing by the IRS. See section 4.04 of this revenue procedure for the requirements for a completed Form 8976. As described in section 5.01 of this revenue procedure, an incomplete Form 8976 will not be accepted for

23processing by the IRS even if it has been successfully submitted through *https://services.irs.gov/registration/*.

(2) The individual submitting Form 8976 on behalf of a section 501(c)(4) organization must establish an account at *https://services.irs.gov/registration/* to submit Form 8976 electronically. The IRS may send electronically to the account of the individual submitting Form 8976 on behalf of the organization the confirmation of transmittal of Form 8976 described in section 6.02 of this revenue procedure, the notice of non-acceptance for processing of Form 8976 described in section 5 of this revenue procedure, and/or the acknowledgement of receipt of Form 8976 described in section 6.01 of this revenue procedure. Accordingly, the organization should ensure that the individual is authorized not only to submit the Form 8976 but also to receive these communications relating to the organization's submission.

.02 *User fee*. Consistent with section 506(e), a Form 8976 must be accompanied by payment of the correct user fee on *www.pay.gov*. The correct user fee for 2016 is $50. In future years, the user fee will be set forth in the instructions or publications with respect to the Form 8976. Payment confirmations are provided through the www.pay.gov portal. Additional information about payment submission can be found under Frequently Asked Questions at *www.pay.gov*.

.03 *Penalty for late submission*. An organization that submits a completed Form 8976 after the due date specified in sections 3.01 or 3.02(2) of this revenue procedure may be subject to penalties provided in section 6652(c)(4), as described in section 8 of this revenue procedure.

.04 *Requirements for completed Form 8976*. For purposes of this revenue procedure, a Form 8976 submitted by an organization is complete if it:

(1) Provides accurate responses for each required line item of the form, consistent with the form instructions, including—

(a) Name of the organization;

(b) Address of the organization;

(c) Employer Identification Number (EIN) of the organization;

(d) Date of Organization;

(e) State or other jurisdiction of organization;

(f) Statement that the purpose of the organization is to operate as either a (i) social welfare organization/civic league, or (ii) local association of employees; and

(g) Month the organization's annual accounting period ends.

(2) Includes an attestation that the information provided is correct and the individual submitting the Form 8976 is authorized to submit the Form 8976 on behalf of the organization; and

(3) Is accompanied by the correct user fee, as described in section 4.02 of this revenue procedure.

.05 *Incomplete Forms 8976*. A Form 8976 submitted by an organization will not be considered complete if—

(1) Any required line item of the electronic form is incomplete or unintelligible;

(2) The organization's name or EIN do not match the records in the IRS Business Master File;

(3) The organization fails to include payment of the correct user fee; or

(4) The required information is submitted on an improper form or in any other improper format.

SECTION 5. NON-ACCEPTANCE FOR PROCESSING

.01 *Incomplete Form 8976*. A submitted Form 8976 that is not a completed Form 8976 within the meaning of section 4.04 of this revenue procedure will not be accepted for processing by the IRS. The organization will be notified of the non-acceptance of its form and any user fee that was paid will be returned or refunded. The organization may then submit a completed Form 8976 with a new user fee.

.02 *Submission of Form 8976 by excepted organizations*. If an organization's Form 8976 is not accepted for processing because the organization is excepted from section 506 under section 405(f) of the PATH Act (an organization that, on or before December 18, 2015, had applied for a Determination Letter that recognizes it as described in section 501(c)(4) of the Code (using Form 1024) or filed a Form 990 (or, if eligible, a Form 990–EZ or 990–N)), the organization will be notified of the non-acceptance of its form and any user fee that was paid will be returned or refunded.

.03 *Submission of multiple Forms 8976*. An organization should not submit more than one Form 8976. If an organization attempts to submit more than one Form 8976, only the first Form 8976 will be accepted for processing. The organization will be notified of the non-acceptance of any subsequent form and any user fee that was paid in connection with a subsequent form will be returned or refunded.

SECTION 6. ACKNOWLEDGMENT OF RECEIPT UNDER SECTION 506

.01 *In general*. Within 60 days of receiving an organization's completed and properly submitted Form 8976, the IRS will send the organization an acknowledgment of its receipt as required by section 506(c) of the Code. The acknowledgment will be sent electronically to the account through which the organization's Form 8976 was submitted. The acknowledgment is not a determination of tax-exempt status. See section 7.02 of this revenue procedure.

.02 *Confirmation of transmittal is not acknowledgment*. The electronic platform for submitting the Form 8976 will automatically supply a confirmation when an organization submits a Form 8976. However, that confirmation is not the acknowledgment required by section 506(c) of the Code. The IRS will send an acknowledgment electronically as provided in section 6.01 of this revenue procedure after processing of the Form 8976 is complete.

SECTION 7. EFFECT OF SUBMISSION OF FORM 8976

.01 *Form 8976 is not a request for a determination*. Submission of the Form 8976 does not constitute a request for a Determination Letter that recognizes the organization as a section 501(c)(4) organization. See section 7.05 of this revenue procedure. An organization's submitted Form 8976 is not open to public inspection under section 6104(a)(1) and (d) because it is not an application within the meaning of section 6104.

.02 *Acknowledgment required by section 506(c) is not a determination of exempt status by the IRS*. Acknowledgment of receipt of an organization's Form 8976 is not a determination of tax-exempt status by the IRS.

.03 *Declaratory judgment provisions of section 7428 do not apply*. Because Form 8976 is not a request for a Determination Letter and the acknowledgment of receipt of Form 8976 is not a determination by the IRS, the declaratory judgment provisions of section 7428 do not apply.

.04 *Requirement to file annual information returns*. A section 501(c)(4) organization must file applicable annual information returns or notices, as required by section 6033(a) or (i), separate from and without regard to its submission of Form 8976.

.05 *Separate procedure by which an organization may request a Determination Letter*. This revenue procedure does not address the separate procedure by which an organization may request a Determination Letter recognizing the organization as a section 501(c)(4) organization. An organization wishing to submit a request for a Determination Letter from the IRS that it qualifies for tax-exempt status should do so in the manner prescribed in Rev. Proc. 2016–5, 2016–1 I.R.B. 188, or a successor revenue procedure.

SECTION 8. PENALTIES FOR FAILURE TO TIMELY SUBMIT A FORM 8976

.01 *Failure to submit a timely Form 8976 as required under section 506*. An organization that fails to submit a completed Form 8976 by the due date described in section 3.01 or 3.02(2) of this revenue procedure, as applicable, will be subject to the penalties provided in section 6652(c)(4), unless it is shown that the failure was due to reasonable cause.

(1) *Penalty on organization*. An organization that fails to submit a completed Form 8976 by the due date must pay a penalty of $20 for each day during which such failure continues. However, the total imposed on the organization for failure to submit Form 8976 shall not exceed $5,000.

(2) *Penalty on managers*. If an organization fails to submit a completed Form 8976 by the due date, the IRS may send a written demand, requesting that the organization submit the Form 8976 by a specified future date that the IRS determines is reasonable under the circumstances. If the organization fails to submit the Form 8976 on or before the date specified in the demand, the person or persons responsible for such failure must pay a penalty of $20 for each day after the date specified in the demand during which such failure continues. For these purposes, the term "person" means any officer, director, trustee, employee, member, or other individual whose duty it is to submit the Form 8976. If more than one person is responsible for a failure to submit the Form 8976, all such persons shall be jointly and severally liable with respect to the penalty for such failure. However, the total amount imposed on all persons responsible for such failure shall not exceed $5,000.

.02 *Requesting relief from a section 6652(c)(4) penalty*. Under section 6652(c)(5) and the regulations thereunder, relief from a penalty imposed by section 6652(c)(4) may be obtained if it is established to the satisfaction of the IRS that the failure to timely submit the Form 8976 was due to reasonable cause. The correspondence from the IRS regarding the penalty will provide instructions on how to submit a request for penalty relief.

.03 *Example of a situation in which reasonable cause relief from the penalty on the organization would be appropriate*. Organization O is formed under the laws of a foreign country and operates for a number of years during which it conducts no activities in the United States and has no income from U.S. sources. In October 2016, O commences operations in the United States from which it anticipates income that will be reported on a Form 990 (or require the filing of a Form 990–N) and promptly notifies the IRS of its intent to operate as a section 501(c)(4) organization by submitting Form 8976. Because the date of submission of Form 8976 is more than 60 days after its Date of Organization, O receives a penalty letter from the IRS. Based on these facts, O's failure is due to reasonable cause, and O may obtain relief from the penalty described in section 8.01(1) of this revenue procedure by submitting a request in accordance with the instructions in the correspondence from the IRS regarding the penalty.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective July 8, 2016.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure will be reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 USC 3507) under control number 1545-2268.

The collection of information in section 4 of this revenue procedure is required to satisfy the requirement imposed by section 506 of the Code to notify the Secretary of an organization's intent to operate under section 501(c)(4). This information will be used by the IRS to process the Form 8976 for completeness in satisfaction of the statutory requirement and to determine applicability of the penalties imposed by section 6652(c)(4) of the Code. The burden for the collection of information contained in section 4 of this revenue procedure will be reflected in the burden estimate for Form 8976.

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

Books and records relating to the 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 section 6103.

SECTION 11. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on this revenue procedure, which will be considered in making any future update to these procedures.

Comments should refer to Rev. Proc. 2016–41, and should be submitted to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Rev. Proc. 2016–41) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions also may be hand delivered Monday through Friday between the hours of 8 am and 4 pm to CC:PA:LPD:PR (Rev. Proc. 2016–41), Courier's Desk, Internal Revenue Service, 1111

Constitution Avenue, N.W., Washington, DC. Alternatively, comments may be submitted electronically via the following email address: *Notice.Comments@irscounsel.treas.gov*. Please include "Rev. Proc. 2016–41" in the subject line of any electronic communication. All comments will be available for public inspection and copying.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Chelsea Rubin of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For additional information, please contact Ms. Rubin at 202-317-5800 (not a toll-free number).

Part IV. Items of General Interest

Correction to Revenue Procedure 2016–34, I.R.B. 2016–26

Announcement 2016–24

This document contains corrections to Revenue Procedure 2016–34, as published on Monday, June 27, 2016 (I.R.B. 2016–26, 1072). In particular, this announcement corrects the following administrative item.

Correction 1:

In **Section 2.3.9 How to Get Approval**, the date incorrectly appears as December 9, 2017. The correct date is December 9, 2016.

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

Requirement to Notify the IRS of Intent to Operate as a Section 501(c)(4) Organization

REG–101689–16

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Internal Revenue Bulletin**, the IRS is issuing temporary regulations relating to the requirement, added by the Protecting Americans from Tax Hikes Act of 2015, that organizations must notify the IRS of their intent to operate under section 501(c)(4) of the Internal Revenue Code (Code). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by October 11, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–101689–16), 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–101689–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–101689–16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Chelsea Rubin at (202) 317-5800; concerning submission of comments and request for hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking will be reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2268 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 September 12, 2016.

The collection of information is in § 1.506–1T(a)(2). The likely respondents are organizations described in section 501(c)(4) of the Code (section 501(c)(4) organizations). The collection of information in § 1.506–1T(a)(2) flows from section 506(b) of the Code, which requires a section 501(c)(4) organization to submit a notification including the following items of information: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the state under the laws of which, the organization was organized; and (3) a statement of the purpose of the organization. The temporary regulations provide that the notification must be submitted on Form 8976, "Notice of Intent to Operate Under Section 501(c)(4)," or its successor. In addition to the specific information required by statute, the temporary regulations require that an organization provide any additional information that may be specified in published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. Form 8976 requires an organization to provide its annual accounting period to ensure that the statutorily-required items of information in the notification are correlated accurately within existing IRS systems. The burden for the collection of information in § 1.506–1T(a)(2)(i) through (iv) associated with the one-time submission of the notification will be reflected in the burden estimate for Form 8976.

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 return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Internal Revenue Bulletin** contain amendments to the Income Tax Regulations (26 CFR part 1) that provide guidance relating to section 405 of the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114–113, div. Q), regarding the new requirement that organizations must notify the IRS of their intent to operate under section 501(c)(4) of the Code. The text of those temporary regulations also serves as the text of these proposed regulations and the preamble to the temporary regulations explains the relevant provisions.

Statement of Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *http://www.irs.gov*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed 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. It is hereby certified that the collection of information in these regulations will not have a significant impact on a substantial number of small entities. The collection of information is in § 1.506–1T(a)(2). The certification is based on the following:

Section 1.506–1T(a)(2) requires the notification to include only a few pieces of basic information: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the state or other jurisdiction under the laws of which, the organization was organized; (3) a statement of the purpose of the organization; and (4) such additional information as may be prescribed by published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification.

These requirements will have a minimal burden on section 501(c)(4) organizations submitting the notification, including small section 501(c)(4) organizations. The notification requires only basic information regarding the organization and, as such, will require little time to submit. Moreover, the burden on small organizations is further minimized because the information is only required to be submitted once.

For these reasons, 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, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

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

Drafting Information

The principal author of these regulations is Chelsea R. Rubin, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS 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 continues to read in part as follows:

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

Par. 2. Section 1.506–1 is added to read as follows:

§ 1.506–1 Organizations required to notify Commissioner of intent to operate under section 501(c)(4).

[The text of proposed § 1.506–1 is the same as the text for § 1.506–1T published elsewhere in this issue of the **Internal Revenue Bulletin**].

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on July 8, 2016, 11:15 a.m., and published in the issue of the Federal Register for July 12, 2016, 81 F.R. 45088)

Notice of proposed rulemaking

Premium Tax Credit NPRM VI

REG–109086–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the health insurance premium tax credit (premium tax credit) and the individual shared responsibility provision. These proposed regulations affect individuals who enroll in qualified health plans through Health Insurance Exchanges (Exchanges, also called Marketplaces) and claim the premium tax credit, and Exchanges that make qualified health plans available to individuals and employers. These proposed regulations also affect individuals who are eligible for employer-sponsored health coverage and individuals who seek to claim an exemption from the individual shared responsibility provision because of unaffordable coverage. Although employers are not directly affected by rules governing the premium tax credit, these proposed regulations may indirectly affect employers through the employer shared responsibility provisions and the related information reporting provisions.

DATES: Written (including electronic) comments and requests for a public hearing must be received by September 6, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–109086–15), 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–109086–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (REG–109086–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Shareen Pflanz, (202) 317-4727; concerning the submission of comments and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317-6901 (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 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 September 6, 2016. 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 § 1.36B–5. The collection of information is necessary to reconcile advance payments of the premium tax credit and determine the allowable premium tax credit. The collection of information is required to comply with the provisions of section 36B of the Internal Revenue Code (Code). The likely respondents are Marketplaces that enroll individuals in qualified health plans.

The burden for the collection of information contained in these proposed regulations will be reflected in the burden on Form 1095–A, *Health Insurance Marketplace Statement*, which is the form that will request the information from the Marketplaces in the proposed regulations.

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.

Background

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act), eligible individuals who purchase coverage under a qualified health plan through an Exchange may claim a premium tax credit under section 36B of the Code. Section 36B was subsequently amended by the Medicare and Medicaid Extenders Act of 2010, Public Law 111–309 (124 Stat. 3285 (2010)); the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112–9 (125 Stat. 36 (2011)); and the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10 (125 Stat. 38 (2011)).

The Affordable Care Act also added section 5000A to the Code. Section 5000A was subsequently amended by the TRICARE Affirmation Act of 2010, Public Law 111–159 (124 Stat. 1123 (2010)) and Public Law 111–173 (124 Stat. 1215 (2010)). Section 5000A provides that, for months beginning after December 31, 2013, a nonexempt individual must have qualifying healthcare coverage (called minimum essential coverage) or make an individual shared responsibility payment.

Applicable Taxpayers

To be eligible for a premium tax credit, an individual must be an applicable taxpayer. Among other requirements, under section 36B(c)(1) an applicable taxpayer is a taxpayer whose household income for the taxable year is between 100 percent and 400 percent of the Federal poverty line (FPL) for the taxpayer's family size (or is a lawfully present non-citizen who has income below 100 percent of the FPL and is ineligible for Medicaid). A taxpayer's family size is equal to the number of individuals in the taxpayer's family. Under section 36B(d)(1), a taxpayer's family consists of the individuals for whom the taxpayer claims a personal exemption deduction under section 151 for the taxable year. Taxpayers may claim a personal exemption deduction for themselves, a spouse, and each of their dependents.

Under section 1412 of the Affordable Care Act, advance payments of the premium tax credit (advance credit payments) may be made directly to insurers on behalf of eligible individuals. The amount of advance credit payments made on behalf of a taxpayer in a taxable year is determined by a number of factors including projections of the taxpayer's household income and family size for the taxable year. Taxpayers who receive the benefit of advance credit payments are required to file an income tax return to reconcile the amount of advance credit payments made during the year with the amount of the credit allowable for the taxable year.

Under § 1.36B–2(b)(6), in general, a taxpayer whose household income for a taxable year is less than 100 percent of the applicable FPL is nonetheless treated as an applicable taxpayer if (1) the taxpayer or a family member enrolls in a qualified health plan, (2) an Exchange estimates at the time of enrollment that the taxpayer's household income for the taxable year will be between 100 and 400 percent of the applicable FPL, (3) advance credit payments are authorized and paid for one or more months during the taxable year, and (4) the taxpayer would be an applicable taxpayer but for the fact that the taxpayer's household income for the taxable year is below 100 percent of the applicable FPL.

Premium Assistance Credit Amount

Under section 36B(a), a taxpayer's premium tax credit is equal to the premium assistance credit amount for the taxable year. Section 36B(b)(1) and § 1.36B–3(d) generally provide that the premium assistance credit amount is the sum of the premium assistance amounts for all coverage months in the taxable year for individuals in the taxpayer's family. The premium assistance amount for a coverage month is the lesser of (1) the premiums for the month for one or more qualified health plans that cover a taxpayer or family member (enrollment premium), or (2) the excess of the adjusted monthly premium for the second lowest cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B)) offered through the Exchange for the rating area where the taxpayer resides that would provide coverage to the taxpayer's coverage family (the benchmark plan), over 1/12 of the product of the taxpayer's household income and the applicable percentage for the taxable year (the contribution amount). In general, the benchmark plan's adjusted monthly premium is the premium an insurer would charge for the plan adjusted only for the ages of the covered individuals. The applicable percentage is provided in a table that is updated annually and represents the portion of a taxpayer's household income that the taxpayer is expected to pay if the taxpayer's coverage family enrolls in the benchmark plan. See, for example, Rev. Proc. 2014–62, 2014–2 C.B. 948 (providing the applicable percentage table for taxable years beginning in 2016) and Rev. Proc. 2014–37, 2014–2 C.B. 363 (providing the applicable percentage table for taxable years beginning in 2015). A taxpayer's coverage family refers to all members of the taxpayer's family who enroll in a qualified health plan in a month and are not eligible for minimum essential coverage as defined in section 5000A(f) (other than coverage in the individual market) for that month.

Under section 1301(a)(1)(B) of the Affordable Care Act, a qualified health plan must offer the essential health benefits package described in section 1302(a). Under section 1302(b)(1)(J) of the Affordable Care Act, the essential health benefits package includes pediatric services, including oral and vision care. Section 1302(b)(4)(F) of the Affordable Care Act provides that, if an Exchange offers a plan described in section 1311(d)(2)(B)(ii)(I) of the Affordable Care Act (42 U.S.C. 13031(d)(2)(B)(ii)(I)) (a stand-alone dental plan), other health plans offered through the Exchange will not fail to be qualified health plans solely because the plans do not offer pediatric dental benefits.

For purposes of calculating the premium assistance amount for a taxpayer who enrolls in both a qualified health plan and a stand-alone dental plan, section 36B(b)(3)(E) provides that the enrollment premium includes the portion of the premium for the stand-alone dental plan properly allocable to pediatric dental benefits that are included in the essential health benefits required to be provided by a qualified health plan.

Section 36B(b)(3)(B) provides that the benchmark plan with respect to an applicable taxpayer is the second lowest cost silver plan offered by the Marketplace through which the applicable taxpayer (or a family member) enrolled and which provides (1) self-only coverage, in the case of unmarried individuals (other than a surviving spouse or head of household) who do not claim any dependents, or any other individual who enrolls in self-only coverage, and (2) family coverage, in the case of any other applicable taxpayer. Section 1.36B–1(l) provides that self-only coverage means health insurance that covers one individual. Section 1.36B–1(m) provides that family coverage means health insurance that covers more than one individual.

Under § 1.36B–3(f)(3), if there are one or more silver-level plans offered through the Exchange for the rating area where the taxpayer resides that do not cover all members of a taxpayer's coverage family under one policy (for example, because of the relationships within the family), the benchmark plan premium is the second lowest-cost option for covering all members of the taxpayer's family, which may be either a single silver-level policy or more than one silver-level policy.

Section 1.36B–3(d)(2) provides that, if a qualified health plan is terminated before the last day of a month or an individual is enrolled in coverage effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, the premium assistance amount for the month is the lesser of the enrollment premiums for the month (reduced by any amounts that were refunded) or the excess of the benchmark plan premium for a full month of coverage over the full contribution amount for the month.

Coverage Month

Under section 36B(c)(2)(A) and § 1.36B–3(c)(1), a coverage month is generally any month for which the taxpayer or a family member is covered by a qualified health plan enrolled in through an Exchange on the first day of the month and the premium is paid by the taxpayer or through an advance credit payment. However, section 36B(c)(2) provides that a month is not a coverage month for an individual who is eligible for minimum essential coverage other than coverage in the individual market. Under section 36B(c)(2)(B)(ii), minimum essential coverage is defined by reference to section 5000A(f). Minimum essential coverage includes government-sponsored programs such as most Medicaid coverage, Medicare part A, the Children's Health Insurance Program (CHIP), most TRICARE programs, most coverage provided to veterans under title 38 of the United States Code, and the Nonappropriated Fund Health Benefits Program of the Department of Defense. See section 5000A(f)(1) and § 1.5000A–2(b). Section 1.36B–2(c)(3)(i) provides that, for purposes of section 36B, the government-sponsored programs described in section 5000A(f)(1)(A) are not considered eligible employer-sponsored plans.

Under § 1.36B–2(c)(2)(i), an individual generally is treated as eligible for government-sponsored minimum essential coverage as of the first day of the first full month that the individual meets the criteria for coverage and is eligible to receive benefits under the government program. However, under § 1.36B–2(c)(2)(v) an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a qualified health plan if, when the individual enrolls in the qualified health plan, an Exchange determines or considers (within the meaning of 45 CFR 155.302(b)) the individual to be ineligible for such program. In addition, § 1.36B–2(c)(2)(iv) provides that if an individual receiving the benefit of advance credit payments is determined to be eligible for a government-sponsored program, and that eligibility is effective retroactively, then, for purposes of the premium tax credit, the individual is treated as eligible for the program no earlier than the first day of the first calendar month beginning after the approval.

Coverage under an eligible employer-sponsored plan is minimum essential coverage. In general, an eligible employer-sponsored plan is coverage provided by an employer to its employees (and their dependents) under a group health plan maintained by the employer. *See* section 5000A(f)(2) and § 1.5000A–2(c). Under section 5000A(f)(3) and § 1.5000A–2(g), minimum essential coverage does not include any coverage that consists solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act (PHS Act) (42 U.S.C. 300gg–91(c)), or regulations issued under those provisions (45 CFR 148.220). In general, excepted benefits are benefits that are limited in scope or are conditional.

Under section 36B(c)(2)(C) and § 1.36B–2(c)(3)(i), except as provided in the next paragraph of this preamble, an individual is treated as eligible for coverage under an eligible employer-sponsored plan only if the employee's share of the premium is affordable and the coverage provides minimum value. Under section 36B(c)(2)(C), an eligible employer-sponsored plan is treated as affordable for an employee if the amount of the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) for self-only coverage does not exceed a specified percentage of the employee's household income. The affordability of coverage for individuals related to an employee is determined in the same manner. Thus, under section 36B(c)(2)(C)(i) and § 1.36B–2(c)(3)(v)(A)(2), an eligible employer-sponsored plan is treated as affordable for an individual eligible for the plan because of a relationship to an employee if the amount of the employee's required contribution for self-only coverage does not exceed a specified percentage of the employee's household income.

Under § 1.36B–2(c)(3)(v)(A)(3), an eligible employer-sponsored plan is not considered affordable if, when an individual enrolls in a qualified health plan, the Marketplace determines that the eligible employer-sponsored plan is not affordable. However, that rule does not apply for an individual who, with reckless disregard for the facts, provides incorrect information to a Marketplace concerning the employee's portion of the annual premium for coverage under the eligible employer-sponsored plan. In addition, under section 36B(c)(2)(C)(iii) and § 1.36B–2(c)(3)(vii)(A), an individual is treated as eligible for employer-sponsored coverage if the individual actually enrolls in an eligible employer-sponsored plan, even if the coverage is not affordable or does not provide minimum value.

Section 1.36B–2(c)(3)(iii)(A) provides that, subject to the rules described above, an employee or related individual may be considered eligible for coverage under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period. Under § 1.36B–2(c)(3)(ii), plan year means an eligible employer-sponsored plan's regular 12-month coverage period (or the remainder of a 12-month coverage period for a new employee or an individual who enrolls during a special enrollment period).

Although coverage in the individual market is minimum essential coverage under section 5000A(f)(1)(C), under section 36B(c)(2)(B)(i), an individual who is eligible for or enrolled in coverage in the individual market (whether or not obtained through the Marketplace) nevertheless may have a coverage month for purposes of the premium tax credit.

Required Contribution for Employer-Sponsored Coverage

Under section 36B(c)(2)(C) and § 1.36B–2(c)(3)(v)(A)(*1*) and (*2*), an eligible employer-sponsored plan is treated as affordable for an employee or a related individual if the amount the employee must pay for self-only coverage whether by salary reduction or otherwise (the employee's required contribution) does not exceed a specified percentage of the employee's household income. Under section 36B(c)(2)(C)(i)(II), an employee's required contribution has the same meaning for purposes of the premium tax credit as in section 5000A(e)(1)(B).

Section 5000A provides that, for each month, taxpayers must have minimum essential coverage, qualify for a health coverage exemption, or make an individual shared responsibility payment when they file a Federal income tax return. Section 5000A(e)(1) and § 1.5000A–3(e)(1) provide that an individual is exempt for a month when the individual cannot afford minimum essential coverage. For this purpose, an individual cannot afford coverage if the individual's required contribution (determined on an annual basis) for minimum essential coverage exceeds a specified percentage of the individual's household income. Under section 5000A(e)(1)(B)(i) and § 1.5000A–3(e)(3)(ii)(A), for employees eligible for coverage under an eligible employer-sponsored plan, the employee's required contribution is the amount an employee would have to pay for self-only coverage (whether paid through salary reduction or otherwise) under the plan. For individuals eligible to enroll in employer-sponsored coverage because of a relationship to an employee (related individual), under section 5000A(e)(1)(C) and § 1.5000A–3(e)(3)(ii)(B), the required contribution is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the employee and all related individuals who are included in the employee's family and are not otherwise exempt under § 1.5000A–3.

Notice 2015–87, 2015–52 I.R.B. 889, provides guidance on determining the affordability of an employer's offer of eligible employer-sponsored coverage for purposes of sections 36B, 5000A, and 4980H (and the related information reporting under section 6056).[1] In relevant part, Notice 2015–87 addresses how to determine the affordability of an employ-

[1]An assessable payment under section 4980H(b) may arise if at least one full-time employee (as defined in § 54.4980H–1(a)(21)) of the applicable large employer (as defined in § 54.4980H–1(a)(4)) receives the premium tax credit. A full-time employee generally is ineligible for the premium tax credit if the employee is offered minimum essential coverage under an eligible employer-sponsored plan that is affordable and provides minimum value. The determination of whether an applicable large employer has made an offer of affordable coverage under an eligible employer-sponsored plan for purposes of section 4980H(b) generally is based on the standard set forth in section 36B, which provides that an offer is affordable if the employee's required contribution is at or below 9.5 percent (as indexed) of the employee's household income. However, because an employer generally will not know the taxpayer employee's household income, § 54.4980H–5(e)(2) sets forth three safe harbors under which an employer may determine affordability (solely for purposes of section 4980H) based on information that is readily available to the employer (that is, Form W–2 wages, the rate of pay, or the Federal poverty line).

er's offer of eligible employer-sponsored coverage if an employer also makes available an opt-out payment, which is a payment that (1) is available only if the employee declines coverage (which includes waiving coverage in which the employee would otherwise be enrolled) under the employer-sponsored plan, and (2) cannot be used to pay for coverage under the employer-sponsored plan. The arrangement under which the opt-out payment is made available is an opt-out arrangement.

As Notice 2015–87 explains, the Treasury Department and the IRS have determined that it is generally appropriate to treat an opt-out payment that is made available under an unconditional opt-out arrangement in the same manner as a salary reduction contribution for purposes of determining an employee's required contribution under sections 36B and 5000A and any related consequences under sections 4980H(b) and 6056. Accordingly, Notice 2015–87 provides that the Treasury Department and the IRS intend to propose regulations reflecting this rule and to request comments on those regulations. For this purpose, an unconditional opt-out arrangement refers to an arrangement providing payments conditioned solely on an employee declining coverage under employer-sponsored coverage and not on an employee satisfying any other meaningful requirement related to the provision of health care to employees, such as a requirement to provide proof of coverage through a plan of a spouse's employer.

Notice 2015–87 also provides that the Treasury Department and the IRS anticipate requesting comments on the treatment of conditional opt-out arrangements, meaning opt-out arrangements under which payments are conditioned not only on the employee declining employer-sponsored coverage but also on satisfaction of one or more additional meaningful conditions (such as the employee providing proof of enrollment in coverage provided by a spouse's employer or other coverage).

Notice 2015–87 provides that, until the applicability date of any final regulations (and in any event for plan years beginning before 2017), individuals may treat opt-out payments made available under unconditional opt-out arrangements as increasing the employee's required contribution for purposes of sections 36B and 5000A.[2] In addition, for the same period, an individual who can demonstrate that he or she meets the condition(s) (in addition to declining the employer's health coverage) that must be satisfied to receive an opt-out payment (such as demonstrating that the employee has coverage under a spouse's group health plan) may treat the amount of the conditional opt-out payment as increasing the employee's required contribution for purposes of sections 36B and 5000A. See the section of this preamble entitled "*Effective/Applicability Date*" for additional related discussion.

Notice 2015–87 included a request for comments on opt-out arrangements. The Treasury Department and the IRS received a number of comments, and the comments are discussed in section 2.f. of this preamble entitled "*Opt-out arrangements and an employee's required contribution*."

Information Reporting

Section 36B(f)(3) provides that Exchanges must report to the IRS and to taxpayers certain information required to administer the premium tax credit. Section 1.36B–5(c)(1) provides that the information required to be reported annually includes (1) identifying information for each enrollee, (2) identifying information for the coverage, (3) the amount of enrollment premiums and advance credit payments for the coverage, (4) the premium for the benchmark plan used to calculate the amount of the advance credit payments made on behalf of the taxpayer or other enrollee, if advance credit payments were made, and the benchmark plan premium that would apply to all individuals enrolled in the coverage if advance credit payments were not made, and (5) the dates the coverage started and ended. Section 1.36B–5(c)(3)(i) provides that an Exchange must report this information for each family enrolled in the coverage.

Explanation of Provisions

1. Effective/Applicability Date

Except as otherwise provided in this section, these regulations are proposed to apply for taxable years beginning after December 31, 2016. As indicated in this section, taxpayers may rely on certain provisions of the proposed regulations for taxable years ending after December 31, 2013. In addition, several rules are proposed to apply for taxable years beginning after December 31, 2018. See the later section of this preamble entitled "*Effective/Applicability Date*" for information on the applicability date for the regulations on opt-out arrangements.

2. Eligibility

a. Applicable taxpayers

To avoid repayments of advance credit payments for taxpayers who experience an unforeseen decline in income, the existing regulations provide that if an Exchange determines at enrollment that the taxpayer's household income will be at least 100 percent but will not exceed 400 percent of the applicable FPL, the taxpayer will not lose his or her status as an applicable taxpayer solely because household income for the year turns out to be below 100 percent of the applicable FPL. To reduce the likelihood that individuals who recklessly or intentionally provide inaccurate information to an Exchange will benefit from an Exchange determination, the proposed regulations provide that a taxpayer whose household income is below 100 percent of the FPL for the taxpayer's family size is not treated as an applicable taxpayer if, with intentional or reckless disregard for the facts, the tax-

[2]Notice 2015–87 also provides that the Treasury Department and the IRS anticipate that the regulations generally will apply only for periods after the issuance of final regulations and that for the period prior to the applicability date of the final regulations, employers are not required to increase the amount of an employee's required contribution by the amount of an opt-out payment made available under an opt-out arrangement (other than a payment made available under a non-relief-eligible opt-out arrangement) for purposes of section 6056 (Form 1095–C), and an opt-out payment made available under an opt-out arrangement (other than a payment made available under a non-relief-eligible opt-out arrangement) will not be treated as increasing an employee's required contribution for purposes of any potential consequences under section 4980H(b). For a discussion of non-relief-eligible opt-out arrangements see Notice 2015–87, Q&A–9.

payer provided incorrect information to an Exchange for the year of coverage.

b. Exchange determination of ineligibility for Medicaid or CHIP

Similar to the rule for taxpayers who received the benefit of advance credit payments but ended the taxable year with household income below 100 percent of the applicable FPL, the existing regulations do not require a repayment of advance credit payments for taxpayers with household income within the range for eligibility for certain government-sponsored programs if an Exchange determined or considered (within the meaning of 45 CFR 155.302(b)) the taxpayer or a member of the taxpayer's family to be ineligible for the program. To reduce the likelihood that individuals who recklessly or intentionally provide inaccurate information to an Exchange will benefit from an Exchange determination, the proposed regulations provide that an individual who was determined or considered by an Exchange to be ineligible for Medicaid, CHIP, or a similar program (such as a Basic Health Program) may be treated as eligible for coverage under the program if, with intentional or reckless disregard for the facts, the individual (or a person claiming a personal exemption for the individual) provided incorrect information to the Exchange.

c. Nonappropriated Fund Health Benefits Program

The existing regulations under section 36B provide that government-sponsored programs described in section 5000A(f)(1)(A), which include the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note), are not eligible employer-sponsored plans. However, § 1.5000A–2(c)(2) provides that, because the Nonappropriated Fund Health Benefits Program (Program) is offered by an instrumentality of the Department of Defense to its employees, the Program is an eligible employer-sponsored plan. The proposed regulations conform the section 36B regulations to the section 5000A regulations and provide that the Program is treated as an eligible employer-sponsored plan for purposes of determining if an individual is eligible for minimum essential coverage under section 36B. Thus, if coverage under the Program does not provide minimum value (under § 1.36B–2(c)(3)(vi)) or is not affordable (under § 36B–2(c)(3)(v)) for an individual who does not enroll in the coverage, he or she is not treated as eligible for minimum essential coverage under the Program for purposes of premium tax credit eligibility.

d. Eligibility for employer-sponsored coverage for months during a plan year

The existing regulations under section 36B provide that an individual is eligible for minimum essential coverage through an eligible employer-sponsored plan if the individual had the opportunity to enroll in the plan and the plan is affordable and provides minimum value. The Treasury Department and the IRS are aware that in some instances individuals may not be allowed an annual opportunity to decide whether to enroll in eligible employer-sponsored coverage. This lack of an annual opportunity to enroll in employer-sponsored coverage should not limit an individual's annual choice from available coverage options through the Marketplace with the possibility of benefitting from the premium tax credit. Thus, the proposed regulations clarify that if an individual declines to enroll in employer-sponsored coverage for a plan year and does not have the opportunity to enroll in that coverage for one or more succeeding plan years, for purposes of section 36B, the individual is treated as ineligible for that coverage for the succeeding plan year or years for which there is no enrollment opportunity.[3]

e. Excepted benefits

Under section 36B and § 1.36B–2(c)(3)(vii)(A), an individual is treated as eligible for minimum essential coverage through an eligible employer-sponsored plan if the individual actually enrolls in the coverage, even if the coverage is not affordable or does not provide minimum value. Although health coverage that consists solely of excepted benefits may be a group health plan and, therefore, is an eligible employer-sponsored plan under section 5000A(f)(2) and § 1.5000A–2(c)(1), section 5000A(f)(3) provides that health coverage that consists solely of excepted benefits is not minimum essential coverage. Therefore, individuals enrolled in a plan consisting solely of excepted benefits still must obtain minimum essential coverage to satisfy the individual shared responsibility provision. The proposed regulations clarify that for purposes of section 36B an individual is considered eligible for coverage under an eligible employer-sponsored plan only if that plan is minimum essential coverage. Accordingly, an individual enrolled in or offered a plan consisting solely of excepted benefits is not denied the premium tax credit by virtue of that excepted benefits offer or coverage. Taxpayers may rely on this rule for all taxable years beginning after December 31, 2013.

f. Opt-out arrangements and an employee's required contribution

Sections 1.36B–2(c)(3)(v) and 1.5000A–3(e)(3)(ii)(A) provide that, in determining whether employer-sponsored coverage is affordable to an employee, an employee's required contribution for the coverage includes the amount by which the employee's salary would be reduced to enroll in the coverage.[4] If an employer makes an opt-out payment available to an

[3] Note that for purposes of section 4980H, in general, an applicable large employer will not be treated as having made an offer of coverage to a full-time employee for a plan year if the employee does not have an effective opportunity to elect to enroll in the coverage at least once with respect to the plan year. For this purpose, a plan year must be twelve consecutive months, unless a short plan year of less than twelve consecutive months is permitted for a valid business purpose. For additional rules on the definition of "offer" and "plan year" under section 4980H, see §§ 54.4980H–1(a)(35), 54.4980H–4(b), and 54.4980H–5(b).

[4] Section 5000A(e)(1)(C) and § 1.5000A–3(e)(3)(ii)(B) provide that, for purposes of the individual shared responsibility provision, the required contribution for individuals eligible to enroll in employer coverage because of a relationship to an employee (related individual) is the portion of the annual premium that the employee would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the employee and all related individuals who are included in the employee's family and are not otherwise exempt under § 1.5000A–3.

employee, the choice between cash and health coverage presented by the opt-out arrangement is analogous to the cash-or-coverage choice presented by the option to pay for coverage by salary reduction. In both cases, the employee may purchase the employer-sponsored coverage only at the price of forgoing a specified amount of cash compensation that the employee would otherwise receive – salary, in the case of a salary reduction, or an equal amount of other compensation, in the case of an opt-out payment. Therefore, the economic cost to the employee of the employer-sponsored coverage is the same under both arrangements. Accordingly, the employee's required contribution generally should be determined similarly regardless of the type of payment that an employee must forgo.

Notice 2015–87 requested comments on the proposed treatment of opt-out arrangements outlined in Q&A–9 of that notice. Several commenters objected to the proposal that the amount of an available unconditional opt-out payment increases the employee's required contribution on the basis that forgoing opt-out payments as part of enrolling in coverage has not traditionally been viewed by employers or employees as economically equivalent to making a salary reduction election and that such a rule would discourage employers from making opt-out payments available. None of the commenters, however, offered a persuasive economic basis for distinguishing unconditional opt-out payments from other compensation that an employee must forgo to enroll in employer-sponsored coverage, such as a salary reduction. Because forgoing an unconditional opt-out payment is economically equivalent to forgoing salary pursuant to a salary reduction election, and because §§ 1.36B–2(c)(3)(v) and 1.5000A–3(e)(3)(ii)(A) provide that the employee's required contribution includes the amount of any salary reduction, the proposed regulations adopt the approach described in Notice 2015–87 for opt-out payments made available under unconditional opt-out arrangements and provide that the amount of an opt-out payment made available to the employee under an unconditional opt-out arrangement increases the employee's required contribution.[5]

Notice 2015–87 provides that, for periods prior to the applicability date of any final regulations, employers are not required to increase the amount of an employee's required contribution by amounts made available under an opt-out arrangement for purposes of section 4980H(b) or section 6056 (in particular Form 1095–C, *Employer-Provided Health Insurance Offer and Coverage*), except that, for periods after December 16, 2015, the employee's required contribution must include amounts made available under an unconditional opt-out arrangement that is adopted after December 16, 2015. However, Notice 2015–87 provided that, for this purpose, an opt-out arrangement will not be treated as adopted after December 16, 2015, under limited circumstances, including in cases in which a board, committee, or similar body or an authorized officer of the employer specifically adopted the opt-out arrangement before December 16, 2015.

Some commenters requested clarification that an unconditional opt-out arrangement that is required under the terms of a collective bargaining agreement in effect before December 16, 2015, should be treated as having been adopted prior to December 16, 2015, and that amounts made available under such an opt-out arrangement should not be included in an employee's required contribution for purposes of sections 4980H(b) or 6056 through the expiration of the collective bargaining agreement that provides for the opt-out arrangement. The Treasury Department and the IRS now clarify that, under Notice 2015–87, for purposes of sections 4980H(b) and 6056, an unconditional opt-out arrangement that is required under the terms of a collective bargaining agreement in effect before December 16, 2015, will be treated as having been adopted prior to December 16, 2015. In addition, until the later of (1) the beginning of the first plan year that begins following the expiration of the collective bargaining agreement in effect before December 16, 2015 (disregarding any extensions on or after December 16, 2015), or (2) the applicability date of these regulations with respect to sections 4980H and 6056, employers participating in the collective bargaining agreement are not required to increase the amount of an employee's required contribution by amounts made available under such an opt-out arrangement for purposes of sections 4980H(b) or 6056 (Form 1095–C). The Treasury Department and the IRS further adopt these commenters' request that this treatment apply to any successor employer adopting the opt-out arrangement before the expiration of the collective bargaining agreement in effect before December 16, 2015 (disregarding any extensions on or after December 16, 2015). Commenters raised the issue of whether other types of agreements covering employees may need a similar extension of the relief through the end of the agreement's term. The Treasury Department and the IRS request comments identifying the types of agreements raising this issue due to their similarity to collective bargaining agreements because, for example, the agreement is similar in scope to a collective bargaining agreement, binding on the parties involved for a multi-year period, and subject to a statutory or regulatory regime.

Several commenters suggested that, notwithstanding the proposal on unconditional opt-out arrangements, the amount of an opt-out payment made available should not increase an employee's required contribution if the opt-out payment is conditioned on the employee having minimum essential coverage through another source, such as a spouse's employer-sponsored plan. These commenters argued that the amount of such a conditional opt-out payment should not affect the affordability of an employer's offer of employer-sponsored coverage for an employee who does not satisfy the applicable condition because that employee is ineli-

[5]To distinguish between opt-out payments and employer contributions to a section 125 cafeteria plan (which in some cases could be paid in cash to an employee who declines coverage in the health plan or other available benefits), the proposed regulations further clarify that an amount provided as an employer contribution to a cafeteria plan and that may be used by the employee to purchase minimum essential coverage is not an opt-out payment, whether or not the employee may receive the amount as a taxable benefit. This provision clarifies that the effect on an employee's required contribution of employer contributions to a cafeteria plan is determined under § 1.36B–2(c)(3)(v)(A)(6) rather than § 1.36B–2(c)(3)(v)(A)(7).

gible to receive the opt-out payment. Moreover, commenters argued that an employee who satisfies the condition (that is, who has alternative minimum essential coverage) is ineligible for the premium tax credit and does not need to determine the affordability of the employer's coverage offer. Thus, the commenters asserted, an amount made available under such an arrangement should be excluded from the required contribution.

While it is clear that the availability of an unconditional opt-out payment increases an individual's required contribution, the effect of the availability of a conditional opt-out payment is less obvious. In particular, under an unconditional opt-out arrangement, an individual who enrolls in the employer coverage loses the opt-out payment as a direct result of enrolling in the employer coverage. By contrast, in the case of a conditional opt-out arrangement, the availability of the opt-out payment may depend on information that is not generally available to the employer (who, if it is an applicable large employer, must report the required contribution under section 6056 and whose potential liability under section 4980H may be affected). Because of this difficulty of ascertaining which individuals could have met the condition and, therefore, would actually forgo the opt-out payment when enrolling in employer-sponsored coverage, it generally is not feasible to have a rule under which the required contribution perfectly captures the cost of coverage for each specific individual offered a conditional opt-out payment.

Similarly, another way to view opt-out payments that are conditioned on alternative coverage is that, rather than raising the cost to the employee of the employer's coverage, they reduce the cost to the employee of the alternative coverage. However, because employers generally do not have information about the existence and cost of other options available to the individual, it is not practical to take into account any offer of coverage other than the offer made by the employer in determining the required contribution with respect to the employer coverage (that is, the coverage that the employee must decline to receive the opt-out payment).

While commenters indicated that the required contribution with respect to the employer coverage does not matter for an individual enrolled in any other minimum essential coverage because the individual would be ineligible for the premium tax credit, this statement is not true if the other coverage is individual market coverage. In particular, while enrollment in most types of minimum essential coverage results in an individual being ineligible for a premium tax credit, that is not the case for coverage in the individual market. Moreover, for individual market coverage offered through a Marketplace, the required contribution with respect to the employer coverage frequently will be relevant in determining whether the individual is eligible for a premium tax credit. In such cases, as in the case of an unconditional opt-out payment, the availability of a conditional opt-out payment effectively increases the cost to the individual of enrolling in the employer coverage (at least relative to Marketplace coverage).

Further, an opt-out arrangement that is conditioned on an employee's ability to obtain other coverage (if that coverage can be coverage in the individual market, whether inside or outside the Marketplace) does not generally raise the issues described earlier in this section of the preamble regarding the difficulty of ascertaining which individuals could meet the condition under a conditional opt-out arrangement. This is because generally all individuals are able to obtain coverage in the individual market, pursuant to the guaranteed issue requirements in section 2702 of the PHS Act. Thus, in the sense that all individuals can satisfy the applicable condition, such an opt-out arrangement is similar to an unconditional opt-out arrangement.

In an effort to provide a workable rule that balances these competing concerns, the proposed regulations provide that amounts made available under conditional opt-out arrangements are disregarded in determining the required contribution if the arrangement satisfies certain conditions (an "eligible opt-out arrangement"), but otherwise the amounts are taken into account. The proposed regulations define an "eligible opt-out arrangement" as an arrangement under which the employee's right to receive the opt-out payment is conditioned on (1) the employee declining to enroll in the employer-sponsored coverage and (2) the employee providing reasonable evidence that the employee and all other individuals for whom the employee reasonably expects to claim a personal exemption deduction for the taxable year or years that begin or end in or with the employer's plan year to which the opt-out arrangement applies (employee's expected tax family) have or will have minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) during the period of coverage to which the opt-out arrangement applies. For example, if an employee's expected tax family consists of the employee, the employee's spouse, and two children, the employee would meet this requirement by providing reasonable evidence that the employee, the employee's spouse, and the two children, will have coverage under the group health plan of the spouse' s employer for the period to which the opt-out arrangement applies.[6]

The Treasury Department and the IRS invite comments on this proposed rule, including suggestions for other workable rules that result in the required contribution more accurately reflecting the individual's cost of coverage while minimizing undesirable consequences and incentives.

For purposes of the proposed eligible opt-out arrangement rule, reasonable evidence of alternative coverage includes the employee's attestation that the employee and all other members of the employee's expected tax family, if any, have or will have minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) or other reasonable evidence.

[6]The Treasury Department and the IRS note that if an opt-out payment is conditioned on an employee obtaining individual market coverage, that opt-out arrangement could act as a reimbursement arrangement for some or all of the employee's premium for that individual market coverage; therefore, the opt-out arrangement could operate as an employer payment plan as discussed in Notice 2015–87, Notice 2015–17, 2015–14 I.R.B. 845, and Notice 2013–54, 2013–40 I.R.B. 287. Nothing in these proposed regulations is intended to affect the prior guidance on employer payment plans.

Notwithstanding the evidence of alternative coverage required under the arrangement, to qualify as an eligible opt-out arrangement, the arrangement must also provide that any opt-out payment will not be made (and the payment must not in fact be made) if the employer knows or has reason to know that the employee or any other member of the employee's expected tax family does not have (or will not have) the required alternative coverage. An eligible opt-out arrangement must also require that the evidence of coverage be provided no less frequently than every plan year to which the eligible opt-out arrangement applies, and that the evidence be provided no earlier than a reasonable period before the commencement of the period of coverage to which the eligible opt-out arrangement applies. Obtaining the reasonable evidence (such as an attestation) as part of the regular annual open enrollment period that occurs within a few months before the commencement of the next plan year of employer-sponsored coverage meets this reasonable period requirement. Alternatively, the eligible opt-out arrangement would be permitted to require evidence of alternative coverage to be provided later, such as after the plan year starts, which would enable the employer to require evidence that the employee and other members of the employee's expected tax family have already obtained the alternative coverage.

Commenters on Notice 2015–87 generally stated that typical conditions under an opt-out arrangement include a requirement that the employee have alternative coverage through employer-sponsored coverage of a spouse or another relative, such as a parent. Provided that, as required under the opt-out arrangement, the employee provided reasonable evidence of this alternative coverage for the employee and the other members of the employee's expected tax family, and met the related conditions described in this preamble, these types of opt-out arrangements would be eligible opt-out arrangements, and opt-out payments made available under such arrangements would not increase the employee's required contribution.

The Treasury Department and the IRS did not receive comments on opt-out arrangements indicating that the meaningful conditions imposed include any requirement other than one relating to alternative coverage. Therefore, the proposed rules do not address other opt-out conditions and would not treat an opt-out arrangement based on other conditions as an eligible opt-out arrangement. However, the Treasury Department and the IRS invite comments on whether opt-out payments are made subject to additional types of conditions in some cases, whether those types of conditions should be addressed in further guidance, and, if so, how.

One commenter suggested that, if opt-out payments conditioned on alternative coverage are not included in an employee's required contribution, rules will be needed for cases in which an employee receives an opt-out payment and that employee's alternative coverage subsequently terminates. The commenter suggested that, in that case, the termination of the alternative coverage should have no impact on the determination of the employee's required contribution for the employer-sponsored coverage from which the employee opted out. In response, under the proposed regulations, provided that the reasonable evidence requirement is met, the amount of an opt-out payment made available under an eligible opt-out arrangement may continue to be excluded from the employee's required contribution for the remainder of the period of coverage to which the opt-out payment originally applied. The opt-out payment may be excluded for this period even if the alternative coverage subsequently terminates for the employee or any other member of the employee's expected tax family, regardless of whether the opt-out payment is required to be adjusted or terminated due to the loss of alternative coverage, and regardless of whether the employee is required to provide notice of the loss of alternative coverage to the employer.

The Treasury Department and the IRS are aware that the way in which opt-out arrangements affect the calculation of affordability is important not only to an employee and the other members of the employee's expected tax family in determining whether they may be eligible for a premium tax credit or whether an individual may be exempt under the individual shared responsibility provisions, but also to an employer subject to the employer shared responsibility provisions under section 4980H in determining whether the employer may be subject to an assessable payment under section 4980H(b). An employer subject to the employer shared responsibility provisions will be subject to a payment under section 4980H(b) only with respect to a full-time employee who receives a premium tax credit, and an employee will not be eligible for the premium tax credit if the employer's offer of coverage was affordable and provided minimum value.[7] Commenters expressed concern that if the rule adopted for conditional opt-outs required an employee to provide reasonable evidence that the employee has or will have minimum essential coverage, the employer may not know whether the employee is being truthful and has obtained (or will obtain) such coverage, or how long such coverage will continue. Under these proposed regulations, however, the employee's required contribution will not be increased by an opt-out payment made available under an eligible opt-out arrangement, provided that the arrangement provides that the employer makes the payment only if the employee provides reasonable evidence of alternative coverage and the employer does not know or have reason to know that the employee or any other member of the employee's expected tax family fails or will fail to meet the requirement to have alternative coverage (other than individual market coverage, whether or not obtained through the Marketplace).

Some commenters requested exceptions for special circumstances from the general rule that the employee's required contribution is increased by the amount of an opt-out payment made available. These circumstances include (1) conditional opt-out payments that are required under the terms of a collective bargaining agreement and (2) opt-out payments that are below a de minimis amount. Regarding opt-out arrangements contained in collec-

[7]The affordability rules under section 36B, including rules regarding opt-out payments, may also affect the application of section 4980H(a) because one element that is required for an applicable large employer to be subject to an assessable payment under section 4980H(a) is that at least one full-time employee must receive the premium tax credit.

tive bargaining agreements, the Treasury Department and the IRS anticipate that the proposed treatment of eligible opt-out arrangements, generally, will address the concerns raised in the comments. Accordingly, the Treasury Department and the IRS do not propose to provide a permanent exception for opt-out arrangements provided under collective bargaining agreements. Earlier in this section of the preamble, however, the Treasury Department and the IRS clarify and expand the transition relief provided under Notice 2015–87 for opt-out arrangements provided under collective bargaining agreements in effect before December 16, 2015. As for an exception for de minimis amounts, the Treasury Department and the IRS decline to adopt such an exception because there is neither a statutory nor an economic basis for establishing a de minimis threshold under which an unconditional opt-out payment would be excluded from the employee's required contribution.

g. Effective date of eligibility for minimum essential coverage when advance credit payments discontinuance is delayed

Section 36B and the regulations under section 36B provide that an individual who may enroll in minimum essential coverage outside the Marketplace (other than individual market coverage) for a month is generally not allowed a premium tax credit for that month. Consequently, individuals enrolled in a qualified health plan with advance credit payments must return to the Exchange to report eligibility for other minimum essential coverage so the Exchange can discontinue the advance credit payments for Marketplace coverage. Similarly, individuals enrolled in a qualified health plan with advance credit payments may be determined eligible for coverage under a government-sponsored program, such as Medicaid. In some cases, individuals may inform the Exchange of their opportunity to enroll in other minimum essential coverage or receive approval for coverage under a government-sponsored program after the time for which the Exchange can discontinue advance credit payments for the next month. Because taxpayers should generally not have to repay the advance credit payments for that next month in these circumstances, the proposed regulations provide a rule for situations in which an Exchange's discontinuance of advance credit payments is delayed. Under the proposed regulations, if an individual who is enrolled in a qualified health plan for which advance credit payments are made informs the Exchange that the individual is or will soon be eligible for other minimum essential coverage and that advance credit payments should be discontinued, but the Exchange does not discontinue advance credit payments for the first calendar month beginning after the month the individual notifies the Exchange, the individual is treated as eligible for the other minimum essential coverage no earlier than the first day of the second calendar month beginning after the first month the individual may enroll in the other minimum essential coverage. Similarly, if a determination is made that an individual is eligible for Medicaid or CHIP but advance credit payments are not discontinued for the first calendar month beginning after the eligibility determination, the individual is treated as eligible for Medicaid or CHIP no earlier than the first day of the second calendar month beginning after the determination. Taxpayers may rely on this rule for all taxable years beginning after December 31, 2013.

3. Premium Assistance Amount

a. Payment of taxpayer's share of premiums for advance credit payments following appeal determinations

Under § 1.36B–3(c)(1)(ii), a month in which an individual who is enrolled in a qualified health plan is a coverage month for the individual only if the taxpayer's share of the premium for the individual's coverage for the month is paid by the unextended due date of the taxpayer's income tax return for the year of coverage, or the premium is fully paid by advance credit payments.

One of the functions of an Exchange is to make determinations as to whether an individual who enrolls in a qualified health plan is eligible for advance credit payments for the coverage. If an Exchange determines that the individual is not eligible for advance credit payments, the individual may appeal that decision. An individual who is initially determined ineligible for advance credit payments, does not enroll in a qualified health plan under the contested determination, and is later determined to be eligible for advance credit payments through the appeals process, may elect to be retroactively enrolled in a health plan through the Exchange. In that case, the individual is treated as having been enrolled in the qualified health plan from the date on which the individual would have enrolled had he or she initially been determined eligible for advance credit payments. If retroactively enrolled, the deadline for paying premiums for the retroactive coverage may be after the unextended due date for filing an income tax return for the year of coverage. Consequently, the proposed regulations provide that a taxpayer who is eligible for advance credit payments pursuant to an eligibility appeal for a member of the taxpayer's coverage family who, based on the appeals decision, retroactively enrolls in a qualified health plan, is considered to have met the requirement in § 1.36B–3(c)(1)(ii) for a month if the taxpayer pays the taxpayer's share of the premium for coverage under the plan for the month on or before the 120th day following the date of the appeals decision. Taxpayers may rely on this rule for all taxable years beginning after December 31, 2013.

b. Month that coverage is terminated

Section 1.36B–3(d)(2) provides that if a qualified health plan is terminated before the last day of a month, the premium assistance amount for the month is the lesser of the enrollment premiums for the month (reduced by any amounts that were refunded), or the excess of the benchmark plan premium for a full month of coverage over the full contribution amount for the month. Section 1.36B–3(c)(2) provides that an individual whose enrollment in a qualified health plan is effective on the date of the individual's birth or adoption, or placement for foster care, or upon the effective date of a court order, is treated as enrolled as of the first day of the month and, therefore, the month of enrollment may be a coverage month. The regulations, however, do not expressly address how the premium assistance amount is computed when a covered individual disenrolls before the last day of a month but the plan is not terminated because other individuals remain enrolled. For purposes of the premium tax credit, the premium assistance amount for an individual who is not enrolled for an entire month should be the same regardless of the circumstances causing the partial-month coverage, provided that the individual was enrolled, or is treated as enrolled, as of the first day of the month (that is, so long as the month is a coverage month). Accordingly, to provide consistency for all individuals who have a coverage month that is less than a full calendar month, the proposed regulations provide that the premium assistance amount for a month is the lesser of the enrollment premiums for the month (reduced by any amounts that were refunded), or the excess of the benchmark plan premium over the contribution amount for the month. Taxpayers may rely on this rule for all taxable years beginning after December 31, 2013.

4. Benchmark Plan Premium

a. Effective/applicability date of benchmark plan rules

The rules relating to the benchmark plan in this section are proposed to apply for taxable years beginning after December 31, 2018.

b. Pediatric dental benefits

Under section 1311(d)(2)(B) of the Affordable Care Act, only qualified health plans, including stand-alone dental plans offering pediatric dental benefits, may be offered through a Marketplace. In general, a qualified health plan is required to provide coverage for all ten essential health benefits described in section 1302(b) of the Affordable Care Act, including pediatric dental coverage. However, under section 1302(b)(4)(F), a plan that does not provide pediatric dental benefits may nonetheless be a qualified health plan if it covers each essential health benefit described in section 1302(b) other than pediatric dental benefits and if it is offered through a Marketplace in which a stand-alone dental plan offering pediatric dental benefits is offered as well.

Section 36B(b)(3)(E) and § 1.36B–3(k) provide that if an individual enrolls in both a qualified health plan and a stand-alone dental plan, the portion of the premium for the stand-alone dental plan properly allocable to pediatric dental benefits is treated as a premium payable for the individual's qualified health plan. Thus, in determining a taxpayer's premium assistance amount for a month in which a member of the taxpayer's coverage family is enrolled in a stand-alone dental plan, the taxpayer's enrollment premium includes the portion of the premium for the stand-alone dental plan allocable to pediatric dental benefits. The existing regulations do not provide a similar adjustment for the taxpayer's applicable benchmark plan premium to reflect the cost of pediatric dental benefits in cases where the second-lowest cost silver plan does not provide pediatric dental benefits.

Section 36B(b)(3)(B) provides that the applicable benchmark plan with respect to a taxpayer is the second lowest cost silver plan available through the applicable Marketplace that provides "self-only coverage" or "family coverage," depending generally on whether the coverage family includes one or more individuals. Neither the Code nor the Affordable Care Act defines the terms "self-only coverage" or "family coverage" for this purpose.

Under the existing regulations, the references in section 36B(b)(3)(B) to plans that provide self-only coverage and family coverage are interpreted to refer to all qualified health plans offered through the applicable Marketplace, regardless of whether the coverage offered by those plans includes all ten essential health benefits. Because qualified health plans that do not offer pediatric dental benefits tend to be cheaper than qualified health plans that cover all ten essential health benefits, the second lowest-cost silver plan (and therefore the premium tax credit) for taxpayers purchasing coverage through a Marketplace in which stand-alone dental plans are offered is likely to not account for the cost of obtaining pediatric dental coverage.

The Treasury Department and the IRS believe that the current rule frustrates the statute's goal of making coverage that provides the essential health benefits affordable to individuals eligible for the premium tax credit. Accordingly, the proposed regulations reflect a modification in the interpretation of the terms "self-only coverage" and "family coverage" in section 36B(b)(3)(B) to refer to coverage that provides each of the essential health benefits described in section 1302(b) of the Affordable Care Act. This coverage may be obtained from either a qualified health plan alone or from a qualified health plan in combination with a stand-alone dental plan. In particular, self-only coverage refers to coverage obtained from such plans where the coverage family is a single individual. Similarly, family coverage refers to coverage obtained from such plans where the coverage family includes more than one individual.

Consistent with this interpretation, the proposed regulations provide that for taxable years beginning after December 31, 2018, if an Exchange offers one or more silver-level qualified health plans that do not cover pediatric dental benefits, the applicable benchmark plan is determined by ranking (1) the premiums for the silver-level qualified health plans that include pediatric dental benefits offered by the Exchange and (2) the aggregate of the premiums for the silver-level qualified health plans offered by the Exchange that do not include pediatric dental benefits plus the portion of the premium allocable to pediatric dental benefits for stand-alone dental plans offered by the Exchange. In constructing this ranking, the premium for the lowest-cost silver plan that does not include pediatric dental benefits is added to the lowest-cost portion of the premium for a stand-alone dental plan that is allocable to pediatric dental benefits, and similarly, the premium for the second lowest-cost silver plan that does not include pediatric dental benefits is added to the second-lowest-cost portion of the premium for a stand-alone dental plan that is assocable to pediatric dental benefits. The second lowest-cost amount from this combined ranking is the taxpayer's applicable benchmark plan premium.

c. Coverage family members residing in different locations

Under § 1.36B–3(f), a taxpayer's applicable benchmark plan is the second lowest cost silver plan offered at the time a taxpayer or family member enrolls in a qualified health plan through the Exchange for the rating area where the taxpayer resides. Under § 1.36B–3(f)(4), if members of a taxpayer's family reside in different states and enroll in separate qualified health plans, the premium for the taxpayer's applicable benchmark plan is the sum of the premiums for the applicable benchmark plans for each group of family members living in the same state.

Referring to the residence of the taxpayer to establish the cost for a benchmark health plan is appropriate when the taxpayer and all members of the taxpayer's coverage family live in the same location because it reflects the cost of available coverage for the taxpayer's coverage family. However, because premiums and plan availability may vary based on location, the existing rule for a taxpayer whose family members reside in different locations in the same state may not accurately reflect the cost of available coverage. In addition, the rules for calculating the premium tax credit should operate the same for families residing in multiple locations within a state and families residing in multiple states. Accordingly, § 1.36B–3(f)(4) of the proposed regulations provides that if a taxpayer's coverage family members reside in multiple locations, whether within the same state or in different states, the taxpayer's benchmark plan is determined based on the cost of available coverage in the locations where members of the taxpayer's coverage family reside. In particular, if members of a taxpayer's coverage family reside in different locations, the taxpayer's benchmark plan premium is the sum of the premiums for the applicable benchmark plans for each group of coverage family members residing in different locations, based on the plans offered to the group through the Exchange for the rating area where the group resides. If all members of a taxpayer's coverage family reside in a single location that is different from where the taxpayer resides, the taxpayer's benchmark plan premium is the premium for the applicable benchmark plan for the coverage family, based on the plans offered to the taxpayer's coverage family through the Exchange for the rating area where the coverage family resides.

d. Aggregation of silver-level policies

Section 1.36B–3(f)(3) provides that if one or more silver-level plans offered through an Exchange do not cover all members of a taxpayer's coverage family under one policy (for example, because an issuer will not cover a taxpayer's dependent parent on the same policy the taxpayer enrolls in), the premium for the applicable benchmark plan may be the premium for a single policy or for more than one policy, whichever is the second lowest-cost silver option. This rule does not specify which combinations of policies must be taken into account for this purpose, suggesting that all such combinations must be considered, which is unduly complex for taxpayers, difficult for Exchanges to implement, and difficult for the IRS to administer. Accordingly, to clarify and simplify the benchmark premium determination for situations in which a silver-level plan does not cover all the members of a taxpayer's coverage family under one policy, the proposed regulations delete the existing rule and provide a new rule in its place.

Under the proposed regulations, if a silver-level plan offers coverage to all members of a taxpayer's coverage family who reside in the same location under a single policy, the plan premium taken into account for purposes of determining the applicable benchmark plan is the premium for that policy. In contrast, if a silver-level plan would require multiple policies to cover all members of a taxpayer's coverage family who reside in the same location, the plan premium taken into account for purposes of determining the applicable benchmark plan is the sum of the premiums for self-only policies under the plan for each member of the coverage family who resides in the same location. Under the proposed regulations, similar rules would apply to the portion of premiums for stand-alone dental plans allocable to pediatric dental coverage taken into account for purposes of determining the premium for a taxpayer's applicable benchmark plan.

Comments are requested on the rule contained in the proposed regulations, as well as on an alternative rule under which the plan premium taken into account for purposes of determining a taxpayer's applicable benchmark plan would be equal to the sum of the self-only policies under a plan for each member of the taxpayer's coverage family, regardless of whether all members of the taxpayer's coverage family could be covered under a single policy under the plan.

e. Silver-level plan not available for enrollment

Section 1.36B–3(f)(5) provides that if a qualified health plan is closed to enrollment for a taxpayer or a member of the taxpayer's coverage family, that plan is disregarded in determining the taxpayer's applicable benchmark plan. Similarly, § 1.36B–3(f)(6) provides that a plan that is the applicable benchmark plan for a taxpayer does not cease to be the applicable benchmark plan solely because the plan or a lower cost plan terminates or closes to enrollment during the taxable year. Because stand-alone dental plans are considered in determining a taxpayer's applicable benchmark plan under the proposed regulations, the proposed regulations provide consistency in the treatment of qualified health plans and stand-alone dental plans that are closed to enrollment or that terminate during the taxable year.

f. Only one silver-level plan offered to the coverage family

In general, § 1.36B–3(f)(1) provides that a taxpayer's applicable benchmark plan is the second lowest-cost silver-level plan available to the taxpayer for self-only or family coverage. However, for taxpayers who reside in certain locations, only one silver-level plan providing such coverage may be available. Section § 1.36B–3(f)(8) of the proposed regulations clarifies that if there is only one silver-level qualified health plan offered through the Exchange that would cover all members of the taxpayer's coverage family (whether under one policy or multiple policies), that silver-level plan is used for purposes of the taxpayer's applicable benchmark plan. Similarly, if there is only one stand-alone dental plan offered through the Exchange that would cover all members of the taxpayer's coverage family (whether under one policy or multiple policies), the portion of the premium of that plan that is allocable to pediatric dental benefits is used for purposes of determining the taxpayer's applicable benchmark plan.

5. Reconciliation of Advance Credit Payments

Section 301.6011–8 provides that a taxpayer who receives the benefit of advance credit payments must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing) and reconcile the advance credit payments. In addition, the regulations under section 36B provide that if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attests to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the determination that the taxpayer is eligible for advance credit payments for coverage of the individual must reconcile the advance credit payments.

Questions have been raised concerning how these two rules apply, and consequently which individual must reconcile advance credit payments, when a taxpayer (a parent, for example) attests that he or she will claim a personal exemption deduction for an individual, the advance payments are made with respect to coverage for the individual, the taxpayer does not claim a personal exemption deduction for the individual, and the individual does not file a tax return for the year. The intent of the existing regulation is that the taxpayer, not the individual for whose coverage advance credit payments were made, must reconcile the advance credit payments in situations in which a taxpayer attests to the intention to claim a personal exemption for the individual and no one claims a personal exemption deduction for the individual. Consequently, the proposed regulations clarify that if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attests to the Exchange to the intention to claim a personal exemption deduction for the individual, not the individual for whose coverage the advance credit payments were made, must file a tax return and reconcile the advance credit payments.

6. Information Reporting

a. Two or more families enrolled in single qualified health plan

Section 1.36B–3(h) provides that if a qualified health plan covers more than one family under a single policy (for example, a plan covers a taxpayer and the taxpayer's child who is 25 and not a dependent of the taxpayer), the premium tax credit is computed for each applicable taxpayer covered by the plan. In addition, in computing the tax credit for each taxpayer, premiums for the qualified health plan the taxpayers purchase (the enrollment premiums) are allocated to each taxpayer in proportion to the premiums for each taxpayer's applicable benchmark plan.

The existing regulations provide that the Exchange must report the enrollment premiums for each family, but do not specify the manner in which the Exchange must divide the enrollment premiums among the families enrolled in the policy. Consequently, the proposed regulations clarify that when multiple families enroll in a single qualified health plan and advance credit payments are made for the coverage, the enrollment premiums reported by the Exchange for each family is the family's allocable share of the enrollment premiums, which is based on the proportion of each family's applicable benchmark plan premium.

b. Partial months of enrollment

The existing regulations do not specify how the enrollment premiums and benchmark plan premiums are reported in cases in which one or more individuals is enrolled or disenrolled in coverage mid-month. To ensure that this reporting is consistent with the rules for calculating the premium assistance amounts for partial months of coverage, the proposed regulations provide that, if an individual is enrolled in a qualified health plan after the first day of a month, generally no value should be reported for the individual's enrollment premium or benchmark plan premium for that month. However, if an individual's coverage in a qualified health plan is terminated before the last day of a month, or an individual is enrolled in coverage after the first day of a month and the coverage is effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, an Exchange must report the premium for the applicable benchmark plan for a full month of coverage (excluding the premium allocated to benefits in excess of essential health benefits). In addition, the proposed regulations provide that the Exchange must report the enrollment premiums for the month (excluding the premium allocated to benefits in excess of essential health benefits), reduced by any amount that was refunded due to the plan's termination.

c. Use of electronic media

Section 301.6011–2(b) provides that if the use of certain forms, including the Form 1095 series, is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media. Form 1095–A should not have been included in § 301.6011–2 because Form 1095–A is not an information return. Consequently, the proposed regulations replace the general reference in § 301.6011–2(b) to the forms in the 1095 series with specific references to Forms 1095–B and 1095–C, but not Form 1095–A.

Effective/Applicability Date

Except as otherwise provided, these regulations are proposed to apply for taxable years beginning after December 31, 2016. In addition, taxpayers may rely on certain provisions of the proposed regulations for taxable years ending after December 31, 2013, as indicated earlier in this preamble. In addition, rules relating to the benchmark plan described in section 4 of this preamble are proposed to apply for taxable years beginning after December 31, 2018.

Notwithstanding the proposed applicability date, nothing in the proposed regulations is intended to limit any relief for opt-out arrangements provided in Notice

2015–87, Q&A 9, or in section 2.f of the preamble to these proposed regulations (regarding opt-out arrangements provided for in collective bargaining agreements). For purposes of sections 36B and 5000A, although under the proposed regulations amounts made available under an eligible opt-out arrangement are not added to an employee's required contribution, for periods before the final regulations are applicable and, if later, through the end of the most recent plan year beginning before January 1, 2017, an individual who can demonstrate that he or she meets the condition for an opt-out payment under an eligible opt-out arrangement is permitted to treat the opt-out payment as increasing the employee's required contribution.[8]

For purposes of the consequences of these regulations under sections 4980H and 6056 (and in particular Form 1095–C), the regulations regarding opt-out arrangements are proposed to be first applicable for plan years beginning on or after January 1, 2017,[9] and for the period prior to this applicability date employers are not required to increase the amount of an employee's required contribution by the amount of an opt-out payment made available under an opt-out arrangement (other than a payment made available under a non-relief-eligible opt-out arrangement[10]). See also section 2.f of this preamble for transition relief provided under Notice 2015–87 as clarified and expanded for opt-out arrangements contained in collective bargaining agreements in effect before December 16, 2015. See § 601.601(d)(2)(ii)(b).

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed 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 information collection required under these regulations is imposed under section 36B. Consistent with the statute, the proposed regulations require a person that provides minimum essential coverage to an individual to file a return with the IRS reporting certain information and to furnish a statement to the responsible individual who enrolled an individual or family in the coverage. These regulations merely provide the method of filing and furnishing returns and statements under section 36B. Moreover, the proposed regulations attempt to minimize the burden associated with this collection of information by limiting reporting to the information that the IRS requires to verify minimum essential coverage and administer tax credits.

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 Requests for 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 this preamble under the "Addresses" heading. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal authors of these proposed regulations are Shareen S. Pflanz and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.36B–0 is amended by:

1. Adding the entries for §§ 1.36B–2(b)(6)(i) and (ii).

2. Adding entries for §§ 1.36B–2(c)(3)(v)(A)(*7*), (v)(A)(*7*)(*i*), (*ii*), (*iii*), (*iii*)(*A*), (*iii*)(*B*), (*iii*)(*C*), and (*iv*).

3. Redesignating entry for § 1.36B–2(c)(4) as (c)(5) and adding new entries for § 1.36B–2(c)(4), (c)(4)(i), (ii), (ii)(A), and (ii)(B).

4. Redesignating entry for § 1.36B–3(c)(4) as (c)(5) and adding a new entry for § 1.36B–3(c)(4).

5. Revising entries for §§ 1.36B–3(d)(1) and (d)(2).

6. Revising entries for §§ 1.36B–3(f)(3), (4), (5), (6), and (7).

7. Adding entries for §§ 1.36B–3(f)(8), (9), and (10).

8. Adding entries for §§ 1.36B–5(c)(3)(iii).

The revisions and additions read as follows:

§ 1.36B–0 Table of contents.

* * * * *

[8]For periods prior to the applicability date, an individual who cannot demonstrate that he or she meets the condition for an opt-out payment under an eligible opt-out arrangement is not permitted to treat the opt-out payment as increasing the employee's required contribution.

[9]Notice 2015–87, Q&A 9 provides that the Treasury Department and the IRS anticipate that the regulations on opt-out arrangements generally will apply only for periods after the issuance of final regulations. The Treasury Department and the IRS anticipate finalizing these regulations prior to the end of 2016.

[10]For a discussion of non-relief-eligible opt-out arrangements see Notice 2015–87, Q&A–9.

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(b) * * *

(6) * * *

(i) In general.

(ii) Exceptions.

*****

(c) * * *

(3) * * *

(v) * * *

(A) * * *

(*7*) Opt-out arrangements.

(*i*) In general.

(*ii*) Eligible opt-out arrangements.

(*iii*) Definitions.

(*A*) Opt-out payment.

(*B*) Opt-out arrangement.

(*C*) Eligible opt-out arrangement.

(*iv*) Examples.

*****

(4) Special eligibility rules.

(i) Related individuals not claimed as a personal exemption deduction.

(ii) Exchange unable to discontinue advance credit payments.

(A) In general.

(B) Medicaid or CHIP.

* * * * *

§ 1.36B–3 Computing the premium assistance credit amount.

* * * * *

(c) * * *

(4) Appeals of coverage eligibility.

(d) * * *

(1) Premium assistance amount.

(2) Examples.

* * * * *

(f) * * *

(3) Silver-level plan not covering pediatric dental benefits.

(4) Family members residing in different locations.

(5) Single or multiple policies needed to cover the family.

(i) Policy covering a taxpayer's family.

(ii) Policy not covering a taxpayer's family.

(6) Plan not available for enrollment.

(7) Benchmark plan terminates or closes to enrollment during the year.

(8) Only one silver-level plan offered to the coverage family.

(9) Examples.

* * * * *

(n) Effective/applicability date.

* * * * *

§ 1.36B–5 Information reporting by Exchanges.

* * * * *

(c) * * *

(3) * * *

(iii) Partial month of coverage.

(A) In general.

(B) Certain mid-month enrollments.

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Par. 3. Section 1.36B–1 is amended by revising paragraphs (l), (m), and (o) to read as follows:

§ 1.36B–1 Premium tax credit definitions.

* * * * *

(l) *Self-only coverage*. Self-only coverage means health insurance that covers one individual and provides coverage for the essential health benefits as defined in section 1302(b)(1) of the Affordable Care Act (42 U.S.C. 18022).

(m) *Family coverage*. Family coverage means health insurance that covers more than one individual and provides coverage for the essential health benefits as defined in section 1302(b)(1) of the Affordable Care Act (42 U.S.C. 18022).

* * * * *

(o) *Effective/applicability date*. Except for paragraphs (l) and (m), this section applies to taxable years ending after December 31, 2013. Paragraphs (l) and (m) of this section apply to taxable years beginning after December 31, 2018. Paragraphs (l) and (m) of § 1.36B–1 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

Par. 4. Section 1.36B–2 is amended by:

1. Revise paragraph (b)(6) introductory text, (b)(6)(i) and (ii).

2. Adding three new sentences to the end of paragraph (c)(2)(v).

3. Revising paragraph (c)(3)(i).

4. Revising paragraph (c)(3)(iii)(A).

5. Adding three new sentences to the end of paragraph (c)(3)(v)(A)(*3*).

6. Adding new paragraphs (c)(3)(v)(A)(*7*)

7. Revising paragraph (c)(4).

8. Adding a new paragraph (e).

§ 1.36B–2 Eligibility for premium tax credit.

* * * * *

(b) * * *

(6) *Special rule for taxpayers with household income below 100 percent of the Federal poverty line for the taxable year*—(i) *In general*. A taxpayer (other than a taxpayer described in paragraph (b)(5) of this section) whose household income for a taxable year is less than 100 percent of the Federal poverty line for the taxpayer's family size is treated as an applicable taxpayer for the taxable year if—

(A) The taxpayer or a family member enrolls in a qualified health plan through an Exchange for one or more months during the taxable year;

(B) An Exchange estimates at the time of enrollment that the taxpayer's household income will be at least 100 percent but not more than 400 percent of the Federal poverty line for the taxable year;

(C) Advance credit payments are authorized and paid for one or more months during the taxable year; and

(D) The taxpayer would be an applicable taxpayer if the taxpayer's household income for the taxable year was at least 100 but not more than 400 percent of the Federal poverty line for the taxpayer's family size.

(ii) *Exceptions*. This paragraph (b)(6) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange for the year of coverage. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows the information provided to the Exchange is inaccurate.

* * * * *

(c) * * *

(2) * * *

(v) * * * This paragraph (c)(2)(v) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange for the year of coverage. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows that information provided to the Exchange is inaccurate.

* * * * *

(3) * * *

(i) *In general*. For purposes of section 36B, an employee who may enroll in an eligible employer-sponsored plan (as defined in section 5000A(f)(2) and the regulations under that section) that is minimum essential coverage, and an individual who may enroll in the plan because of a relationship to the employee (a related individual), are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value. Except for the Nonappropriated Fund Health Benefits Program of the Department of Defense, established under section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note), government-sponsored minimum essential coverage is not an eligible employer-sponsored plan. The Nonappropriated Fund Health Benefits Program of the Department of Defense is considered eligible employer-sponsored coverage, but not government-sponsored coverage, for purposes of determining if an individual is eligible for minimum essential coverage under this section.

* * * * *

(iii) ***

(A) *Failure to enroll in plan*. An employee or related individual may be eligible for minimum essential coverage under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period for the plan year. If an enrollment period relates to coverage for not only the upcoming plan year (or the current plan year in the case of an enrollment period other than an open enrollment period), but also coverage in one or more succeeding plan years, this paragraph (c)(3)(iii)(A) applies only to eligibility for the coverage in the upcoming plan year (or the current plan year in the case of an enrollment period other than an open enrollment period).

* * * * *

(v) * * *

(A) * * *

(*3*) * * * This paragraph (c)(3)(v)(A)(*3*) does not apply for an individual who, with intentional or reckless disregard for the facts, provides incorrect information to an Exchange concerning the portion of the annual premium for coverage for the employee or related individual under the plan. A reckless disregard of the facts occurs if the taxpayer makes little or no effort to determine whether the information provided to the Exchange is accurate under circumstances that demonstrate a substantial deviation from the standard of conduct a reasonable person would observe. A disregard of the facts is intentional if the taxpayer knows that the information provided to the Exchange is inaccurate.

* * * * *

(*7*) *Opt-out arrangements*—(*i*) *In general*. Except as otherwise provided in this paragraph (c)(3)(v)(A)(*7*), the amount of an opt-out payment made available to an employee under an opt-out arrangement increases the employee's required contribution for purposes of determining the affordability of the eligible employer-sponsored plan to which the opt-out arrangement relates, regardless of whether the employee enrolls in the eligible employer-sponsored plan or declines to enroll in that coverage and is paid the opt-out payment.

(*ii*) *Eligible opt-out arrangements*. The amount of an opt-out payment made available to an employee under an eligible opt-out arrangement does not increase the employee's required contribution for purposes of determining the affordability of the eligible employer-sponsored plan to which the eligible opt-out arrangement relates, regardless of whether the employee enrolls in the eligible employer-sponsored plan or is paid the opt-out payment.

(*iii*) *Definitions*. The following definitions apply for purposes of this paragraph (c)(3)(v)(A)(*7*):

(*A*) *Opt-out payment*. The term *opt-out payment* means a payment that is available only if an employee declines coverage, including waiving coverage in which the employee would otherwise be enrolled, under an eligible employer-sponsored plan and that is not permitted to be used to pay for coverage under the eligible employer-sponsored plan. An amount provided as an employer contribution to a cafeteria plan that is permitted to be used by the employee to purchase minimum essential coverage is not an opt-out payment, whether or not the employee may receive the amount as a taxable benefit. See paragraph (c)(3)(v)(A)(*6*) of this section for the treatment of employer contributions to a cafeteria plan.

(*B*) *Opt-out arrangement*. The term *opt-out arrangement* means the arrangement under which an opt-out payment is made available.

(*C*) *Eligible opt-out arrangement*. The term *eligible opt-out arrangement* means an arrangement under which an employee's right to receive an opt-out payment is conditioned on the employee providing reasonable evidence that the employee and all other individuals for whom the employee reasonably expects to claim a personal exemption deduction for the taxable year or years that begin or end in or with the employer's plan year to which the opt-out arrangement applies (employee's expected tax family) have or will have minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) during the period of coverage to which the opt-out arrangement applies. For this purpose, reasonable evidence of alternative coverage may include the employee's attestation that the employee and all other members of the employee's expected tax family have or will have minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) for the relevant period. Regardless of the evidence of alternative coverage required under the arrangement, to be an eligible opt-out arrangement, the arrangement must provide that the opt-out payment will not be made, and the employer in fact must not make the payment, if the employer knows or has reason to know that the employee or any other member of the employee's expected tax family does not have or will not have the alternative coverage. The arrangement must also require that the evidence of the alternative coverage be provided no less frequently than every plan year to which the eligible opt-out arrangement applies, and that it must be provided no earlier than a reasonable period of time before the commencement of the period of coverage to which the eligible opt-out arrangement applies. If the reasonable evidence (such as an attestation) is obtained as part of the regular annual open enrollment period that occurs within a few months before the commencement of the next plan year of employer-sponsored coverage, it will qualify as being provided no earlier than a reasonable period of time before commencement of the applicable period of coverage. An eligible opt-out arrangement is also permitted to require evidence of alternative coverage to be provided at a later date, such as after the plan year starts, which would enable the employer to require evidence that the employee and all other members of the employee's expected tax family have already obtained the alternative coverage. Nothing in this rule prohibits an employer from requiring reasonable evidence of alternative coverage other than an attestation in order for an employee to qualify for an opt-out payment under an eligible opt-out arrangement. Further, provided that the reasonable evidence requirement is met, the amount of an opt-out payment made available under an eligible opt-out arrangement continues to be excluded from the employee's required contribution for the remainder of the period of coverage to which the opt-out payment originally applied even if the alternative coverage subsequently terminates for the employee or for any other member of the employee's expected tax family, regardless of whether the opt-out payment is required to be adjusted or terminated due to the loss of alternative coverage, and regardless of whether the employee is required to provide notice of the loss of alternative coverage to the employer.

(*iv*) *Examples*. The following examples illustrate the provisions of this paragraph (c)(3)(v)(A)(*7*). In each example, the eligible employer-sponsored plan's plan year is the calendar year.

Example 1. Taxpayer B is an employee of Employer X, which offers its employees coverage under an eligible employer-sponsored plan that requires B to contribute $3,000 for self-only coverage. X also makes available to B a payment of $500 if B declines to enroll in the eligible employer-sponsored plan. Therefore, the $500 opt-out payment made available to B under the opt-out arrangement increases B's required contribution under X's eligible employer-sponsored plan from $3,000 to $3,500, regardless of whether B enrolls in the eligible employer-sponsored plan or declines to enroll and is paid the opt-out payment.

Example 2. The facts are the same as in *Example 1*, except that availability of the $500 opt-out payment is conditioned not only on B declining to enroll in X's eligible employer-sponsored plan but also on B providing reasonable evidence no earlier than the regular annual open enrollment period for the next plan year that B and all other members of B's expected tax family are or will be enrolled in minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through the Marketplace). B's expected tax family consists of B and B's spouse, C, who is an employee of Employer Y. During the regular annual open enrollment period for the upcoming plan year, B declines coverage under X's eligible employer-sponsored plan and provides X with reasonable evidence that B and C will be enrolled in Y's employer-sponsored plan, which is minimum essential coverage. The opt-out arrangement provided by X is an eligible opt-out arrangement, and, therefore, the $500 opt-out payment made available to B does not increase B's required contribution under X's eligible employer-sponsored plan. B's required contribution for self-only coverage under X's eligible employer-sponsored plan is $3,000.

Example 3. The facts are the same as in *Example 2*, except that B and C have two children that B expects to claim as dependents for the taxable year that coincides with the upcoming plan year. During the regular annual open enrollment period for the upcoming plan year, B declines coverage under X's eligible employer-sponsored plan and provides X with reasonable evidence that B and C will be enrolled in Y's employer-sponsored plan, which is minimum essential coverage. However, B does not provide reasonable evidence that B's children will be enrolled in minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace); therefore, X determines B is not eligible for the opt-out payment, and B does not receive it. The $500 opt-out payment made available under the opt-out arrangement does not increase B's required contribution under X's eligible employer-sponsored plan because the opt-out arrangement provided by X is an eligible opt-out arrangement. B's required contribution for self-only coverage under X's eligible employer-sponsored plan is $3,000.

Example 4. Taxpayer D is married and is employed by Employer Z, which offers its employees coverage under an eligible employer-sponsored plan that requires D to contribute $2,000 for self-only coverage. Z also makes available to D a payment of $300 if D declines to enroll in the eligible employer-sponsored plan and provides reasonable evidence no earlier than the regular annual open enrollment period for the next plan year that D is or will be enrolled in minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through the Marketplace); the opt-out arrangement is not conditioned on whether the other members of D's expected tax family have other coverage. This opt-out arrangement is not an eligible opt-out arrangement because it does not condition the right to receive the opt-out payment on D providing reasonable evidence that D and the other members of D's expected tax family have (or will have) minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace). Therefore, the $300 opt-out payment made available to D under the opt-out arrangement increases D's required contribution under Z's eligible employer-sponsored plan. D's required contribution for self-only coverage under Z's eligible employer-sponsored plan is $2,300.

* * * * *

(4) *Special eligibility rules*—(i) *Related individual not claimed as a personal exemption deduction*. An individual who may enroll in minimum essential coverage because of a relationship to another person eligible for the coverage, but for whom the other eligible person does not claim a personal exemption deduction under section 151, is treated as eligible for minimum essential coverage under the coverage only for months that the related individual is enrolled in the coverage.

(ii) *Exchange unable to discontinue advance credit payments*— (A) *In general*. If an individual who is enrolled in a qualified health plan for which advance credit payments are made informs the Exchange that the individual is or will soon be eligible for other minimum essential coverage and that advance credit payments should be discontinued, but the Exchange does not discontinue advance credit payments for the first calendar month beginning after the month the individual informs the Exchange, the individual is treated as eligible for the other minimum essential coverage no earlier than the first day of the second calendar month beginning after the first month the individual may enroll in the other minimum essential coverage.

(B) *Medicaid or CHIP*. If a determination is made that an individual who is enrolled in a qualified health plan for which advance credit payments are made is eligible for Medicaid or CHIP but the advance credit payments are not discontinued for the first calendar month beginning after the eligibility determination, the individual is treated as eligible for the Medicaid or CHIP no earlier than the first day of the second calendar month beginning after the eligibility determination.

* * * * *

(e) *Effective/applicability date*. (1) Except as provided in paragraph (e)(2) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraph (b)(6)(ii), the last three sentences of paragraph (c)(2)(v), paragraph (c)(3)(i), paragraph (c)(3)(iii)(A), the last three sentences of paragraph (c)(3)(v)(A)(*3*), paragraph (c)(3)(v)(A)(*7*), and paragraph (c)(4) of this section apply to taxable years beginning after December 31, 2016. Paragraphs (b)(6), (c)(3)(i), (c)(3)(iii)(A), and (c)(4) of § 1.36B–2 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017.

Par. 5. Section 1.36B–3 is amended by:

1. Redesignating paragraph (c)(4) as paragraph (c)(5) and adding a new paragraph (c)(4).

2. Revising paragraph (d)(1).

3. Revising paragraph (d)(2).

4. Revising paragraph (f)

11. Adding paragraph (n).

§ 1.36B–3 Computing the premium tax credit amount.

* * * * *

(c) * * *

(4) *Appeals of coverage eligibility*. A taxpayer who is eligible for advance credit payments pursuant to an eligibility appeal decision implemented under 45 CFR § 155.545(c)(1)(ii) for coverage of a member of the taxpayer's coverage family who, based on the appeal decision, retroactively enrolls in a qualified health plan is considered to have met the requirement in paragraph (c)(1)(ii) of this section for a month if the taxpayer pays the taxpayer's share of the premiums for coverage under the plan for the month on or before the 120th day following the date of the appeals decision.

* * * * *

(d) * * *

(1) *Premium assistance amount*. The premium assistance amount for a coverage month is the lesser of—

(i) The premiums for the month, reduced by any amounts that were refunded, for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or

(ii) The excess of the adjusted monthly premium for the applicable benchmark plan (benchmark plan premium) over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year (the taxpayer's contribution amount).

(2) *Examples*. The following examples illustrate the rules of paragraph (d)(1) of this section.

Example 1. Taxpayer Q is single and has no dependents. Q enrolls in a qualified health plan with a monthly premium of $400. Q's monthly benchmark plan premium is $500, and his monthly contribution amount is $80. Q's premium assistance amount for a coverage month is $400 (the lesser of $400, Q's monthly enrollment premium, and $420, the difference between Q's monthly benchmark plan premium and Q's contribution amount).

Example 2. (i) Taxpayer R is single and has no dependents. R enrolls in a qualified health plan with a monthly premium of $450. The difference between R's benchmark plan premium and contribution amount for the month is $420. R's premium assistance amount for a coverage month is $420 (the lesser of $450 and $420).

(ii) The issuer of R's qualified health plan is notified that R died on September 20. The issuer terminates coverage as of that date and refunds the remaining portion of the September enrollment premiums ($150) for R's coverage.

(iii) Under paragraph (d)(1) of this section, R's premium assistance amount for September is the lesser of the enrollment premiums for the month, reduced by any amounts that were refunded ($300 ($450 – $150)) or the difference between the benchmark plan premium and the contribution amount for the month ($420). R's premium assistance amount for September is $300, the lesser of $420 and $300.

Example 3. The facts are the same as in *Example 2* of this paragraph (d)(2), except that the qualified health plan issuer does not refund any enrollment premiums for September. Under paragraph (d)(1) of this section, R's premium assistance amount for September is $420, the lesser of $450 and $420.

* * * * *

(f) *Applicable benchmark plan* —(1) *In general*. Except as otherwise provided in this paragraph (f), the applicable benchmark plan for each coverage month is the second- lowest-cost silver plan (as described in section 1302(d)(1)(B) of the Affordable Care Act (42 U.S.C. 18022(d)(1)(B))) offered to the taxpayer's coverage family through the Exchange for the rating area where the taxpayer resides for—

(i) Self-only coverage for a taxpayer—

(A) Who computes tax under section 1(c) (unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under section 151 for a dependent for the taxable year;

(B) Who purchases only self-only coverage for one individual; or

(C) Whose coverage family includes only one individual; and

(ii) Family coverage for all other taxpayers.

(2) *Family coverage*. The applicable benchmark plan for family coverage is the second lowest-cost silver plan that would cover the members of the taxpayer's coverage family (such as a plan covering two adults if the members of a taxpayer's coverage family are two adults).

(3) *Silver-level plan not covering pediatric dental benefits*. If one or more silver-level qualified health plans offered through an Exchange do not cover pediatric dental benefits, the premium for the applicable benchmark plan is determined based on the second lowest-cost option among—

(i) The silver-level qualified health plans that provide pediatric dental benefits offered by the Exchange to the members of the coverage family;

(ii) The lowest-cost silver-level qualified health plan that does not provide pediatric dental benefits offered by the Exchange to the members of the coverage family in conjunction with the lowest-cost portion of the premium for a stand-alone dental plan (within the meaning of section 1311(d)(2)(B)(ii) of the Affordable Care Act (42 U.S.C. 13031(d)(2)(B)(ii)) offered through the Exchange to the members of the coverage family that is properly allocable to pediatric dental benefits determined under guidance issued by the Secretary of Health and Human Services; and

(iii) The second-lowest-cost silver-level qualified health plan that does not provide pediatric dental benefits offered by the Exchange to the members of the coverage family in conjunction with the second-lowest-cost portion of the premium for a stand-alone dental plan (within the meaning of section 1311(d)(2)(B)(ii) of the Affordable Care Act (42 U.S.C. 13031(d)(2)(B)(ii)) offered through the Exchange to the members of the coverage family that is properly allocable to pediatric dental benefits determined under guidance issued by the Secretary of Health and Human Services.

(4) *Family members residing in different locations*. If members of a taxpayer's coverage family reside in different loca-

tions, the taxpayer's benchmark plan premium is the sum of the premiums for the applicable benchmark plans for each group of coverage family members residing in different locations, based on the plans offered to the group through the Exchange where the group resides. If all members of a taxpayer's coverage family reside in a single location that is different from where the taxpayer resides, the taxpayer's benchmark plan premium is the premium for the applicable benchmark plan for the coverage family, based on the plans offered through the Exchange to the taxpayer's coverage family for the rating area where the coverage family resides.

(5) *Single or multiple policies needed to cover the family*—(i) *Policy covering a taxpayer's family*. If a silver-level plan or a stand-alone dental plan offers coverage to all members of a taxpayer's coverage family who reside in the same location under a single policy, the premium (or allocable portion thereof, in the case of a stand-alone dental plan) taken into account for the plan for purposes of determining the applicable benchmark plan under paragraphs (f)(1), (f)(2), and (f)(3) of this section is the premium for this single policy.

(ii) *Policy not covering a taxpayer's family*. If a silver-level qualified health plan or a stand-alone dental plan would require multiple policies to cover all members of a taxpayer's coverage family who reside in the same location (for example, because of the relationships within the family), the premium (or allocable portion thereof, in the case of a standalone dental plan) taken into account for the plan for purposes of determining the applicable benchmark plan under paragraphs (f)(1), (f)(2), and (f)(3) of this section is the sum of the premiums (or allocable portion thereof, in the case of a stand-alone dental plan) for self-only policies under the plan for each member of the coverage family who resides in the same location.

(6) *Plan not available for enrollment*. A silver-level qualified health plan or a stand-alone dental plan that is not open to enrollment by a taxpayer or family member at the time the taxpayer or family member enrolls in a qualified health plan is disregarded in determining the applicable benchmark plan.

(7) *Benchmark plan terminates or closes to enrollment during the year*. A silver-level qualified health plan or a stand-alone dental plan that is used for purposes of determining the applicable benchmark plan under this paragraph (f) for a taxpayer does not cease to be the applicable benchmark plan for a taxable year solely because the plan or a lower cost plan terminates or closes to enrollment during the taxable year.

(8) *Only one silver-level plan offered to the coverage family*. If there is only one silver-level qualified health plan providing pediatric dental benefits, one silver-level qualified health plan not providing pediatric dental benefits, or one stand-alone dental plan offered through an Exchange that would cover all members of a taxpayer's coverage family who reside in the same location (whether under one policy or multiple policies), that plan is used for purposes of determining the taxpayer's applicable benchmark plan.

(9) *Examples*. The following examples illustrate the rules of this paragraph (f). Unless otherwise stated, in each example the plans are open to enrollment to a taxpayer or family member at the time of enrollment and are offered through the Exchange for the rating area where the taxpayer resides:

Example 1. Single taxpayer enrolls in a qualified health plan. Taxpayer A is single, has no dependents, and enrolls in a qualified health plan. The Exchange in the rating area in which A resides offers only silver-level qualified health plans that provide pediatric dental benefits. Under paragraphs (f)(1) and (f)(2) of this section, A's applicable benchmark plan is the second lowest cost silver plan providing self-only coverage for A.

Example 2. Single taxpayer enrolls with dependent in a qualified health plan. Taxpayer B is single and claims her daughter, C, as a dependent. B purchases family coverage for herself and C. The Exchange in the rating area in which B and C reside offers qualified health plans that provide pediatric dental benefits but does not offer qualified health plans without pediatric dental benefits. Under paragraphs (f)(1) and (f)(2) of this section, B's applicable benchmark plan is the second lowest-cost silver plan providing family coverage to B and C.

Example 3. Benchmark plan for a coverage family with a family member eligible for pediatric dental benefits. (i) Taxpayer D's coverage family consists of D and D's 10-year old son, E, who is a dependent of D and eligible for pediatric dental benefits. The Exchange in the rating area in which D and E reside offers three silver-level qualified health plans, two of which provide pediatric dental benefits (S1 and S2) and one of which does not (S3), in which D and E may enroll. The Exchange also offers two stand-alone dental plans (DP1 and DP2) available to D and E. The monthly premiums allocable to essential health benefits for the silver-level plans are as follows:

S1 – $1,250
S2 – $1,200
S3 – $1,180

(ii)The monthly premiums, and the portion of the premium allocable to pediatric dental benefits, for the two dental plans are as follows:

DP1 – $100 ($25 allocable to pediatric dental benefits)

DP2 – $80 ($40 allocable to pediatric dental benefits).

(iii) Under paragraph (f)(3) of this section, D's applicable benchmark plan is the second lowest cost option among the following offered by the rating area in which D resides: silver-level qualified health plans providing pediatric dental benefits ($1,250 for S1 and $1,200 for S2); the lowest-cost silver-level qualified health plan not providing pediatric dental benefits, in conjunction with the lowest-cost portion of the premium for a stand-alone dental plan properly allocable to pediatric dental benefits ($1,180 for S3 in conjunction with $25 for DP1 = $1,205); and the second lowest cost silver-level qualified health plan not providing pediatric health benefits, in conjunction with the second lowest-cost portion of the premium for a stand-alone dental plan allocable to pediatric dental benefits ($1,180 for S3 in conjunction with $40 for DP2 = $1,220). Under paragraph (f)(8) of this section, S3, as the lone silver-level qualified health plan not providing pediatric dental benefits offered by the Exchange, is treated as the second lowest-cost silver-level qualified health plan not providing pediatric dental benefits. Under paragraph (e) of this section, the adjusted monthly premium for D's applicable benchmark plan is $1,205.

Example 4. Benchmark plan for a coverage family with no family members eligible for pediatric dental coverage. (i) The facts are the same as in *Example 3*, except Taxpayer D's coverage family consists of D and D's 22-year old son, F, who is a dependent of D and not eligible for pediatric dental coverage and the monthly premiums allocable to essential health benefits for the silver-level plans are as follows:

S1 – $1,210
S2 – $1,190
S3 – $1,180

(ii) Because no one in D's coverage family is eligible for pediatric dental benefits, $0 of the premium for a stand-alone dental plan is allocable to pediatric dental benefits in determining A's applicable benchmark plan. Consequently, under paragraphs (f)(1), (f)(2), and (f)(3) of this section, D's applicable benchmark plan is the second lowest-cost option among the following options offered by the rating area in which D resides: silver-level qualified health plans providing pediatric dental benefits ($1,210 for S1 and $1,190 for S2), the lowest-cost silver-level qualified health plan not providing pediatric dental benefits, in conjunction with the lowest-cost portion of the premium for a stand-alone dental plan properly allocable to pediatric dental benefits ($1,180 for S3 in conjunction with $0 for DP1 = $1,180), and the second lowest cost silver-level qualified health plan not providing pediatric health benefits, in conjunction with the second lowest-cost portion of the premium for a stand-alone dental plan allocable to pediatric dental benefits ($1,180 for S3 in conjunction with $0 for DP2 = $1,180). Under paragraph (e) of this section, the adjusted monthly premium for D's applicable benchmark plan is $1,180.

Example 5. Single taxpayer enrolls with dependent and nondependent in a qualified health plan. Taxpayer G is single and resides with his daughter, H, and with his teenage son, I, but may only claim I as a dependent. G, H, and I enroll in coverage through the Exchange in the rating area in which they all reside. The Exchange offers only silver-level plans providing pediatric dental benefits. Under paragraphs (f)(1) and (f)(2) of this section, G's applicable benchmark plan is the second lowest-cost silver plan covering G and I. However, H may qualify for a premium tax credit if H is otherwise eligible. See paragraph (h) of this section.

Example 6. Change in coverage family. Taxpayer J is single and has no dependents when she enrolls in a qualified health plan. The Exchange in the rating area in which she resides offers only silver-level plans that provide pediatric dental benefits. On August 1, J has a child, K, whom she claims as a dependent. J enrolls in a qualified health plan covering J and K effective August 1. Under paragraphs (f)(1) and (f)(2) of this section, J's applicable benchmark plan for January through July is the second lowest-cost silver plan providing self-only coverage for J, and J's applicable benchmark plan for the months August through December is the second lowest-cost silver plan covering J and K.

Example 7. Minimum essential coverage for some coverage months. Taxpayer L claims his daughter, M, as a dependent. L and M enroll in a qualified health plan through an Exchange that offers only silver-level plans that provide pediatric dental benefits. L, but not M, is eligible for government-sponsored minimum essential coverage for September to December. Thus, under paragraph (c)(1)(iii) of this section, January through December are coverage months for M, and January through August are coverage months for L. Because, under paragraphs (d) and (f)(1) of this section, the premium assistance amount for a coverage month is computed based on the applicable benchmark plan for that coverage month, L's applicable benchmark plan for January through August is the second lowest-cost option covering L and M. Under paragraph (f)(1)(i)(C) of this section, L's applicable benchmark plan for September through December is the second lowest-cost silver plan providing self-only coverage for M.

Example 8. Family member eligible for minimum essential coverage for the taxable year. The facts are the same as in *Example 7*, except that L is not eligible for government-sponsored minimum essential coverage for any months and M is eligible for government sponsored minimum essential coverage for the entire year. Under paragraph (f)(1)(i)(C) of this section, L's applicable benchmark plan is the second lowest-cost silver plan providing self-only coverage for L.

Example 9. Benchmark plan premium for a coverage family with family members who reside in different locations. (i) Taxpayer N's coverage family consists of N and her three dependents O, P, and Q. N, O, and P reside together but Q resides in a different location. Under paragraphs (f)(1), (f)(2), and (f)(3) of this section, the monthly applicable benchmark plan premium for N, O, and P is $1,000 and the monthly applicable benchmark plan premium for Q is $220.

(ii) Under paragraph (f)(4) of this section, because the members of N's coverage family reside in different locations, the monthly premium for N's applicable benchmark plan is the sum of $1,000, the monthly premiums for the applicable benchmark plan for N, O, and P, who reside together, and $220, the monthly applicable benchmark plan premium for Q, who resides in a different location than N, O, and P. Consequently, the premium for N's applicable benchmark plan is $1,220.

Example 10. Aggregation of silver-level policies for plans not covering a family under a single policy. (i) Taxpayers R and S are married and live with S's mother, T, whom they claim as a dependent. The Exchange for their rating area offers self-only and family coverage at the silver level through Issuers A, B, and C, which each offer only one silver-level plan. The silver-level plans offered by Issuers A and B do not cover R, S, and T under a single policy. The silver-level plan offered by Issuer A costs the following monthly amounts for self-only coverage of R, S, and T, respectively: $400, $450, and $600. The silver-level plan offered by Issuer B costs the following monthly amounts for self-only coverage of R, S, and T, respectively: $250, $300, and $450. The silver-level plan offered by Issuer C provides coverage for R, S, and T under one policy for a $1,200 monthly premium.

(ii) Under paragraph (f)(5) of this section, Issuer C's silver-level plan that covers R, S, and T under one policy ($1,200 monthly premium) and Issuer A's and Issuer B's silver-level plans that do not cover R, S and T under one policy are considered in determining R's and S's applicable benchmark plan. In addition, under paragraph (f)(5)(ii) of this section, in determining R's and S's applicable benchmark plan, the premium taken into account for Issuer A's plan is $1,450 (the aggregate premiums for self-only policies covering R ($400), S ($450), and T ($600) and the premium taken into account for Issuer B's plan is $1,000 (the aggregate premiums for self-only policies covering R ($250), S ($300), and T ($450). Consequently, R's and S's applicable benchmark plan is the Issuer C silver-level plan covering R's and S's coverage family and the premium for their applicable benchmark plan is $1,200.

Example 11. Benchmark plan premium for a taxpayer with family members who cannot enroll in one policy and who reside in different locations. (i) Taxpayer U's coverage family consists of U, U's mother, V, and U's two daughters, W and X. U and V reside together in Location 1 and W and X reside together in Location 2. The Exchange in the rating area in which U and V reside does not offer a silver-level plan that covers U and V under a single policy, whereas all the silver-level plans offered through the Exchange in the rating area in which W and X reside cover W and X under a single policy. Both Exchanges offer only silver-level plans that provide pediatric dental benefits. The silver plan offered by the Exchange for the rating area in which U and V reside that would cover U and V under self-only policies with the second-lowest aggregate premium costs $400 a month for self-only coverage for U and $600 a month for self-only coverage for V. The monthly premium for the second-lowest cost silver plan covering W and X that is offered by the Exchange for the rating area in which W and X reside is $500.

(ii) Under paragraph (f)(5)(ii) of this section, because multiple policies are required to cover U and V, the members of U's coverage family who reside together in Location 1, the premium taken into account in determining U's benchmark plan is $1,000, the sum of the premiums for the second-lowest aggregate cost of self-only policies covering U ($400) and V ($600) offered by the Exchange to U and V for the rating area in which U and V reside. Under paragraph (f)(5)(i) of this section, because all silver-level plans offered by the Exchange in which W and X reside cover W and X under a single policy, the premium for W and X's coverage that is taken into account in determining U's benchmark plan is $500, the second-lowest cost silver policy covering W and X that is offered by the Exchange for the rating area in which W and X reside. Under paragraph (f)(4) of this section, because the members of U's coverage family reside in different locations, U's monthly benchmark plan premium is $1,500, the sum of the premiums for the applicable benchmark plans for each group of family members residing in different locations ($1,000 for U and V, who reside in Location 1, plus $500 for W and X, who reside in Location 2).

Example 12. Qualified health plan closed to enrollment. Taxpayer Y has two dependents, Z and AA. Y, Z, and AA enroll in a qualified health plan through the Exchange for the rating area where the family resides. The Exchange, which offers only qualified health plans that include pediatric dental benefits, offers silver-level plans J, K, L, and M, which are, respectively, the first, second, third, and fourth lowest cost silver plans covering Y's family. When Y's family enrolls, Plan J is closed to enrollment. Under paragraph (f)(6) of this section, Plan J is disregarded in determining Y's applicable benchmark plan, and Plan L is used in determining Y's applicable benchmark plan.

Example 13. Benchmark plan closes to new enrollees during the year. (i) Taxpayers BB, CC, and DD each have coverage families consisting of two adults. In that rating area, Plan 2 is the second lowest cost silver plan and Plan 3 is the third lowest cost silver plan covering the two adults in each coverage family offered through the Exchange. The BB and CC families each enroll in a qualified health plan that is not the applicable benchmark plan (Plan 4) in November during the annual open enrollment period. Plan 2 closes to new enrollees the following June. Thus, on July 1, Plan 3 is the second lowest cost silver plan available to new enrollees through the Exchange. The DD family enrolls in a qualified health plan in July.

(ii) Under paragraphs (f)(1), (f)(2), (f)(3), and (f)(7) of this section, the silver-level plan that BB and CC use to determine their applicable benchmark plan for all coverage months during the year is Plan 2. The applicable benchmark plan that DD uses to determine DD's applicable benchmark plan is Plan

3, because Plan 2 is not open to enrollment through the Exchange when the DD family enrolls.

Example 14. Benchmark plan terminates for all enrollees during the year. The facts are the same as in *Example 13*, except that Plan 2 terminates for all enrollees on June 30. Under paragraphs (f)(1), (f)(2), (f)(3), and (f)(7) of this section, Plan 2 is the silver-level plan that BB and CC use to determine their applicable benchmark plan for all coverage months during the year, and Plan 3 is the applicable benchmark plan that DD uses.

Example 15. Exchange offers only one silver-level plan. Taxpayer EE's coverage family consists of EE, his spouse FF, and their two dependent children GG and HH, who all reside together. The Exchange for the rating area in which they reside offers only one silver-level plan that EE's family may enroll in and the plan does not provide pediatric dental benefits. The Exchange also offers one stand-alone dental plan in which the family may enroll. Under paragraph (f)(8) of this section, the silver-level plan and the stand-alone dental plan offered by the Exchange are used for purposes of determining EE's applicable benchmark plan under paragraph (f)(3) of this section. Moreover, the lone silver-level plan and the lone stand-alone dental plan offered by the Exchange are used for purposes of determining EE's applicable benchmark plan regardless of whether these plans cover EE's family under a single policy or multiples policies.

* * * * *

(n) *Effective/applicability date*. (1) Except as provided in paragraph (n)(2) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraphs (c)(4) and (d)(2) apply to taxable years beginning after December 31, 2016. Paragraphs (f)(1), (f)(3), (f)(4), (f)(6), (f)(7), (f)(8), and (f)(9) of this section apply to taxable years beginning after December 31, 2018. Paragraphs (c)(4) and (d)(2) of § 1.36B–3 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraphs (f)(1), (f)(3), (f)(4), (f)(6), and (f)(7) of § 1.36B–3 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

Par. 6. Section 1.36B–5 is amended by:
1. Adding a new sentence to the end of paragraph (c)(3)(i).
2. Adding paragraphs (c)(3)(iii) and (h).

§ 1.36B–5 Information reporting by Exchanges.

* * * * *

(c) * * *

(3) —***

(i) * * * If advance credit payments are made for coverage under the plan, the enrollment premiums reported to each family under paragraph (c)(1)(viii) of this section are the premiums allocated to the family under § 1.36B–3(h) (allocating enrollment premiums to each taxpayer in proportion to the premiums for each taxpayer's applicable benchmark plan).

* * * * *

(iii) *Partial month of coverage*.—(A) *In general*. Except as provided in paragraph (c)(iii)(B) of this section, if an individual is enrolled in a qualified health plan after the first day of a month, the amount reported for that month under paragraphs (c)(1)(iv), (c)(1)(v), and (c)(1)(viii) of this section is $0.

(B) *Certain mid-month enrollments*. If an individual's qualified health plan is terminated before the last day of a month, or if an individual is enrolled in coverage after the first day of a month and the coverage is effective on the date of the individual's birth, adoption, or placement for adoption or in foster care, or on the effective date of a court order, the amount reported under paragraphs (c)(1)(iv) and (c)(1)(v) of this section is the premium for the applicable benchmark plan for a full month of coverage (excluding the premium allocated to benefits in excess of essential health benefits) and the amount reported under paragraph (c)(1)(viii) of this section is the enrollment premium for the month, reduced by any amounts that were refunded.

* * * * *

(h) *Effective/applicability date*. Except for the last sentence of paragraph (c)(3)(i) of this section and paragraph (c)(3)(iii) of this section, this section applies to taxable years ending after December 31, 2013. The last sentence of paragraph (c)(3)(i) of this section and paragraph (c)(3)(iii) of this section apply to taxable years beginning after December 31, 2016. Paragraph (c)(3)(iii) of § 1.36B–5 as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017.

Par. 7. Section 1.5000A–3 is amended by adding a new paragraph (e)(3)(ii)(G) to read as follows:

§ 1.5000A–3 Exempt individuals.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *Opt-out arrangements*—(*1*) *In general*. Except as otherwise provided in this paragraph (e)(3)(ii)(G), the amount of an opt-out payment made available to an employee under an opt-out arrangement increases the employee's (or related individual's) required contribution for purposes of determining the affordability of the eligible employer-sponsored plan to which the opt-out arrangement relates, regardless of whether the employee (or related individual) enrolls in the eligible employer-sponsored plan or declines to enroll in that coverage and is paid the opt-out payment.

(*2*) *Eligible opt-out arrangements*. The amount of an opt-out payment made available to an employee under an eligible opt-out arrangement does not increase the employee's (or related individual's) required contribution for purposes of determining the affordability of the eligible employer-sponsored plan to which the eligible opt-out arrangement relates, regardless of whether the employee (or related individual) enrolls in the eligible employer-sponsored plan or is paid the opt-out payment.

(*3*) *Definitions*. The following definitions apply for purposes of this paragraph (e)(3)(ii)(G):

(*A*) *Opt-out payment*. The term *opt-out payment* means a payment that is available only if an employee declines coverage, including waiving coverage in which the employee would otherwise be enrolled, under an eligible employer-sponsored plan and that is not permitted to be used to pay for coverage under the eligible employer-sponsored plan. An amount provided as an employer contribution to a cafeteria plan that is permitted to be used by the employee to purchase minimum essential coverage is not an opt-out payment, whether or not the employee may receive the amount as a taxable benefit. See paragraph (e)(3)(ii)(E) of this section for the treatment of employer contributions to a cafeteria plan.

(*B*) *Opt-out arrangement*. The term *opt-out arrangement* means the arrangement under which an opt-out payment is made available.

(*C*) *Eligible opt-out arrangement*. The term *eligible opt-out arrangement* means an arrangement under which an employee's right to receive an opt-out payment is conditioned on the employee providing reasonable evidence that the employee and all other individuals for whom the employee reasonably expects to claim a personal exemption deduction for the taxable year or years that begin or end in or with the employer's plan year to which the opt-out arrangement applies (employee's expected tax family) have, or will have, minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) during the period of coverage to which the opt-out arrangement applies. For this purpose, reasonable evidence of alternative coverage may include the employee's attestation that the employee and all other members of the employee's expected tax family have, or will have, minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) for the relevant period. Regardless of the evidence of alternative coverage required under the arrangement, to be an eligible opt-out arrangement, the arrangement must provide that the opt-out payment will not be made, and the employer in fact must not make the payment, if the employer knows or has reason to know that the employee or any other member of the employee's expected tax family does not have, or will not have, the alternative coverage. The arrangement must also require that the evidence of the alternative coverage be provided no less frequently than every plan year to which the eligible opt-out arrangement applies, and that it must be provided no earlier than a reasonable period of time before the commencement of the period of coverage to which the eligible opt-out arrangement applies. If the reasonable evidence (such as an attestation) is obtained as part of the regular annual open enrollment period that occurs within a few months before the commencement of the next plan year of employer-sponsored coverage, it will qualify as being provided no earlier than a reasonable period of time before commencement of the applicable period of coverage. An eligible opt-out arrangement is also permitted to require evidence of alternative coverage to be provided at a later date, such as after the plan year starts, which would enable the employer to require evidence that the employee and all other members of the employee's expected tax family have already obtained the alternative coverage. Nothing in this rule prohibits an employer from requiring reasonable evidence of alternative coverage other than an attestation in order for an employee to qualify for an opt-out payment under an eligible opt-out arrangement. Further, provided that the reasonable evidence requirement is met, the amount of an opt-out payment made available under an eligible opt-out arrangement continues to be excluded from the employee's required contribution for the remainder of the period of coverage to which the opt-out payment originally applied even if the alternative coverage subsequently terminates for the employee or for any other member of the employee's expected tax family, regardless of whether the opt-out payment is required to be adjusted or terminated due to the loss of alternative coverage, and regardless of whether the employee is required to provide notice of the loss of alternative coverage to the employer.

* * * * *

Par. 8. Section 1.5000A–5 is amended by revising paragraph (c).

§ 1.5000A–5 Administration and procedure.

* * * * *

(c) *Effective/applicability date*. (1) Except as provided in paragraph (c)(2), this section and §§ 1.5000A–1 through 1.5000A–4 apply for months beginning after December 31, 2013.

(2) Paragraph (e)(3)(ii)(G) of § 1.5000A–3 applies to months beginning after December 31, 2016.

Par. 9. Revise § 1.6011–8 to read as follows:

§ 1.6011–8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) *Requirement of return*. Except as otherwise provided in this paragraph (a), a taxpayer who receives the benefit of advance payments of the premium tax credit under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing) and reconcile the advance credit payments. However, if advance credit payments are made for coverage of an individual for whom no taxpayer claims a personal exemption deduction, the taxpayer who attests to the Exchange to the intention to claim a personal exemption deduction for the individual as part of the determination that the taxpayer is eligible for advance credit payments must file a tax return and reconcile the advance credit payments.

(b) *Effective/applicability date*. Except as otherwise provided, this section applies for taxable years beginning after December 31, 2016. Paragraph (a) of § 1.6011–8 as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017.

§ 301.6011–2 [Amended]

Par. 10. Section 301.6011–2(b)(1) is amended by adding "1095–B, 1095–C" after "1094 series", and removing "1095 series".

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Filed by the Office of the Federal Register on July 6, 2016, 11:15 a.m., and published in the issue of the Federal Register for July 8, 2016, 81 F.R. 44557)

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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