INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017–4
January 23, 2017

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–112800–16, page 569.

Nuclear Decommissioning Funds. The proposed regulations provide rules under section 468A concerning deductions for amounts contributed to a qualified nuclear decommissioning reserve fund and the use of the amounts in those funds to decommission nuclear plants. The proposed regulations revise certain provisions to (1) address issues that have arisen as more nuclear plants have begun the decommissioning process, and (2) clarify provisions in the current regulations regarding self-dealing and the definition of substantial completion of decommissioning.

Notice 2017–02, page 539.

This notice updates the appendix to Notice 2013–1, which lists the Indian tribes who have settled tribal trust cases against the United States. Notice 2012–60 originally was published in IRB 2012–41 (October 9, 2012). Notice 2012–60 was superceded by Notice 2013–1 IRB 2013–3, and the appendix to Notice 2013–1 was superceded by Notice 2013–16 (IRB 2013–14), then Notice 2013–36, then Notice 2013–55, then Notice 2014–22, Notice 2014–38, then Notice 2014–61, and then Notice 2015–20, and then Notice 2016–41, and then Notice 2016–65. However, we noticed a typo in Notice 2016–65 after it was published. The correct spelling of Tribe 81 is ″Southern Ute Indian Tribe.″ Notice 2017–02 simply corrects the spelling. This notice would supersede Notice 2016–65.

Rev. Rul. 2017–03, page 522.

The proposed revenue ruling updates, for certain insurance contracts issued in 2016 and 2017, the prevailing state assumed interest rates that life insurance companies need in order to compute their life insurance reserves for federal tax purposes.

Notice 2017–04, page 541.

Beginning of Construction for Sections 45 and 48. Notice 2017–04 updates and clarifies the guidance provided in prior IRS notices regarding the beginning of construction for sections 45 and 48. Specifically, the notice provides clarification regarding the extension and modification of the Continuity Safe Harbor, the prohibition against combining methods by which to satisfy the beginning of construction requirement, and the costs that may be included in the Five Percent Safe Harbor for retrofitted renewable energy facilities.

Notice 2017–10, page 544.

The notice alerts participants and material advisors involved in certain syndicated conservation easement transactions that they are tax avoidance transactions and are listed transactions.

T.D. 9806, page 524.

The final regulations provide guidance on determining ownership of a passive foreign investment company (PFIC) and on certain annual reporting requirements for shareholders of PFICs to file Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund." In addition, the final regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations." The regulations finalize proposed regulations and withdraw temporary regulations published on December 31, 2013. The final regulations affect United States persons that own interests in PFICs, and certain United States shareholders of foreign corporations.

(Continued on the next page)

Finding Lists begin on page ii.

EMPLOYEE PLANS

REG–112324–15, page 547.

This document contains proposed regulations prescribing mortality tables to be used by most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. This information is used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for the plan. These mortality tables are also relevant to determining the minimum required amount of a lump-sum distribution from such a plan. In addition, this document contains proposed regulations to update the requirements that a plan sponsor must meet in order to obtain IRS approval to use mortality tables specific to the plan for minimum funding purposes (instead of the generally applicable mortality tables). These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

EXEMPT ORGANIZATIONS

Notice 2017–10, page 544.

The notice alerts participants and material advisors involved in certain syndicated conservation easement transactions that they are tax avoidance transactions and are listed transactions.

ADMINISTRATIVE

Notice 2017–09, page 542.

Section 202 of the Protecting Americans from Tax Hikes Act of 2015 (P.L. 114–113) amended sections 6721 and 6722 to provide that an error on an information return or payee statement does not need to be corrected to avoid a penalty if the error relates to an incorrect dollar amount and differs from the correct amount by no more than $100 ($25 with respect to an amount of tax withheld). This safe harbor does not apply to a payee statement if a payee makes an election that the safe harbor not apply "at such time and in such manner as the Secretary may prescribe." This notice provides the requirements for making this election and seeks comment on the matters discussed in the notice.

Notice 2017–10, page 544.

The notice alerts participants and material advisors involved in certain syndicated conservation easement transactions that they are tax avoidance transactions and are listed transactions.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 807.—Rules for Certain Reserves

Rev. Rul. 2017–03

For purposes of § 807(d)(4) of the Internal Revenue Code, for taxable years beginning after December 31, 2015, this ruling supplements the schedules of prevailing state assumed interest rates set forth in Rev. Rul. 92–19, 1992–1 C.B. 227. This information is to be used by insurance companies in computing their reserves for (1) life insurance and supplementary total and permanent disability benefits, (2) individual annuities and pure endowments, and (3) group annuities and pure endowments. As § 807(d)(2)(B) requires that the interest rate used to compute these reserves be the greater of (1) the applicable federal interest rate, or (2) the prevailing state assumed interest rate, the table of applicable federal interest rates in Rev. Rul. 92–19 is also supplemented.

Following are supplements to schedules A, B, C, and D to Part III of Rev. Rul. 92–19, providing prevailing state assumed interest rates for insurance products with different features issued in 2016 and 2017, and a supplement to the table in Part IV of Rev. Rul. 92–19, providing the applicable federal interest rates under § 807(d) for 2016 and 2017. This ruling does not supplement Parts I and II of Rev. Rul. 92–19.

This is the twenty-fifth supplement to the interest rates provided in Rev. Rul. 92–19. Earlier supplements were published in Rev. Rul. 93–58, 1993–2 C.B. 241 (interest rates for insurance products issued in 1992 and 1993); Rev. Rul. 94–11, 1994–1 C.B. 196 (1993 and 1994); Rev. Rul. 95–4, 1995–1 C.B. 141 (1994 and 1995); Rev. Rul. 96–2, 1996–1 C.B. 141 (1995 and 1996); Rev. Rul. 97–2, 1997–1 C.B. 134 (1996 and 1997); Rev. Rul. 98–2, 1998–1 C.B. 259 (1997 and 1998); Rev. Rul. 99–10, 1999–1 C.B. 671 (1998 and 1999); Rev. Rul. 2000–17, 2000–1 C.B. 842 (1999 and 2000); Rev. Rul. 2001–11, 2001–1 C.B. 780 (2000 and 2001); Rev. Rul. 2002–12, 2002–1 C.B. 624 (2001 and 2002); Rev. Rul. 2003–24, 2003–1 C.B. 557 (2002 and 2003); Rev. Rul. 2004–14, 2004–1 C.B. 511 (2003 and 2004); Rev. Rul. 2005–29, 2005–1 C.B. 1080 (2004 and 2005); Rev. Rul. 2006–25, 2006–1 C.B. 882 (2005 and 2006); Rev. Rul. 2007–10, 2007–1 C.B. 660 (2006 and 2007); Rev. Rul. 2008–19, 2008–1 C.B. 669 (2007 and 2008); Rev. Rul. 2009–3, 2009–5 I.R.B. 382 (2008 and 2009); Rev. Rul. 2010–7, 2010–8 I.R.B. 417 (2009 and 2010); Rev. Rul. 2011–23, 2011–43 I.R.B. 585 (2010 and 2011); Rev. Rul. 2012–6, 2012–6 I.R.B. 349 (2011 and 2012); Rev. Rul. 2013–4, 2013–9 I.R.B. 520 (2012 and 2013); Rev. Rul. 2014–4, 2014–5 I.R.B. 449 (2013 and 2014); Rev. Rul. 2015–2, 2015–3 I.R.B. 321 (2014 and 2015); and Rev. Rul. 2016–02, 2016–4 I.R.B. 284 (2015 and 2016).

Part III. Prevailing State Assumed Interest Rates — Products Issued in Years After 1982.*

Schedule A

STATUTORY VALUATION INTEREST RATES BASED ON THE 1980 AMENDMENTS TO THE NAIC STANDARD VALUATION LAW

A. Life insurance valuation:

Guarantee Duration (years)	*Calendar Year of Issue 2017*
10 or fewer	3.75**
More than 10 but not more than 20	3.75**
More than 20	3.50**

Source: Rates calculated from the monthly averages, ending June 30, 2016, of Moody's Composite Yield on Seasoned Corporate Bonds.

*The terms used in the schedules in this ruling and in Part III of Rev. Rul. 92–19 are those used in the Standard Valuation Law; the terms are defined in Rev. Rul. 92–19.

**As these rates exceed the applicable federal interest rate for 2017 of 1.46 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in this table.

Part III, Schedule B

STATUTORY VALUATION INTEREST RATES BASED ON THE 1980 AMENDMENTS TO THE NAIC STANDARD VALUATION LAW

B. Single premium immediate annuities and annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Calendar Year of Issue	*Valuation Interest Rate*
2016	4.00*

Source: Rates calculated from the monthly averages, ending June 30, 2016, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As this prevailing state assumed interest rate exceeds the applicable federal interest rate for 2016 of 1.56 percent, the valuation interest rate of 4.00 percent is to be used for this product under § 807.

Part III, Schedule C24 – 2016

STATUTORY VALUATION INTEREST RATES BASED ON NAIC STANDARD VALUATION LAW FOR 2016 CALENDAR YEAR BUSINESS GOVERNED BY THE 1980 AMENDMENTS

C. Valuation interest rates for other annuities and guaranteed interest contracts that are valued on an issue year basis:

Cash Settlement Options?	*Future Interest Guarantee?*	*Guarantee Duration (years)*	*Valuation Interest Rate For Plan Type*		
			A	B	C
Yes	Yes	5 or fewer	4.00*	3.75*	3.75*
		More than 5, but not more than 10	4.00*	3.75*	3.75*
		More than 10, but not more than 20	4.00*	3.75*	3.75*
		More than 20	3.75*	3.50*	3.50*
Yes	No	5 or fewer	4.25*	4.00*	3.75*
		More than 5, but not more than 10	4.00*	4.00*	3.75*
		More than 10, but not more than 20	4.00*	3.75*	3.75*
		More than 20	3.75*	3.50*	3.50*
No	Yes or No	5 or fewer	4.00*		
		More than 5, but not more than 10	4.00*	NOT APPLICABLE	
		More than 10, but not more than 20	4.00*		
		More than 20	3.75*		

Source: Rates calculated from the monthly averages, ending June 30, 2016, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As these rates exceed the applicable federal interest rate for 2016 of 1.56 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in the above table.

Part III, Schedule D24 — 2016

STATUTORY VALUATION INTEREST RATES BASED ON NAIC STANDARD VALUATION LAW FOR 2016 CALENDAR YEAR BUSINESS GOVERNED BY THE 1980 AMENDMENTS

D. Valuation interest rates for other annuities and guaranteed interest contracts that are contracts with cash settlement options and that are valued on a change in fund basis:

Cash Settlement Options?	*Future Interest Guarantee?*	*Guarantee Duration (years)*	*Valuation Interest Rate For Plan Type*		
			A	*B*	*C*
Yes	Yes	5 or fewer	4.25*	4.25*	3.75*
		More than 5, but not more than 10	4.25*	4.25*	3.75*
		More than 10, but not more than 20	4.00*	4.00*	3.75*
		More than 20	3.75*	3.75*	3.50*
Yes	No	5 or fewer	4.50*	4.25*	3.75*
		More than 5, but not more than 10	4.25*	4.25*	3.75*
		More than 10, but not more than 20	4.25*	4.00*	3.75*
		More than 20	4.00*	4.00*	3.75*

Source: Rates calculated from the monthly averages, ending June 30, 2016, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As these rates exceed the applicable federal interest rate for 2016 of 1.56 percent, the valuation interest rate to be used for this product under § 807 is the applicable rate specified in the above table.

Part IV. Applicable Federal Interest Rates.

TABLE OF APPLICABLE FEDERAL INTEREST RATES FOR PURPOSES OF § 807

Year	*Interest Rate*
2016	1.56
2017	1.46

Sources: Rev. Rul. 2004–106, 2004–2 C.B. 893, for the 2005 rate; Rev. Rul. 2005–77, 2005–2 C.B. 1071, for the 2006 rate; Rev. Rul. 2006–61, 2006–2 C.B 1028 for the 2007 rate; Rev. Rul. 2007–70, 2007–2 C.B. 1158 for the 2008 rate; Rev. Rul. 2008–53, 2008–2 C.B. 1231 for the 2009 rate; Rev. Rul. 2009–38, 2009–49 I.R.B. 736, for the 2010 rate; Rev. Rul. 2010–29, 2010–50 I.R.B. 818 for the 2011 rate; Rev. Rul. 2011–31, 2011–49 I.R.B. 829 for the 2012 rate; Rev. Rul. 2012–31, 2012–49 I.R.B. 636 for the 2013 rate; Rev. Rul. 2013–26, 2013–50 I.R.B. 628 for the 2014 rate; Rev. Rul. 2014–31, 2014–50 I.R.B. 935 for the 2015 rate; Rev. Rul. 2015–25, 2015–49 I.R.B. 695 for the 2016 rate; and Rev. Rul. 2016–27, 2016–49 I.R.B. 781 for the 2017 rate.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 92–19 is supplemented by the addition to Part III of that ruling of prevailing state assumed interest rates under § 807 for certain insurance products issued in 2016 and 2017 and is further supplemented by an addition to the table in Part IV of Rev. Rul. 92–19 listing applicable federal interest rates. Parts I and II of Rev. Rul. 92–19 are not affected by this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sharon Y. Horn of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling contact Ms. Horn at (202) 317-6995 (not a toll-free number).

T.D. 9806

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on determining ownership of a passive foreign investment company (PFIC) and on certain annual reporting requirements for shareholders of PFICs to file Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund." In addition, the final regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations." The regulations finalize proposed regulations and withdraw temporary regulations published on December 31, 2013. The final regulations affect United States persons that own interests in PFICs, and certain United States shareholders of foreign corporations.

DATES: *Effective Date*: These regulations are effective on December 28, 2016.

Applicability Dates: For dates of applicability, see §§ 1.1291–1(j)(3), 1.1291–9(k)(3), 1.1298–1(h), 1.6038–2(m), and 1.6046–1(l)(3).

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mitchell at (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2013, the Treasury Department and the IRS published final and temporary regulations (2013 temporary regulations) under sections 1291, 1298, 6038, and 6046 (T.D. 9650) in the **Federal Register** (78 FR 79602, as corrected at 79 FR 26836). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–140974–11) in the **Federal Register** (78 FR 79650, as corrected at 79 FR 27230) cross-referencing the 2013 temporary regulations (2013 proposed regulations). No public hearing was requested or held. Written comments were received, and are available at www.regulations.gov or upon request.

On April 28, 2014, the Treasury Department and the IRS issued Notice 2014–28 (2014–18 I.R.B. 990), which announced that the regulations under section 1291 would provide that a United States person that owns stock of a PFIC through a tax-exempt organization or account is not treated as a shareholder of the PFIC with respect to the stock. In addition, on September 29, 2014, the Treasury Department and the IRS issued Notice 2014–51 (2014–40 I.R.B. 594), which announced that the regulations under section 1298 would provide guidance concerning United States persons that own stock in a PFIC that is marked to market under a provision of chapter 1 of the Code other than section 1296.

This Treasury decision adopts the 2013 proposed regulations with the changes described below as final regulations, including implementing the rules described in Notice 2014–28 and Notice 2014–51, and removes the corresponding 2013 temporary regulations.

Summary of Comments and Explanation of Revisions

The final regulations retain the basic approach and structure of the 2013 temporary regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses those revisions as well as comments received in response to the solicitation of comments in the notice of proposed rulemaking accompanying the 2013 temporary regulations. Several comments were received that did not pertain to the rules in the 2013 temporary regulations. These comments are beyond the scope of this rulemaking and are not addressed in this preamble. The Treasury Department and the IRS will consider these comments in connection with any future guidance projects addressing the issues discussed in the comments.

A. *Definition of Shareholder and Indirect Shareholder in § 1.1291–1(b)(7) and (8)*

1. *Revision to definition of shareholder announced in Notice 2014–28*

As described in Notice 2014–28, the application of the PFIC rules to a United States person treated as owning stock of a PFIC through a tax-exempt organization or account described in § 1.1298–1(c)(1) would be inconsistent with the tax policies underlying the PFIC rules and the treatment of tax-exempt organizations and accounts. For example, applying the PFIC rules to a United States person that owns stock of a PFIC through an individual retirement account (IRA) described in section 408(a) would be inconsistent with the principle of deferred taxation provided by IRAs. Notice 2014–28 provides that the regulations incorporating the guidance described in the notice will be effective for taxable years of United States persons that own stock of a PFIC through a tax-exempt organization or account ending on or after December 31, 2013.

The final regulations modify the definition of shareholder in § 1.1291–1 as announced in Notice 2014–28. Under new § 1.1291–1(e)(2), a United States person is not treated as a shareholder of a PFIC to the extent the person owns PFIC stock through a tax-exempt organization or account described in § 1.1298–1(c)(1).

2. *Indirect shareholder as a result of attribution through a domestic corporation*

a. 1992 Proposed Regulations

On April 1, 1992 (57 FR 11024) the Treasury Department and the IRS issued proposed regulations (1992 proposed regulations) that, among other things, included rules for determining when a United States person is treated as indirectly owning stock of a PFIC. Consistent with section 1298(a)(2)(A), § 1.1291–1(b)(8)(ii)(A) of the 1992 proposed regulations provided that a United States person who directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock (including PFIC stock) owned directly or indirectly by the foreign corporation. Thus, for example, if a United States person owned 100 percent of the shares of FC, a foreign corporation that is not a PFIC but that owns 50 shares of a PFIC, the United States person would be treated as indirectly owning the 50 PFIC shares under § 1.1291–1(b)(8)(ii)(A) of the 1992 proposed regulations.

By contrast, section 1298(a)(1)(B) provides that PFIC stock owned by a domestic corporation (which generally would be treated as a PFIC shareholder itself) is not attributed to any other person, except to the extent provided in regulations. Pursuant to this grant of regulatory authority, § 1.1291–1(b)(8)(ii)(C) of the 1992 proposed regulations provided that, if stock of a section 1291 fund was not treated as owned indirectly by a United States person under the other attribution rules provided in the proposed regulations, but would be treated as owned by a United States person if the ownership rule of § 1.1291–1(b)(8)(ii)(A) of the 1992 proposed regulations applied to domestic corporations (in addition to foreign corporations), then the stock of the section 1291 fund would be considered as owned by such United States person.

Both § 1.1291–1(b)(8)(ii)(A) and (C) of the 1992 proposed regulations were withdrawn and reissued under the 2013 temporary regulations as § 1.1291–1T(b)(8)(ii)(A) and (C), respectively.

b. Intended Scope of § 1.1291–1T(b)(8)(ii)(C)

The purpose of § 1.1291–1(b)(8)(ii)(C) of the 1992 proposed regulations and § 1.1291–1T(b)(8)(ii)(C), as explained in the preamble to the 1992 proposed regulations, was to attribute stock through a domestic C corporation in certain circumstances if, absent such attribution, the stock of a PFIC would not be treated as owned by any United States person. In particular, because § 1.1291–1T(b)(8)(ii)(A) provides that a United States person who directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation, without § 1.1291–1T(b)(8)(ii)(C), a United States person could interpose a domestic C corporation into an ownership structure to avoid shareholder status with respect to stock of a PFIC that the United States person indirectly owned through one or more foreign corporations that were not PFICs. In other words, § 1.1291–1T(b)(8)(ii)(C) provides guidance as to when a United States person is treated as indirectly owning stock of a foreign corporation through a domestic corporation for purposes of § 1.1291–1T(b)(8)(ii)(A).

For example, assume that A, a United States person, owns 49 percent of the stock of FC1, a foreign corporation that is not a PFIC, and separately all the stock of DC, a domestic corporation that is not an S corporation. DC, in turn, owns the remaining 51 percent of the stock of FC1, and FC1 owns 100 shares of stock in a PFIC (which is not a controlled foreign corporation within the meaning of section 957(a)). DC is an indirect shareholder with respect to 51 percent of the PFIC stock held by FC1 under § 1.1291–1T(b)(8)(ii)(A). Absent the application of § 1.1291–1T(b)(8)(ii)(C), because A directly or indirectly owns less than 50 percent of the value of the stock of FC1 and thus § 1.1291–1T(b)(8)(ii)(A) does not apply, A would not be treated as an indirect shareholder with respect to any of the PFIC stock directly owned by FC1 when, from an economic perspective, A indirectly owns all the PFIC stock held by

FC1. Therefore, without a rule treating A as owning DC's stock in FC1, the remaining 49 percent of the PFIC stock held by FC1 would not be treated as owned by any United States person.

On the other hand, the literal language of § 1.1291–1T(b)(8)(ii)(C) could have been interpreted to create overlapping ownership by two or more United States persons in the same stock of a section 1291 fund. Thus, in the foregoing example, A may have been considered as owning 100 percent of the stock of FC1, and therefore as indirectly owning all 100 shares of the PFIC stock held by FC1, even though 51 of those shares are considered indirectly owned by DC, a United States person. This outcome is inconsistent with the intended purpose of the rule to attribute stock through a domestic C corporation in certain circumstances if, absent such attribution, the stock of a PFIC would not be treated as owned by any United States person.

c. Revisions to 2013 Temporary Regulations

To address this concern, the final regulations include a non-duplication rule. Specifically, the final regulations provide under § 1.1291–1(b)(8)(ii)(C)(*1*) that, solely for purposes of determining whether a person owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC under § 1.1291–1(b)(8)(ii)(A), a person who directly or indirectly owns 50 percent or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation. However, the non-duplication rule in § 1.1291–1(b)(8)(ii)(C)(*2*) states that a United States person will not be treated, as a result of applying § 1.1291–1(b)(8)(ii)(C)(*1*), as owning (other than for purposes of determining whether a person satisfies the ownership threshold of § 1.1291–1(b)(8)(ii)(A)) stock of a PFIC that is directly owned or considered owned indirectly under § 1.1291–1(b)(8) by another United States person (determined without regard to § 1.1291–1(b)(8)(ii)(C)(*1*)).

Applying the non-duplication rule to the example above, to the extent that the 51 shares of PFIC stock are indirectly owned by DC (a United States person) under § 1.1291–1(b)(8)(ii)(A), those shares are not also treated as indirectly owned by A (other than for purposes of determining whether A satisfies the ownership threshold of § 1.1291–1(b)(8)(ii)(A)). Only the remaining 49 shares of PFIC stock are considered to be indirectly owned by A.

d. *Additional Revisions to 2013 Temporary Regulations*

Lastly, the final regulations make two additional clarifications with respect to this rule. First, the final regulations clarify, under § 1.1291–1(b)(8)(ii)(C)(*3*), that the ownership rule of § 1.1291–1(b)(8)(ii)(C)(*1*) does not apply to stock owned directly or indirectly by an S corporation; rather, the indirect ownership rule under § 1.1291–1(b)(8)(iii)(B) applies in those instances. Second, the final regulations clarify that the attribution rule in § 1.1291–1(b)(8)(ii)(C) applies to all PFICs and not only section 1291 funds, in order to ensure that United States persons who are treated as indirect shareholders of PFICs are permitted to make qualified electing fund elections under section 1295.

B. *Exceptions to Section 1298(f) Reporting*

A number of comments requested that the final regulations expand the exceptions to section 1298(f) reporting provided in the 2013 temporary regulations or add new exceptions.

1. *Exception for PFIC stock that is marked to market under a non-section 1296 MTM provision announced in Notice 2014–51*

Two comments requested an exception to section 1298(f) reporting for PFIC stock that is marked to market under a provision of chapter 1 of the Code other than section 1296 (a non-section 1296 MTM provision), such as section 475(f). In response to these comments, the Treasury Department and the IRS issued Notice 2014–51, which announced that the regulations under section 1298 would be amended to provide that United States persons that own stock in a PFIC that is marked to market under a non-section 1296 MTM regime generally are not subject to section 1298(f) reporting. In addition, the notice states that the regulations would provide that a shareholder's PFIC stock that is marked to market under a non-section 1296 MTM provision is not taken into account in determining whether the shareholder qualifies for the exceptions from reporting set forth in § 1.1298–1T(c)(2)(i)(A)(*1*) or (c)(2)(iii), which generally exempt certain shareholders from certain section 1298(f) reporting requirements when their aggregate PFIC holdings do not exceed $25,000 (or, $50,000 in the case of a shareholder that files a joint return). Notice 2014–51 states that the regulations that incorporate the guidance described in the notice would be effective for taxable years of shareholders ending on or after December 31, 2013.

The final regulations, in accordance with Notice 2014–51, add § 1.1298–1(c)(3), which provides that United States persons that own PFIC stock that is marked to market under a non-section 1296 MTM provision are not subject to section 1298(f) reporting unless they are subject to section 1291 under the coordination rule in § 1.1291–1(c)(4)(ii). Generally, under § 1.1291–1(c)(4)(ii), when a United States person's PFIC stock is marked to market under a non-section 1296 MTM provision in a taxable year after the year in which the United States person acquired the stock, the United States person is subject to section 1291 for the first taxable year in which the United States person marks to market the PFIC stock. Thus, the United States person is subject to section 1291 with respect to any unrealized gain in the stock as of the last day of the first taxable year in which the stock is marked to market, as if the person disposed of the stock on that day. *See* § 1.1291–1(c)(4)(ii) and § 1.1296–1(i)(2) and (3).

Also consistent with Notice 2014–51, the final regulations add § 1.1298–1(c)(2)(ii)(C), pursuant to which a United States person's PFIC stock that is marked to market under a non-section 1296 MTM provision is not taken into account in determining whether the person qualifies for the exceptions from section 1298(f) reporting set forth in § 1.1298–1(c)(2)(i)(A)(*1*) or

(c)(2)(iii), provided that the rules of § 1.1296–1(i)(2) and (3) do not apply with respect to the PFIC stock pursuant to § 1.1291–1(c)(4)(ii) for the taxable year. See Section B.7 of this preamble for a description of these exceptions.

2. *Exception for certain domestic partnerships*

A comment requested that the final regulations add a new exception from the section 1298(f) filing requirements for domestic partnerships in which all of the partners are tax-exempt organizations (or other partnerships, all of the partners of which are tax-exempt organizations) that are not subject to the PFIC rules with respect to a PFIC held by the partnership because any income derived with respect to the PFIC would not be taxable to the tax-exempt partners under subchapter F of Subtitle A of the Code. The comment pointed out that a tax-exempt organization is subject to section 1298(f) reporting with respect to PFIC stock under § 1.1298–1(c)(1) only if the income derived by the organization with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code. However, under the 2013 temporary regulations, a domestic partnership (such as a domestic partnership that exclusively pools the funds of tax-exempt organizations to invest in PFICs) is required to file a Form 8621 with respect to PFIC stock even when none of its partners are subject to the PFIC rules with respect to the PFIC stock.

Requiring reporting under section 1298(f) by a domestic partnership when none of its direct and indirect owners are subject to the PFIC rules may result in undue compliance costs and burdens. Accordingly, consistent with the exception in § 1.1298–1(c)(1), the final regulations adopt and expand upon this comment and provide a final rule in § 1.1298–1(c)(6) that exempts a domestic partnership from section 1298(f) reporting with respect to an interest in a PFIC for a taxable year when none of its direct or indirect partners are required to file Form 8621 (or successor form) with respect to the PFIC interest under section 1298(f) and these regulations because the partners are not subject to the PFIC rules.

Thus, for example, if all the partners of a domestic partnership are tax-exempt organizations exempt from PFIC taxation under § 1.1291–1(e) with respect to PFIC stock held by the partnership, and accordingly are exempt from reporting pursuant to § 1.1298–1(c)(1), the partnership, in turn, is exempt from filing Form 8621 under section 1298(f) with respect to the PFIC stock held by the partnership. Likewise, if all the partners of a domestic partnership are foreign corporations that are not considered to be shareholders under § 1.1291–1(b)(7) of PFIC stock held by the partnership, and no United States person is an indirect shareholder of the PFIC stock under § 1.1291–1(b)(8), the partnership, in turn, is exempt from filing Form 8621 under section 1298(f) with respect to the PFIC stock held by the partnership.

In contrast, a domestic partnership is not exempt from filing Form 8621 under § 1.1298–1(c)(6) with respect to stock it holds in a section 1291 fund when some or all of its partners are exempt from filing Form 8621 with respect to that stock but otherwise would be subject to tax on distributions on, or dispositions of, that stock. PFIC information reporting by the domestic partnership in these circumstances is appropriate because it furthers PFIC tax compliance and enforcement.

3. *Exception for PFIC stock held through certain foreign pension funds that are covered by a U.S. income tax treaty*

In general, § 1.1298–1T(b)(3)(ii) exempts a United States person from section 1298(f) reporting with respect to PFIC stock that is owned by the United States person through a foreign trust that is a foreign pension fund operated principally to provide pension or retirement benefits, when, pursuant to the provisions of a U.S. income tax treaty, the income earned by the pension fund may be taxed as the income of the United States person only when, and to the extent, the income is paid to, or for the benefit of, the United States person.

As a threshold matter, this rule applies only when the United States person owns the PFIC through a foreign pension fund that is treated as a foreign trust under section 7701(a)(31)(B). However, the applicable provisions of U.S. income tax treaties apply generally to foreign pension funds, regardless of whether the foreign pension fund is treated as a trust for U.S. income tax purposes.

The Treasury Department and the IRS have concluded that the treaty-based exception in § 1.1298–1T(b)(3)(ii) should be expanded to apply to PFICs held by United States persons through all applicable foreign pension funds (or equivalents, such as exempt pension trusts or pension schemes referred to in certain U.S. income tax treaties), regardless of their entity classification for U.S. income tax purposes. Accordingly, the final regulations revise the treaty-based exception for PFIC stock held by a United States person through certain foreign pension funds under § 1.1298–1T(b)(3)(ii) to eliminate the requirement that the foreign pension fund be treated as a foreign trust under section 7701(a)(31)(B). The final rule, which is renumbered § 1.1298–1(c)(4), clarifies that a foreign pension fund (or equivalent) covered by this exception may be any type of arrangement, including but not limited to one of the arrangements listed in § 1.1298–1(c)(4). The final rule also applies in the case of an income tax treaty that provides the relevant benefit by election (or other procedure), such as under paragraph 7 of Article 18 of the U.S.-Canada income tax treaty, to the extent that the election is in effect (or other procedure properly satisfied).

4. *Exception for dual resident taxpayers*

A comment requested that an exception from the section 1298(f) filing requirements be added for dual resident taxpayers who are treated as residents of another country (treaty country) pursuant to an income tax treaty between the United States and the treaty country. In general, a "dual resident taxpayer" is an individual who is considered a resident of the United States under the Code, and is also considered a resident of a treaty country under the treaty country's internal laws. § 301.7701(b)–7(a)(1). Certain U.S. income tax treaties contain provisions that resolve the conflicting claims of residence by both countries (tie-breaker rules), pursuant to which dual resident taxpayers are

treated as residents of only one country for purposes of income taxation. A dual resident taxpayer may claim the benefit of treatment as a resident of a treaty country for U.S. income tax purposes under a tie-breaker rule of an applicable treaty provision by timely filing Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)," with an appropriate income tax return, such as Form 1040NR, "U.S. Nonresident Alien Income Tax Return." § 301.7701(b)–7(b) and (c). A dual resident taxpayer who properly claims this benefit is taxed as a nonresident alien (as defined in section 7701(b)(1)(B)) for U.S. income tax purposes.

Nonresident aliens are not subject to tax under the PFIC provisions (sections 1291 through 1298) because the PFIC rules apply only to "United States persons," and nonresident aliens are not United States persons within the meaning of section 7701(a)(30). However, dual resident taxpayers treated as residents of a treaty country for U.S. income tax purposes generally are treated as United States residents under the Code for purposes other than the computation of their income tax liability. § 301.7701(b)–7(a)(3). Accordingly, dual resident taxpayers who are treated as residents of a treaty country under a tie-breaker rule and who own PFICs are subject to the section 1298(f) reporting rules set forth in the 2013 temporary regulations even though they are not subject to tax under the PFIC provisions.

The requirement to file Form 8621 under section 1298(f) increases taxpayer awareness of, and compliance with, the PFIC rules. However, because dual resident taxpayers treated as nonresident aliens for purposes of computing their U.S. tax liability are not subject to tax under the PFIC rules, section 1298(f) reporting by these dual resident taxpayers is not essential to the enforcement of the PFIC provisions. Thus, the Treasury Department and the IRS have determined that it is appropriate to provide an exception from the section 1298(f) reporting rules for dual resident taxpayers who are treated as residents of a treaty country, and, accordingly, not subject to tax under the PFIC provisions.

Accordingly, the final regulations add § 1.1298–1(c)(5), which sets forth an exception from section 1298(f) reporting for a dual resident taxpayer for a taxable year, or the portion of a taxable year, during which the dual resident taxpayer determines any U.S. income tax liability as a nonresident alien under § 301.7701(b)–7, and complies with the filing requirements of § 301.7701(b)–7(b) and (c) and, if applicable, § 1.6012–1(b)(2)(ii)(*b*) (applicable when the dual resident taxpayer is treated as a resident of the treaty country on the last day of the taxable year), or § 1.6012–1(b)(2)(ii)(*a*) (applicable when the dual resident taxpayer is treated as a resident of the United States on the last day of the taxable year). This new section 1298(f) reporting exception is consistent with § 1.6038D–2(e), which generally exempts a dual resident taxpayer who is taxed as a nonresident alien from section 6038D reporting for a taxable year, or the portion of a taxable year, during which the taxpayer is treated as a nonresident alien and properly files Form 8833.

5. *Exception for certain PFIC stock held for a period of 30 days or less*

Under the 2013 temporary regulations, a shareholder who owns stock in a section 1291 fund for only a short period of time during a year, and does not recognize an excess distribution (or gain treated as an excess distribution) with respect to the section 1291 fund during the year may still have a filing obligation under section 1298(f). Assume, for example, that during a shareholder's taxable year, its section 1291 fund (upper-tier PFIC) acquires all of the stock of another section 1291 fund (lower-tier PFIC), which is liquidated into the upper-tier PFIC a few days after it is acquired. The lower-tier PFIC does not make any distributions to the upper-tier PFIC before the liquidation, and the upper-tier PFIC does not recognize any gain upon the liquidation of the lower-tier PFIC. On the last day of its taxable year, the shareholder owns PFIC stock with a value of more than $25,000, and thus the exception in § 1.1298–1T(c)(2) is not applicable. (See Section B.7 of this preamble for an explanation of the reporting exception in § 1.1298–1T(c)(2).) Accordingly, under the 2013 temporary regulations, the shareholder is required to report its ownership in the lower-tier PFIC, even though it only owned the PFIC for a few days during the year and did not recognize any income with respect to the PFIC.

The Treasury Department and the IRS have concluded that compliance with, and enforcement of, the PFIC regime would not be adversely impacted by allowing a reporting exception for transitory ownership of section 1291 funds when there is no taxation under section 1291 with respect to the short period of ownership. Thus, the final regulations provide an exception for section 1298(f) reporting for certain shareholders with respect to PFICs that were owned for a short period of time during which no PFIC taxation was imposed on the shareholders. Specifically, under § 1.1298–1(c)(7), a shareholder is not required to file a Form 8621 under section 1298(f) with respect to stock of a section 1291 fund that it acquired either during its taxable year or the immediately preceding year, when the shareholder (i) does not own any stock of the section 1291 fund for more than 30 days during the period beginning 29 days before the first day of the shareholder's taxable year and ending 29 days after the close of the shareholder's taxable year and (ii) did not receive an excess distribution (including gain treated as an excess distribution) with respect to the section 1291 fund.

6. *Exception for certain bona fide residents of U.S. territories*

A bona fide resident (within the meaning of section 937(a)) of a possession of the United States (U.S. territories) (namely, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands) may include an individual who is also a United States person, and thus the bona fide resident may be a shareholder of a PFIC.

Under the 2013 temporary regulations, the general section 1298(f) reporting requirements in § 1.1298–1T(b)(1) apply regardless of whether a shareholder is required to file a U.S. income tax return. As a result, under the 2013 temporary regulations, bona fide residents of U.S. territories who were shareholders of PFICs were subject to the section 1298(f) filing requirements set forth in the 2013 temporary regulations even when they were not required to file a U.S. income tax return.

As described in greater detail in this Section B.6, the final regulations change this result for bona fide residents of Guam, the Northern Mariana Islands, and the United States Virgin Islands and, as provided in § 1.1298–1(h)(1), the final regulations apply to taxable years ending on or after the issuance of the 2013 temporary regulations.

Three of the five U.S. territories (Guam, the Northern Mariana Islands, and the United States Virgin Islands) have a mirror code system of taxation, which means that their income tax laws generally are identical to the Code (except for the substitution of the name of the relevant territory for the term "United States," where appropriate). Bona fide residents of U.S. territories that are mirror code jurisdictions have no income tax obligation (or related filing obligation) with the United States provided, generally, that they properly report income and fully pay their income tax liability to the tax administration of their respective U.S. territory. See sections 932 and 935. Thus, for example, a bona fide resident of Guam who is a shareholder of a PFIC would generally not have a U.S. income tax obligation even in a year when the shareholder is treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the PFIC.

Bona fide residents of non-mirror code jurisdictions (American Samoa and Puerto Rico) generally exclude territory-source income from U.S. federal gross income under sections 931 and 933, respectively. (American Samoa currently is the only territory to which section 931 applies because it is the only territory that has entered into an implementing agreement under sections 1271(b) and 1277(b) of the Tax Reform Act of 1986.) However, unlike mirror code jurisdictions, these bona fide residents generally are subject to U.S. income taxation, and have a related income tax return filing requirement with the United States, to the extent they have non-territory-source income or income from amounts paid for services performed as an employee of the United States or any agency thereof. See sections 931(a) and (d) and 933. Further, under the 1992 proposed regulations, certain excess distributions (or gains treated as excess distributions) from a PFIC would be exempt from taxation with respect to a shareholder who is a bona fide resident of Puerto Rico if the amounts distributed were derived from sources in Puerto Rico. Section 1.1291–1(f) of the 1992 proposed regulations. Accordingly, for example, if a bona fide resident of Puerto Rico is a shareholder of a PFIC and is treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the PFIC that is from sources outside of Puerto Rico, such shareholder would be subject to U.S. income tax under the PFIC provisions with respect to such amounts.

The Treasury Department and the IRS have concluded that relieving section 1298(f) reporting for PFIC stock held by an individual who is a bona fide resident of a U.S. territory that is a mirror code jurisdiction who is not required to file a U.S. income tax return for one or more taxable years would not adversely impact tax enforcement efforts related to PFICs. This is because such individuals are not subject to U.S. income tax in such years, given that they have properly reported income and fully paid their income tax liability to the tax administration of their respective U.S. territory, and it is unlikely such individuals will ever be subject to tax under the PFIC provisions in the years they receive excess distributions (or recognize gain treated as excess distributions). As a result, these final regulations add § 1.1298–1(c)(8) to provide an exception from reporting under section 1298(f) for a taxable year in which the individual is a bona fide resident of Guam, the Northern Mariana Islands, or the United States Virgin Islands and is not required to file a U.S. income tax return.

However, no exception from reporting is provided with respect to bona fide residents of Puerto Rico and American Samoa. Bona fide residents of Puerto Rico and American Samoa who are not required to file U.S. income tax returns in a given year may still be subject to tax under the PFIC provisions if they are shareholders of a PFIC and receive excess distributions (or recognize gain treated as excess distributions) in a later year. Thus, PFIC information reporting by these individuals can reasonably be expected to further PFIC tax compliance and enforcement.

7. *$25,000 and $5,000 exceptions*

Under § 1.1298–1T(c)(2)(i), a shareholder generally is not required to file Form 8621 with respect to a section 1291 fund when the shareholder is not treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the section 1291 fund stock, and, as of the last day of the shareholder's taxable year, either the value of all PFIC stock considered owned by the shareholder is $25,000 (or $50,000 for shareholders that file a joint return) or less, or, if the stock of the section 1291 fund is owned indirectly, the value of the indirectly owned stock is $5,000 or less. Stock in a PFIC that is indirectly owned through another PFIC or United States person that is a shareholder of the PFIC is not taken into account in determining if the $25,000 (or $50,000 for joint returns) threshold is met. § 1.1298–1T(c)(2)(ii).

A comment generally requested that the reporting exception thresholds in § 1.1298–1T(c)(2)(i) be increased for U.S. individuals living abroad. The apparent concern underlying the comment is the commenter's view that such persons often are not aware of the PFIC provisions. The Treasury Department and the IRS have determined that adopting an exception to the reporting requirements on this basis would adversely affect compliance with, and enforcement of, the PFIC provisions, because such individuals remain subject to tax under section 1291 regardless of the value of their PFIC stock, and a benefit of requiring reporting with respect to a section 1291 fund in a year in which a shareholder is not subject to tax under section 1291 is to enhance the shareholder's awareness of the PFIC requirements with respect to the section 1291 fund. The Treasury Department and the IRS proposed the dollar amounts for the reporting exception thresholds in the 2013 temporary regulations in order to balance administrative burdens with compliance and enforcement concerns. No comments were submitted that recommended a specific higher dollar amount or that provided a basis, consistent with the purposes of the PFIC provisions, for increasing the monetary thresholds. Accordingly, the final regulations do not increase the monetary thresholds for these exceptions.

A separate comment requested that the reporting exceptions under § 1.1298–1T(c)(2) be expanded to apply when a United States person recognizes an excess distribution under section 1291 in a taxable year with respect to one or more PFICs, to the extent the PFICs are indirectly held through domestic pass-through entities and the total excess distribution income from the PFICs in the taxable year is less than $1,000, indexed for inflation. The comment explained that many United States persons hold indirect interests in section 1291 funds, particularly through partnerships, that generate only small amounts of excess distribution income, and exempting reporting for these PFIC shareholders would simplify PFIC reporting compliance. However, the section 1291 rules apply when a PFIC shareholder receives (or is treated as receiving) an excess distribution, regardless of the dollar amount of the excess distribution. After consideration of this comment, the Treasury Department and the IRS concluded that the request should not be adopted because of the potential for such a reporting exception to reduce compliance with the substantive section 1291 rules.

C. *Manner of Filing Form 8621*

1. *Filing Form 8621 when a shareholder is not otherwise obligated to file a return*

Section 1.1298–1T(d) generally provides that a United States person required to file Form 8621 under section 1298(f) with respect to a PFIC for a taxable year must attach the form to the person's U.S. income tax return (or information return, if applicable) for the relevant taxable year. The instructions for Form 8621 further provide that a United States person who is required to file Form 8621 for a taxable year in which the person does not file an income tax return (or other return) must send the Form 8621 to the IRS at a mailing addressed designated in the instructions.

These final regulations clarify how a United States person files a Form 8621 (or successor form) when the United States person is not otherwise required to file a U.S. income tax return (or information return, if applicable). Section 1.1298–1(d) of the final regulations states that a United States person that is not otherwise required to file a U.S. income tax return must file the Form 8621 (or successor form) in accordance with the instructions for the form.

2. *Protective filing procedure for Form 8621*

A comment requested that the final regulations allow a "protective" Form 8621 to be filed under section 1298(f) with respect to a foreign corporation when a shareholder is unsure of its PFIC status due to factors beyond the control of the shareholder that prevent access to the books and records of the corporation necessary to make a PFIC determination. The purpose of the protective filing is to defer any potential section 1298(f) filing requirements so that the assessment period for the shareholder's entire return under section 6501(c)(8) would not be suspended if the foreign corporation is subsequently determined to have been a PFIC in the year to which the protective filing relates. The comment proposed that if the foreign corporation subsequently is determined to be a PFIC for a taxable year for which the protective filing was made, the shareholder would be subject to PFIC taxation in that year, and thus would be required to file Form 8621 for that year.

The failure to file Form 8621 to properly report PFIC information under section 1298(f) for a taxable year suspends the period of limitation on assessment under section 6501(c)(8)(A) with respect to any tax return, event, or period to which the information relates until three years after the information is reported. However, if the failure to file the information is due to reasonable cause and not willful neglect, the period of limitation on assessment under section 6501(c)(8)(B) is suspended only with respect to items related to such failure. The Treasury Department and the IRS have concluded that the reasonable cause exception under section 6501(c)(8)(B) provides appropriate relief for a failure to file Form 8621. When a taxpayer can establish reasonable cause for a failure to file Form 8621, the assessment period is suspended only with respect to items related to the PFIC that were required to be reported on the Form 8621. Thus, the recommendation to add a protective filing rule to the final regulations is not adopted.

3. *Consolidated filings for Forms 8621*

Two comments requested that the final regulations allow a United States person to file a consolidated Form 8621 that would include all of the person's PFICs and relevant information on a supporting schedule attached to the Form 8621. One of the comments explained that foreign investment partnerships commonly hold multiple PFIC investments, and, in such cases, a United States person who is a partner in the foreign partnership is required to file multiple Forms 8621 to report each underlying PFIC. This comment further noted that at least two commonly used commercial tax return preparation products, as of 2012, did not allow for electronic filing of a Form 1040 containing more than five Forms 8621, which is contrary to the IRS's goal of increasing e-filings of tax returns.

The Treasury Department and the IRS have concluded that the expenditures needed to redesign and reprogram the IRS's processing system to gather, compile, and cross-reference information from a consolidated Form 8621 outweigh the marginal administrative burden for United States persons to file a separate Form 8621 with respect to each of their PFICs. Accordingly, the final regulations do not adopt the comment to permit consolidated filings.

D. *Form 5471 Filing Obligations*

The final regulations adopt the 2013 temporary regulations with respect to the removal of the requirement under sections 6038 and 6046 that certain United States persons file a statement in circumstances where the United States person qualifies for the constructive ownership exception, with certain clarifying changes to the language of the regulations.

Effect on Other Documents

Notice 2014–28, 2014–18 I.R.B. 990, is obsolete as of December 28, 2016.

Notice 2014–51, 2014–40 I.R.B. 594, is obsolete as of December 28, 2016.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that most small entities do not own an interest in a PFIC. Moreover, those small entities that are shareholders of a PFIC generally either make a qualified electing fund election under section 1295 or make a mark to market election under section 1296 and were therefore required to file Form 8621 with respect to the PFIC stock under the rules that preceded the 2013 temporary regulations. Thus, there is a limited class of small entities that are PFIC shareholders that were required to file Forms 8621 under the 2013 temporary regulations and that were not required to do so prior to the issuance of those regulations. The final regulations, as compared to the 2013 temporary regulations, provide additional exceptions that exempt certain PFIC shareholders, some of which could include certain small entities, from filing Form 8621. Accordingly, the collection of information required by these final regulations does not affect a substantial number of small entities.

Further, the collection of information required under these final regulations will not have a significant economic impact on a substantial number of small entities because neither the time nor the costs necessary for shareholders to comply with the collection of information requirements is significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Drafting Information

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

* * * * *

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 entries for §§ 1.1291–1, 1.1291–9, and 1.1298–1, § 1.1298–1, and § 1.6046–1 in numerical order and revising the entry for § 1.6038–2 to read in part as follows:

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

Sections 1.1291–1, 1.1291–9, and 1.1298–1 also issued under 26 U.S.C. 1298(a) and (g).

* * * * *

Section 1.1298–1 also issued under 26 U.S.C. 1298(f).

* * * * *

Section 1.6038–2 also issued under 26 U.S.C. 6038(d).

* * * * *

Section 1.6046–1 also issued 26 U.S.C. 6046(b).

* * * * *

Par. 2. Section 1.1291–0 is amended by:

1. Revising the heading and entries for § 1.1291–1.

2. Revising the entry for § 1.1291–9(k).

The revisions read as follows:

§ 1.1291–0 Treatment of shareholders of certain passive foreign investment companies; table of contents.

* * * * *

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

(a) through (b)(2)(i) [Reserved]

(ii) Pedigreed QEF.

(b)(2)(iii) and (iv) [Reserved]

(v) Section 1291 fund.

(3) through (6) [Reserved]

(7) Shareholder.

(8) Indirect shareholder.

(i) In general.

(ii) Ownership through a corporation.

(A) Ownership through a non-PFIC foreign corporation.

(B) Ownership through a PFIC.

(C) Ownership through a domestic corporation.

(iii) Ownership through pass-through entities.

(A) Partnerships.

(B) S Corporations.

(C) Estates and nongrantor trusts.

(D) Grantor trusts.

(iv) Examples.

(c) Coordination with other PFIC rules.

(1) and (2) [Reserved]

(3) Coordination with section 1296: distributions and dispositions.

(4) Coordination with mark to market rules under chapter 1 of the Internal Revenue Code other than section 1296.

(i) In general.

(ii) Coordination rule.

(d) [Reserved].

(e) Exempt organization as shareholder.

(1) In general.

(2) Ownership through certain tax-exempt organizations and accounts.

(f) through (i) [Reserved]

(j) Applicability dates.

§ 1.1291–9 Deemed dividend election.

* * * * *

(k) Effective/applicability dates.

* * * * *

§ 1.1291–0T [Removed]

Par. 3. Section 1.1291–0T is removed.

Par. 4. Section 1.1291–1 is amended by:

1. Revising the section heading.

2. Adding paragraphs (b)(2)(ii) and (v), (b)(7), and (b)(8).

3. Revising paragraphs (e)(2) and (j).

The revisions and additions read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

* * * * *

(b) * * *

(2) * * *

(ii) *Pedigreed QEF.* A PFIC is a *pedigreed QEF* with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock.

* * * * *

(v) *Section 1291 fund.* A PFIC is a *section 1291 fund* with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder.

* * * * *

(7) *Shareholder.* A *shareholder* is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in section 1298(a) and paragraph (b)(8) of this section), except as provided in paragraph (e) of this section. For purposes of sections 1291 and 1298, a domestic partnership or S corporation (as defined in section 1361(a)(1)) is not treated as a shareholder of a PFIC except for purposes of any information reporting requirements, including the requirement to file an annual report under section 1298(f). In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of § 1.1298–1(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).

(8) *Indirect shareholder*—(i) *In general.* An *indirect shareholder* of a PFIC is a United States person that indirectly owns stock of a PFIC. A person indirectly owns stock when it is treated as owning stock of a corporation owned by another person, including another United States person, under this paragraph (b)(8). In applying this paragraph (b)(8), the determination of a person's indirect ownership is made on the basis of all the facts and circumstances in each case; the substance rather than the form of ownership is controlling, taking into account the purposes of sections 1291 through 1298.

(ii) *Ownership through a corporation*—(A) *Ownership through a non-PFIC foreign corporation.* A person that directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation.

(B) *Ownership through a PFIC.* A person that directly or indirectly owns stock of a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the PFIC. Section 1297(d) does not apply in determining whether a corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).

(C) *Ownership through a domestic corporation*—(*1*) *In general.* Solely for purposes of determining whether a person satisfies the ownership threshold described in paragraph (b)(8)(ii)(A) of this section, a person that directly or indirectly owns 50 percent or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation.

(*2*) *Non-duplication.* Paragraph (b)(8)(ii)(C)(*1*) of this section does not apply to treat a United States person as owning (other than for purposes of applying the ownership threshold in paragraph (b)(8)(ii)(A) of this section) stock of a PFIC that is directly owned or considered owned indirectly within the meaning of this paragraph (b)(8) by another United States person (determined without regard to paragraph (b)(8)(ii)(C)(*1*)). See *Example 1* of paragraph (b)(8)(iv) of this section.

(*3*) *S corporations.* The 50 percent limitation in paragraph (b)(8)(ii)(C)(*1*) of this section does not apply with respect to stock owned directly or indirectly by an S corporation. See paragraph (b)(8)(iii)(B) of this section for rules regarding stock owned directly or indirectly by an S corporation.

(iii) *Ownership through pass-through entities*—(A) *Partnerships.* If a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership.

(B) *S Corporations.* If an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation.

(C) *Estates and nongrantor trusts.* If a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679.

(D) *Grantor trusts.* If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.

(iv) *Examples.* The rules of this paragraph (b)(8) are illustrated by the following examples:

Example 1. A is a United States person who owns 49 percent of the stock of FC1, a foreign corporation that is not a PFIC, and separately all the stock of DC, a domestic corporation that is not an S corporation. DC, in turn, owns the remaining 51 percent of the stock of FC1, and FC1 owns 100 shares of stock in a PFIC that is not a controlled foreign corporation (CFC) within the meaning of section 957(a). DC is an indirect shareholder with respect to 51 percent of the PFIC stock held by FC1 under paragraph (b)(8)(ii)(A) of this section. In determining whether A owns 50 percent or more of the value of FC1 for purposes of applying paragraph (b)(8)(ii)(A) of this section, A is consid-

ered under paragraph (b)(8)(ii)(C)(*1*) of this section as indirectly owning all the stock of FC1 that DC directly owns. However, because 51 shares of the PFIC stock held by FC1 are indirectly owned by DC under paragraph (b)(8)(ii)(A) of this section, pursuant to the limitation imposed by paragraph (b)(8)(ii)(C)(*2*) of this section, only the remaining 49 shares of the PFIC stock are considered as indirectly owned by A under paragraph (b)(8) of this section.

* * * * *

(e) * * *

(2) *Ownership through certain tax-exempt organizations and accounts*. To the extent a United States person owns stock of a PFIC through an organization or account described in § 1.1298–1(c)(1), that person is not treated as a shareholder with respect to the PFIC stock.

* * * * *

(j) *Applicability dates*. (1) Paragraphs (c)(3) and (4) of this section apply for taxable years beginning on or after May 3, 2004.

(2) Paragraph (e)(1) of this section is applicable on and after April 1, 1992.

(3) Paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (e)(2) of this section apply to taxable years of shareholders ending on or after December 31, 2013.

§ 1.1291–1T [Removed]

Par. 5. Section 1.1291–1T is removed.

Par. 6. Section 1.1291–9 is amended by revising paragraphs (j)(3) and (k)(3) to read as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *

(3) A shareholder is a United States person that is a shareholder as defined in § 1.1291–1(b)(7) or an indirect shareholder as defined in § 1.1291–1(b)(8), except as provided in § 1.1291–1(e).

(k) * * *

(3) Paragraph (j)(3) of this section applies to taxable years of shareholders ending on or after December 31, 2013.

§ 1.1291–9T [Removed]

Par. 7. Section 1.1291–9T is removed.

Par. 8. Section 1.1298–0 is amended by:

1. Revising the section heading and introductory text.

2. Adding a heading and entries for § 1.1298–1.

The revisions and additions read as follows:

§ 1.1298–0 Passive foreign investment company – table of contents.

This section contains a listing of the paragraph headings for §§ 1.1298–1 and 1.1298–3.

§ 1.1298–1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

(a) Overview.

(b) Requirement to file.

(1) General rule.

(2) Additional requirement to file for certain indirect shareholders.

(i) General rule.

(ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.

(3) Special rules for estates and trusts.

(i) Domestic liquidating trusts and fixed investment trusts.

(ii) Beneficiaries of foreign estates and trusts.

(c) Exceptions.

(1) Exception if shareholder is a tax-exempt entity.

(2) Exception if aggregate value of shareholder's PFIC stock is $25,000 or less, or value of shareholder's indirect PFIC stock is $5,000 or less.

(i) General rule.

(ii) Determination of the $25,000 threshold in the case of indirect ownership.

(iii) Application of the $25,000 exception to shareholders who file a joint return.

(iv) Reliance on periodic account statements.

(3) Exception for PFIC stock marked to market under a provision other than section 1296.

(4) Exception for PFIC stock held through certain foreign pension funds.

(5) Exception for certain shareholders who are dual resident taxpayers.

(i) General rule.

(ii) Dual resident taxpayer filing as nonresident alien at end of taxable year.

(iii) Dual resident taxpayer filing as resident alien at end of taxable year.

(6) Exception for certain domestic partnerships.

(7) Exception for certain short-term ownership of PFIC stock.

(8) Exception for certain bona fide residents of U.S. territories.

(9) Exception for taxable years ending before December 31, 2013.

(d) Time and manner for filing.

(e) Separate annual report for each PFIC.

(1) General rule.

(2) Special rule for shareholders who file a joint return.

(f) Coordination rule.

(g) Examples.

(h) Applicability date.

* * * * *

§ 1.1298–0T [Removed]

Par. 9. Section 1.1298–0T is removed.

Par. 10. Section 1.1298–1 is added to read as follows:

§ 1.1298–1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

(a) *Overview*. This section provides rules regarding the reporting requirements under section 1298(f) applicable to a United States person that is a shareholder (as defined in § 1.1291–1(b)(7)) of a passive foreign investment company (PFIC). Paragraph (b) of this section provides the section 1298(f) annual reporting requirements generally applicable to United States persons. Paragraph (c) of this section sets forth exceptions to reporting for certain shareholders. Paragraph (d) of this section provides rules regarding the time and manner of filing the annual report. Paragraph (e) of this section sets forth the requirement to file a separate annual report with respect to each PFIC. Paragraph (f) of this section coordinates the requirement to file an annual report under section 1298(f) with the requirement to file an annual report under other provisions of the Internal Revenue Code (Code). Paragraph (g) of this section sets forth examples illustrating the application of this sec-

tion. Paragraph (h) of this section provides effective/applicability dates.

(b) *Requirement to file*—(1) *General rule*. Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC must complete and file Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund" (or successor form), under section 1298(f) and these regulations for the PFIC if, during the shareholder's taxable year,

the shareholder—

(i) Directly owns stock of the PFIC;

(ii) Is an indirect shareholder under § 1.1291–1(b)(8) that holds any interest in the PFIC through one or more entities, each of which is foreign; or

(iii) Is an indirect shareholder under § 1.1291–1(b)(8)(iii)(D) that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly through one or more entities, each of which is foreign, any interest in the PFIC.

(2) *Additional requirement to file for certain indirect shareholders*—(i) *General rule*. Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC through one or more United States persons also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and these regulations if, during the indirect shareholder's taxable year, the indirect shareholder is—

(A) Treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the PFIC;

(B) Treated as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) as a result of a disposition of the PFIC;

(C) Required to include an amount in income under section 1293(a) with respect to the PFIC (QEF inclusion);

(D) Required to include or deduct an amount under section 1296(a) with respect to the PFIC (MTM inclusion); or

(E) Required to report the status of a section 1294 election with respect to the PFIC (see § 1.1294–1T(h)).

(ii) *Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions*. Except as otherwise provided in this paragraph (b)(2)(ii), the filing requirements under paragraph (b) of this section do not apply with respect to an interest in a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (D) of this section if another shareholder through which the indirect shareholder owns such interest in the PFIC timely files Form 8621 (or successor form) with respect to the PFIC under paragraph (b)(1) or (2) of this section. However, the exception in this paragraph (b)(2)(ii) does not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) of this section that owns the PFIC through a domestic partnership or S corporation if the domestic partnership or S corporation does not make a qualified electing fund election with respect to the PFIC (see § 1.1293–1(c)(2)(ii), addressing QEF stock transferred to a pass through entity that does not make a section 1295 election).

(3) *Special rules for estates and trusts*—(i) *Domestic liquidating trusts and fixed investment trusts*. A United States person that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the trust is either a domestic liquidating trust under § 301.7701–4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq*.) of the Bankruptcy Code or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq*.) of the Bankruptcy Code, or a widely held fixed investment trust under § 1.671–5. Such a trust itself is treated as a shareholder for purposes of section 1298(f) and these regulations, and thus, except as otherwise provided in this section, the trust is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC as provided in paragraphs (b)(1) and (2) of this section.

(ii) *Beneficiaries of foreign estates and trusts*. A United States person that is considered to own an interest in a PFIC because it is a beneficiary of an estate described in section 7701(a)(31)(A) or a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, stock of a PFIC, and that has not made an election under section 1295 or 1296 with respect to the PFIC, is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the stock of the PFIC that it is considered to own through the estate or trust if, during the beneficiary's taxable year, the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock.

(c) *Exceptions*—(1) *Exception if shareholder is a tax-exempt entity*. A shareholder that is an organization exempt under section 501(a) to the extent that it is described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529, a qualified ABLE program described in 529A, or a Coverdell education savings account described in section 530 is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC unless the income derived with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code.

(2) *Exception if aggregate value of shareholder's PFIC stock is $25,000 or less, or value of shareholder's indirect PFIC stock is $5,000 or less*—(i) *General rule*. A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291–1(b)(2)(v)) for a shareholder's taxable year if—

(A) On the last day of the shareholder's taxable year:

(*1*) The value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291–1(b)(8) by the shareholder is $25,000 or less; or

(*2*) The section 1291 fund stock is indirectly owned by the shareholder under section 1298(a)(2)(B) and § 1.1291–1(b)(8)(ii)(B), and the value of the section

1291 fund stock indirectly owned by the shareholder is $5,000 or less;

(B) The shareholder is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund during the taxable year or as recognizing gain treated as an excess distribution under section 1291(a)(2) as the result of a disposition of the section 1291 fund during the taxable year; and

(C) An election under section 1295 has not been made to treat the section 1291 fund as a qualified electing fund with respect to the shareholder.

(ii) *Determination of the $25,000 threshold in the case of indirect ownership*. For purposes of determining the value of stock held by a shareholder for purposes of paragraph (c)(2)(i)(A)(*1*) of this section, the shareholder must take into account the value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291–1(b)(8), except for PFIC stock that is—

(A) Owned through another United States person that itself is a shareholder of the PFIC (including a domestic partnership or S corporation treated as a shareholder of a PFIC for purposes of information reporting requirements applicable to a shareholder);

(B) Owned through a PFIC under section 1298(a)(2)(B) and § 1.1291–1(b)(8)(ii)(B); or

(C) Marked to market for the shareholder's taxable year under any provision of chapter 1 of the Internal Revenue Code other than section 1296, provided the rules of § 1.1296–1(i)(2) and (3) do not apply to the shareholder with respect to the PFIC stock pursuant to § 1.1291–1(c)(4)(ii) for the shareholder's taxable year.

(iii) *Application of the $25,000 exception to shareholders who file a joint return*. In the case of a joint return, the exception described in paragraph (c)(2)(i)(A)(*1*) of this section shall apply if the value of all PFIC stock owned directly or indirectly (as determined under section 1298(a), § 1.1291–1(b)(8), and paragraph (c)(2)(ii) of this section) by both spouses is $50,000 or less, and all of the other applicable requirements of paragraph (c)(2) of this section are met.

(iv) *Reliance on periodic account statements*. A shareholder may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the PFIC's value.

(3) *Exception for PFIC stock marked to market under a provision other than section 1296*. A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for any taxable year in which the PFIC is marked to market under any provision of chapter 1 of the Internal Revenue Code other than section 1296, provided the rules of § 1.1296–1(i)(2) and (3) do not apply to the shareholder with respect to the PFIC pursuant to § 1.1291–1(c)(4)(ii) for the taxable year.

(4) *Exception for PFIC stock held through certain foreign pension funds*. A shareholder who is a member or beneficiary of, or participant in, a plan, trust, scheme, or other arrangement that is treated as a foreign pension fund (or equivalent) under an income tax treaty to which the United States is a party and that owns, directly or indirectly, an interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC interest if, pursuant to the applicable income tax treaty, the income earned by the foreign pension fund may be taxed as the income of the shareholder only when and to the extent the income is paid to, or for the benefit of, the shareholder.

(5) *Exception for certain shareholders who are dual resident taxpayers*—(i) *General rule*. Subject to the provisions of paragraphs (c)(5)(ii) and (iii) of this section, a shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for a taxable year, or the portion of a taxable year, in which the shareholder is a dual resident taxpayer (within the meaning of § 301.7701(b)–7(a)(1) of this chapter) who is treated as a nonresident alien of the United States for purposes of computing his or her United States income tax liability pursuant to § 301.7701(b)–7 of this chapter.

(ii) *Dual resident taxpayer filing as a nonresident alien at end of taxable year*. If a shareholder to whom this paragraph (c)(5) applies computes his or her U.S. income tax liability as a nonresident alien on the last day of the taxable year and complies with the filing requirements of § 301.7701(b)–7(b) and (c) of this chapter and, in particular, such individual timely files with the Internal Revenue Service Form 1040NR, "U.S. Nonresident Alien Income Tax Return," or Form 1040NR–EZ, "U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents," as applicable, and attaches thereto a properly completed Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)," and the schedule required by § 1.6012–1(b)(2)(ii)(*b*) (if applicable), such shareholder will not be required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the taxable year, or the portion of the taxable year, covered by Form 1040NR (or Form 1040NR–EZ).

(iii) *Dual resident taxpayer filing as resident alien at end of taxable year*. If a shareholder to whom this paragraph (c)(5) applies computes his or her U.S. income tax liability as a resident alien on the last day of the taxable year and complies with the filing requirements of § 1.6012–1(b)(2)(ii)(*a*) and, in particular such shareholder timely files with the Internal Revenue Service Form 1040, "U.S. Individual Income Tax Return," or Form 1040EZ, "Income Tax Return for Single and Joint Filers With No Dependents," as applicable, and attaches a properly completed Form 8833 to the schedule required by § 1.6012–1(b)(2)(ii)(*a*), such shareholder will not be required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the portion of the taxable year reflected on the schedule to such Form 1040 or Form 1040EZ required by § 1.6012–1(b)(2)(ii)(*a*).

(6) *Exception for certain domestic partnerships*. A shareholder that is a domestic partnership is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC directly or indirectly held by the domestic partnership for a

taxable year if each person that directly or indirectly owns an interest in the domestic partnership for its taxable year in which or with which the taxable year of the partnership ends is either—

(i) Not a shareholder of the PFIC as defined by § 1.1291–1(b)(7);

(ii) A tax-exempt entity or account not required to file Form 8621 with respect to the stock of the PFIC under paragraph (c)(1) of this section;

(iii) A dual resident taxpayer not required to file Form 8621 with respect to the stock of the PFIC under paragraph (c)(5) of this section; or

(iv) A domestic partnership not required to file Form 8621 with respect to the stock of the PFIC under this paragraph (c)(6).

(7) *Exception for certain short-term ownership of PFIC stock*. A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291–1(b)(2)(v)) for a taxable year when the shareholder—

(i) Acquires the section 1291 fund in the taxable year or the immediately preceding taxable year;

(ii) Is a shareholder of the section 1291 fund for a total of 30 days or less during the period beginning 29 days before the first day of the shareholder's taxable year and ending 29 days after the close of the shareholder's taxable year; and

(iii) Is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund, including any gain recognized that is treated as an excess distribution under section 1291(a)(2) as a result of the disposition of the section 1291 fund.

(8) *Exception for certain bona fide residents of certain U.S. territories*. A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for a taxable year when the shareholder—

(i) Is a bona fide resident (as defined by section 937(a)) of Guam, the Northern Mariana Islands, or the United States Virgin Islands; and

(ii) Is not required to file an income tax return with the Internal Revenue Service with respect to such taxable year.

(9) *Exception for taxable years ending before December 31, 2013*. A United States person is not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013.

(d) *Time and manner for filing*. A United States person required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC must attach the form to its Federal income tax return (or information return, if applicable) for the taxable year to which the filing obligation relates on or before the due date (including extensions) for the filing of the return, or must separately file the form in accordance with the instructions for the form when the United States person is not required to file a Federal income tax return (or information return, if applicable) for the taxable year. In the case of any failure to report information that is required to be reported pursuant to section 1298(f) and these regulations, the time for assessment of tax will be extended pursuant to section 6501(c)(8).

(e) *Separate annual report for each PFIC*—(1) *General rule*. If a United States person is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to more than one PFIC, the United States person must file a separate Form 8621 (or successor form) for each PFIC.

(2) *Special rule for shareholders who file a joint return*. United States persons that file a joint return may file a single Form 8621 (or successor form) with respect to a PFIC in which they jointly or individually own an interest.

(f) *Coordination rule*. A United States person that is a shareholder of a PFIC may file a single Form 8621 (or successor form) with respect to the PFIC that contains all of the information required to be reported pursuant to section 1298(f) and these regulations and any other information reporting requirements or election rules under other provisions of the Code.

(g) *Examples*. The following examples illustrate the rules of this section:

Example 1. General requirement to file. (i) *Facts*. In 2013, J, a United States citizen, directly owns an interest in Partnership X, a domestic partnership, which, in turn, owns an interest in A Corp, which is a PFIC. In addition, J directly owns an interest in Partnership Y, a foreign partnership, which, in turn, owns an interest in A Corp. Neither J nor Partnership X has made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is $200,000, and the value of J's proportionate share of Partnership Y's interest in A Corp is $100,000. During 2013, J is not treated as receiving an excess distribution or recognizing gain treated as an excess distribution with respect to A Corp. Partnership X timely files a Form 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp for 2013.

(ii) *Results*. J is the first United States person in the chain of ownership with respect to J's interest in A Corp held through Partnership Y. Under paragraph (b)(1) of this section, J must file a Form 8621 under section 1298(f) with respect to J's interest in A Corp held through Partnership Y because J is an indirect shareholder of A Corp under § 1.1291–1(b)(8) that holds PFIC stock through a foreign entity (Partnership Y), and there are no other United States persons in the chain of ownership. The fact that Partnership X filed a Form 8621 with respect to A Corp does not relieve J of the obligation under paragraph (b)(1) of this section to file a Form 8621 with respect to J's interest in A Corp held through Partnership Y. J has no filing obligation under section 1298(f) and paragraph (b)(2) of this section with respect to J's proportionate share of Partnership X's interest in A Corp.

Example 2. Application of the $25,000 exception. (i) *Facts*. In 2013, J, a United States citizen, directly owns stock of A Corp, B Corp, and C Corp, all of which were PFICs during 2013. As of the last day of 2013, the value of J's interests was $5,000 in A Corp, $10,000 in B Corp, and $4,000 in C Corp. J timely filed an election under section 1295 to treat A Corp as a qualified electing fund for the first year in which A Corp qualified as a PFIC, and a mark-to-market election under section 1296 with respect to the stock of B Corp. J did not make a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to C Corp. J did not receive an excess distribution or recognize gain treated as an excess distribution in respect of C Corp during 2013.

(ii) *Results*. Under paragraph (b)(1) of this section, J must file separate Forms 8621 with respect to A Corp and B Corp for 2013. However, J is not required to file a Form 8621 with respect to C Corp because J owns, in the aggregate, PFIC stock with a value of less than $25,000 on the last day of J's taxable year, C Corp is not subject to a qualified electing fund election or mark to market election with respect to J, and J did not receive an excess distribution in respect of C Corp or recognize gain treated as an excess distribution in respect of C Corp during 2013. Therefore, J qualifies for the $25,000 exception in paragraph (c)(2) of this section with respect to C Corp.

Example 3. Application of the $25,000 exception to indirect shareholder. (i) *Facts*. E, a United States citizen, directly owns an interest in Partnership X, a domestic partnership. Partnership X, in

turn, directly owns an interest in A Corp and B Corp, both of which are PFICs. Partnership X timely filed an election under section 1295 to treat B Corp as a qualified electing fund for the first year in which B Corp qualified as a PFIC. In addition, E directly owns an interest in C Corp, which is a PFIC. C Corp, in turn, owns an interest in D Corp, which is a PFIC. E has not made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp, C Corp, or D Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is $30,000, the value of Partnership X's interest in B Corp is $30,000, the value of E's indirect interest in A Corp is $10,000, the value of E's indirect interest in B Corp is $10,000, the value of E's interest in C Corp is $20,000, and the value of C Corp's interest in D Corp is $10,000. During 2013, E did not receive an excess distribution, or recognize gain treated as an excess distribution, with respect to A Corp, C Corp, or D Corp. Partnership X timely files Forms 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp and B Corp for 2013.

(ii) *Results*. Under paragraph (b) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp because E is not the United States person that is at the lowest tier in the chain of ownership with respect to A Corp and E did not receive an excess distribution or recognize gain treated as an excess distribution with respect to A Corp. Furthermore, under paragraph (b)(2)(ii) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to B Corp because Partnership X timely filed a Form 8621 with respect to B Corp. In addition, under paragraph (c)(2)(ii)(A) of this section, E does not take into account the value of A Corp and B Corp, which E owns through Partnership X, in determining whether E qualifies for the $25,000 exception. Further, under paragraph (c)(2)(ii)(B) of this section, E does not take into account the value of D Corp in determining whether E qualifies for the $25,000 exception. Therefore, even though E is the United States person that is at the lowest tier in the chain of ownership with respect to C Corp and D Corp, E does not have to file a Form 8621 with respect to C Corp or D Corp because E qualifies for the $25,000 exception set forth in paragraph (c)(2)(i)(A)(*1*) of this section.

Example 4. Indirect shareholder's requirement to file. (i) *Facts*. The facts are the same as in *Example 3* of this paragraph (g), except that the value of E's interest in C Corp is $30,000 and the value of E's proportionate share of C Corp's interest in D Corp is $3,000.

(ii) *Results*. The results are the same as in *Example 3* of this paragraph (g) with respect to E having no requirement to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp and B Corp. However, under the facts in this *Example 4*, E does not qualify for the $25,000 exception under paragraph (c)(2)(i)(A)(*1*) of this section with respect to C Corp because the value of E's interest in C Corp is $30,000. Accordingly, E must file a Form 8621 under section 1298(f) and these regulations with respect to C Corp. However, E does qualify for the $5,000 exception under paragraph (c)(2)(i)(A)(*2*) of this section with respect to D Corp, and thus does not have to file a Form 8621 with respect to D Corp.

Example 5. Application of the domestic partnership exception. (i) *Facts*. Tax Exempt Entity A and Tax Exempt Entity B are both organizations exempt under section 501(a) because they are described in section 501(c). Tax Exempt Entity A and Tax Exempt Entity B own all the interests in Partnership X, a domestic partnership, which, in turn, owns, an interest in Partnership Y, also a domestic partnership. The remaining interests in Partnership Y are owned by F Corp, a foreign corporation owned solely by individuals that are not residents or citizens of the United States. Partnership Y owns an interest in A Corp, which is a PFIC. Any income derived with respect to A Corp would not be taxable to Tax Exempt Entity A or Tax Exempt Entity B under subchapter F of Subtitle A of the Code. Tax Exempt Entity A, Tax Exempt Entity B, Partnership X, and Partnership Y all are calendar year taxpayers.

(ii) *Results*. Under paragraph (c)(1) of this section, Tax Exempt Entity A and Tax Exempt Entity B do not have to file Form 8621 under section 1298(f) and these regulations with respect to A Corp because neither entity would be subject to tax under subchapter F of Subtitle A of the Code with respect to income derived from A Corp. In addition, under paragraph (c)(6) of this section, neither Partnership X nor Partnership Y is required to file Form 8621 under section 1298(f) and these regulations with respect to A Corp because all of the direct and indirect interests in Partnership X and Partnership Y are owned by persons described in paragraph (c)(1) of this section or persons that are not a shareholder of A Corp as defined by § 1.1291–1(b)(7).

(h) *Applicability dates*. (1) Except as provided in paragraph (h)(2) of this section, this section applies to taxable years of shareholders ending on or after December 31, 2013.

(2) Paragraph (c)(9) of this section applies to taxable years of shareholders ending before December 31, 2013.

§ 1.1298–1T [Removed]

Par. 11. Section 1.1298–1T is removed.

Par. 12. Section 1.6038–2 is amended by revising paragraphs (j)(3) and (m) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(3) *Statement required*. Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) of this section shall file a statement with his income tax return indicating that such requirement has been (or will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

* * * * *

(m) *Applicability dates*. Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (5) *Examples 3* and *4* of this section apply June 21, 2006. Paragraph (d) of this section applies to taxable years ending after April 9, 2008. Paragraph (j)(3) of this section applies to returns filed on or after December 31, 2013.

§ 1.6038–2T [Removed]

Par. 13. Section 1.6038–2T is removed.

Par. 14. Section 1.6046–1 is amended by revising paragraph (e)(5) and adding paragraph (l)(3) to read as follows:

§ 1.6046–1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

* * * * *

(e) * * *

(5) *Persons excepted from furnishing items of information*. Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of either the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such requirement has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a

return by reason of the provisions of paragraph (e)(4) of this section.

* * * * *

(l) * * *

(3) Paragraph (e)(5) of this section applies to returns filed on or after December 31, 2013. See paragraph (e)(5) of § 1.6046–1, as contained in 26 CFR part 1 revised as of April 1, 2012, for returns filed before December 31, 2013.

§ 1.6046–1T [Removed]

Par. 15. Section 1.6046–1T is removed.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2016.

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

(Filed by the Office of the Federal Register on December 27, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 28, 2016, 81 F.R. 95459)

Part III. Administrative, Procedural, and Miscellaneous

Per Capita Payments from Proceeds of Settlements of Indian Tribal Trust Cases

Notice 2017–02

BACKGROUND

Notice 2013–1, 2013–3 IRB 281, provides guidance on the federal tax treatment of per capita payments that members of Indian tribes receive from proceeds of certain settlements of tribal trust cases between the United States and those Indian tribes. Additional tribes have settled tribal trust cases against the United States since publication of Notice 2013–1. This notice provides an updated Appendix that reflects the additional settlement agreements.

EFFECT ON OTHER DOCUMENTS

Notice 2013–1 Appendix is modified and superseded.

FURTHER INFORMATION

For further information regarding this notice, please contact Jon Damm at phone number (202) 317-8493 (not a toll-free number).

Appendix

Tribes That Have Entered into Settlement Agreements of Tribal Trust Cases

1. Assiniboine and Sioux Tribes of the Fort Peck Reservation
2. Bad River Band of Lake Superior Chippewa Indians
3. Blackfeet Tribe of the Blackfeet Indian Reservation
4. Bois Forte Band of Chippewa
5. Cachil Dehe Band of Wintun Indians of the Colusa Rancheria
6. Chippewa Cree Tribe of the Rocky Boy's Reservation
7. Coeur d'Alene Tribe
8. Confederated Salish and Kootenai Tribes
9. Confederated Tribes of Siletz Indians
10. Confederated Tribes of the Colville Reservation
11. Confederated Tribes of the Goshute Reservation
12. Crow Creek Sioux Tribe
13. Eastern Shawnee Tribe of Oklahoma
14. Hualapai Indian Tribe
15. Iowa Tribe of Kansas and Nebraska
16. Kaibab Band of Paiute Indians of Arizona
17. Kickapoo Tribe of Kansas
18. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
19. Lac du Flambeau Band of Lake Superior Chippewa Indians
20. Leech Lake Band of Ojibwe
21. Lower Brule Sioux Tribe
22. Makah Indian Tribe of the Makah Reservation
23. Mescalero Apache Tribe
24. Minnesota Chippewa Tribe
25. Nez Perce Tribe
26. Nooksack Indian Tribe
27. Northern Cheyenne Tribe of Indians
28. Omaha Tribe of Nebraska
29. Passamaquoddy Tribe of Maine
30. Pawnee Nation
31. Prairie Band of Potawatomi Nation
32. Pueblo of Zia
33. Quechan Tribe of the Fort Yuma Reservation
34. Red Cliff Band of Lake Superior Chippewa Indians
35. Rincon Luiseño Band of Indians
36. Rosebud Sioux Tribe
37. Round Valley Indian Tribes
38. Salt River Pima-Maricopa Indian Community
39. Santee Sioux Tribe of Nebraska
40. Sault Ste. Marie Tribe
41. Shoshone-Bannock Tribes of the Fort Hall Reservation
42. Soboba Band of Luiseno Indians

43. Spirit Lake Dakotah Nation
44. Spokane Tribe of Indians
45. Standing Rock Sioux Tribe
46. Stillaguamish Tribe of Indians
47. Summit Lake Paiute Tribe
48. Swinomish Indian Tribal Community
49. Te-Moak Tribe of Western Shoshone Indians
50. Tohono O'odham Nation
51. Tulalip Tribes
52. Tule River Indian Tribe
53. Ute Indian Tribe of the Uintah and Ouray Reservation
54. Ute Mountain Ute Tribe
55. Winnebago Tribe of Nebraska
56. Qawalangin Tribe of Unalaska
57. Tlingit & Haida Tribes of Alaska
58. Northwestern Band of Shoshone Indians
59. Hoopa Valley Tribe
60. Ak-Chin Indian Community
61. Oglala Sioux Tribe
62. Yoruk Tribe
63. Cheyenne River Sioux Tribe
64. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony
65. Seminole Nation of Oklahoma
66. Otoe-Missouria Tribe of Oklahoma
67. Samish Indian Nation
68. Tonkawa Tribe of Indians of Oklahoma
69. Yakama Nation
70. Miami Tribe of Oklahoma
71. Shoshone Indian Tribe and the Northern Arapahoe Indian Tribe of the Wind River Reservation
72. Pueblo of Laguna
73. Navajo Nation
74. Caddo Nation of Oklahoma
75. Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation
76. Chickasaw Nation
77. Choctaw Nation
78. Klamath Tribe
79. Skokomish Indian Tribe
80. Quinault Indian Nation
81. Southern Ute Indian Tribe
82. Confederated Tribes of the Umatilla Indian Reservation
83. White Earth Nation
84. Kickapoo Tribe of Oklahoma
85. Sisseton Wahpeton Oyate of the Lake Traverse Reservation
86. Grand Traverse Band of Ottawa and Chippewa Indians
87. Muscogee (Creek) Nation of Oklahoma
88. Gila River Indian Community
89. Aleut Community of St. Paul Island
90. San Carlos Apache Tribe
91. Comanche Nation
92. Colorado River Indian Tribes
93. Jicarilla Apache Nation
94. Pueblo of Acoma
95. Penobscot Indian Nation
96. Seminole Tribe of Florida

Beginning of Construction for Sections 45 and 48

Notice 2017–04

SECTION 1. PURPOSE

Section 38 of the Internal Revenue Code (the Code) allows certain business credits against the tax imposed by Chapter 1 of the Code. Among the credits allowed by § 38 is the credit for renewable electricity production described in § 45(a). To qualify for the renewable electricity production tax credit, electricity must, among other things, be produced by the taxpayer at a qualified facility as defined in § 45(d). If the taxpayer makes an election under § 48(a)(5), the taxpayer may instead claim the investment tax credit with respect to the facility.

On December 18, 2015, the Protecting American from Tax Hikes Act of 2015, Pub. L. No. 114–113, Div. Q, 129 Stat. 2242 (the PATH Act), enacted amendments to the production tax credit under § 45 (PTC) and the investment tax credit under § 48 (ITC) for certain renewable energy facilities. The PATH Act extended the PTC for two years with respect to certain facilities the construction of which begins before January 1, 2017, and further extended the PTC for wind facilities the construction of which begins before January 1, 2020. The PATH Act also modified the PTC for wind facilities by providing that the credit will phase out over the next four years. Under § 45(b)(5) as modified by the PATH Act, wind facilities the construction of which begins before January 1, 2017 are eligible to receive 100 percent of the PTC; wind facilities the construction of which begins after December 31, 2016 and before January 1, 2018 are eligible to receive 80 percent of the PTC; wind facilities the construction of which begins after December 31, 2017 and before January 1, 2019 are eligible to receive 60 percent of the PTC; and wind facilities the construction of which begins after December 31, 2018 and before January 1, 2020 are eligible to receive 40 percent of the PTC. In addition, the PATH Act extended the election to claim the ITC in lieu of the PTC with respect to certain renewable energy facilities if construction of such facility begins before January 1, 2017 (or January 1, 2020 in the case of wind facilities).

Similarly, the PATH Act also extended and modified the ITC for solar energy facilities the construction of which begins before January 1, 2022. The Treasury Department and the Internal Revenue Service (Service) anticipate issuing separate guidance addressing the extension and modification of the ITC for solar energy facilities.

This notice updates and clarifies the guidance provided in Notice 2013–29, 2013–1 C.B. 1085; Notice 2013–60, 2013–2 C.B. 431; Notice 2014–46, 2014–2 C.B. 520; Notice 2015–25, 2015–13 I.R.B. 814; and Notice 2016–31, 2016–23 I.R.B. 1025 (collectively "the prior IRS notices"). The Service will not issue private letter rulings to taxpayers regarding the application of this notice, the prior IRS notices, or the beginning of construction requirement under §§ 45(d) and 48(a)(5).

SECTION 2. BACKGROUND

On June 6, 2016, the Treasury Department and the Service published Notice 2016–31 to extend and modify the Continuity Safe Harbor, as defined in section 3.02 of Notice 2013–60, and to provide additional guidance regarding the beginning of construction requirement. Notice 2016–31 also clarifies the application of the Five Percent Safe Harbor, as defined in section 5 of Notice 2013–29, to retrofitted renewable energy facilities.

After the publication of Notice 2016–31, the Treasury Department and the Service received requests for further clarification regarding the extension and modification of the Continuity Safe Harbor, the prohibition against combining methods by which to satisfy the beginning of construction requirement, and the costs that may be included in the Five Percent Safe Harbor for retrofitted renewable energy facilities. This notice modifies and clarifies Notice 2016–31. Except as otherwise specified in this notice, the guidance provided in the prior IRS notices continues to apply.

SECTION 3. EXTENSION AND MODIFICATION OF THE CONTINUITY SAFE HARBOR

Section 3.02 of Notice 2013–60 provides a Continuity Safe Harbor that allows a facility to be deemed to satisfy the Continuous Construction Test, as defined in section 4.06 of Notice 2013–29 (for purposes of satisfying the Physical Work Test provided in section 4 of Notice 2013–29), or the Continuous Efforts Test, as defined in section 5.02 of Notice 2013–29 (for purposes of satisfying the Five Percent Safe Harbor), based on the date on which a facility is placed in service. If a facility does not satisfy the Continuity Safe Harbor, whether the facility satisfies the Continuous Construction or Continuous Efforts Tests is determined by the relevant facts and circumstances.

Section 3 of Notice 2016–31 modifies and extends the Continuity Safe Harbor by providing that if a taxpayer places a facility in service by the later of (1) a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began or (2) December 31, 2016, the facility will be considered to satisfy the Continuity Safe Harbor.

This notice modifies the Continuity Safe Harbor provided in section 3 of Notice 2016–31 by providing that if a taxpayer places a facility in service by the later of (1) a calendar year that is no more than four calendar years after the calendar year during which construction of the facility began or (2) December 31, 2018, the facility will be considered to satisfy the Continuity Safe Harbor. For example, if construction begins on a facility on January 15, 2013, and the facility is placed in service by December 31, 2018, the facility will be considered to satisfy the Continuity Safe Harbor. Alternatively, if construction begins on a facility on January 15, 2016, and the facility is placed in service by December 31, 2020, the facility will be considered to satisfy the Continuity Safe Harbor.

SECTION 4. PROHIBITION AGAINST COMBINING METHODS BY WHICH TO SATISFY THE BEGINNING OF CONSTRUCTION REQUIREMENT

Section 4.01 of Notice 2016–31 provides that a taxpayer may not rely upon the Physical Work Test and the Five Percent Safe Harbor in alternating calendar years to satisfy the beginning of construction requirement or the Continuity Re-

quirement. For example, if a taxpayer performs physical work of a significant nature on a facility in 2015, and then pays or incurs five percent or more of the total cost of the facility in 2016, the Continuity Safe Harbor will be applied beginning in 2015, not in 2016.

This notice modifies section 4.01 of Notice 2016–31 by providing that this rule applies to facilities the construction of which begins after June 6, 2016 (the date on which Notice 2016–31 was published in I.R.B. 2016–23).

SECTION 5. COSTS INCLUDED IN THE APPLICATION OF FIVE PERCENT SAFE HARBOR TO RETROFITTED FACILITIES

Section 6.01 of Notice 2016–31 provides that a facility may qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property) (the 80/20 Rule).

Section 6.02 of Notice 2016–31 provides that to satisfy the beginning of construction requirement for §§ 45 and 48, the Five Percent Safe Harbor is applied only with respect to the cost of new property used to retrofit an existing facility. Therefore, only expenditures paid or incurred that relate to new construction should be taken into account for purposes of the Five Percent Safe Harbor.

Section 5.01(1) of Notice 2013–29 provides that for purposes of the Five Percent Safe Harbor, all costs properly included in the depreciable basis of the facility are taken into account to determine whether the Safe Harbor has been met. The total cost of the facility does not include the cost of land or any property not integral to the facility, as described in section 4.05(1) of Notice 2013–29.

This notice clarifies that for purposes of the 80/20 rule, the cost of new property includes all costs properly included in the depreciable basis of the new property.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 2013–29, Notice 2013–60, Notice 2014–46, Notice 2015–25, and Notice 2016–31 are clarified and modified. The guidance provided in this notice is applicable to any project for which a taxpayer claims the PTC or the ITC under §§ 45 or 48, as modified by ATRA, that is placed in service after January 2, 2013.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 317-6853 (not a toll-free number).

De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties

Notice 2017–09

SECTION 1. PURPOSE

This notice provides guidance to implement changes made by the Protecting Americans from Tax Hikes Act of 2015 (P.L. 114–113) (PATH Act) regarding the de minimis error safe harbor from information reporting penalties under sections 6721 and 6722 of the Internal Revenue Code (Code) and the payee election to have the safe harbor not apply. These provisions are effective for information returns required to be filed and payee statements required to be furnished after December 31, 2016. The notice also announces that the Treasury Department and the IRS intend to issue regulations under sections 6721 and 6722 with respect to the de minimis error safe harbor and the payee election to have the safe harbor not apply. To the extent the regulations incorporate the rules contained in this notice, the regulations will be effective for returns required to be filed, and payee statements required to be furnished, after December 31, 2016.

SECTION 2. BACKGROUND

Section 202 of the PATH Act amended sections 6721 and 6722 of the Code to establish a safe harbor from penalties for failure to file correct information returns and failure to furnish correct payee statements for certain de minimis errors. The penalties apply when a person is required to file an information return, or furnish a payee statement, but the person fails to do so on or before the prescribed date, fails to include all of the information required to be shown, or includes incorrect information. Under the safe harbor, an error on an information return or payee statement is not required to be corrected, and no penalty is imposed, if the error relates to an incorrect dollar amount and the error differs from the correct amount by no more than $100 ($25 in the case of an error with respect to an amount of tax withheld).

Section 6722(c)(3)(B) provides that the safe harbor does not apply to any payee statement if the payee makes an election that the safe harbor not apply at such time and in such manner as the Secretary may prescribe. Section 6721(c)(3)(B) provides that the safe harbor does not apply with respect to any incorrect dollar amount to the extent that such an error on an information return relates to an amount with respect to which an election is made under section 6722(c)(3)(B). Accordingly, if an election is in effect, a payor may be subject to penalties for an incorrect dollar amount appearing on an information return or payee statement even if the incorrect amount is a de minimis error.

Sections 6721(c)(3)(C) and 6722(c)(3)(C) provide that the Secretary may issue regulations to prevent the abuse of the safe harbor, including regulations providing that the safe harbor shall not apply to the extent necessary to prevent such abuse.

The amendments by Section 202 of the PATH Act to sections 6721 and 6722 are effective for returns required to be filed, and payee statements required to be furnished, after December 31, 2016. Section 6724(d) of the Code lists the information returns and payee statements subject to section 6721 and 6722 penalties.

This notice provides requirements for the election under section 6722(c)(3)(B), including the time and manner for making the election. This notice clarifies that the de minimis error safe harbor does not apply in the case of an intentional error or if a payor fails to file an information return or furnish a payee statement. This notice

requires payors to retain certain records. Finally, this notice solicits comments regarding the rules contained in this notice and regarding any potential abuse of the de minimis error safe harbor.

SECTION 3. ELECTION TO HAVE THE SAFE HARBOR NOT APPLY

.01 *In general*. Pursuant to sections 6721(c)(3)(B) and 6722(c)(3)(B), a payee may make an election that the de minimis error safe harbor not apply so that penalties are applicable to a payor who fails to correct an error on an information return or payee statement, even if the error is de minimis under sections 6721(c)(3)(A) and 6722(c)(3)(A). If a payee has made the election under section 6722(c)(3)(B), and the payor both furnishes a corrected payee statement to the payee and files a corrected information return with the IRS within 30 days of the date of the election, the error will be treated as due to reasonable cause and not willful neglect, and the section 6721 and 6722 penalties will not apply to the error. Where specific rules provide for additional time in which to furnish a corrected payee statement and file a corrected information return, the 30-day rule does not apply and the specific rules will apply. *See e.g.*, § 31.6051–1(c)–(d) and § 31.6051–2(b).

A payor may prescribe any reasonable manner for making the election, including in writing, on-line (electronic), or by telephone, provided that the payor furnishes the payee written notification of the reasonable manner before the date the payee makes the election. If the payor provides an on-line (electronic) option to make the election, this must not be the exclusive manner to make the election. If a payor has prescribed a reasonable manner for making the election, the payee must adhere to that prescribed manner to make a valid election. If the payor has not prescribed a manner to make the election, a payee may make the election under section 6722(c)(3)(B) in writing to the payor's address appearing on a payee statement furnished by the payor to the payee or as directed by the payor after making an appropriate inquiry.

The payor may not impose any prerequisite, condition, or time limitation on the payee's ability to request a corrected payee statement, other than prescribing a reasonable manner for making the election as described above.

This notice does not prohibit a payor from filing corrected information returns and furnishing corrected payee statements if the payee does not make an election.

The IRS encourages employers to correct any errors on Form W–2 (Wage and Tax Statement) and Form W–2c (Corrected Wage and Tax Statement). The IRS and Social Security Administration (SSA) have long maintained the Combined Annual Wage Reporting (CAWR) program to ensure that employees receive proper credit for their earnings and ensure that employers have paid and reported the proper amount of taxes. CAWR is a document matching program that compares the Federal income tax withheld, Medicare wages, social security wages, and social security tips reported to the IRS on the employment tax returns (e.g., Form 941 (Employer's QUARTERLY Federal Tax Return) and Schedule H (Household Employment Taxes)) against the amounts reported to SSA via Forms W–3 (Transmittal of Wage and Tax Statements) and the processed totals of the Forms W–2. Employers can help resolve discrepancies between employment tax returns and amounts reported to SSA by filing corrected information returns and furnishing corrected payee statements whenever Forms W–2 and W–2c include incorrect information, even if the error is de minimis under sections 6721(c)(3)(A) and 6722(c)(3)(A). Corrections help prevent mismatches and aid the IRS and SSA in the efficient administration of the tax laws and benefits programs.

.02 *Time for making the election and duration*. A payee may make an election with respect to payee statements required to be furnished in the calendar year in which the payee makes the election (for example, a payee making an election on June 15, 2017, may make an election with respect to payee statements required to be furnished in calendar year 2017), or, alternatively, with respect to payee statements required to be furnished in the calendar year of the election and succeeding calendar years. The payee's election under section 6722(c)(3)(B) applies to related information returns under section 6721(c)(3)(B).

A payee may revoke an election at any time subsequent to making the election by providing the payor with written notification of revocation. Such revocation applies to all information returns of the type set forth in the revocation required to be filed and payee statements required to be furnished on or after the date the payor receives the revocation until the payee makes a new election.

Nothing in this notice prevents a payee from requesting that the payor file a corrected information return or furnish a corrected payee statement required to be filed or furnished in a calendar year preceding the calendar year in which the payee makes the election.

.03 *Information required to be included in the election*. When making the election, the payee must: (1) clearly state that the payee is making the election; (2) provide the payee's name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41) of the Code) to the payor; (3) identify the type of payee statement(s) and account number(s), if applicable, to which the election applies (e.g., Form 1099–DIV (Dividends and Distributions)) if the payee wants the election to apply only to specific statements; and (4) if the payee wants the election to apply only to the year for which the payee makes the election, state that the election applies only to payee statements required to be furnished in that calendar year. If the payee does not identify (i) the type of payee statement and account number or (ii) the calendar year to which the election relates, the payor must treat the election as applying to all types of payee statements the payor is required to furnish to the payee and as applying to payee statements required to be furnished in the calendar year in which the payee makes the election and in any succeeding calendar years.

.04 *Safe harbor only applies to inadvertent errors and not to failure to file or furnish*. The de minimis error safe harbor applies only to inadvertent errors on a filed information return or furnished payee statement. A payor that intentionally misreports a dollar amount on an information return or payee statement, whether or not the amount otherwise qualifies as de minimis, falls under the intentional disregard provisions of sections

6721(e) and 6722(e), and, therefore, the de minimis error safe harbor does not apply. A pattern of non-compliance may indicate intentional disregard for purposes of the penalties.

Also, the de minimis error safe harbor does not apply to a failure to file or furnish an information return or payee statement, even if the payee statement or information return would report dollar amounts of $100 or less (or $25 or less with respect to any amount of tax withheld). Section 6721(c)(3) applies only to information returns that have been filed, and section 6722(c)(3) applies only to payee statements that have been furnished.

.05 *Recordkeeping*. Payors must retain records of any election, or revocation of an election, for as long as that information may be relevant to the administration of any internal revenue law.

SECTION 4. REGULATIONS TO IMPLEMENT THE DE MINIMIS ERROR SAFE HARBOR

The Treasury Department and the IRS intend to issue regulations to implement the de minimis error safe harbor and the payee election to have the safe harbor not apply. These regulations are expected to incorporate the rules contained in this notice, and to the extent that they do, the regulations will be effective for information returns required to be filed, and payee statements required to be furnished, after December 31, 2016. The regulations are also expected to include a requirement for payors to notify payees regarding the de minimis error safe harbor and the election for the safe harbor not to apply. The regulations may also provide that, to prevent abuse of the de minimis error safe harbor, the safe harbor does not apply to certain information returns and payee statements.

SECTION 5. EFFECTIVE DATE

This notice applies with respect to information returns required to be filed, and payee statements required to be furnished, after December 31, 2016.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control number 1545–2270.

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

The collection of information in this notice is in section 3. This information is required to facilitate the making of elections by payees under section 6722(c)(3)(B), to allow payees to revoke the elections, and to provide records to facilitate proof of compliance with information reporting requirements. This information will be used by payors to determine whether they are required to furnish corrected payee statements to payees and file corrected information returns with the IRS to avoid application of penalties under sections 6721 and 6722. This information will also be used by the IRS to determine whether payors are subject to penalties under sections 6721 and 6722. The collection of information is both voluntary to obtain a benefit and mandatory. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting burden is 760,569 hours.

The estimated annual burden per respondent is approximately 0.09 hours. The estimated number of respondents is 8,307,625.

The estimated annual frequency of responses is 8,984,600.

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

SECTION 7. REQUEST FOR COMMENTS

Comments are requested regarding the rules contained in this notice. Comments are also requested regarding potential abuses of the de minimis error safe harbor and any information returns or payee statements that should be excepted from the de minimis error safe harbor provisions in sections 6721(c)(3)(C) and 6722(c)(3)(C).

Any person or persons wishing to submit comments in response to this notice should submit such comments by April 24, 2017. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2017–09), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand-delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2017–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: Notice.Comments@irscounsel.treas.gov. Please include Notice 2017–09 in the subject line of any electronic submissions. Comments will be available for public inspection and copying.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Mark A. Bond of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Mr. Bond on (202) 317-6844 (not a toll-free number).

Listing Notice—Syndicated Conservation Easement Transactions

Notice 2017–10

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amount invested. This notice alerts taxpayers and their representatives that the transaction described in section 2 of this notice is a tax avoidance transaction and identifies this transaction, and substantially similar transactions, as listed transactions for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations (Regulations) and

§§ 6111 and 6112 of the Internal Revenue Code (Code). This notice also alerts persons involved with these transactions that certain responsibilities may arise from their involvement.

SECTION 1. BACKGROUND

Section 170(f)(3)(B)(iii) of the Code allows a deduction for a qualified conservation contribution. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. Section 170(h)(1) through (5); § 1.170A–14. A qualified real property interest includes a restriction, granted in perpetuity, on the use that may be made of real property. Section 170(h)(2)(C). For purposes of this notice, a qualified real property interest is referred to as a conservation easement.

The Treasury Department and the IRS have become aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to claim charitable contribution deductions in amounts that significantly exceed the amount invested. In such a syndicated conservation easement transaction, a promoter offers prospective investors in a partnership or other pass-through entity ("pass-through entity") the possibility of a charitable contribution deduction for donation of a conservation easement.

The promoters (i) identify a pass-through entity that owns real property, or (ii) form a pass-through entity to acquire real property. Additional tiers of pass-through entities may be formed. The promoters then syndicate ownership interests in the pass-through entity that owns the real property, or in one or more of the tiers of pass-through entities, using promotional materials suggesting to prospective investors that an investor may be entitled to a share of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor's investment. The promoters obtain an appraisal that purports to be a qualified appraisal as defined in § 170(f)(11)(E)(i) but that greatly inflates the value of the conservation easement based on unreasonable conclusions about the development potential of the real property. After an investor invests in the pass-through entity, either directly or through one or more tiers of pass-through entities, the pass-through entity donates a conservation easement encumbering the property to a tax-exempt entity. Investors who held their direct or indirect interests in the pass-through entity for one year or less may rely on the pass-through entity's holding period in the underlying real property to treat the donated conservation easement as long-term capital gain property under § 170(e)(1). The promoter receives a fee or other consideration with respect to the promotion, which may be in the form of an interest in the pass-through entity. The IRS intends to challenge the purported tax benefits from this transaction based on the overvaluation of the conservation easement. The IRS may also challenge the purported tax benefits from this transaction based on the partnership anti-abuse rule, economic substance, or other rules or doctrines.

SECTION 2. FACTS

A transaction described in this section is a listed transaction. An investor receives promotional materials that offer prospective investors in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the investor's investment. The promotional materials may be oral or written. For purposes of this notice, promotional materials include, but are not limited to, documents described in § 301.6112–1(b)(3)(iii)(B) of the Regulations. The investor purchases an interest, directly or indirectly (through one or more tiers of pass-through entities), in the pass-through entity that holds real property. The pass-through entity that holds the real property contributes a conservation easement encumbering the property to a tax-exempt entity and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the investor. Following that contribution, the investor reports on his or her federal income tax return a charitable contribution deduction with respect to the conservation easement.

SECTION 3. LISTED TRANSACTIONS

Transactions entered into on or after January 1, 2010, that are the same as, or substantially similar to, the transaction described in section 2 of this notice are identified as "listed transactions" for purposes of § 1.6011–4(b)(2) and §§ 6111 and 6112 effective December 23, 2016. Persons entering into these transactions on or after January 1, 2010, must disclose the transactions as described in § 1.6011–4 for each taxable year in which the taxpayer participated in the transactions, provided that the period of limitations for assessment of tax has not ended on or before December 23, 2016. Material advisors, including appraisers, who make a tax statement on or after January 1, 2010, with respect to transactions entered into on or after January 1, 2010, have disclosure and list maintenance obligations under §§ 6111 and 6112. See §§ 301.6111–3, 301.6112–1.

For rules regarding the time for providing disclosure of a transaction described in this notice, see §§ 1.6011–4(e) and 301.6111–3(e). However, if, under § 1.6011–4(e)(1), a taxpayer is required to file a disclosure statement with respect to a transaction described in this notice after December 23, 2016, and prior to May 1, 2017, that disclosure statement will be considered to be timely filed if the taxpayer alternatively files the disclosure with the Office of Tax Shelter Analysis by May 1 (because April 30 is a Sunday). In addition, for purposes of disclosure of transactions described in this notice, the 90-day period provided in § 1.6011–4(e)(2)(i) is extended to 180 days. Further, if under § 301.6111–3(e), a material advisor is required to file a disclosure statement with respect to the listed transaction described in this notice by January 31, 2017, that disclosure statement will be considered to be timely filed if the taxpayer files the disclosure with the Office of Tax Shelter Analysis by May 1, 2017 (because April 30 is a Sunday).

Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the syndicated conservation easement transaction described in section 2 may already

be subject to the requirements of §§ 6011, 6111, 6112, or the regulations thereunder. The transaction described in section 2 is identified as a listed transaction regardless of whether the transaction has the characteristics described in section 1 of this notice.

Whether a taxpayer has participated in the listed transaction described in section 2 of this notice will be determined under § 1.6011–4(c)(3)(i)(A). Participants include, but are not limited to, investors, the pass-through entity (any tier, if multiple tiers are involved in the transaction), or any other person whose tax return reflects tax consequences or a tax strategy described in section 2.

For purposes of this notice, a donee described in § 170(c) shall not be treated as a party to the transaction under § 4965 or a participant under § 1.6011–4.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so will be subject to penalties under § 6707A. Participants required to disclose these transactions under § 1.6011–4 who fail to do so may also be subject to an extended period of limitations under § 6501(c)(10). Material advisors required to disclose these transactions under § 6111 who fail to do so may be subject to the penalty under § 6707. Material advisors required to maintain lists of investors under § 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) may be subject to the penalty under § 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including the accuracy-related penalty under § 6662 or § 6662A, the § 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, and the § 6695A penalty for certain valuation misstatements attributable to incorrect appraisals.

The Treasury Department and the IRS recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

DRAFTING INFORMATION

The principal authors of this notice are Angella L. Warren and Maxine M. Woo-Garcia of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Ms. Warren at (202) 317-7003 (not a toll-free number) or Ms. Woo-Garcia at (202) 317-7011 (not a toll-free number).

Part IV. Items of General Interest

REG–112324–15

Mortality Tables for Determining Present Value Under Defined Benefit Pension Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations prescribing mortality tables to be used by most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. This information is used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for the plan. These mortality tables are also relevant to determining the minimum required amount of a lump-sum distribution from such a plan. In addition, this document contains proposed regulations to update the requirements that a plan sponsor must meet in order to obtain IRS approval to use mortality tables specific to the plan for minimum funding purposes (instead of the generally applicable mortality tables). These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

DATES: Comments and outlines of topics to be discussed at the public hearing scheduled for April 13, 2017 must be received by March 29, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112324–15), 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–112324–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–112324–15). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Thomas Morgan at (202) 317-6700; concerning the construction of the base mortality tables and the static mortality tables for 2018, Michael Spaid at (206) 946-3480; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. *Generally applicable mortality tables*

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430, which was added to the Code by the Pension Protection Act of 1996, Public Law No. 109–280 (120 Stat. 780 (2006)), specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.[1] Section 430(a) defines the minimum required contribution by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) contains rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those mortality tables are to be based on the actual mortality experience of pension plan participants and projected trends in that experience. In prescribing those mortality tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans.[2] Under section 430(h)(3)(B), the Secretary is required to revise any mortality table in effect under section 430(h)(3)(A) at least every 10 years to reflect actual mortality experience of pension plan participants and projected trends in that experience.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Section 417(e)(3) generally provides that the present value of certain benefits under a qualified pension plan (including single-sum distributions) must not be less

[1]Section 302 of the Employee Retirement Income Security Act of 1974, Public Law No. 93–406, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

[2]The standards prescribed for developing these mortality tables are the same as the standards that are prescribed for developing mortality tables for multiemployer plans under section 431(c)(6)(D)(iv)(II) (which are used determine current liability in order to determine the minimum full funding limitation under section 431(c)(6)(B)). These standards also apply for purposes of determining current liability in order to determine the minimum full funding limitation under section 433(c)(2)(C) for a CSEC plan (as defined in section 414(y)).

than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Section 417(e)(3)(B) defines the term "applicable mortality table" as the mortality table specified for the plan year for minimum funding purposes under section 430(h)(3)(A) (without regard to the rules for substitute mortality tables under section 430(h)(3)(C) or mortality tables for disabled individuals under section 430(h)(3)(D)), modified as appropriate by the Secretary. The modifications made by the Secretary to the section 430(h)(3)(A) mortality table to determine the section 417(e)(3)(B) applicable mortality table are not addressed in these proposed regulations. Revenue Ruling 2007–67, 2007–2 CB 1047, describes the modifications that are currently applied to determine the section 417(e)(3)(B) applicable mortality table.

Final regulations under section 430(h)(3) were published in the **Federal Register** on July 31, 2008 in TD 9419, 73 FR 44632. The final regulations issued in 2008 include rules regarding generally applicable mortality tables, which are set forth in § 1.430(h)(3)–1 (the 2008 general mortality table regulations). The final regulations issued in 2008 also include rules regarding substitute mortality tables, which are set forth in § 1.430(h)(3)–2 (the 2008 substitute mortality table regulations).

The 2008 general mortality table regulations prescribe a base mortality table and a set of mortality improvement rates, which may be reflected through the use of either generational mortality tables or static mortality tables. Generational mortality tables are a series of mortality tables, one for each year of birth, each of which fully reflects projected trends in mortality rates. The static mortality tables (which are updated annually) use a single mortality table for all years of birth to approximate the present value that would be determined using the generational morality tables. Section 1.430(h)(3)–1 includes static mortality tables for valuation dates occurring in 2008 and provides that static mortality tables for valuation dates occurring in later years are to be published in the Internal Revenue Bulletin.

The mortality tables included in § 1.430(h)(3)–1 are based on the mortality tables included in the RP–2000 Mortality Tables Report (referred to in this preamble as the RP–2000 mortality tables) released by the Society of Actuaries in July 2000 (updated in May 2001) and a set of mortality improvement projection factors (the Scale AA Projection Factors) that was also included in the RP–2000 Mortality Tables Report.

Section 1.431(c)(6)–1 provides that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)–1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the full-funding rules of section 431(c)(6). For this purpose, a multiemployer plan is permitted to apply either the annually-adjusted static mortality tables or the generational mortality tables.

Static mortality tables for valuation dates occurring during 2009–2013 were published in Notice 2008–85, 2008–42 IRB 905. Updated static mortality tables for valuation dates occurring during 2014 and 2015 were published in Notice 2013–49, 2013–32 IRB 127. Updated static mortality tables for valuation dates occurring in 2016 were published in Notice 2015–53, 2015–33 IRB 190. Updated static mortality tables for valuation dates occurring in 2017 were published in Notice 2016–50, 2016–38 IRB 371.

Notice 2013–49 requested comments on whether it continues to be necessary to provide multiple alternative versions of the mortality tables in order to accommodate limitations in some actuarial software. Notice 2013–49 also requested comments on whether a separate disability mortality table is still warranted with respect to participants who became disabled before 1995. Finally, Notice 2013–49 noted that the Treasury Department (Treasury) and the IRS were aware that the Society of Actuaries was conducting a mortality study of pension plan participants and specifically requested comments on whether other studies of actual mortality experience of pension plan participants and projected trends of that experience are available that should be considered for use in developing mortality tables for future use under section 430(h)(3).

In October 2014, the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries issued a new mortality study of participants in private pension plans, referred to as the RP–2014 Mortality Tables Report (which sets forth mortality tables that are referred to as the RP–2014 mortality tables). The RP–2014 Mortality Tables Report, as revised November 2014, is available at www.soa.org/Research/Experience-Study/pension/research-2014-rp.aspx. At the same time, RPEC issued a companion study of mortality improvement, referred to as the Mortality Improvement Scale MP–2014 Report (which sets forth mortality improvement rates that are referred to as Scale MP–2014 Rates). As described in the Mortality Improvement Scale MP–2014 Report, (available at *www.soa.org/Research/Experience-Study/pension/research-2014-mp.aspx)*, the Scale MP–2014 rates were based on mortality improvement experience for the general population through 2009.

In October 2015, RPEC released an update to the Scale MP–2014 Rates. The updated rates, referred to as Scale MP–2015 Rates, were released as part of the Mortality Improvement Scale MP–2015 Report (which is available at https://www.soa.org/Research/Experience-Study/Pension/research-2015-mp.aspx). The Scale MP–2015 Rates were created using historical data for mortality improvement for the general population through 2011, and the same model and parameters that were used to produce Scale MP–2014 Rates. In conjunction with the release of the updated rates, RPEC indicated the intent to reflect the latest data available by providing future annual updates to the model as soon as practicable following the public release of updated data upon which the model is constructed.

In October 2016, RPEC released a further update to the Scale MP–2014 Rates, which are referred to as the Scale MP–2016 Rates. The Scale MP–2016 Rates take into account data for mortality improvement for the general population for years 2012 and 2013, along with an estimate of mortality rates for 2014. As described in the Mortality Improvement Scale MP–2016 Report (which is available at www.soa.org/Research/Experience-Study/Pension/research-2016-mp.aspx), in developing the Scale MP–2016 rates, RPEC changed some of the parame-

ters from those that were used in developing the Scale MP–2014 Rates.

B. *Plan-specific substitute mortality tables*

Section 430(h)(3)(C) prescribes rules for a plan sponsor's use of substitute mortality tables reflecting the specific mortality experience of a plan's population instead of using the generally applicable mortality tables. Under section 430(h)(3)(C), the plan sponsor may request the Secretary's approval to use plan-specific substitute mortality tables that meet requirements specified in the statute. If approved, these substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request. In order for a plan sponsor to use a substitute mortality table for a plan, the statute requires that: (1) the plan has a sufficient number of plan participants and has been maintained for a sufficient period of time in order to have credible mortality information necessary to create a substitute mortality table; and (2) the tables reflect the actual mortality experience of the plan's participants and projected trends in general mortality experience of participants in pension plans. Except as provided by the Secretary, a plan sponsor must not use substitute mortality tables for any plan unless substitute mortality tables are established and used for each plan maintained by the plan sponsor and its controlled group.

Regulations issued in 2008 set forth rules regarding the use of substitute mortality tables. Under § 1.430(h)(3)–2(b), in order to use substitute mortality tables with respect to a plan, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables comply with applicable requirements. A request to use substitute mortality tables must specify the first plan year, and the term of years (not more than 10), for which the tables are requested to be used. In general, substitute mortality tables may not be used for a plan year unless the plan sponsor submits the request at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply.

The Commissioner has a 180-day period to review a request for the use of substitute mortality tables. If the Commissioner does not issue a denial within this 180-day period, the request is deemed to have been approved unless the Commissioner and the plan sponsor have agreed to extend that period. The Commissioner may request additional information with respect to a submission. Failure to provide that information on a timely basis is grounds for denial of the plan sponsor's request. In addition, the Commissioner will deny a request if the request fails to meet the requirements to use substitute mortality tables or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

Under § 1.430(h)(3)–2(c)(1)(i), substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables are to be used. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table may be established for a gender only if the plan has credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, the substitute mortality tables are used for the gender that has credible mortality experience, and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience.

Section 1.430(h)(3)–2(c)(1)(ii) provides that, for purposes of determining whether substitute mortality tables may be used, there is credible mortality experience for a gender within a plan if and only if, over the period covered by the experience study, there are at least 1,000 deaths within that gender.[3] Pursuant to § 1.430(h)(3)–2(c)(2)(ii), the minimum length of the experience study period is 2 years and the maximum length of the experience study period is 5 years (and can be lengthened in published guidance). Furthermore, under that provision, the last day of the final year reflected in the experience data must be less than three years before the first day of the first plan year for which the substitute mortality tables are to apply.

Under § 1.430(h)(3)–2(c)(2), development of a substitute mortality table under the regulations requires creation of a base table and identification of a base year, which are then used to determine a substitute mortality table. The base table must be developed from a study of the mortality experience of the plan using amounts-weighted data.

Under § 1.430(h)(3)–2(c)(3), a plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed from the experience study and the Scale AA Projection Factors, which are also used for the generally applicable mortality tables.

Under § 1.430(h)(3)–2(c)(4), separate substitute mortality tables are permitted (but not required) to be established for separate populations within a gender, such as annuitants and nonannuitants or hourly and salaried individuals. Under that provision, separate substitute mortality tables generally are permitted to be used for a separate population within a gender under a plan only if all individuals of that gender in the plan are divided into separate populations, each separate population has credible mortality experience (determined in the same manner as determining whether a gender has credible mortality experience), and the separate substitute mortality table for each separate population is developed using mortality experience data for that population.

Section 1.430(h)(3)–2(d)(3) prescribes rules for aggregating plans for purposes of using substitute mortality tables. Under § 1.430(h)(3)–2(d)(3), in order to use a set of substitute mortality tables for two or more plans, the rules set forth in the regulations must be applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used

[3]The 1,000-death threshold for credible mortality experience under the regulations was intended to provide a high degree of confidence that the plan's past mortality experience will be predictive of its future mortality, and is consistent with relevant actuarial literature (see, for example, Thomas N. Herzog, Introduction to Credibility Theory (1999); Stuart A. Klugman, *et. al.*, Loss Models: From Data to Decisions (2004)).

for all such plans and must be based on data collected with respect to all such plans.

Section 1.430(h)(3)–2(d)(4) provides for the early termination of the use of substitute mortality tables in certain specified circumstances, including pursuant to a replacement of the mortality tables specified in § 1.430(h)(3)–1. The early termination pursuant to such a replacement must be effective as of a date specified in guidance published in the Internal Revenue Bulletin.

Rev. Proc. 2008–62, 2008–2 CB 935, sets forth the procedure by which a plan sponsor of a defined benefit plan may request and obtain approval for the use of plan-specific substitute mortality tables in accordance with section 430(h)(3)(C). The revenue procedure specifies the information that must be provided in order to request the use of substitute mortality tables and specifies two alternative acceptable methods of construction for base substitute mortality tables. Under section 11 of Rev. Proc. 2008–62, a base table for a population can be created from the unadjusted base table for the population through the application of a graduation method generally used by the actuarial profession in the United States (for example, the Whittaker-Henderson Type B graduation method or the Karup-King graduation method). Section 12 of Rev. Proc. 2008–62 provides for an alternative method of constructing a base table through the application of a fixed percentage to the mortality rates of a standard mortality table, projected to the base year. This alternative method can be used only if the IRS determines that the resulting base table sufficiently reflects the mortality experience of the applicable plan population. In general, the standard mortality table that is used under this alternative method is a projection of the base mortality table that applies for the population under § 1.430(h)(3)–1; however, the IRS will consider requests for the approval of base tables constructed through the application of a fixed percentage to the mortality rates of other published generally accepted mortality tables.

Section 503 of the Bipartisan Budget Act of 2015, Public Law No. 114–74, 129 Stat. 584, which was enacted November 2, 2015, provides for changes to the rules on the use of substitute mortality tables. Under that section, the determination of whether a plan has credible information that can be used to develop a substitute mortality table must be made in accordance with established actuarial credibility theory, which (1) is materially different from the rules for using substitute mortality tables (including Revenue Procedure 2007–37)[4] that are in effect on November 2, 2015; and (2) permits the use of mortality tables that reflect adjustments to the generally applicable mortality tables, if those adjustments are based on the actual experience of the pension plan maintained by the plan sponsor. This provision applies to plan years beginning after December 31, 2015.

Explanation of Provisions

These proposed regulations set forth the methodology Treasury and the IRS would use to update the generally applicable mortality tables that are used to determine present value or make any computation under section 430. Pursuant to section 417(e)(3)(B), a modified version of these updated tables would be used for purposes of determining the amount of a single-sum distribution (or another accelerated form of distribution).[5] This methodology for developing updated tables under section 430(h)(3)(A) is being proposed pursuant to the requirement under section 430(h)(3)(B) to revise the mortality tables used under section 430 to reflect the actual mortality experience of pension plan participants and projected trends in that experience. As under the 2008 general mortality table regulations, the methodology involves the separate determination of base tables and the projection of mortality improvement.

These proposed regulations also set forth rules for the use of substitute mortality tables. The rules on substitute mortality tables are being proposed pursuant to section 503 of the Bipartisan Budget Act of 2015, which requires that the determination of whether the plan has credible information be made in accordance with established actuarial credibility theory. Pursuant to that requirement, Treasury and the IRS undertook a review of actuarial literature regarding credibility theory and consulted with experts on that topic from the Society of Actuaries. Based on that review and analysis, the proposed regulations set forth a method for developing substitute mortality tables that is materially different from the method that is required under the 2008 substitute mortality table regulations and the associated revenue procedure.

The method for developing substitute mortality tables that is set forth in the proposed regulations is simpler than the method that applies under the 2008 substitute mortality table regulations, and also accommodates the use of substitute mortality tables by plans with smaller populations that have partially credible mortality experience. Comments are requested regarding additional simplifications that might be appropriate for use in developing substitute mortality tables.

I. *Generally Applicable Mortality Tables*

A. *Base mortality tables*

The base mortality tables proposed for use under section 430(h)(3)(A) are derived from the tables contained in the RP–2014 Mortality Tables Report. In response to Notice 2013–49, commentators generally recommended that the RP–2014 mortality tables form the basis for the mortality tables used under section 430.[6] After reviewing the RP–2014 mortality tables, the accompanying report published by the Society of Actuaries, and related public comments, Treasury and the IRS have de-

[4]Rev. Proc. 2007–37, 2007–1 CB 1433, was not in effect on November 2, 2015. It was issued in 2007 in conjunction with proposed regulations regarding substitute mortality tables (REG–143601–06, 72 FR 29456), and was replaced by Rev. Proc. 2008–62 when those regulations were finalized in 2008.

[5]After these regulations are finalized, the section 417(e)(3)(B) applicable mortality table will be specified in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

[6]These proposed regulations also apply the new generally applicable mortality tables under section 430 for purposes of determining the current liability of a multiemployer plan pursuant to section 431(c)(6)(D)(iv)(II) or a CSEC plan pursuant to section 433(h)(3).

termined that the experience study used to develop the RP–2014 mortality tables is the best available study of the actual mortality experience of pension plan participants (other than disabled individuals). Accordingly, the RP–2014 mortality tables are the foundation for the base mortality tables used to project the mortality of pension plan participants under these proposed regulations.[7]

Like the mortality tables provided in the 2008 general mortality table regulations, the mortality tables set forth in these proposed regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality. In addition, as under the 2008 general mortality table regulations, these proposed regulations set forth separate mortality rates for annuitants and nonannuitants. This distinction has been made because these two groups have significantly different mortality experience. *See* chapter 3 of the RP–2000 Mortality Tables Report, available at *www.soa.org/research/experience-study/pension/research-rp-2000-mortality-tables.aspx*.

Under these proposed regulations, the annuitant mortality tables are applied to determine the present value of benefits for an annuitant. For a nonannuitant, the nonannuitant mortality tables are applied for the periods before the participant is projected to commence receiving benefits, and the annuitant mortality tables are used for later periods. With respect to a beneficiary of a participant, the annuitant mortality table applies for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality table applies with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

The proposed regulations set forth base tables that are to be used to develop the mortality tables for future years. These base tables have a base year of 2006 (the central year of the experience study used to develop the mortality tables in the RP–2014 Mortality Tables Report). These base tables generally have the same rates as the RP–2014 mortality tables after factoring out the mortality improvements from 2007 to 2014 (calculated using the Scale MP–2014 Rates). However, these base tables also include nonannuitant rates for ages below age 18 and above age 80 and annuitant rates for ages below age 50. This generally is the same approach that was used to develop the base tables included in the 2008 general mortality table regulations.

The nonannuitant rates for ages above age 80 were developed by (1) using the annuitant rates from the base tables for ages 90 and older and (2) interpolating between the rates for age 80 and age 90 in order to produce a smooth transition between the age 80 rates from the nonannuitant tables to the age 90 rates from the annuitant tables. The interpolation uses increasing fractions with a denominator of 55 to allocate the total difference between the rates at ages 80 and 90 over those 10 years. Thus, the rate at age 81 is set equal to the rate at age 80 plus 1/55 of the total difference, the age 82 rate is equal to the rate at age 81 plus 2/55 of the total difference (so that the age 82 rate is equal to the rate at age 80 plus 3/55 of the total difference), and so on for other ages.

A similar approach was used to develop annuitant rates for ages below age 50. The annuitant rates for ages under age 50 were determined by (1) using the nonannuitant rates from the base tables for ages 18 to 40, and (2) interpolating between the rates for age 40 and age 50, using the same methodology described in the prior paragraph. This method produces a smooth transition between the age 40 rates from the nonannuitant table and the age 50 rates from the annuitant table. For ages below age 18, both the annuitant and nonannuitant rates incorporate the juvenile rates from the RP–2014 Mortality Tables Report, after factoring out the mortality improvements from 2007 to 2014 (calculated using the Scale MP–2014 Rates).

B. *Reflection of mortality improvement*

The proposed regulations provide that expected trends in mortality experience must be taken into account through the use of either generational or annually updated static mortality tables. In accordance with section 430(h)(3)(B), the proposed regulations update the mortality improvement rates from the Scale AA Projection Factors that were set forth under the 2008 general mortality table regulations.

In order to select up-to-date mortality improvement rates, Treasury and the IRS reviewed the Mortality Improvement Scale MP–2014 Report, related public comments, the data sources cited in those comments, the Mortality Improvement Scale MP–2015 Report, the Mortality Improvement Scale MP–2016 Report, and other published data sources.[8] Pursuant to this review, Treasury and the IRS determined that the procedures that RPEC used to develop the Scale MP–2016 Rates generate the most appropriate currently available mortality improvement rates. Accordingly, the proposed regulations provide that, for valuation dates in 2018, the mortality tables for use under section 430(h)(3)(A) must reflect the mortality improvement rates contained in the Mortality Improvement Scale MP–2016 Report.

The Scale MP–2016 Rates are structured as two-dimensional tables that contain mortality improvement rates that vary according to both age and calendar year (so that the mortality improvement rate for someone who is age 72 in 2020 is different than the mortality improvement rate for someone who is age 72 in 2030). RPEC provided for two-dimensional tables of mortality improvement rates in order to reflect differences in mortality improvement at different ages as well as mortality improvement trends that vary for different age cohorts. The proposed regulations include numerical examples illustrating how to apply these two-dimensional mortality improvement rates.

[7]Mortality tables that may be used as an alternative to the tables provided in these regulations with respect to certain disabled individuals are provided in Rev. Rul. 96–7, 1996–1 CB 59.

[8]See the August 2013 Literature Review and Assessment of Mortality Improvement Rates in the U.S. Population: Past Experience and Future Long-Term Trends, available at *www.soa.org/Files/Research/Exp-Study/research-2013-lit-review.pdf*; and the 2015 Technical Panel on Assumptions and Methods Report to the Social Security Advisory Board, available at *www.ssab.gov/Details-Page/ArticleID/656/2015-Technical-Panel-on-Assumptions-and-Methods-A-Report-to-the-Board-September-2015*.

As under the current regulations, the proposed regulations take into account the limitations of some current actuarial software that is not designed to use generational mortality tables. Accordingly, the proposed regulations continue to permit the use of static mortality tables. These static tables consist of a single table for each gender, updated annually, that approximates the effect of projected mortality improvement under the generational mortality tables. The static mortality tables that would be used for 2018 are included in these proposed regulations. For later years, updated static mortality tables will be set forth in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

The static mortality tables that would be permitted to be used under the proposed regulations are constructed from the base tables that are used for purposes of the generational mortality tables. For each calendar year, the static mortality tables are based on a projection of mortality improvement applied to the mortality rates in the base tables for the period beginning with 2006 and ending with the year of the table, with a further projection from that year for a specified projection period. The rates in the static mortality tables are not the expected mortality rates for the current plan year, nor are they the mortality rates under the generational mortality tables that would apply for any current age. Instead, the projection period has been selected so that the use of the static mortality tables to calculate present values produces approximately the same results as would be calculated using the generational tables. Based on modeling of annuity values at different ages, Treasury and the IRS have selected a projection period of 8 years for males and 9 years for females, with a further adjustment based on age. For ages below 80, the projection period is increased by 1 year for each year below 80. For ages above 80, the projection period is reduced (but not below zero) by 1/3 year for each year above 80.

These proposed regulations provide an option for smaller plans (plans for which the total number of active and inactive participants and beneficiaries of deceased participants is not more than 500 on the valuation date for the plan year) to use gender distinct blended static tables for all participants and beneficiaries—in lieu of the separate static tables for annuitants and nonannuitants—in order to simplify the actuarial valuation for these plans. These blended tables are constructed from the separate nonannuitant and annuitant static mortality tables using the same nonannuitant and annuitant weighting factors as in the 2008 general mortality table regulations.

Treasury and the IRS understand that RPEC expects to issue updated mortality improvement rates that reflect new data for mortality improvement trends for the general population on an annual basis. Treasury and the IRS expect to take those updates into account in determining the mortality rates to be used under section 430(h)(3) for valuation dates in years after 2018. Those rates will be specified in guidance to be published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

II. *Plan-specific substitute mortality tables*

A. *Overview*

These proposed regulations contain a comprehensive set of rules regarding plan-specific substitute mortality tables. The proposed regulations contain many of the rules regarding substitute mortality tables from the 2008 substitute mortality table regulations. However, after analyzing the actuarial literature regarding credibility theory, Treasury and the IRS propose to make a number of changes to the regulations relating to the development of substitute mortality tables. Specifically, the proposed regulations would require a substitute mortality table to be constructed by multiplying the mortality rates from a projected version of the generally applicable base mortality table by a mortality ratio (that is, a ratio of the actual deaths for the plan population to expected deaths determined using the standard mortality tables for that population).

Use of mortality ratios (rather than providing for the graduation of raw mortality rates as under the 2008 substitute mortality table regulations) should make it easier for plan sponsors to develop the substitute tables, because it would eliminate the need to apply a graduation technique. It would also make it easier for the IRS to review applications to use substitute mortality tables. This simplification is particularly important in light of the other major change made in the proposed regulations, which would permit the use of substitute mortality tables for a plan that has only partially credible mortality information. Treasury and the IRS expect significantly more plan sponsors to request the use of substitute mortality tables after this change becomes effective.

B. *Development of substitute mortality tables for plans with full credibility*

The substitute mortality table for a population with full credibility would be determined by applying projected mortality improvement to a base substitute mortality table which is developed using an experience study of the population. The proposed regulations would use the same requirements for an experience study as under the 2008 substitute mortality table regulations. Specifically, the experience study would have to cover a period of at least 2 years (and no more than 5 years) that ends less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. As under the 2008 substitute mortality table regulations, the calendar year that contains the day before the midpoint of the experience study is the base year for the base substitute mortality table. In addition, the proposed regulations include the rule in the 2008 substitute mortality table regulations that requires an additional demonstration that the experience study results are predictive of future mortality for a plan population if the number of individuals in that population has changed by more than 20 percent compared to the average number of individuals in that population during the experience study period.

The base substitute mortality table is determined by multiplying the mortality rates from the standard mortality table (that is, the generally applicable base mortality table projected with mortality improvement to the base year for the base substitute mortality table) by the plan's mortality ratio. For this purpose, the mortality improvement rates that apply for the calendar year during which the plan spon-

sor submits the request to use substitute mortality tables are used to project the generally applicable base mortality table to the base year for the base substitute mortality table.[9] The mortality ratio is determined as a fraction, the numerator of which is the number of actual deaths during the experience study period (with each death weighted by the amount of benefit) and the denominator of which is the number of expected deaths during that period (determined using the standard mortality table) weighted by the amount of the benefit. For this purpose, the amount of benefit is the accrued benefit (substituting the current periodic payment in the case of individuals in pay status). Consistent with section 503 of the Bipartisan Budget Act of 2015 (and unlike § 1.430(h)(3)–2(c)(2)(ii)(D) of the 2008 substitute mortality table regulations, which provides that the Commissioner may permit the use of other recognized mortality tables to construct the base substitute mortality table), these proposed regulations provide that the standard mortality table that must be used for this purpose is the generally applicable base mortality table projected with mortality improvement to the base year for the base substitute mortality table.

C. *Standards for full credibility*

The proposed regulations revise the standard for full credibility of a population under the 2008 substitute mortality table regulations (which is 1,000 actual deaths for the relevant population during the experience study period). This is because, under established actuarial credibility theory, that threshold (which is a rounding down of the 1,082 actual deaths that would be needed for a 90% confidence level that the measured rate is within 5% of the underlying rate of mortality) should apply to the credibility for a single rate of mortality and not an entire mortality table.[10] Moreover, the 1,000 death threshold did not take into account the well-established actuarial principle that mortality experience within a population will vary predictably based on the amount of the annuity (or life insurance, as applicable). The base tables for the generally applicable mortality tables were constructed on an amounts-weighted basis (under which the individuals with higher benefit amounts have a greater weight in the computation of the mortality rate for a particular age); accordingly, substitute mortality tables should be constructed using the same principle.

The variability of benefit amounts for different individuals in different populations within a plan means that a single 1,000 actual-death standard that would apply to all populations is not appropriate. Instead, established actuarial credibility theory would require a plan-specific calculation of the full-credibility standard that takes into account the dispersion of benefits within the plan.

Under the proposed regulations, the number of deaths that are needed for the population within a plan to have fully credible mortality information is determined as the product of 1,082 and the benefit dispersion factor for the population.[11] The benefit dispersion factor for a population is equal to the number of expected deaths for the population during the experience study period, times the sum of the mortality-weighted square of the benefits, divided by the square of the mortality-weighted benefits.[12]

D. *Partial Credibility*

The proposed regulations permit substitute mortality tables to be used for a plan that does not have sufficient deaths to have fully credible mortality information. In accordance with established actuarial credibility theory, such a plan would use a weighted average of the standard mortality table (projected with mortality improvement to the base year of the base substitute mortality table) and the mortality table that would be developed for the plan if it were to have fully credible mortality information. The weight for the mortality table that would apply if the plan were to have fully credible mortality information is the square-root of a fraction, the numerator of which is the actual number of deaths for the population within the experience study period and the denominator of which is the number of deaths needed for the plan to have fully credible mortality information.

In order to avoid the need to create a substitute mortality table for a plan with a relatively small population, the proposed regulations provide that a population does not have credible mortality information if the actual number of deaths for that population during the experience study period is less than 100. For this purpose, the length of the experience study period must be the same length as the longest experience study period for any plan in the controlled group.

Treasury and the IRS chose the threshold of 100 deaths as a result of balancing the burdens of developing substitute mortality tables and the benefit of the use of those tables, in light of the requirement under section 430(h)(3)(C)(iv) that substitute mortality tables be used for all plans within a controlled group (and the exception to this requirement for plans that lack fully or partially credible mortality information). Comments are requested regarding whether this is the appropriate threshold or whether a different number of deaths should be used for this purpose.

E. *Mortality Improvement Rates*

As required under the 2008 substitute mortality table regulations, the proposed regulations provide that substitute mortality tables must be generational mortality tables. These proposed regulations require that the mortality improvement rates that are used for the generally applicable mortality tables also be applied beginning with the base year of the base substitute mortality tables.

[9]If the plan sponsor submits such a request during 2017, then the cumulative mortality improvement factors are determined using the Scale MP–2016 Rates.

[10]Note, however, the use of a graduation technique set forth in Rev. Proc. 2008–62 enables a plan to have credible mortality experience in order to establish a substitute mortality table even though there are fewer than 1000 deaths at each age.

[11]This is based on the assumption that the distribution of releases from liability due to deaths follows a compound Poisson model. See *www.actuaries.ca/members/publications/2002/202037e.pdf*.

[12]See Gavin Benjamin, Selecting Mortality Tables: A Credibility Approach, available at *www.soa.org/Files/Research/Projects/research-2008-benjamin.pdf*.

F. *Other rules relating to the use of substitute mortality tables*

1. *Use of separate subpopulations within a gender under plan*

The proposed regulations continue to apply the rules under the 2008 substitute mortality table regulations regarding the applicability of substitute mortality tables for separate populations within a plan. Specifically, separate substitute mortality tables must be developed for each gender under the plan. In addition, the regulations permit separate substitute mortality tables to be developed for separate subpopulations (such as hourly and salaried participants) within a gender under the plan in certain circumstances.

As under the 2008 substitute mortality table regulations, permission to separate a gender into separate subpopulations is generally limited to situations in which each of the subpopulations have fully credible mortality information. However, that requirement does not apply if the separate subpopulations are annuitants and non-annuitants. Comments are requested on whether there should be other exceptions to this rule. For example:

- Should the regulations allow separate sub-populations to be used if one subpopulation has full credibility while the other one has only partial credibility?
- Should the regulations provide for the use of separate sub-populations based on age, even if those groups have only partial credibility?
- Should there be a rule to "normalize" the mortality tables for separate subpopulations (so that the total number of expected deaths for the separate subpopulations is the same as the total number of expected deaths for the entire population without regard to the separation)?

2. *Requirement to use substitute mortality tables for all plans with credible mortality information*

As under the 2008 substitute mortality table regulations, the proposed regulations provide that substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year, substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the plan sponsor or by a member of the sponsor's controlled group. However, this rule does not prohibit the use of substitute mortality tables for one plan if the only other plan or plans maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) for which substitute mortality tables are not used are too small to have fully or partially credible mortality information for the plan year. Thus, if a sponsor's controlled group contains two pension plans that are subject to section 430, each of which has fully or partially credible mortality information for at least one gender, either the plan sponsors of both plans must obtain approval from the Commissioner to use substitute mortality tables or substitute mortality tables may not be used for either plan. In contrast, if for one of those plans neither males nor females have fully or partially credible mortality information, then the plan without credible mortality information will not prevent the use of substitute mortality tables for the plan with credible mortality information.

As under the 2008 substitute mortality table regulations, the proposed regulations provide that the requirement that the plan sponsor demonstrate the lack of credible mortality information for both the male and female populations in other plans maintained by the plan sponsor (and by members of the plan sponsor's controlled group) for which substitute mortality tables are not used must be satisfied for each plan year for which substitute mortality tables are used. This demonstration is made for a plan population by showing that the population has not experienced at least 100 deaths over a time period that satisfies the requirements set forth in the regulations. In general, for each plan year in which substitute mortality tables are used for a plan, in order to demonstrate that a gender within a plan does not have credible mortality information for a plan year, the demonstration that the gender within the plan has fewer than 100 deaths must be made by analyzing the actual number of deaths over a period that is the same length as the period for the experience study on which the substitute mortality tables are based and that ends less than three years before the first day of the plan year.

3. *Permitted aggregation of plans*

The proposed regulations retain the rules contained in the 2008 substitute mortality table regulations regarding aggregation of plans for purposes of using substitute mortality tables. Under these rules, in order for a plan sponsor to use the same substitute mortality tables for two or more plans, the rules set forth in the regulations are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for all such plans and must be based on data collected with respect to all such plans. Although plans generally are not required to be aggregated for purposes of substitute mortality tables, the regulations require a plan to be aggregated with any plan that was previously spun off from that plan if the Commissioner determines that one purpose of the spinoff was to avoid the use of substitute mortality tables for any of the plans involved in the spinoff.

4. *Special rules for newly-acquired plans*

If substitute mortality tables are used for at least one plan within a controlled group, in order for the plan sponsor to continue to use substitute mortality tables for that plan after a plan joins the controlled group, substitute mortality tables must be used for the newly affiliated plan unless the newly affiliated plan demonstrates that it lacks credible mortality information. However, the proposed regulations provide for a transition period during which the standard mortality table is permitted to be used for a newly affiliated plan (without affecting the use of substitute mortality tables for other plans within the controlled group) even if the newly affiliated plan fails to demonstrate a lack of credible mortality information. Similarly, the use of substitute mortality tables for a newly affiliated plan is not affected during the transition period merely because the standard mortality tables are used for another plan within the controlled group despite the failure of that other plan

to demonstrate a lack of credible mortality information. Notably, these rules do not change the requirement that the continued use of substitute mortality tables for any plan within the controlled group is permitted only if the other pre-affiliation plans within the controlled group for which substitute mortality tables are not used demonstrate a lack of credible mortality information.

Like the 2008 substitute mortality table regulations, the proposed regulations do not require the use of pre-affiliation experience in order to establish whether a newly-affiliated plan has credible mortality information. If the pre-affiliation data is excluded and substitute mortality tables will be used for the plan, then the experience study period may be as short as one year (instead of two years). If the pre-affiliation data is excluded and substitute mortality tables will not be used for the plan, then the experience study period used to demonstrate that the plan does not have credible mortality information may also be shortened, provided that the period ends not more than one year and one day before the first day of the plan year.

5. *Treatment of mortality experience with respect to disabled individuals*

As under the 2008 substitute mortality table regulations, if separate mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, then those individuals are disregarded for all purposes with respect to substitute mortality tables under section 430(h)(3)(C). Thus, if the mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in determining mortality rates for substitute mortality tables with respect to a plan.

6. *Early termination of use of substitute mortality tables*

The proposed regulations retain the rules from the 2008 substitute mortality table regulations regarding the early termination of use of substitute mortality tables. Under those rules, a plan's substitute mortality tables may not be used beginning with the earliest of: (1) for a plan for which substitute mortality tables are used for only one gender because of a lack of credible mortality information with respect to the other gender, the first plan year for which there is credible mortality information with respect to the gender that had lacked credible mortality information (unless the plan receives approval to use a substitute mortality table for that other gender); (2) the first plan year for which the requirements regarding use of substitute mortality tables by controlled group members are not satisfied; (3) the second plan year following the plan year for which there is a significant change in individuals covered by the plan (unless the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population)); (4) the first plan year following the plan year for which a substitute mortality table used for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or (5) the date specified in guidance published in the Internal Revenue Bulletin in conjunction with a replacement of generally applicable mortality tables (other than annual updates to the static mortality tables or changes to the mortality improvement rates).

G. *Procedures for requesting approval of substitute mortality tables*

As under the 2008 substitute mortality table regulations, the proposed regulations provide that a plan sponsor that wishes to use substitute mortality tables for a plan must submit a request to the IRS for approval to use the proposed tables. In general, the request must be submitted at least 7 months before the first day of the plan year for which the proposed substitute tables would be used. If the IRS does not deny the request within 180 days (which may be extended as agreed to by the IRS and the plan sponsor), the request is deemed to have been approved.

The IRS intends to issue an updated version of Rev. Proc. 2008–62 after final regulations regarding substitute mortality tables are issued. If the timing of the release of those final regulations and the associated revenue procedure does not leave adequate time to submit an application to use substitute mortality tables for the plan year beginning in 2018, Treasury and the IRS expect that they would provide a transition rule that would permit extra time to submit such an application

Before final regulations adopting the provisions set forth in these proposed regulations are issued, plan sponsors requesting the use of substitute mortality tables should continue to use the procedures set forth in Rev. Proc. 2008–62. During that period, the IRS will not evaluate whether a substitute mortality table for a population with only partially credible mortality information is appropriate.

Applicability Date

These regulations are proposed to apply to plan years beginning on or after January 1, 2018. Under the proposed regulations, a plan sponsor may use a substitute mortality table for a plan year beginning on or after January 1, 2018 only if that substitute mortality table is approved as provided in these proposed regulations.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *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. The regulations do not impose a collection of information on small entities, therefore the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Admin-

istration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to Treasury and the IRS as prescribed in this preamble in the **"ADDRESSES"** section. Treasury and the IRS request comments on all aspects of these proposed regulations. All comments will be available for public inspection and copying at *www.regulations.gov* or upon request.

A public hearing on these proposed regulations has been scheduled for April 13, 2017 beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **"FOR FURTHER INFORMATION CONTACT"** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by March 29, 2017, and an outline of topics to be discussed and the amount of time to be devoted to each topic by March 29, 2017. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

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

* * * * *

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.430(h)(3)–1 is revised to read as follows:

§ 1.430(h)(3)–1 Mortality tables used to determine present value

(a) *Basis for mortality tables*—(1) *In general*. This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. Generally applicable mortality tables for participants and beneficiaries are set forth in this section pursuant to section 430(h)(3)(A). In general, either the generational mortality tables set forth in paragraph (a)(2) of this section or the static mortality tables set forth in paragraph (a)(3) of this section must be used for a plan. In lieu of using the mortality tables provided under this section with respect to participants and beneficiaries, plan-specific substitute mortality tables are permitted to be used for this purpose pursuant to section 430(h)(3)(C), provided that the requirements of § 1.430(h)(3)–2 are satisfied. Mortality tables that may be used with respect to disabled individuals are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(2) *Generational mortality tables*—(i) *In general*—(A) *Use of generational mortality tables*. The generational mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1) of this section are determined using the base mortality tables described in paragraph (a)(2)(i)(B) of this section and the mortality improvement rates described in paragraph (a)(2)(i)(C) of this section.

(B) *Base mortality tables*. The base mortality tables are set forth in paragraph (d) of this section. The base year for those tables is 2006.

(C) *Mortality improvement rates*. The mortality improvement rates for valuation dates occurring during 2018 are the mortality improvement rates contained in the Mortality Improvement Scale MP–2016 Report (issued by the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries and available at *www.soa.org/Research/Experience-Study/Pension/research-2016-mp.aspx*). For later years, updated mortality improvement rates that take into account new data for mortality improvement trends of the general population are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(D) *Application of mortality improvement rates*. Under the generational mortality tables described in this paragraph (a)(2), the probability of an individual's death at a particular age in the future is determined as the individual's base mortality rate that applies at that age (that is, the applicable mortality rate from the table set forth in paragraph (d) of this section for that age, gender, and status as an annuitant or a nonannuitant) multiplied by the cumulative mortality improvement factor for the individual's gender and for that age for the period from 2006 through the calendar year in which the individual is projected to reach the particular age. Paragraph (a)(2)(ii) of this section shows how the base mortality tables in paragraph (d) of this section and the mortality improvement rates for valuation dates occurring during 2018 are combined to determine projected mortality rates.

(E) *Cumulative mortality improvement factor*. The cumulative mortality improvement factor for an age and gender for a period is the product of the annual mortality improvement factors for that age and gender for each year within that period.

(F) *Annual mortality improvement factor*. The annual mortality improvement factor for an age and gender for a year is 1 minus the mortality improvement rate that applies for that age and gender for that year.

(ii) *Example of calculation*—(A) *Calculation of mortality rate*. The mortality rate for 2018 that is applied to male annuitants who are age 66 in 2018 is equal to the product of the mortality rate for 2006

that applied to male annuitants who were age 66 in 2006 (0.013855) and the cumulative mortality improvement factor for age 66 males from 2006 to 2018. The cumulative mortality improvement factor for age 66 males for the period from 2006 to 2018 is 0.8929, and the mortality rate for 2018 for male annuitants who are age 66 in that year would be 0.012371, as shown in the following table.

Calendar Year	Scale MP–2016 Mortality Improvement Rate	Annual Mortality improvement factor (1- Scale MP–2016 Rate)	Cumulative Mortality Improvement Factor	Mortality Rate
2006	n/a	n/a	n/a	0.013855
2007	0.0237	0.9763	0.9763	
2008	0.0211	0.9789	0.9557	
2009	0.0180	0.9820	0.9385	
2010	0.0142	0.9858	0.9252	
2011	0.0099	0.9901	0.9160	
2012	0.0053	0.9947	0.9112	
2013	0.0043	0.9957	0.9072	
2014	0.0035	0.9965	0.9041	
2015	0.0030	0.9970	0.9014	
2016	0.0028	0.9972	0.8988	
2017	0.0030	0.9970	0.8961	
2018	0.0036	0.9964	0.8929	0.012371

(B) *Probability of survival for an individual*. After the projected mortality rates are derived for each age for each year, the rates are used to calculate the present value of a benefit stream that depends on the probability of survival year-by-year. For example, for purposes of calculating the present value (for a 2018 valuation date) of future payments in a benefit stream payable for a male annuitant who is age 66 in 2018, the probability of survival for the annuitant is based on the mortality rate for a male annuitant who is age 66 in 2018 (0.012371), and the projected mortality rate for a male annuitant who will be age 67 in 2019 (0.013302), age 68 in 2020 (0.014321), and so on.

(3) *Static mortality tables*. The static mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1) of this section are updated annually by the IRS according to the methodology described in paragraph (c)(2) of this section. Paragraph (e) of this section sets forth static tables that are permitted to be used for valuation dates in 2018. For valuation dates in later years, static mortality tables are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants*—(i) *In general*. Separate tables are provided for use for annuitants and nonannuitants. The nonannuitant mortality table is applied to determine the probability of survival for a nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. The annuitant mortality table is applied to determine the present value of benefits for each annuitant. In addition, the annuitant mortality table is applied for each nonannuitant with respect to each assumed commencement of benefits for the period beginning with that assumed commencement. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a nonannuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit that has commenced and treated as a nonannuitant with respect to the balance of the benefit. In addition, with respect to a beneficiary of a participant, the annuitant mortality table applies for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality table applies with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

(ii) *Examples of calculation using separate annuitant and nonannuitant tables*. With respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target is determined using the nonannuitant mortality table for the period before the participant attains age 55 (so that, if the static mortality tables are used pursuant to paragraph (a)(3) of this section, the probability of an active male participant living from age 45 to age 55 using the table that applies for a valuation date in 2018 is 0.988857) and using the annuitant mortality table for the period ages 55 and above. Similarly, for a 45-year-old

terminated vested participant who is projected to commence an annuity at age 65, the funding target is determined using the nonannuitant mortality table for the period before the participant attains age 65 and using the annuitant mortality table for ages 65 and above.

(2) *Small plan tables*. If static mortality tables are used pursuant to paragraph (a)(3) of this section, as an alternative to the separate static tables specified for annuitants and nonannuitants pursuant to paragraph (b)(1) of this section, combined static tables that apply the same mortality rates to both annuitants and nonannuitants are permitted to be used for a small plan. For this purpose, a small plan is defined as a plan with 500 or fewer total participants (including both active and inactive participants and beneficiaries of deceased participants) on the valuation date. The combined static tables that are permitted to be used for small plans pursuant to this paragraph (b)(2) are constructed from the separate nonannuitant and annuitant static mortality tables using the weighting factors for small plans that are set forth in paragraph (d) of this section. The weighting factors are applied to develop these combined static tables using the following equation: Combined mortality rate = [nonannuitant rate * (1- weighting factor)] + [annuitant rate * weighting factor].

(c) *Static tables*—(1) *Source of rates*. The static mortality tables that are used pursuant to paragraph (a)(3) of this section are determined using the base mortality tables described in paragraph (a)(2)(i)(B) of this section taking into account the mortality improvement rates described in paragraph (a)(2)(i)(C) of this section, in accordance with the rules set forth in paragraph (c)(3) of this section.

(2) *Selection of static tables*. The static mortality tables that are used for a valuation date are the static mortality tables for the calendar year that contains the valuation date.

(3) *Projection of mortality improvements*—(i) *General rule*. Except as provided in paragraph (c)(3)(iii) of this section, the static mortality tables for a calendar year are determined by multiplying the applicable mortality rate for each age from the base mortality tables by both—

(A) The cumulative mortality improvement factor (determined under the rules of paragraph (a)(2) of this section) for the period from 2006 through that calendar year; and

(B) The cumulative mortality improvement factor (determined under the rules of paragraph (a)(2) of this section) for the period beginning in that calendar year and continuing beyond that calendar year for the number of years in the projection period described in paragraph (c)(3)(ii) of this section.

(ii) *Projection period for static mortality tables*—(A) *In general*. The projection period is 8 years for males and 9 years for females, as adjusted based on age as provided in paragraph (c)(3)(ii)(B) of this section.

(B) *Age adjustment*. For ages below 80, the projection period is increased by 1 year for each year below age 80. For ages above 80, the projection period is reduced (but not below zero) by ⅓ year for each year above 80.

(iii) *Fractional projection periods*. If for an age the number of years in the projection period determined under this paragraph (c)(3) is not a whole number, then the mortality rate for that age is determined by using linear interpolation between—

(A) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next lower whole number; and

(B) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next higher whole number.

(iv) *Example*. For example, at age 85 the projection period for a male is 6⅓ years (8 years minus ⅓ year for each of the 5 years above age 80). For a valuation date in 2018, the mortality rate in the static mortality table for an 85-year-old male is based on a projection of mortality improvement for 6⅓ years beyond 2018. Under paragraph (c)(3)(iii) of this section, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2018 is ⅔ times the projected mortality rate for a male annuitant that age in 2024 plus ⅓ times the projected mortality rate for a male annuitant that age in 2025. Accordingly, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2018 is 0.075196 (⅔ times the projected mortality rate for an 85-year old male annuitant in 2024 (0.075447) plus ⅓ times the projected mortality rate for an 85-year old male annuitant in 2025 (0.074693)).

(d) *Base mortality tables*. The following are the base mortality tables. The base year for these tables is 2006.

	Males			Females		
Age	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
0	0.008878	0.008878	0	0.007278	0.007278	0
1	0.000515	0.000515	0	0.000451	0.000451	0
2	0.000348	0.000348	0	0.000295	0.000295	0
3	0.000289	0.000289	0	0.000220	0.000220	0
4	0.000225	0.000225	0	0.000165	0.000165	0
5	0.000197	0.000197	0	0.000149	0.000149	0
6	0.000177	0.000177	0	0.000137	0.000137	0
7	0.000156	0.000156	0	0.000127	0.000127	0
8	0.000132	0.000132	0	0.000117	0.000117	0

	Males			Females		
Age	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
9	0.000107	0.000107	0	0.000109	0.000109	0
10	0.000090	0.000090	0	0.000102	0.000102	0
11	0.000095	0.000095	0	0.000105	0.000105	0
12	0.000142	0.000142	0	0.000121	0.000121	0
13	0.000187	0.000187	0	0.000137	0.000137	0
14	0.000230	0.000230	0	0.000151	0.000151	0
15	0.000274	0.000274	0	0.000165	0.000165	0
16	0.000318	0.000318	0	0.000177	0.000177	0
17	0.000364	0.000364	0	0.000187	0.000187	0
18	0.000412	0.000412	0	0.000196	0.000196	0
19	0.000463	0.000463	0	0.000202	0.000202	0
20	0.000510	0.000510	0	0.000202	0.000202	0
21	0.000552	0.000552	0	0.000197	0.000197	0
22	0.000587	0.000587	0	0.000191	0.000191	0
23	0.000599	0.000599	0	0.000190	0.000190	0
24	0.000594	0.000594	0	0.000188	0.000188	0
25	0.000545	0.000545	0	0.000186	0.000186	0
26	0.000510	0.000510	0	0.000186	0.000186	0
27	0.000486	0.000486	0	0.000188	0.000188	0
28	0.000472	0.000472	0	0.000192	0.000192	0
29	0.000468	0.000468	0	0.000198	0.000198	0
30	0.000470	0.000470	0	0.000209	0.000209	0
31	0.000480	0.000480	0	0.000222	0.000222	0
32	0.000495	0.000495	0	0.000238	0.000238	0
33	0.000514	0.000514	0	0.000257	0.000257	0
34	0.000534	0.000534	0	0.000278	0.000278	0
35	0.000557	0.000557	0	0.000301	0.000301	0
36	0.000581	0.000581	0	0.000325	0.000325	0
37	0.000611	0.000611	0	0.000355	0.000355	0
38	0.000648	0.000648	0	0.000389	0.000389	0
39	0.000694	0.000694	0	0.000428	0.000428	0
40	0.000750	0.000750	0	0.000471	0.000471	0
41	0.000814	0.000823	.0045	0.000518	0.000515	0
42	0.000890	0.000969	.0091	0.000570	0.000603	0
43	0.000982	0.001188	.0136	0.000628	0.000735	0
44	0.001088	0.001480	.0181	0.000691	0.000911	0
45	0.001207	0.001846	.0226	0.000758	0.001131	.0084
46	0.001342	0.002285	.0272	0.000831	0.001395	.0167
47	0.001487	0.002797	.0317	0.000908	0.001703	.0251
48	0.001643	0.003382	.0362	0.000986	0.002055	.0335
49	0.001807	0.004040	.0407	0.001065	0.002451	.0419
50	0.001979	0.004771	.0453	0.001151	0.002891	.0502
51	0.002159	0.005059	.0498	0.001242	0.002993	.0586
52	0.002351	0.005343	.0686	0.001344	0.003124	.0744
53	0.002539	0.005592	.0953	0.001458	0.003291	.0947

	Males			Females		
Age	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
54	0.002741	0.005839	.1288	0.001588	0.003499	.1189
55	0.002967	0.006102	.2066	0.001735	0.003755	.1897
56	0.003231	0.006399	.3173	0.001902	0.004065	.2857
57	0.003548	0.006746	.3780	0.002091	0.004435	.3403
58	0.003932	0.007155	.4401	0.002302	0.004869	.3878
59	0.004396	0.007639	.4986	0.002537	0.005373	.4360
60	0.004954	0.008211	.5633	0.002795	0.005942	.4954
61	0.005616	0.008878	.6338	0.003080	0.006581	.5805
62	0.006392	0.009646	.7103	0.003388	0.007283	.6598
63	0.007291	0.010523	.7902	0.003724	0.008043	.7520
64	0.008320	0.011514	.8355	0.004089	0.008870	.8043
65	0.009486	0.012621	.8832	0.004482	0.009760	.8552
66	0.010668	0.013855	.9321	0.005004	0.010731	.9118
67	0.011973	0.015221	.9510	0.005575	0.011790	.9367
68	0.013414	0.016736	.9639	0.006205	0.012952	.9523
69	0.015006	0.018421	.9714	0.006898	0.014226	.9627
70	0.016761	0.020288	.9740	0.007662	0.015628	.9661
71	0.018690	0.022348	.9766	0.008507	0.017170	.9695
72	0.020824	0.024638	.9792	0.009438	0.018861	.9729
73	0.023176	0.027176	.9818	0.010470	0.020723	.9763
74	0.025770	0.029992	.9844	0.011615	0.022780	.9797
75	0.028623	0.033113	.9870	0.012887	0.025057	.9830
76	0.031761	0.036585	.9896	0.014301	0.027590	.9864
77	0.035214	0.040457	.9922	0.015885	0.030438	.9898
78	0.039007	0.044778	.9948	0.017656	0.033653	.9932
79	0.043169	0.049605	.9974	0.019639	0.037296	.9966
80	0.047750	0.055022	1.0	0.021859	0.041440	1.0
81	0.049804	0.061087	1.0	0.023791	0.046181	1.0
82	0.053911	0.067902	1.0	0.027655	0.051564	1.0
83	0.060072	0.075550	1.0	0.033451	0.057714	1.0
84	0.068286	0.084162	1.0	0.041179	0.064709	1.0
85	0.078554	0.093775	1.0	0.050838	0.072601	1.0
86	0.090876	0.104507	1.0	0.062429	0.081490	1.0
87	0.105251	0.116487	1.0	0.075952	0.091444	1.0
88	0.121680	0.129770	1.0	0.091407	0.102470	1.0
89	0.140162	0.144470	1.0	0.108794	0.114635	1.0
90	0.160698	0.160698	1.0	0.128113	0.128113	1.0
91	0.177741	0.177741	1.0	0.142619	0.142619	1.0
92	0.195154	0.195154	1.0	0.157939	0.157939	1.0
93	0.212642	0.212642	1.0	0.173886	0.173886	1.0
94	0.230055	0.230055	1.0	0.190319	0.190319	1.0
95	0.247257	0.247257	1.0	0.207191	0.207191	1.0
96	0.265940	0.265940	1.0	0.225057	0.225057	1.0
97	0.284940	0.284940	1.0	0.243507	0.243507	1.0
98	0.304432	0.304432	1.0	0.262587	0.262587	1.0

	Males			Females		
Age	Non-Annuitant	Annuitant	Weighting Factor For Small Plans	Non-Annuitant	Annuitant	Weighting Factor For Small Plans
99	0.324272	0.324272	1.0	0.282171	0.282171	1.0
100	0.344364	0.344364	1.0	0.302162	0.302162	1.0
101	0.364420	0.364420	1.0	0.322282	0.322282	1.0
102	0.384058	0.384058	1.0	0.342371	0.342371	1.0
103	0.403188	0.403188	1.0	0.362210	0.362210	1.0
104	0.421533	0.421533	1.0	0.381534	0.381534	1.0
105	0.438903	0.438903	1.0	0.400321	0.400321	1.0
106	0.455492	0.455492	1.0	0.418418	0.418418	1.0
107	0.470810	0.470810	1.0	0.435390	0.435390	1.0
108	0.484965	0.484965	1.0	0.451459	0.451459	1.0
109	0.498023	0.498023	1.0	0.466408	0.466408	1.0
110	0.509768	0.509768	1.0	0.480123	0.480123	1.0
111	0.512472	0.512472	1.0	0.492664	0.492664	1.0
112	0.509296	0.509296	1.0	0.503970	0.503970	1.0
113	0.506193	0.506193	1.0	0.507361	0.507361	1.0
114	0.503061	0.503061	1.0	0.503564	0.503564	1.0
115	0.500000	0.500000	1.0	0.500000	0.500000	1.0
116	0.500000	0.500000	1.0	0.500000	0.500000	1.0
117	0.500000	0.500000	1.0	0.500000	0.500000	1.0
118	0.500000	0.500000	1.0	0.500000	0.500000	1.0
119	0.500000	0.500000	1.0	0.500000	0.500000	1.0
120	1.000000	1.000000	1.0	1.000000	1.000000	1.0

(e) *Static tables for 2018*. The following static mortality tables are used pursuant to paragraph (a)(3) of this section for determining present value or making any computation under section 430 with respect to valuation dates occurring during 2018.

	Males			Females		
Age	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans
0	0.002420	0.002420	0.002420	0.002234	0.002234	0.002234
1	0.000142	0.000142	0.000142	0.000140	0.000140	0.000140
2	0.000097	0.000097	0.000097	0.000092	0.000092	0.000092
3	0.000081	0.000081	0.000081	0.000070	0.000070	0.000070
4	0.000064	0.000064	0.000064	0.000053	0.000053	0.000053
5	0.000056	0.000056	0.000056	0.000048	0.000048	0.000048
6	0.000051	0.000051	0.000051	0.000045	0.000045	0.000045
7	0.000046	0.000046	0.000046	0.000042	0.000042	0.000042
8	0.000039	0.000039	0.000039	0.000039	0.000039	0.000039
9	0.000032	0.000032	0.000032	0.000037	0.000037	0.000037
10	0.000027	0.000027	0.000027	0.000035	0.000035	0.000035
11	0.000029	0.000029	0.000029	0.000036	0.000036	0.000036
12	0.000044	0.000044	0.000044	0.000042	0.000042	0.000042
13	0.000058	0.000058	0.000058	0.000048	0.000048	0.000048

	Males			Females		
Age	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans
14	0.000072	0.000072	0.000072	0.000053	0.000053	0.000053
15	0.000087	0.000087	0.000087	0.000059	0.000059	0.000059
16	0.000102	0.000102	0.000102	0.000064	0.000064	0.000064
17	0.000118	0.000118	0.000118	0.000068	0.000068	0.000068
18	0.000135	0.000135	0.000135	0.000072	0.000072	0.000072
19	0.000153	0.000153	0.000153	0.000075	0.000075	0.000075
20	0.000170	0.000170	0.000170	0.000076	0.000076	0.000076
21	0.000192	0.000192	0.000192	0.000078	0.000078	0.000078
22	0.000214	0.000214	0.000214	0.000080	0.000080	0.000080
23	0.000229	0.000229	0.000229	0.000084	0.000084	0.000084
24	0.000238	0.000238	0.000238	0.000087	0.000087	0.000087
25	0.000230	0.000230	0.000230	0.000090	0.000090	0.000090
26	0.000226	0.000226	0.000226	0.000094	0.000094	0.000094
27	0.000226	0.000226	0.000226	0.000099	0.000099	0.000099
28	0.000230	0.000230	0.000230	0.000105	0.000105	0.000105
29	0.000238	0.000238	0.000238	0.000111	0.000111	0.000111
30	0.000249	0.000249	0.000249	0.000120	0.000120	0.000120
31	0.000263	0.000263	0.000263	0.000130	0.000130	0.000130
32	0.000278	0.000278	0.000278	0.000142	0.000142	0.000142
33	0.000294	0.000294	0.000294	0.000155	0.000155	0.000155
34	0.000309	0.000309	0.000309	0.000168	0.000168	0.000168
35	0.000323	0.000323	0.000323	0.000182	0.000182	0.000182
36	0.000336	0.000336	0.000336	0.000196	0.000196	0.000196
37	0.000350	0.000350	0.000350	0.000213	0.000213	0.000213
38	0.000366	0.000366	0.000366	0.000231	0.000231	0.000231
39	0.000385	0.000385	0.000385	0.000251	0.000251	0.000251
40	0.000410	0.000410	0.000410	0.000273	0.000273	0.000273
41	0.000438	0.000443	0.000438	0.000298	0.000296	0.000298
42	0.000474	0.000516	0.000474	0.000326	0.000344	0.000326
43	0.000518	0.000627	0.000519	0.000358	0.000419	0.000358
44	0.000573	0.000779	0.000577	0.000395	0.000520	0.000395
45	0.000636	0.000973	0.000644	0.000436	0.000651	0.000438
46	0.000712	0.001213	0.000726	0.000484	0.000813	0.000489
47	0.000798	0.001502	0.000820	0.000538	0.001010	0.000550
48	0.000896	0.001844	0.000930	0.000597	0.001245	0.000619
49	0.001005	0.002248	0.001056	0.000661	0.001522	0.000697
50	0.001128	0.002719	0.001200	0.000734	0.001844	0.000790
51	0.001265	0.002963	0.001350	0.000814	0.001961	0.000881
52	0.001418	0.003224	0.001542	0.000903	0.002099	0.000992
53	0.001580	0.003481	0.001761	0.001003	0.002263	0.001122
54	0.001761	0.003751	0.002017	0.001114	0.002454	0.001273
55	0.001964	0.004040	0.002393	0.001235	0.002673	0.001508
56	0.002200	0.004357	0.002884	0.001367	0.002921	0.001811
57	0.002474	0.004704	0.003317	0.001509	0.003200	0.002084
58	0.002796	0.005088	0.003805	0.001661	0.003512	0.002379

	Males			Females		
Age	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans
59	0.003174	0.005515	0.004341	0.001823	0.003860	0.002711
60	0.003613	0.005989	0.004951	0.001994	0.004238	0.003106
61	0.004122	0.006516	0.005639	0.002181	0.004659	0.003619
62	0.004705	0.007100	0.006406	0.002381	0.005119	0.004188
63	0.005364	0.007742	0.007243	0.002600	0.005616	0.004868
64	0.006111	0.008457	0.008071	0.002842	0.006165	0.005515
65	0.006940	0.009234	0.008966	0.003107	0.006766	0.006236
66	0.007779	0.010103	0.009945	0.003465	0.007430	0.007080
67	0.008697	0.011056	0.010940	0.003863	0.008170	0.007897
68	0.009709	0.012114	0.012027	0.004308	0.008993	0.008770
69	0.010836	0.013302	0.013231	0.004806	0.009912	0.009722
70	0.012093	0.014637	0.014571	0.005366	0.010945	0.010756
71	0.013486	0.016126	0.016064	0.006001	0.012111	0.011925
72	0.015044	0.017799	0.017742	0.006711	0.013412	0.013230
73	0.016794	0.019693	0.019640	0.007521	0.014886	0.014711
74	0.018751	0.021823	0.021775	0.008439	0.016552	0.016387
75	0.020950	0.024237	0.024194	0.009485	0.018443	0.018291
76	0.023428	0.026986	0.026949	0.010678	0.020600	0.020465
77	0.026183	0.030081	0.030051	0.012035	0.023061	0.022949
78	0.029308	0.033645	0.033622	0.013582	0.025888	0.025804
79	0.032774	0.037661	0.037648	0.015347	0.029144	0.029097
80	0.036705	0.042295	0.042295	0.017347	0.032886	0.032886
81	0.038556	0.047291	0.047291	0.019058	0.036992	0.036992
82	0.042087	0.053009	0.053009	0.022345	0.041662	0.041662
83	0.047283	0.059466	0.059466	0.027251	0.047017	0.047017
84	0.054248	0.066860	0.066860	0.033811	0.053130	0.053130
85	0.062990	0.075196	0.075196	0.042053	0.060056	0.060056
86	0.073605	0.084646	0.084646	0.052009	0.067888	0.067888
87	0.086115	0.095308	0.095308	0.063725	0.076724	0.076724
88	0.100513	0.107196	0.107196	0.077205	0.086549	0.086549
89	0.116840	0.120431	0.120431	0.092462	0.097426	0.097426
90	0.135087	0.135087	0.135087	0.109484	0.109484	0.109484
91	0.150610	0.150610	0.150610	0.122541	0.122541	0.122541
92	0.166534	0.166534	0.166534	0.136397	0.136397	0.136397
93	0.182546	0.182546	0.182546	0.150811	0.150811	0.150811
94	0.198598	0.198598	0.198598	0.165818	0.165818	0.165818
95	0.214442	0.214442	0.214442	0.181360	0.181360	0.181360
96	0.232944	0.232944	0.232944	0.198746	0.198746	0.198746
97	0.251903	0.251903	0.251903	0.216930	0.216930	0.216930
98	0.271612	0.271612	0.271612	0.235921	0.235921	0.235921
99	0.291889	0.291889	0.291889	0.255617	0.255617	0.255617
100	0.312680	0.312680	0.312680	0.275938	0.275938	0.275938
101	0.333720	0.333720	0.333720	0.296628	0.296628	0.296628
102	0.354570	0.354570	0.354570	0.317471	0.317471	0.317471
103	0.375136	0.375136	0.375136	0.338385	0.338385	0.338385

	Males			Females		
Age	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans	Non-Annuitant	Annuitant	Optional Combined Table for Small Plans
104	0.395172	0.395172	0.395172	0.358868	0.358868	0.358868
105	0.413945	0.413945	0.413945	0.379183	0.379183	0.379183
106	0.432145	0.432145	0.432145	0.398878	0.398878	0.398878
107	0.449197	0.449197	0.449197	0.417703	0.417703	0.417703
108	0.465497	0.465497	0.465497	0.435384	0.435384	0.435384
109	0.480869	0.480869	0.480869	0.452108	0.452108	0.452108
110	0.495080	0.495080	0.495080	0.467928	0.467928	0.467928
111	0.500557	0.500557	0.500557	0.482562	0.482562	0.482562
112	0.500454	0.500454	0.500454	0.496164	0.496164	0.496164
113	0.500352	0.500352	0.500352	0.502110	0.502110	0.502110
114	0.500201	0.500201	0.500201	0.500952	0.500952	0.500952
115	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
116	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
117	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
118	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
119	0.500000	0.500000	0.500000	0.500000	0.500000	0.500000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

Par. 3. Section 1.430(h)(3)–2 is revised to read as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

(a) *In general*. This section sets forth rules for the use of substitute mortality tables under section 430(h)(3)(C) in determining any present value or making any computation under section 430 in accordance with § 1.430(h)(3)–1(a)(1). In order to use substitute mortality tables, a plan sponsor must obtain approval to use substitute mortality tables for the plan in accordance with the procedures set forth in paragraph (b) of this section. Paragraph (c) of this section sets forth rules for the development of substitute mortality tables, including guidelines providing that a plan must have either full or partial credibility in order to have sufficient credible mortality information to use substitute mortality tables. Paragraph (d) of this section describes the requirements for full credibility. Paragraph (e) of this section describes the requirements for partial credibility. Paragraph (f) of this section provides special rules for newly affiliated plans not using substitute mortality tables. Paragraph (g) of this section specifies the effective date and applicability date of this section. The Commissioner may, in revenue rulings and procedures, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), provide additional guidance regarding approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters.

(b) *Procedures for obtaining approval to use substitute mortality tables*—(1) *Written request to use substitute mortality tables*—(i) *General requirements*. In order to use substitute mortality tables, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables meet the requirements of section 430(h)(3)(C) and this section. This request must specify the first plan year and the term of years (not more than 10) for which the tables are to apply.

(ii) *Time for written request*. Substitute mortality tables may not be used for a plan year unless the plan sponsor submits the written request described in paragraph (b)(1)(i) of this section at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply.

(2) *Commissioner's review of request*—(i) *In general*. During the 180-day period that begins on the date the plan sponsor submits a request to use substitute mortality tables for a plan pursuant to this section, the Commissioner will determine whether the request to use substitute mortality tables satisfies the requirements of this section (including any published guidance issued pursuant to paragraph (a) of this section), and will either approve or deny the request. The Commissioner will deny a request if the request fails to meet the requirements of this section or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

(ii) *Request for additional information*. The Commissioner may request additional information with respect to the submission. Failure to provide that information on a timely basis constitutes grounds for denial of the request.

(iii) *Deemed approval*. Except as provided in paragraph (b)(2)(iv) of this section, if the Commissioner does not issue a denial within the 180-day review period, the request is deemed to have been approved.

(iv) *Extension of time permitted*. The Commissioner and a plan sponsor may, before the expiration of the 180-day review period, agree in writing to extend that period, provided that any such agreement also specifies any revisions in the plan sponsor's request, including any change in the requested term of use of the substitute mortality tables.

(c) *Development of substitute mortality tables*—(1) *Substitute mortality tables must be used for all plans in controlled group*—(i) *General rule*. Except as otherwise provided in this paragraph (c), substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year (or any portion of that plan year), substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the plan sponsor and by each member of the plan sponsor's controlled group. For purposes of this section, the term controlled group means any group treated as a single employer under paragraph (b), (c), (m), or (o) of section 414.

(ii) *Treatment of plans without credible mortality information*. The rule of paragraph (c)(1)(i) of this section does not prohibit use of substitute mortality tables for one plan for a plan year if the only other plan or plans maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) for which substitute mortality tables are not used are too small to have fully or partially credible mortality information for the plan year. For purposes of demonstrating that neither males nor females under a plan have credible mortality information for a plan year, the length of the experience study period must be the same length as the longest experience study period used for any plan within the controlled group.

(2) *Mortality experience requirements*—(i) *In general*. Substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables are to be used and that mortality experience must be credible mortality information as described in paragraph (c)(2)(ii) of this section. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality information with respect to that gender. See paragraph (d)(5) of this section for rules permitting the use of substitute mortality tables for populations within a gender that have full credibility.

(ii) *Credible mortality information*—(A) *In general*. There is credible mortality information for a gender within a plan if and only if the mortality experience with respect to that gender satisfies the requirement for either—

(*1*) Full credibility (as described in paragraph (d) of this section); or

(*2*) Partial credibility (as described in paragraph (e) of this section).

(B) *Simplified rule*. Whether there is credible mortality information for a gender may be determined by only taking into account people who are at least age 50 and less than age 100. If there is credible mortality information for a gender when applying this simplified rule, the entire gender (not just those who are at least age 50 and less than age 100) has credible mortality information.

(iii) *Gender without credible mortality information*—(A) *In general*. If for a plan, one gender has credible mortality information but for a plan year the other gender does not have credible mortality information, then the substitute mortality tables are established for the gender that does have credible mortality information and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality information.

(B) *Demonstration of lack of credible mortality information for a gender*. In general, in order to demonstrate that a gender within a plan does not have credible mortality information for a plan year, the demonstration that the gender within the plan has fewer than the minimum number of actual deaths to have partial credibility, as described in paragraph (e)(1) of this section, must be made by analyzing the actual number of deaths over a period that is the same length as the period for the experience study on which the substitute mortality tables are based and that ends less than three years before the first day of the plan year.

(3) *Determination of substitute mortality tables*—(i) *Requirement to use generational mortality table*. A plan's substitute mortality tables must be generational mortality tables. A plan's substitute mortality tables are determined using the plan's base substitute mortality tables developed pursuant to paragraph (d) or (e) of this section and the mortality improvement factors described in paragraph (c)(3)(ii) of this section.

(ii) *Determination of mortality improvement factors*. The mortality improvement factor for an age and a gender is the cumulative mortality improvement factor determined under § 1.430(h)(3)–1(a)(2)(i)(E) for the applicable period. The applicable period is the period beginning with the base year of the base substitute mortality table determined under paragraph (d) or (e) of this section and ending in the calendar year in which the individual attains the age for which the probability of death is being determined. The base year for the base substitute mortality table is the calendar year that contains the day before the midpoint of the experience study period.

(4) *Disabled individuals*. Under section 430(h)(3)(D), separate mortality tables are permitted to be used for certain disabled individuals. If such separate mortality tables are used for those disabled individuals, then those individuals are disregarded for all purposes under this section. Thus, if the mortality tables under section 430(h)(3)(D) are used for disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in developing mortality rates for substitute mortality tables under this section.

(5) *Aggregation*—(i) *Permissive aggregation of plans*. A plan sponsor may use a set of substitute mortality tables for two or more its plans provided that the rules of this section are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for the aggregated plans and must be based on data collected with respect to those aggregated plans.

(ii) *Required aggregation of plans*. In general, plans are not required to be aggregated for purposes of applying the rules of this section. However, for purposes of this section, a plan is required to be aggregated with any plan that was previously spun off from that plan if a purpose of the spinoff is to avoid the use of substitute mortality tables for any of the plans that were involved in the spinoff.

(6) *Duration of use of tables*—(i) *General rule*. Except as provided in this paragraph (c)(6), substitute mortality tables are used for a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables under paragraph (b)(1) of this section and approved by the Commissioner, or a shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. Following the end of the approved term of use, or following any early termination of use described in this paragraph (c)(6), the mortality tables specified in § 1.430(h)(3)–1 are used for the plan unless approval under paragraph (b)(1) of this section has been received by the plan sponsor to use substitute mortality tables for a further term.

(ii) *Early termination of use of tables*. A plan's substitute mortality tables must not be used beginning with the earliest of—

(A) For a plan using a substitute mortality table for only one gender because of a lack of credible mortality information with respect to the other gender, the first plan year for which there is credible mortality information with respect to the gender that had lacked credible mortality information (unless an approved substitute mortality table is used for that gender);

(B) The first plan year for which the plan fails to satisfy the requirements of paragraph (c)(1) of this section (regarding use of substitute mortality tables by controlled group members);

(C) The second plan year following the plan year for which there is a significant change in individuals covered by the plan as described in paragraph (c)(6)(iii) of this section;

(D) The first plan year following the plan year for which a substitute mortality table used for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) in conjunction with a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)–1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)(3)–1(a)(3) or changes to the mortality improvement rates pursuant to § 1.430(h)(3)–1(a)(2)(i)(C)).

(iii) *Significant change in coverage*—(A) *Change in coverage from time of experience study*. For purposes of applying the rules of paragraph (c)(6)(ii)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals of at least 20 percent compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(B) *Change in coverage from time of certification*. For purposes of applying the rules of paragraph (c)(6)(ii)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals covered by a substitute mortality table of at least 20 percent compared to the number of individuals in a plan year for which a certification described in paragraph (c)(6)(iii)(A) of this section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with respect to the covered population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the plan population).

(d) *Full credibility*—(1) *In general*. The mortality experience with respect to a gender or other population within a plan has full credibility if the actual number of deaths for that population during the experience study period described in paragraph (d)(2) of this section is at least the full credibility threshold described in paragraph (d)(3) of this section. Paragraph (d)(4) of this section provides rules for the creation of a base substitute mortality table from the experience study, which apply if the mortality experience for the population has full credibility.

(2) *Experience study period requirements*. The base substitute mortality table for a gender or other population within a plan must be developed from an experience study of the mortality experience of that population that is collected over an experience study period. The length of the experience study period must be at least 2 years and no more than 5 years. The last day of the final year reflected in the experience data must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. For example, if July 1, 2019, is the first day of the first plan year for which the substitute mortality tables will be used, then an experience study using calendar year data must include data collected for a period that ends no earlier than December 31, 2016.

(3) *Full credibility threshold*—(i) *Threshold number of deaths*. The full credibility threshold for a gender or other population within a plan is the product of 1,082 and the population's benefit dispersion factor. In calculating the population's benefit dispersion factor, for purposes of paragraphs (d)(3)(iii), (iv), and (v) of this section, the population is adjusted, as appropriate, for people who leave on account of reason other than death.

(ii) *Population's benefit dispersion factor*. The population's benefit dispersion factor is equal to—

(A) The number of expected deaths for the population during the experience study period (as defined in paragraph (d)(3)(iii) of this section); multiplied by

(B) The mortality-weighted square of the benefits (as defined in paragraph (d)(3)(iv) of this section); divided by

(C) The square of the mortality-weighted benefits (as defined in paragraph (d)(3)(v) of this section).

(iii) *Number of expected deaths*. The number of expected deaths for a population during the experience study period is equal to the sum, for each year in the experience study period, of the expected number of deaths in the population during the year using the mortality rates from the

standard mortality tables set forth in paragraph (d)(4)(iii) of this section.

(iv) *Mortality-weighted square of the benefits*. The mortality-weighted square of the benefits for a population is the sum, for each year in the experience study period, for all individuals for each age in the population at the beginning of the year, of the product of—

(A) The probability of death of those individuals using the mortality rate for that age from the standard mortality table set forth in paragraph (d)(4)(iii) of this section; and

(B) The sum of the square of the accrued benefits (substituting the current periodic payment in the case of individuals in pay status) for those individuals.

(v) *Square of the mortality-weighted benefits*. The square of the mortality-weighted benefits is equal to the square of the sum, for each year in the experience study period, for all individuals for each age in the population at the beginning of the year, of the product of—

(A) The probability of death of those individuals using the mortality rate for that age from the standard mortality table set forth in paragraph (d)(4)(iii) of this section; and

(B) The sum of the accrued benefits (substituting the current periodic payment in the case of individuals in pay status) for those individuals.

(4) *Development of mortality rates*—(i) *In general*. The mortality rates derived from the experience study must be amounts-weighted mortality rates that are derived by multiplying the mortality rate from the standard mortality table described in paragraph (d)(4)(iii) of this section by the mortality ratio determined under paragraph (d)(4)(ii) of this section. If the simplified rule of paragraph (c)(2)(ii)(B) of this section is used for the population, then the mortality ratio is determined only taking into account people who are at least 50 years old and less than 100 years old, but the mortality ratio is applied to all ages. Because amounts-weighted mortality rates for a plan cannot be determined without benefit amounts, the mortality experience study used to develop a base table must not include periods before the plan was established.

(ii) *Mortality ratio*. The mortality ratio for a gender or other population within a plan is equal to the quotient determined by dividing—

(A) The sum, for each year in the experience study period, of the accrued benefits (substituting the current periodic payment in the case of individuals in pay status) for all individuals in the population at the beginning of the year who died during the year, by

(B) The sum, for each year in the experience study period, for all individuals for each age in the population at the beginning of the year (adjusted, as appropriate, for people who leave on account of reason other than death), of the product of—

(*1*) The probability of death of those individuals using the mortality rate for that age from the standard mortality table set forth in paragraph (d)(4)(iii) of this section; and

(*2*) The sum of the accrued benefits (substituting the current periodic payment in the case of individuals in pay status) for those individuals.

(iii) *Standard mortality table*—(A) *Projection of base table*. The standard mortality table for a year is the mortality table determined by applying cumulative mortality improvement factors determined under § 1.430(h)(3)–1(a)(2)(i)(E) to the base mortality table under § 1.430(h)(3)–1(d) for the period beginning with 2006 and ending in the base year for the base substitute mortality table determined under paragraph (d) or (e) of this section. For purposes of the previous sentence, the cumulative mortality improvement factors are determined using the mortality improvement rates described in § 1.430(h)(3)–1(a)(2)(i)(C) that apply for the calendar year during which the plan sponsor submits the request to use substitute mortality tables. If the plan sponsor submits such a request during 2017, then the cumulative mortality improvement factors are determined using the mortality improvement rates contained in the Mortality Improvement Scale MP–2016 Report (issued by the Retirement Plans Experience Committee (RPEC) of the Society of Actuaries and available at *www.soa.org/Research/Experience-Study/Pension/research-2016-mp.aspx*).

(B) *Selection of base table*. If the population consists solely of annuitants, the annuitant base mortality table under § 1.430(h)(3)–1(d) must be used for purposes of paragraph (d)(4)(iii)(A) of this section. If the population consists solely of nonannuitants, the nonannuitant base mortality table under § 1.430(h)(3)–1(d) must be used for that purpose. If the population includes both annuitants and non–annuitants, a combination of the annuitant and nonannuitant base tables under § 1.430(h)(3)–1(d) must be used for that purpose. The combined table is constructed using the weighting factors for small plans that are set forth in § 1.430(h)(3)–1(d). The weighting factors are applied to develop the combined table using the following equation: Combined mortality rate = [nonannuitant rate * (1-weighting factor)] + [annuitant rate * weighting factor].

(iv) *Change in number of individuals covered by table*. Experience data may not be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitant population) as of the last day of the plan year before the year the request to use substitute mortality tables is made, compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan). For this purpose, a reasonable estimate of the number of individuals in the population covered by the table may be used.

(5) *Separate tables for specified populations*—(i) *In general*. Except as provided in this paragraph (d)(5), separate substitute mortality tables are permitted to be used for separate populations within a gender under a plan only if—

(A) All individuals of that gender in the plan are divided into separate populations;

(B) Each separate population has mortality experience that has full credibility as determined under the rules of paragraph (d)(5)(iii) of this section; and

(C) The separate base substitute mortality table for each separate population is developed applying the rules of paragraphs (d)(1) through (4) of this section using an experience study that takes into account solely members of that population.

(ii) *Annuitant and nonannuitant separate populations*. Notwithstanding paragraph (d)(5)(i)(B) of this section, substitute mortality tables for separate populations of annuitants and nonannuitants within a gender may be used even if only one of those separate populations has credible mortality information. Similarly, if separate populations that satisfy paragraph (d)(5)(i)(B) of this section are established, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. The standard mortality tables under § 1.430(h)(3)–1 are used for a resulting subpopulation that does not have credible mortality information. For example, in the case of a plan with mortality experience for both its male hourly and salaried individuals that has full credibility, if the male salaried annuitant population has credible mortality information, substitute mortality tables may be used for the plan with respect to that population even if the standard mortality tables under § 1.430(h)(3)–1 are used with respect to the male salaried nonannuitant population (because that nonannuitant population does not have credible mortality information).

(iii) *Credible mortality experience for separate populations*. In determining whether the mortality experience for a separate population within a gender has full credibility, the requirements of paragraph (d)(1) of this section must be satisfied but, in applying that paragraph (d)(1), the separate population should be substituted for the particular gender. In demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality information, the requirements of paragraph (c)(2)(iii)(B) of this section must be satisfied but, in applying that paragraph, the annuitant (or nonannuitant) population should be substituted for the particular gender.

(e) *Partial credibility*—(1) *In general*. The mortality experience with respect to a population has partial credibility if the actual number of deaths for that population during the experience study period described in paragraph (d)(2) of this section is at least equal to the partial credibility threshold of 100 and is less than the full credibility threshold described for the population in paragraph (d)(3) of this section. If the mortality experience for the population has partial credibility, then in lieu of creating a base substitute mortality table as described in paragraph (d) of this section, the base substitute mortality table is created as the sum of—

(i) The product of—

(A) The partial credibility weighting factor determined under paragraph (e)(2) of this section; and

(B) The mortality rates that are derived from the experience study determined under paragraph (d)(4)(i) of this section, and

(ii) The product of—

(A) One minus the partial credibility weighting factor described in paragraph (e)(2) of this section; and

(B) The mortality rate from the standard mortality tables described in paragraph (d)(4)(iii) of this section.

(2) *Partial credibility weighting factor*. The partial credibility weighting factor is equal to the square root of the fraction—

(i) The numerator of which is the actual number of deaths for the population during the experience study period, and

(ii) The denominator of which is the full credibility threshold for the population described in paragraph (d)(3) of this section.

(f) *Special rules for newly affiliated plans*—(1) *In general*. This paragraph (f) provides special rules that provide temporary relief from certain rules in this section in the case of a controlled group that includes a newly affiliated plan. Paragraph (f)(2) of this section provides a transition period during which the requirement in paragraph (c)(1) of this section (that is, the requirement that all plans within the controlled group that have credible mortality information must use substitute mortality tables) is not applicable. Paragraph (f)(3) of this section provides special rules that permit the use of a shorter experience study period in the case of a newly affiliated plan that excludes the mortality experience data for the period prior to the date the plan sponsor becomes maintained by a member of the new plan sponsor's controlled group. Paragraph (f)(4) of this section defines *newly affiliated plan*.

(2) *Transition period for newly affiliated plans*. The use of substitute mortality tables for a plan within a controlled group is not prohibited merely because substitute mortality tables are not used during the transition period for a newly affiliated plan that fails to demonstrate a lack of credible mortality information during the that period. Similarly, during the transition period, the use of substitute mortality tables for a newly affiliated plan is not prohibited merely because substitute mortality tables are not used for another plan within the controlled group that fails to demonstrate a lack of credible mortality information during that period. The transition period runs through the last day of the plan year that contains the last day of the period described in section 410(b)(6)(C)(ii) for either of the plans, whichever is later.

(3) *Experience study period for newly affiliated plan*—(i) *In general*. The mortality experience data for a newly affiliated plan may either include or exclude mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. If a plan sponsor excludes mortality experience data for the period prior to the date the plan becomes maintained within the new plan sponsor's controlled group, the exclusion must apply for all populations within the plan.

(ii) *Demonstration relating to lack of credible mortality experience*. If the experience study for a newly affiliated plan excludes mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group, then the demonstration that the plan does not have credible mortality information for a plan year that begins after the transition period can be made using a shorter experience study period than would otherwise be permitted under paragraph (c)(2)(iii)(B) of this section, provided that the experience study period begins with the date the plan becomes maintained within the sponsor's controlled group and ends not more than one year and one day before the first day of the plan year.

(iii) *Demonstration relating to credible mortality experience*. If the experience

study for a newly affiliated plan excludes mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group and the plan fails to demonstrate that it does not have credible mortality information for the plan year under the rules of paragraph (f)(3)(ii) of this section, then other plans within the controlled group can continue to use substitute mortality tables only if substitute mortality tables are used for the newly affiliated plan the plan year. In such a case, the experience study period can be a shorter period than the period in paragraph (d)(2) of this section, provided that the period is at least one year.

(4) *Definition of newly affiliated plan*. For purposes of this paragraph (f), a plan is treated as a newly affiliated plan if it becomes maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). A plan also is treated as a newly affiliated plan for purposes of this section if the plan is established in connection with a transfer of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

(g) *Effective/applicability date*. This section applies for plan years beginning on or after January 1, 2018, and any substitute mortality table used for a plan for such a plan year must comply with the rules of this section.

Par. 4. Section 1.431(c)(6)–1 is revised to read as follows:

§ 1.431(c)(6)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability*. The mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)–1(a) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). Either the generational mortality tables used pursuant to § 1.430(h)(3)–1(a)(2) or the static mortality tables used pursuant to § 1.430(h)(3)–1(a)(3) are permitted to be used for a multiemployer plan for this purpose. However, for this purpose, substitute mortality tables under § 1.430(h)(3)–2 are not permitted to be used for a multiemployer plan.

(b) *Effective/applicability date*. This section applies for plan years beginning on or after January 1, 2018. For rules that apply to plan years beginning before January 1, 2018 and on or after January 1, 2008, see § 1.431(c)(6)–1 (as contained in 26 CFR part 1 revised April 1, 2015).

Par. 5. Section 1.433(h)(3)–1 is added to read as follows:

§ 1.433(h)(3)–1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability*. In accordance with section 433(h)(3)(B), the mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)–1(a) are used to determine a CSEC plan's current liability for purposes of applying the rules of section 433(c)(7)(C). Either the static mortality tables used pursuant to § 1.430(h)(3)–1(a)(3) or generational mortality tables used pursuant to § 1.430(h)(3)–1(a)(2) are permitted to be used for a CSEC plan for this purpose, but substitute mortality tables under

§ 1.430(h)(3)–2 are not permitted to be used for this purpose.

(b) *Effective/applicability date*. This section applies for plan years beginning on or after January 1, 2018.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 28, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 29, 2016, 81 F.R. 95911)

Nuclear Decommissioning Funds

REG–112800–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed changes to the regulations under section 468A of the Internal Revenue Code of 1986 (Code) relating to deductions for contributions to trusts maintained for decommissioning nuclear power plants and the use of the amounts in those trusts to decommission nuclear plants. The proposed regulations revise certain provisions to: address issues that have arisen as more nuclear plants have begun the decommissioning process; and clarify provisions in the current regulations regarding self-dealing and the definition of substantial completion of decommissioning.

DATES: Written or electronic comments and requests for a public hearing must be received by March 29, 2017.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–112800–16), 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–112800–16), 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–112800–16).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jennifer C. Bernardini, (202) 317-6853; concerning submissions and to request a hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

There is no new collection of information contained in this notice of proposed rulemaking. The collection of information contained in the regulations under section 468A has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2091. Responses to these collections of information are required to obtain a tax benefit.

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

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

Background

This proposed rulemaking consists of several amendments to the existing regulations under section 468A. Section 468A was originally enacted by section 91(c)(1) of the Deficit Reduction Act of 1984, Public Law 98–369, (98 Stat 604) and has been amended, most recently by section 1310 of the Energy Policy Act of 2005, Public Law 109–58 (119 Stat 594). Temporary regulations (TD 9374) under section 468A were published in the Federal Register for December 31, 2007 (72 FR 74175). Regulations finalizing and removing the temporary regulations (TD 9512) were published in the Federal Register on December 23, 2010 (75 FR 80697).

Explanation of Provisions

1. *Definition of Nuclear Decommissioning Costs*

A. *Inclusion of amounts related to the storage of spent fuel within definition of nuclear decommissioning costs*

Section 468A is intended to allow taxpayers to currently deduct amounts set aside in a qualified fund (Fund) for the purpose of decommissioning a nuclear power plant. The taxpayer must include the amount of any actual or deemed distribution from the Fund in gross income in the year of the distribution, as provided in § 1.468A–2(d)(1). Taxpayers may then claim an offsetting deduction for amounts spent on decommissioning costs as determined under section 461(h) and other sections. See § 1.468A–2(e).

Taxpayers that operate nuclear power plants, whether such plants are currently operating or have ceased operations, must safely store spent fuel. Nuclear fuel assemblies are removed from the reactor and those assemblies are stored in a spent fuel pool for cooling. Subsequently, the spent fuel may be inserted into storage casks and the casks transferred to an on-site Independent Spent Fuel Storage Installation (ISFSI). An ISFSI consists of a concrete storage pad on which the storage casks are placed. Although the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101, et seq, requires the Department of Energy (DOE) to take and dispose of spent nuclear fuel in a permanent geologic repository, no such repository has been established and the government has not yet begun accepting spent fuel. Thus, operators of nuclear power plants must safely store spent fuel in an on-site ISFSI.

Existing § 1.468A–1(b)(6) defines nuclear decommissioning costs as including "all otherwise deductible expenses to be incurred in connection with" the disposal of certain nuclear assets. Section 1.468A–1(b)(6) continues that "such term also includes costs incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending acceptance by the government for permanent storage or disposal, spent nuclear fuel generated by the nuclear power plant or plants located on the same site as the storage facility." The Treasury Department and the IRS have become aware that there are questions regarding whether ISFSI-related costs for the construction or purchase of assets that would not necessarily qualify as "otherwise deductible" expenses under the current regulation are included as nuclear decommissioning costs. The proposed regulations clarify the definition of nuclear decommissioning costs to specifically provide for ISFSI-related costs.

B. *Inclusion of amounts for purchase or construction of a depreciable asset as part of decommissioning process within definition of nuclear decommissioning costs*

Under the existing regulations, questions have arisen as to whether a cost must be currently deductible for that amount to be payable currently from the Fund under the "otherwise deductible" language of § 1.468A–1(b)(6). For example, where a depreciable asset is purchased or constructed as part of the decommissioning process (and the asset is not considered abandoned) questions have arisen regarding whether the "otherwise deductible" language is satisfied solely by the fact that the property is depreciable or whether the expense is treated as a deductible decommissioning expense only to the extent that depreciation is currently allowed. This raises a timing issue regarding whether a fund may pay for the purchase or construction of a depreciable asset to be used in decommissioning that is not considered abandoned when completed. Under the present regulations, because the asset would be fully depreciable but the cost of the asset is not otherwise deductible, a fund may only pay for the portion of the depreciation allowable in the tax year in which such property is placed in service. The intent of section 468A is to allow owners of nuclear power plants to put amounts in a Fund on a tax-free basis and then to use those amounts and the earnings on those amounts to pay for decommissioning. In order to effectuate that intent, the proposed regulations broaden the definition of nuclear decommissioning costs to include the total cost of depreciable assets by adding the words "or recoverable through depreciation" following "otherwise deductible" in § 1.468A–1(b)(6).

2. *Clarification of the Applicability of the Self-Dealing Rules to Transactions Between the Fund and Related Parties*

Section 4951 imposes an excise tax on acts of self-dealing between a "disqualified person" and a trust described in section 501(c)(21). Section 468A(e)(5) provides that, under regulations prescribed by the Secretary, for purposes of section 4951, the Fund shall be treated in the same manner as a trust described in section 501(c)(21). Section 1.468A–5(b)(1) states that the excise taxes imposed by section 4951 apply to each act of self-dealing between the Fund and a disqualified person. Section 1.468A–5(b)(2) defines "self-dealing," for purposes of § 1.468A–5(b), as any act described in section 4951(d), but provides for some exclusions, including a payment by a Fund for the purpose of satisfying, in whole or in part, the liability of the taxpayer who has elected section 468A and established a Fund (electing taxpayer) for decommissioning costs of the nuclear power plant to which the Fund relates. Section 1.468A–5(b)(3), by reference to section 4951(e)(4) and § 53.4951–1(d), provides that the term

"disqualified person" includes, with respect to a trust, a contributor to the trust and a trustee of the trust.

The IRS has issued several private letter rulings holding that a reimbursement to an electing taxpayer or an unrelated party by a Fund of decommissioning costs, such as severance payments and pre-dismantlement decommissioning costs, is made for the purpose of satisfying the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the Fund relates and therefore is not self-dealing. Thus, under these rulings, the reimbursement by a Fund of these costs represents a permissible use of the Funds. To remove any lingering uncertainty, as well as to avoid the burden on taxpayers of filing additional ruling requests on these issues, the proposed regulations clarify that reimbursements of decommissioning costs by the Fund to related parties (including the electing taxpayer) that paid such costs are not an act of self-dealing. However, no amount beyond what is actually paid by the related party, including amounts such as direct or indirect overhead or a reasonable profit element, may be included in the reimbursement by the Fund.

3. *Definition of "Substantial Completion" in § 1.468A–5(d)(3)(i)*

Existing § 1.468A–5(d)(3)(i) defines the substantial completion date as "the date that the maximum acceptable radioactivity levels mandated by the Nuclear Regulatory Commission [NRC] with respect to a decommissioned nuclear power plant are satisfied." However, § 1.468A–5(d)(3)(ii) provides that, if a significant portion of the total estimated decommissioning costs are not incurred on or before the substantial completion date, the electing taxpayer may request a ruling that designates a date subsequent to the substantial completion date as the termination date; such later date may be no later than the last day of the third taxable year after the taxable year that includes the substantial completion date. Under certain state and local requirements, the plant operator must return the site of the plant to conditions requiring time beyond that needed to reach the maximum radioactivity level mandated by the NRC. To accommodate these situations without requiring that the taxpayer request a ruling, the proposed regulations amend the definition of "substantial completion" to the date on which all Federal, state, local, and contractual decommissioning liabilities are fully satisfied.

Proposed Effective/Applicability Date

The rules contained in these regulations are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Notwithstanding the prospective effective date, the IRS will not challenge return positions consistent with these proposed regulations for taxable years ending on or after the date these proposed regulations are published.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and affirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on (1) the fact that the rules in these proposed regulations primarily affect owners of nuclear power plants which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601) and (2) the proposed regulations do not impose a collection of information on small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. 601) is not required. We request comment on the accuracy of this certification. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these regulations is Jennifer C. Bernardini, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section § 1.468A–1 is amended by revising paragraph (b)(6) to read as follows:

§ 1.468A–1 Nuclear decommissioning costs; general rules.

* * * * *

(b) * * *

(6)(i) The term *nuclear decommissioning costs* or *decommissioning costs* includes all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant, whether that nuclear power plant will continue to produce electric energy or has permanently ceased to produce electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the plant after

the actual decommissioning occurs, such as physical security and radiation monitoring expenses. An expense is otherwise deductible for purposes of this paragraph (b)(6) if it would be deductible or recoverable through depreciation or amortization under chapter 1 of the Internal Revenue Code without regard to section 280B.

(ii) The term nuclear decommissioning costs or decommissioning costs also includes costs incurred in connection with the construction, operation, and ultimate decommissioning of a facility used solely to store, pending delivery to a permanent repository or disposal, spent nuclear fuel generated by the nuclear power plant or plants located on the same site as the storage facility (for example, an Independent Spent Fuel Storage Installation). Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Public Law 97–425).

* * * * *

Par. 3. Paragraph § 1.468A–5 is amended by revising the heading and paragraphs (b)(2)(i) and (d)(3)(i) to read as follows:

§ 1.468A–5 Nuclear decommissioning fund—miscellaneous provisions.

* * * * *

(b) * * *

(2) * * *

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates, whether such payment is made to an unrelated party in satisfaction of the decommissioning liability or to the plant operator or other otherwise disqualified person as reimbursement solely for actual expenses paid by such person in satisfaction of the decommissioning liability;

* * * * *

(d) * * *

(3) * * *

(i) The substantial completion of the decommissioning of a nuclear power plant occurs on the date on which all Federal, state, local, and contractual decommissioning requirements are fully satisfied (the substantial completion date). Except as otherwise provided in paragraph (d)(3)(ii) of this section, the substantial completion date is also the termination date.

* * * * *

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 28, 2016, 8:45 a.m., and published in the issue of the Federal Register for December 29, 2016, 81 F.R. 95929)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletin 2017–1 through 2017–4

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2017–1 through 2017–4

Notices:

2002-1
Amplified by
Notice 2017-1, 2017-2 I.R.B. *367*

2011-86
Obsoleted by
Notice 2017-1, 2017-2 I.R.B. *367*

2016-29
Modified by
Notice 2017-6, 2017-3 I.R.B. *422*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–27 through 2016–52 is in Internal Revenue Bulletin 2016–52, dated December 26, 2016.

Internal Revenue Service
Washington, DC 20224

INTERNAL REVENUE BULLETIN

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

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.