INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2022–45
November 7, 2022

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.

ADMINISTRATIVE

REG-100719-21, page 457.
This guidance contains proposed amendments to the regulations relating to the user fees for the new enrollment and renewal enrollment of enrolled actuaries. In accordance with the guidelines in OMB Circular A-25, the IRS has re-calculated its cost of administering the new enrollment and renewal enrollment processes for enrolled actuaries and determined the full cost has increased to $680.00 per new enrollment or renewal enrollment. Therefore, the Treasury Department and the IRS propose to increase the amount of the user fee for enrolled actuary new enrollment or renewal enrollment from $250.00 to $680.00.

ADMINISTRATIVE, INCOME TAX

Rev. Proc. 2022-38, page 445.
This revenue procedure sets forth inflation-adjusted items for 2023 for various Code provisions as in effect on October 18, 2022. The inflation adjusted items for the Code sections set forth in section 3 of this revenue procedure are generally determined by reference to § 1(f) of the Code. To the extent amendments to the Code are enacted for 2023 after October 18, 2022, taxpayers should consult additional guidance to determine whether these adjustments remain applicable for 2023.

EMPLOYEE PLANS

Notice 2022-54, page 439.
This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for October 2022 used under § 417(e)(3)(D), the 24-month average segment rates applicable for October 2022, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv).

Notice 2022-55, page 443.
Section 415 of the Internal Revenue Code (the Code) provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost of living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under § 415. Under § 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act.

EMPLOYEE PLANS, EXCISE TAX

Notice 2022-53, page 437.
This notice announces that the Department of the Treasury and the Internal Revenue Service intend to issue final regulations related to required minimum distributions under section 401(a)(9) of the Internal Revenue Code that will apply no earlier than the 2023 distribution calendar year. In addition, this notice provides guidance related to certain provisions of section 401(a)(9) that apply for 2021 and 2022 and the related excise tax under section 4974.

INCOME TAX

REG-121509-00, page 463.
This document withdraws a notice of proposed rulemaking published in the Federal Register on August 29, 2006. The notice of proposed rulemaking relates to

Finding Lists begin on page ii.

the exclusion from gross income of previously taxed earnings and profits under section 959 of the Internal Revenue Code (the "Code") and related basis adjustments under section 961 of the Code.

Rev. Rul. 2022-20, page 407.
Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term tax exempt rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for November 2022.

T.D. 9968, page 409.
These final regulations under section 36B of the Internal Revenue Code amend the regulations regarding eligibility for the premium tax credit to provide that affordability of employer-sponsored minimum essential coverage for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee.

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

Section 1274.— Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483, 1288, 7520, 7872.)

Rev. Rul. 2022-20

This revenue ruling provides various prescribed rates for federal income tax purposes for November 2022 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2022-20 TABLE 1
Applicable Federal Rates (AFR) for November 2022
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	4.10%	4.06%	4.04%	4.03%
110% AFR	4.52%	4.47%	4.45%	4.43%
120% AFR	4.93%	4.87%	4.84%	4.82%
130% AFR	5.35%	5.28%	5.25%	5.22%
		Mid-term		
AFR	3.97%	3.93%	3.91%	3.90%
110% AFR	4.37%	4.32%	4.30%	4.28%
120% AFR	4.78%	4.72%	4.69%	4.67%
130% AFR	5.18%	5.11%	5.08%	5.06%
150% AFR	5.99%	5.90%	5.86%	5.83%
175% AFR	7.00%	6.88%	6.82%	6.78%
		Long-term		
AFR	3.92%	3.88%	3.86%	3.85%
110% AFR	4.32%	4.27%	4.25%	4.23%
120% AFR	4.71%	4.66%	4.63%	4.62%
130% AFR	5.10%	5.04%	5.01%	4.99%

REV. RUL. 2022-20 TABLE 2
Adjusted AFR for November 2022
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	3.10%	3.08%	3.07%	3.06%
Mid-term adjusted AFR	3.00%	2.98%	2.97%	2.96%
Long-term adjusted AFR	2.97%	2.95%	2.94%	2.93%

REV. RUL. 2022-20 TABLE 3 Rates Under Section 382 for November 2022	
Adjusted federal long-term rate for the current month	2.97%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.97%

REV. RUL. 2022-20 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for November 2022	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.91%
Appropriate percentage for the 30% present value low-income housing credit	3.39%

REV. RUL. 2022-20 TABLE 5 Rate Under Section 7520 for November 2022	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	4.80%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 467.—Certain Payments for the Use of Property or Services

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The applicable federal short-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 7520.—Valuation Tables

The applicable federal mid-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of November 2022. See Rev. Rul. 2022-20, page 407.

T.D. 9968

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Affordability of Employer Coverage for Family Members of Employees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 36B of the Internal Revenue Code (Code) that amend the regulations regarding eligibility for the premium tax credit (PTC) to provide that affordability of employer-sponsored minimum essential coverage (employer coverage) for family members of an employee is determined based on the employee's share of the cost of covering the employee and those family members, not the cost of covering only the employee. The final regulations also add a minimum value rule for family members of employees based on the benefits provided to the family members. The final regulations affect taxpayers who enroll, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange (Exchange) and who may be allowed a PTC for the coverage.

DATES: These final regulations are effective on December 12, 2022.

FOR FURTHER INFORMATION CONTACT: Clara Raymond at (202) 317-4718 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. *Overview*

This document amends the Income Tax Regulations (26 CFR part 1) under section 36B of the Code. On April 7, 2022, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-114339-21) in the Federal Register (87 FR 20354) under section 36B (proposed regulations). A public hearing was held on June 27, 2022. The Treasury Department and the IRS also received written comments on the proposed regulations. After consideration of the testimony heard at the public hearing and the comments received, the proposed regulations are adopted as amended by this Treasury decision (final regulations).

These final regulations provide that, for purposes of determining eligibility for PTC, affordability of employer coverage for individuals eligible to enroll in the coverage because of their relationship to an employee of the employer (related individuals) is determined based on the employee's share of the cost of covering the employee and the related individuals. As further explained in the Summary of Comments and Explanation of Revisions, the affordability rule for related individuals in these final regulations represents the better reading of the relevant statutes and is consistent with Congress's purpose in the Affordable Care Act (ACA)[1] to expand access to affordable health care coverage. The final regulations also include amendments to the rules relating to the determination of whether employer coverage provides a minimum level of benefits, referred to as minimum value; conforming amendments to the current regulations; and clarification of the treatment of premium refunds.

II. *Eligibility for Employer Coverage Under Section 36B*

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer's family enrolls in a qualified health plan through an Exchange (QHP or Exchange coverage) for one or more "coverage months." Under §1.36B-1(d) of the Income Tax Regulations, a taxpayer's family consists of the taxpayer, the taxpayer's spouse if filing jointly, and any dependents of the taxpayer.

Section 1.36B-3(d)(1) provides that the PTC for a coverage month is the lesser of: (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer's family enrolls (enrollment premiums); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over 1/12 of the product of a taxpayer's household income and the applicable percentage for the taxable year (taxpayer's contribution amount).

Under section 36B(c)(2)(B) and §1.36B-3(c), a month is a coverage month for an individual only if the individual is not eligible for minimum essential coverage (MEC) for that full calendar month (other than coverage under a health care plan offered in the individual market within a state). Under section 5000A(f)(1)(B) of the Code, the term MEC includes employer coverage. If an individual is eligible for employer coverage for a given month, no PTC is allowed for the individual for that month.

Section 36B(c)(2)(C) generally provides that an individual is not treated as eligible for employer coverage if the coverage offered is unaffordable or does not provide minimum value. However, if the individual enrolls in employer coverage, the individual is eligible for MEC, irrespective of whether the employer coverage is affordable or provides minimum

[1] The term ACA in this preamble means the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 1029 (2010).

value. *See* section 36B(c)(2)(C)(iii) and §1.36B-2(c)(3)(vii).

Under the affordability test in section 36B(c)(2)(C)(i)(II), an employee who does not enroll in employer coverage is not treated as eligible for the coverage if "the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income."[2] The flush language following this provision provides that "[t]his clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee."

Section 5000A generally requires applicable individuals[3] to make an individual shared responsibility payment[4] with their tax return if they do not maintain minimum essential coverage for themselves and any dependents. Section 5000A(e)(1) establishes exemptions from the individual shared responsibility payment that would otherwise apply for "individuals who cannot afford coverage," which the statute defines in section 5000A(e)(1)(A) to be applicable individuals whose required contribution for coverage exceeds a specified percentage of their household income. Section 5000A(e)(1)(B)(i) provides that, for an employee eligible to purchase employer coverage, the term "required contribution" means "the portion of the annual premium which would be paid by the individual . . . for self-only coverage." For related individuals, the definition of "required contribution" in section 5000A(e)(1)(B)(i) is modified by a "special rule" in section 5000A(e)(1)(C). Section 5000A(e)(1)(C) provides that "[f]or purposes of [section 5000A(e)(1)](B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination [of affordability] under subparagraph (A) shall be made by reference to [the] required contribution of the employee." The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) regarding coverage for related individuals to take into account the cost of covering the employee and the related individuals, not just the employee. Specifically, for related individuals, §1.5000A-3(e)(3)(ii)(B) provides that the required contribution is the amount an employee must pay to cover the employee and the related individuals who are included in the employee's family.[5] Thus, under §1.5000A-3(e)(3)(ii)(B), employer coverage is affordable for those related individuals if the share of the annual premium the employee must pay to cover the employee and the related individuals is not greater than the required contribution percentage of household income.

In contrast to the affordability rule for related individuals in §1.5000A-3(e)(3)(ii)(B), the Treasury Department and the IRS issued final regulations in 2013 for purposes of the PTC providing that employer coverage is affordable for the related individuals if the share of the annual premium the employee must pay for self-only coverage is not greater than the required contribution percentage of household income, regardless of how expensive the annual premium for family coverage would be. *See* §1.36B-2(c)(3)(v)(A)(*2*) (the 2013 regulations or 2013 affordability rule). Thus, under the 2013 affordability rule, the employee's share of the premium for family coverage, as defined in §1.36B-1(m),[6] was not considered in determining whether employer coverage is affordable for related individuals.

When the 2013 regulations were issued, the Treasury Department and the IRS considered the statutory language of section 36B(c)(2)(C)(i)(II) and its cross-reference to section 5000A(e)(1)(B), as well as the statutory language of section 5000A(e)(1)(B) and the cross-reference in section 5000A(e)(1)(C) to section 5000A(e)(1)(B). In the preamble to those regulations, the Treasury Department and the IRS interpreted the language of section 36B, through the cross-reference to section 5000A(e)(1)(B), to provide that the affordability test for related individuals is based on the cost of self-only coverage. Thus, if the cost of self-only coverage is affordable, no PTC is allowed for the Exchange coverage of related individuals even if family coverage through the employer costs more than 9.5 percent of household income.

As noted above, section 36B(c)(2)(C) generally provides that an individual is not treated as eligible for employer coverage if the coverage offered is unaffordable or does not provide minimum value. An eligible employer-sponsored plan provides minimum value under section 36B(c)(2)(C)(ii) and §1.36B-6(a)(1) only if the plan's share of the total allowed costs of benefits provided to an employee is at least 60 percent. On November 4, 2014, the IRS released Notice 2014-69, 2014-48 I.R.B. 903, which advised employers of the intent to propose regulations providing that group health plans that fail to provide substantial coverage for inpatient hospitalization or physician services do not provide minimum value. Notice 2014-69 noted that the Department of Health and Human Services (HHS) was concurrently issuing parallel guidance and also provided that, pending issuance of final Treasury regulations, an employee would not be required to treat a non-hospital/non-physician services plan as providing minimum value for purposes of an employee's eligibility for a PTC.

On November 26, 2014, HHS issued proposed regulations providing that an eligible employer-sponsored plan provides minimum value only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided under

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[2] This required contribution percentage of 9.5 is indexed annually under section 36B(c)(2)(C)(iv). For simplicity, this preamble refers to 9.5 percent as the required contribution percentage.

[3] Section 5000A(d)(1) defines an applicable individual as any individual other than an individual with a religious conscience exemption, an individual who is not lawfully present or an individual who is incarcerated.

[4] Public Law 115-97 (2017), commonly referred to as the Tax Cuts and Jobs Act, reduced the individual shared responsibility payment amount to zero for months beginning after December 31, 2018.

[5] For purposes of this exemption for unaffordable coverage, an employee or related individual who is otherwise exempt under §1.5000A–3 is not included in determining the required contribution.

[6] Section 1.36B-1(m) defines family coverage as health insurance that covers more than one individual and provides coverage for the essential health benefits as defined in section 1302(b)(1) of the ACA.

the plan, the plan benefits include substantial coverage of inpatient hospital services and physician services. *See* 79 FR 70674. On February 27, 2015, HHS finalized this minimum value rule at 45 CFR 156.145(a). *See* 80 FR 10750, 10872. On September 1, 2015, the Treasury Department and the IRS issued proposed regulations under section 36B (REG-143800-14, 80 FR 52678) (2015 proposed regulations) to incorporate the substance of the HHS final regulations regarding the minimum value rule. The 2015 proposed regulations issued by the Treasury Department and the IRS relating to substantial coverage of inpatient hospital services and physician services have not been finalized.

III. *EO 14009*

On January 28, 2021, President Biden issued Executive Order (EO) 14009, Strengthening Medicaid and the Affordable Care Act (ACA). Section 3(a) of EO 14009 directed the Secretary of the Treasury to review, as soon as practicable, all existing regulations and other agency actions to determine whether the actions are inconsistent with the policy to protect and strengthen the ACA and, as part of this review, to examine policies or practices that may reduce the affordability of coverage or financial assistance for coverage, including for dependents. Consistent with the EO, the Treasury Department and the IRS reviewed the regulations under section 36B, including §1.36B-2(c)(3)(v)(A)(*2*).

IV. *Proposed Regulations*

On April 7, 2022, the Treasury Department and the IRS published proposed regulations proposing to amend §1.36B-2(c)(3)(v)(A)(*2*) to change the rule regarding the affordability of employer coverage for related individuals. The proposed regulations provided that, for purposes of determining eligibility for PTC, affordability of employer coverage for related individuals in the employee's family would be determined based on the cost of covering the employee and those related individuals—just as affordability is determined in the regulations implementing section 5000A. For this purpose, affordability for related individuals would be based on the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, within the meaning of §1.36B-1(d), who are offered the coverage. Although some individuals who are not part of the family might be offered the employer coverage through the employee, the cost of covering individuals not in the family would not be considered in determining whether the related individuals in the employee's family have an offer of affordable employer coverage.

The proposed regulations would not change the affordability rule for employees. As required by statute, employees have an offer of affordable employer coverage if the employee's required contribution for self-only coverage of the employee does not exceed the required contribution percentage of household income.

The proposed regulations also addressed the minimum value rules in section 36B. Under the proposed regulations, a separate minimum value rule would be provided for related individuals that is based on the level of coverage provided to related individuals under an eligible employer-sponsored plan. In addition, the proposed regulations withdrew the 2015 proposed regulations and re-proposed the rule regarding substantial coverage of inpatient hospitalization services and physician services. Thus, under the proposed regulations, an eligible employer-sponsored plan would provide minimum value only if the plan covers at least 60 percent of the total allowed costs of benefits provided to an employee under the plan and the plan benefits include substantial coverage of inpatient hospital services and physician services.

Finally, the proposed regulations would amend §1.36B-3(d)(1)(i) to clarify that, in computing the PTC for a coverage month, a taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded in the same taxable year the taxpayer incurred the premium liability.

Summary of Comments and Explanation of Revisions

I. *Overview*

The Treasury Department and the IRS received 3,888 comments on the proposed regulations, the overwhelming majority of which were in support of the rules in the proposed regulations, including the affordability test for related individuals that is based on the cost of family coverage offered to the related individuals. Many commenters recounted personal stories of family members being uninsured due to the unaffordability of family coverage offered by an employer and the unavailability of a PTC for Exchange coverage. One married couple even testified to a state legislature that they divorced solely to retain the husband's eligibility for the PTC after his wife got a new job with an offer of family coverage at a cost of $16,000, over half of the husband's annual earnings.[7] Some commenters made the point that an affordability test for related individuals that is based on the cost of the coverage offered to the employee and related individuals is family-friendly because it is more likely to provide all family members with access to affordable coverage. Many commenters agreed with the analysis in the preamble to the proposed regulations that the language of section 36B(c)(2)(C)(i) is best interpreted to require a separate affordability determination for related individuals that is based on the employee's cost to cover the employee and related individuals rather than a single affordability determination for both employees and related individuals that is based on the cost of self-only coverage to employees, and provided persuasive legal support for this position. Commenters also overwhelmingly supported the minimum value rules provided in the proposed regulations and agreed that a failure to provide a separate minimum value rule for related individuals could undermine the separate affordability rule for related individuals.

Other commenters expressed the view that the separate affordability test and minimum value rule for related individuals in the proposed regulations are contrary to

[7] *See* https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=161949.

the language of section 36B, and that the Treasury Department and the IRS do not have the authority to change those rules. Several of these commenters provided legal analyses in support of their position as well as policy arguments against the proposed affordability test and minimum value rule for related individuals. For reasons explained in sections II and III of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS are not persuaded by these arguments.

Some commenters suggested that the Treasury Department and the IRS adopt various changes to the rules in the proposed regulations. Other commenters requested outreach by HHS, the Treasury Department, and the IRS to educate individuals, employers, and other stakeholders about the final regulations once they are issued. Several commenters requested clarification on certain issues related to employers, including information reporting requirements under section 6056 of the Code and the effect of the final regulations on individuals enrolled in non-calendar year plans. These comments are addressed in sections IV, V, and VI of the Summary of Comments and Explanation of Revisions.

Finally, many commenters supported the minimum value rule in the proposed regulations under which an eligible employer-sponsored plan would provide minimum value to an employee only if, in addition to covering at least 60 percent of the total allowed costs of benefits provided to an employee under the plan, the plan's benefits include substantial coverage of inpatient hospitalization services and physician services. In addition, many commenters supported the proposed amendment to §1.36B-3(d)(1)(i) to clarify that, in computing the PTC for a coverage month, a taxpayer's enrollment premiums for the month are the premiums for the month, reduced by any amounts that were refunded in the same taxable year the taxpayer incurred the premium liability. Because commenters supported these rules and did not request any modifications to them, both the proposed minimum value rule for employees related to inpatient hospitalization services and physician services and the proposed clarification of the premium refund rule are being finalized without change.

II. *Comments on Legal Analysis*

A. *Statutory analysis of affordability rule*

Under section 36B(c)(2)(C)(i)(II), an employee who does not enroll in employer coverage is not considered eligible for the coverage if "the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income." The flush language following this provision provides that "[t]his clause shall also apply to an individual who is eligible to enroll in the plan by reason of a relationship the individual bears to the employee."

As discussed in the preamble to the proposed regulations, the flush language in section 36B(c)(2)(C)(i) does not state clearly and expressly how section 36B(c)(2)(C)(i)(II) applies to related individuals or how the cross-reference to section 5000A(e)(1)(B) applies to coverage for related individuals. Section 5000A(e)(1)(B)(i) provides that, for an employee eligible to purchase employer coverage, the term "required contribution" means "the portion of the annual premium which would be paid by the individual . . . for self-only coverage." For related individuals, the definition of "required contribution" in section 5000A(e)(1)(B)(i) is modified by a "special rule" in section 5000A(e)(1)(C). Section 5000A(e)(1)(C) provides that "[f]or purposes of [section 5000A(e)(1)](B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under [section 5000(e)(1)(A)] shall be made by reference to [the] required contribution of the employee." The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) for coverage for a related individual to provide that the determination under section 5000A(e)(1)(A) is made by reference to the required contribution of the employee for coverage for the employee and that related individual. Specifically, for related individuals, §1.5000A-3(e)(3)(ii)(B) provides that the required contribution for related individuals is the amount an employee must pay to cover the employee and all related individuals who are included in the employee's family.[8] This long-standing rule under section 5000A was proposed in February 2013[9] and did not generate any critical comments. The proposed rule was finalized without change in August 2013[10] and has never been challenged.

Similar to the regulations implementing section 5000A, the proposed regulations provided an affordability rule for related individuals for section 36B purposes that looks to the cost of coverage for the employee and related individuals and is separate from the affordability rule for employees of the employer offering the coverage. Under the proposed regulations, affordability for related individuals would be based on the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, within the meaning of §1.36B-1(d), who are offered the coverage.

Some commenters expressed the view that the affordability rule in the proposed regulations conflicts with the language in section 36B, that the 2013 affordability rule is correct, and that the affordability rule for related individuals in the proposed regulations should be withdrawn. These commenters argued that section 36B unambiguously establishes a single affordability test for both employees and related individuals that is based on the cost of self-only coverage to the employee. As explained later in this section II.A. of the Summary of Comments and Explanation of Revisions, however, the proposed rule's approach represents

[8] For purposes of this exemption for unaffordable coverage, an employee or related individual who is otherwise exempt under §1.5000A–3 is not included in determining the required contribution.

[9] REG-148500-12 (78 FR 7314).

[10] TD 9632 (78 FR 53646).

the better reading of the statute and the better means of implementing it. After careful consideration, the Treasury Department and the IRS are adopting the affordability test as proposed.

The Treasury Department and the IRS are of the view that section 36B(c)(2)(C)(i), including the flush language that follows section 36B(c)(2)(C)(i)(II), is correctly interpreted to provide that the affordability test for a related individual is based on the cost of coverage for the employee and the related individual. The flush language provides as follows: "[t]his clause shall also apply to a [related individual]." Thus, taking into account the flush language, section 36B(c)(2)(C)(i) may be read to apply to a related individual as follows:

[A related individual] shall not be treated as eligible for minimum essential coverage if such coverage (I) consists of an eligible employer-sponsored plan [ ], and (II) the employee's[11] required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of the applicable taxpayer's household income.

This language includes four references to the coverage provided by the employee's employer: "minimum essential coverage," "such coverage," "eligible employer-sponsored plan," and "the plan." Without question, "such coverage" refers to the minimum essential coverage offered by the employee's employer to the related individual, as do references to "employer-sponsored plan" and "the plan." Unless a related individual is also employed by that employer, the related individual may not enroll in the employer's coverage on a self-only basis. Thus, the minimum essential coverage referred to in section 36B(c)(2)(C)(i), as it applies to related individuals, is the coverage the related individual may enroll in, which is the family coverage offered by the employer. Under this reading, the reference to "the employee's required contribution . . . with respect to the plan" is the required contribution for family coverage.

This reading gives full effect to section 36B(c)(2)(C)(i)(II)'s cross reference to section 5000A(e)(1)(B). As noted earlier in this section II.A of the Summary of Comments and Explanation of Revisions, section 36B(c)(2)(C)(i) specifies rules to determine the affordability of coverage under an eligible employer-sponsored plan both for an employee and for related individuals. Taken in isolation, section 5000A(e)(1)(B) would specify a rule for determining the affordability of a required contribution only with respect to coverage for an employee, even though the flush language in section 36B(c)(2)(C)(i) requires a calculation to be performed for related individuals as well. Section 5000A(e)(1)(C) provides a rule for that calculation by specifying a "special rule" for purposes of the calculation of the employee's required contribution for coverage that includes the related individual. As explained earlier in this section II.A. of the Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have long understood section 5000A(e)(1)(C) in this way. See § 1.5000A-3(e)(3)(ii)(B), promulgated in 2013.

As noted in section I of this Summary of Comments and Explanation of Revisions, the vast majority of commenters supported the proposed affordability rule for related individuals, and several of these commenters provided detailed technical analyses in support of this interpretation of the statute. Some of those commenters argued that section 36B unambiguously establishes a separate affordability test for related individuals that is based on the cost of family coverage. For example, one commenter asserted that the proposed affordability rule for related individuals follows the plain language of the statute and that section 5000A(c)(1)(C) states on its face that it must be read into 5000A(c)(1)(B). Another commenter argued that the plain text of the statute indicates that a related individual's eligibility for the PTC is based on the cost of family coverage and that the affordability rule in the 2013 regulations reflected a strained reading of the statute. One commenter supported the proposed affordability rule for related individuals but disagreed that the rule adopts an "alternative" reading of the statute. Instead, the commenter opined that the interpretation in the proposed regulations is correct and that the affordability rule in the 2013 regulations reflected an erroneous interpretation of the ACA. Finally, one commenter stated that the 2013 regulations implementing section 36B badly misinterpret the statute and that section 36B mandates a family-based affordability test. The commenter noted that if Congress had intended a self-only test, it would have mandated that coverage be deemed affordable for a related family member so long as the employee can afford self-only coverage, rather than obliquely stating that the special rule applies to related family members as well.

For reasons explained in section III of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have concluded that the affordability rule for related individuals in the proposed regulations, as finalized in these regulations, is the better reading of the statute and the better means of implementing the statute. Further, the Treasury Department and the IRS believe that the affordability rule in these final regulations is consistent with the goal of the ACA to provide access to affordable, quality health care for all Americans.[12] Indeed, under the 2013 regulations, some family members of employees could not access any PTC for Exchange coverage even if their only offer of employer coverage was a family plan with exorbitant premiums (about 16% of income, on average),[13] solely because the employee had access to affordable self-only coverage.

As explained earlier in this section II.A of the Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS disagree with commenters who argued that section 36B unambiguously establishes a single affordability test for both employees and related individuals that is based on the cost

[11] The term "employee" would not be replaced with "related individual" here because it is the employee who makes contributions (through salary reduction or otherwise) to pay for employer coverage, even if the employer coverage includes family members of the employee.

[12] *See* H.R. Rep. No. 111-443 (2009).

[13] https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.1491.

of self-only coverage to the employee. Some of these commenters argued that, because section 36B(c)(2)(C)(i)(II) does not cross-reference section 5000A(e)(1)(C) in defining the term "required contribution," section 5000A(e)(1)(C) cannot be considered in determining whether a related individual has been offered affordable employer coverage for purposes of section 36B. One of those commenters also argued that, under the negative-implication canon of statutory interpretation,[14] the reference to section 5000A(e)(1)(A) in section 5000A(e)(1)(C) precludes the use of the rule in section 5000A(e)(1)(C) for other purposes, such as providing a rationale for an affordability test in section 36B for related individuals that is separate from the test for employees.

The Treasury Department and the IRS disagree. As noted in the Background section and earlier in this section II.A. of the Summary of Comments and Explanation of Revisions, the definition of "required contribution" in section 5000A(e)(1)(B)(i) is modified by a "special rule" in section 5000A(e)(1)(C) that is applicable to related individuals. Section 5000A(e)(1)(C) provides that "[f]or purposes of [section 5000A(e)(1)](B)(i), if an applicable individual is eligible for minimum essential coverage through an employer by reason of a relationship to an employee, the determination under subparagraph (A) shall be made by reference to [the] required contribution of the employee." The regulations under section 5000A interpret section 5000A(e)(1)(C) as modifying the required contribution rule in section 5000A(e)(1)(B)(i) regarding coverage for related individuals to take into account the cost of covering the employee and the related individuals, not just the employee. Specifically, §1.5000A-3(e)(3)(ii)(B) provides that the required contribution for related individuals is the amount an employee must pay to cover the employee and the related individuals who are included in the employee's family.[15] Because section 5000A(e)(1)(C) begins with the language "[f]or purposes of [section 5000A(e)(1)](B)(i)," the parenthetical cross reference in section 36B(c)(2)(C)(i)(II) to section 5000A(e)(1)(B)(i) incorporates the special rule in section 5000A(e)(1)(C) and modifies section 5000A(e)(1)(B)(i) when the coverage in question is for related individuals. Accordingly, a specific reference to section 5000A(e)(1)(C) in the flush language of section 36B(c)(2)(C)(i) is not necessary to require the consideration of section 5000A(e)(1)(C) for determining whether coverage offered to related individuals is affordable under section 36B.

In addition, the Treasury Department and the IRS disagree that the negative-implication canon of statutory construction compels the conclusion that the reference to section 5000A(e)(1)(A) in section 5000A(e)(1)(C) precludes the use of the rule in section 5000A(e)(1)(C) for section 36B purposes. As the Supreme Court has emphasized in numerous cases, the force of any negative implication depends on the context, and the negative-implication canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded. See, for example, *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 81 (2002) ("The [negative-implication canon] is fine when it applies, but this case joins some others in showing when it does not."); *United States v. Vonn*, 535 U.S. 55, 65 (2002) ("At best, as we have said before, the [negative-implication canon] is only a guide, whose fallibility can be shown by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion of its common relatives"); *United Dominion Industries v. United States*, 532 U.S. 822, 836 (2001) ("But here, as always, the soundness of the [negative-implication canon] is a function of timing").[16] *See also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012), stating that the negative-implication canon "must be applied with great caution since its application depends so much on context." Here, the context points in favor of not restricting the use of section 5000A(e)(1)(C) to the determination in 5000A(e)(1)(A). Instead, the context points in favor of reading the reference in section 36B(c)(2)(C)(i) to section 5000A(e)(1)(B) as incorporating the modification of that subparagraph in section 5000A(e)(1)(C). This reading creates a clear and consistent rule for determining the affordability of coverage for related individuals for purposes of both section 36B and section 5000A. And, as explained earlier in this section II.A. of the Summary of Comments and Explanation of Revisions, without incorporating section 5000A(e)(1)(C), the statute would point only to a calculation of affordability for the employee's coverage, even though section 36B requires a calculation of affordability for the related individuals as well.

Moreover, had Congress intended section 5000A(e)(1)(C) to apply only to the affordability determination under section 5000A, excluding all other provisions, it could have done so through explicit means, such as using the language "solely for purposes of the determination under section 5000A(e)(1)(A)." See, for example, section 4980H(c)(2)(D) and section 4980H(c)(2)(E), also enacted under the ACA and which provide "solely for purposes of" limiting language. No such limiting language is included in section 5000A(e)(1)(C). More generally, had Congress intended a self-only affordability test for related individuals, it could have explicitly provided that coverage is affordable for a related individual so

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[14] The negative-implication canon of construction – *expressio unius est exclusio alterius* — means the expression of one thing implies the exclusion of the other.

[15] For purposes of this exemption for unaffordable coverage, an employee or related individual who is otherwise exempt under §1.5000A–3 is not included in determining the required contribution.

[16] Notably, in *U.S. Venture, Inc. v. United States*, 2 F.4th 1034 (7th Cir. 2021), the court rejected an argument by a taxpayer that the negative-implication canon of statutory interpretation required an outcome consistent with the taxpayer's interpretation of a provision of the Internal Revenue Code. The question considered by the court was whether a taxpayer's sale of a butane and gasoline mix qualified for the alternative fuel mixture credit in section 6426 of the Code. In discussing whether the sale of the butane and gasoline mix should qualify for the credit, the court rejected the taxpayer's argument that a specific cross reference in section 6426(e) to section 4083(a)(1) for the definition of a term in section 6426(e) forecloses using a third provision, section 4083(a)(2), to further illuminate the definition in section 4083(a)(1). The court "decline[d]" the taxpayer's invitation "to follow a congressionally mandated cross-reference only part of the way. Instead, we must accept and follow the cross-referenced definition in full." *U.S. Venture, Inc.*, 2 F.4th at 1042. "Whether the cross-reference is to the individual sub-paragraphs or to the whole statute does not change the meaning that Congress chose to give "gasoline" in § 4083 and, consequently, in § 6426(e)." *Id.*

long as the employee is offered affordable self-only coverage. Congress did just that in 2016 when it enacted section 36B(c)(4), relating to the affordability of employer coverage under a qualified small employer health reimbursement arrangement (QSEHRA).

Under section 36B(c)(4)(A), a PTC is not allowed for a month for the Exchange coverage of "an employee (or any spouse or dependent of such employee) if for such month the employee is provided a [QSEHRA] which constitutes affordable coverage." A QSEHRA is affordable for a month if the excess of (1) the monthly premium for the second lowest cost silver plan for self-only coverage of the employee offered in the Exchange for the rating area in which the employee resides, over (2) 1/12 of the employee's permitted benefit (as defined in section 9831(d)(3)(C)) under the QSEHRA, does not exceed 1/12 of 9.5 percent of the employee's household income.

In contrast to the language in section 36B(c)(2)(C)(i)(II), section 36B(c)(4)(A) does not reference section 5000A(e)(1)(B) for the QSEHRA affordability determination or provide that "this clause shall also apply" to a related individual. Instead, it provides the same affordability rule for both employees and related individuals by stating that affordability for coverage under a QSEHRA for "an employee (or any spouse or dependent of such employee)" is based on the cost of self-only coverage of the employee. That is far different from the language in section 36B(c)(2)(C)(i)(II) and, therefore, it is reasonable to conclude that the affordability rule in section 36B(c)(2)(C)(i)(II) for related individuals is not the same as the affordability rule for related individuals in section 36B(c)(4)(A).

Additionally, the structure and context of sections 36B and 5000A suggest that Congress did not intend to preclude the use of section 5000A(e)(1)(C) in determining the affordability of employer coverage for related individuals for purposes of PTC eligibility under section 36B. Foremost, when the coverage in question is for related individuals, section 36B(c)(2)(C)(i)(II) specifically refers to the definition of required contribution in section 5000A(e)(1)(B)(i), and section 5000A in turn specifically incorporates the special rule in section 5000A(e)(1)(C) "for purposes of" section 5000A(e)(1)(B)(i). Under this statutory structure, a specific reference to section 5000A(e)(1)(C) in the flush language of section 36B(c)(2)(C)(i) is not necessary to require the consideration of section 5000A(e)(1)(C) in determining affordability for related individuals for section 36B purposes. This consideration of section 5000A(e)(1)(C) is particularly sensible given the flush language in section 36B(c)(2)(C)(i)(II). That is, the flush language evinces Congress's intent to provide an affordability rule for related individuals. Given that there are numerous cross references in section 36B to section 5000A and that section 5000A confronts a similar situation relating to affordability for related individuals that is resolved through section 5000A(e)(1)(C), it is logical to consider section 5000A(e)(1)(C) for purposes of the affordability rule for related individuals under section 36B. Finally, using the rule in section 5000A(e)(1)(C) in determining the affordability of employer coverage for related individuals for section 36B purposes supports the goal of the ACA to provide affordable, quality health care for all Americans. *See* H.R. Rep. No. 111-443 (2009).

B. *Consistency between the affordability rules of sections 36B and 5000A*

The preamble to the proposed regulations noted that the proposed affordability rule under section 36B would create greater consistency between the section 36B affordability rules and the rules in section 5000A used to determine whether an individual is exempt from the individual shared responsibility payment under section 5000A because employer coverage is unaffordable. With the finalization of the proposed section 36B affordability rule in these final regulations, both rules provide that affordability for employees is based on the employee's cost for self-only coverage and that affordability for family members is generally based on the amount an employee must pay to cover the employee and the related individuals included in the employee's family. Thus, these final regulations promote consistency between these two affordability rules.

One commenter argued that Congress did not intend the affordability rules of section 36B and section 5000A to be consistent, suggesting that it instead sought to make it easier for a taxpayer to avoid a section 5000A individual shared responsibility payment for a related individual than to qualify for a PTC for such individual. In other words, the commenter seems to be suggesting that Congress's intent was to make it easier to go without health insurance coverage than to qualify for subsidized Exchange coverage. However, the commenter does not point to any evidence of this beyond the assertion that the statutory text compels this result. As explained above, the Treasury Department and the IRS disagree with the commenter's reading of the statutory text. The commenter's argument also ignores Congress's broader goal of expanding access to affordable health insurance coverage through the ACA, which goal is advanced by the affordability rule for related individuals in these final regulations.

C. *Legislative history of ACA*

One commenter also argued that the legislative history underlying the ACA shows that Congress intended that the rule for affordability of employer coverage for family members be the same as the affordability rule for employees and that both determinations are intended to be based on the cost of self-only coverage to the employee. The argument is that S. 1796, the America's Healthy Future Act of 2009[17] (one of the Senate bills that became the ACA through consolidation with another bill[18] and amendment), as introduced, based the determination of the affordability of employer-sponsored coverage on the employee's required contribution, as defined by (what was in that version of the bill) section 5000A(e)(2),

[17] 111th Congress (2009).

[18] H.R. 3590, 111th Congress (2009).

which would have set affordability tests for both self-only and family coverage.

The commenter further argued that, when the bill that became the ACA was introduced on the Senate floor, it altered the language of S. 1796 to reflect the language currently in the statute, in which the required contribution is described as "within the meaning of section 5000A(e)(1)(B)." In the commenter's view, this change demonstrates that the required contribution rule in section 5000A(e)(1)(C) does not apply to the section 36B affordability test for related individuals. The commenter asserted that the proposed regulations fail to consider the changes to S. 1796 because the affordability test under the proposed regulations reflects exactly how the required contribution for related individuals would have been determined had these changes not been made.

The Treasury Department and the IRS disagree that the change in legislative language on the Senate floor described by the commenter indicates that Congress intended that affordability for related individuals must be based on the cost of self-only coverage to the employee. At the same time that the legislative sponsors added the language to section 36B that cross-references section 5000A(e)(1)(B), they also added the introductory phrase to section 5000A(e)(1)(C) clarifying that that subparagraph applies "for purposes of" subparagraph (e)(1)(B). The fact that the legislative sponsors made both of these changes at the same time indicates that they understood that section 36B would incorporate both subparagraphs into its affordability rule. Moreover, as noted by a number of commenters supportive of the proposed regulations, had Congress intended an identical affordability rule for employees and related individuals, the flush language in section 36B(c)(2)(C)(i) would not have been necessary. For example, Congress could simply have stated that affordability for an employee (or any spouse or dependent of such employee) is based on the cost of self-only coverage of the employee. Indeed, as explained in section II.A. of this Summary of Comments and Explanation of Revisions, Congress did exactly that when it enacted the affordability rules for QSEHRAs in section 36B(c)(2)(4). That, however, is not the direction that Congress chose to take with its changes to S. 1796. Instead, Congress enacted two rules, one for employees and one for related individuals. Consequently, it is reasonable to conclude that Congress's use of separate rules for employees and related individuals indicates an intent to provide separate tests for an employee, based on the cost of self-only coverage to the employee, and for related individuals, based on the cost of the coverage for the employee and those related individuals.

D. *Legislative proposals to change affordability rule*

Several commenters also argued that a change to the affordability rule for related individuals should be accomplished by legislative action, rather than regulatory action. They argued that, despite requests to amend section 36B to provide that affordability of employer coverage for related individuals is based on the employee's cost for family coverage, Congress has not amended section 36B to specifically command this result. In addition, they noted that Congress has included language in various bills to amend the affordability rule, but the proposed legislation has not been enacted. The commenters asserted that this Congressional inaction means that the Treasury Department and the IRS are not empowered to issue regulations to address a matter that Congress acknowledges must be addressed in legislation.

Although the commenters are correct that members of Congress have included language in various bills to address the section 36B affordability rule in section 36B(c)(2)(C)(i), the introduction of proposed legislation is not an acknowledgement by Congress that the section 36B affordability test for related individuals must be addressed in legislation and not by regulation. As the Supreme Court has emphasized, "failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute [internal quotations omitted] . . . Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from that inaction, including the inference that the existing legislation already incorporated the offered change." *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994) (quoting *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U.S. 633, 650 (1990)). Here, for instance, it is possible that legislative proposals were introduced not because of insufficient language in the ACA, but because members of Congress believed that the 2013 regulations had incorrectly interpreted the existing language of the ACA. Although Congress may not have enacted legislation specifically and unequivocally mandating the approach taken in these final regulations, the Treasury Department and the IRS have determined that existing section 36B(c)(2)(C)(i) is better interpreted to require separate affordability determinations for employees and for family members, as set forth in §1.36B-2(c)(3)(v)(A)(2) of these final regulations.

E. *Interpretation of Joint Committee on Taxation report*

In a footnote in the preamble to the proposed regulations, the Treasury Department and the IRS observed that in the Joint Committee on Taxation report, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in combination with the "Patient Protection and Affordable Care Act*," (JCX-18-10), March 21, 2010 (JCT report), the staff of the Joint Committee on Taxation (Joint Committee staff) initially explained that "[u]naffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on the type of coverage applicable (e.g., individual or family coverage)." The Joint Committee staff later revised the quoted language, after the enactment of the ACA, to state that "[u]naffordable is defined as coverage with a premium required to be paid by the employee that is 9.5 percent or more of the employee's household income, based on self-only coverage." *ERRATA for JCX-18-10*, (JCX-27-10), May 4, 2010 (May 2010 Errata).

A few commenters expressed the view that the original JCT report was in error and should not be viewed as evidence that the statutory language in section 36B(c)(2)(C)(i)(II) supports a separate affordability rule based on the cost of family coverage; these commenters noted that the May 2010 Errata corrected the error. The Treasury Department and the IRS acknowledge that the Joint Committee staff characterized the May 2010 Errata as a correction of an error but disagree with the commenters as to the relevance of that observation. The May 2010 Errata was not before Congress at the time that the ACA was enacted in March 2010. In any event, neither the JCT report nor the May 2010 Errata is considered part of the legislative history, and neither is dispositive of any particular statutory interpretation.

F. *Relevance of section 18081*

The preamble to the proposed regulations noted that the proposed regulations would promote consistency between the affordability rules in sections 36B and 5000A and the rule in 42 U.S.C. 18081(b)(4)(C) (section 18081(b)(4)(C)). Section 18081(b)(4)(C) relates to information that a QHP enrollee must provide as part of the enrollee's QHP application if the enrollee wants to be determined eligible for advance payments of the PTC (APTC) or cost-sharing reductions. Under section 18081(b)(4)(C), if an employer offers minimum essential coverage to an individual seeking to enroll in a QHP, and the individual asserts that the offer does not preclude the individual from qualifying for APTC or cost-sharing reductions because it is not affordable, the QHP applicant must provide to the Exchange information on "the lowest cost option for the enrollee's or [related] individual's enrollment status and the enrollee's or [related] individual's required contribution (within the meaning of section 5000A(e)(1)(B) of title 26) under the employer-sponsored plan."

Certain commenters opined that they saw no inconsistency between the 2013 affordability rule under section 36B, the affordability rule under section 5000A, and the QHP applicant information rule in section 18081(b)(4)(C). One commenter stated that section 18081(b)(4)(C), by referencing section 5000A(e)(1)(B), merely instructs Exchanges to determine "the portion of the annual premium which would be paid by the individual … for self-only coverage" under the employer-sponsored plan. Another commenter argued that section 18081(b)(4)(C), by using the term "or" and not "and," requires the submission of information on the required contribution solely for the employee who is offered employer coverage, meaning the individual who would pay the required contribution, but that the individual enrolling in the QHP could be the employee or someone related to the employee. This commenter further argued that in either case, the only information required by section 18081(b)(4)(C) is the lowest cost option for self-only coverage and the required contribution for the applicable employee.

The Treasury Department and the IRS agree with the commenter who noted that section 18081(b)(4)(C) requires the submission of information on the required contribution solely for the employee who is offered employer coverage and that the individual enrolling in the QHP could be the employee or someone related to the employee. However, the Treasury Department and the IRS disagree with the conclusion of both commenters that section 18081(b)(4)(C) requires Exchanges to collect information on only the portion of the annual premium that would be paid by the employee for self-only coverage under the employer-sponsored plan.

Section 18081 requires Exchanges to collect information from enrollees who are offered coverage under an employer plan on "the lowest cost option" that the employee, whether the enrollee or an individual related to the enrollee, must contribute for the employee's or individual's enrollment status. The language "lowest cost option for the . . . enrollment status" indicates that the amount may vary depending on whether the employee's enrollment status would be for self-only or family coverage. Otherwise, section 18081(b)(4)(C) would refer to "the lowest cost option for the enrollee for self-only coverage." Thus, the Treasury Department and the IRS are of the view that the amendment to §1.36B-2(c)(3)(v)(A)(*2*) in these final regulations and the similar affordability rule in §1.5000A-3(e)(3)(ii)(B) are consistent with the QHP applicant information rule in section 18081(b)(4)(C).

G. *Coordination with section 4980H*

One commenter asserted that the framework of section 4980H supports the view that a separate affordability test under section 36B for related individuals is not warranted. Section 4980H provides that an applicable large employer (ALE) generally must offer coverage to full-time employees and their dependents or potentially be subject to an employer shared responsibility payment. As the commenter noted, although ALEs are required to offer coverage to full-time employees and dependents, only the coverage offered to the full-time employees is required to be affordable. There is no comparable affordability rule for the coverage offered to dependents. In addition, an employer's obligation to make a payment under section 4980H is triggered only when a full-time employee is allowed a PTC.

The commenter stated that the affordability of self-only coverage is the key determinant in whether an employer of a full-time employee must make a section 4980H payment and in whether the full-time employee and his or her dependents are allowed a PTC. The commenter argued that this framework shows Congress's intent that section 36B and section 4980H have just one affordability test based on the cost of self-only coverage to the employee and that providing an affordability test for related individuals based on the cost of family coverage is not consistent with that framework.

The Treasury Department and the IRS disagree. Section 36B and section 4980H apply to different types of taxpayers and have different purposes. Section 36B provides a PTC to taxpayers and their families who meet certain requirements, one of which is that they are not eligible for affordable, minimum value coverage from their employer. The amount of the PTC is determined based on family size and household income, among other factors, in recognition of the fact that affordability of coverage depends on the cost to the family. The PTC is integral to ensuring that individuals and their families can access affordable coverage through an Exchange. In contrast, section 4980H imposes a payment on ALEs if they fail to offer minimum essential coverage to their full-time employees and their dependents, and at least one full-time employee is allowed a PTC. Section 4980H does not require that employer coverage be offered to an employee's spouse, and it does not require that any coverage offered to spouses or dependents be affordable. Further, employers do not owe a payment under section 4980H if a PTC is allowed for an employee's spouse or dependent. The purpose of this provision is to ensure that large employers share responsibility under the ACA for providing affordable health coverage to employees, but this responsibility does not extend to affordable coverage for spouses or dependents. Given these differing purposes, there is nothing in this framework that suggests Congress intended for section 36B and section 4980H to have a single affordability test based on the cost of self-only coverage to the employee.

In addition, the goal of the ACA is to provide affordable, quality health care for all Americans,[19] not just to full-time employees of ALEs, and these final regulations further that goal. In light of that goal, and contrary to the suggestion of the commenter, the lack of any requirement under section 4980H for ALEs to offer affordable coverage to family members of employees indicates that a PTC should be allowed for family members offered unaffordable coverage.

H. *Minimum value rule*

As noted in the Background section of this preamble, an employee generally is not treated as eligible for coverage under an eligible employer-sponsored plan unless the coverage provides minimum value, as defined in section 36B(c)(2)(C)(ii). Under section 36B(c)(2)(C)(ii) and §1.36B-6(a)(1), an eligible employer-sponsored plan provides minimum value if the plan's share of the total allowed costs of benefits provided to an employee is at least 60 percent, regardless of the total allowed costs of benefits.

The proposed regulations provided a minimum value rule for related individuals that is based on the plan's share of the total allowed cost of benefits provided to the related individuals. Under the proposed regulations, an eligible employer-sponsored plan satisfies the minimum value requirement for related individuals only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the existing rule in §1.36B-6(a)(1) for employees.

The vast majority of commenters supported the separate minimum value rule for related individuals in the proposed regulations. However, two commenters stated that the minimum value requirement in section 36B applies only to employees and that the Treasury Department and the IRS have no authority to provide a minimum value rule for related individuals. In the view of these commenters, related individuals are eligible for employer coverage if the coverage is affordable, even if the plan's share of the total allowed costs of benefits provided to related individuals is below 60 percent. This approach, however, is contrary to the approach taken in current §1.36B-2(c)(3)(i)(A), which was promulgated in final regulations in 2012. *See* TD 9590 (77 FR 30377). Section 1.36B-2(c)(3)(i)(A) clarifies that there is a minimum value requirement for both employees and related individuals, stating that "an employee who may enroll in an eligible employer-sponsored plan . . . that is minimum essential coverage, and an individual who may enroll in the plan because of a relationship to the employee (a related individual), are eligible for minimum essential coverage under the plan for any month only if the plan is affordable and provides minimum value." Under this long-standing rule, a related individual who receives an offer of employer coverage that does not provide minimum value is deemed to be ineligible for the coverage, and a PTC may be allowed for the related individual provided that the related individual does not enroll in the coverage. The proposed regulations did not propose to revisit this long-standing rule.

Further, as stated in the preamble to the proposed regulations, without a separate minimum value rule for related individuals based on the costs of benefits provided to related individuals, a PTC would not be allowed for a related individual offered coverage under a plan that was affordable but provided minimum value only to employees and not to related individuals. This outcome would diminish the benefit a related individual would derive from the amendment of the affordability rule for related individuals. That is, the affordability of employer coverage for related individuals would be based on the employee's cost of covering the related individuals, but there would be no assurance that the affordable coverage offered to the related individuals provided a minimum value of benefits to the related individuals.

Moreover, as described by commenters supportive of the minimum value rule for related individuals, it is extremely rare for an employer plan to provide a different level of coverage for family members than the coverage level provided to the employee enrolled in the plan. This is because most employers that offer multiple benefits packages offer family coverage on the condition that the employee and the employee's family must enroll in the same benefits package, which will then have the same minimum value for the entire family. Thus, if an employer plan offered to employees provides minimum value, and that plan is also offered to related individuals, the plan generally will also provide minimum value to the family members. Nevertheless, because the lack of a separate minimum value rule for related individuals would be inconsistent with the goals of the ACA in providing comprehensive health coverage and improving access to quality and affordable health care, the final regulations provide that an eligible employer-sponsored plan provides minimum value for related individuals only if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent and the plan benefits include substantial coverage of inpatient hospital services and physician services.

III. *Rationale for change*

At the time that the Treasury Department and the IRS promulgated the 2013 regulations, limited information was available to model the effects of an

[19] *See* H.R. Rep. No. 111-443 (2009).

affordability rule for related individuals based on the cost of family coverage. In the years since the 2013 regulations became effective in 2014, however, the Treasury Department and the IRS have learned more about how the ACA is affecting individuals, families, employers, group health plans, health insurance markets, and other stakeholders. For example, in 2017, the Congressional Budget Office (CBO) determined that 2010 reports by CBO and JCT on the budgetary effects of the ACA dramatically overstated the cost of the PTC.[20] In the 2017 report, the CBO noted that, to a great extent, the differences arose because actual results deviated from the agencies' expectations about how the economy would change and how people and employers would respond to the law, and that, to a lesser extent, the differences were caused by judicial decisions, statutory changes, and administrative actions that followed the ACA's enactment.

Despite the initial uncertainty about the ACA's effects, there has been substantial progress over the past several years toward meeting the goal of the ACA to give all Americans the opportunity to enroll in comprehensive health insurance at an affordable price. For individuals who were previously uninsured, the ACA expanded eligibility for Medicaid and created new Exchanges for eligible individuals to purchase QHPs subsidized by the PTC. Research has shown that these policies increased access to affordable health insurance and helped reduce the share of the population that was uninsured.[21]

Despite this progress, roughly 26 million people still lack health insurance coverage. About 8 percent of the population is still uninsured.[22] Because these people without health coverage face large, unpredictable bills when they seek medical care, many forgo necessary treatments. The key challenge for these families in obtaining coverage is the cost of coverage. According to the National Health Interview Survey, nearly 75 percent of uninsured adults reported the main reason they were uninsured was because the coverage options available to them were not affordable.[23] Additionally, millions of adults reported that in order to save money, they did not get needed medical care or take medication as prescribed.[24]

Premium costs are particularly challenging for families enrolling in employer coverage. Since the 2013 regulations were promulgated, the average annual employee contribution for family coverage has increased by over 30 percent — a growth rate that is nearly double the rate at which the Consumer Price Index increased over the same period.[25] In 2021, the average annual employee contribution for a family plan offered by the employer was $5,969. Contributions were even higher for employees at small firms who faced an average cost of $7,710. Roughly 12 percent of workers offered health coverage would have had to pay over $10,000 to cover their entire family.[26] Under the 2013 regulations, these families are not eligible for the PTC if the self-only coverage offer is affordable, even if the cost of family coverage exceeds their annual income. Without access to affordable coverage from either their employer or the Exchange, some low- and middle-income families are unable to obtain coverage and must go uninsured.

For families that can afford employer coverage, the coverage is sometimes of limited value because of high levels of cost-sharing. In 2020, roughly 90 percent of employer plans had a deductible.[27] Among family plans offered by employers with a deductible, the average amount of the deductible was roughly $3,722. After families reach their deductible, they are usually liable for co-insurance or co-payments until they hit their out-of-pocket maximum. For 2020, the average out-of-pocket maximum for a family plan offered by employers was $8,867. There is also clear evidence that high levels of cost-sharing can restrict access to necessary medical care and lead to adverse health outcomes.[28]

Thus, although the ACA has succeeded in providing affordable health care to millions of Americans, some still cannot afford coverage. With increasingly higher premiums and out-of-pocket costs, the cost of family coverage offered by employers has become particularly unaffordable for some employees' family members. The self-only affordability rule for related individuals in the 2013 regulations exacerbates that problem. Although the Treasury Department and the IRS could speculate in 2010-2013 that the self-only affordability rule might adversely affect certain families, the data and subsequent analysis have now borne out those adverse effects.

In addition to the data provided in the studies cited above, numerous health care advocates have written articles over the years describing the adverse effects of the 2013 affordability rule and recommending a rule change.[29] Most recently, the proposed regulations themselves generated over 3,800 comments in support of the proposed rule. As noted earlier in this preamble, many of these commenters recounted personal stories of family members being uninsured due to the unaffordability of family coverage offered by an employer and the unavailability of a PTC for Exchange coverage. Finally, individuals have shared stories in other forums regarding the negative impact of the 2013 affordability rule on their lives. For example, one married couple testified to a state legislature that they divorced solely to retain the husband's eligibility for the PTC after his wife got a new job with an offer of family coverage at a cost

[20] *See* https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53094-acaprojections.pdf.
[21] https://onlinelibrary.wiley.com/doi/epdf/10.1002/pam.22158.
[22] https://aspe.hhs.gov/reports/2022-uninsurance-at-all-time-low.
[23] https://www.cdc.gov/nchs/data/databriefs/db382-H.pdf.
[24] https://www.cdc.gov/nchs/data/nhis/earlyrelease/earlyrelease202204.pdf.
[25] https://www.bls.gov/cpi/data.htm.
[26] https://www.kff.org/health-costs/report/2021-employer-health-benefits-survey/.
[27] https://www.meps.ahrq.gov/data_files/publications/cb25/cb25.pdf.
[28] https://academic.oup.com/qje/article-abstract/132/3/1261/3769421; https://www.nber.org/papers/w28439.
[29] *See*, *for example*, Trapped by the Firewall: Policy Changes Are Needed to Improve Health Coverage for Low-Income Workers | Center on Budget and Policy Priorities (cbpp.org); https://www.healthaffairs.org/do/10.1377/forefront.20210520.564880/.

of $16,000, over half of the husband's annual earnings.[30]

Consistent with EO 14009, issued in January 2021, the Treasury Department and the IRS undertook a review of the affordability rule for family members in the 2013 regulations at §1.36B-2(c)(3)(v)(A)(*2*). As part of this review, the Treasury Department and the IRS reconsidered the text of the relevant statutes and whether the 2013 affordability rule represents the best reading of that text. As explained above, the Treasury Department and the IRS now believe (in contrast to their view in 2013) that the 2013 affordability rule did not represent the best reading of the statutory text. The Treasury Department and the IRS also considered the evidence described above from the intervening years and evaluated whether the 2013 affordability rule is inconsistent with the overall goal of the ACA in providing comprehensive, affordable health coverage, as well as the goal of improving access to quality and affordable health care.[31] This evaluation was informed by the experience of the intervening years since Exchange coverage and the PTC first became available. The evaluation demonstrated adverse impacts of the 2013 regulations on families and prompted the Treasury Department and the IRS to issue the proposed regulations and solicit public comments.

In addition, the Treasury Department and the IRS now have a clearer idea of the potential cost and the coverage benefits of changing the affordability rule, in part because of the time that has elapsed since the issue was last considered and the experiences of different insurance markets during that time. For example, analysis has shown how adopting the policies in the final rule would increase access to affordable Exchange coverage.[32] Newly insured individuals will receive substantial benefits. Recent academic research suggests that enrollment in Exchange coverage provides financial protection and improves health outcomes.[33] Several commenters on the proposed regulations also cited publicly available studies that estimate the impact of the proposed affordability rule for related individuals on Federal outlays and revenues.

In addition, several commenters cited publicly available studies that estimate how changing the affordability rule for related individuals could affect the number of people with health insurance coverage.[34] One commenter presented estimates based on their own simulation of health insurance coverage decisions. Another commenter cited a study that focused specifically on the state of California.[35] Since the comment period on the proposed regulations ended, analysts have continued to estimate the impact of changing the affordability rule.[36]

The studies cited by commenters found that implementing a policy similar to the affordability rule described in the proposed regulations would increase the number of individuals eligible for financial assistance by between 3 million and 5.1 million. Other studies project that, out of those newly eligible, between 600,000 and 2.3 million individuals would choose to enroll in Exchange coverage.[37] Estimates of the number of people who would be newly insured range from 80,000 to 700,000. These studies estimate that this change in eligibility and subsequent enrollment would increase the Federal deficit by between approximately $2.6 billion and $4.5 billion per year on average.

The studies also discussed which types of families would be most likely to benefit from the proposed affordability rule for related individuals. Families with incomes below 250 percent of the Federal poverty level and families with employees who work for small employers were expected to benefit the most. One study found that workers in industries such as service, agriculture, mining, and construction were more likely to be eligible for a PTC.[38] Another study estimated that families switching from employer coverage to Exchange coverage would save an average of about $400 per person in premiums per year.[39] The studies also discussed how certain qualifying individuals would benefit from cost-sharing reductions that are available for certain qualified individuals enrolling in Exchange coverage.

These studies provide a range of estimated impacts on health coverage status and the Federal deficit. Each study relies on different data sources, modeling techniques, behavioral assumptions, and budgetary baselines. Additionally, the policies they simulate are different than the exact set of policies being adopted in the final regulations. The Treasury Department and the IRS also note that there is a substantial amount of uncertainty in estimating the impact of the policy change.[40]

In addition to these studies – those cited by commenters, as well as others reviewed by the Treasury Department and the IRS – the Treasury Department's Office of Tax Analysis has conducted its own analysis as to the effect of the policy change on health insurance coverage decisions and the Federal deficit. The policy change is

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[30] *See* https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=161949.

[31] *See* H.R. Rep. No. 111-443 (2009).

[32] https://www.healthaffairs.org/do/10.1377/forefront.20220420.498595/.

[33] https://academic.oup.com/qje/article/136/1/1/5911132; https://www.sciencedirect.com/science/article/abs/pii/S0047272718302408.

[34] *See* https://www.kff.org/health-reform/issue-brief/the-aca-family-glitch-and-affordability-of-employer-coverage/; https://www.kff.org/health-reform/issue-brief/many-workers-particularly-at-small-firms-face-high-premiums-to-enroll-in-family-coverage-leaving-many-in-the-family-glitch/; https://www.cbo.gov/system/files/2020-06/Patient_Protection_and_Affordable_Care_Enhancement_Act_0.pdf; https://www.urban.org/research/publication/changing-family-glitch-would-make-health-coverage-more-affordable-many-families; https://www.urban.org/research/publication/marketplace-subsidies-changing-family-glitch-reduces-family-health-spending-increases-government-costs; https://www.rand.org/pubs/research_reports/RR1296.html; https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.1491.

[35] https://laborcenter.berkeley.edu/wp-content/uploads/2022/06/Fact-Sheet-Family-Glitch.pdf.

[36] https://www.cbo.gov/system/files?file=2022-07/58313-Crapo_letter.pdf.

[37] Some studies estimated any Exchange enrollment while other studies estimated only subsidized Exchange enrollment.

[38] https://www.kff.org/health-reform/issue-brief/many-workers-particularly-at-small-firms-face-high-premiums-to-enroll-in-family-coverage-leaving-many-in-the-family-glitch/.

[39] https://www.urban.org/sites/default/files/publication/104223/changing-the-family-glitch-would-make-health-coverage-more-affordable-for-many-families_1.pdf.

[40] None of the studies reviewed by the Treasury Department and the IRS provided a quantitative measure of the level of uncertainty associated with their estimates. For example, the studies did not report sensitivity checks describing how their results would change under different modeling assumptions. Additionally, none of the studies reported standard errors, a statistic that researchers use to quantify sampling error and the significance of any differences.

projected to increase the number of individuals with PTC-subsidized Exchange coverage by about 1 million and increase the Federal deficit by an average of $3.8 billion per year over the next 10 years. The projections from this analysis are within the range of predictions reported in the cited studies. The evaluation focused on direct, predictable effects of the regulation. Although some studies predict the affordability rule may incidentally increase enrollment in Medicaid or CHIP, these effects are indirect and speculative. Taken as whole, the Treasury Department and the IRS conclude that these analyses provide compelling evidence that the new affordability rule for related individuals will increase the affordability and accessibility of health insurance. Although the range of numbers indicate there is uncertainty in the precise number of individuals who will be affected, the studies suggest that the final regulations will succeed in achieving two key policy goals of the ACA: increasing coverage and reducing costs for consumers. These studies, and the Treasury Department's own analysis, lead the Treasury Department and the IRS to believe that the proposed affordability rule, as finalized in these regulations, is consistent with the overall goals of the ACA and is based on sound reasons for a revision to the affordability rule. Further, as explained in section II of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS are of the view that section 36B(c)(2)(C)(i) is better interpreted in a manner that requires consideration of the premium cost to the employee to cover not just the employee, but also other members of the employee's family who may enroll in the employer coverage. Thus, the Treasury Department and the IRS adopt in these final regulations the proposed affordability rule for related individuals that is based on the cost of family coverage because they have concluded that such a rule is the better reading of the statute. For the reasons stated in section II of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have also concluded that, to the extent there is ambiguity in the statute, the proposed affordability rule would be the better alternative to resolve that ambiguity and to implement the statute in a way consistent with Congress's purposes in enacting the ACA.

IV. *Recommended Amendments to Proposed Rules*

A. *Cost of family coverage*

Under the proposed regulations, an eligible employer-sponsored plan would be treated as affordable for related individuals if the portion of the annual premium the employee must pay for family coverage, that is, the employee's required contribution, does not exceed 9.5 percent of household income. For this purpose, §1.36B-2(c)(3)(v)(A)(*2*) of the proposed regulations provided that an employee's required contribution for family coverage is the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, as defined in §1.36B-1(d), who are offered coverage under the eligible employer-sponsored plan. Under §1.36B-1(d), an employee's family consists of the employee, the employee's spouse filing a joint return with the employee, and the employee's dependents.

A few commenters requested a change to §1.36B-2(c)(3)(v)(A)(*2*) of the proposed regulations. Under the rule suggested by the commenters, an employee's required contribution for family coverage under §1.36B-2(c)(3)(v)(A)(*2*) would be the portion of the annual premium the employee must pay for coverage of the employee and all other individuals offered the employer coverage as a result of their relationship to the employee, including non-dependents of the employee who may enroll in the employer coverage (non-family members). As noted by the commenters, many employers offer coverage to employees' children up to age 26 without regard to whether a child is a dependent of the employee.[41] The commenters argued that including the cost to cover all individuals offered the coverage in an employee's required contribution will ensure that all of these individuals, including non-family members, have access to affordable coverage.

The Treasury Department and the IRS do not adopt this comment. Under the final regulations, as in the proposed regulations, the cost of covering individuals who are offered the coverage but are non-family members is not considered in determining whether the employee's family members have an offer of affordable employer coverage. Under §1.36B-2(c)(4)(i), an individual who may enroll in employer coverage as a result of the individual's relationship to an employee, but who is a non-family member, is treated as eligible for the employer coverage only if he or she is enrolled in the coverage. Consequently, an individual who may enroll in employer coverage, but who is a non-family member, does not need a determination of unaffordable coverage to enroll in a QHP and be eligible for the PTC, if the individual otherwise qualifies. Unlike family members, a non-family member may enroll in a QHP and be eligible for the PTC, if the individual is otherwise eligible, by simply not enrolling in the offered employer coverage. Accordingly, the cost of covering non-family members should not be considered in determining whether other related individuals have an offer of affordable employer coverage.

B. *Determine affordability for employees based on the cost of family coverage*

Under §1.36B-2(c)(3)(v)(A)(*1*), an eligible employer-sponsored plan is considered affordable for an employee offered coverage under the plan if the employee's required contribution for self-only coverage does not exceed 9.5 percent of household income. The proposed regulations do not change the affordability rule for employees.

Several commenters requested that the final regulations amend the affordability rule for employees to provide that, if an offer of employer coverage is unaffordable for an employee's family members,

[41] Under Public Health Service Act section 2714, which is incorporated into the Code through Code section 9815 and into the Employee Retirement Income Security Act (ERISA) through section 715 of ERISA, group health plans and health insurance issuers offering group or individual health insurance coverage that offer dependent coverage for children must make that coverage available to employees' children until they attain age 26. *See* 26 CFR 54.9815-2714, 29 CFR 2590.715-2714, and 45 CFR 147.120.

the offer would also be considered unaffordable for the employee. The commenters noted that separate affordability rules for employees and family members will sometimes result in a spouse or dependent of an employee having an offer of employer coverage that is unaffordable even though the employee has an affordable offer of self-only coverage. This could cause families to enroll in multiple plans or policies, the employee in the employer plan and the family members in a QHP, which would be burdensome and costly for families who must navigate different provider networks and drug formularies and incur separate deductibles and caps on out-of-pocket spending.

Although the Treasury Department and the IRS understand the concerns raised by the commenters, the affordability rule for employees is specifically provided in section 36B(c)(2)(C)(i) and cannot be changed by regulation. Under section 36B(c)(2)(C)(i), an employee is not eligible for minimum essential coverage under an employer plan if the employee's required contribution (within the meaning of section 5000A(e)(1)(B)) with respect to the plan exceeds 9.5 percent of household income. Section 5000A(e)(1)(B) provides that the term "required contribution" means, "in the case of an individual eligible to purchase minimum essential coverage consisting of coverage through an eligible employer-sponsored plan, the portion of the annual premium which would be paid by the individual (without regard to whether paid through salary reduction or otherwise) for self-only coverage." Further, the affordability rule in section 5000A(e)(1)(C) applies only to related individuals and not to employees. Consequently, the final regulations do not amend the affordability rule for employees.

C. *Multiple offers of coverage*

The proposed regulations provided that an individual who has offers of employer coverage from multiple employers has an offer of affordable coverage if at least one of the offers of coverage is affordable. For example, if X has an offer of employer coverage from X's employer and also from the employer of X's spouse, Y, for a year for which X and Y file a joint return, X has an offer of affordable coverage if either X's required contribution for self-only coverage under X's employer's plan does not exceed 9.5 percent of X's and Y's household income, or if Y's required contribution for family coverage under Y's employer's plan does not exceed 9.5 percent of X's and Y's household income. One commenter suggested that the Treasury Department and the IRS reconsider this multiple coverage rule as it may be confusing for individuals with multiple offers of coverage; however, the commenter did not include a recommendation for a specific change to the regulations.

The final regulations do not change the rule provided in the proposed regulations regarding affordability for individuals with multiple offers of coverage. Although the current section 36B regulations do not explicitly address situations involving multiple offers of employer coverage, as noted in the Background section of this preamble, a month is a coverage month for an individual only if the individual is not eligible for MEC, other than individual market coverage, for the month. Therefore, under the current regulations, an individual with multiple employer coverage offers for a month is eligible for MEC for that month if at least one of the offers of coverage is affordable and provides minimum value. The rule in the proposed regulations relating to multiple offers of coverage simply states expressly how the affordability rule in the current regulations applies to an individual with multiple offers of employer coverage.

Furthermore, an individual with multiple offers of employer coverage seeking to enroll in a QHP with APTC would provide information to the applicable Exchange concerning the required contribution for each coverage offer. The Exchange will determine if at least one of the offers is affordable, in which case APTC would not be allowed for the individual's Exchange coverage. This process should minimize any burden or confusion relating to whether an individual with multiple offers of coverage has an affordable offer that would deny the individual APTC and PTC for his or her Exchange coverage. In addition, for taxpayers for whom APTC is not paid for their or their family's QHP coverage, the IRS will update the instructions for Form 8962, *Premium Tax Credit (PTC)*, and Publication 974, *Premium Tax Credit (PTC)*, to address multiple offers of employer coverage.

D. *Comments requiring legislative changes*

One commenter suggested that the final regulations include a rule under which an employee and the employee's family members are not considered to have an offer of affordable coverage if the cost of coverage for the entire family is more than 15 percent of household income. One commenter asked that the rule in section 36B(c)(2)(B) be amended and that all individuals offered coverage under an employer plan be permitted to choose between the employer coverage and Exchange coverage with a PTC. Another commenter requested that the Treasury Department and the IRS make permanent the rule in section 36B(c)(1)(E) under which taxpayers with household income above 400 percent of the applicable Federal poverty line may qualify for a PTC for taxable years beginning in 2021 and 2022.[42] One commenter requested that the rules of section 36B be amended so that a PTC for a child may be claimed by the taxpayer who pays for the health insurance coverage of the child, not to the taxpayer claiming the child as a dependent. Finally, one commenter suggested that the final regulations include a rule under which excess APTC repayments would be waived for taxable year 2023 while the Exchanges adjust and reeducate consumers on the affordability calculation for family members.

The Treasury Department and the IRS appreciate these comments but note that these changes would require legislative action and cannot be made by regulation. Thus, the final regulations do not include these recommended rules.

[42] Section 12001 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), extended through 2025 the rule in section 36B(c)(1)(E) under which taxpayers with household income above 400 percent of the applicable Federal poverty line may qualify for a PTC.

E. *ICHRA and QSEHRA comments*

In general, §1.36B-2(c)(3)(i)(B) provides affordability rules related to employees who are offered a health reimbursement arrangement (HRA) or other account-based group health plan that would be integrated with individual health insurance coverage if the employee enrolls in individual health insurance coverage (an individual coverage health reimbursement arrangement or ICHRA). Those rules provide that an individual who is offered an ICHRA because of a relationship to the employee (a related HRA individual) is eligible for minimum essential coverage under an eligible employer-sponsored plan for any month for which the ICHRA is offered if (1) the ICHRA is affordable, or (2) the employee does not opt out of and waive future reimbursements from the ICHRA, regardless of whether the ICHRA is affordable. Under §1.36B-2(c)(5), an ICHRA is affordable for a month if the employee's required HRA contribution does not exceed 9.5 percent of the employee's household income for the taxable year, divided by 12. An employee's required HRA contribution is the excess of the monthly premium for the lowest cost silver plan for self-only coverage of the employee offered in the Exchange for the rating area in which the employee resides, over the monthly self-only ICHRA amount (or the monthly maximum amount available to the employee under the ICHRA if the ICHRA provides for reimbursements up to a single dollar amount regardless of whether an employee has self-only or other-than-self-only coverage).

One commenter stated it was unclear whether the affordability rule for related individuals in the proposed regulations applies to ICHRAs. The commenter also suggested that the final regulations include a rule under which family coverage amounts, not self-only coverage amounts, are used to determine whether an ICHRA offer to a related HRA individual is affordable.

The proposed regulations do not address the affordability rules relating to an ICHRA offer, and, consequently, the final regulations also do not address ICHRAs. Therefore, the rules for determining affordability of an ICHRA remain unchanged. However, the Treasury Department and the IRS, in coordination with HHS and the U.S. Department of Labor (DOL), will consider whether future guidance should be issued to change the ICHRA affordability rules for related HRA individuals in the manner suggested by the commenter.

Other commenters suggested that a PTC be allowed for family members in situations in which an employee is offered an affordable HRA, whether an ICHRA or a QSEHRA, and does not opt-out of the HRA. The commenters recommended that, in these situations, the employee and the family members would enroll in an Exchange family plan and the employee would not be allowed a PTC because of the affordable HRA, but the family members would be allowed a PTC.

The rules relating to QSEHRAs are specifically provided by statute in section 36B(c)(4). Because the Treasury Department and the IRS cannot amend those rules by regulation, QSEHRAs are not addressed in these final regulations.

Under the rules for ICHRAs, if the terms of the ICHRA provide that reimbursements are allowed only for the medical expenses of the employee and not for the expenses of related individuals, a PTC may be allowed for the Exchange coverage of the related individuals, irrespective of whether the ICHRA is considered affordable under §1.36B-2(c)(5), or whether the employee opts out of the ICHRA. However, if the ICHRA offer includes reimbursements of the medical expenses of related HRA individuals, a PTC is generally not allowed for the Exchange coverage of the employee or the related HRA individuals if the ICHRA offer is affordable or if the employee does not opt out of the ICHRA. This is because an ICHRA is an eligible employer-sponsored plan under section 5000A(f)(2) and, therefore, under section 36B(c)(2)(C), if the coverage is affordable and provides minimum value, a PTC is generally not allowed for the Exchange coverage of an individual to whom the ICHRA offer extends or who does not opt out of the ICHRA. Consequently, this rule relating to offers of employer coverage in section 36B(c)(2)(C) cannot be amended by regulation. However, as noted in connection with the prior comment concerning ICHRAs, the Treasury Department and the IRS, in coordination with HHS and DOL, will consider whether future guidance should be issued to provide an ICHRA affordability rule for related individuals that is separate from the affordability rule for employees.

F. *Minimum value*

1. Minimum value rule for related individuals

The proposed regulations provided that an employer plan meets the minimum value requirement for related individuals if the plan's share of the total allowed costs of benefits provided to related individuals is at least 60 percent, similar to the minimum value requirement for employees. One commenter requested that the final regulations include a minimum value safe harbor rule under which an employer plan is considered to provide minimum value to related individuals if the coverage provided to employees under the plan meets minimum value requirements and the same benefits are provided to employees and family members. Other commenters recommended that the final regulations allow for the calculation of minimum value using a standard population that includes both employees and dependents to calculate a single, composite, minimum value for an employee and dependents, and that separate populations not be required for coverage provided to employees and coverage provided to related individuals.

As in the proposed regulations, the final regulations provide a minimum value rule for related individuals that is separate from the minimum value rule for employees, and that requires a plan's share of the total allowed costs of benefits provided to related individuals to be at least 60 percent. This minimum value rule for related individuals is not intended to require the use of a standard population for family members that is separate from the standard population for employees. Rather, the intent of the rule is to ensure that employers continue to provide a plan that has the same benefit design for employees and related individuals, and not to burden employers with having to offer different benefit packages for employees and related individuals. Consequently, the final regulations include a rule providing that an employer plan that provides minimum value to an employee also provides minimum value to related individuals if the scope of benefits and cost sharing (including deductibles, co-payments, coinsurance, and out-of-pocket maximums) under the plan are the same for employees and family members. If cost sharing varies based on whether related individuals are enrolled and/or the number of related individuals enrolled (that is, the tier of coverage), minimum value for related individuals is based on the tier of coverage that would, if elected, cover the employee and all related individuals (disregarding any differences in deductibles or out-of-pocket maximums that are attributable to a different tier of coverage, such as self plus one versus family coverage.) In addition, the final regulations do not require a departure from the practice of computing minimum value for employees and related individuals based on the provision of benefits to a standard population that includes both employees and related individuals.

2. Require coverage of all essential health benefits

The proposed regulations provided that, to be considered to provide minimum value, an eligible employer-sponsored plan must include substantial coverage of inpatient hospital services and physician services. One commenter asked that final regulations provide that an employer plan does not meet the minimum value requirements unless it provides coverage of all 10 essential health benefits that, under the ACA, certain plans must cover, not just inpatient hospital services and physician services. This comment requesting an expansion of the minimum value rule is outside the scope of these final regulations. Thus, as in the proposed regulations, the final regulations provide that an eligible employer-sponsored plan does not meet minimum value requirements unless it includes substantial coverage of inpatient hospital services and physician services.

3. Minimum value calculator

Under 45 CFR 156.145(a)(1), a minimum value calculator is to be made available by HHS and the IRS that an employer plan may use to determine whether the percentage of total allowed costs under the plan is at least 60 percent. Several commenters requested that the minimum value calculator be updated to reflect more current large group data and to incorporate appropriate model changes that have been made to the actuarial value calculator.[43] Although the commenters' request concerning the minimum value calculator is outside the scope of the final regulations, the Treasury Department and the IRS have shared these comments with HHS to determine the best way to address these comments relating to the calculator.

G. *Applicability date of final regulations*

The proposed regulations provided that the changes to §§1.36B-2, 1.36B-3, and 1.36B-6(a)(2) in the proposed regulations, if finalized, were expected to apply for taxable years beginning after December 31, 2022. Several commenters requested instead that the final regulations apply for taxable years beginning after December 31, 2023. These commenters expressed concern that taxpayers will be faced with a number of health care-related changes in 2022, including the end of the temporary applicable percentages for 2021 and 2022 in section 36B(b)(3)(A)(iii) that increased PTC amounts.[44] Commenters also noted that at the end of the COVID-19 public health emergency, states will no longer be required to comply with a Medicaid continuous enrollment requirement in order to receive a temporary increase in Federal Medicaid matching funds under the Families First Coronavirus Response Act. The commenters stated that these changes, along with the changes in the proposed regulations, will result in much uncertainty for QHP enrollees for the open enrollment period that begins on November 1, 2022, and will lead to substantial confusion for QHP enrollees and likely inaccurate APTC determinations by Exchanges.

Although the commenters' concerns are appreciated, the Treasury Department and the IRS are of the view that those concerns are outweighed by the goal of allowing spouses and dependents, some of whom have been negatively affected by the 2013 affordability rule, to be able to access affordable Exchange coverage beginning in the 2023 plan year. For this reason, many commenters urged the Treasury Department and the IRS to implement the changes to the affordability rule for related individuals in time for QHP open enrollment for the 2023 plan year. Although 2023 QHP enrollment may present some new challenges, as discussed more fully in section IV of this Summary of Comments and Explanation of Revisions, HHS has informed the Treasury Department and the IRS that HHS will engage in thorough implementation efforts, including revising the Exchange application and providing resources and technical assistance education for State Exchanges, Navigators, agents, brokers, and other assisters to help enrollees understand their options for 2023. In addition, the IRS will be making changes to its forms, instructions, publications, and website, in an effort to educate taxpayers about any changes for the 2023 plan year. Therefore, the Treasury Department and the IRS do not adopt the commenters' request that the applicability date of the final regulations be delayed until taxable years beginning after December 31, 2023. Instead, the final regulations apply for taxable years beginning after December 31, 2022.

Another commenter urged that the Treasury Department and the IRS consider the effective date implications of this rule for the State Innovation Waiver program under section 1332 of the ACA (section 1332 waivers). The commenter requested that the Administration consider the implications of the final regulations on states with approved section 1332 waivers and, if necessary, identify a plan to mitigate potential harm to accessing affordable coverage for individuals. For

[43] Under 45 CFR 156.135, HHS is responsible for developing and updating an actuarial value calculator that issuers may use to determine the actuarial value of a health plan.

[44] Under section 12001 of the IRA, the temporary applicable percentages for 2021 and 2022 in section 36B(b)(3)(A)(iii) were extended through 2025 so taxpayers will not see a change in their PTC amount due to the potential policy change described by commenters.

example, the commenter expressed concern that states would need to develop and update actuarial analyses for section 1332 waivers and that there would be an impact on states leveraging Federal pass-through funding under section 1332 waivers, mostly through reinsurance programs, given that the proposed regulations would modify who is eligible for the PTC and APTC. The commenter also was concerned that there may be implications for states exploring other innovative opportunities, such as public health insurance options that enhance affordable options by leveraging section 1332 Federal pass-through funding.

The section 1332 waiver program permits states to apply to waive certain provisions of the ACA, including section 36B of the Code, to undertake their own state-specific reforms to provide residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA. A state applying for a section 1332 waiver must include in its application actuarial and economic analyses that demonstrate that the waiver proposal meets the statutory requirements for section 1332 waivers.[45,46] If a waiver yields Federal savings on certain forms of Federal financial assistance under the ACA (such as the PTC), those savings are passed through to the state to help implement the state's approved waiver plan. Federal pass-through funding amounts are calculated annually by the Treasury Department and HHS. Pass-through amounts reflect current law and policy at the time of the calculation but can be updated, as necessary, to reflect applicable changes in Federal or state law.[47] The Treasury Department plans to work with HHS to communicate any implications of these final regulations, including any associated requirements for states, to affected stakeholders and to states that have approved section 1332 waivers or that are considering section 1332 waivers. The Treasury Department and the IRS recognize that the final regulations may affect states in different ways but believe that any negative effects related to the effective date are outweighed by the goal, supported by numerous commenters, of allowing more spouses and dependents to be able to access affordable Exchange coverage beginning in 2023. The Treasury Department and the IRS also note that further innovation under section 1332 of the ACA is speculative, and that, in any event, section 1332 waiver policies are outside the scope of these regulations.

V. *Comments regarding outreach*

Several commenters requested that HHS, the Treasury Department, and the IRS provide clear resources aimed at helping various individuals and employers. Many of the commenters who requested that HHS, the Treasury Department, and the IRS provide outreach about the new rules were concerned about families understanding the trade-offs if they are considering "split coverage," meaning that the employee would enroll in employer coverage and the family members would enroll in Exchange coverage. Some commenters noted that split coverage could lead to lower premiums for the family or could lead to uninsured individuals gaining coverage. Those commenters also noted, however, that some families with split coverage will need to contend with different provider networks, deductibles, out-of-pocket limits, open enrollment periods, appeals and grievance procedures, and other parameters unique to their different health plans. Another commenter added that for some families, moving family members from employer coverage to Exchange coverage could mean lower HRA or health savings account contributions from employers. One commenter stated that confusion about split coverage could present particular difficulties for those with limited English proficiency or lower rates of health literacy.

The commenters who raised these concerns all supported the affordability rule for related individuals provided in the proposed regulations, but requested that the Treasury Department and the IRS work with HHS to help ensure that families who choose to enroll in split coverage will benefit from doing so. One commenter stated that families considering whether to enroll in Exchange coverage with a PTC in lieu of enrolling in employer coverage would greatly benefit from resources and guidance that help them make an informed purchasing decision. That commenter urged the Treasury Department and the IRS to work with HHS on how to best communicate that information in an accessible fashion to consumers both generally and as part of the Exchange application. Finally, one commenter noted that numerous studies show there is a correlation between advertising about the ACA and an increase in individuals shopping for, and enrolling in, Exchange coverage. Thus, that commenter suggested that the IRS and HHS should reinvigorate efforts to educate the American public about Exchange open enrollment (Open Enrollment), specifically focusing on this change to the affordability rule for related individuals.

The Treasury Department and the IRS understand that the new affordability rule in these final regulations will present families with additional coverage options they will need to understand, evaluate, and compare to determine the type of coverage that is best for them. The Treasury Department and the IRS have been working with HHS, and will continue to work with HHS, to ensure that the agencies communicate information about the new rules in an accessible fashion to individuals both generally and as part of the Exchange application. Specifically, HHS has informed the Treasury Department and the IRS that HHS will work to revise the Exchange application on HealthCare.gov in advance of Open Enrollment for the 2023 plan year to include new information that will assist consumers in filling out their applications. Those revisions will include (1) new questions on the application about employer coverage offers for family members, and (2) revised materials for consumers to gather information from their employer about the coverage being offered. To assist those with limited English proficiency, HealthCare.gov offers language services upon request through the Marketplace Call Center, and

[45] *See* 31 CFR 33.108(f)(4)(i) and (ii); 45 CFR 155.1308(f)(4)(i) and (ii).
[46] Section 1332(b)(1)(A)-(D) of the ACA.
[47] 31 CFR 33.122 and 45 CFR 155.1322.

the HealthCare.gov application is available in both English and Spanish.

The Treasury Department and the IRS also understand that HHS will provide resources and technical assistance to State Exchanges that will need to make similar changes on their websites and Exchange application experiences. More generally, HHS is working regularly with State Exchanges to provide technical assistance on implementation of the new rules. HHS continues to track State Exchange planning and take all necessary steps to support efforts by State Exchanges to implement the new rules, with necessary outreach and education efforts, for Open Enrollment for the 2023 plan year.

In addition, the Treasury Department and the IRS understand that HHS will provide training on the new rules to agents, brokers, and other assisters (for example, Navigators) so applicants will better understand their options before enrolling, including the trade-offs if applicants are considering split coverage. This training is particularly important because over half of the applicants who apply for Exchange coverage through HealthCare.gov are assisted by an agent, broker, or other assister. HHS also will share available resources with State Exchanges to leverage for use in training customer support personnel in their states.

Finally, HHS has informed the Treasury Department and the IRS that HHS is considering outreach to specific consumers. HHS has data from prior years on applicants who applied through a Federally-facilitated Exchange, were denied APTC at enrollment, and might benefit from the new rules. HHS is evaluating opportunities for direct outreach to these individuals.

The IRS also will need to implement the new rules for the 2023 taxable year. In particular, the IRS will update relevant forms, instructions, and publications prior to the tax filing season for 2023, to include the instructions for Form 8962 and Publication 974. In addition, the IRS will update relevant materials on IRS.gov to provide taxpayers with additional information about the new rules.

In addition to the commenters requesting that HHS, the Treasury Department, and the IRS provide outreach to individuals, a few commenters provided specific recommendations related to employers. One commenter stated that employers are thinking about ways to educate employees affected by this new change but suggested that resources be made available from HHS, the Treasury Department, and the IRS that could be shared with employees. One commenter suggested that the Treasury Department, in coordination with HHS and the U.S. Department of Labor, issue tri-agency guidance and consumer-friendly resources to help employees navigate challenges that arise from split coverage. One commenter stated that the Treasury Department and the IRS should require employers to provide notification to their employees about the new affordability test, including information about Exchange coverage, the availability of financial assistance, and how an individual may enroll in coverage. The commenter also recommended that the Treasury Department and the IRS invite stakeholder feedback on a draft of a model notice that employers could share with employees. Finally, one commenter stated that the new rules will create new requirements for plan sponsors and administrators to ensure compliance with the rules and recommended that the Treasury Department and the IRS issue a Request for Information to better understand the recordkeeping and compliance needs of stakeholders who will be affected by the final rule.

The Treasury Department and the IRS appreciate that employers are interested in providing information to their employees about the new rules and encourage employers to provide employees with resources published by DOL, HHS, the Treasury Department, and the IRS relating to the new rules. Regarding the suggestion to impose a notification requirement on employers, such a requirement is outside the scope of section 36B and these final regulations. Thus, the Treasury Department and the IRS cannot impose a notification requirement on employers through these final regulations. In addition, the Treasury Department does not intend to issue formal tri-agency guidance with HHS and DOL or publish a model notice. However, the agencies understand the need to provide clear, consumer-friendly resources that can be accessed by individuals in various ways, including through employers who want to provide those resources directly to employees. Therefore, the Treasury Department and the IRS, in coordination with HHS and DOL, will work to ensure that outreach materials about these final regulations can be accessed by individuals or by employers who choose to share the materials with their employees. In addition, the agencies plan to coordinate in conducting open door forums with employers, employer associations, and employee benefits managers to educate them about the new rules.

As noted earlier, one commenter stated that the new rules will create new recordkeeping and compliance requirements for plan sponsors and administrators. However, nothing in the proposed rules specifically imposed any new requirements on plan sponsors or administrators and any such requirements would be outside the scope of section 36B. In addition, as discussed later, the new rules in these final regulations do not create, even indirectly, any new recordkeeping or compliance requirements for plan sponsors or administrators.

VI. *Issues for employers*

A. *Information reporting*

Multiple commenters pointed out that the proposed regulations did not address whether the regulations would impose new information reporting obligations on employers and other providers of minimum essential coverage under sections 6055 and 6056. Section 6055 requires providers of minimum essential coverage to report coverage information by filing information returns with the IRS and furnishing statements to individuals. Section 6056 requires ALEs to file information returns with the IRS and furnish statements to full-time employees relating to health coverage offered by an ALE to its full-time employees and their dependents. Some commenters noted that the composition of an employee's tax family is not readily ascertainable by an employer, no employer collects the type of information that would allow them to make determinations about the employment status and health coverage of family members, and this data would be costly and burdensome to collect and report.

The Treasury Department and the IRS clarify that nothing in these final regulations affects any information reporting requirements for employers, including the reporting required under sections 6055 and 6056, which is done on Form 1095-B, *Health Coverage*, and Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*, respectively. Further, these final regulations do not amend the regulations under section 6055 or 6056, and the IRS does not intend to revise Form 1095-B or Form 1095-C to require any additional data elements related to the new rules. Additionally, the safe harbors that an employer may use to determine affordability for purposes of the employer shared responsibility provisions under section 4980H continue to be available for employers.

B. *Non-calendar year plans*

One commenter expressed concern about how the affordability rule for related individuals would affect family members enrolled in non-calendar year employer plans, especially individuals enrolled in employer coverage through section 125 cafeteria plans (cafeteria plans). The commenter noted that under current rules, spouses and dependents of employees cannot, without a qualifying event, discontinue their employer coverage during a plan year if the employee has elected under the cafeteria plan to cover the spouse or dependent under the employer plan[48]. Thus, under current rules, if as of January 1, 2023, a spouse or dependent enrolled in a non-calendar year employer plan through a cafeteria plan wants to enroll in a QHP as of that date, no PTC would be allowed for the period from January 1, 2023, until the close of the employer plan year in 2023 because the spouse and dependents would have to continue their enrollment in the employer plan. The commenter opined that, because of this issue, the Treasury Department and the IRS should consider making the final regulations effective beginning in 2024 rather than 2023.

Spouses and dependents enrolled in non-calendar year employer plans not associated with cafeteria plans may, subject to the plan rules, disenroll from the employer plan effective on January 1, 2023, and enroll in a QHP with coverage beginning on January 1, 2023. In that situation, a PTC would be allowed for the Exchange coverage of the spouse and dependents if the requirements for a PTC are met, including that the employer plan is not affordable for the spouse and dependents under the rules in §1.36B-2(c)(3)(v)(A). The rules in §1.36B-2(c)(3)(v)(B) apply in determining whether the employer plan is affordable for the spouse and dependents for the period from January 1, 2023, until the end of the plan year.

For employer plans associated with cafeteria plans, the Treasury Department and the IRS agree with the commenter that, as with employees, spouses and dependents should be able to discontinue their employer coverage during a plan year and enroll in a QHP, and that a PTC should be allowed for their Exchange coverage if the other requirements of section 36B are met. Consequently, simultaneous with the issuance of these final regulations, Notice 2022-41 is being issued to allow employees to revoke coverage in an employer plan associated with a cafeteria plan for family members to allow them to enroll in a QHP.[49] The notice is effective for elections that are effective on or after January 1, 2023. Thus, because employees will be permitted under the notice to revoke coverage in an employer plan associated with a cafeteria plan beginning in 2023, the issuance of the notice addresses the commenter's concern about the effective date of the final regulations.

C. *Section 4980H liability*

One commenter that supported the proposed regulations noted in a footnote that the proposed regulations would not have a direct effect on an ALE's liability for an employer shared responsibility payment with respect to the employees of that ALE. The Treasury Department and the IRS agree with that comment; the employer shared responsibility payment is triggered by the allowance of a PTC with respect to a full-time employee of the ALE. These final regulations may affect a related individual's eligibility for a PTC, but they do not affect an employee's eligibility for a PTC, and thus these final regulations do not affect the liability of the ALE of the employee.

The commenter also noted that the proposed regulations could have an indirect impact on an ALE's liability for an employer shared responsibility payment. That is, an ALE that does not offer affordable, minimum value coverage to some of its full-time employees could have an increase in its payment under section 4980H for full-time employees who were previously ineligible for a PTC based on an offer of coverage from their spouse's employer. The commenter did not request any change in the proposed regulations, but merely noted this scenario. Certainly, an ALE that has chosen not to offer affordable, minimum value coverage to the requisite number of its full-time employees may have a potential liability for a payment under section 4980H – a risk that the ALE knowingly accepts. Whenever more employees of such an ALE are allowed a PTC, for any reason, the ALE's liability may grow. The Treasury Department and the IRS have considered the interests such an employer might have in retaining the affordability rule in the 2013 regulations, but do not believe that any such ALE would have a meaningful reliance interest in the 2013 affordability rule. Such an ALE is already risking liability under section 4980H due to its failure to offer affordable self-only coverage to its employees, and has avoided or limited that liability solely through the happenstance that one or more of its employees has received an offer of coverage through a family member that the 2013 affordability rule deemed to be affordable. After careful consideration of this potential interest and broader policy considerations, the Treasury Department and the IRS are adopting these final rules to give full effect to the statutory language

[48] Although current cafeteria plan rules generally prohibit employees, spouses, and dependents from discontinuing their employer coverage during a plan year, Notice 2014-55, 2014-41 I.R.B. 672, permits a cafeteria plan to allow an employee to revoke his or her election under the cafeteria plan for coverage under the employer plan if certain conditions are met. The notice does not allow an employee to revoke an election solely for coverage of the employee's spouse or dependents under the employer plan.

[49] Employees who revoke coverage in an employer plan associated with a cafeteria plan for themselves or for family members will be eligible for a Special Enrollment Period to enroll in a QHP if a family member becomes newly eligible for APTC. *See* 45 CFR 155.420(d)(6)(iii).

and to promote the ACA's goal of providing affordable, quality health care for all Americans.

VII. *Procedural Requirements for Regulations and Cost of New Rules*

A few commenters argued that the proposed affordability rule for related individuals would be too costly, producing an inefficient use of Federal resources. These commenters all cited a report from the CBO estimating the costs of H.R. 1425, introduced during the 116th Congress, which included provisions that would have amended section 36B to provide an affordability rule for related individuals similar to the one in the proposed regulations. *See* section 103 of H.R. 1425. According to the CBO analysis, that provision would have increased Federal deficits by $45 billion over ten years.[50]

The Treasury Department and the IRS acknowledge that multiple analyses have been undertaken since 2013 that analyze the impact of the 2013 interpretation and estimate any impact of changing the policy of the affordability rule. These analyses consider several aspects of the policy change, including the estimated impact on the Federal deficit, the change in individuals' health coverage status, and the estimated increase in PTC. The Treasury Department and the IRS reviewed the CBO analysis of H.R. 1425, more recent CBO analyses, and other studies that were cited by commenters. In addition to the CBO analysis referred to by commenters, CBO has released an updated analysis estimating that the proposed affordability rule for related individuals, if finalized, would increase the deficit by approximately $3.4 billion annually on average.[51] Further, the Treasury Department analysis indicates a potential increase in the Federal deficit by an average of $3.8 billion per year over the next 10 years. These analyses are discussed in section III of this Summary of Comments and Explanation of Revisions. However, the Treasury Department and the IRS disagree that the benefits of the policy change are insufficient to justify the impact on the Federal deficit. As discussed in section III, these studies consistently project an increase in coverage and affordability for a substantial number of individuals. The Treasury Department and the IRS have determined that adding to the Federal deficit to this extent is a worthwhile tradeoff to achieve these policy goals.

Some of those commenters also criticized the Treasury Department and the IRS for not including specific cost estimates in the preamble to the proposed regulations. One commenter argued that the failure to include a cost-benefit analysis in the proposed affordability rule for related individuals violates the Administrative Procedure Act[52] because it deprives the public of an opportunity for meaningful notice and comment and demonstrates the lack of a reasoned explanation for the rule change.

The Treasury Department and the IRS have provided analysis in accord with the 2018 Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (OMB) (2018 MOA),[53] which specifies that the Treasury Department and the IRS will provide qualitative analysis of the potential costs and benefits of tax regulatory actions determined to raise novel legal or policy issues, as described in section 6(a)(3)(B) of EO 12866.

Another commenter asserted that the Treasury Department and the IRS did not provide the analyses required by EO 12866, EO 13563, and the Regulatory Flexibility Act when it issued the proposed regulations. EOs 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits to the American public. The Regulatory Flexibility Act requires the assessment of the numbers of small businesses potentially impacted by the proposed rule. The commenter argued that the analysis contained in the proposed rule lacks quantifiable data and thus is inadequate to satisfy the procedural requirements in EO 12866, EO 13563, and the Regulatory Flexibility Act.

The commenter first argued that the Treasury Department and the IRS failed to satisfy the requirements of EOs 12866 and 13563 because they did not provide a reasoned explanation of the need for regulatory action or an assessment of the costs and benefits of all alternatives. The commenter stated that studies or surveys should have been conducted to assess a more precise number of persons impacted and that the Treasury Department and the IRS failed to quantify the costs of the proposed rule. The commenter asserted that the Treasury Department and the IRS are required to conduct research and assess the costs of all the regulatory alternatives, including the alternative of no action.

The Treasury Department and the IRS disagree. The preamble to the proposed regulations provided a detailed qualitative analysis of the proposed rule's benefits, costs, and transfers. In addition, the Treasury Department and the IRS requested comments regarding data, other evidence, or models. In response to comments, the Special Analyses section of this preamble includes further explanation of the qualitative analysis used by the Treasury Department and the IRS. This analysis meets the requirements of EOs 12866 and 13563 applicable to tax regulatory actions and was issued after coordination with and review by OMB under the 2018 MOA.

As noted by the commenter, the Regulatory Flexibility Act generally requires the assessment of the numbers of small businesses potentially impacted by a proposed rule. However, section 605 of the Regulatory Flexibility Act provides an exception under which an assessment is not required if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the exception applies, the agency must publish the certification in the Federal Register at the time of publication of the proposed rule, along with a statement providing the factual basis for such certification. The agency also must provide the certification and statement

[50] https://www.cbo.gov/system/files/2020-06/Combined%20Tables.pdf.

[51] https://www.cbo.gov/system/files?file=2022-07/58313-Crapo_letter.pdf.

[52] 5 U.S.C. 551-559.

[53] The Department of the Treasury and the Office of Management and Budget, Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866, April 11, 2018, https://home.treasury.gov/sites/default/files/2018-04/04-11%20Signed%20Treasury%20OIRA%20MOA.pdf.

to the Chief Counsel for Advocacy of the Small Business Administration.

In the preamble to the proposed regulations, the Treasury Department and the IRS certified that the proposed regulations would not have a significant economic effect on a substantial number of small entities. The preamble stated that the certification is based on the fact that the majority of the effect of the proposed regulations falls on individual taxpayers, and that entities will experience only small changes. The preamble further noted that the proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business. Thus, the Treasury Department and the IRS fully complied with the Regulatory Flexibility Act in promulgating the proposed regulations. Further, the Treasury Department and the IRS did not receive any comments from the Small Business Administration regarding the proposed rule's impact on small business. Accordingly, as stated in the Special Analyses section of this preamble, the Treasury Department and the IRS certify that, as with the proposed regulations, these final regulations will not have a significant economic impact on a substantial number of small entities.

VIII. *Effect of New Rules on Other Stakeholders*

A. *Effect of new rules on insurance markets*

Several commenters opined that the affordability rule for related individuals provided in the proposed regulations will have an adverse effect on the employer insurance market. In the view of the commenters, one result of changing the affordability rule for related individuals will be that a substantial number of dependents of employees, who are generally younger and healthier than the employees, will shift from employer plans to Exchange coverage. The commenters stated that this shifting of younger, healthier individuals from employer plans to Exchange coverage will result in increased premiums for employer plans. One commenter, however, opined that it is unlikely that the magnitude of the impact on premiums for employer plans would be large. Some commenters pointed out that the shift also will result in decreased premiums for Exchange coverage, but one commenter asserted that the potential impact on the individual market is likely to be minor. Finally, a few commenters expressed concern that the affordability rule for related individuals will cause employers to discontinue or reduce insurance contributions for the coverage of related individuals. One commenter also mentioned this concern but opined that relatively few employers would take this approach.

The Treasury Department and the IRS do not expect the affordability rule will have a meaningful effect on average premiums for employer plans. Overall, the aggregate amount that employers spend on family coverage is expected to decrease by a small amount because some individuals who would otherwise enroll in employer coverage will prefer to enroll in Exchange coverage with a PTC. Commenters are correct that individuals enrolled in Exchange coverage and individuals enrolled in employer coverage have, on average, different levels of morbidity. However, the Treasury Department and the IRS do not expect that the morbidity of the marginal individual – rather than average individual – is significantly different such that there would be large effects on premiums. In some cases, individuals who would have otherwise enrolled in employer plans may have higher than average costs while in other cases those individuals will have lower than average costs. Furthermore, the number of individuals who are expected to switch plans based on this affordability rule will be modest relative to the over 170 million individuals enrolled in employer health plans. As a result, the net effect on employer premiums – if any – is likely to be negligible.

Because the rule is not expected to have a meaningful impact on premiums for employer coverage, the Treasury Department and the IRS disagree that changes in morbidity would result in employers discontinuing coverage or reducing their contributions to that coverage. Additionally, there are several reasons the Treasury Department and the IRS expect that employers will continue to have strong incentives to offer family coverage. The exclusion of employer coverage from taxable income encourages employers to compensate employees with (and increases employees' demand for) generous health coverage in lieu of taxable wages. In addition, employers face competitive pressure to offer generous family coverage to their employees at a relatively low cost. Employers who reduce their contributions for family coverage may find it difficult to recruit or retain employees. Thus, competitive forces in the labor market will discourage employers from reducing contributions.

B. *Effect of new rules on individuals*

Some commenters asserted that the proposed affordability rule for related individuals would harm individuals and families in various ways. In particular, commenters argued that individuals and families would face increased complexity as they navigate multiple plan choices, including the choice to enroll in "split coverage" in which the employee with an affordable offer enrolls in self-only employer coverage and the employee's family members separately enroll in Exchange coverage. Some commenters asserted that the shift to Exchange coverage caused by the proposed rule would be a poor trade-off for individuals and would harm individuals because Exchange coverage in general provides coverage that is inferior to and less generous than employer plans. These commenters asserted, for example, that Exchange coverage may be less expensive than an available employer plan but provide significantly higher deductibles, narrower networks, or lower actuarial value than the available employer plan.

The Treasury Department and the IRS are of the view that providing individuals and families with more choices for health coverage is a positive aspect of the new affordability rule, especially if those additional choices include options for more affordable coverage. The new affordability rule for related individuals does not change the availability of any current coverage options for individuals, nor does it change any aspect of those coverage options. Specifically, family members of employees for whom a PTC may now be allowed as a result of the new affordability rule are free to retain their current coverage, or continue to go without coverage, based on their particular circumstances. Because the coverage decision is voluntary, families who would have enrolled in employer coverage will likely enroll in the Exchange if they expect the benefit of split coverage exceeds the monetary or other cost. As detailed in the Special Analyses section of this preamble, the Treasury Department and the IRS expect that only a limited number of families – relative to the population enrolled in employer coverage and relative to those newly eligible for the PTC – will choose to shift their coverage. Only family members for whom it is advantageous, based on their personal and family circumstances, will choose to shift their coverage.

Further, the Treasury Department and the IRS disagree with commenters who suggest that Exchange coverage is necessarily inferior to employer plans. The cost and quality of employer coverage compared to Exchange coverage will depend on what plans are available to the family and the family's particular circumstances. The Treasury Department and the IRS agree, however, that individuals and families could face new, more complex choices under the new rules as they navigate multiple plan choices, including the choice to enroll in split coverage. Individuals and families will need to assess their current situation and determine whether they want to enroll family members in Exchange coverage with a PTC or in an available employer plan. In comparing their options, these families will need to consider the factors noted by the commenters, including the cost of premiums, the amount of deductibles, the available networks, and the actuarial value of the plans, as well as the various trade-offs if the family is considering split coverage. The Treasury Department and the IRS understand these concerns and are working closely with HHS to ensure that individuals and families have clear and accurate information about the new rules so they can make informed decisions about their health coverage and choose their optimal health coverage. Accordingly, as further explained in section V of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have been working with HHS, and will continue to work with HHS, to ensure that information about the new rules is provided in an accessible fashion to individuals both generally and as part of the Exchange application. In addition, HHS, the Treasury Department, and the IRS encourage individuals to work with agents, brokers, and other assisters when applying for Exchange coverage, whether applying through an Exchange using the Federal eligibility and enrollment platform or a State Exchange using its own platform. Those agents, brokers, and other assisters can help families understand their health coverage options and help them determine which option will best meet their particular needs. The Treasury Department and the IRS also encourage employers to provide employees with resources published by HHS, the Treasury Department, and the IRS relating to the new rules.

C. *Effect of new rules on states*

A few commenters asserted that states will face adverse consequences because family members who seek Exchange coverage under the new affordability rule for related individuals may find instead that they qualify for Medicaid or the Children's Health Insurance Program (CHIP). The commenters asserted that people may switch from employer coverage, where states bear no cost, to public programs, the most significant items on state budgets, which will impose new burdens on states. Some of these commenters stated that the new affordability rule will increase costs on state Medicaid programs by increasing the number of people who apply for coverage through the Exchange and then enroll in Medicaid. These commenters cited an analysis by the Urban Institute estimating that 90,000 family members—mainly children—would newly enroll in Medicaid or CHIP owing to their parents seeking Exchange coverage.[54] The Treasury Department and the IRS did not receive comments from any states expressing concern about potential adverse consequences.

As an initial matter, the Treasury Department and the IRS note that Congressional legislation established the Medicaid and CHIP programs prior to, and independent of, the ACA and these final regulations. States have knowingly and consistently elected to participate in the Medicaid and CHIP programs since these programs were adopted. These final regulations have no effect on the Federal standards for those programs, nor do they affect how states determine eligibility for enrollment in their Medicaid or CHIP programs.[55] The Federal government provides the majority of the funding for State Medicaid and CHIP programs. (The exact share varies based on factors such as the state's economic characteristics and the types of beneficiaries who enroll.) In general, states pay no more than half of the costs of additional children who enroll in these programs. Additionally, per capita costs to insure children in these programs are substantially lower than costs for adults.

In addition, despite the commenters' assertions that the final regulations will increase costs to states by increasing enrollment in state programs, the Treasury Department and the IRS view these effects as highly uncertain. Any changes in Medicaid or CHIP enrollment would be second-order effects that would not stem from changes in Medicaid or CHIP eligibility. Although it is possible the rule may indirectly lead to higher state Medicaid or CHIP spending, there are other factors that will reduce costs for state and local governments. In particular, the analysis cited by the commenters finds that over 75 percent of states' higher Medicaid and CHIP costs will be offset by less spending on uncompensated care for the uninsured. The study projects the potential "tiny" increase in state spending would also be at least partially offset by additional tax revenue.[56] Because employers are assumed to hold total compensation constant,

[54] *See* Changing the "Family Glitch" Would Make Health Coverage More Affordable for Many Families | Urban Institute.

[55] Although the Federal government imposes certain mandatory coverage requirements, states primarily determine eligibility standards for these programs. *See* https://crsreports.congress.gov/product/pdf/R/R43357/16 and https://crsreports.congress.gov/product/pdf/R/R43949/19.

[56] *See* https://www.urban.org/sites/default/files/publication/104223/changing-the-family-glitch-would-make-health-coverage-more-affordable-for-many-families_1.pdf at pg. 12

the Federal government is projected to receive more tax revenue as employers shift compensation from health coverage towards taxable wages; states may receive more tax revenue for the same reason. The combined effect of increased state tax revenue and decreased spending on uncompensated care may completely offset any increase in Medicaid spending. Research has shown that Medicaid expansions under the ACA increased hospital revenue and reduced spending on locally-funded safety net programs, and it is likely that any increase in enrollment in Medicaid and CHIP enrollment that indirectly arises from the rule would have similar effects.[57] Over the long-term, Medicaid and CHIP beneficiaries may also have higher earnings and pay more in taxes.[58] Although it is difficult to quantify the combined effect of these factors on state and local budgets, the Treasury Department and the IRS expect any net impact (whether positive or negative) to be small relative to states' total Medicaid spending.[59]

One commenter asserted that Medicaid and CHIP are associated with narrow networks of medical providers, making it harder for families to find pediatricians and other primary care physicians, dentists, and medical specialists. The Treasury Department and the IRS again note that the final regulations do not require individuals to enroll in any particular type of coverage. Family members who currently are enrolled in an employer plan and are determined eligible for Medicaid or CHIP when they apply for Exchange coverage are not required to leave the employer plan and enroll in Medicaid or CHIP. These family members always have a choice to stay in the employer plan if they prefer the network of medical providers or other aspects of the employer plan to what is provided under Medicaid or CHIP.

IX. *Comments Exceeding Scope of Final Regulations*

A number of commenters submitted comments on matters not within the purview of the Treasury Department and the IRS. For example, several commenters suggested that the U.S. adopt a Medicare-for-all style of health coverage or offer universal health coverage in a manner similar to the health coverage provided by other countries. Other commenters requested that coverage rules be changed so that children over age 25 could remain enrolled on a parent's health insurance policies, while others recommended that health care providers be required to accept Medicare and Medicaid insurance. These comments are outside the scope of matters handled by the Treasury Department and the IRS and thus are not addressed in the final regulations.

X. *Severability*

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

EOs 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated as subject to review under EO 12866 pursuant to the 2018 MOA between the Treasury Department and OMB regarding review of tax regulations.

A. *Background*

1. Affordability of employer coverage for family members of an employee

As noted earlier in this preamble, section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that the taxpayer or one or more family members is enrolled in a QHP for one or more months in which they are not eligible for other MEC. However, an individual who is eligible to enroll in employer coverage, but chooses not to, is not considered eligible for the employer coverage if it is "unaffordable." Section 36B defines employer coverage as unaffordable for an employee if the employee's share of the self-only premium is more than 9.5 percent of the employee's household income.

Section 1.36B-2(c)(3)(v)(A)(*2*) provides that affordability of employer coverage for each related individual of the employee is determined by the cost of self-only coverage. Thus, the employee and any related individuals included in the employee's family, within the meaning of §1.36B-1(d), are eligible for MEC and are ineligible for the PTC if (1) the plan provides minimum value and (2) the employee's share of the self-only coverage is not more than 9.5 percent of household income (that is, the self-only coverage for the employee is "affordable").

2. Description of the final regulations

The final regulations revise §1.36B-2(c)(3)(v)(A)(*2*) to provide a separate affordability test for related individuals based on the cost to the employee of family coverage. The final regulations do not change the affordability test for the employee. When a family applies for Exchange coverage, the Exchange will ask for information concerning which of the family members are offered coverage by their own employer, and the family members to whom the employer's coverage offer extends. When an applicant for whom APTC is otherwise allowed

[57] https://www.aeaweb.org/articles?id=10.1257/pol.20190279.

[58] https://academic.oup.com/restud/article/87/2/792/5538992?login=false.

[59] For context, as of May 2022, there were nearly 89 million individuals enrolled in Medicaid or CHIP. The change of 90,000 people predicted by the Urban Institute analysis is a change of 0.1 percent. *See* https://www.medicaid.gov/medicaid/national-medicaid-chip-program-information/downloads/may-2022-medicaid-chip-enrollment-trend-snapshot.pdf.

indicates that their employer offers them coverage, the Exchange will ask for the premium for self-only coverage for the applicant and make an affordability determination for the applicant on that basis. When an applicant for whom APTC is otherwise allowed indicates an offer of coverage through an employer of another family member, the Exchange will ask for the premium for family coverage and make an affordability determination for the applicant on that basis. It is therefore possible that family members would be eligible for APTC but the employee would not. In this case, if the entire family chooses to enroll in Exchange coverage with APTC, the APTC would be paid only for coverage of the employee's family members but would not be paid for coverage of the employee.

B. *Baseline*

The Treasury Department and the IRS have assessed the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. *Affected entities*

Some families with an offer of employer coverage to the employee and at least one other family member would be newly eligible for the PTC for the Exchange coverage of the non-employee family members. The final regulations will have no effect on families for whom self-only employer coverage costs more than 9.5 percent of household income – as family coverage is more expensive than self-only coverage – because the affordability status of their employer coverage is unchanged. Similarly, the final regulations will not affect families for whom the cost of family employer coverage does not exceed 9.5 percent of household income because their coverage is determined to be affordable either way. In contrast, the final regulations will affect only family members – other than the employee – for whom the employee's cost for the available employer coverage does not exceed 9.5 percent of household income for a self-only plan but does exceed 9.5 percent of household income for a family plan or for whom the offer of the family plan is affordable but does not provide minimum value.

Employers may see some of their employees shift from family coverage to self-only coverage when family members newly qualify for the PTC. The cost per enrollee could increase or decrease depending on the characteristics of those that remain covered. However, this shift will likely lead to a small decrease in the total amount employers are spending on health coverage – due to covering fewer total people – as the Federal government increases spending on PTC for the non-employee family members who move from employer coverage to Exchange coverage.

D. *Economic analysis of the final regulations*

1. Overview

For some families, the final regulations will lower the premium contributions required to purchase coverage for all family members by allowing family members other than the employee to receive a PTC. For some families with offers of employer coverage who will be newly eligible for the PTC, the combined cost of split coverage (self-only employer coverage for the employee plus PTC-subsidized Exchange coverage for related individuals) will be lower than what they pay for family coverage through the employer. Some low-income families with uninsured individuals where the employee is offered low-cost, self-only employer coverage and relatively high-cost family employer coverage will gain access to a lower-cost option through eligibility for the PTC on behalf of one or more related individuals.

However, the cost for families to purchase Exchange coverage with PTC is determined in part by the applicable percentage and household income, which are the same regardless of the number of individuals actually covered. Therefore, if the number of individuals needing Exchange coverage is small – such as when some family members have access to other MEC – the cost of Exchange coverage per enrollee is relatively high when added to the cost of the employee share of self-only employer coverage. Furthermore, split coverage also means multiple deductibles and maximum out-of-pocket limits for the family, which potentially increases out-of-pocket costs for families. As a result of these features, many families with offers of employer coverage who will be newly eligible for the PTC under the final regulations – including families with some uninsured individuals – would not see any savings in the combined cost of out-of-pocket premiums and cost sharing. Lastly, many families may prefer the benefits and provider networks of employer coverage, compared to Exchange coverage.

Taking all these factors into account, the Treasury Department and the IRS expect new take-up of Exchange coverage may be modest relative to the size of the newly eligible population and relative to the total number of individuals who are either uninsured or covered by employer coverage because many will either still prefer employer coverage or prefer to purchase other goods and services, or save or invest, rather than insure all family members.

The Office of Tax Analysis has evaluated the effect of the policy change on health insurance coverage decisions and the Federal deficit. The policy change is predicted to increase the number of individuals with PTC-subsidized Exchange coverage by approximately 1 million and increase the Federal deficit by an average of $3.8 billion per year over the next 10 years. The deficit increases as enrollment in PTC-subsidized Exchange coverage increases, offset by a modest decrease in the tax exclusion for employer coverage.[60] These changes to the revenue effect associated with the PTC as well as the tax exclusion for employer coverage are transfer payments. Transfer payments are neither a cost nor a benefit. The analysis relied on tax data as well as the Medical Expenditure Panel Survey. The Medical Expenditure Panel Survey dataset includes several variables that are not observed in the tax data such as employee contribution

[60] The predictions rely on various assumptions including, but not limited to, the economic and technical assumptions from the 2023 Mid-Session Review. The assumptions are based on the current law baseline as of August 31, 2022. The baseline includes the PTC changes enacted under the IRA.

amounts for family coverage as well as health care utilization.

2. Benefits

Gain of health insurance coverage. For those individuals who are uninsured because the premiums for family coverage through a family member's employer are unaffordable, gaining access to the PTC for the purchase of Exchange coverage may make coverage more affordable and may prompt some of them to take up coverage.

Additional health insurance option. For those individuals who are covered by family coverage through a family member's employer that costs more than 9.5 percent of their household income, the final regulations will, by providing access to a PTC, give them an additional option that could provide coverage at a lower cost or with more comprehensive benefits.

3. Costs

Administrative costs. Adding this new option for eligibility for PTC increases the cost to the IRS to evaluate PTC claims. The IRS's PTC infrastructure will require one-time changes to certain processes, forms, and instructions to be implemented in time for the 2023 taxable year, and the cost of these changes is expected to be negligible. The Centers for Medicare & Medicaid Services (CMS), as the administrator of the Federally-facilitated Exchanges and the Federal Exchange eligibility and enrollment platform, and the State Exchanges that operate their own Exchange eligibility and enrollment platforms will also incur administrative costs as the Exchanges will have primary responsibility for implementing the rule as part of the eligibility and enrollment process when families are applying for Exchange coverage with APTC. Exchanges will incur one-time costs to update Exchange eligibility systems to account for the new treatment of family contribution amounts for employer coverage for purposes of determining eligibility for APTC. In addition, CMS, State Exchanges, State Medicaid Agencies, and CMS-approved Enhanced Direct Enrollment partners will incur administrative costs to make conforming updates to their respective consumer applications and consumer-facing affordability tools. The Treasury Department and the IRS anticipate total administrative costs to CMS, the Exchanges, State Medicaid Agencies, and Enhanced Direct Enrollment partners associated with the final regulation to be modest.

The Treasury Department and the IRS do not expect any new administrative costs for employers because the final regulations do not impose new reporting requirements. Under current regulations, ALEs must report the cost of self-only coverage on Form 1095-C. The primary purpose of this reporting is to collect information relevant for the administration of the employer shared responsibility provisions in section 4980H. Because the cost of family coverage is not relevant for computing the employer shared responsibility payment, the final regulations do not require ALEs to report the cost of family coverage on Form 1095-C. Further, as noted earlier in this preamble, these final regulations do not amend the regulations under section 6055 or 6056, and the IRS does not intend to revise Form 1095-B or Form 1095-C to require any additional data elements related to the new rules.

4. Transfer payments

Increased PTC costs for new Exchange enrollees. Because some individuals may be newly eligible for the PTC, some individuals may move from employer coverage or uninsured status to Exchange coverage. Thus, the final regulations may increase the amount of PTC being paid by the government and reduce employer contributions.

Decreased employer exclusion for people who drop employer coverage. If individuals drop their employer coverage, or do not enroll when they otherwise would have, to take up Exchange coverage, the amount of money that was going toward their employer coverage, which provides tax-preferred health benefits, will go into the employee's wages, other employees' wages, and/or employer profits and will no longer be tax exempt. Thus, the final regulations may increase the amount of tax revenue received from income and payroll taxes.

II. *Paperwork Reduction Act*

This final rule does not include information collections under the Paperwork Reduction Act (5 U.S.C. chapter 35).

III. *Regulatory Flexibility Act*

It is hereby certified that these final 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).

As mentioned in the response to commenters, the Treasury Department and the IRS hereby certify that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the final regulations falls on individual taxpayers, and entities will experience only small changes.

Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

EO 13132 (Federalism) prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the EO. This rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the EO.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

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

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 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 1.36B-0 is amended by:

a. Adding an entry for §1.36B-2(c)(3)(v)(A)(*8*);

b. Adding entries for §1.36B-6(a)(1) and (2) and (a)(2)(i) and (ii); and

c. Revising the entry for §1.36B-6(g)(2).

The additions and revisions read as follows:

§ 1.36B-0 Table of contents.

* * * * *

§1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(v) * * *

(A) * * *

(*8*) Multiple offers of coverage.

* * * * *

§1.36B-6 Premium tax credit definitions.

(a) * * *

(1) Employees.

(2) Related individuals

(i) In general.

(ii) Plans providing MV to employees.

* * * * *

(g) * * *

(2) Exceptions.

Par. 3. Section 1.36B-2 is amended by:

a. Revising the first sentence and adding a new second sentence in paragraph (c)(3)(v)(A)(*2*).

b. Adding paragraph (c)(3)(v)(A)(*8*).

c. Revising the second sentence of paragraph (c)(3)(v)(B).

d. In paragraph (c)(3)(v)(D), Examples 1 through 9 are designated as paragraphs (c)(3)(v)(D)(*1*) through (*9*), respectively.

e. In newly designated paragraphs (c)(3)(v)(D)(*3*), (*5*), (*6*), (*7*), and (*9*), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(c)(3)(v)(D)(*3*)(i) through (ii)	(c)(3)(v)(D)(*3*)(*i*) through (*ii*)
(c)(3)(v)(D)(*5*)(i) through (ii)	(c)(3)(v)(D)(*5*)(*i*) through (*ii*)
(c)(3)(v)(D)(*6*)(i) through (ii)	(c)(3)(v)(D)(*6*)(*i*) through (*ii*)
(c)(3)(v)(D)(*7*)(i) through (iv)	(c)(3)(v)(D)(*7*)(*i*) through (*iv*)
(c)(3)(v)(D)(*9*)(i) through (ii)	(c)(3)(v)(D)(*9*)(*i*) through (*ii*)

f. Revising newly redesignated paragraphs (c)(3)(v)(D)(*1*) and (*2*).

g. Redesignating paragraphs (c)(3)(v)(D)(*3*) through (*9*) as paragraphs (c)(3)(v)(D)(*7*) through (*13*), respectively.

h. Adding new paragraphs (c)(3)(v)(D)(*3*) through (*6*).

i. Revising the heading for newly redesignated paragraph (c)(3)(v)(D)(*7*), the heading and first sentence of newly redesignated paragraph (c)(3)(v)(D)(*8*), the heading of newly redesignated paragraph (c)(3)(v)(D)(*9*), and the first sentence of newly redesignated paragraph (c)(3)(v)(D)(*9*)(*i*).

j. In the headings for newly redesignated paragraphs (c)(3)(v)(D)(*10*) through (*13*), removing the first period and adding a colon in its place.

k. Revising paragraph (e)(1).

l. Adding paragraph (e)(5).

The revisions and additions read as follows:

§ 1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(3) * * *

(v) * * *

(A) * * *

(*2*) * * * Except as provided in paragraph (c)(3)(v)(A)(*3*) of this section, an eligible employer-sponsored plan is affordable for a related individual if the employee's required contribution for family coverage under the plan does not exceed the required contribution percentage, as defined in paragraph (c)(3)(v)(C) of this section, of the applicable taxpayer's household income for the taxable year. For purposes of this paragraph (c)(3)(v)(A)(*2*), an employee's required contribution for family coverage is the portion of the annual premium the employee must pay for coverage of the employee and all other individuals included in the employee's family, as defined in §1.36B-1(d), who are offered coverage under the eligible employer-sponsored plan. * * *

* * * * *

(*8*) *Multiple offers of coverage*. An individual who has offers of coverage under eligible employer-sponsored plans from multiple employers, either as an employee or a related individual, has an offer of affordable coverage if at least one of the offers of coverage is affordable under paragraph (c)(3)(v)(A)(*1*) or (*2*) of this section.

(B) * * * Coverage under an eligible employer-sponsored plan is affordable for a part-year period if the annualized required contribution for self-only coverage, in the case of an employee, or family coverage, in the case of a related individual, under the plan for the part-year period does not exceed the required contribution percentage of the applicable taxpayer's household income for the taxable year. * * *

* * * * *

(D) * * *

(*1*) *Example 1: Basic determination of affordability*. For all of 2023, taxpayer C works for an employer, X, that offers its employees and their spouses a health insurance plan under which, to enroll in self-only coverage, C must contribute an amount for 2023 that does not exceed the required contribution percentage of C's 2023 household income. Because C's required contribution for self-only coverage does not exceed the required contribution percentage of C's household income, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.

(*2*) *Example 2: Basic determination of affordability for a related individual*. (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*1*) of this section (Example 1), except that C is married to J, they file a joint return, and to enroll C and J, X's plan requires C to contribute an amount for coverage for C and J for 2023 that exceeds the required contribution percentage of C's and J's household income. J does not work for an employer that offers employer-sponsored coverage.

(*ii*) J is a member of C's family as defined in §1.36B-1(d). Because C's required contribution for coverage of C and J exceeds the required contribution percentage of C's and J's household income, under paragraph (c)(3)(v)(A)(*2*) of this section, X's plan is unaffordable for J. Accordingly, J is not eligible for minimum essential coverage for 2023. However, under paragraph (c)(3)(v)(A)(*1*) of this section, X's plan is affordable for C, and C is eligible for minimum essential coverage for all months in 2023.

(*3*) *Example 3: Multiple offers of coverage*. The facts are the same as in paragraph (c)(3)(v)(D)(*2*) of this section (Example 2), except that J works all year for an employer that offers employer-sponsored coverage to employees. J's required contribution for the cost of self-only coverage from J's employer does not exceed the required contribution percentage of C's and J's household income. Although the coverage offered by C's employer for C and J is unaffordable for J, the coverage offered by J's employer is affordable for J. Consequently, under paragraphs (c)(3)(v)(A)(*1*) and (*8*) of this section, J is eligible for minimum essential coverage for all months in 2023.

(*4*) *Example 4: Cost of covering individuals not part of taxpayer's family*. (*i*) D and E are married, file a joint return, and have two children, F and G, under age 26. F is a dependent of D and E, but G is not. D works all year for an employer that offers employer-sponsored coverage to employees, their spouses, and their children under age 26. E, F, and G do not work for employers offering coverage. D's required contribution for self-only coverage under D's employer's coverage does not exceed the required contribution percentage of D's and E's household income. D's required contribution for coverage of D, E, F, and G exceeds the required contribution percentage of D's and E's household income, but D's required contribution for coverage of D, E, and F does not exceed the required contribution percentage of the household income.

(*ii*) E and F are members of D's family as defined in §1.36B-1(d). G is not a member of D's family under §1.36B-1(d), because G is not D's dependent. Under paragraph (c)(3)(v)(A)(*1*) of this section, D's employer's coverage is affordable for D because D's required contribution for self-only coverage does not exceed the required contribution percentage of D's and E's household income. D's employer's coverage also is affordable for E and F, because, under paragraph (c)(3)(v)(A)(*2*) of this section, D's required contribution for coverage of D, E, and F does not exceed the required contribution percentage of D's and E's household income. Although D's cost to cover D, E, F, and G exceeds the required contribution percentage of D's and E's household income, under paragraph (c)(3)(v)(A)(*2*) of this section, the cost to cover G is not considered in determining whether D's employer's coverage is affordable for E and F, regardless of whether G actually enrolls in the plan, because G is not in D's family. D, E, and F are eligible for minimum essential coverage for all months in 2023. Under paragraph (c)(4)(i) of this section, G is considered eligible for the coverage offered by D's employer only if G enrolls in the coverage.

(*5*) *Example 5: More than one family member with an employer offering coverage*. (*i*) K and L are married, file a joint return, and have one dependent child, M. K works all year for an employer that offers coverage to employees, spouses, and children under age 26. L works all year for an employer that offers coverage to employees only. K's required contribution for self-only coverage under K's employer's coverage does not exceed the required contribution percentage of K's and L's household income. Likewise, L's required contribution for self-only coverage under L's employer's coverage does not exceed the required contribution percentage of K's and L's household income. However, K's required contribution for coverage of K, L, and M exceeds the required contribution percentage of K's and L's household income.

(*ii*) L and M are members of K's family as defined in §1.36B-1(d). Under paragraph (c)(3)(v)(A)(*1*) of this section, K's employer's coverage is affordable for K because K's required contribution for self-only coverage does not exceed the required contribution percentage of K's and L's household income. Similarly, L's employer's coverage is affordable for L, because L's required contribution for self-only coverage does not exceed the required contribution percentage of K's and L's household income. Thus, K and L are eligible for minimum essential coverage for all months in 2023. However, under paragraph (c)(3)(v)(A)(*2*) of this section, K's employer's coverage is unaffordable for M, because K's required contribution for coverage of K, L, and M exceeds the required contribution percentage of K's and L's household income. Accordingly, M is not eligible for minimum essential coverage for 2023.

(*6*) *Example 6: Multiple offers of coverage for a related individual*. (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*5*) of this section (Example 5), except that L works all year for an employer that offers coverage to employees, spouses, and children under age 26. L's required contribution for coverage of K, L, and M does not exceed the required contribution percentage of K's and L's household income.

(*ii*) Although M is not eligible for affordable employer coverage under K's employer's coverage, paragraph (c)(3)(v)(A)(*8*) of this section dictates that L's employer coverage must be evaluated to determine whether L's employer coverage is affordable for M. Under paragraph (c)(3)(v)(A)(*2*) of this section, L's employer's coverage is affordable for M, because L's required contribution for K, L, and M does not exceed the required contribution percentage of K's and L's household income. Accordingly, M is eligible for minimum essential coverage for all months in 2023.

(*7*) *Example 7: Determination of unaffordability at enrollment*. * * *

(*8*) *Example 8: Determination of unaffordability for plan year*. The facts are the same as in paragraph (c)(3)(v)(D)(*7*) of this section (Example 7), except that X's employee health insurance plan year is September 1 to August 31. * * *

(*9*) *Example 9: No affordability information affirmatively provided for annual redetermination*. (*i*) The facts are the same as in paragraph (c)(3)(v)(D)(*7*) of this section (Example 7), except the Exchange redetermines D's eligibility for advance credit payments for 2015. * * *

* * * * *

(e) * * *

(1) Except as provided in paragraphs (e)(2) through (5) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(5) The first two sentences of paragraph (c)(3)(v)(A)(*2*), paragraph (c)(3)(v)(A)(*8*), the second sentence of paragraph (c)(3)(v)(B), paragraphs (c)(3)(v)(D)(*1*) through (*6*), and the first sentences of paragraphs (c)(3)(v)(D)(*8*) and (*9*) of this section apply to taxable years beginning after December 31, 2022.

Par. 4. Section 1.36B-3 is amended by revising paragraphs (d)(1)(i) and (n)(1) and adding paragraph (n)(3) to read as follows:

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

* * * * *

(d) * * *

(1) * * *

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

* * * * *

(n) * * *

(1) Except as provided in paragraphs (n)(2) and (3) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(3) Paragraph (d)(1)(i) of this section applies to taxable years beginning after December 31, 2022.

Par. 5**.** Section 1.36B-6 is amended by revising paragraphs (a) and (g)(2) to read as follows:

§ 1.36B-6 Minimum value.

(a) ***In general*—(1) *Employees*.** An eligible employer-sponsored plan provides minimum value (MV) for an employee of the employer offering the coverage only if—

(i) The plan's MV percentage, as defined in paragraph (c) of this section, is at least 60 percent based on the plan's share of the total allowed costs of benefits provided to the employee; and

(ii) The plan provides substantial coverage of inpatient hospital services and physician services.

(2) *Related individuals*—(i) *In general*. An eligible employer-sponsored plan provides MV for an individual who may enroll in the plan because of a relationship to an employee of the employer offering the coverage (a related individual) only if—

(A) The plan's MV percentage, as defined in paragraph (c) of this section, is at least 60 percent based on the plan's share of the total allowed costs of benefits provided to the related individual; and

(B) The plan provides substantial coverage of inpatient hospital services and physician services.

(ii) *Plans providing MV to employees*. If an eligible employer-sponsored plan provides MV to an employee under paragraph (a)(1) of this section, the plan also provides MV for related individuals if—

(A) The scope of benefits is the same for the employee and related individuals; and

(B) Cost sharing (including deductibles, co-payments, coinsurance, and out-of-pocket maximums) under the plan is the same for the employee and related individuals under the tier of coverage that would, if elected, include the employee and all related individuals (disregarding any differences in deductibles or out-of-pocket maximums that are attributable to a different tier of coverage, such as self plus one versus family coverage).

* * * * *

(g) * * *

(2) *Exceptions*. (i) Paragraph (a)(1)(ii) of this section applies for plan years beginning after November 3, 2014; and

(ii) Paragraph (a)(2) of this section applies to taxable years beginning after December 31, 2022.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2022.

Lily Batchelder,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on October 11, 2022, 8:45 a.m., and published in the issue of the Federal Register for October 13, 2022, 87 F.R. 61979)

Part III

Certain Required Minimum Distributions for 2021 and 2022

Notice 2022-53

I. Purpose

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue final regulations related to required minimum distributions (RMDs) under section 401(a)(9) of the Internal Revenue Code (Code) that will apply no earlier than the 2023 distribution calendar year. In addition, this notice provides guidance related to certain provisions of section 401(a)(9) that apply for 2021 and 2022.

II. Background

A. Section 401(a)(9)

Section 401(a)(9) provides rules for RMDs from a qualified plan during the life of the employee in section 401(a)(9)(A) and after the death of the employee in section 401(a)(9)(B). The rules set forth a required beginning date for distributions and identify the period over which the employee's entire interest must be distributed.

Specifically, section 401(a)(9)(A)(ii) provides that the entire interest of an employee in a qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary).

Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the distribution method used by the employee as of the date of the employee's death. Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must either be: (1) distributed within 5 years after the death of the employee (5-year rule), or (2) distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee's death (subject to an exception in section 401(a)(9)(B)(iv) if the designated beneficiary is the employee's surviving spouse).

The rules of section 401(a)(9) are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs), section 408A(c)(5) for Roth IRAs, section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans), and section 457(d) for eligible deferred compensation plans.

B. Section 401(a)(9)(H) as added by the SECURE Act

1. New 10-year rule

Section 401(a)(9) of the Code was amended by section 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019) to add section 401(a)(9)(H) to the Code. Generally, pursuant to section 401(a)(9)(H)(i), if an employee in a defined contribution plan has a designated beneficiary, the 5-year period under the 5-year rule is lengthened to 10 years (10-year rule) and the new 10-year rule applies regardless of whether the employee dies before the required beginning date. In addition, pursuant to section 401(a)(9)(H)(ii), the section 401(a)(9)(B)(iii) exception to the 10-year rule (under which the 10-year rule is treated as satisfied if distributions are paid over the designated beneficiary's lifetime or life expectancy) applies only if the designated beneficiary is an eligible designated beneficiary, as that term is defined in the new section 401(a)(9)(E)(ii).

Section 401(a)(9)(H)(iii) provides that when an eligible designated beneficiary dies before that individual's portion of the employee's interest in the plan has been distributed, the beneficiary of the eligible designated beneficiary will be subject to a requirement that the remainder of that individual's portion be distributed within 10 years of the eligible designated beneficiary's death. In addition, section 401(a)(9)(E)(iii) provides that when a minor child reaches the age of majority, that child will no longer be considered an eligible designated beneficiary and the remainder of that child's portion of the employee's interest in the plan must be distributed within 10 years of that date.

2. Section 401(a)(9)(H) effective date

Section 401(b)(1) of the SECURE Act provides that, generally, the amendments made to section 401(a)(9)(H) of the Code apply to distributions with respect to employees who die after December 31, 2019. Pursuant to section 401(b)(2) and (3) of the SECURE Act, later effective dates apply for certain collectively bargained plans and governmental plans (as defined in section 414(d) of the Code).

Section 401(b)(4) of the SECURE Act provides that section 401(a)(9)(H) of the Code does not apply to payments under certain annuity contracts under which payment commenced (or the manner of payments was fixed) before December 20, 2019. Section 401(b)(5) of the SECURE Act provides that if an employee who participated in a plan died before section 401(a)(9)(H) of the Code became effective with respect to the plan, and the employee's designated beneficiary died after that effective date, then that designated beneficiary is treated as an eligible designated beneficiary and section 401(a)(9)(H) applies to any beneficiary of that designated beneficiary.

C. Excise tax under section 4974(a)

Section 4974(a) provides that if the amount distributed during the taxable year of a payee under any qualified retirement plan (as defined in section 4974(c)) or any eligible deferred compensation plan (as defined in section 457(b)) is less than that taxable year's minimum required distribution (as defined in section 4974(b)), then an excise tax is imposed on the payee equal to 50 percent of the amount by which the minimum required distribution for the taxable year exceeds the amount actually distributed in that taxable year.

D. Section 401(a)(9) proposed regulations

The Treasury Department and the IRS published proposed regulations regarding RMDs under section 401(a)(9) of the Code and related provisions in the Federal Register on February 24, 2022 (87 FR 10504), which provided that the regulations, when finalized, would apply beginning with the 2022 distribution calendar year. Along with other matters, the proposed regulations address issues relating to the new 10-year rule in section 401(a)(9)(H) of the Code. Specifically, Prop. Reg. § 1.401(a)(9)-5(d)(1)(i) requires that, in the case of an employee who dies on or after the employee's required beginning date, distributions to the employee's beneficiaries for calendar years after the calendar year of the employee's death must satisfy section 401(a)(9)(B)(i). In addition, distributions to the employee's beneficiaries must also satisfy section 401(a)(9)(B)(ii) (or if applicable, section 401(a)(9)(B)(iii), taking into account section 401(a)(9)(E)(iii), (H)(ii), and (H)(iii)).

In order to satisfy section 401(a)(9)(B)(i), the beneficiary of an employee who died after the employee's required beginning date must take an annual required minimum distribution beginning in the first calendar year after the calendar year of the employee's death. In order to satisfy section 401(a)(9)(B)(ii), the remaining account balance must be distributed by the 10th calendar year after the calendar year of the employee's death (subject to an exception under section 401(a)(9)(B)(iii), if applicable). In order to satisfy both of those requirements, the proposed regulations generally provide that, in the case of an employee who dies after the employee's required beginning date with a designated beneficiary who is not an eligible designated beneficiary (and for whom the section 401(a)(9)(B)(iii) alternative to the 10-year rule is not applicable), annual RMDs must continue to be taken after the death of the employee, with a full distribution required by the end of the 10th calendar year following the calendar year of the employee's death.

In accordance with section 401(a)(9)(B)(iii), in the case of a designated beneficiary who is an eligible designated beneficiary, the proposed regulations include an alternative to the 10-year rule under which annual lifetime or life expectancy payments are made to the beneficiary beginning in the year following the year of the employee's death. Under the proposed regulations, if an eligible designated beneficiary of an employee is using the lifetime or life expectancy payment alternative to the 10-year rule, then the eligible designated beneficiary (and, after the death of the eligible designated beneficiary, the beneficiary of the eligible designated beneficiary) must continue to take annual distributions after the death of the employee (with a full distribution made no later than the 10th year after the year of the eligible designated beneficiary's death). The proposed regulations provide for similar treatment (that is, continued annual RMDs with a requirement to take a full distribution no later than the 10th year after a specified event) in the case of a designated beneficiary who is a minor child of the employee (with the specified event being the child's reaching the age of majority).

E. Comments received by the Treasury Department and the IRS

The Treasury Department and the IRS provided a 90-day comment period for the proposed regulations. During that period, some individuals who are owners of inherited IRAs or are beneficiaries under qualified defined contribution plans or section 403(b) plans submitted comments indicating that they thought the new 10-year rule would apply differently than what was proposed in the proposed regulations. Specifically, commenters believed that, regardless of when an employee died, the 10-year rule would operate like the 5-year rule, under which there would not be any RMD due for a calendar year until the last year of the 5- or 10-year period following the specified event (the death of the employee, the death of the eligible designated beneficiary, or the attainment of the age of majority for the employee's child who is an eligible designated beneficiary). Commenters in those situations who are heirs or beneficiaries of individuals who died in 2020 explained that they did not take an RMD in 2021 and are unsure of whether they would be required to take an RMD in 2022. Commenters asserted that, if final regulations adopt the interpretation of the 10-year rule set forth in the proposed regulations, the Treasury Department and the IRS should provide transition relief for failure to take distributions that are RMDs due in 2021 or 2022 pursuant to section 401(a)(9)(H) in the case of the death of an employee (or designated beneficiary) in 2020 or 2021.

III. Applicability Date of Final Regulations

Final regulations regarding RMDs under section 401(a)(9) of the Code and related provisions will apply no earlier than the 2023 distribution calendar year.

IV. Guidance for Certain RMDs for 2021 and 2022

A. Guidance for defined contribution plans that did not make a specified RMD

A defined contribution plan that failed to make a specified RMD (as defined in Section IV.C of this notice) will not be treated as having failed to satisfy section 401(a)(9) merely because it did not make that distribution.

B. Guidance for certain taxpayers who did not take a specified RMD

To the extent a taxpayer did not take a specified RMD (as defined in Section IV.C of this notice), the IRS will not assert that an excise tax is due under section 4974. If a taxpayer has already paid an excise tax for a missed RMD in 2021 that constitutes a specified RMD, that taxpayer may request a refund of that excise tax.

C. Definition of specified RMD

For purposes of this notice only, a specified RMD is any distribution that, under the interpretation included in the proposed regulations, would be required to be made pursuant to section 401(a)(9) in 2021 or 2022 under a defined contribution plan or IRA that is subject to the rules of 401(a)(9)(H) for the year in which the employee (or designated beneficiary) died if that payment would be required to be made to:

- a designated beneficiary of an employee under the plan (or IRA owner) if: (1) the employee (or IRA owner) died in 2020 or 2021 and on or after the employee's (or IRA owner's) required beginning date, and (2) the designated beneficiary is not taking lifetime or life expectancy payments pursuant to section 401(a)(9)(B)(iii); or
- a beneficiary of an eligible designated beneficiary (including a designated beneficiary who is treated as an eligible designated beneficiary pursuant to section 401(b)(5) of the SECURE Act) if: (1) the eligible designated beneficiary died in 2020 or 2021, and (2) that eligible designated beneficiary was taking lifetime or life expectancy payments pursuant to section 401(a)(9)(B)(iii) of the Code.

V. Drafting Information

The principal author of this notice is Brandon Ford of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Brandon Ford at (202) 317-4148 (not a toll-free number).

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

Notice 2022-54

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.[1] However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from September 2022 data is in Table 2022-9 at the end of this notice. The spot first, second, and third segment rates for the month of September 2022 are, respectively, 4.48, 5.26, and 5.07.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates. The 25-year average segment rates for plan years beginning in 2021, 2022 and 2023 were published in Notice 2020-72, 2020-40 I.R.B. 789, Notice 2021-54, 2021-41 I.R.B. 457, and Notice 2022-40, 2022-40 I.R.B. 266, respectively.

24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for October 2022 without adjustment for the 25-year average segment rate limits are as follows:

	24-Month Average Segment Rates Without 25-Year Average Adjustment		
Applicable Month	**First Segment**	**Second Segment**	**Third Segment**
October 2022	1.57	3.21	3.66

[1] Pursuant to § 433(h)(3)(A), the third segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

[2] Section 80602 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, makes further changes to the time periods for which specified applicable minimum and maximum percentages apply.

25-YEAR AVERAGE SEGMENT RATES

Section 9706(a) of the American Rescue Plan Act of 2021, Pub. L. 117-2 (the ARP), which was enacted on March 11, 2021, changed the 25-year average segment rates and the applicable minimum and maximum percentages used under § 430(h)(2)(C)(iv) of the Code to adjust the 24-month average segment rates.[2] Prior to this change, the applicable minimum and maximum percentages were 85% and 115% for a plan year beginning in 2021, and 80% and 120% for a plan year beginning in 2022, respectively. After this change, the applicable minimum and maximum percentages are 95% and 105% for a plan year beginning in 2021 or 2022. In addition, pursuant to this change, any 25-year average segment rate that is less than 5% is deemed to be 5%.[3]

Pursuant to § 9706(c)(1) of the ARP, these changes apply with respect to plan years beginning on or after January 1, 2020. However, § 9706(c)(2) of the ARP provides that a plan sponsor may elect not to have these changes apply to any plan year beginning before January 1, 2022.[4]

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code as amended by § 9706(a) of the ARP. These adjusted 24-month average segment rates apply only for plan years for which an election under § 9706(c)(2) of the ARP is not in effect. For a plan year for which such an election does not apply, the 24-month averages applicable for October 2022, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2021	October 2022	4.75	5.36	6.11
2022	October 2022	4.75	5.18	5.92
2023	October 2022	4.75	5.00	5.74

The adjusted 24-month average segment rates set forth in the chart below do not reflect the changes to § 430(h)(2)(C)(iv) of the Code made by § 9706(a) of the ARP. These adjusted 24-month average segment rates apply only for plan years for which an election under § 9706(c)(2) of the ARP is in effect. For a plan year for which such an election applies, the 24-month averages applicable for October 2022, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

Pre-ARP Adjusted 24-Month Average Segment Rates

For Plan Years Beginning In	Applicable Month	First Segment	Second Segment	Third Segment
2021	October 2022	3.32	4.79	5.47

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The rate of interest on 30-year Treasury securities for September 2022 is 3.55 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in August 2052. For plan years beginning in October 2022, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rate used to calculate current liability are as follows:

Treasury Weighted Average Rates

For Plan Years Beginning In	30-Year Treasury Weighted Average	Permissible Range 90% to 105%
October 2022	2.27	2.04 to 2.38

[3] Pursuant to this change, the 25-year averages of the first segment rate for 2021 and 2022 are increased to 5.00% because those 25-year averages as originally published are below 5.00%.
[4] This election may be made either for all purposes for which the amendments under § 9706 of the ARP apply or solely for purposes of determining the adjusted funding target attainment percentage under § 436 of the Code for the plan year.

MINIMUM PRESENT VALUE SEGMENT RATES

In general, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value segment rates determined for September 2022 are as follows:

Minimum Present Value Segment Rates

Month	First Segment	Second Segment	Third Segment
September 2022	4.48	5.26	5.07

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Osmundo Bernabe at 626-927-1344 (not toll-free numbers).

Table 2022-9
Monthly Yield Curve for September 2022
Derived from September 2022 Data

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	3.89	20.5	5.30	40.5	5.04	60.5	4.96	80.5	4.92
1.0	4.15	21.0	5.29	41.0	5.04	61.0	4.96	81.0	4.92
1.5	4.36	21.5	5.27	41.5	5.03	61.5	4.96	81.5	4.92
2.0	4.51	22.0	5.26	42.0	5.03	62.0	4.96	82.0	4.92
2.5	4.59	22.5	5.25	42.5	5.03	62.5	4.96	82.5	4.92
3.0	4.63	23.0	5.24	43.0	5.03	63.0	4.96	83.0	4.92
3.5	4.64	23.5	5.22	43.5	5.02	63.5	4.96	83.5	4.92
4.0	4.65	24.0	5.21	44.0	5.02	64.0	4.95	84.0	4.92
4.5	4.67	24.5	5.20	44.5	5.02	64.5	4.95	84.5	4.92
5.0	4.70	25.0	5.19	45.0	5.02	65.0	4.95	85.0	4.92
5.5	4.74	25.5	5.18	45.5	5.01	65.5	4.95	85.5	4.92
6.0	4.79	26.0	5.17	46.0	5.01	66.0	4.95	86.0	4.92
6.5	4.85	26.5	5.17	46.5	5.01	66.5	4.95	86.5	4.92
7.0	4.91	27.0	5.16	47.0	5.01	67.0	4.95	87.0	4.91
7.5	4.98	27.5	5.15	47.5	5.01	67.5	4.95	87.5	4.91
8.0	5.05	28.0	5.15	48.0	5.00	68.0	4.95	88.0	4.91
8.5	5.11	28.5	5.14	48.5	5.00	68.5	4.94	88.5	4.91
9.0	5.17	29.0	5.13	49.0	5.00	69.0	4.94	89.0	4.91
9.5	5.22	29.5	5.13	49.5	5.00	69.5	4.94	89.5	4.91
10.0	5.27	30.0	5.12	50.0	5.00	70.0	4.94	90.0	4.91
10.5	5.31	30.5	5.12	50.5	4.99	70.5	4.94	90.5	4.91
11.0	5.35	31.0	5.11	51.0	4.99	71.0	4.94	91.0	4.91
11.5	5.38	31.5	5.11	51.5	4.99	71.5	4.94	91.5	4.91
12.0	5.40	32.0	5.10	52.0	4.99	72.0	4.94	92.0	4.91
12.5	5.42	32.5	5.10	52.5	4.99	72.5	4.94	92.5	4.91
13.0	5.43	33.0	5.09	53.0	4.98	73.0	4.94	93.0	4.91
13.5	5.44	33.5	5.09	53.5	4.98	73.5	4.93	93.5	4.91
14.0	5.44	34.0	5.08	54.0	4.98	74.0	4.93	94.0	4.91
14.5	5.44	34.5	5.08	54.5	4.98	74.5	4.93	94.5	4.91
15.0	5.44	35.0	5.08	55.0	4.98	75.0	4.93	95.0	4.91
15.5	5.43	35.5	5.07	55.5	4.98	75.5	4.93	95.5	4.91
16.0	5.42	36.0	5.07	56.0	4.98	76.0	4.93	96.0	4.90
16.5	5.41	36.5	5.07	56.5	4.97	76.5	4.93	96.5	4.90
17.0	5.40	37.0	5.06	57.0	4.97	77.0	4.93	97.0	4.90
17.5	5.39	37.5	5.06	57.5	4.97	77.5	4.93	97.5	4.90
18.0	5.37	38.0	5.06	58.0	4.97	78.0	4.93	98.0	4.90
18.5	5.36	38.5	5.05	58.5	4.97	78.5	4.93	98.5	4.90
19.0	5.34	39.0	5.05	59.0	4.97	79.0	4.93	99.0	4.90
19.5	5.33	39.5	5.05	59.5	4.97	79.5	4.93	99.5	4.90
20.0	5.32	40.0	5.04	60.0	4.96	80.0	4.92	100.0	4.90

2023 Limitations Adjusted as Provided in Section 415(d), etc.

Notice 2022-55

Section 415 of the Internal Revenue Code ("Code") provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under section 415. Under section 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

Cost-of-Living Adjusted Limits for 2023

Effective January 1, 2023, the limitation on the annual benefit under a defined benefit plan under section 415(b)(1)(A) of the Code is increased from $245,000 to $265,000.

For a participant who separated from service before January 1, 2023, the participant's limitation under a defined benefit plan under section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2022, by 1.0833.

The limitation for defined contribution plans under section 415(c)(1)(A) is increased in 2023 from $61,000 to $66,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of section 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2023 are as follows:

The limitation under section 402(g)(1) on the exclusion for elective deferrals described in section 402(g)(3) is increased from $20,500 to $22,500.

The annual compensation limit under sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from $305,000 to $330,000.

The dollar limitation under section 416(i)(1)(A)(i) concerning the definition of "key employee" in a top-heavy plan is increased from $200,000 to $215,000.

The dollar amount under section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from $1,230,000 to $1,330,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from $245,000 to $265,000.

The limitation used in the definition of "highly compensated employee" under section 414(q)(1)(B) is increased from $135,000 to $150,000.

The dollar limitation under section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in section 401(k)(11) or section 408(p) for individuals aged 50 or over is increased from $6,500 to $7,500. The dollar limitation under section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in section 401(k)(11) or section 408(p) for individuals aged 50 or over is increased from $3,000 to $3,500.

The annual compensation limitation under section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under section 401(a)(17) to be taken into account, is increased from $450,000 to $490,000.

The compensation amount under section 408(k)(2)(C) regarding simplified employee pensions (SEPs) is increased from $650 to $750.

The limitation under section 408(p)(2)(E) regarding SIMPLE retirement accounts is increased from $14,000 to $15,500.

The limitation on the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer under section 457(e)(11)(B)(ii) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from $6,500 to $7,000.

The limitation on deferrals under section 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from $20,500 to $22,500.

The limitation under section 664(g)(7) concerning the qualified gratuitous transfer of qualified employer securities to an employee stock ownership plan is increased from $55,000 to $60,000.

The compensation amount under § 1.61-21(f)(5)(i) of the Income Tax Regulations ("Regulations") concerning the definition of "control employee" for fringe benefit valuation purposes is increased from $120,000 to $130,000. The compensation amount under § 1.61-21(f)(5)(iii) is increased from $245,000 to $265,000.

The dollar limitation on premiums paid with respect to a qualifying longevity annuity contract under § 1.401(a)(9)-6, A-17(b)(2)(i) of the Regulations is increased from $145,000 to $155,000.

The Code provides that the $1,000,000,000 threshold used to determine whether a multiemployer plan is a systemically important plan under section 432(e)(9)(H)(v)(III)(aa) of the Code is adjusted using the cost-of-living adjustment provided under section 432(e)(9)(H)(v)(III)(bb). After taking the applicable rounding rule into account, the threshold used to determine whether a multiemployer plan is a systemically important plan under section 432(e)(9)(H)(v)(III)(aa) is increased from $1,220,000,000 to $1,256,000,000.

The Code also provides that several retirement-related amounts are to be adjusted using the cost-of-living adjustment under section 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2023 are as follows:

The adjusted gross income limitation under section 25B(b)(1)(A) for determining the retirement savings contributions credit for married taxpayers filing a joint return is increased from $41,000 to $43,500; the limitation under section 25B(b)(1)(B) is increased from $44,000 to $47,500; and the limitation under sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $68,000 to $73,000.

The adjusted gross income limitation under section 25B(b)(1)(A) for determining the retirement savings contributions credit for taxpayers filing as head of household is increased from $30,750 to $32,625; the limitation under section 25B(b)(1)(B) is increased from $33,000 to $35,625; and the limitation under sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $51,000 to $54,750.

The adjusted gross income limitation under section 25B(b)(1)(A) for determining the retirement savings contributions credit for all other taxpayers is increased from $20,500 to $21,750; the limitation under section 25B(b)(1)(B) is increased from $22,000 to $23,750; and the limitation under sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from $34,000 to $36,500.

The deductible amount under sections 219(b)(5)(A) for an individual making qualified retirement contributions is increased from $6,000 to $6,500.

The applicable dollar amount under section 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from $109,000 to $116,000. The applicable dollar amount under section 219(g)(3)(B)(ii) for all other taxpayers who are active participants (other than married taxpayers filing separate returns) is increased from $68,000 to $73,000. If an individual or the individual's spouse is an active participant, the applicable dollar amount under section 219(g)(3)(B)(iii) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains $0. The applicable dollar amount under section 219(g)(7)(A) for a taxpayer who is not an active participant but whose spouse is an active participant is increased from $204,000 to $218,000.

Accordingly, under section 219(g)(2)(A), the deduction for taxpayers making contributions to a traditional IRA is phased out for single individuals and heads of household who are active participants in a qualified plan (or another retirement plan specified in section 219(g)(5)) and have adjusted gross incomes (as defined in section 219(g)(3)(A)) between $73,000 and $83,000, increased from between $68,000 and $78,000. For married couples filing jointly, if the spouse who makes the IRA contribution is an active participant, the income phase-out range is between $116,000 and $136,000, increased from between $109,000 and $129,000. For an IRA contributor who is not an active participant and is married to someone who is an active participant, the deduction is phased out if the couple's income is between $218,000 and $228,000, increased from between $204,000 and $214,000. For a married individual filing a separate return who is an active participant, the phase-out range is not subject to an annual cost-of-living adjustment and remains $0 to $10,000.

The adjusted gross income limitation under section 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution for married taxpayers filing a joint return or for taxpayers filing as a qualifying widow(er) is increased from $204,000 to $218,000. The adjusted gross income limitation under section 408A(c)(3)(B)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from $129,000 to $138,000. The applicable dollar amount under section 408A(c)(3)(B)(ii)(III) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains $0.

Accordingly, under section 408A(c)(3)(A), the adjusted gross income phase-out range for taxpayers making contributions to a Roth IRA is between $218,000 and $228,000 for married couples filing jointly, increased from between $204,000 and $214,000. For singles and heads of household, the income phase-out range is between $138,000 and $153,000, increased from between $129,000 and $144,000. For a married individual filing a separate return, the phase-out range is not subject to an annual cost-of-living adjustment and remains between $0 and $10,000.

Drafting Information

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan at (202) 317-6700 or Greg Davis at (443) 853-5590 (not toll-free numbers).

26 CFR 601.602: Tax forms and instructions.
(Also Part I, §§ 1, 23, 24, 32, 36B, 42, 45R, 55, 59, 62, 63, 125, 132(f),135, 137, 146, 147, 148, 152, 179, 179D,199A, 213, 220, 221, 448, 461, 512, 513, 642, 831, 877, 877A, 911, 1274A, 2010, 2032A, 2503, 2523, 4161, 4261, 6033, 6039F, 6323, 6334, 6601, 6651, 6652, 6695, 6698, 6699, 6721, 6722, 7345, 7430, 7702B, 9831; 1.148-5.)

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[1] All references to "Code" are to the Internal Revenue Code of 1986 and, unless otherwise specified, all "section" or "§" references are to provisions of the Code.

SECTION 1. PURPOSE

This revenue procedure sets forth inflation-adjusted items for 2023 for various Code provisions as in effect on October 18, 2022. The inflation adjusted items for the Code sections set forth in section 3 of this revenue procedure are generally determined by reference to § 1(f) of the Code. To the extent amendments to the Code are enacted for 2023 after October 18, 2022, taxpayers should consult additional guidance to determine whether these adjustments remain applicable for 2023.

SECTION 2. CHANGES

.01 For taxable years beginning after December 31, 2022, § 13303(a)(1) of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), modifies the maximum amount of the energy efficient commercial buildings deduction under § 179D.

(1) For taxable years beginning in 2023, the applicable dollar value used to determine the maximum allowance of the deduction under § 179D(b) is $0.50 increased (but not above $1.00) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

(2) For taxable years beginning in 2023, the applicable dollar value used to determine the increased deduction amount for certain property under § 179D(b)(3)(A) is $2.50 increased (but not above $5.00) by $0.10 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

.02 The amounts set forth in section 2.01 of this revenue procedure are adjusted for inflation for taxable years beginning in 2023.

SECTION 3. 2023 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2023, the tax rate tables under § 1 are as follows:

TABLE 1 - Section 1(j)(2)(A) - Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	*The Tax Is:*
Not over $22,000	10% of the taxable income
Over $22,000 but not over $89,450	$2,200 plus 12% of the excess over $22,000
Over $89,450 but not over $190,750	$10,294 plus 22% of the excess over $89,450
Over $190,750 but not over $364,200	$32,580 plus 24% of the excess over $190,750
Over $364,200 but not over $462,500	$74,208 plus 32% of the excess over $364,200
Over $462,500 but not over $693,750	$105,664 plus 35% of the excess over $462,500
Over $693,750	$186,601.50 plus 37% of the excess over $693,750

TABLE 2 - Section 1(j)(2)(B) – Heads of Households

If Taxable Income Is:	*The Tax Is:*
Not over $15,700	10% of the taxable income
Over $15,700 but not over $59,850	$1,570 plus 12% of the excess over $15,700
Over $59,850 but not over $95,350	$6,868 plus 22% of the excess over $59,850
Over $95,350 but not over $182,100	$14,678 plus 24% of the excess over $95,350
Over $182,100 but not over $231,250	$35,498 plus 32% of the excess over $182,100
Over $231,250 but not over $578,100	$51,226 plus 35% of the excess over $231,250
Over $578,100	$172,623.50 plus 37% of the excess over $578,100

TABLE 3 - Section 1(j)(2)(C) – Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	*The Tax Is:*
Not over $11,000	10% of the taxable income
Over $11,000 but not over $44,725	$1,100 plus 12% of the excess over $11,000
Over $44,725 but not over $95,375	$5,147 plus 22% of the excess over $44,725
Over $95,375 but not over $182,100	$16,290 plus 24% of the excess over $95,375
Over $182,100 but not over $231,250	$37,104 plus 32% of the excess over $182,100
Over $231,250 but not over $578,125	$52,832 plus 35% of the excess over $231,250
Over $578,125	$174,238.25 plus 37% of the excess over $578,125

TABLE 4 - Section 1(j)(2)(D) – Married Individuals Filing Separate Returns

If Taxable Income Is:	*The Tax Is:*
Not over $11,000	10% of the taxable income
Over $11,000 but not over $44,725	$1,100 plus 12% of the excess over $11,000
Over $44,725 but not over $95,375	$5,147 plus 22% of the excess over $44,725
Over $95,375 but not over $182,100	$16,290 plus 24% of the excess over $95,375
Over $182,100 but not over $231,250	$37,104 plus 32% of the excess over $182,100
Over $231,250 but not over $346,875	$52,832 plus 35% of the excess over $231,250
Over $346,875	$93,300.75 plus 37% of the excess over $346,875

TABLE 5 - Section 1(j)(2)(E) – Estates and Trusts

If Taxable Income Is:	*The Tax Is:*
Not over $2,900	10% of the taxable income
Over $2,900 but not over $10,550	$290 plus 24% of the excess over $2,900
Over $10,550 but not over $14,450	$2,126 plus 35% of the excess over $10,550
Over $14,450	$3,491 plus 37% of the excess over $14,450

.02 *Unearned Income of Minor Children Subject to the "Kiddie Tax"*. For taxable years beginning in 2023, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $1,250. This $1,250 amount is the same as the amount provided in § 63(c)(5)(A), as adjusted for inflation. The same $1,250 amount is used for purposes of § 1(g)(7) to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax." For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2023 must be more than $1,250 but less than $12,500.

.03 *Maximum Capital Gains Rate (§1(h), §1(j)(5))*. For taxable years beginning in 2023, the maximum zero rate amounts and maximum 15 percent rate amounts under § 1(j)(5)(B) are as follows:

Filing Status	*Maximum Zero Rate Amount*	*Maximum15% Rate Amount*
Married Individuals Filing Joint Returns and Surviving Spouse	$89,250	$553,850
Married Individuals Filing Separate Returns	$44,625	$276,900
Heads of Household	$59,750	$523,050
All Other Individuals	$44,625	$492,300
Estates and Trusts	$3,000	$14,650

.04 *Adoption Credit*. For taxable years beginning in 2023, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is $15,950. For taxable years beginning in 2023, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $15,950. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $239,230 and is completely phased out for taxpayers with modified adjusted gross income of $279,230 or more. See section 3.19 of this revenue procedure for the adjusted items relating to adoption assistance programs.

.05 *Child Tax Credit*. For taxable years beginning in 2023, the amount used in § 24(d)(1)(A) to determine the amount of credit under § 24 that may be refundable is $1,600.

.06 *Earned Income Credit*.

(1) *In general*. For taxable years beginning in 2023, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed. The threshold phaseout amounts and the completed phaseout amounts shown in the table below for married taxpayers filing a joint return include the increase provided in § 32(b)(2)(B), as adjusted for inflation for taxable years beginning in 2023. The threshold phaseout amounts and the completed phaseout amounts shown in the table below for single, surviving spouse, or head of household taxpayers also apply to married taxpayers who are not filing a joint return and satisfy the special rules for separated spouses in § 32(d).

	Number of Qualifying Children			
Item	*One*	*Two*	*Three or More*	*None*
Earned Income Amount	$11,750	$16,510	$16,510	$7,840
Maximum Amount of Credit	$3,995	$6,604	$7,430	$600
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$21,560	$21,560	$21,560	$9,800
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$46,560	$52,918	$56,838	$17,640
Threshold Phaseout Amount (Married Filing Jointly)	$28,120	$28,120	$28,120	$16,370
Completed Phaseout Amount (Married Filing Jointly)	$53,120	$59,478	$63,398	$24,210

The instructions for the Form 1040 series provide tables showing the amount of the earned income credit for each type of taxpayer.

(2) *Excessive Investment Income*. For taxable years beginning in 2023, the earned income tax credit is not allowed under § 32(i) if the aggregate amount of certain investment income exceeds $11,000.

.07 *Refundable Credit for Coverage Under a Qualified Health Plan*. For taxable years beginning in 2023, the limitation on tax imposed under § 36B(f)(2)(B) for excess advance credit payments is determined using the following table:

If the household income (expressed as a percent of poverty line) is:	The limitation amount for unmarried individuals (other than surviving spouses and heads of household) is:	The limitation amount for all other taxpayers is:
Less than 200%	$350	$700
At least 200% but less than 300%	$900	$1,800
At least 300% but less than 400%	$1,500	$3,000

.08 *Rehabilitation Expenditures Treated as Separate New Building*. For calendar year 2023, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is $7,900.

.09 *Low-Income Housing Credit*. For calendar year 2023, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) $2.75 multiplied by the State population, or (2) $3,185,000.

.10 *Employee Health Insurance Expense of Small Employers*. For taxable years beginning in 2023, the dollar amount in effect under § 45R(d)(3)(B) is $30,700. This amount is used under § 45R(c) for limiting the small employer health insurance credit and under § 45R(d)(1)(B) for determining who is an eligible small employer for purposes of the credit.

.11 *Exemption Amounts for Alternative Minimum Tax*. For taxable years beginning in 2023, the exemption amounts under § 55(d)(1) are:

Joint Returns or Surviving Spouses	$126,500
Unmarried Individuals (other than Surviving Spouses)	$81,300
Married Individuals Filing Separate Returns	$63,250
Estates and Trusts	$28,400

For taxable years beginning in 2023, under § 55(b)(1), the excess taxable income above which the 28 percent tax rate applies is:

Married Individuals Filing Separate Returns	$110,350
All Other Taxpayers	$220,700

For taxable years beginning in 2023, the amounts used under § 55(d)(2) to determine the phaseout of the exemption amounts are:

	Threshold Phaseout amount	*Complete Phaseout amount*
Joint Returns or Surviving Spouses	$1,156,300	$1,662,300
Unmarried Individuals (other than Surviving Spouses)	$578,150	$903,350
Married Individuals Filing Separate Returns	$578,150	$831,150
Estates and Trusts	$94,600	$208,200

.12 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax*." For taxable years beginning in 2023, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55(d) and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $8,800.

.13 *Certain Expenses of Elementary and Secondary School Teachers*. For taxable years beginning in 2023, under § 62(a)(2)(D) the amount of the deduction allowed under § 162 that consists of expenses paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom is $300.

.14 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees Under Accountable Plans*. For calendar year 2023, an eligible employer may pay certain welders and heavy equipment mechanics an amount up to $20 per hour for rig-related expenses that are deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002-41, 2002-1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, an amount up to $13 per hour is deemed substantiated if paid under Rev. Proc. 2002-41.

.15 *Standard Deduction*.

(1) *In general*. For taxable years beginning in 2023, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status	*Standard Deduction*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(j)(2)(A))	$27,700
Heads of Households (§ 1(j)(2)(B))	$20,800
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(j)(2)(C))	$13,850
Married Individuals Filing Separate Returns (§ 1(j)(2)(D))	$13,850

(2) *Dependent*. For taxable years beginning in 2023, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) $1,250, or (2) the sum of $400 and the individual's earned income.

(3) *Aged or blind*. For taxable years beginning in 2023, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,500. The additional standard deduction amount is increased to $1,850 if the individual is also unmarried and not a surviving spouse.

.16 *Cafeteria Plans*. For taxable years beginning in 2023, the dollar limitation under § 125(i) on voluntary employee salary reductions for contributions to health flexible spending arrangements is $3,050. If the cafeteria plan permits the carryover of unused amounts, the maximum carryover amount is $610.

.17 *Qualified Transportation Fringe Benefit*. For taxable years beginning in 2023, the monthly limitation under § 132(f)(2)(A) regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass is $300. The monthly limitation under § 132(f)(2)(B) regarding the fringe benefit exclusion amount for qualified parking is $300.

.18 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses*. For taxable years beginning in 2023, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above $137,800 for joint returns and $91,850 for all other returns. The exclusion is completely phased out for modified adjusted gross income of $167,800 or more for joint returns and $106,850 or more for all other returns.

.19 *Adoption Assistance Programs*. For taxable years beginning in 2023, under § 137(a)(2), the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is $15,950. For taxable years beginning in 2023, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for adoptions by the employee is $15,950. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $239,230 and is completely phased out for taxpayers with modified adjusted gross income of $279,230 or more. (See section 3.04 of this revenue procedure for the adjusted items relating to the adoption credit.)

.20 *Private Activity Bonds Volume Cap*. For calendar year 2023, the amounts used under § 146(d) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) $120 multiplied by the State population, or (2) $358,845,000.

.21 *Loan Limits on Agricultural Bonds*. For calendar year 2023, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $616,100.

.22 *General Arbitrage Rebate Rules*. For bond years ending in 2023, the amount of the computation credit determined under § 1.148-3(d)(4) of the Income Tax Regulations is $1,960.

.23 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow*. For calendar year 2023, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $46,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(*2*)) or, if more, $5,000; and (2) for any issue, the issuer does not treat more than $130,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.24 *Gross Income Limitation for a Qualifying Relative*. For taxable years beginning in 2023, the exemption amount referenced in § 152(d)(1)(B) is $4,700.

.25 *Election to Expense Certain Depreciable Assets*. For taxable years beginning in 2023, under § 179(b)(1), the aggregate cost of any § 179 property that a taxpayer elects to treat as an expense cannot exceed $1,160,000 and under § 179(b)(5)(A), the cost of any sport utility vehicle that may be taken into account under § 179 cannot exceed $28,900. Under § 179(b)(2), the $1,160,000 limitation under § 179(b)(1) is reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the 2023 taxable year exceeds $2,890,000.

.26 *Energy Efficient Commercial Building Deduction*. For taxable years beginning in 2023, the applicable dollar value used to determine the maximum allowance of the deduction under § 179D(b)(2) is $0.54 increased (but not above $1.07) by $0.02 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent. For taxable years beginning in 2023, the applicable dollar value used to determine the increased deduction amount for certain property under § 179D(b)(3) is $2.68 increased (but not above $5.36) by $0.11 for each percentage point by which the total annual energy and power costs for the building are certified to be reduced by a percentage greater than 25 percent.

.27 *Qualified Business Income*. For taxable years beginning in 2023, the threshold amounts under § 199A(e)(2) and phase-in range amounts under § 199A(b)(3)(B) and § 199A(d)(3)(A) are:

Filing Status	Threshold amount	Phase-in range amount
Married Individuals Filing Joint Returns	$364,200	$464,200
Married Individuals Filing Separate Returns	$182,100	$232,100
All Other Returns	$182,100	$232,100

.28 *Eligible Long-Term Care Premiums*. For taxable years beginning in 2023, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

Attained Age Before the Close of the Taxable Year	*Limitation on Premiums*
40 or less	$480
More than 40 but not more than 50	$890
More than 50 but not more than 60	$1,790
More than 60 but not more than 70	$4,770
More than 70	$5,960

.29 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2023, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,650 and not more than $3,950, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $5,300.

(2) *Family coverage*. For taxable years beginning in 2023, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $5,300 and not more than $7,900, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $9,650.

.30 *Interest on Education Loans*. For taxable years beginning in 2023, the $2,500 maximum deduction for interest paid on qualified education loans under § 221 begins to phase out under § 221(b)(2)(B) for taxpayers with modified adjusted gross income in excess of $75,000 ($155,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $90,000 or more ($185,000 or more for joint returns).

.31 *Limitation on Use of Cash Method of Accounting*. For taxable years beginning in 2023, a corporation or partnership meets the gross receipts test of § 448(c) for any taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with the taxable year which precedes such taxable year does not exceed $29,000,000.

.32 *Threshold for Excess Business Loss*. For taxable years beginning in 2023, in determining a taxpayer's excess business loss, the amount under § 461(l)(3)(A)(ii)(II) is $289,000 ($578,000 for joint returns).

.33 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2023, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is $191.

.34 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns*.

(1) *Low cost article*. For taxable years beginning in 2023, for purposes of defining the term "unrelated trade or business" for certain exempt organizations under § 513(h)(2), "low cost articles" are articles costing $12.50 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2023, under § 170, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90-12, 1990-1 C.B. 471 (as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102, 1992-2 C.B. 579), for the value of insubstantial benefits that may be received by a donor in return for a contribution, without causing the contribution to fail to be fully deductible, are $12.50, $62.50 and $125, respectively.

.35 *Special Rules for Credits and Deductions*. For taxable years beginning in 2023, the amount of the deduction under § 642(b)(2)(C)(i) is $4,700.

.36 *Tax on Insurance Companies Other than Life Insurance Companies.* For taxable years beginning in 2023, under § 831(b)(2)(A)(i) the amount of the limit on net written premiums or direct written premiums (whichever is greater) is $2,650,000 to elect the alternative tax for certain small companies under § 831(b)(1) to be taxed only on taxable investment income.

.37 *Expatriation to Avoid Tax*. For calendar year 2023, under § 877A(g)(1)(A), unless an exception under § 877A(g)(1)(B) applies, an individual is a covered expatriate if the individual's "average annual net income tax" under § 877(a)(2)(A) for the five taxable years ending before the expatriation date is more than $190,000.

.38 *Tax Responsibilities of Expatriation*. For taxable years beginning in 2023, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by $821,000 pursuant to § 877A(a)(3).

.39 *Foreign Earned Income Exclusion*. For taxable years beginning in 2023, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is $120,000.

.40 *Debt Instruments Arising Out of Sales or Exchanges*. For calendar year 2023, a qualified debt instrument under § 1274A(b) has stated principal that does not exceed $6,734,800, and a cash method debt instrument under § 1274A(c)(2) has stated principal that does not exceed $4,810,600.

.41 *Unified Credit Against Estate Tax*. For an estate of any decedent dying in calendar year 2023, the basic exclusion amount is $12,920,000 for determining the amount of the unified credit against estate tax under § 2010.

.42 *Valuation of Qualified Real Property in Decedent's Gross Estate*. For an estate of a decedent dying in calendar year 2023, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed $1,310,000.

.43 *Annual Exclusion for Gifts*.

(1) For calendar year 2023, the first $17,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2023, the first $175,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.44 *Tax on Arrow Shafts*. For calendar year 2023, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is $0.59 per shaft.

.45 *Passenger Air Transportation Excise Tax*. For calendar year 2023, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air transportation is $4.80. For calendar year 2023, the tax under § 4261(c)(1) on any amount paid (whether within or without the United States) for any international air transportation, if the transportation begins or ends in the United States, generally is $21.10. Under § 4261(c)(3), however, a lower rate of tax applies under § 4261(c)(1) to a domestic segment beginning or ending in Alaska or Hawaii, and the tax applies only to departures. For calendar year 2023, the rate of tax is $10.60.

.46 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2023, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98-19, 1998-1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is $132 or less.

.47 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2023, § 6039F authorizes the Secretary of the Treasury or her delegate to require recipients of gifts from certain foreign persons to report these gifts if the aggregate value of gifts received in the taxable year exceeds $18,567.

.48 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2023, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than $1,810, or (2) a mechanic's lien or under § 6323(b)(7) who repaired or improved certain residential property if the contract price with the owner is not more than $9,030.

.49 *Property Exempt from Levy*. For calendar year 2023, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed $10,810. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed $5,400.

.50 *Exempt Amount of Wages, Salary, or Other Income*. For taxable years beginning in 2023, the dollar amount used to calculate the amount determined under § 6334(d)(4)(B) is $4,700.

.51 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2023, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is $1,750,000.

.52 *Failure to File Tax Return*. In the case of any return required to be filed in 2024, the amount of the addition to tax under § 6651(a) for failure to file an income tax return within 60 days of the due date of such return (determined with regard to any extensions of time for filing) will not be less than the lesser of $485 or 100 percent of the amount required to be shown as tax on such return.

.53 *Failure to File Certain Information Returns, Registration Statements, etc*. For returns required to be filed in 2024, the penalty amounts under § 6652(c) are:

(1) for failure to file a return required under § 6033(a)(1) (relating to returns by exempt organization) or § 6012(a)(6) (relating to returns by political organizations):

Scenario	Daily Penalty	Maximum Penalty
Organization (§ 6652(c)(1)(A))	$20	Lesser of $12,000 or 5% of gross receipts of the organization for the year.
Organization with gross receipts exceeding $1,208,500 (§ 6652(c)(1)(A))	$120	$60,000
Managers (§ 6652(c)(1)(B))	$10	$6,000
Public inspection of annual returns and reports (§ 6652(c)(1)(C))	$20	$12,000
Public inspection of applications for exemption and notice of status (§ 6652(c)(1)(D))	$20	No Limit

(2) for failure to file a return required under § 6034 (relating to returns by certain trust) or § 6043(b) (relating to terminations, etc., of exempt organizations):

Scenario	Daily Penalty	Maximum Penalty
Organization or trust (§ 6652(c)(2)(A))	$10	$6,000
Managers (§ 6652(c)(2)(B))	$10	$6,000
Split-Interest Trust (§ 6652(c)(2)(C)(ii))	$20	$12,000
Any trust with gross income exceeding $302,000 (§ 6652(c)(2)(C)(ii))	$120	$60,000

(3) for failure to file a disclosure required under § 6033(a)(2):

Scenario	Daily Penalty	Maximum Penalty
Tax–exempt entity (§ 6652(c)(3)(A))	$120	$60,000
Failure to comply with written demand (§ 6652(c)(3)(B)(ii))	$120	$12,000

.54 *Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons*. In the case of any failure relating to a return or claim for refund filed in 2024, the penalty amounts under § 6695 are:

Scenario	Per Return or Claim for Refund	Maximum Penalty
Failure to furnish copy to taxpayer (§ 6695(a))	$60	$30,000
Failure to sign return (§ 6695(b))	$60	$30,000
Failure to furnish identifying number (§ 6695(c))	$60	$30,000
Failure to retain copy or list (§ 6695(d))	$60	$30,000
Failure to file correct information returns (§ 6695(e))	$60 per return and item in return	$30,000
Negotiation of check (§ 6695(f))	$600 per check	No limit
Failure to be diligent in determining eligibility for head of household filing status, child tax credit, American Opportunity tax credit, and earned income credit (§ 6695(g))	$600 per failure	No limit

.55 *Failure to File Partnership Return*. In the case of any return required to be filed in 2024, the dollar amount used to determine the amount of the penalty under § 6698(b)(1) is $235.

.56 *Failure to File S Corporation Return*. In the case of any return required to be filed in 2024, the dollar amount used to determine the amount of the penalty under § 6699(b)(1) is $235.

.57 *Failure to File Correct Information Returns*. In the case of any failure relating to a return required to be filed in 2024, the penalty amounts under § 6721 are:

(1) for persons with average annual gross receipts for the most recent three taxable years of more than $5,000,000, for failure to file correct information returns:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(a)(1))	$310	$3,783,000
Corrected on or before 30 days after required filing date (§ 6721(b)(1))	$60	$630,500
Corrected after 30th day but on or before August 1, 2024 (§ 6721(b)(2))	$120	$1,891,500

(2) for persons with average annual gross receipts for the most recent three taxable years of $5,000,000 or less, for failure to file correct information returns:

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(d)(1)(A))	$310	$1,261,000
Corrected on or before 30 days after required filing date (§ 6721(d)(1)(B))	$60	$220,500
Corrected after 30th day but on or before August 1, 2024 (§ 6721(d)(1)(C))	$120	$630,500

(3) for failure to file correct information returns due to intentional disregard of the filing requirement (or the correct information reporting requirement):

Scenario	Penalty Per Return	Calendar Year Maximum
Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A))	Greater of (i) $630, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B))	Greater of (i) $630, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C))	Greater of (i) $31,520, or (ii) amount of cash received up to $126,000	No limit
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) $630, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return	No limit

.58 *Failure to Furnish Correct Payee Statements*. In the case of any failure relating to a statement required to be furnished in 2024, the penalty amounts under § 6722 are:

(1) for persons with average annual gross receipts for the most recent three taxable years of more than $5,000,000, for failure to furnish correct payee statements:

Scenario	Penalty Per Statement	Calendar Year Maximum
General Rule (§ 6722(a)(1))	$310	$3,783,000
Corrected on or before 30 days after required furnishing date (§ 6722(b)(1))	$60	$630,500
Corrected after 30th day but on or before August 1, 2024 (§ 6722(b)(2))	$120	$1,891,500

(2) for persons with average annual gross receipts for the most recent 3 taxable years of $5,000,000 or less, for failure to furnish correct payee statements:

Scenario	Penalty Per Statement	Calendar Year Maximum
General Rule (§ 6722(d)(1)(A))	$310	$1,261,000
Corrected on or before 30 days after required furnishing date (§ 6722(d)(1)(B))	$60	$220,500
Corrected after 30th day but on or before August 1, 2024 (§ 6722(d)(1)(C))	$120	$630,500

(3) for failure to furnish correct payee statements due to intentional disregard of the requirement to furnish a payee statement (or the correct information reporting requirement):

Scenario	Penalty Per Statement	Calendar Year Maximum
Payee statement other than a statement required under §§ 6045(b), 6041A(e) (in respect of a return required under § 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c) (§ 6722(e)(2)(A))	Greater of (i) $630, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Payee statement required under §§ 6045(b), 6050K(b), or 6050L(c) (§ 6722(e)(2)(B))	Greater of (i) $630, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit

.59 *Revocation or Denial of Passport in Case of Certain Tax Delinquencies*. For calendar year 2023, the amount of a serious delinquent tax debt under § 7345 is $59,000.

.60 *Attorney Fee Awards*. For fees incurred in calendar year 2023, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is $230 per hour.

.61 *Periodic Payments Received Under Qualified Long-Term Care Insurance Contracts or Under Certain Life Insurance Contracts*. For calendar year 2023, the stated dollar amount of the per diem limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is $420.

.62 *Qualified Small Employer Health Reimbursement Arrangement*. For taxable years beginning in 2023, to qualify as a qualified small employer health reimbursement arrangement under § 9831(d), the arrangement must provide that the total amount of payments and reimbursements for any year cannot exceed $5,850 ($11,800 for family coverage).

SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02 of this revenue procedure, this revenue procedure applies to taxable years beginning in 2023.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2023 for purposes of sections 3.08 (rehabilitation expenditures treated as separate new building), 3.09 (low-income housing credit), 3.14 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.20 (private activity bonds volume cap), 3.21 (loan limits on agricultural bonds), 3.22 (general arbitrage rebate rules), 3.23 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.37 (expatriation to avoid taxes), 3.40 (debt instruments arising out of sales or exchanges), 3.41 (unified credit against estate tax), 3.42 (valuation of qualified real property in decedent's gross estate), 3.43 (annual exclusion for gifts), 3.44 (tax on arrow shafts), 3.45 (passenger air transportation excise tax), 3.48 (persons against whom a federal tax lien is not valid), 3.49 (property exempt from levy), 3.51 (interest on a certain portion of the estate tax payable in installments), 3.59 (revocation or denial of passport in case of certain tax delinquencies), 3.60 (attorney fee awards), and 3.61 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts) of this revenue procedure.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is William Ruane of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Ruane at (202) 317-4718 (not a toll-free number) or Kyle Walker at (202) 317-5394 (not a toll-free number).

Part IV

Notice of Proposed Rulemaking

User Fees Relating to Enrolled Actuaries

REG-100719-21

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed amendments to the regulations relating to imposing user fees for enrolled actuaries. The proposed regulations increase both the enrollment and renewal of enrollment user fees for enrolled actuaries from $250.00 to $680.00. The proposed regulations affect individuals who apply to become an enrolled actuary or seek to renew their enrollment. The Independent Offices Appropriation Act of 1952 authorizes charging user fees.

DATES: Electronic or written comments must be received by December 19, 2022. The public hearing is being held by teleconference on January 9, 2023 at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 19, 2022. If no outlines are received by December 19, 2022, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. EST on January 5, 2023. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by January 4, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-100719-21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. Send paper submissions to: CC:PA:LPD:PR (REG-100719-21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. The IRS will publish any comments submitted to the public docket.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-100719-21).

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-100719-21 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-100719-21. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend the public hearing by telephone must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-100719-21 and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-100719-21. To request special assistance during the telephonic hearing contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317-5177 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Carolyn M. Lee at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, Regina Johnson at (202) 317-5177 (not toll-free numbers), or publichearings@irs.gov.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 300 regarding user fees.

Regulations establish certain requirements for individuals who seek to provide actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) Pub. L. 93-406, Title III, § 3042, Sept. 2, 1974, 88 Stat. 1002. To account for its costs of providing enrolled actuary enrollment and renewal of enrollment services, the IRS charges a user fee to apply for enrollment or renew enrollment as an enrolled actuary. This proposal would increase the amount of the user fee from $250.00 per enrollment application or renewal application to $680.00 per enrollment application or renewal application.

A. *Enrolled Actuaries*

ERISA directed the Secretary of Labor and the Secretary of the Treasury to establish a Joint Board for the Enrollment of Actuaries (Joint Board). 29 U.S.C. 1241. The Joint Board consists of three members and one alternate member appointed by the Secretary of the Treasury, two members and one alternate member appointed by the Secretary of Labor, and one non-voting representative designated by the Director of the Pension Benefit Guaranty Corporation. Pursuant to the Joint Board's bylaws, the Secretary of the Treasury appoints an Executive Director who has the delegated authority to administer the Joint Board's enrollment and renewal of enrollment processes. The Secretary of the Treasury delegated these functions to the IRS and the costs of these activities are borne by the IRS. The Executive Director, an IRS Return Preparer Office (RPO) employee, administers the enrollment and renewal of enrollment processes for the Joint Board.

Pursuant to 29 U.S.C. 1242(a), the Joint Board establishes reasonable standards and qualifications for persons performing actuarial services and is empowered to enroll such individuals who, upon application, satisfy these standards and qualifications. The regulations at 20 CFR Part 901, Subpart B prescribe eligibility requirements for enrollment and renewal of enrollment. An enrolled actuary is any individual who has satisfied the standards and qualifications as set forth in the regulations of the Joint Board and who has been approved by the Joint Board to perform actuarial services required under ERISA.

Before conferring status as an enrolled actuary to an individual, the Joint Board must verify the individual fulfills certain requirements related to experience, basic actuarial knowledge, and pension actuarial knowledge. 20 CFR §901.12(a). The RPO Joint Board staff oversees this verification as part of its responsibility to administer the enrollment application and renewal application processes for the Joint Board. An applicant may be denied enrollment for disreputable conduct (20 CFR §901.12(f)(1)), conviction of specified offenses (20 CFR §901.12(f)(2)), submitting false or misleading information on the enrollment application (20 CFR §901.12(f)(3)), or knowingly submitting false or misleading information on any report presenting actuarial information to any person (*id*.). An individual applying for enrollment as an enrolled actuary must submit a Form 5434, *Joint Board for the Enrollment of Actuaries – Application for Enrollment*, and pay the current non-refundable $250.00 user fee. 20 CFR §901.10(a).

Enrollment is for a three-year term. 20 CFR §901.1(k). Before the Joint Board will renew an actuary's enrollment, the enrolled actuary must certify he or she has satisfied continuing professional education (CPE) requirements as prescribed by the regulations of the Joint Board, including a minimum of 36 (thirty-six) hours of CPE in prescribed core and non-core subject matter courses during the three-year enrollment cycle. 20 CFR §901.11(e). Core subject matter is program content and knowledge integral and necessary to the satisfactory performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code, and includes content concerning the ethical standards of performance for actuarial services. 20 CFR §901.11(f)(1)(i). An individual applying to renew enrollment as an enrolled actuary must submit a Form 5434-A, *Joint Board for the Enrollment of Actuaries – Application for Renewal of Enrollment*, and pay the current non-refundable $250.00 user fee. 20 CFR §901.11(d). The RPO Joint Board staff verifies the enrolled actuary's certification as part of its responsibilities to administer the enrollment and renewal of enrollment processes for the Joint Board.

Section 330 of Title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department) and requires that an individual seeking to practice demonstrate necessary qualifications, competency, and good character and reputation. The rules governing practice before the IRS are published in 31 CFR, Subtitle A, part 10, and reprinted as Treasury Department Circular No. 230 (Circular 230). Under section 10.3(d)(1) of Circular 230, any individual who is enrolled as an actuary by the Joint Board and who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. Section 10.3(d)(2) provides that an enrolled actuary's authority to practice before the IRS is limited to matters involving certain provisions of the Internal Revenue Code.

B. *User Fee Authority*

The Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services the agency provides (user fees). The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The IOAA provides that user fee regulations are subject to policies prescribed by the President. The policies are currently set forth in the Office of Management and Budget (OMB) Circular A-25 (OMB Circular A-25), 58 FR 38142 (July 15, 1993).

Section 6a(1) of OMB Circular A-25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. Section 8e of OMB Circular A-25 requires agencies to review user fees biennially and update the fees as necessary to reflect changes in the cost of providing the underlying services. During the biennial review, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. government. Under section 6d(1) of OMB Circular A-25, the full cost of providing a service includes, but is not limited to, an appropriate share of salaries, medical insurance and retirement benefits, management costs, and physical overhead, and other indirect costs, including rents, utilities, and travel associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full-cost requirement. Under section 6c(2) of OMB Circular A-25, the OMB may grant exceptions when the cost of collecting the fees would represent an unduly large part of the fee for the activity or when any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service and must fund the remaining cost of providing the service from other available funding sources. Consequently, the agency subsidizes the cost of the service to the recipients of reduced-fee services even though the service confers a special benefit on those recipients who would otherwise be required to pay the full cost of providing the service as provided for by the IOAA and OMB Circular A-25.

C. *Enrolled Actuary User Fee*

An individual who has been granted new enrollment or renewal of enrollment as an enrolled actuary by the Joint Board may perform actuarial services under ERISA and practice before the IRS as provided by section 10.3(d) of Circular 230. The enrollment confers benefits on individuals who are enrolled actuaries beyond those that accrue to the general public. Because these are specific benefits not available to the general public, the IRS charges a user fee to recover the full cost associated with the administration of the enrollment and renewal of enrollment processes.

Final regulations (TD 9370) published in the **Federal Register** (72 FR 72606-01) on December 21, 2007, established the current $250.00 user fee for the enrollment application and renewal of enrollment application processes for enrolled actuaries. At that time, the Treasury Department and the IRS determined that a $250.00 user fee per application to enroll or renew enrollment as an enrolled actuary would recover the full direct and indirect costs the government would incur to administer the enrollment and renewal of enrollment processes.

As required by OMB Circular A-25, the IRS has conducted biennial reviewof this user fee since it was established by regulation in 2007. These reviews either resulted in a user fee calculation of approximately $250.00 or otherwise did not result in the Treasury Department and the IRS increasing the fee. In 2021 the IRS conducted a biennial review and calculated its costs associated with administering the enrolled actuary enrollment and renewal of enrollment processes. As discussed in Section D of this preamble, during the review, the IRS took into account increases in labor, benefits, and overhead costs incurred in connection with providing services to individuals who enroll or renew enrollment as enrolled actuaries since the user fee was promulgated in 2007. The costs include activities related to verifying that an individual meets the requirements for enrollment or renewal of enrollment as an enrolled actuary. The RPO also took into account a re-allocation of certain labor costs in their methodology to include costs associated with certain human capital matters, formalizing policies and procedures, and other administrative support. The number of employees, the percentage allocation of time spent by employees performing activities directly related to the enrollment or renewal of enrollment processes, and the associated oversight and support labor costs were increased from those costs underlying the current $250.00 user fee.

The costs to the RPO Joint Board staff of performing enrollment and renewal of enrollment processes are the same. The IRS determined that the full cost of administering the enrollment and renewal of enrollment processes increased from $250.00 to $680.00 per enrollment or renewal of enrollment. The proposed fee is an increase of $143.33 per year for the three-year enrollment period.

D. *Calculation of User Fees Generally*

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering the enrolled actuary enrollment and renewal of enrollment processes. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for Federal reporting entities, such as the IRS. FASAB publishes the FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended (Current Handbook), which is available at https://files.fasab.gov/pdffiles/2022_%20FASAB_%20Handbook.pdf. The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) 4: Managerial Cost Accounting Standards and Concepts*.

SFFAS 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of Federal programs, and the methodology below is in accordance with SFFAS 4.

1. *Cost Center Allocation*

The IRS determines the cost of its services and the activities involved in providing them through a cost accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost accounting system is a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost accounting system. The costs charged to a cost center are the direct costs for the cost center's activities in addition to allocated overhead. Some cost centers work on different services across the IRS and are not fully dedicated to the services for which the IRS charges user fees.

2. *Cost Estimation of Direct Costs*

The IRS uses various cost measurement techniques to estimate the costs attributable to the enrolled actuary enrollment and renewal of enrollment processes. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject matter experts on the time devoted to a program. To determine the labor and benefits costs incurred to provide the service of enrolling actuaries, the IRS estimated the number of full-time employees required to conduct activities related to administering the enrollment and renewal of enrollment processes. The number of full-time employees is based on both current employment numbers and future hiring estimates. Other direct costs associated with administering the enrollment and renewal of enrollment processes include travel, training, and supplies.

3. *Overhead*

When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an overhead rate is added to the identifiable direct cost to arrive at full cost. Overhead is the indirect cost of operating an organization that is not specifically identifiable with a single activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and supporting organizations.
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance).
- Procurement and contracting services.
- Financial management and accounting services.
- Information technology services.
- Services to acquire and operate property, plants, and equipment.
- Publication, reproduction, graphics and video services.
- Research, analytical, and statistical services.
- Human resources/personnel services.
- Library and legal services.

To calculate the overhead allocable to a specific service, the IRS multiplies an overhead rate by the estimated direct costs of the service. The IRS calculates the overhead rate annually based on the Statement of Net Cost included in the IRS annual financial statements. The financial statements are audited by the Government Accountability Office. The overhead rate is the ratio of the IRS's indirect costs divided by direct costs of its organizational units. Indirect costs are labor, benefits, and non-labor costs (excluding IT related to taxpayer services, enforcement, and business system modernization) from the supporting and sustaining organizational units. Direct costs are labor, benefits, and non-labor costs for the IRS's organizational units that interact directly with taxpayers.

For the enrolled actuary user fee review, an overhead rate of 58.83 percent was used. The rate was calculated based on the Fiscal Year (FY) 2020 Statement of Net Cost as follows:

Total Indirect Costs	$4,274,512,375
Total Direct Costs	$7,265,460,800
Overhead Rate	58.83%

E. *Calculation of Enrolled Actuary Enrollment and Renewal of Enrollment User Fees*

1. *Cost Estimate*

The IRS projected the estimated costs of direct labor and benefits based on the actual salary and benefits of employees who devote time to conducting enrolled actuary enrollment and renewal of enrollment processes, reduced to reflect the percentage of time each individual spends on those activities. The RPO's managers estimated the percentage of time these employees devote to conducting enrolled actuary enrollment and renewal of enrollment activities based on their knowledge of actual program assignments. Four employees devote an average of sixty-five percent of their time over the three-year enrollment cycle to enrolled actuary enrollment or renewal of enrollment activities. Prior biennial review costing analyses had understated the cost by only taking into account an average of forty percent of their time to enrolled actuary enrollment or renewal of enrollment activities. Additional staffing costs include oversight and support associated with these functions.

The baseline for the labor and benefits estimate was the actual salary and benefits for FY 2021. From this baseline, the IRS estimated the direct labor and benefits costs over the next three years using an inflation factor for FYs 2022, 2023, and 2024. The IRS used a three-year projection because the increase in future labor and benefits costs are reliably predictable representations of the actual costs that will be incurred by the RPO. These estimated direct labor and benefits costs were then reduced to reflect the percentage of time each individual devoted to enrolled actuary enrollment and renewal of enrollment activities and are set out in the following table:

Year	Estimated costs for direct labor and benefits
2022	$546,457
2023	$557,659
2024	$569,101
Total	$1,673,217

In addition, the IRS estimated $3,500 in direct costs for each year for travel, training, and supplies, or $10,500 total in this category for the three-year projection.

The total estimated direct costs for the three years is $1,683,717. After estimating the total direct costs, the IRS applied the FY 2021 overhead rate of 58.83 percent to the estimated direct costs to calculate indirect costs of $990,531, for a total cost for the three-year period of $2,674,248.

The calculation of the total cost of the enrolled actuary enrollment and renewal of enrollment program for 2022 through 2024 is shown below:

Direct Costs	$1,683,717
Overhead at 58.83%	+ $990,531
Total Costs	$2,674,248

2. *Volume of Applications*

The number of applicants during FYs 2018, 2019, and 2020 were 214, 132, and 3,584, respectively. The higher number of applicants in 2020 follows the historical norm of most renewals of enrollment occurring every third year. The total number of applications for the three years was 3,930. The IRS used this historical three-year volume to estimate the number of applicants for FYs 2022, 2023, and 2024.

3. *Unit Cost per Application*

To arrive at the total cost per application, the IRS divided the estimated three-year total of enrolled actuaries costs by the total volume of applications expected over the same three-year period to determine a per-application cost of $680.00, as shown below:

Total Costs	$2,674,248
Number of Applications	÷ 3,930
Cost per Application	$680

Special Analyses

I. *Regulatory Planning and Review*

These regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. *Initial Regulatory Flexibility Analysis*

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6), (RFA) requires the agency "to prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to the requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6). The Treasury Department and the IRS conclude that the proposed regulations, if promulgated, may have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is required.

Description of the reasons why action by the agency is being considered.

The change in enrolled actuary user fees is being considered in compliance with Section 6a(1) of OMB Circular A-25, which states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. Enrollment as an enrolled actuary confers special benefits to identifiable recipients; such "identifiable recipients" are new and renewing enrolled actuaries authorized to provide pension actuarial services and actuarial calculations under ERISA and the Internal Revenue Code. The IRS incurs costs associated with enrollment and renewal of enrollment verification and approval processes. The Treasury Department and the IRS previously determined that the full cost to the IRS of the enrollment and renewal of enrollment processes was $250.00 for each enrollment and each renewal of enrollment. In accordance with OMB Circular A-25, the Treasury Department and the IRS conducted a biennial review of the enrolled actuary user fee amount in 2021 and determined that the full cost to the IRS of the enrollment and renewal of enrollment processes for each enrolled actuary candidate is $680.00 per enrollment and renewal of enrollment, an increase of $143.33 per year for the three-year enrollment period.

Succinct statement of the objectives of, and the legal basis for, the proposed rule.

The objective of the proposed regulations is to recover the costs to the government associated with providing the services conferring the special benefit that accrues to an individual whom the Joint Board enrolls as a new or renewing enrolled actuary. When performing its duties, the RPO Joint Board staff conducts enrollment and renewal of enrollment processes including verifying that the individual applying for new or renewed enrolled actuary status fulfills certain requirements related to experience, basic actuarial knowledge, and pension actuarial knowledge. In addition, with respect to an individual seeking to renew as an enrolled actuary, the RPO Joint Board staff must verify that the renewing enrolled actuary properly certified that he or she satisfied continuing professional education (CPE) requirements as prescribed by the regulations of the Joint Board. Section 6a(1) of OMB Circular A-25 states that when a service offered by an agency confers special benefits to identifiable recipients beyond those accruing to the general public, the agency is to charge a user fee to recover the full cost of providing the service. An individual who is enrolled as an actuary by the Joint Board is conferred the special benefits of being authorized to perform actuarial services under ERISA and to practice before the IRS as provided by section 10.3(d) of Circular 230. These benefits are not available to the general public.

The legal basis for the fee for initial enrollment and the fee for renewal of enrollment as an enrolled actuary with the Joint Board is section 9701 of title 31.

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

The proposed regulations affect actuaries who apply for enrollment as an enrolled actuary or renewal of enrollment with the Joint Board. Only individuals, not businesses, can apply for new enrollment or to renew enrolled actuary certification. Therefore, the economic impact of these regulations on any small entity generally will be the result of an individual actuary owning a small business, or a small business employing an actuary and requiring the individual to apply for enrolled actuary status or renew as an enrolled actuary with the Joint Board. An estimate of the number of small entities to which the proposed rule will apply is not available.

The appropriate NAICS codes for enrolled actuaries are those that relate to the performance of pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code: NAICS code 524298, other insurance related activities; NAICS code 525110, employee benefit plans, retirement plans, pension funds and plans; and NAICS code 541611, administrative management and general management consulting services. The Small Business Administration establishes size standards for concerns considered to be small, as provided by 13 CFR 121.201. Pursuant to 13 CFR 121.201, concerns within NAICS 524298 are considered to be small if their annual receipts are less than or equal to $27.0 million; NAICS 525110, $35.0 million; and NAICS 541611, $21.5 million.

A description of the projected recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

No reporting or recordkeeping requirements are projected to be associated with the proposed regulations.

Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The IRS is not aware of any Federal rules that duplicate, overlap, or conflict with the proposed rule.

Description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities, including a discussion of significant alternatives.

The IOAA authorizes the government to charge user fees for agency services, subject to policies designated by the President. OMB Circular A-25 implements presidential policies regarding user fees and encourages user fees when a government agency provides services that confer a special benefit to a member of the public. In the IOAA, Congress has stated a preference that the costs of providing such services should be self-sustaining. OMB Circular A-25 expressly states that the agency providing such services generally must charge a user fee to recover the full cost of providing the service.

The IRS, acting through the RPO Joint Board staff, provides services which confer special benefits to the enrolled actuaries who will be subject to these user fees. Individuals who wish to perform pension actuarial services and actuarial certifications under ERISA and the Internal Revenue Code and practice before the IRS must satisfy the standards and qualifications as set forth in the regulations of the Joint Board for persons performing actuarial services required under ERISA. Only after the Joint Board verifies that an individual satisfied the stated standards and qualifications – either as a new enrolled actuary applicant or a renewing enrolled actuary – will the individual be enrolled as an enrolled actuary. An enrolled actuary must renew his or her certification every three years to ensure the required competence and compliance with ethical standards of performance for actuarial service.

Due to the costs of administering the new enrollment and renewal of enrollment processes, and the expressed preference in the IOAA that government services conferring special benefits be self-sustaining, there is no viable alternative to imposing a user fee.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the "ADDRESSES" section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at www.regulations.gov and upon request.

A public hearing is being held by teleconference on January 9, 2023 beginning at 10 a.m. EST. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments by telephone at the hearing must submit electronic or written comments and an outline of the topics to be addressed and the time to be devoted to each topic by December 19, 2022 as prescribed in the preamble under the "ADDRESSES" section.

A period of 10 minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at www.regulations.gov, search IRS and REG-100719-21. Copies of the agenda will also be available by emailing a request to publichearings@irs.gov. Please put "REG-100719-21 Agenda Request" in the subject line of the email.

Drafting Information

The principal author of these regulations is Carolyn M. Lee, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 300 as follows:

PART 300 – USER FEES

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

Authority: 31 U.S.C. 9701.

2. Amend §300.7 by revising paragraphs (b) and (d) to read as follows:

§300.7 Enrollment of enrolled actuary fee.

* * * * *

(b) *Fee*. The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $680.00.

* * * * *

(d) *Applicability date*. This section is applicable beginning [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

3. Amend §300.8 by revising paragraphs (b) and (d) to read as follows:

§300.8 Renewal of enrollment of enrolled actuary fee.

* * * * *

(b) *Fee*. The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $680.00.

* * * * *

(d) *Applicability date*. This section is applicable beginning [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

Paul J. Mamo,
Assistant Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 4, 2022, 8:45 a.m., and published in the issue of the Federal Register for October 5, 2022, 87 F.R. 60357)

Notice of Proposed Rulemaking

Exclusion From Gross Income of Previously Taxed Earnings and Profits, and Adjustments to Basis of Stock in Controlled Foreign Corporations and of Other Property

REG-121509-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking published in the Federal Register on August 29, 2006. The notice of proposed rulemaking relates to the exclusion from gross income of previously taxed earnings and profits under section 959 of the Internal Revenue Code (the "Code") and related basis adjustments under section 961 of the Code.

DATES: The proposed regulations are withdrawn on October 21, 2022.

FOR FURTHER INFORMATION CONTACT: Joshua P. Roffenbender, (202) 317-6934, or Chadwick Rowland, (202) 317-6937 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2006, the Treasury Department and the IRS issued a notice of proposed rulemaking relating to the exclusion from gross income of previously taxed earnings and profits under section 959 and related basis adjustments under section 961 (71 FR 51155), corrections to which were published in the **Federal Register** on December 8, 2006 (71 FR 71116) (together, the "2006 proposed regulations"). On December 14, 2018, the Treasury Department and the IRS issued Notice 2019-01 (2019-02 I.R.B. 275), which announced an intent to withdraw the 2006 proposed regulations and issue a new notice of proposed rulemaking under sections 959 and 961 (the "new proposed regulations").

This document withdraws the 2006 proposed regulations. Those proposed regulations were never finalized, never went into effect, and did not indicate that taxpayers could rely on them. Withdrawing the proposed regulations at this point will help prevent possible abuse or other misuse of them—such as inappropriate basis adjustments in certain stock acquisitions to which section 304(a)(1) applies—while the Treasury Department and the IRS continue to develop the new proposed regulations. The IRS may, where appropriate, challenge taxpayer positions giving rise to inappropriate results.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-121509-00) published in the **Federal Register** on August 29, 2006 (71 FR 51155), corrections to which were published in the **Federal Register** on December 8, 2006 (71 FR 71116), is withdrawn.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on T.B.D., and published in the issue of the Federal Register for T.B.D.)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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