Internal Revenue
bulletin

Bulletin No. 2009-22
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

T.D. 9449, page 1044.
REG–107271–08, page 1051.

Temporary and proposed regulations under section 163 of the Code provide guidance on how to determine the amount of prepaid mortgage insurance premiums that a taxpayer may deduct each taxable year under section 163(h)(4)(F). The regulations also provide guidance on the information reporting requirements for premiums, including prepaid premiums, for mortgage insurance.

Rev. Proc. 2009–29, page 1050.

2010 inflation adjusted amounts for Health Savings Accounts (HSAs). This procedure provides the 2010 inflation adjusted amounts for (HSAs) under section 223 of the Code.

EMPLOYEE PLANS

REG–115699–09, page 1052.

Proposed regulations under section 401 of the Code contain proposed amendments to the regulations relating to certain cash or deferred arrangements and matching contributions. A public hearing is scheduled for September 23, 2009.

Notice 2009–45, page 1047.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in May 2009; the 24-month average segment rates; the funding transitional segment rates applicable for May 2009; and the minimum present value transitional rates for April 2009.

ADMINISTRATIVE

T.D. 9449, page 1044.
REG–107271–08, page 1051.

Temporary and proposed regulations under section 163 of the Code provide guidance on how to determine the amount of prepaid mortgage insurance premiums that a taxpayer may deduct each taxable year under section 163(h)(4)(F). The regulations also provide guidance on the information reporting requirements for premiums, including prepaid premiums, for mortgage insurance.

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

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Actions Relating to Decisions of the Tax Court

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

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

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

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

The Commissioner does NOT ACQUIESCE in the following decision:

Cox v. Commissioner,[1]
514 F.3d 1119 (10th Cir. 2008),
rev'g 126 T.C. 237 (2006)

[1] Nonacquiescence relating to the court of appeals' holding that indirect consideration of a tax liability in conjunction with evaluating collection alternatives raised in a collection due process hearing for an earlier tax year constitutes prohibited prior involvement under section 6330(b)(3) and disqualifies an appeals officer from conducting a subsequent CDP hearing focusing on that liability.

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

Section 163.—Interest

26 CFR 1.163–11T: Allocation of certain prepaid qualified mortgage insurance premiums (temporary).

T.D. 9449

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Allocation and Reporting of Mortgage Insurance Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that explain how to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residence interest each taxable year under section 163(h)(4)(F) of the Internal Revenue Code (Code). The temporary regulations also provide guidance to reporting entities receiving premiums, including prepaid premiums, for mortgage insurance. The temporary regulations reflect changes to the law made by the Tax Relief and Health Care Act of 2006 and the Mortgage Forgiveness Debt Relief Act of 2007. The text of the temporary regulations also serves as the text of the proposed regulations (REG–107271–08) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on May 7, 2009.

Applicability Dates: For dates of applicability, see §§1.163–11T(d) and 1.6050H–3T(e).

FOR FURTHER INFORMATION CONTACT: Concerning §1.163–11T, Angela Warren, (202) 622–4950; concerning §1.6050H–3T, Stephen Coleman (202) 622–4910 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 419 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2967) (2006 Act), added sections 163(h)(3)(E), (h)(4)(E), and (h)(4)(F) to the Code. Section 3 of the Mortgage Forgiveness Debt Relief Act of 2007, Public Law 110–142 (121 Stat. 1803) (2007), amended section 163(h)(3)(E)(iv). In general, these new provisions treat certain qualified mortgage insurance premiums as qualified residence interest. This treatment applies only to certain qualified mortgage insurance premiums paid or accrued on or after January 1, 2007, and on or before December 31, 2010, on mortgage insurance contracts issued on or after January 1, 2007.

Section 163(h)(3)(E)(i) provides that premiums paid or accrued for qualified mortgage insurance in connection with acquisition indebtedness for a qualified residence are treated as qualified residence interest for purposes of section 163. Section 163(h)(4)(E) defines *qualified mortgage insurance* as (i) mortgage insurance provided by the Veterans Administration (VA), the Federal Housing Administration (FHA), or the Rural Housing Administration (Rural Housing)[1], and (ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). The amount treated as qualified residence interest may be reduced or eliminated under section 163(h)(3)(E)(ii), which provides that the amount allowed as a deduction is phased out ratably by 10 percent for each $1,000 ($500 in the case of a married individual filing a separate return) that the taxpayer's adjusted gross income exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

Section 163(h)(4)(F) states that any amount paid by the taxpayer for qualified mortgage insurance that is properly allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which the amount is paid shall be chargeable to capital account and shall be treated as paid in the periods to which the amount is allocated. No deduction shall be allowed for the unamortized balance of the account if the mortgage is satisfied before the end of its term. The allocation rules in section 163(h)(4)(F) do not apply to amounts paid for qualified mortgage insurance provided by the VA or Rural Housing. Additionally, section 163(h)(3)(E)(iv)(II) disallows a deduction for amounts allocable to any period after December 31, 2010.

Section 419 of the 2006 Act also added section 6050H(h) to the Code, which generally provides that any person who, in the course of a trade or business, receives from an individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make an information return in the form prescribed by the Secretary. As defined in section 6050H(h)(3)(B), the term *mortgage insurance* has the same meaning as qualified mortgage insurance in section 163(h)(4)(E). See also Tax Technical Corrections Act of 2007, Public Law 110–172 (121 Stat. 2473) §11(b)(2).

On January 8, 2008, the IRS and the Treasury Department published Notice 2008–15, 2008–4 I.R.B. 313, (see §601.601(d)(2)(ii)(*b*)) to provide guidance to individual taxpayers in determining the amount of prepaid qualified mortgage insurance premiums that is treated as qualified residence interest under section 163(h)(3)(E) that may be deducted in 2007, and to reporting entities receiving premiums, including prepaid premiums, for mortgage insurance in 2007. The notice provides that an individual taxpayer may allocate the prepaid premium ratably over the shorter of (1) the stated term of the mortgage, or (2) 84 months, beginning with the month in which the insurance was obtained. The notice also provides that reporting entities that receive mortgage insurance premiums of $600 or more in 2007 may report either the portion of the amount received that is allocable to 2007, the amount actually received, or the

[1] References in section 163(h)(4)(E)(i) to the Veterans Administration and Rural Housing Administration are interpreted to mean their respective successors, the Department of Veterans Affairs and Rural Housing Service.

amount determined under an 84-month allocation method. The notice requested comments regarding the appropriate allocation method and reporting requirements that should apply to future years.

Summary of Comments on Notice 2008–15 and Explanation of Provisions

In response to Notice 2008–15, the Treasury Department and the IRS received several comments concerning the appropriate allocation methodology for prepaid qualified mortgage insurance premiums that are treated as qualified residence interest under section 163(h)(3)(E). One commenter recommended adopting the rule from Notice 2008–15 permitting taxpayers to allocate a prepaid premium ratably over the shorter of (1) the stated term of the mortgage, or (2) 84 months. According to this commenter, an 84-month allocation rule closely approximates the actual duration of the average mortgage insurance contract. Another commenter suggested adopting a three-year allocation period to coincide with the Department of Housing and Urban Development's (HUD) policy of refunding prepaid premiums on FHA loans. Under this policy, HUD refunds prepaid FHA mortgage insurance premiums if the borrower refinances the mortgage through another FHA loan within the first three years of the original loan term.

After consideration of these comments, the Treasury Department and the IRS are adopting the rule from Notice 2008–15 concerning allocation of prepaid qualified mortgage insurance premiums based on the understanding that the average life of a mortgage insurance contract on home mortgages generally is seven years (84 months). Accordingly, the temporary regulations add a new provision to the regulations under section 163. Notwithstanding the general rules for the treatment of qualified residence interest (for example, the period over which certain points paid to refinance a mortgage are allocable), §1.163–11T provides that an individual taxpayer may allocate prepaid qualified mortgage insurance premiums that are treated as qualified residence interest under section 163(h)(3)(E) over the shorter of (a) the stated term of the mortgage, or (b) a period of 84 months. Instructions for calculating the portion of prepaid qualified mortgage insurance premiums that are deductible in a particular taxable year are in Publication 936, "*Home Mortgage Interest Deduction*."

The Treasury Department and the IRS received several comments in response to Notice 2008–15 concerning the appropriate reporting requirement. Some commenters suggested that mortgage servicers be required to report all mortgage insurance premiums received during the taxable year, including prepayments. Others suggested allowing mortgage servicers to report either (1) the amount of mortgage insurance premiums received, or (2) the amount disbursed during the taxable year to the issuer of the mortgage insurance policy.

After consideration of these comments, the Treasury Department and the IRS are adopting a rule requiring mortgage servicers to report the amount of all mortgage insurance premiums, including prepaid mortgage insurance premiums, received in the calendar year. The temporary regulations accordingly add a new provision to the regulations under section 6050H. Section 1.6050H–3T provides that a reporting entity that receives mortgage insurance premiums of $600 or more from an individual taxpayer during a calendar year shall make an information return setting forth the total amount received from that individual during the calendar year pursuant to the forms and instructions prescribed by the Secretary (currently reported in Box 4 of Form 1098 "*Mortgage Interest Statement*").

Several commenters suggested clarifying that there are separate $600 thresholds for reporting mortgage interest under section 6050H(a) and mortgage insurance premiums under section 6050H(h). Several commenters also requested inclusion of a separate standard for penalty relief for reporting mortgage insurance premiums in compliance with section 6050H(h). Such guidance is unnecessary, as sections 6050H(a) and 6050H(h) set forth separate $600 reporting thresholds for mortgage interest received and mortgage insurance premiums received, and the good faith standard for penalty relief in §301.6724–1(a)(2)(i) applies to the reporting of mortgage insurance premiums.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Angela Warren, Office of the Associate Chief Counsel (Income Tax and Accounting), and Stephen Coleman, Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.163–11T is added to read as follows:

§1.163–11T Allocation of certain prepaid qualified mortgage insurance premiums (temporary).

(a) *Allocation*—(1) *In general.* As provided in section 163(h)(3)(E), premiums paid or accrued for qualified mortgage insurance during the taxable year in connection with acquisition indebtedness with respect to a qualified residence (as defined in section 163(h)(4)(A)) of the taxpayer shall be treated as qualified residence interest

(as defined in section 163(h)(3)(A)). If an individual taxpayer pays such a premium that is properly allocable to a mortgage the payment of which extends to periods beyond the close of the taxable year (prepaid premium), the taxpayer must allocate the premium to determine the amount treated as qualified residence interest for each taxable year. The premium must be allocated ratably over the shorter of—

(i) The stated term of the mortgage; or

(ii) A period of 84 months, beginning with the month in which the insurance was obtained.

(2) *Limitation*. If a mortgage is satisfied before the end of its stated term, no deduction as qualified residence interest shall be allowed for any amount of the premium that is allocable to periods after the mortgage is satisfied.

(b) *Scope*. The allocation requirement in paragraph (a) of this section applies only to mortgage insurance provided by the Federal Housing Administration or private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). It does not apply to mortgage insurance provided by the Department of Veterans Affairs or the Rural Housing Service. Paragraph (a) of this section applies whether the qualified mortgage insurance premiums are paid in cash or are financed, without regard to source.

(c) *Cross reference*. For rules concerning the information reporting of premiums, including prepaid premiums, for mortgage insurance, see §1.6050H–3T.

(d) *Effective/applicability date*. This section applies to prepaid qualified mortgage insurance premiums described in paragraph (a) of this section paid or accrued on or after January 1, 2008, and on or before December 31, 2010, for mortgage insurance provided by the Federal Housing Administration or private mortgage insurers issued on or after January 1, 2007.

(e) *Expiration date*. The applicability of this section expires on May 4, 2012.

Par. 3. Section 1.6050H–3T is added to read as follows:

§1.6050H–3T Information reporting of mortgage insurance premiums (temporary).

(a) *Information reporting requirements*. Any person who, in the course of a trade or business receives premiums, including prepaid premiums, for mortgage insurance (as described in paragraph (b) of this section) from any individual aggregating $600 or more for any calendar year, shall make an information return setting forth the total amount received from that individual during the calendar year pursuant to the forms and instructions prescribed by the Secretary.

(b) *Scope*. Paragraph (a) of this section applies to mortgage insurance provided by the Federal Housing Administration, Department of Veterans Affairs, or the Rural Housing Service (or their successor organizations), or to private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). The rule stated in paragraph (a) of this section applies to the receipt of all payments of mortgage insurance premiums, by cash or financing, without regard to source.

(c) *Aggregation*. Whether a person receives $600 or more of mortgage insurance premiums is determined on a mortgage-by-mortgage basis. A recipient need not aggregate mortgage insurance premiums received on all of the mortgages of an individual to determine whether the $600 threshold is met. Therefore, a recipient need not report mortgage insurance premiums of less than $600 received on a mortgage, even though it receives a total of $600 or more of mortgage insurance premiums on all of the mortgages for an individual for a calendar year.

(d) *Cross reference*. For rules concerning the allocation of certain prepaid qualified mortgage insurance premiums, see §1.163–11T of this chapter.

(e) *Effective/applicability date*. This section applies to mortgage insurance premiums received on or after January 1, 2008.

(f) *Expiration date*. The applicability of this section expires on May 4, 2012.

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

Approved April 23, 2009.

Bernard J. Knight, Jr.,
Acting General Counsel of the Treasury.

(Filed by the Office of the Federal Register on May 6, 2009, 8:45 a.m., and published in the issue of the Federal Register for May 7, 2009, 74 F.R. 21296)

Section 6050H.—Returns Relating to Mortgage Interest Received in Trade or Business From Individuals

Temporary and proposed regulations provide guidance on the information reporting requirements for premiums, including prepaid premiums, for mortgage insurance. See T.D. 9449, page 1044.

Temporary and proposed regulations provide guidance on the information reporting requirements for premiums, including prepaid premiums, for mortgage insurance. See REG-107271-08, page 1051.

Part III. Administrative, Procedural, and Miscellaneous

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

Notice 2009–45

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–2 C.B. 366.

The composite corporate bond rate for April 2009 is 7.05 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range		
Month	*Year*		90%	to	100%
May	2009	6.43	5.78		6.43

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from April 2009 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of April 2009 are, respectively, 5.12, 7.15, and 6.92. The three 24-month average corporate bond segment rates applicable for May 2009 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.33	6.68	6.82

The transitional segment rates under § 430(h)(2)(G) applicable for May 2009, taking into account the corporate bond weighted average of 6.43 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	6.06	6.51	6.56
2009	5.70	6.60	6.69

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for April 2009 is 3.76 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2039.

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

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	*Year*		90%	to	105%
May	2009	4.44	4.00		4.67

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for April 2009, taking into account the April 2009 30-year Treasury rate of 3.76 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.03	4.44	4.39
2009	4.30	5.12	5.02

DRAFTING INFORMATION

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

Table I

Monthly Yield Curve for April 2009

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	3.55	20.5	7.19	40.5	6.89	60.5	6.80	80.5	6.75
1.0	4.03	21.0	7.17	41.0	6.89	61.0	6.80	81.0	6.75
1.5	4.47	21.5	7.16	41.5	6.88	61.5	6.80	81.5	6.75
2.0	4.85	22.0	7.14	42.0	6.88	62.0	6.79	82.0	6.75
2.5	5.17	22.5	7.13	42.5	6.88	62.5	6.79	82.5	6.75
3.0	5.43	23.0	7.11	43.0	6.87	63.0	6.79	83.0	6.75
3.5	5.66	23.5	7.10	43.5	6.87	63.5	6.79	83.5	6.75
4.0	5.85	24.0	7.09	44.0	6.87	64.0	6.79	84.0	6.75
4.5	6.03	24.5	7.08	44.5	6.86	64.5	6.79	84.5	6.75
5.0	6.20	25.0	7.07	45.0	6.86	65.0	6.79	85.0	6.75
5.5	6.35	25.5	7.05	45.5	6.86	65.5	6.78	85.5	6.74
6.0	6.48	26.0	7.04	46.0	6.86	66.0	6.78	86.0	6.74
6.5	6.61	26.5	7.04	46.5	6.85	66.5	6.78	86.5	6.74
7.0	6.72	27.0	7.03	47.0	6.85	67.0	6.78	87.0	6.74
7.5	6.83	27.5	7.02	47.5	6.85	67.5	6.78	87.5	6.74
8.0	6.92	28.0	7.01	48.0	6.85	68.0	6.78	88.0	6.74
8.5	7.00	28.5	7.00	48.5	6.84	68.5	6.78	88.5	6.74
9.0	7.08	29.0	7.00	49.0	6.84	69.0	6.78	89.0	6.74
9.5	7.14	29.5	6.99	49.5	6.84	69.5	6.77	89.5	6.74
10.0	7.19	30.0	6.98	50.0	6.84	70.0	6.77	90.0	6.74
10.5	7.24	30.5	6.98	50.5	6.83	70.5	6.77	90.5	6.74
11.0	7.28	31.0	6.97	51.0	6.83	71.0	6.77	91.0	6.74
11.5	7.31	31.5	6.97	51.5	6.83	71.5	6.77	91.5	6.74
12.0	7.33	32.0	6.96	52.0	6.83	72.0	6.77	92.0	6.74
12.5	7.35	32.5	6.96	52.5	6.83	72.5	6.77	92.5	6.74
13.0	7.36	33.0	6.95	53.0	6.82	73.0	6.77	93.0	6.73
13.5	7.36	33.5	6.95	53.5	6.82	73.5	6.77	93.5	6.73
14.0	7.36	34.0	6.94	54.0	6.82	74.0	6.76	94.0	6.73
14.5	7.36	34.5	6.94	54.5	6.82	74.5	6.76	94.5	6.73
15.0	7.35	35.0	6.93	55.0	6.82	75.0	6.76	95.0	6.73
15.5	7.34	35.5	6.93	55.5	6.81	75.5	6.76	95.5	6.73
16.0	7.33	36.0	6.92	56.0	6.81	76.0	6.76	96.0	6.73
16.5	7.32	36.5	6.92	56.5	6.81	76.5	6.76	96.5	6.73
17.0	7.30	37.0	6.91	57.0	6.81	77.0	6.76	97.0	6.73
17.5	7.29	37.5	6.91	57.5	6.81	77.5	6.76	97.5	6.73
18.0	7.27	38.0	6.91	58.0	6.81	78.0	6.76	98.0	6.73
18.5	7.26	38.5	6.90	58.5	6.80	78.5	6.76	98.5	6.73
19.0	7.24	39.0	6.90	59.0	6.80	79.0	6.76	99.0	6.73
19.5	7.22	39.5	6.90	59.5	6.80	79.5	6.75	99.5	6.73
20.0	7.21	40.0	6.89	60.0	6.80	80.0	6.75	100.0	6.73

* This spot monthly yield curve represents data from April 2009 only, and under the proposed regulations for § 430(h)(2), this table is for use by § 430(h)(2)(D)(ii) electing plans with valuation dates in May 2009. Until final regulations are effective, a reasonable interpretation of § 430(h)(2)(D)(ii) would permit plan sponsors to use this table in conjunction with the applicable month rules of § 430(h)(2)(E). In such a case, this table could also be used for a valuation as of a date in April, June, July, or August of 2009.

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26 CFR 601.602: Tax forms and instructions. (Also: Part 1, §§ 1, 223.)

Rev. Proc. 2009–29

SECTION 1. PURPOSE

This revenue procedure provides the 2010 inflation adjusted amounts for Health Savings Accounts (HSAs) as determined under § 223 of the Internal Revenue Code.

SECTION 2. 2010 INFLATION ADJUSTED ITEMS

Annual contribution limitation. For calendar year 2010, the annual limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible health plan is $3,050. For calendar year 2010, the annual limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible health plan is $6,150.

High deductible health plan. For calendar year 2010, a "high deductible health plan" is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,200 for self-only coverage or $2,400 for family coverage, and the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $5,950 for self-only coverage or $11,900 for family coverage.

SECTION 3. EFFECTIVE DATE

This revenue procedure is effective for calendar year 2010.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Christina M. Glendening of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding § 223 and HSAs, contact Leslie Paul at (202) 622–6080 (not a toll-free call). For further information regarding the calculation of the inflation adjustments in this revenue procedure, contact Ms. Glendening at (202) 622–4920 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Allocation and Reporting of Mortgage Insurance Premiums

REG–107271–08

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations relating to prepaid qualified mortgage insurance premiums. The temporary regulations reflect changes to the law made by the Tax Relief and Health Care Act of 2006 and the Mortgage Forgiveness Debt Relief Act of 2007. The temporary regulations explain how to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residence interest each taxable year under section 163(h)(4)(F) of the Internal Revenue Code (Code). The temporary regulations also provide guidance to reporting entities receiving premiums, including prepaid premiums, for mortgage insurance. The text of those temporary regulations (T.D. 9449) also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by August 5, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–107271–08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–107271–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–107271–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Angela Warren (202) 622–4950; concerning submission of comments or a request for a public hearing, Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the regulations under 26 CFR Part 1 relating to sections 163(h) and 6050H(h). The temporary regulations add rules relating to the proper allocation of prepaid qualified mortgage insurance premiums and provide guidance to reporting entities receiving mortgage insurance premiums. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

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

Drafting Information

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

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.163–11 is added to read as follows:

§1.163–11 Allocation of certain prepaid qualified mortgage insurance premiums.

[The text of this section is the same as the text of §1.163–11T(a) through (d) published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.6050H–3 is added to read as follows:

§1.6050H–3 Information reporting of mortgage insurance premiums.

[The text of this section is the same as the text of §1.6050H–3T(a) through (e) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on May 6, 2009, 8:45 a.m., and published in the issue of the Federal Register for May 7, 2009, 74 F.R. 21295)

Notice of Proposed Rulemaking and Notice of Public Hearing

Suspension or Reduction of Safe Harbor Nonelective Contributions

REG–115699–09

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 certain cash or deferred arrangements and matching contributions under section 401(k) plans and section 403(b) plans. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of certain section 401(k) plans and section 403(b) plans.

DATES: Written or electronic comments must be received by August 17, 2009. Outlines of the topics to be discussed at the public hearing scheduled for Wednesday, September 23, 2009, at 10 a.m. must be received by August 19, 2009.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–115699–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–115699–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., 20224 or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–115699–09).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad, Dana Barry or William D. Gibbs at (202) 622–6060; concerning the submission of comments or to request a public hearing, *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by July 17, 2009. Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in these proposed regulations is in §1.401(k)–3. The collection relates to the new supplemental notice in the case of a reduction or suspension of safe harbor nonelective contributions. The likely recordkeepers are businesses or other for-profit institutions, nonprofit institutions, organizations, and state or local governments.

Estimated total average annual recordkeeping burden: 5,000 hours.

Estimated average annual burden hours per recordkeeper: 1 hour.

Estimated number of recordkeepers: 5,000.

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

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

Background

This document contains proposed amendments to regulations under sections 401(k) and 401(m) of the Internal Revenue Code.

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Section 1.401(k)–1(a)(2) defines a cash or deferred arrangement (CODA) as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a). Contributions that are made pursuant to a cash or deferred election under a qualified CODA are commonly referred to as elective contributions.

In order for a CODA to be a qualified CODA, it must satisfy a number of requirements. For example, contributions under the CODA must satisfy either the nondiscrimination test set forth in section 401(k)(3), called the actual deferral percentage (ADP) test, or one of the design-based alternatives in section 401(k)(11), 401(k)(12), or 401(k)(13). Under the ADP test, the average percentage of compensation deferred for eligible highly compensated employees (HCEs) is compared to the average percentage of compensation deferred for eligible nonhighly compensated employees (NHCEs), and if certain deferral percentage limits are exceeded with respect to HCEs, corrective action must be taken.

Section 401(k)(12) provides a design-based safe harbor method under

which a CODA is treated as satisfying the ADP test if the arrangement meets certain contribution and notice requirements. A plan satisfies this safe harbor method if the employer makes specified qualified matching contributions (QMACs) for all eligible NHCEs. The employer can make QMACs under a basic matching formula that provides for QMACs on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 3% of compensation and 50% of the employee's elective contributions that exceed 3% but do not exceed 5% of compensation. Alternatively, the employer can make QMACs under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of QMACs that is at least as generous as under the basic matching formula, but only if the rate of QMACs under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In lieu of QMACs, the plan is permitted to provide qualified nonelective contributions (QNECs) equal to 3% of compensation for all eligible NHCEs. In addition, notice must be provided to each eligible employee, within a reasonable period before the beginning of the plan year, of the employee's rights and obligations under the plan.

Section 401(k)(13), as added by section 902 of the Pension Protection Act of 2006, Public Law 109–280 (PPA '06), provides an alternative design-based safe harbor for a CODA that provides for automatic contributions at a specified level and meets certain employer contribution and notice requirements. Similar to the design-based safe harbor under section 401(k)(12), section 401(k)(13) provides a choice for an employer between satisfying a matching contribution requirement or a nonelective contribution requirement. Under the matching contribution requirement, the employer can make matching contributions under a basic matching formula that provides for matching contributions on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 1% of compensation and 50% of the employee's elective contributions that exceed 1% but do not exceed 6% of compensation. Alternatively, the employer can make matching contributions under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of matching contributions that is at least as generous as under the basic matching formula at such rate, but only if the rate of matching contributions under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In addition, the plan must satisfy a notice requirement under section 401(k)(13) that is similar to the notice requirement under section 401(k)(12).

Except as discussed elsewhere in this preamble, a plan that uses one of these safe harbor methods under section 401(k)(12) or (13) must specify, before the beginning of the plan year, whether the safe harbor contribution will be the safe harbor nonelective contribution or the safe harbor matching contribution and is not permitted to provide that ADP testing will be used if the requirements for the safe harbor are not satisfied.

Section 401(m) sets forth a nondiscrimination requirement that applies to a plan providing for matching contributions or employee contributions. Such a plan must satisfy either the nondiscrimination test set forth in section 401(m)(2), called the actual contribution percentage (ACP) test, or one of the design-based alternatives in section 401(m)(10), 401(m)(11), or 401(m)(12). The ACP test in section 401(m)(2) is comparable to the ADP test in section 401(k)(3).

Under section 401(m)(11), a defined contribution plan is treated as satisfying the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(12) and certain other requirements are satisfied. Similarly, under section 401(m)(12), as added by section 902 of PPA '06, a defined contribution plan that provides for automatic contributions at a specified level is treated as meeting the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(13) and certain other requirements are satisfied.

Section 403(b) provides favorable tax treatment for the purchase of annuity contracts that satisfy certain requirements. Pursuant to sections 403(b)(1)(D) and 403(b)(12)(A)(i), the purchase of an annuity contract (other than a purchase by a church) is eligible for this favorable tax treatment only if it is part of a plan that meets the requirements of section 401(m), as if it were a qualified plan under section 401(a).

Final regulations under sections 401(k) and 401(m) were published on December 29, 2004. Sections 1.401(k)–3 and 1.401(m)–3 set forth the requirements for a safe harbor plan under sections 401(k)(12) and 401(m)(11), respectively. On February 24, 2009, these regulations were amended to reflect sections 401(k)(13) and 401(m)(12) (T.D. 9447, 2009–12 I.R.B. 694 [74 FR 8200]).

Sections 1.401(k)–3(e)(1) and 1.401(m)–3(f)(1) provide that subject to certain exceptions, a safe harbor plan must be adopted before the beginning of the plan year and be maintained throughout a full 12-month plan year. Accordingly, if, at the beginning of the plan year, a plan contains an allocation formula that includes safe harbor matching or safe harbor nonelective contributions, then the plan may not be amended to revert to ADP or ACP testing for the plan year (except to the extent permitted under §§1.401(k)–3 and 1.401(m)–3).

Sections 1.401(k)–3(f) and 1.401(m)–3(g) permit a plan that provides for the use of the current year ADP or ACP testing method to be amended after the first day of the plan year to adopt the safe harbor method under §1.401(k)–3 or §1.401(m)–3 using safe harbor nonelective contributions, effective as of the first day of the plan year, if certain requirements are satisfied. In particular, the amendment must be adopted no later than 30 days before the last day of the plan year, and the plan must satisfy specified contingent and follow-up notice requirements. Under §§1.401(k)–3(f) and 1.401(m)–3(g), a plan satisfies the contingent notice requirement if the notice is provided before the plan year and specifies that the plan may be amended during the plan year to include the safe harbor nonelective contribution and that, if the plan is amended, a follow-up notice will be provided. A plan satisfies the follow-up notice requirement if, no later than 30 days before the last day of the plan year, each eligible employee is given a notice that states that the safe harbor nonelective contributions will be made for the plan year.

A plan that provides for safe harbor matching contributions will not fail to sat-

isfy section 401(k)(3) or section 401(m)(2) for a plan year merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective contributions, as long as the requirements under §1.401(k)–3(g) or §1.401(m)–3(h) are met. Under these regulations: a notice must be provided to all eligible employees regarding the reduction or suspension of safe harbor matching contributions; the reduction or suspension of safe harbor matching contributions must be effective no earlier than the later of 30 days after eligible employees are provided the notice and the date the amendment is adopted; eligible employees must be given a reasonable opportunity prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections; the plan must be amended to provide that the applicable nondiscrimination tests will be satisfied for the entire plan year; and the plan must satisfy the requirements of §§1.401(k)–3 and 1.401(m)–3 (other than §§1.401(k)–3(g) and 1.401(m)–3(h)) with respect to amounts deferred through the effective date of the amendment.

Sections 1.401(k)–3(e)(4) and 1.401(m)–3(f)(4) provide that, if a plan terminates during a plan year, the plan will not fail to satisfy the requirements of §§1.401(k)–3(e)(1) and 1.401(m)–3(f)(1) merely because the final plan year is less than 12 months, provided that the plan satisfies the requirements of §§1.401(k)–3 and 1.401(m)–3 through the date of termination and either (1) the plan would have satisfied the requirements applicable to a plan amendment to reduce or suspend safe harbor matching contributions (other than the requirement that employees have a reasonable opportunity to change their cash or deferred elections and, if applicable, employee contribution elections) or (2) the termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(d)[1]).

Section 416 sets forth the rules for top-heavy plans. Section 416(g)(4)(H) provides that a top-heavy plan will not include a plan which consists solely of a cash or deferred arrangement that meets the requirements of section 401(k)(12) or 401(k)(13) and matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

Explanation of Provisions

The proposed regulations would amend §§1.401(k)–3 and 1.401(m)–3 to permit an employer sponsoring a safe harbor plan described in section 401(k)(12) or 401(k)(13) that incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(c)) to reduce or suspend safe harbor nonelective contributions during a plan year. These proposed regulations would provide an employer an alternative to the option of terminating the employer's safe harbor plan in such a situation.

The proposed regulations would allow for the reduction or suspension of safe harbor nonelective contributions under rules generally comparable to the provisions relating to the reduction or suspension of safe harbor matching contributions. Under these rules, a plan that reduces or suspends safe harbor nonelective contributions will not fail to satisfy section 401(k)(3), provided that: (1) all eligible employees are provided a supplemental notice of the reduction or suspension; (2) the reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice and the date the amendment is adopted; (3) eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of the safe harbor nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections; (4) the plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs, using the current year testing method; and (5) the plan satisfies the safe harbor nonelective contribution requirement with respect to safe harbor compensation paid through the effective date of the amendment. The proposed regulations would also provide that the supplemental notice requirement is satisfied if each eligible employee is given a notice that explains: (1) the consequences of the amendment reducing or suspending future safe harbor nonelective contributions; (2) the procedures for changing cash or deferred elections and, if applicable, employee contribution elections; and (3) the effective date of the amendment.

The proposed regulations would further provide that these same rules that apply to safe harbor plans under §1.401(k)–3 also apply to safe harbor plans under §1.401(m)–3, except that the plan must be amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method.

Because the reduction or suspension of safe harbor contributions can be effective no earlier than the later of 30 days after the notice is provided to all eligible employees and the date the amendment is adopted, an employer that wants to reduce or suspend safe harbor contributions during a year could not implement this change by adopting the amendment at the end of the plan year. In addition, a plan that is amended during the plan year to reduce or suspend safe harbor contributions (whether nonelective contributions or matching contributions) must prorate the otherwise applicable compensation limit under section 401(a)(17) in accordance with the requirements of §1.401(a)(17)–1(b)(3)(iii)(A). Furthermore, a plan that is amended to reduce or suspend safe harbor contributions is no longer a plan described in section 401(k)(12), 401(k)(13), 401(m)(11), or 401(m)(12) for the entire plan year. Accordingly, such a plan is not described in section 416(g)(4)(H) and, thus, will be subject to the top-heavy rules under section 416.

Proposed Effective Date

These regulations are proposed to be effective for amendments adopted after May 18, 2009. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the guidance in these proposed regulations, those provisions of the

[1] The definition of substantial business hardship in section 412(d) was relocated to become part of section 412(c) by section 111 of the Pension Protection Act of 2006, Public Law 109–280.

final regulations will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. The proposed regulations impact on small businesses is as follows. A pension consultant or attorney must read the regulation. He must then communicate this information to the small business owner. The small business owner must then decide if he wants to reduce nonelective contributions to its safe harbor plan. Once this decision is made, the pension consultant or attorney must draft the notice to employees and the small business must make sure that the employees receive the notice.

We estimate that the cost to do these tasks is $500-$1000. If the small business owner can implement this program by July 1, 2009, he will save 1.5% of his payroll for 2009. A small business with an annual payroll of $1,000,000 can save $15,000 in 2009. Thus, adopting the provisions in these regulation will in almost all cases save the small business owner money. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (one signed and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand.

The current regulations, in describing the requirement for safe harbor plans that a notice be provided before the beginning of the plan year, do not address the possibility that safe harbor contributions may be reduced or suspended during the year. Since, under these regulations, safe harbor nonelective contributions, as well as safe harbor matching contributions, can be reduced or suspended during the plan year under certain circumstances, the IRS and Treasury are considering adding to the minimum content listing in §1.401(k)–3(d)(2)(ii), a requirement that the possibility of reduced or suspended safe harbor contributions be described in the notice required to be provided before the beginning of the plan year (except in the case of a contingent notice described in §1.401(k)–3(f)). If adopted, the requirement that the notice describe the possibility of reduced or suspended safe harbor contributions would not apply for plan years beginning before January 1, 2010. The IRS and Treasury specifically request comments on whether the additional content requirement should be added to the regulations.

A public hearing has been scheduled for September 23, 2009, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the FOR FURTHER INFORMATION CONTACT section of this preamble.

Persons who wish to present oral comments at the hearing must submit written or electronic comments and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by August 19, 2009. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Dana Barry, William Gibbs, and Lisa Mojiri-Azad, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

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Proposed Amendments to the Regulations

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

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended to read as follows:

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

Section 1.401(k)–3 is also issued under 26 U.S.C. 401(m)(9)

Par. 2. Section 1.401(k)–0 is amended by revising the entries for §1.401(k)–3(g), (g)(1) and (g)(2) to read as follows:

§1.401(k)–0 Table of Contents.

* * * * *

§1.401(k)–3 Safe harbor requirements.

* * * * *

(g) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

Par. 3. Section 1.401(k)–3 is amended by:

1. Revising paragraph (e)(4)(ii).
2. Revising paragraph (g).

The revisions read as follows:

§1.401(k)–3 Safe harbor requirements.

* * * * *

(e) * * *

(4) * * *

(ii) The plan termination is in connection with a transaction described in section

410(b)(6)(C) or the employer incurs a substantial business hardship comparable to a substantial business hardship described in section 412(c).

* * * * *

(g) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions*. A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective contributions (and, if applicable, employee contributions) provided that—

(A) All eligible employees are provided the supplemental notice in accordance with paragraph (g)(2) of this section;

(B) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section and the date the amendment is adopted;

(C) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(D) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(k)–2(a)(2)(ii); and

(E) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions*. A plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section for the plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(c));

(B) The amendment is adopted after May 18, 2009;

(C) All eligible employees are provided the supplemental notice in accordance with paragraph (g)(2) of this section;

(D) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section and the date the amendment is adopted;

(E) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(F) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(k)–2(a)(2)(ii); and

(G) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice*. The supplemental notice requirement of this paragraph (g)(2) is satisfied if each eligible employee is given a notice (in writing or such other form as prescribed by the Commissioner) that explains—

(i) The consequences of the amendment which reduces or suspends future safe harbor contributions;

(ii) The procedures for changing their cash or deferred elections and, if applicable, their employee contribution elections; and

(iii) The effective date of the amendment.

Par. 4. Section 1.401(m)–0 is amended by revising the entries for §1.401(m)–3(h), (h)(1) and (h)(2) in their entirety to read as follows:

§1.401(m)–0 Table of Contents.

* * * * *

§1.401(m)–3 Safe Harbor Requirements.

* * * * *

(h) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

Par. 5. Section 1.401(m)–3 is amended by:

1. Revising paragraph (f)(4)(ii).
2. Revising paragraph (h).

The revisions read as follows:

§1.401(m)–3 Safe harbor requirements.

* * * * *

(f) * * *

(4) * * *

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship, comparable to a substantial business hardship described in section 412(c).

* * * * *

(h) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions*. A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(m)(2) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective deferrals and, if applicable, employee contributions provided that—

(A) All eligible employees are provided the supplemental notice in accordance with paragraph (h)(2) of this section;

(B) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section and the date the amendment is adopted;

(C) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections

and, if applicable, their employee contribution elections;

(D) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(m)–2(a)(2)(ii); and

(E) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions*. A plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section will not fail to satisfy the requirements of section 401(m)(2) for the plan year merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(c));

(B) The amendment is adopted after May 18, 2009;

(C) All eligible employees are provided the supplemental notice in accordance with paragraph (h)(2) of this section;

(D) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section and the date the amendment is adopted;

(E) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(F) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in §1.401(m)–2(a)(2)(ii); and

(G) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice*. The supplemental notice requirement of this paragraph (h)(2) is satisfied if each eligible employee is given a notice that satisfies the requirements of §1.401(k)–3(g)(2).

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

(Filed by the Office of the Federal Register on May 15, 2009, 8:45 a.m., and published in the issue of the Federal Register for May 18, 2009, 74 F.R. 23134)

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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