Internal Revenue bulletin

Bulletin No. 2011-2
January 10, 2011

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.

SPECIAL ANNOUNCEMENT

Notice 2011–4, page 282.

This notice provides procedures for a taxpayer to obtain automatic consent to change its method of accounting for unearned premiums by reason of section 833(c)(5) of the Code. Rev. Proc. 2008-52 modified. Notice 2010-79 clarified and modified.

INCOME TAX

Rev. Rul. 2011–2, page 256.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for January 2011.

Notice 2011–2, page 260.

This notice provides guidance on the application of section 162(m)(6) of the Code. Section 162(m)(6) limits the allowable deduction for remuneration for services provided by individuals to certain health insurance providers. Section 162(m)(6) was enacted as part of the Patient Protection and Affordable Care Act (2010).

Notice 2011–4, page 282.

This notice provides procedures for a taxpayer to obtain automatic consent to change its method of accounting for unearned premiums by reason of section 833(c)(5) of the Code. Rev. Proc. 2008-52 modified. Notice 2010-79 clarified and modified.

Rev. Proc. 2011–12, page 297.

Cost-of-living adjustments for 2011. This procedure sets forth the 2011 cost-of-living adjustments to certain items due to inflation as required under various provisions of the Code.

EMPLOYEE PLANS

Rev. Rul. 2011–1, page 251.

This ruling modifies the rules for group trusts described in Rev. Rul. 81-100, 1981-1 C.B. 326, as clarified and modified by Rev. Rul. 2004-67, 2004-2 C.B. 28. The modifications revise the generally applicable rules for these group trusts and, if certain requirements are met, permit the participation in group trusts of custodial accounts under section 403(b)(7), retirement income accounts under section 403(b)(9), and governmental retiree benefit plans under section 401(a)(24). This ruling also modifies the transition relief provided in Rev. Rul. 2008-40, 2008-2 C.B. 166, relating to plans qualifying under section 1165 of the Puerto Rico Internal Revenue Code (Puerto Rico Code). In addition, this ruling provides related model language that may be used by group trusts to comply with these new provisions. Rev. Ruls. 81–100, 2004–67, and 2008–40 modified.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Notice 2011–1, page 259.

This notice addresses the timing of the application of the Affordable Care Act provisions prohibiting insured group health plans from discriminating in favor of highly compensated individuals. It states that the Treasury Department and the IRS, as well as the Departments of Labor and Health and Human Services, have determined that compliance with these requirements should not be required (and thus, any sanctions for failure to comply do not apply) until after regulations or other administrative guidance of general applicability has been issued. The notice includes a request for public comments.

Notice 2011–2, page 260.

This notice provides guidance on the application of section 162(m)(6) of the Code. Section 162(m)(6) limits the allowable deduction for remuneration for services provided by individuals to certain health insurance providers. Section 162(m)(6) was enacted as part of the Patient Protection and Affordable Care Act (2010).

Notice 2011–3, page 263.

Special rules relating to funding relief for single-employer pension plans under PRA 2010. This notice provides guidance on the special rules relating to funding relief for single-employer defined benefit pension plans (including multiple employer defined benefit pension plans) under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010).

EXEMPT ORGANIZATIONS

Rev. Proc. 2011–9, page 283.

Determination letters and rulings. This document sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. The procedures also apply to the revocation and modification of determination letters or rulings, and provide guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under section 7428. Rev. Proc. 2010-9 superseded.

Rev. Proc. 2011–10, page 294.

This document sets forth updated procedures with respect to issuing rulings and determination letters on private foundation status under section 509(a) of the Code, operating foundation status under section 4942(j)(3), and exempt operating foundation status under section 4940(d)(2), of organizations exempt from Federal income tax under section 501(c)(3). This document also applies to the issuance of determination letters on the foundation status under section 509(a)(3) of nonexempt charitable trusts described in section 4947(a)(1). Rev. Procs. 72-50 and 76-34 modified and superseded. Announcements 85-88 and 2009-62 obsoleted.

ADMINISTRATIVE

REG–124018–10, page 301.

Proposed regulations under Part 300 of the Code would amend regulations relating to the imposition of user fees for enrolled agents and enrolled retirement plan agents. A public hearing is scheduled for January 14, 2011.

Notice 2011–4, page 282.

This notice provides procedures for a taxpayer to obtain automatic consent to change its method of accounting for unearned premiums by reason of section 833(c)(5) of the Code. Rev. Proc. 2008-52 modified. Notice 2010-79 clarified and modified.

Announcement 2011–1, page 304.

Update to Publication 1220 (Revised 8-2010). This announcement contains an update to Publication 1220, Specifications for Filing Forms 1097–BTC, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically (Revised 8-2010) concerning the filing of Form 1099-R.

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 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.

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

Section 24.—Child Tax Credit

The Service provides inflation adjustments for the value used in determining the amount of the credit that may be refunded for taxable years beginning in 2011. See Rev. Proc. 2011-12, page 297.

Section 25A.—Hope and Lifetime Learning Credits

For taxable years beginning in 2011, the Service provides inflation adjustments for the amount of qualified tuition and related expenses that are taken into account in determining the amount of the Hope Scholarship Credit, and for the amount of a taxpayer's modified adjusted gross income that is taken into account in determining the reduction in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise available. See Rev. Proc. 2011-12, page 297.

Section 32.—Earned Income

The Service provides inflation adjustments to the limitations on the earned income credit for taxable years beginning in 2011. See Rev. Proc. 2011-12, page 297.

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 63.—Taxable Income Defined

The Service provides inflation adjustments to the standard deduction amounts (including the limitation in the case of certain dependents, and the additional standard deduction for the aged or blind) for taxable years beginning in 2011. See Rev. Proc. 2011-12, page 297.

Section 132.—Certain Fringe Benefits

The Service provides inflation adjustments to the limitations on the exclusion of income for a qualified transportation fringe benefit for taxable years beginning in 2011. See Rev. Proc. 2011-12, page 297.

Section 151.—Allowance of Deductions for Personal Exemptions

The Service provides inflation adjustments to the personal exemption amount out for taxable years beginning in 2011. See Rev. Proc. 2011-12, page 297.

Section 221.—Interest on Education Loans

The Service provides inflation adjustments to the income limitations used to determine the allowable deduction for interest on education loans for taxable years beginning in 2011. See Rev. Proc. 2011-12, page 297.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

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

The adjustable applicable federal long-term rate is set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 483.—Interest on Certain Deferred Payments

The adjustable applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 501.—Exemption From Tax on Corporations, Certain Trusts, Etc.

26 CFR 1.501(a)–1: Exemption from taxation.
(Also §§ 401, 403; 1.401(a)–2, 1.403(b)–8.)

This ruling modifies the rules for group trusts described in Rev. Rul. 81-100, 1981-1 C.B. 326, as clarified and modified by Rev. Rul. 2004-67, 2004-2 C.B. 28. The modifications revise the generally applicable rules for these group trusts and, if certain requirements are met, permit the participation in group trusts of custodial accounts under section 403(b)(7), retirement income accounts under section 403(b)(9), and governmental retiree benefit plans under section 401(a)(24). This ruling also modifies the transition relief provided in Rev. Rul. 2008-40, 2008-2 C.B. 166, relating to plans qualifying under section 1165 of the Puerto Rico Internal Revenue Code (Puerto Rico Code). In addition, this ruling provides related model language that may be used by group trusts to comply with these new provisions. Rev. Ruls. 81–100, 2004–67, and 2008–40 modified.

Rev. Rul. 2011–1

PURPOSE

This revenue ruling modifies the rules for group trusts described in Rev. Rul. 81–100, 1981–1 C.B. 326, as clarified and modified by Rev. Rul. 2004–67, 2004–2 C.B. 28. The modifications revise the generally applicable rules for these group trusts and, if certain requirements are met, permit the participation in group trusts of custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental retiree benefit plans under § 401(a)(24). In addition, this revenue ruling provides related model language that may be used by group trusts to comply with these new provisions. This revenue ruling also modifies the transition relief provided in Rev. Rul. 2008–40, 2008–2 C.B. 166, relating to plans qualifying under section 1165 of the Puerto Rico Internal Revenue Code (Puerto Rico Code).

ISSUE

Under what conditions may the assets of qualified plans under § 401(a), individual retirement accounts (IRAs) under § 408 (including Roth IRAs under §408A), and eligible governmental plans under § 457(b) be pooled in a group trust described in Rev. Rul. 81–100 with the assets of custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental plans under § 401(a)(24) without affecting the tax status of these entities or the group trust?

LAW AND ANALYSIS

Section 401(a) provides that a trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries is qualified if it meets certain requirements. Section 401(a)(1) provides that one of these requirements is that contributions be made to the trust by the applicable employer or employees, or both, for the purpose of distributing to such employees or their beneficiaries the *corpus* and income of the fund accumulated in accordance with such plan. Section 501(a) provides, in part, that a trust described in § 401(a) is exempt from income tax. Section 401(a)(2) provides, in part, that under each trust instrument it must be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the plan and the trust, for any part of the *corpus* or income of the trust to be used for or diverted to purposes other than for the exclusive benefit of the employees or their beneficiaries. Similarly, § 408 provides that an IRA means a trust created or organized "for the exclusive benefit of an individual or his beneficiaries" and § 457(g) provides that the assets of an eligible governmental plan under § 457(b) must be held in trust "for the exclusive benefit of participants and their beneficiaries."

Section 401(a)(24) provides that any group trust that otherwise meets the requirements of § 401(a) does not fail to satisfy such requirements due to the participation or inclusion of the monies of a plan or governmental unit described in § 818(a)(6) in the group trust. Section 818(a)(6) contains special rules regarding the definition of the term "pension plan contract." Section 818(a)(6)(A) defines the term to include a contract purchased by a governmental plan (within the meaning of § 414(d)) and an eligible governmental plan under § 457(b). Section 818(a)(6)(B) further defines the term to include a contract purchased by the Government of the United States, the government of any state or political subdivision thereof, or by any agency or instrumentality of the foregoing, or any organization (other than a governmental unit) exempt from tax under subtitle A (income taxes), for use in satisfying an obligation of such government, political subdivision, agency, instrumentality, or organization to provide a benefit under a plan described in § 818(a)(6)(A).[1]

Section 401(f)(1) provides that a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State is treated as a qualified trust under § 401 if the custodial account or contract would constitute a qualified trust under § 401, except for the fact that it is not a trust. Section 401(f)(2) requires that the assets in any such custodial account are to be held by a bank within the meaning of § 408(n) or "another person" that demonstrates that it will hold the assets in a manner consistent with the requirements of § 401. See § 1.408–2(e) of the Income Tax Regulations for rules regarding nonbank trustees.

Section 403(b) generally provides that amounts contributed by an employer for an annuity contract are excluded from the gross income of the employee for the taxable year if certain requirements are satisfied. Section 403(b) applies to contributions made: for an employee by an employer described in § 501(c)(3) which is exempt from taxation under § 501(a); for an employee who performs services for an educational organization described in § 170(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one of the foregoing; or for a minister described in § 414(e)(5)(A) by the minister or by an employer.

Section 403(b)(7)(A) provides, in part, that amounts paid by an employer described in § 403(b)(1) to a custodial account which satisfies the requirements of § 401(f)(2) are treated as amounts contributed for an annuity contract for the employee if the amounts are to be invested in regulated investment company stock to be held in that custodial account. Section 403(b)(7)(B) provides that a custodial account which satisfies the requirements of § 401(f)(2) is treated as an organization described in § 401(a) solely for purposes of subchapter F of chapter 1 of subtitle A of the Code (§§ 501–530) and subtitle F of the Code (pertaining to procedure and administration) with respect to amounts received by the account and with respect to income from the investment of these amounts. Section 1.403(b)–8(d)(2)(i) provides that all of the amounts held in the account must be invested in the stock of a regulated investment company (as defined in § 851(a)). Section 1.403(b)–8(d)(2)(i) provides that the assets of a custodial

[1] The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97–248, added § 401(a)(24) to the Code. With respect to that section, the TEFRA conference report explains that "the tax-exempt status of a group trust will not be adversely affected merely because the trust accepts monies from (a) a retirement plan of a State or local government, whether or not the plan is a qualified plan and whether or not the assets are held in trust, or (b) any State or local government monies for use in satisfying an obligation of such State or local government to provide a retirement benefit under a governmental plan." H.R. Conf. Rep. No. 760, 97th Cong., 2nd Sess. 81, 1982–2 C.B. 682.

account under § 403(b)(7) cannot be commingled in a group trust with any assets other than those of a regulated investment company described in § 851(a). Section 1.403(b)–8(d)(2)(iii) provides that a custodial account under § 403(b)(7) must contain a written statement that the assets held in a custodial account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries.

Section 403(b)(9) provides that a retirement income account is treated as an annuity contract and amounts paid by an employer described in § 403(b)(1)(A) to a retirement income account are treated as amounts contributed to an annuity contract for the employee. Section 403(b)(9)(B) provides that a retirement income account means a defined contribution program established or maintained by a church, or convention or association of churches, including an organization described in § 414(e)(3)(A), to provide benefits under § 403(b) for an employee described in § 403(b)(1) or the employee's beneficiaries. Section 1.403(b)–9(a)(2)(i) requires separate accounting for the retirement income account's interest in the underlying assets, and that a § 403(b)(9) retirement income account contain a written statement that the assets held in the retirement income account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries.

Rev. Rul. 81–100, as clarified and modified by Rev. Rul. 2004–67, holds that if specified requirements are satisfied, a group trust is exempt from taxation under § 501(a) with respect to its funds which equitably belong to participating trusts described in § 401(a) and is exempt from taxation under § 408(e) with respect to its funds which equitably belong to IRAs. Rev. Rul. 81–100, as clarified and modified by Rev. Rul. 2004–67, sets forth the following requirements for a group trust: (1) the group trust must be adopted as a part of each adopting employer's plan or each adopting individual retirement account; (2) the group trust instrument must expressly limit participation in the group trust to pension, profit-sharing, and stock bonus trusts or custodial accounts qualifying under § 401(a) that are exempt under § 501(a), individual retirement accounts that are exempt under § 408(e), and eligible governmental plan trusts or custodial accounts under § 457(b) that are exempt under § 457(g) (adopting entities); (3) the group trust instrument must prohibit any part of its *corpus* or income that equitably belongs to any adopting entity from being used for or diverted to any purpose other than for the exclusive benefit of the employees (and the individual for whom an individual retirement account is maintained) and their beneficiaries who are entitled to benefits under such adopting entity; (4) the group trust instrument must prohibit the assignment by an adopting entity of any part of its equity or interest in the group trust; and (5) the group trust must be created or organized in the United States and be maintained at all times as a domestic trust in the United States.

To ensure that the assets of a group trust described in Rev. Rul. 81–100, as clarified and modified by Rev. Rul. 2004–67 (generally referred to hereinafter as an 81–100 group trust), are only commingled with the assets of similar plans or arrangements, each entity adopting the group trust must be tax-exempt under § 501(a) of the Code (or not subject to Federal income taxation) and must be part of a plan that satisfies an exclusive benefit rule that is similar to the exclusive benefit rule of § 401(a) and § 1.401(a)–2, as more fully described in paragraph (5) of the **Holding** of this revenue ruling. For this purpose, the group trust must also keep separate records of each adopting entity's interest in the group trust, as more fully described in paragraph (6) of the **Holding** of this revenue ruling.

The Service has received several inquiries as to whether a governmental plan that provides retiree welfare benefits will be treated as a plan described in § 401(a)(24) and may invest in an 81–100 group trust. Section 401(a)(24) applies to governmental plans that provide pension benefits and to governmental plans that provide other employee benefits for retirees such as retiree welfare benefits (a § 401(a)(24) governmental plan). Accordingly, a governmental plan providing retiree welfare benefits may be treated as a governmental plan under § 401(a)(24) and may invest in an 81–100 group trust.

The Service has also received inquiries as to whether a plan described in section 1022(i)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (a section 1022(i)(1) plan) may participate in an 81–100 group trust. Some of these inquiries have arisen in the context of Rev. Rul. 2008–40, which holds that a transfer of assets and liabilities from a qualified plan to a plan that satisfies section 1165 of the Puerto Rico Code is treated as a distribution from the transferor plan, even if the recipient plan is described in section 1022(i)(1) of ERISA. Rev. Rul. 2008–40 also provides, however, that this holding is not effective for a transfer if the date of the transfer is before January 1, 2011. The inquiries state that sponsors of qualified plans currently participating in 81–100 group trusts want to transfer assets and liabilities to section 1022(i)(1) plans prior to January 1, 2011, but are concerned that such plans may not be able to participate in an 81–100 group trust. If a section 1022(i)(1) plan is not permitted to participate in an 81–100 group trust then, upon a transfer of assets and liabilities from a qualified plan to a section 1022(i)(1) plan prior to January 1, 2011, pursuant to the relief set forth in Rev. Rul. 2008–40, the assets that are transferred to a section 1022(i)(1) plan that were previously invested in the 81–100 group trust will need to be distributed to the plans from the group trust and the plans will lose the advantages of participating in the group trust.

Section 4042(d) of ERISA authorizes the Pension Benefit Guaranty Corporation (PBGC) as statutory trustee to take control of the assets of a terminated plan. Under ERISA section 4042(a), the PBGC maintains certain commingled trust funds to hold and invest such assets upon becoming statutory trustee. These commingled trust funds are limited to (i) assets attributable to terminated tax-qualified defined benefit plans for which the PBGC has become statutory trustee, and (ii) assets transferred to the PBGC under ERISA section 4050 from terminated tax-qualified plans which, under ERISA section 4050(a)(2), are treated as assets attributable to terminated tax-qualified defined benefit plans for which the PBGC has become statutory trustee. Thus, from time to time, a group trust may hold assets attributable to PBGC's commingled trust funds.

HOLDING

Accordingly, on or after January 10, 2011, provided that the requirements below are satisfied, the assets of qualified plans under § 401(a), IRAs, and eligible governmental plans under § 457(b) may be pooled in a group trust described in Rev. Rul. 81–100, as clarified and modified by Rev. Rul. 2004–67 and this revenue ruling, with the assets of custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and § 401(a)(24) governmental plans without affecting the tax status of the group trust or the tax status of each of the separate group trust retiree benefit plans participating in the group trust. For purposes of this revenue ruling, all of the entities listed in the preceding sentence are collectively referred to as "group trust retiree benefit plans."

A custodial account under § 403(b)(7) will fail to satisfy § 1.403(b)–8(d)(2)(i) if the assets of the account are invested other than in the stock of a regulated investment company, and any group trust in which the assets of a § 403(b)(7) custodial account is invested must comply with this restriction. Accordingly, as a result of this investment restriction, the assets of a custodial account under § 403(b)(7) generally will be commingled in a group trust that solely contains the assets of other § 403(b)(7) custodial accounts.

If the requirements below are satisfied, the tax status of the group trust will be derived from the tax status of the participating entities to the extent of their equitable interests in the group trust. Thus, for example, a group trust is exempt from taxation under § 501(a) with respect to the assets of the group trust which equitably belong to participating trusts described in § 401(a) that are exempt from tax under § 501(a).

The requirements are as follows:

(1) The group trust is itself adopted as a part of each adopting group trust retiree benefit plan.

(2) The group trust instrument expressly limits participation to: pension, profit-sharing, and stock bonus trusts or custodial accounts qualifying under § 401(a) that are exempt under § 501(a); individual retirement accounts that are exempt under § 408(e); eligible governmental plan trusts or custodial accounts under § 457(b) that are exempt under § 457(g); custodial accounts under § 403(b)(7); retirement income accounts under § 403(b)(9); and § 401(a)(24) governmental plans.

(3) The group trust instrument expressly prohibits any part of its *corpus* or income that equitably belongs to any adopting group trust retiree benefit plan from being used for, or diverted to, any purpose other than for the exclusive benefit of the participants and the beneficiaries of the group trust retiree benefit plan. For example, plan assets are treated as used for, or diverted to, a purpose other than for the exclusive benefit of the plan participants or beneficiaries if the assets of one group trust retiree benefit plan are used to provide benefits under another group trust retiree benefit plan even if the plan participant or beneficiary receiving the benefits is a participant or beneficiary under both plans.

(4) Each group trust retiree benefit plan entity which adopts the group trust is itself a trust, a custodial account, or a similar entity that is tax-exempt under § 408(e) or § 501(a) (or is treated as tax-exempt under § 501(a)). A group trust retiree benefit plan that is a § 401(a)(24) governmental plan is treated as meeting this requirement if it is not subject to Federal income taxation.

(5) Each group trust retiree benefit plan which adopts the group trust expressly provides in its governing document that it is impossible for any part of the *corpus* or income of the group trust retiree benefit plan to be used for, or diverted to, purposes other than for the exclusive benefit of the plan participants and their beneficiaries. For this purpose, assets of a group trust retiree benefit plan are treated as used for, or diverted to, purposes other than for the exclusive benefit of the plan participants and their beneficiaries if there is a loan or other extension of credit from assets in the group trust to the employer. In addition, plan assets are used for, or diverted to, purposes other than for the exclusive benefit of the plan participants and their beneficiaries if the assets of one group trust retiree benefit plan are used to provide benefits under another group trust retiree benefit plan even if the plan participant or beneficiary receiving the benefits is a participant or beneficiary under both plans. The exclusive benefit requirement described in this paragraph (5) must be irrevocable. Plans that satisfy the following regulations, with respect to each type of adopting plan to which the regulations apply, will satisfy this paragraph (5): § 1.401(a)–2 (for qualified plans); § 1.403(b)–8(d)(2)(iii) (for § 403(b)(7) custodial accounts); § 1.403(b)–9(a)(2)(i)(C) (for § 403(b)(9) retirement income accounts); § 1.408–2(b) (for IRAs); and § 1.457–8(a)(2)(i) (for eligible governmental plans described in § 457(g)).

(6) The group trust instrument expressly limits the assets that may be held by the group trust to assets that are contributed by, or transferred from, a group trust retiree benefit plan to the group trust (and the earnings thereon), and the group trust instrument expressly provides for separate accounts (and appropriate records) to be maintained to reflect the interest which each adopting group trust retiree benefit plan has in the group trust, including separate accounting for contributions to the group trust from the adopting plan, disbursements made from the adopting plan's account in the group trust, and investment experience of the group trust allocable to that account. A transaction or accounting method which has the effect of directly or indirectly transferring value from the account of one adopting plan into the account of another adopting plan violates this separate accounting requirement. However, a transaction that merely exchanges investments at fair market value between the accounts of one adopting plan to another account of that adopting plan does not violate this separate accounting requirement.

(7) The group trust instrument expressly prohibits an assignment by an adopting group trust retiree benefit plan of any part of its equity or interest in the group trust.

(8) The group trust is created or organized in the United States and is maintained at all times as a domestic trust in the United States.

In addition, under ERISA section 4042(a), the PBGC maintains certain commingled trust funds which are limited to (i) assets attributable to terminated tax-qualified defined benefit plans for which the PBGC has become statutory trustee under section 4042 of ERISA, and (ii) assets transferred to the PBGC under ERISA section 4050 from terminated tax-qualified plans which, under ERISA section 4050(a)(2), are treated as assets attributable to terminated tax-qualified defined benefit plans for which the PBGC has become statutory trustee. A group trust will not be treated as failing to satisfy the foregoing enumerated requirements of this revenue ruling merely because the PBGC, rather than a qualified plan, holds the interest in the group trust or merely because the group trust holds assets attributable to PBGC's commingled trust funds.

MODEL AMENDMENTS

There are two model amendments set forth below. Amendment 1 is for a group trust that received a determination letter from the Service prior to January 10, 2011, that the group trust satisfies Rev. Rul. 81–100, but that does not satisfy the separate account requirement of paragraph (6) of the **Holding** in this revenue ruling. Amendment 2 is for a group trust that received a determination letter from the Service prior to January 10, 2011, that the group trust satisfies Rev. Rul. 81–100, and that intends to permit custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), or § 401(a)(24) governmental retirement plans to participate in the group trust. Both model amendments should be adopted by group trusts that do not satisfy the separate account requirement and intend to permit custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), or § 401(a)(24) governmental retirement plans to participate in the group trust.

AMENDMENT 1 — GROUP TRUSTS THAT DO NOT SATISFY THE SEPARATE ACCOUNT REQUIREMENT

In general, group trusts that have received favorable determination letters from the Service currently satisfy the separate account requirement of paragraph (6) of the **Holding** in this revenue ruling. However, a sponsor of a group trust that satisfies Rev. Rul. 81–100, as modified by Rev. Rul. 2004–67, but that does not currently provide for separate accounts, must amend its group trust instrument by January 10, 2012, to provide for separate accounts as required under this revenue ruling. A sponsor of a group trust may satisfy this requirement by amending its group trust instrument to include the model language below:

> "A separate account will be maintained to reflect the interest of each adopting group trust retiree benefit plan, including separate accounting for contributions to the group trust by each such plan, disbursements made from each such plan's account, and the investment experience of the group trust as allocable to that account."

AMENDMENT 2 — GROUP TRUSTS INTENDING TO PERMIT OTHER GROUP TRUST RETIREE BENEFIT PLANS TO PARTICIPATE

A sponsor of a group trust that satisfies Rev. Rul. 81–100, as modified by Rev. Rul. 2004–67, may amend its group trust instrument to include the model language below to reflect this revenue ruling:

> "This group trust is operated or maintained exclusively for the commingling and collective investment of funds from other trusts that it holds. Notwithstanding any contrary provision in this group trust, the trustee of this group trust is permitted, unless restricted in writing by the named fiduciary, to hold in this group trust funds that consist exclusively of trust assets held under plans qualified under Internal Revenue Code (Code) § 401(a) that are exempt under Code § 501(a); funds from Code § 401(a)(24) governmental retiree benefit plans that are not subject to Federal income taxation; funds from retirement income accounts under Code § 403(b)(9); funds from individual retirement accounts that are exempt under Code § 408(e); and funds from eligible governmental plan trusts or custodial accounts under Code § 457(b) that are exempt under Code § 457(g). The trustee of this group trust is also permitted, unless restricted in writing by the named fiduciary, to hold funds in this group trust that consist of assets of custodial accounts under Code § 403(b)(7), provided that if assets of a custodial account under § 403(b)(7) are invested in the group trust, all assets of the group trust, including the § 403(b)(7) custodial accounts, are solely permitted to be invested in stock of regulated investment companies. For this purpose, a trust includes a custodial account that is treated as a trust under Code § 401(f), 403(b)(7), 408(h), or 457(g)(3).
>
> "For purposes of valuation, the value of the interest maintained by the fund with respect to any plan or account in such group trust shall be the fair market value of the portion of the fund held for that plan or account, determined in accordance with generally recognized valuation procedures."

RELIANCE BY TRUSTEES WITH PRIOR DETERMINATION LETTER

If a group trust instrument provides that amendments to the group trust will automatically pass-through to the group trust retiree benefit plan, and the trustee of the group trust is otherwise entitled to rely on a favorable determination letter issued to it prior to January 10, 2011, regarding eligibility of its group trust under Rev. Rul. 81–100, the group trust trustee will not lose its right to rely on its determination letter merely because it adopts Model Amendment 1 or Model Amendment 2 set forth above in this revenue ruling on a word-for-word basis (or adopts an amendment that is substantially similar in all material respects). Thus, such a trustee may adopt Model Amendment 1 or Model Amendment 2 on a word-for-word basis (or adopt an amendment that is substantially similar in all material respects) and continue to rely on the previously issued determination letter regarding its group trust without filing a request with the Service for a new determination letter.

A trustee of a group trust that satisfies the above requirements and amends its group trust to include Model Amendment 1 or Model Amendment 2 on a word-for-word basis (or adopts an amendment that is substantially similar in all material respects) will also not lose its right to rely on its prior determination letter merely because it becomes necessary, as a result of the adoption of such model amendment (or an amendment that is substantially similar in all material respects), to modify or delete a prior provision that is inconsistent with the model amendment so adopted (or an amendment that is substantially similar in all material respects that is so adopted).

Generally, the group trust instrument will provide that amendments to the group trust will automatically pass through to the group trust retiree benefit plans. However, a group trust that has received a favorable determination letter under Rev. Proc. 2010–6, 2010–1 I.R.B. 193 (or its predecessors), that does not contain such a pass-through provision may not adopt Model Amendment 1 or Model Amendment 2 and automatically continue to rely on its determination letter.

PLANS DESCRIBED IN SECTION 1022(i)(1) OF ERISA

The Service anticipates issuing guidance as to whether a plan described in section 1022(i)(1) of ERISA may participate in an 81–100 group trust. Until such guidance is issued, the Service will not treat a group trust as failing to satisfy the requirements of this revenue ruling merely because the group trust includes the assets of a section 1022(i)(1) plan as long as the section 1022(i)(1) plan (1) was participating in the group trust as of January 10, 2011, or (2) holds assets that had been held by a qualified plan immediately prior to the transfer of those assets to the section 1022(i)(1) plan pursuant to the transition relief in Rev. Rul. 2008–40, as modified by this revenue ruling. In addition, Rev. Rul. 2008–40 is hereby modified to extend the transition relief for transfers from a qualified plan to a section 1022(i)(1) transferee plan for an additional year. Thus, "January 1, 2012" is substituted for "January 1, 2011" each place it appears in the Transition Relief section of Rev. Rul. 2008–40.

EFFECT ON OTHER DOCUMENTS

Rev. Ruls. 81–100, 2004–67, and 2008–40 are modified.

REQUEST FOR COMMENTS

The IRS requests comments on whether annuity contracts and/or other tax-favored accounts held by plans described in § 401(a) or § 403(b), such as pooled separate accounts supporting annuity contracts that are treated as trusts under § 401(f), should be permitted to invest in the group trusts described in this revenue ruling. Comments should be submitted by April 11, 2011, to CC:PA:LPD:PR (Rev. Rul. 2011–1), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Rev. Rul. 2011–1), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington D.C. Alternatively, comments may be submitted via the Internet at *Notice.comments@irscounsel.treas.gov*. Please include "Rev. Rul. 2011–1" in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this revenue ruling is Robert Walsh of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number) between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, or e-mail Mr. Walsh at *RetirementPlanQuestions@irs.gov*.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

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

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for January 2011.

Rev. Rul. 2011–2

This revenue ruling provides various prescribed rates for federal income tax purposes for January 2011 (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, and before December 31, 2013, shall not be less than 9%. 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. Finally, Table 6 contains the deemed rate of return for transfers made during calendar year 2011 to pooled income funds described in § 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made.

REV. RUL. 2011–2 TABLE 1

Applicable Federal Rates (AFR) for January 2011

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.43%	.43%	.43%	.43%
110% AFR	.47%	.47%	47%	.47%
120% AFR	.52%	.52%	.52%	.52%
130% AFR	.56%	.56%	.56%	.56%
Mid-term				
AFR	1.95%	1.94%	1.94%	1.93%
110% AFR	2.14%	2.13%	2.12%	2.12%
120% AFR	2.34%	2.33%	2.32%	2.32%
130% AFR	2.54%	2.52%	2.51%	2.51%
150% AFR	2.93%	2.91%	2.90%	2.89%
175% AFR	3.43%	3.40%	3.39%	3.38%
Long-term				
AFR	3.88%	3.84%	3.82%	3.81%
110% AFR	4.26%	4.22%	4.20%	4.18%
120% AFR	4.66%	4.61%	4.58%	4.57%
130% AFR	5.05%	4.99%	4.96%	4.94%

REV. RUL. 2011–2 TABLE 2

Adjusted AFR for January 2011

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.69%	.69%	.69%	.69%
Mid-term adjusted AFR	1.79%	1.78%	1.78%	1.77%
Long-term adjusted AFR	4.10%	4.06%	4.04%	4.03%

REV. RUL. 2011–2 TABLE 3

Rates Under Section 382 for January 2011

Adjusted federal long-term rate for the current month	4.10%
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.)	4.10%

REV. RUL. 2011–2 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for January 2011

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.67%
Appropriate percentage for the 30% present value low-income housing credit	3.29%

REV. RUL. 2011–2 TABLE 5 Rate Under Section 7520 for January 2011	
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	2.4%

REV. RUL. 2011–2 TABLE 6 Deemed Rate for Transfers to New Pooled Income Funds During 2011	
Deemed rate of return for transfers during 2011 to pooled income funds that have been in existence for less than 3 taxable years	2.8%

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 January 2011. See Rev. Rul. 2011-2, page 256.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2011. See Rev. Rul. 2011-2, page 256.

Part III. Administrative, Procedural, and Miscellaneous

Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health Plans

Notice 2011–1

I. PURPOSE

This notice addresses the timing of the application of the Affordable Care Act provisions prohibiting insured group health plans from discriminating in favor of highly compensated individuals.

II. BACKGROUND

The Patient Protection and Affordable Care Act (the Affordable Care Act), Pub. L. 111–148, was enacted on March 23, 2010; the Health Care and Education Reconciliation Act, Pub. L. 111–152, was enacted on March 30, 2010. The Affordable Care Act adds § 9815(a)(1) to the Code and § 715(a)(1) to the Employee Retirement Income Security Act (ERISA) to incorporate the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) into the Code and ERISA.

Section 10101(d) of the Affordable Care Act adds § 2716 to the PHS Act. PHS Act § 2716 (§ 2716) provides that a group health plan (other than a self-insured plan) must satisfy the requirements of § 105(h)(2) of the Code and that "rules similar to the rules contained in paragraphs (3) [nondiscriminatory eligibility classifications], (4) [nondiscriminatory benefits], and (8) [certain controlled groups] of § 105(h) of such Code shall apply." Section 2716 also provides that the term "highly compensated individual" has the meaning given by § 105(h)(5). Section 2716 is included in the PHS Act sections incorporated by § 9815 of the Code into chapter 100 of the Code.

Section 2716 references the substantive nondiscrimination requirements of § 105(h) of the Code (but not the taxes on highly compensated individuals in § 105(h)(1)) and applies them to insured group health plans. An insured group health plan that fails to comply with these rules may be subject to: (1) an excise tax that generally applies for a plan failing to comply with the requirements of chapter 100 of the Code (generally, an excise tax under § 4980D of $100 for each day in the noncompliance period with respect to each individual to whom such failure relates, limited in the case of failures due to reasonable cause and not applicable in limited circumstances, such as where a failure is due to reasonable cause and not to willful neglect and is corrected within a specified time period), (2) in the case of a non-Federal governmental group health plan, civil money penalties under title XXVII of the PHS Act (generally up to $100 per day per individual for each day the plan does not comply with the requirement, also not applicable in limited circumstances), or (3) a civil action to enjoin a noncompliant act or practice or for other appropriate equitable relief under part 5 of ERISA. Thus, if a self-insured plan fails to comply with § 105(h), highly compensated individuals lose a tax benefit; if an insured group health plan fails to comply with § 2716, the plan or plan sponsor may be subject to an excise tax, civil money penalty, or a civil action to compel it to provide nondiscriminatory benefits.

Section 2716 does not apply to grandfathered health plans. See § 54.9815–1251T, 29 CFR 2590.715–1251, and 45 CFR 147.140. The rules of § 105(h) of the Code continue to apply to any self-insured medical reimbursement plan regardless of whether the plan is a grandfathered health plan.

III. TIMING OF APPLICATION OF § 2716

Notice 2010–63, 2010–41 I.R.B. 420, issued on September 20, 2010, requested public comments on guidance needed regarding § 2716. Comments raised fundamental concerns about plan sponsors' ability to comply with § 2716 without regulatory guidance, including, in particular, guidance regarding the meaning of § 2716(b)(1), which provides that "[r]ules *similar to* the rules contained in paragraphs (3), (4) and (8) of section 105(h) of such Code shall apply" [emphasis added] to insured plans. The § 2716(b)(1) reference to rules "similar to" means that guidance must specify in what respects insured plans are subject to the same statutory provisions that apply to self-insured plans under § 105(h)(3), (4) and (8) and in what respects insured plans are subject to rules reflecting a different (although "similar") application of those statutory provisions. Because regulatory guidance is essential to the operation of the statutory provisions, the Treasury Department and the IRS, as well as the Departments of Labor and Health and Human Services (collectively, the Departments), have determined that compliance with § 2716 should not be required (and thus, any sanctions for failure to comply do not apply) until after regulations or other administrative guidance of general applicability has been issued under § 2716. In order to provide insured group health plan sponsors time to implement any changes required as a result of the regulations or other guidance, the Departments anticipate that the guidance will not apply until plan years beginning a specified period after issuance. Before the beginning of those plan years, an insured group health plan sponsor will not be required to file IRS Form 8928 with respect to excise taxes resulting from the incorporation of § 2716 into § 9815 of the Code.

The United States Department of Labor and the United States Department of Health and Human Services have reviewed this notice and have requested the Department of the Treasury and the IRS to state that the Departments of Labor and Health and Human Services agree with the notice.

IV. REQUEST FOR COMMENTS

As noted, comments submitted in response to Notice 2010–63 maintained that, without regulations or other administrative guidance under § 2716, plan sponsors are uncertain how to apply the nondiscrimination provisions. In addition to what is meant by rules "similar to," comments raised a number of other issues regarding the application of § 2716. Comments suggested that guidance address the application of § 2716 before plan years beginning in 2014 (when the State Exchanges, employer responsibility and penalty provisions, and related provisions take effect) and also in and after 2014. The Departments recognize that the guidance under § 2716 must take into consideration the Exchange operations and individual and plan sponsor requirements that go into effect after 2013.

The Departments anticipate issuing guidance under § 2716. As a more specific follow-up to the public comments provided in response to Notice 2010–63, additional public comments are requested on the issues that should be addressed in that guidance and on the suggested resolution of those issues, including the following:

1. The basis on which the determination of what constitutes nondiscriminatory benefits under § 105(h)(4) should be made and what is included in the term "benefits." For example, is the rate of employer contributions toward the cost of coverage (or the required percentage or amount of employee contributions) or the duration of an eligibility waiting period treated as a "benefit" that must be provided on a nondiscriminatory basis?

2. The suggestion made in previous comments that the Departments have the authority to provide for an alternative method of compliance with § 2716 that would involve only an availability of coverage test.

3. The application of § 2716 to insured group health plans beginning in 2014 when the health insurance exchanges become operational and the employer responsibility provisions (§ 4980H of the Code), the premium tax credit (§ 36B of the Code), and the individual responsibility provisions (§ 5000A of the Code) and related Affordable Care Act provisions are effective.

4. The suggestion in previous comments that the nondiscriminatory classification provision in § 105(h)(3)(A)(iii) could be used as a basis to permit an insured health care plan to use a highly compensated employee definition in § 414(q) of the Code for purposes of determining the plan's nondiscriminatory classification.

5. The suggestion in previous comments that the nondiscrimination standards should be applied separately to employers sponsoring insured group health plans in distinct geographic locations and on whether application of the standards on a geographic basis should be permissive or mandatory.

6. The suggestion in previous comments that the guidance should provide for "safe harbor" plan designs. Specifically, comments are requested on potential safe and unsafe harbor designs that are consistent with the substantive requirements of § 105(h).

7. Whether employers should be permitted to aggregate different, but substantially similar, coverage options for purposes of § 2716 and, if so, the basis upon which a "substantially similar" determination could be made.

8. The application of the nondiscrimination rules to "expatriate" and "inpatriate" coverage.

9. The application of the nondiscrimination rules to multiple employer plans.

10. The suggestion in previous comments that coverage provided to a "highly compensated individual" (as defined in § 105(h)(5)) on an after-tax basis should be disregarded in applying § 2716.

11. The treatment of employees who voluntarily waive employer coverage in favor of other coverage.

12. Potential transition rules following a merger, acquisition, or other corporate transaction.

13. The application of the sanctions for noncompliance with § 2716.

Comments must be submitted by March 11, 2011. All materials submitted will be shared with the Departments of Labor and Health and Human Services and will be available for public inspection and copying. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2011–1), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2011–1), Room 5203. Submissions may also be sent electronically via the internet to the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Include the notice number (Notice 2011–1) in the subject line.

V. DRAFTING INFORMATION

The principal author of this notice is Jamie Dvoretzky of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), though other Treasury Department and IRS officials participated in its development. For further information on the submission of comments or the comments submitted, contact Regina Johnson at (202) 622–7180 (not a toll-free number). For further information on all other provisions of this notice, contact Ms. Dvoretzky at (202) 622–6060 (not a toll-free number).

Guidance on the Application of Section 162(m)(6)

Notice 2011–2

I. PURPOSE

This notice provides guidance on the application of section 162(m)(6) of the Internal Revenue Code (Code). Section 162(m)(6) limits the allowable deduction for remuneration for services provided by individuals to certain health insurance providers. Section 162(m)(6) was added to the Code by section 9014 of the Patient Protection and Affordable Care Act (Public Law 111–148, 124 Stat. 119, 868 (2010)).

Section III of this notice provides guidance on certain issues the Treasury Department and the IRS have determined require immediate guidance. Section V requests comments as to the application of the provisions of this notice as well as all other aspects of the application of section 162(m)(6). The Treasury Department and the IRS anticipate that the guidance provided in this notice will be incorporated into future regulations issued under section 162(m)(6).

II. BACKGROUND

Section 162(m)(6) limits the allowable deduction to $500,000 for "applicable individual remuneration" and "deferred deduction remuneration" attributable to services performed by "applicable individuals" that is otherwise deductible by a "covered health insurance provider" in taxable years beginning after December 31, 2012.

Section 162(m)(6)(C)(i)(I) provides that for taxable years beginning after December 31, 2009, and before January 1, 2013, the term "covered health insurance provider" means any employer that is a health insurance issuer as defined in section 9832(b)(2) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)) ("pre–2013 covered health insurance provider"). For taxable years beginning after December 31, 2012, section 162(m)(6)(C)(i)(II) provides that the term "covered health insurance provider" means any employer that is a health insurance issuer as defined in section 9832(b)(2) and with respect to which not less than 25% of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) are from minimum essential coverage (as defined in section 5000A(f)) ("post–2012 covered health insurance provider"). Section 162(m)(6)(C)(ii) provides that two or more persons who are treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 162(m)(6), except that in applying section 1563(a) for purposes of any such subsection, paragraphs (2) and (3) thereof are disregarded.

Section 162(m)(6) applies to applicable individual remuneration attributable to services performed in a "disqualified taxable year" beginning after December 31, 2012 that is otherwise deductible in such taxable year. Section 162(m)(6)(B) provides that a disqualified taxable year for any employer is any taxable year for which the employer is a covered health insurance provider. Section 162(m)(6)(D) provides that applicable individual remuneration for any disqualified taxable year is the aggregate amount otherwise allowable as a deduction for such taxable year for remuneration for services performed by such individual (whether or not during the taxable year), but does not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

In addition, section 162(m)(6) applies to deferred deduction remuneration attributable to services performed in a disqualified taxable year beginning after December 31, 2009 that is otherwise deductible in a taxable year beginning after December 31, 2012. Section 162(m)(6)(E) provides that deferred deduction remuneration is compensation for services that an applicable individual performs during a disqualified taxable year but that is not deductible until a later taxable year (for example, nonqualified deferred compensation). In the case of deferred deduction remuneration attributable to services performed in a disqualified taxable year, the unused portion of the $500,000 limit (if any) for the taxable year in which the services to which the deferred deduction remuneration is attributable were performed is carried forward to the taxable year or years in which such compensation is otherwise deductible, and applied in calculating the allowable deduction with respect to such amount.

Section 162(m)(6)(F) provides that an applicable individual, with respect to any covered health insurance provider for any disqualified taxable year, is any individual (i) who is an officer, director, or employee in such taxable year, or (ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

III. GUIDANCE

A. Application of Deduction Limitation to Deferred Deduction Remuneration for 2010 through 2012 Taxable Years

The deduction limitation under section 162(m)(6) applies to applicable individual remuneration and deferred deduction remuneration attributable to services performed in a disqualified taxable year beginning after December 31, 2012 that is otherwise deductible by a covered health insurance provider in a taxable year beginning after December 31, 2012. In addition, the deduction limitation under section 162(m)(6) applies to deferred deduction remuneration attributable to services performed in a taxable year beginning after December 31, 2009 and before January 1, 2013 if (1) the employer was a pre–2013 covered health insurance provider for the taxable year in which the services were performed to which the deferred deduction remuneration is attributable, and (2) the employer is a post–2012 covered health insurance provider for the taxable year in which such deferred deduction remuneration is otherwise deductible.

The following examples illustrate this rule:

Example 1. Corporation A is a calendar year taxpayer. For 2010, 2011, and 2012, Corporation A is a pre–2013 covered health insurance provider. Corporation A is a post–2012 covered health insurance provider for all taxable years after 2012 because 25% or more of its gross premiums from health insurance coverage (as defined in section 9832(b)(1)) are from minimum essential coverage (as defined in section 5000A(f)). Corporation A is a covered health insurance provider for all taxable years. Accordingly, deferred deduction remuneration attributable to services performed in 2010, 2011, and 2012 is subject to the section 162(m)(6) deduction limitation in the taxable years after 2012 in which such amounts are otherwise deductible.

Example 2. Assume the same facts as in *Example 1*, except that for all taxable years after 2012, Corporation A remains a health insurance issuer (as defined in section 9832(b)(2)), but does not qualify as a post–2012 covered health insurance provider because less than 25% of its gross premiums from health insurance coverage (as defined in section 9832(b)(1)) are from minimum essential coverage (as defined in section 5000A(f)). For all taxable years beginning after 2012, Corporation A is not a covered health insurance provider. Accordingly, any deferred deduction remuneration attributable to services performed in 2010, 2011, and 2012 is not subject to the section 162(m)(6) deduction limitation in the taxable year in which such amounts are otherwise deductible.

Example 3. Assume the same facts as in *Example 1*, except that after its 2012 taxable year, Corporation A remains a health insurance issuer (as defined in section 9832(b)(2)), but does not qualify as a post–2012 covered health insurance provider for the 2013, 2014 and 2015 taxable years because less than 25% of its gross premiums from health insurance coverage (as defined in section 9832(b)(1)) are from minimum essential coverage (as defined in section 5000A(f)). However, for 2016 and subsequent taxable years, Corporation A qualifies as a post–2012 covered health insurance provider because 25% or more of its gross premiums from health insurance coverage (as defined in section 9832(b)(1)) are from minimum essential coverage (as defined in section 5000A(f)). Corporation A is a covered health insurance provider during its 2010, 2011, 2012, 2016 and subsequent taxable years. Accordingly, deferred deduction remuneration attributable to services performed in 2010, 2011, and 2012 that is otherwise deductible in 2016 and subsequent years is subject to the deduction limitation under section 162(m)(6) in the year in which such amounts are otherwise deductible. Any deferred deduction remuneration attributable to services performed in 2010, 2011, and

2012 that is otherwise deductible in 2013, 2014, or 2015 is not subject to the deduction limitation under section 162(m)(6) in the year in which such amounts are otherwise deductible. Any deferred compensation attributable to services performed in Corporation A's 2013 through 2015 taxable years is not subject to the deduction limitation under section 162(m)(6) for the taxable years in which such amounts are otherwise deductible.

Example 4: Assume the same facts as in *Example 1*, except that for its 2010, 2011, and 2012 taxable years, Corporation A is not a pre–2013 covered health insurance provider. However, Corporation A is a post–2012 covered health insurance provider for its 2013 taxable year and all subsequent years because 25% or more of its gross premiums from health insurance coverage (as defined in section 9832(b)(1)) are from minimum essential coverage (as defined in section 5000A(f)). Accordingly, any deferred compensation attributable to services performed in Corporation A's 2010, 2011, and 2012 taxable years is not subject to the deduction limitation under section 162(m)(6) for the taxable years in which such amounts are otherwise deductible.

B. *De Minimis* Rule

An employer (including an employer as determined in accordance with the aggregation rules under section 162(m)(6)(C)(ii)) will not be treated as a covered health insurance provider within the meaning of section 162(m)(6)(C)(i)(I) for a taxable year beginning after December 31, 2009 and before January 1, 2013 if the premiums received by the employer for providing health insurance coverage as defined in section 9832(b)(1) are less than 2% of the employer's gross revenues for that taxable year. For taxable years beginning after December 31, 2012, an employer will not be treated as a covered health insurance provider within the meaning of section 162(m)(6)(C)(i)(II) for a taxable year beginning after December 31, 2012 if the premiums received for providing health insurance coverage as defined in section 9832(b)(1) that are from providing minimum essential coverage (as defined in section 5000A(f)) for that taxable year are less than 2% of the employer's gross revenues for that taxable year.

The following example illustrates this rule:

Example. Corporations D and E are treated as a single employer under section 162(m)(6)(C)(ii). Corporations D and E are calendar year taxpayers. Corporation E does not receive any health insurance premiums within the meaning of section 9832(b)(1) for the 2010 taxable year. Corporation D receives health insurance premiums within the meaning of section 9832(b)(1) for the 2010 taxable year in an amount that is less than 2% of the combined gross revenues of D and E. Accordingly, Corporations D and E are not treated as a covered health insurance provider within the meaning of section 162(m)(6)(C) for the 2010 taxable year. Deferred compensation attributable to services performed in the 2010 taxable year that is otherwise deductible for taxable years after 2012 is not subject to the deduction limitation under section 162(m)(6).

C. Definition of Applicable Individual

Section 162(m)(6)(F) provides that an applicable individual, with respect to any covered health insurance provider for any disqualified taxable year, is any individual (i) who is an officer, director, or employee in such taxable year, or (ii) who provides services for or on behalf of such covered health insurance provider during such taxable year. For purposes of section 162(m)(6)(F), the term "applicable individual" for a taxable year does not include an independent contractor with respect to whom a compensation arrangement would not be subject to section 409A pursuant to Treasury Regulation §1.409A–1(f)(2) (generally excepting arrangements with independent contractors providing substantial services to multiple unrelated customers).

D. Certain Reinsurers Are Not Covered Health Insurance Providers

Solely for purposes of determining whether a taxpayer is a "covered health insurance provider" within the meaning of section 162(m)(6)(C), premiums received under an indemnity reinsurance contract are not treated as premiums from providing health insurance coverage.

IV. EFFECTIVE DATE

The guidance provided in section III of this notice is effective for taxable years beginning on or after January 1, 2010. The Treasury Department and the IRS anticipate incorporating this guidance into regulations. Any future guidance, including regulations, addressing the issues covered by this notice in a manner that would expand the coverage of section 162(m)(6), such as a modification of, or a restriction on, the application of the *de minimis* rule in section III.C, or broadening of the definition of an applicable individual under section III.D, will apply prospectively.

V. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments as to the application of this notice, as well as all aspects of the application of section 162(m)(6). Specifically, comments are requested on the application of the deduction limitation to remuneration for services performed for insurers who are captive or who provide reinsurance or stop loss insurance, and specifically with respect to stop loss insurance arrangements that effectively constitute a direct health insurance arrangement because the attachment point is so low. Comments are also requested on the application of the term "covered health insurance provider", including the *de minimis* rule set forth in this notice and possible alternative *de minimis* rules. Comments are also requested on the application of the term "covered health insurance provider" in the case of a corporate event such as a merger, acquisition or reorganization. Comments are also requested as to whether the allocation rules set forth in Notice 2008–94, 2008–2 C.B. 1070, Q&A–9, should be applied for purposes of determining the services and the taxable year to which deferred deduction remuneration is attributable and as to any alternatives to those rules, including the services and the taxable year to which deferred deduction remuneration is attributable in the case of a corporate event such as a merger, acquisition or reorganization. Comments may be submitted through March 23, 2011 to Internal Revenue Service, CC:PA:LPD:RU (Notice 2011–02), Room 5203, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington DC 20224, Attn: CC:PA:LPD:RU (Notice 2011–02), Room 5203. Submissions may also be sent electronically via the internet to the following email address: *Notice.comments@irscounsel.treas.gov*. Include the notice number (Notice 2011–02) in the subject line.

VI. DRAFTING INFORMATION

The principal author of this notice is Ilya Enkishev of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), although other Treasury and IRS officials participated in its development. For further information on the provisions of this notice, contact Ilya Enkishev at (202) 622–6030 (not a toll-free number).

Funding Relief for Single-Employer Pension Plans under PRA 2010

Notice 2011–3

I. PURPOSE

This notice provides guidance on the special rules relating to funding relief for single-employer defined benefit pension plans (including multiple employer defined benefit pension plans) under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111–192.

II. BACKGROUND

Section 430 of the Internal Revenue Code (Code) specifies the minimum funding requirements that apply to single-employer defined benefit pension plans pursuant to § 412. For purposes of calculating the minimum required contribution, § 430 generally requires a plan to establish a shortfall amortization base with respect to a plan year for which the value of a plan's assets is less than the amount of the plan's funding target. Section 430(c)(2) generally provides for amortization of a shortfall amortization base over 7 years.

Section 201(b)(1) of PRA 2010 adds § 430(c)(2)(D) which permits a plan sponsor to elect, in lieu of the otherwise applicable amortization schedule, to amortize the shortfall amortization base established for certain plan years under one of two alternative amortization schedules: the 2 plus 7-year amortization schedule, or the 15-year amortization schedule. The 2 plus 7-year amortization schedule is described in § 430(c)(2)(D)(ii) and the 15-year amortization schedule is described in § 430(c)(2)(D)(iii). Section 201(b)(2) of PRA 2010 amends § 430 by adding § 430(c)(7), which provides for an acceleration of the required installments under an alternative amortization schedule in the case of certain compensatory payments, dividends, and stock redemptions.

Under § 430(c)(2)(D)(v), an election to use an alternative amortization schedule may generally be made only with respect to one or two eligible plan years, and, under § 430(c)(2)(D)(iv)(II), if the plan sponsor makes the election for two plan years, the same amortization schedule must be used for both plan years. An eligible plan year is a plan year that begins in 2008, 2009, 2010, or 2011, but only if the due date for the minimum required contribution to the plan for such plan year under § 430(j)(1) occurs on or after June 25, 2010 (the date of enactment of PRA 2010). Section 430(c)(2)(D)(iv)(III) provides that any such election may be revoked only with the consent of the Secretary, after consultation with the Pension Benefit Guaranty Corporation.

Pursuant to § 430(c)(2)(D)(vi), a plan sponsor that makes an election under § 430(c)(2)(D) for a plan year is required to provide notice of the election to participants and beneficiaries of the plan. Under § 430(c)(2)(D)(vi)(II), the plan sponsor must also inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

Sections 104, 105, and 106 of the Pension Protection Act of 2006 (PPA '06), Pub. L. No. 109–280, provide that the effective dates for the minimum funding rules under § 430 and funding-based benefit restrictions under § 436 are delayed for certain plans. For plans described in section 104 or 105 of PPA '06, these provisions do not generally apply for plan years beginning before January 1, 2017, and January 1, 2014, respectively. For plans described in section 106 of PPA '06, the provisions of §§ 430 and 436 of the Code do not apply for plan years beginning before January 1, 2011.

Section 202(a) of PRA 2010 amends Title I of PPA '06 to allow a plan sponsor of a plan described in section 104 or 105 of PPA '06 to elect, for any two eligible plan years (using the same definition as applies under § 430), one of two alternative amortization schedules with respect to a portion of the plan's unfunded new liability. The schedules, set forth in sections 107(b) and 107(c) of PPA '06, as amended by PRA 2010, are generally similar to the 2 plus 7-year amortization schedule and the 15-year amortization schedule.

Section 202(a) of PRA 2010 also provides for the election of one of the alternative amortization schedules for plans described in section 106 of PPA '06. Such plans are subject to the minimum funding rules of § 430 of the Code for plan years beginning on or after January 1, 2011, and the election to use an alternative amortization schedule under section 202(a) of PRA 2010 is available for these plans only for one eligible year beginning in 2008, 2009, or 2010. Sponsors of these plans may also make an election under section 201(b)(1) of PRA 2010 to use an alternative amortization schedule to amortize the shortfall amortization base for a plan year beginning in 2011.

Section 202(b) of PRA 2010 amends section 104 of PPA '06 to provide a delayed effective date for application of the minimum funding requirements of § 430 and the funding-based benefit restrictions under § 436 to certain plans maintained by eligible charities. Under this provision, eligible charity plans (certain plans maintained by employers described in § 501(c)(3)) generally will not be subject to the rules of §§ 430 and 436 for plan years beginning before January 1, 2017. However, plan sponsors may elect to have the provisions of §§ 430 and 436 apply for plan years beginning after December 31, 2007, and on or before December 31, 2008.

Section 303(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is parallel to § 430(c)(2) of the Code, and section 201(a)(1) of PRA 2010 amends section 303(c)(2) of ERISA in a manner parallel to the amendments made to § 430(c)(2) of the Code by section 201(b)(1) of PRA 2010. Section 201(a)(2) of PRA 2010 adds section 303(c)(7) of ERISA, which is parallel to new § 430(c)(7). Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter of this notice for purposes of ERISA as well as the Code. Thus, this notice applies for both purposes.

Notice 2010–55, 2010–33 I.R.B. 253, states that the Service expects to issue future guidance on the special funding rules under PRA 2010 for single-employer plans. Notice 2010–55 also states that, in the case of a plan year that ends before the guidance is issued, the plan sponsor will be permitted to elect to use an alternative amortization schedule under PRA 2010 without regard to whether the Form 5500 (and Schedule SB) has been filed for that plan year. This notice constitutes the guidance anticipated in Notice 2010–55.

III. QUESTIONS AND ANSWERS

The questions and answers in this notice relate to the following topics:

G — General rules
I — Installment acceleration amounts
C — Excess compensation amounts
S — Excess shareholder payment amounts
M — Mergers and acquisitions
E — Elections to use an alternative amortization schedule
N — Notification to participants, beneficiaries, and the PBGC
CP — Eligible charity plans
R — Reporting requirements
T — Transition rules

G. GENERAL RULES

Q G–1: For which plan years can the sponsor of a single-employer defined benefit pension plan elect to use an alternative amortization schedule under § 430(c)(2)(D), as added by section 201 of PRA 2010?

A G–1: (a) In general, an alternative amortization schedule under § 430(c)(2)(D) may be elected for one or two of the plan years beginning in 2008, 2009, 2010, or 2011, as long as the deadline for the minimum required contribution for the plan year occurs on or after June 25, 2010. Pursuant to § 430(j)(1), this deadline is 8½ months after the end of the plan year. Therefore, in general, plan years ending on or after October 10, 2009, and beginning before January 1, 2012 (*eligible plan years*) are eligible for this relief.

(b) However, for plans described in section 106 of PPA '06, the election to use an alternative amortization schedule under § 430(c)(2)(D) can only be made for a plan year beginning in 2011, which is the first year for which these plans are covered by § 430. See section 202 of PRA 2010 for similar rules pertaining to funding relief for plans described in sections 104 through 106 of PPA '06 with respect to plan years to which § 430 does not apply.

Q G–2: What rules generally apply to the alternative amortization schedules?

A G–2: (a) In lieu of the otherwise applicable amortization schedule for a shortfall amortization base established for a plan year that is an eligible plan year as defined in Q&A G–1 of this notice, a plan sponsor may elect to apply either of two alternative amortization schedules to the shortfall amortization base: the 2 plus 7-year amortization schedule described in Q&A G–3 of this notice, or the 15-year amortization schedule described in Q&A G–4 of this notice. A plan year for which such an election is made is known as an *election year* under § 430(c)(2)(D)(i). If an election is made to use an alternative amortization schedule for two eligible plan years, the same schedule must be elected for both years.

(b) In certain circumstances, the amortization installments under an alternative amortization schedule must be increased, as described in section III.I of this notice relating to installment acceleration amounts.

(c) See Q&A R–5 of this notice for a description of how to report the shortfall amortization installments in years affected by an election to use an alternative amortization schedule.

Q G–3: How are the installment amounts for a shortfall amortization base calculated under the 2 plus 7-year amortization schedule?

A G–3: (a) If an election is made to apply the 2 plus 7-year amortization schedule to a shortfall amortization base, the installment for each of the first two years is determined by multiplying the amount of the shortfall amortization base established for the election year by the effective interest rate for the plan for the election year. The installment for each of the remaining 7 years is the level amount calculated so that the present value of the 9 installments as of the valuation date for the election year equals the amount of the shortfall amortization base established for the election year.

(b) The present value of the 9 installments is determined using the segment rates or rates from the full yield curve used to determine the target normal cost (or the funding target, if the target normal cost is zero) for the election year. See § 1.430(h)(2)–1(e) of the Income Tax Regulations for a description of the interest rates that may be used for this purpose, and § 1.430(h)(2)–1(f)(2) for rules regarding the use of segment rates to determine the amount of shortfall amortization installments.

Example G–1: (a) Assume that the sponsor of a plan with a calendar year plan year and a January 1 valuation date elects to amortize the shortfall amortization base of $1,000,000 established for the 2010 plan year using the 2 plus 7-year amortization schedule. The first and second segment rates used to determine the target normal cost for the 2010 plan year are 4.81% and 6.69%, respectively, and the effective interest rate for the plan for the 2010 plan year is 6.00%.

(b) Each of the shortfall amortization installments for the 2010 and 2011 plan years is $60,000, determined by multiplying the amount of the shortfall amortization base by the effective interest rate for the plan for the 2010 plan year ($1,000,000 x 6% = $60,000). After taking into account these installments, the remaining shortfall amortization base is equal to the amount of the shortfall amortization base, minus the first two installments adjusted to the January 1, 2010 valuation date using the first segment rate of 4.81%, or $882,754 ($1,000,000 - $60,000 - ($60,000 ÷ 1.0481)). The shortfall amortization installment for each of the next 7 plan years (2012 through 2018) is $168,458, determined as the level amount necessary to amortize the remaining balance of $882,754 using the first segment rate of 4.81% for the shortfall amortization installments for 2012 through 2014, and the second segment rate of 6.69% for the shortfall amortization installments for 2015 through 2018. The total present value of all 9 payments is $1,000,000, calculated using the first segment rate of 4.81% for installments due for plan years 2010 through 2014 and the second segment rate of 6.69% for plan years 2015 through 2018.

Q G–4: How are the installment amounts for a shortfall amortization base calculated under the 15-year amortization schedule?

A G–4: If an election is made to apply the 15-year amortization schedule to a shortfall amortization base, the installment amount for each plan year (*i.e.*, the election year and the subsequent 14 plan years) is the level amount needed to amortize the shortfall amortization base established for the election year over a period of 15 years. A shortfall amortization base for which relief is elected is amortized using the segment rates or rates from the full yield curve used to determine the target normal cost (or the funding target, if the target normal cost is zero) for the election year. See § 1.430(h)(2)–1(e) for a description of the interest rates that may be used for this purpose, and § 1.430(h)(2)–1(f)(2) for rules regarding the use of segment rates to determine the amount of shortfall amortization installments.

Example G–2: The facts are the same as in *Example G–1*, except that the plan sponsor elects to use the 15-year amortization schedule. The shortfall amortization installment due for each of the 15 plan years from 2010 through 2024 is $99,394. The shortfall amortization installment is determined using the first segment rate of 4.81% for the installments due for plan years 2010 through 2014 and the second segment rate of 6.69% for the installments due for plan years 2015 through 2024.

Q G–5: How does the calculation of shortfall amortization installments change if the valuation date is not the first day of the plan year?

A G–5: (a) The shortfall amortization installments are calculated using the same principles as the installments under the corresponding amortization schedule for plans with valuation dates on the first day of the plan year. For example, the amortization installments for the first two years of the 2 plus 7-year amortization schedule are equal to the product of the shortfall amortization base and the plan's effective interest rate for the election year, without further adjustment for interest.

(b) Each installment, regardless of whether the 2 plus 7-year or the 15-year amortization schedule is used, is assumed to be paid on the valuation date when determining the amount of the shortfall amortization installments.

Q G–6: How is an election to use an alternative amortization schedule applied to a multiple employer plan?

A G–6: (a) In the case of a multiple employer plan to which § 413(c)(4)(A) applies, the rules of § 430 and this notice are applied separately for each employer under the plan, as if each employer maintained a separate plan. Accordingly, the rules of this section apply to each plan sponsor separately, and a plan sponsor may independently elect to use an alternative amortization schedule for up to two eligible years with respect to the portion of the plan attributable to that sponsor. Other sponsors of the multiple employer plan may elect to use a different alternative amortization schedule for different eligible plan years, or may decide not to use an alternative amortization schedule.

(b) In the case of a multiple employer plan to which § 413(c)(4)(A) does not apply, the rules of § 430 are applied as if all participants in the plan were employed by a single employer. Therefore, if an election is made to use an alternative amortization schedule, such election applies to the entire plan and the rules of this notice apply to the entire plan.

Q G–7: Will an election to use an alternative amortization schedule for a plan affect the plan sponsor's ability to obtain a funding waiver for that plan?

A G–7: Each request for a funding waiver is reviewed based on the facts and circumstances applying to that individual plan. See section 2.03 of Rev. Proc. 2004–15, 2004–1 C.B. 490. One relevant factor is whether the combination of a funding waiver and an election to use an alternative amortization schedule would reduce the minimum required contributions to a point where the granting of the waiver would be adverse to the interest of plan participants in the aggregate. To ensure that the granting of the waiver is not adverse to the interest of participants in the aggregate, the Service may impose additional requirements relating to any election of an alternative amortization schedule as a condition for granting a funding waiver.

I. INSTALLMENT ACCELERATION AMOUNTS

Section 430(c)(7)(A) provides that if there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to a plan year for which an alternative amortization schedule is elected, then the shortfall amortization installment otherwise determined under § 430(c)(2)(D) is increased by the installment acceleration amount, subject to the limitation under § 430(c)(7)(B). Section § 430(c)(7)(F)(ii) defines the restriction period as the 3-plan-year period (in the case of a plan using the 2 plus 7-year amortization schedule) or the 5-plan-year period (in the case of a plan using the 15-year amortization schedule) beginning with the later of the election year or the first plan year beginning after December 31, 2009. Installment acceleration amounts for a plan year which exceed the limitation are carried over to the following plan year if that year is within the period described in § 430(c)(7)(C)(iii)(III). See Q&A I–6 of this notice.

Section 430(c)(7)(C) defines an installment acceleration amount with respect to a plan year within the restriction period. In general, the installment acceleration amount is equal to the sum of the aggregate amount of excess employee compensation determined under § 430(c)(7)(D) (referred to in this notice as the *excess compensation amount*) and the aggregate amount of dividends and redemptions determined under § 430(c)(7)(E) (referred to in this notice as the *excess shareholder payment amount*).

Under § 430(c)(7)(C)(ii), the installment acceleration amount applied to a shortfall amortization installment for any plan year (referred to in this notice as the *acceleration adjustment*) is limited to the excess (if any) of the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period, determined without regard to the election of an alternative amortization schedule, over the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of the alternative amortization schedule. Section 430(c)(7)(B)(ii) further provides that if an acceleration adjustment applies, subsequent shortfall amortization installments are reduced (beginning with the last payment due) so that the present value of the adjusted amortization schedule is equal to the present value of the remaining unamortized shortfall amortization base. Thus, the effect of an installment acceleration adjustment is to accelerate, rather than increase, the installments otherwise required.

Q I–1: What are the general rules for installment acceleration amounts?

A I–1: (a) For any plan year that is within the restriction period described in Q&A I–2, an installment acceleration amount is calculated for a shortfall amortization base for which an alternative amortization schedule has been elected. The installment acceleration amount for a plan year is determined as the sum of the excess compensation amount as described in section III.C of this notice and the excess shareholder payment amount as described in section III.S of this notice.

(b) The amount added to the shortfall amortization installment for a plan year is based on the installment acceleration amount but is limited as described in Q&A I–4 of this notice. If the limitation described in Q&A I–4 of this notice is exceeded, the excess amounts are carried over to subsequent plan years in accordance with Q&A I–5 and Q&A I–6 of this notice. No amounts are added to the shortfall amortization installments on account of installment acceleration amounts after the period described in Q&A I–6.

(c) For any year in which an amount is added under paragraph (b) of this Q&A I–1, the remaining shortfall amortization installments for the affected shortfall amortization base are reduced as described in Q&A I–3, so that the present value of the future shortfall amortization installments is the same after reflecting the acceleration adjustment as determined disregarding the increase for the installment acceleration amount.

(d) If an alternative amortization schedule has been elected for more than one plan in the plan sponsor's controlled group (within the meaning of § 412(d)(3)), the installment acceleration amount is allocated among all plans (i) for which the plan sponsor has elected to use an alternative amortization schedule and (ii) for which the current plan year falls within the restriction period with respect to the election year. The rules related to the allocation of the installment acceleration amount are described in Q&A I–7 and Q&A I–8 of this notice. See Q&A I–9 and Q&A I–10 of this notice for additional considerations if the plan sponsor has elected to use an alternative amortization schedule for more than one election year for one or more plans in the controlled group.

(e) Quarterly installments required under § 430(j)(3) are determined without regard to any increase due to an installment acceleration amount, whether the required annual payment for a plan year is based on 90% of the minimum required contribution for that plan year under § 430(j)(3)(D)(ii)(I) or 100% of the minimum required contribution for the prior plan year under § 430(j)(3)(D)(ii)(II).

Q I–2: What is the restriction period with respect to an election year?

A I–2: (a) If the plan sponsor elects to use the 2 plus 7-year amortization schedule for a plan year, the *restriction period* with respect to that election year is the 3-year period beginning with the later of the election year or the first plan year beginning after December 31, 2009. If the plan sponsor elects to use the 15-year amortization schedule for a plan year, the restriction period with respect to that election year is the 5-year period beginning with the later of the election year or the first plan year beginning after December 31, 2009.

(b) For example, if the sponsor of a calendar-year plan elects to use the 2 plus 7-year amortization schedule for the shortfall amortization base established for the plan year beginning in 2009 (the 2009 election year), the restriction period would be the 3-year period beginning January 1, 2010, and ending December 31, 2012. If instead, the plan sponsor elects to use the 15-year amortization schedule with a 2010 election year, the restriction period would be the 5-year period beginning January 1, 2010, and ending December 31, 2014.

Q I–3: How does the acceleration adjustment affect shortfall amortization installments for future years?

A I–3: Installment acceleration amounts are intended to accelerate the timing of shortfall amortization installments, not increase the total amount of installments associated with a shortfall amortization base. When an acceleration adjustment is added to the amortization installment for a shortfall amortization base for a plan year, the subsequent shortfall amortization installments are reduced to the extent necessary so that the present value of the remaining shortfall amortization installments for that base (including the installment for the current year) is the same as the present value of the remaining shortfall amortization installments for that base before the increase for the acceleration adjustment. Under § 430(c)(7)(B)(ii), these reductions are applied in reverse order, beginning with the last shortfall amortization installment due for the shortfall amortization base. For this purpose, the present value of the remaining payments is determined using the segment rates or the full yield curve used to determine the target normal cost (or the funding target, if the target normal cost is zero) for the year for which the acceleration adjustment is added to the shortfall amortization installment.

Example I–1. (a) The facts are the same as in *Example G–1*, except that an acceleration adjustment of $214,000 is added to the shortfall amortization installment for the 2012 plan year for the shortfall amortization base for which the alternative amortization schedule was elected. Assume for purposes of this example that the first and second segment rates used to calculate the target normal cost for the 2012 plan year are 5.50% and 6.25%, respectively, and that there were no installment acceleration amounts for any previous plan years.

(b) The shortfall amortization installment for the 2012 plan year, increased to reflect the acceleration adjustment, is $382,458. This is equal to the otherwise-applicable shortfall amortization installment of $168,458 under the 2 plus 7-year amortization schedule, plus the acceleration adjustment of $214,000.

(c) Prior to applying the acceleration adjustment, seven shortfall amortization installments of $168,458 each remain as of January 1, 2012. Using the segment rates for the 2012 plan year, the present value of these remaining installments is $1,000,426.

(d) The subsequent amortization installments are reduced or eliminated as required under § 430(c)(7)(B)(ii). Accordingly, the shortfall amortization installment for the 2018 plan year is eliminated, and the installment for the 2017 plan year is reduced to $37,233. This results in the following shortfall amortization installments, which have the same present value ($1,000,426) as the remaining installments prior to applying the acceleration adjustment:

Year	Shortfall amortization installments	
	Before adjustment	After adjustment
2012	$168,458	$382,458
2013	168,458	168,458
2014	168,458	168,458
2015	168,458	168,458
2016	168,458	168,458
2017	168,458	37,233
2018	168,458	0
Present value as of January 1, 2012	$1,000,426	$1,000,426

Q I–4: How is the § 430(c)(7)(C)(ii) annual limitation on the increase in the shortfall amortization installment applied?

A I–4: (a) The annual limitation on the increase in the shortfall amortization installment is determined for a shortfall amortization base as the excess of (i) the sum (without interest) of the shortfall amortization installments for the plan year and all preceding plan years, determined as if the sponsor had not elected the alternative amortization schedule, over (ii) the sum (without interest) of the actual shortfall amortization installments for the plan year and all preceding plan years, reflecting the alternative amortization schedule elected by the plan sponsor. The shortfall amortization installments in clause (ii) of the preceding sentence reflect any acceleration adjustments for all preceding plan years, but not for the current plan year. Thus, as of the end of the plan year for which a shortfall amortization installment for a shortfall amortization base is increased, the cumulative amount of the shortfall amortization installments for that base, including any increase on account of an installment acceleration amount, will not be greater than the cumulative amount of the shortfall amortization installments for that base determined as if the alternative amortization schedule had not been elected.

In addition, the increase is limited so that it does not cause the increased shortfall amortization installment for that plan year to exceed the present value of the remaining shortfall amortization installments for that base, determined as of the valuation date (without regard to the increase attributable to the installment acceleration amount for the plan year).

(b) The annual limitation is applied separately to the increase in the shortfall amortization installment for each affected shortfall amortization base. The resulting increase in the shortfall amortization installment for a base is not affected by whether or not the increases in the shortfall amortization installments for any other affected base exceed the annual limitation for that base.

Example I–2: (a) The facts are the same as in *Example I–1*, except that the installment acceleration amount determined for the 2012 plan year is $250,000.

(b) Based on the first and second segment rates for the 2010 election year of 4.81% and 6.69% respectively, each shortfall amortization installment would have been $167,698 under the 7-year amortization schedule that would have applied absent an election to use an alternative amortization schedule. The annual limitation on the installment acceleration amount is the excess of (1) the sum of shortfall amortization installments under the 7-year amortization schedule that would have applied absent the election to use an alternative amortization schedule, over (2) the sum of the shortfall amortization installments under the 2 plus 7-year amortization schedule elected by the plan sponsor, or $214,636, as shown in the table below:

Year	Shortfall amortization installments	
	Without alternative amortization schedule (a)	Reflecting alternative amortization schedule (b)
2010	$167,698	$ 60,000
2011	167,698	60,000
2012	167,698	168,458
Total	$503,094	$288,458
Excess of (a) over (b)		$214,636

(c) Using the first and second segment rates for the 2012 plan year of 5.50% and 6.25%, respectively, the present value of the remaining shortfall amortization installments prior to application of the installment acceleration amount for 2012 is $1,000,426. The increase in the shortfall amortization installment for the 2012 plan year is limited to the smaller of this amount or the annual limitation in § 430(c)(7)(C)(ii), or $214,636. The increased shortfall amortization installment for 2012 for the affected shortfall amortization base is therefore $168,458 + $214,636, or $383,094.

Q I–5: What carryover rules apply if the otherwise-applicable increase in the shortfall amortization installment for an amortization base exceeds the annual limitation described in Q&A I–4 of this notice?

A I–5: (a) If the otherwise-applicable increase in the shortfall amortization installment for a shortfall amortization base exceeds the annual limitation described in Q&A I–4 of this notice for that base for a plan year, the excess (referred to in this notice as an *excess installment acceleration amount*) is carried over and added to the increase in the shortfall amortization installment for that base for the following plan year if that plan year is within the carryover period described in Q&A I–6 of this notice. Any carryover of an excess installment amount is added only to the installments for the shortfall amortization base to which it was originally attributed.

(b) The acceleration adjustment added to the shortfall amortization installment for any plan year within the carryover period described in Q&A I–6 of this notice is equal to (i) the installment acceleration amount for that shortfall amortization base, if that base is within the restriction period, plus (ii) any installment acceleration amount carried over from previous years in accordance with this Q&A I–5, with that sum limited by the annual limitation in Q&A I–4 of this notice.

Example I–3. (a) The facts are the same as in *Example I–2*. The amount carried over to the 2013 plan year is equal to $35,364, which is the excess of the installment acceleration amount determined for the 2012 plan year, or $250,000, over the amount that was added to the shortfall amortization installment for the 2012 plan year after application of the annual limitation, or $214,636. No installment acceleration amount is applicable for the 2013 plan year, because the 2013 plan year is not within the restriction period for the shortfall amortization base established for the 2010 plan year.

(b) Before application of the annual limit under § 430(c)(7)(C)(ii) and Q&A I–4 of this notice, the shortfall amortization installment for 2013 would be increased to $168,458 + $35,364, or $203,822. The annual limitation for the 2013 plan year is the excess of (i) the sum of the shortfall amortization installments for the 2010 through 2013 plan years, determined as if the sponsor had not elected the alternative amortization schedule, over (ii) the sum of the actual shortfall amortization installments for the 2010 through 2013 plan years reflecting the alternative amortization schedule elected by the plan sponsor, including acceleration adjustments added to the shortfall amortization installments through 2012. Accordingly, the annual limitation for the 2013 plan year is $0, as shown in the table below:

Year	Shortfall amortization installments	
	Without alternative amortization schedule (a)	Reflecting alternative amortization schedule (b)
2010	$167,698	$ 60,000
2011	167,698	60,000
2012	167,698	383,094
2013	167,698	168,458
Total	$670,792	$671,552
Excess of (a) over (b)		$0

Q I–6: For how long will excess installment acceleration amounts be carried over?

A I–6: (a) In general, any excess installment acceleration amount for a shortfall amortization base is carried over each plan year until there is no longer an excess installment acceleration amount for the associated shortfall amortization base or until the associated shortfall amortization base is completely amortized. However, in no event is an excess installment acceleration amount carried over to a plan year which begins after the first plan year following the last plan year in the restriction period for a base being amortized using the 2 plus 7-year amortization schedule. For a base being amortized using the 15-year amortization schedule, no excess installment acceleration amount is carried over to a plan year which begins after the second plan year following the last plan year in the restriction period for that base.

(b) For example, if the sponsor of a plan with a calendar-year plan year elected to amortize the shortfall amortization base established for the 2010 plan year using the 2 plus 7-year amortization schedule, the restriction period would end in 2012 (the end of the 3-year period beginning with the election year of 2010) and the last year for which any installment acceleration amounts would be carried over from previous years is the following year, 2013. Any excess installment acceleration amounts remaining at the end of 2013 would not be added to the remaining shortfall amortization installments for that base (or any other base) for any future years.

(c) If, instead, the plan sponsor elected to amortize the shortfall amortization base established for 2010 using the 15-year amortization schedule, the restriction period would end in 2014 (the end of the 5-year period beginning with the election year of 2010) and the last year for any installment acceleration amounts to be carried over from previous years is the second year following the end of the restriction period, or 2016. Any excess installment acceleration amounts remaining at the end of 2016 would not be added to the remaining shortfall amortization installments for that base (or any other base) for any future years.

Q I–7: How is an installment acceleration amount for a plan year allocated among plans for which the sponsor has elected to use an alternative amortization schedule?

A I–7: (a) Under § 430(c)(7)(F)(iii), if a plan sponsor elects to use alternative amortization schedules for two or more plans, the installment acceleration amount for a plan year is allocated among those plans. If the plan sponsor has elected to use an alternative amortization schedule for only one election year for each plan, the installment acceleration amount for a plan year is allocated among all plans of the plan sponsor's controlled group for which a shortfall amortization base is being amortized using an alternative amortization schedule, but only if that shortfall amortization base is still in its restriction period for the plan year for which the installment acceleration amount is being allocated. These plans are referred to in this notice as *affected plans*. If the plan year for which the installment acceleration amount is determined is later than the last year of a restriction period for all shortfall amortization bases for a plan, that plan is not an affected plan, and is disregarded in allocating the installment acceleration amount for that plan year. See Q&A I–9 and Q&A I–10 of this notice for rules regarding the allocation of installment acceleration amounts if an election to use an alternative amortization schedule is made for more than one election year for one or more plans in the controlled group.

(b) The first step in allocating the installment acceleration amount among the affected plans is to identify the shortfall amortization bases for which the shortfall amortization installments are determined using an alternative amortization schedule, and which are still in their restriction period as described in Q&A I–2 of this notice (*affected shortfall amortization bases*). The second step is to determine, for each affected shortfall amortization base, the difference between (i) the shortfall amortization installment without reflecting the alternative amortization schedule, and (ii) the shortfall amortization installment for the first year of the alternative amortization schedule, determined without regard to any installment acceleration amount that may have applied for that first year. This difference is referred to in this notice as the *first-year reduction* with respect to the affected shortfall amortization base.

(c) The portion of the installment acceleration amount allocated to an affected plan for a plan year (the *allocated portion*) is determined by multiplying the installment acceleration amount for that plan year by a fraction, the numerator of which is the first-year reduction for that plan, and the denominator of which is the sum of the first-year reductions for all affected plans. Each amount so allocated is limited as described in Q&A I–4 and Q&A I–5 of this notice, and the resulting acceleration adjustment is added to the corresponding affected shortfall amortization base.

Example I–4. (a) Assume that a plan sponsor has two plans (with calendar year plan years) for which an alternative amortization schedule has been elected:

Plan	Plan A	Plan B
Election year	2009	2011
Alternative amortization schedule elected	2 plus 7-year	15-year
Shortfall amortization installments for first year of amortization schedule:		
Without alternative schedule	$167,698	$252,579
Reflecting alternative schedule	60,000	146,878
First-year reduction	$107,698	$105,701

Installment acceleration amounts of $100,000 and $300,000 are calculated for the plan years beginning January 1, 2010, and January 1, 2011, respectively.

(b) The installment acceleration amount of $100,000 determined for the plan year beginning January 1, 2010, is applied only to the shortfall amortization installment for Plan A, and the carryover of any amount over the annual limitation for 2010 and future years is applied only to Plan A. No portion of the installment acceleration amount for 2010 is allocated to Plan B because it is not an affected plan in 2010.

(c) The installment acceleration amount of $300,000 determined for the plan year beginning January 1, 2011, is allocated ratably between Plans A and B based on the first-year reduction for each plan. Accordingly, the allocated portion of the installment acceleration amount for Plan A for the 2011 plan year is $151,404, determined by multiplying the installment acceleration amount of $300,000 by a fraction, the numerator of which is the first-year reduction for Plan A ($107,698) and the denominator of which is the total of such first-year reductions for Plans A and B ($107,698 + $105,701, or $213,399). Similarly, the portion of the $300,000 installment acceleration amount for the 2011 plan year that is allocated to Plan B is $148,596.

Q I–8: How is the installation acceleration amount determined if the amount is required to be allocated among plans that have differing plan years?

A I–8: If an alternative amortization schedule has been elected for more than one plan and the plans do not all have the same plan year, then installment acceleration amounts are determined on a calendar year basis and the installment acceleration amount so determined for a calendar year is allocated among the plans based on the plan years that begin within that calendar year. See Q&A S–4 of this notice for related rules.

Q I–9: How do the installment acceleration rules apply if the sponsor elected to use an alternative amortization schedule for two election years?

A I–9: (a) Section 430(c)(7)(A) provides that the shortfall amortization installment otherwise determined with respect to an election year is increased on account of the installment acceleration amount. Section 430(c)(7) provides for an allocation of the installment acceleration amount among plans for which the sponsor elected to use an alternative amortization schedule (see § 430(c)(7)(F)(iii) and Q&A I–7 and Q&A I–8 of this notice), but does not provide for the allocation of the installment acceleration amount among individual shortfall amortization bases within a plan. Accordingly, subject to the adjustments in Q&A I–4 through Q&A I–6 of this notice, the increase on account of the excess compensation amount and excess shareholder payment amount is added separately to the shortfall amortization installment for each base for which an alternative amortization schedule was elected.

(b) For example, if the plan sponsor elected an alternative amortization schedule for the plan year beginning in 2009 and elected the same alternative amortization schedule for the plan year beginning in 2010, and if the installment acceleration amount for the 2010 plan year is $500,000, then, subject to the annual limitation in § 430(c)(7)(C)(ii), the shortfall amortization charge for the 2010 plan year reflects an increase of $500,000 with respect to the shortfall amortization base established for the 2009 plan year and an additional increase of $500,000 with respect to the shortfall amortization base established for the 2010 plan year, for a total increase in the minimum required contribution for the 2010 plan year of $1,000,000. Thus, the minimum required contribution can be increased by $2 for every $1 of the installment acceleration amount if an election has been made for two plan years and the installment acceleration amount arises in the restriction period for both election years (but can only be increased by $1 for every $1 of the installment acceleration amount if an election has been made for only one plan year).

Q I–10: How is an installment acceleration amount allocated among plans for which the sponsor has elected to use an alternative amortization schedule for shortfall amortization bases established for more than one election year?

A I–10: (a) As discussed in Q&A I–9 of this notice, a separate installment acceleration amount determined for a plan year is added to the shortfall amortization installment for that plan year for each affected shortfall amortization base. Accordingly, if a plan sponsor elects to use an alternative amortization schedule for two shortfall amortization bases for any plan in the controlled group, and if both of those bases are still within the restriction period (as described in Q&A I–2 of this notice), the installment acceleration amount is added twice. However, because no plan can have more than two election years, the installment acceleration amount cannot be added more than twice, even if the election years for various plans within the controlled group fall in more than two separate plan years. Each installment acceleration amount is then allocated among the plans based on the rules described in Q&A I–7 and Q&A I–8 of this notice, as described in paragraphs (b) through (e) of this Q&A I–10.

(b) First, all affected plans in the controlled group and the affected shortfall amortization bases are identified, as outlined in Q&A I–7 of this notice, disregarding those which are no longer in the restriction period for the year for which the installment acceleration amount is being allocated. The affected shortfall amortization bases are then divided into two groups, the *earlier-year shortfall amortization bases* and the *later-year shortfall amortization bases*. The group of earlier-year shortfall amortization bases consists of the affected shortfall amortization bases for each plan for which the election year is not later than the election year for any other affected shortfall amortization base for that plan. The group of later-year shortfall amortization bases consists of the affected shortfall amortization bases in the group of affected shortfall amortization bases that are not in the group of earlier-year shortfall amortization bases. Note that a later-year shortfall amortization base for a plan will move to the group of earlier-year shortfall amortization bases when the original earlier-year shortfall amortization base for that plan is no longer in its restriction period.

(c) The allocated portion of the installment acceleration amount for each plan with an earlier-year shortfall amortization base is determined by multiplying the installment acceleration amount calculated for the current plan year by a fraction, the numerator of which is the first-year reduction (as described in paragraph (b) of Q&A I–7 of this notice) for the earlier-year shortfall amortization base for that plan and the denominator of which is the sum of such first-year reductions for the earlier-year shortfall amortization bases for all plans in the controlled group.

(d) Similarly, the allocated portion of the installment acceleration amount for each plan with a later-year shortfall amortization base is determined by multiplying the installment acceleration amount calculated for the current plan year by a fraction, the numerator of which is the first-year reduction for the later-year shortfall amortization base for that plan and the denominator of which is the sum of such first-year reductions for all plans in the controlled group with later-year shortfall amortization bases.

(e) The increase in the shortfall amortization installment for each affected shortfall amortization base is subject to the adjustments described in Q&A I–4 and Q&A I–5 of this notice.

Example I–5: (a) The facts are the same as for *Example I–4*, except that the plan sponsor also elects to use the 2 plus 7-year amortization schedule for Plan A for the shortfall amortization base established for 2011:

Plan	Plan A	Plan A	Plan B
Election year	2009	2011	2011
Alternative amortization schedule elected	2 plus 7-year	2 plus 7-year	15-year
End of restriction period	2012	2013	2015
Shortfall amortization installments for first year of amortization schedule:			
Without alternative schedule	$167,698	503,094	$252,579
Reflecting alternative schedule	60,000	172,500	146,878
First-year reduction	$107,698	$330,594	$105,701

An installment acceleration amount of $100,000 is determined for the plan year beginning January 1, 2011.

(b) Because an alternative amortization schedule has been elected for two shortfall amortization bases for Plan A, and because the 2011 plan year is in the restriction period for each base, an installment acceleration amount is added to each shortfall amortization installment for 2011. The installment acceleration amounts are allocated between Plan A and Plan B based on the rules in Q&A I–7 and Q&A I–8 of this notice. The earlier-year shortfall amortization base for Plan A is the first shortfall amortization base for which an alternative amortization schedule was elected for that plan (the base established for 2009). The earlier-year shortfall amortization base for Plan B is the only base for which an alternative amortization schedule was elected for that plan, established for the 2011 plan year.

(c) The installment acceleration amount of $100,000 is allocated between the plans in proportion to the first-year reduction for each earlier-year shortfall amortization base for the first year of the amortization schedule. The allocated portion of the installment acceleration amount for Plan A is $50,468. This amount is calculated by multiplying the installment acceleration amount of $100,000 by a ratio, the numerator of which is the first-year reduction for the earlier-year shortfall amortization base for Plan A and the denominator of which is the sum of the first-year reductions for the earlier-year shortfall amortization bases for Plans A and B ($100,000 x $107,698 ÷ ($107,698 + $105,701) = $50,468). Similarly, the allocated portion of the installment acceleration amount for Plan B is $49,532.

(d) In addition, a second installment acceleration amount of $100,000 is added to the shortfall amortization installments for the later-year shortfall amortization bases. The only later-year shortfall amortization base for which the sponsor has elected an alternative amortization schedule is the base established for Plan A for 2011. Therefore, the full $100,000 installment acceleration amount is allocated to Plan A, and the total installment acceleration amount allocated to both affected shortfall amortization bases for Plan A amounts to $150,468 for the 2011 plan year. As developed earlier in this example, an additional installment acceleration amount of $49,532 is allocated to Plan B, for a total installment acceleration amount of $200,000 for the 2011 plan year.

Example I–6: (a) The facts are the same as in *Example I–5*. An installment acceleration amount of $150,000 is determined for the 2013 plan year.

(b) Because the shortfall amortization base established for Plan A for the 2009 plan year is no longer in the restriction period, that base is ignored when determining the installment acceleration amounts that are allocated to that plan for that plan year. Accordingly, the shortfall amortization base established for 2011 becomes the earlier-year shortfall amortization base for Plan A, and there are no later-year shortfall amortization bases for either plan.

(c) Because neither plan has more than one shortfall amortization base for which an alternative amortization schedule was elected and which is still in its restriction period, the installment acceleration amount is only applied once, and the amount is allocated between Plans A and B based on the reduction in the first-year installments for each base. The allocated portion of the installment acceleration amount for Plan A for the 2013 plan year is $113,660. This amount is calculated by multiplying the installment acceleration amount for the 2013 plan year ($150,000) by a ratio, the numerator of which is the first-year reduction for the shortfall amortization base established for Plan A for 2011 and the denominator of which is the sum of the first-year reductions for the shortfall amortization bases established for Plan A and Plan B for that same year ($150,000 x $330,594 ÷ ($330,594 + $105,701) = $113,660). Similarly, the allocated portion of the installment acceleration amount for the shortfall amortization base established for Plan B for 2011 is $36,340.

Q I–11: How do the rules of this section apply to multiple employer plans?

A I–11: (a) In the case of a multiple employer plan to which § 413(c)(4)(A) applies, the rules of § 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Accordingly, any installment acceleration amount is determined separately for each plan sponsor who elects an alternative amortization schedule, based on the excess compensation amount for employees in that sponsor's controlled group in accordance with the rules of section III.C of this notice, and on the excess shareholder payment amounts for that sponsor's controlled group determined in accordance with the rules of section III.S of this notice. The resulting installment acceleration amount for a plan sponsor is added only to shortfall amortization bases for which that sponsor elected to use an alternative amortization schedule, in accordance with the rules of this section.

(b) In the case of a multiple employer plan to which § 413(c)(4)(A) does not apply, the rules of § 430 are applied as if all participants in the plan were employed by a single employer. Therefore, if an election is made to use an alternative amortization schedule, the installment acceleration amount is determined based on the excess compensation amount for all employees of the controlled groups for all sponsoring employers in accordance with section III.C of this notice, and on the excess shareholder payment amounts for any member of the controlled groups for all sponsoring employers, in accordance with section III.S of this notice.

C. EXCESS COMPENSATION AMOUNTS

The excess employee compensation amount that is included in the installment acceleration amount is defined at § 430(c)(7)(D). In general, the excess employee compensation amount is, with respect to any employee for any plan year, the excess (if any) over $1,000,000, of the aggregate amount includible in income for remuneration during the calendar year in which the plan year begins for services performed by the employee for the plan sponsor (whether or not performed during the calendar year). Under § 430(c)(7)(D)(vi), the term "employee" includes a self-employed individual who is treated as an employee under § 401(c), and the term "compensation" includes earned income of such individual with respect to such self-employment. Pursuant to § 430(c)(7)(D)(viii), the $1,000,000 amount is indexed under § 1(f)(3) for calendar years after 2010, rounded to the next lowest multiple of $1,000.

Under § 430(c)(7)(D)(ii), if during any calendar year, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in § 409A) of the plan sponsor, then, for purposes of determining the excess employee compensation amount with respect to an employee, the amount of those assets is treated as remuneration of the employee includible in income for the calendar year, unless that amount is taken into account under § 430(c)(7)(D)(i) for that year. An amount that is taken into account as remuneration includible in income under § 430(c)(7)(D)(ii) for a calendar year is not taken into account under § 430(c)(7)(D) for any subsequent calendar year. Sections 430(c)(7)(D)(iii) through (v) provide four additional exceptions from the remuneration taken into account for purposes of calculating the excess employee compensation amount.

Q C–1: How is the excess compensation amount that is included in the installment acceleration amount determined?

A C–1: (a) The excess compensation amount for a plan year is the sum, for all employees of the plan sponsor, of the portion of the PRA compensation amount for each such employee that exceeds $1,000,000 (as indexed for changes in the cost-of-living index). For this purpose, the *PRA compensation amount* for an employee for a plan year is determined as the employee's compensation amount, as described in Q&A C–2 of this notice, adjusted by adding any set-aside amount as described in Q&A C–3 of this notice, but disregarding any amounts excluded as described in Q&A C–4 through Q&A C–7 of this notice.

(b) For purposes of determining the excess compensation amount, (1) the term "employee" includes former employees and self-employed individuals who are treated as employees under § 401(c), and (2) the term "plan sponsor" includes all members of the plan sponsor's controlled group (as defined in § 412(d)(3)). However, in the case of a plan established or maintained jointly by an employer and an employee organization, the term "plan sponsor" includes all members of the employer's controlled group (as defined in § 412(d)(3)).

Q C–2: What is the compensation amount for an employee for a plan year?

A C–2: The compensation amount for an employee for a plan year is equal to the amount that is includible in the employee's income for the calendar year in which the plan year begins and that constitutes remuneration for services performed by the employee for the plan sponsor (including remuneration for services performed by the employee for the plan sponsor in earlier years that is includible in the employee's income for the calendar year in which the plan year begins, subject to the special rules described in Q&A C–3 through Q&A C–7 of this notice). With respect to a self-employed individual who is treated as an employee under § 401(c), compensation for this purpose includes the earned income of that individual with respect to such self-employment for the taxable year ending during the calendar year in which the plan year begins.

Q C–3: How is the set-aside amount determined for an employee for a plan year?

A C–3: (a) The set-aside amount for an employee for a plan year that is added to the compensation amount under Q&A C–2 of this notice for purposes of determining the PRA compensation amount is equal to the fair market value of assets that are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of the employee under a nonqualified deferred compensation plan (as defined in § 409A) during the calendar year in which the plan year (of the qualified plan) begins, except to the extent that amount is includible in income for that year. For this purpose, any guidance under § 409A(b)(1) concerning assets that are set aside or reserved (directly or indirectly) in a trust or other arrangement (or transferred to such a trust or other arrangement) also applies for purposes of § 430(c)(7)(D)(ii) (but without regard to the *situs* of the trust or other arrangement).

(b) An amount that is taken into account as part of the set-aside amount for an employee for a plan year is not also taken into account in determining the employee's compensation amount under Q&A C–2 of this notice for any subsequent period.

(c) The fair market value of assets set aside, reserved, or transferred is determined at the time they are set aside, reserved, or transferred. If such assets are permitted under the trust or arrangement to be applied to the deferred compensation of more than one employee, those assets are included in the set-aside amounts of each employee proportionately to the aggregate present value of each employee's benefits for which assets are permitted to be applied under the trust or arrangement.

(d) Payments made by a foreign corporation to a foreign trust (or other foreign arrangement as determined by the Secretary) on behalf of a nonresident alien are not considered to be set-aside amounts for the purpose of determining excess compensation under § 430(c)(7)(D)(i) to the extent that such payments would not have been subject to U.S. income tax as income effectively connected with the conduct of a trade or business within the United States if they had been paid to the nonresident alien in cash.

(e) The exceptions set forth in §§ 430(c)(7)(iii) through (v), as described in Q&A C–4 through Q&A C–7 of this notice, do not apply for purposes of determining the set-aside amount under § 430(c)(7)(ii), as described in this Q&A C–3.

Q C–4: Section 430(c)(7)(iii) provides that remuneration taken into account under § 430(c)(7)(D)(i) only includes remuneration to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010. How is this rule applied?

A C–4: Remuneration included in an employee's compensation amount under Q&A C–2 of this notice for a calendar year that is attributable to services performed before March 1, 2010, is subtracted from the amount otherwise included in an employee's remuneration in determining the compensation amount for that calendar year. The rules of Q&A–23 of Notice 2009–8, 2009–4 I.R.B. 347, apply for purposes of determining whether a compensation amount under Q&A C–2 of this notice for a calendar year is attributable to services performed before March 1, 2010 (applied by substituting periods before March 1, 2010, for periods before January 1, 2009). However, for remuneration which is not directly attributable to services performed during specific months within the 2010 calendar year, the remuneration is treated as attributable *pro rata* to months during 2010. Thus, for a $12,000 bonus payment made to an employee for services rendered by the employer for the plan sponsor during the entire 2010 calendar year, $2,000 would be attributable to services performed during January and February of 2010, and only the remaining $10,000 would be included in remuneration for purposes of § 430(c)(7)(D)(i).

Q C–5: Section 430(c)(7)(D)(iv) provides that remuneration taken into account under § 430(c)(7)(D)(i) does not include any amount includible in income with respect to the granting, after February 28, 2010, of service recipient stock (within the meaning of § 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined in § 83(c)(1)) for at least 5 years from the date of that grant. How is this rule applied?

A C–5: For purposes of determining whether a grant of service recipient stock made after February 28, 2010, is taken into account under § 430(c)(7)(D)(i), except as provided in the final sentence of this Q&A C–5, the determination of whether a risk of forfeiture constitutes a substantial risk of forfeiture (as defined in § 83(c)(1)) for at least 5 years from the date of that grant is made as of the date of grant. Thus, provided the risk of forfeiture with respect to such a grant is a substantial risk of forfeiture as of the date of grant, the grant does not fail to meet the requirement that the service recipient stock be subject to a substantial risk of forfeiture for at least 5 years from the date of that grant merely because the risk of forfeiture lapses prior to the end of the 5-year period pursuant to the terms of the grant. For example, if the terms of the grant on the date of the grant impose a substantial risk of forfeiture for at least 5 years, but the terms provide for the risk to lapse if the grantee dies, the grant will be treated as being subject to a substantial risk of forfeiture for at least 5 years from the date of the grant for purposes of § 430(c)(7)(D) even if the risk of forfeiture lapses within 5 years after the grant due to the death of the grantee. However, if any amendment is made to the terms of the grant after February 28, 2010, that causes the grant to cease to be subject to a substantial risk of forfeiture (as defined in § 83(c)(1)) for at least 5 years from the date of that grant, the special rule described in this Q&A C–5 will cease to apply to the grant.

Q C–6: Section 430(c)(7)(D)(v)(I) provides that the remuneration taken into account under § 430(c)(7)(D)(i) does not include any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to which that remuneration is payable. How is this rule applied?

A C–6: For purposes of § 430(c)(7)(D)(i)(I), remuneration is payable on a commission basis only if the facts and circumstances show that the remuneration is paid solely on account of income generated directly by the individual performance of the individual to whom the compensation is paid and the income is a result of a direct sale of a product or service to an unrelated customer in the ordinary course of the business of the employer. Thus, remuneration is not payable on a commission basis if the remuneration is paid on account of broader performance standards, such as on account of the income produced by a business unit of the employer or on account of the disposition of a business unit that is not in the ordinary course of business of the employer. However, remuneration does not fail to be attributable directly to the individual merely because support services, such as secretarial or research services, are utilized in generating the income.

Q C–7: Section 430(c)(7)(D)(v)(II) provides that the remuneration taken into account under § 430(c)(7)(D)(i) does not include any remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and that was not modified in any material respect before that remuneration is paid. How is this rule applied?

A C–7: (a) Remuneration consisting of nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and that was not modified in any material respect before that remuneration is paid and which is included in an employee's compensation amount under Q&A C–2 of this notice for a plan year is subtracted from the amount otherwise included in determining the PRA compensation amount for that plan year. For this purpose, remuneration is not payable or granted under a written binding contract that is in effect on March 1, 2010, if the employee does not have a legally binding right to the remuneration on March 1, 2010, under the rules set forth in § 1.409A–1(b)(1). Whether a material modification has occurred is determined under rules similar to the rules under § 1.409A–6(a)(4) (substituting March 1, 2010, for October 3, 2004, or January 1, 2005), as applied based on the nonqualified deferred compensation, restricted stock, stock options, or stock appreciation rights modified. For example, if an employee's contract addresses both cash compensation and stock options, and a material modification is made on or after March 1, 2010, with respect to the employee's cash compensation, but the modification does not affect the employee's stock options, then the compensation in the form of stock options is not considered to have been materially modified.

(b) For purposes of applying § 430(c)(7)(D)(v)(II), nonqualified deferred compensation does not include remuneration that is not deferred for more than a brief period of time after the end of the employer's taxable year, as described in § 1.404(b)–1T, Q&A–2. Accordingly, compensation is not considered to consist of nonqualified deferred compensation for purposes of the exception described in this Q&A C–7 to the extent that such compensation is received on or before the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered.

S. EXCESS SHAREHOLDER PAYMENT AMOUNTS

Section 430(c)(7)(E) defines the excess shareholder payment amount that is included in the installment acceleration amount. The excess shareholder payment amount for a plan year is the excess (if any) of the sum of dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year, over the greater of two amounts. The first such amount is the adjusted net income (within the meaning of section 4043 of ERISA) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization. The second such amount is, in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner. Sections 430(c)(7)(E)(ii) through (v) provide certain exceptions from dividends and redemptions that are taken into account in determining the excess shareholder payment amount.

Q S–1: How is the excess shareholder payment amount that is included in the installment acceleration amount determined?

A S–1: (a) Except as described in this Q&A S–1 and Q&A S–5 through Q&A S–8 of this notice, the excess shareholder payment amount for a plan year is the excess (if any) of (i) the sum of dividends declared by the plan sponsor during the plan year for which the installment acceleration amount is calculated (regardless of whether the dividends are paid after the last day of that plan year) plus the aggregate amount paid for the redemption of stock (as described in § 317(b)) of the plan sponsor that occurs during such plan year (regardless of whether the redemption was announced before the first day of that plan year), over (ii) the adjusted net income for the prior plan year as described in Q&A S–2 of this notice. However, in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years, as described in Q&A S–3 of this notice, the amount in clause (ii) of the preceding sentence is not less than the aggregate amount of dividends determined and declared for the plan year that are determined in that same manner.

(b) Section 430(c)(7)(E)(iii) provides an exception for intra-group dividends, under which dividends paid by one member of a controlled group (as defined in § 412(d)(3)) to another member of that group are not taken into account.

(c) For purposes of determining the excess shareholder payment amount, pursuant to § 430(c)(7)(F), the term "plan sponsor" includes all members of the plan sponsor's controlled group. However, in the case of a plan established or maintained jointly by an employer and an employee organization, the term "plan sponsor" includes all members of the employer's controlled group.

Q S–2: How is the adjusted net income for the prior plan year determined for purposes of calculating the excess shareholder payment amount?

A S–2: (a) The adjusted net income for the prior plan year for purposes of calculating the excess shareholder payment amount is the adjusted net income (within the meaning of 29 CFR 4043.31(e)(1)) of the plan sponsor for the fiscal year ending with or during that prior plan year (the *applicable fiscal year*), determined before any reduction by reason of interest, taxes, depreciation, or amortization. Adjusted net income is defined in 29 CFR 4043.31(e)(1) as the net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices. Accordingly, the adjusted net income for purposes of calculating the excess shareholder payment amount is the net income as determined in accordance with generally accepted accounting principles and practices, but determined before any reduction by reason of interest, taxes, depreciation, or amortization and disregarding any gain or loss on any sale of assets. The amount of adjusted net income for this purpose is deemed to be no less than zero.

(b) If the length of the plan year for which the excess shareholder payment amount is determined and the fiscal year used to determine the adjusted net income described in Q&A S–2 are not the same, the adjusted net income is multiplied by a fraction, the numerator of which is the number of months in the plan year for which the excess shareholder payment amount is determined and the denominator of which is the number of months in the fiscal year for which the adjusted net income is determined. For example, if a short plan year is 5 months long, and the fiscal year is 12 months long, then the adjusted net income for the prior plan year as determined in this Q&A S–2 is multiplied by 5/12 to determine the adjusted net income used in calculating the excess shareholder payment amount.

Q S–3: What does it mean for dividends to be determined and declared in the same manner for at least 5 consecutive years?

A S–3: (a) The aggregate amount of dividends declared during the plan year for which the installment acceleration amount is determined is deemed to be determined in the same manner for at least 5 consecutive years if the dividends are determined using the same formula (including the same specified dollar amount, determined on either a per share basis, with appropriate adjustments for stock splits and similar changes in capitalization, or on an aggregate basis) as was used for dividends declared during the 60-month period immediately preceding the first day of that plan year. Other examples of dividends determined using the same formula include dividends that increase by a fixed amount each year, dividends that increase by a fixed percentage each year, and dividends that are a fixed percentage of income, earnings, or other consistently applied measure of profitability.

(b) If, at any time during the 60 months immediately preceding the first day of the plan year for which the installment acceleration amount is determined, a plan sponsor omitted its periodic dividend or the sponsor has existed for fewer than 60 months prior to the first day of that plan year, the exception under § 430(c)(7)(E)(i)(II) does not apply.

Example S–1. (a) Assume that a plan sponsor that elected to use an alternative amortization schedule for the shortfall amortization base established as of January 1, 2011, has determined dividends in the same manner for the 60-month period immediately preceding January 1, 2012. The plan sponsor continues to determine dividends in the same manner for dividends declared as of March 31, 2012, June 30, 2012, and December 31, 2012, but declares a reduced dividend as of September 30, 2012. Assume the following dividends were declared as a result:

Date dividends declared	Dividend amount	Dividend determined in the same manner as the 60-month period ending December 31, 2011
March 31, 2012	$100,000	Yes
June 30, 2012	101,000	Yes
September 30, 2012	50,000	No
December 31, 2012	99,000	Yes
Total dividends declared during the plan year	$350,000	N/A

(b) In accordance with Q&A S–1 of this notice, the excess shareholder payment amount for the 2012 plan year reflects the total dividends declared during the plan year, or $350,000. However, the amount of dividends eligible for the exception under § 430(c)(7)(E)(i)(II) excludes the dividend declared September 30, 2012, because that dividend was not determined in the same manner as dividends declared during the 60-month period immediately preceding the plan year for which the installment acceleration amount is calculated. Accordingly, the amount of dividends taken into account for purposes of Q&A S–1(a)(ii) of this notice is $300,000, and the excess shareholder payment amount for the 2012 plan year is the excess of (i) the $350,000 in dividends declared by the plan sponsor during the 2012 plan year plus the aggregate amount paid for the redemption of stock during 2012, over (ii) the adjusted net income for the plan sponsor for the fiscal year that ends during 2011 or $300,000 if larger.

(c) For any excess shareholder payment amount determined for the 2013 plan year, no dividends are eligible for the exception under § 430(c)(7)(E)(i)(II), because the dividends were not determined in the same manner throughout the 60-month period immediately preceding January 1, 2013.

Example S–2. (a) Assume that the sponsor of Plan A has an October 1 – September 30 fiscal year and elects to use an alternative amortization schedule for Plan A for its plan year beginning July 1, 2011. Assume further that the dividends declared during the plan year beginning July 1, 2011, total $1,200,000, payments made for the redemption of stock during the plan year beginning July 1, 2011, total $500,000, and that the adjusted net income for the fiscal year ending September 30, 2010, was $1,000,000.

(b) If the dividends declared during the plan year beginning July 1, 2011, were determined in the same manner as those declared during the 60 months preceding July 1, 2011 (that is, during the period beginning July 1, 2006, and ending June 30, 2011), the exception under Q&A S–1 of this notice and § 430(c)(7)(E)(i)(II) applies to the dividends declared during the plan year beginning July 1, 2011. In such a case, the excess shareholder payment amount for the plan year beginning July 1, 2011, is equal to the excess of (i) the sum of dividends declared by the plan sponsor during the plan year beginning July 1, 2011, and amounts paid by the plan sponsor for the redemption of stock during that plan year ($1,200,000 plus $500,000, or $1,700,000) over (ii) the greater of the plan sponsor's adjusted net income for the fiscal year beginning October 1, 2009, and ending September 30, 2010, or dividends declared during the plan year beginning July 1, 2011 (the greater of $1,000,000 or $1,200,000, or $1,200,000). The excess shareholder payment amount for the plan year beginning July 1, 2011, is therefore $500,000, which is the excess of $1,700,000 over $1,200,000.

(c) However, if none of the dividends declared during the plan year beginning July 1, 2011, were determined in the same manner as those declared during the 60-month period beginning July 1, 2006, and ending June 30, 2011 (or if the dividends declared during the 60-month period beginning July 1, 2006, and ending June 30, 2011, were not determined in the same manner throughout that period), then the exception under Q&A S–1 of this notice and § 430(c)(7)(E)(i)(II) does not apply to the dividends declared during the plan year beginning July 1, 2011. In that case, the excess shareholder payment amount for the plan year beginning July 1, 2011, would be equal to $700,000, which is the excess of (i) the sum of dividends declared by the plan sponsor during the plan year beginning July 1, 2011, and amounts paid by the plan sponsor for the redemption of stock redeemed during that plan year, or $1,700,000, over (ii) the plan sponsor's adjusted net income for the fiscal year beginning October 1, 2009, and ending September 30, 2010 ($1,000,000).

Q S–4: How does the calculation of excess shareholder payment amounts change if the installment acceleration amount is to be allocated among plans with differing plan years?

A S–4: (a) If on any date during a calendar year (the *applicable calendar year*) there are two or more plans within the controlled group for which an election has been made to use an alternative amortization schedule (for which the restriction period has not ended) and two or more of those plans have different plan years, then, for all plan years that begin in the applicable calendar year, the excess shareholder payment is determined as if the plan year were the calendar year. Accordingly, subject to the special rules in Q&A S–5 through Q&A S–8 of this notice, the excess shareholder payment amount for a plan year is calculated in accordance with Q&A S–1 through Q&A S–3 of this notice, but (i) using dividends declared by the plan sponsor and the aggregate amount paid for the redemption of stock, as defined in Q&A S–1 of this notice, during the applicable calendar year, (ii) using adjusted net income, as defined in Q&A S–2 of this notice, for the fiscal year ending with or during the calendar year preceding the applicable calendar year, and (iii) determining whether dividends have been determined and declared in the same manner for at least 60 consecutive months in accordance with Q&A S–3 of this notice by using the 60 months immediately preceding the first day of the applicable calendar year as the relevant period. In such a case, the installment acceleration amount is determined based on the applicable calendar year in which the plan year begins because both the excess shareholder payment amount and the excess compensation amount are determined based on the applicable calendar year.

(b) If the special rule of paragraph (a) applies for an applicable calendar year but did not apply in the preceding calendar year, then, except as provided in paragraph (c) of this Q&A S–4, the excess shareholder payment for any plan year that began in the preceding calendar year and ends in the applicable calendar year is determined as if the plan year were the preceding calendar year.

(c) The special rule in paragraph (b) of this Q&A S–4 does not apply if the date in the applicable calendar year on which the conditions of paragraph (a) of this Q&A S–4 are first satisfied is after the close of all the plan years that began in the prior calendar year and end in the applicable calendar year.

Example S–3. (a) The facts are the same as in *Example S–2*, except that the plan sponsor also elects to use an alternative amortization schedule for Plan B, which has a plan year beginning March 1. The shortfall amortization base for Plan B is still in the restriction period for the plan year beginning March 1, 2011, and the installment acceleration amount will be allocated between Plans A and B.

(b) The excess shareholder payment amount is determined based on the calendar year in which the plan years begin. Accordingly, the excess shareholder payment amount allocated to Plan A for the plan year beginning July 1, 2011, and to Plan B for the plan year beginning March 1, 2011, is based on (i) the dividends declared by the plan sponsor and amounts paid by the plan sponsor for the redemption of stock as defined in Q&A S–1 of this notice during the 2011 calendar year; and (ii) the plan sponsor's adjusted net income as defined in Q&A S–2 of this notice for the fiscal year beginning October 1, 2009, and ending September 30, 2010. Dividends declared throughout the 2006 through 2010 calendar years (the 60-month period immediately preceding January 1, 2011) must have been determined and declared in the same manner, in order for any dividends to be eligible for the exception under § 430(c)(7)(E)(i)(II) and Q&A S–1 of this notice.

Q S–5: Section § 430(c)(7)(E)(ii) provides that only dividends declared, and redemptions occurring, after February 28, 2010, are taken into account. How is this rule applied?

A S–5: Only dividends declared, and redemptions occurring, after February 28, 2010, are taken into account in determining the excess shareholder payment amount that is included in the installment acceleration amount for any plan year. Accordingly, any dividends declared on or before February 28, 2010, are not reflected in the installment acceleration amount without regard to when they are paid. In contrast, any stock redemptions occurring after February 28, 2010, are reflected in the installment acceleration amount without regard to when they were announced.

Q S–6: Under what circumstances is a distribution of the stock of the employer taken into account in determining the excess shareholder payment?

A S–6: Pursuant to § 305(a), a distribution by a corporation of its stock is generally not treated as a dividend and is therefore not generally taken into account in determining the excess shareholder payment. However, pursuant to § 305(b), a distribution of stock that is described in § 305(b)(1) through (5) (for example, a distribution of stock that has the result of changing the proportionate interests of the shareholders in the earnings and profits of the corporation) is treated as a distribution of property to which § 301 applies and therefore is a dividend that is taken into account in determining the excess shareholder payment, provided that the distribution is paid out of earnings and profits as described in § 316(a).

Q S–7: Under § 430(c)(7)(E)(iv), redemptions of stock that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, are not taken into account. How is this rule applied?

A S–7: (a) Redemptions of shares that are made pursuant to a plan maintained with respect to employees (whether or not the plan is qualified) are not taken into account when determining the amount of excess shareholder payment amounts. For this purpose, a plan maintained with respect to employees that is not a qualified plan does not include an agreement or arrangement that covers only a single individual, but instead is limited to a plan that covers a category of employees.

(b) Redemptions that are made on account of the death, disability, or termination of employment of an employee or shareholder, are not taken into account in determining the excess shareholder payment amount that is included in the installment acceleration amount. For this purpose, a redemption is made on account of death, disability, or termination of employment only if, as a result of the death, disability, or termination of employment of the employee or shareholder, either (i) the plan sponsor or any member of the plan sponsor's controlled group is required to redeem the stock held by the shareholder (even if the shareholder is not required to tender the stock) or (ii) the shareholder is required to tender the stock for redemption (even if the plan sponsor or a member of the plan sponsor's controlled group is not required to redeem the stock tendered).

(c) For example, if a company's bylaws require that the shares in the company be held by active employees, an employee who terminates employment is required to tender his/her shares in the company for redemption. Any amount paid by the company to redeem these shares would not be taken into account for purposes of determining an excess shareholder payment amount. However, if the spouse of a deceased shareholder in a company that does not require shares to be held by active employees voluntarily redeems the stock held by the shareholder (under circumstances not otherwise described in clause (i) or (ii) of paragraph (b) of this Q&A S–7), the amount paid by that company to redeem these shares would be taken into account when determining an excess shareholder payment amount.

Q S–8: Section 430(c)(7)(E)(v) provides an exception with respect to certain preferred stock. How is this rule applied?

A S–8: Under this exception, dividends with respect to applicable preferred stock are not taken into account in determining the excess shareholder payment amount that is included in the installment acceleration amount to the extent that dividends accrue with respect to that stock at a specified rate in all events and without regard to the plan sponsor's income, and interest accrues on any unpaid dividends with respect to that stock. In addition, redemptions with respect to applicable preferred stock are not taken into account in determining the excess shareholder payment amount that is included in the installment acceleration amount if dividends accrue with respect to that stock at a specified rate in all events and without regard to the plan sponsor's income, and interest accrues on any unpaid dividends with respect to that stock. For this purpose, applicable preferred stock is preferred stock that was originally issued before March 1, 2010, or that was originally issued prior to that date and is subsequently reissued with otherwise identical terms. In addition, applicable preferred stock includes preferred stock that was issued on or after March 1, 2010, and is held by an employee benefit plan that is subject to the provisions of Title I of ERISA and that is maintained for the benefit of employees and former employees of the plan sponsor and their beneficiaries.

M. MERGERS AND ACQUISITIONS

Section 430(c)(2)(F)(iv) provides that the Secretary of the Treasury is to prescribe rules for the application of installment acceleration amounts in any case where there is a merger or acquisition involving a plan sponsor that has elected to use an alternative amortization schedule in accordance with § 430(c)(2)(D).

Q M–1: How does a merger or acquisition affect the calculation of the excess compensation amount described in section III.C and the excess shareholder payment amount described in section III.S?

A M–1: (a) If a plan sponsor that elected to use an alternative amortization schedule for any shortfall amortization base merges with, acquires, or is acquired by another company that was not in its controlled group prior to the transaction, and that other company either did not sponsor a single-employer defined benefit plan or did not elect to use an alternative amortization schedule for any plan it sponsored, any aggregate compensation amount with respect to employees of such other company that would otherwise be taken into account prior to the date of the merger or acquisition is disregarded for the purpose of calculating the amounts in section III.C of this notice with respect to any installment acceleration amounts determined for the plan sponsor. Similarly, any dividends declared by such other company and any redemptions of stock of such other company that occur prior to the date of the transaction are ignored for the purpose of calculating the amounts in section III.S of this notice.

(b) If the other company involved in the transaction described in paragraph (a) of this Q&A M–1 sponsors a plan for which an election was made to use an alternative amortization schedule, the rule in paragraph (a) of this Q&A M–1 does not apply. Accordingly, the installment acceleration amount is determined by combining the compensation amounts and shareholder payment amounts for both companies involved in the transaction as if they had been in the same controlled group before and after the transaction. The installment acceleration amount is then allocated as described in Q&A I–7 through Q&A I–10 of this notice.

(c) For purposes of this Q&A M–1, (i) any election to use an alternative amortization schedule during the plan year in which the transaction occurs is treated as an election that occurred prior to the date of the transaction and (ii) a shortfall amortization base that is not in its restriction period for the plan year of the transaction is disregarded when determining whether a plan sponsor has elected to use an alternative amortization schedule.

(d) The rules of this Q&A M–1 apply regardless of whether the transaction is an asset or a stock transaction.

Example M–1. (a) Assume that Company A and Company B are separate companies that are not in the same controlled group, and that Company A sponsors a single-employer defined benefit plan for which an election was made to use an alternative amortization schedule for the 2010 plan year. Company B sponsors a single-employer defined benefit plan but did not elect to use an alternative amortization schedule. Company A acquires Company B effective July 1, 2011. Consider the following employees:

Employee	Employee X	Employee Y
Company	A	B
Compensation for 2011:		
Paid before July 1, 2011	$ 400,000	$750,000
Paid on or after July 1, 2011	1,100,000	750,000
Total	$1,500,000	$1,500,000

(b) The installment acceleration amount for 2011 for the plan sponsored by Company A reflects the compensation paid to Employee X for all of 2011, because Employee X was an employee of Company A prior to the date of the acquisition. The threshold for determining excess compensation for 2011 is $1,014,000. Therefore $486,000 of Employee X's compensation is excess compensation. However, only the compensation paid to Employee Y after July 1, 2011, is considered when calculating the 2011 installment acceleration amount for the plan sponsored by Company A, because Employee Y was not in the same controlled group as Company A prior to the date of the acquisition. Because the compensation paid to Employee Y on and after July 1, 2011, was under $1,014,000, none of Employee Y's compensation is considered excess compensation.

Example M–2. (a) The facts are the same as in *Example M–1*, except that Company B, not Company A, elected to use an alternative amortization schedule for the 2010 plan year. The installment acceleration amount for 2011 for the plan sponsored by Company B reflects the compensation paid to Employee Y for all of 2011, because Employee Y was an employee of Company B prior to the date of the acquisition. Therefore, $486,000 of Employee Y's compensation is excess compensation for the purpose of determining the installment acceleration amount for the 2011 plan year.

(b) Only the compensation paid to Employee X after July 1, 2011, is considered when calculating the 2011 installment acceleration amount for the plan sponsored by Company B, because Employee X was not in the same controlled group as Company B prior to the date of the acquisition. As a result, $86,000 of Employee X's compensation is excess compensation for the purpose of determining the installment acceleration amount for the 2011 plan year.

Q M–2: Are amounts paid to purchase stock pursuant to a merger or acquisition reflected in the excess shareholder payment amount for the plan year in which the transaction occurs?

A M–2: Any amounts paid to redeem or purchase stock pursuant to a merger or acquisition are not reflected in the excess shareholder payment amount determined according to section III.S of this notice, regardless of whether the actual payment occurs during the plan year in which the transaction occurs.

E. ELECTIONS TO USE AN ALTERNATIVE AMORTIZATION SCHEDULE

Section 430(c)(2)(D)(iv)(III) provides that a plan sponsor's election under § 430(c)(2)(D) is to be made at such time and in such form and manner as is prescribed by the Secretary of the Treasury. Section 430(c)(2)(D)(iv)(III) provides further that any such election may be revoked only with the consent of the Secretary, after consultation with the Pension Benefit Guaranty Corporation (PBGC).

Q E–1: How is an election made to use an alternative amortization schedule for a plan year?

A E–1: An election made on or after January 1, 2011, must be made by the plan sponsor, by providing written notification of such election to both the plan's enrolled actuary and the plan administrator. Such election must be signed and dated by the plan sponsor and must include all of the following information:

(1) The name of the plan;

(2) The plan number;

(3) The name of the plan sponsor;

(4) The plan sponsor's mailing address;

(5) The plan sponsor's employer identification number;

(6) Which of the two alternative amortization schedules is being elected;

(7) The plan year for which the election is being made;

(8) Whether an alternative amortization schedule has been elected for another year, and, if so, a statement that the same alternative amortization schedule is being elected; and

(9) A statement that the plan sponsor will notify the PBGC and plan participants and beneficiaries pursuant to § 430(c)(2)(D)(vi) of the Code and ERISA section 303(c)(2)(D)(vi).

Q E–2: What is the deadline for making the election?

A E–2: The election must be made by the latest of: (i) the last day of the plan year for which the election is made, (ii) 30 days after the valuation date for the plan year for which the election is made, or (iii) January 31, 2011. For example, if the valuation date for a plan is the first day of the plan year, an election for the plan year that begins on January 1, 2009, or January 1, 2010, must be made by January 31, 2011; for the plan year that begins on January 1, 2011, the election must be made by December 31, 2011.

Q E–3: How does the ability to elect an alternative amortization schedule apply to multiple employer plans?

A E–3: (a) In the case of a multiple employer plan to which § 413(c)(4)(A) applies, the rules of § 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Thus, each employer under a multiple employer plan may elect to use an alternative amortization schedule independent of the elections of other employers under the plan.

(b) In the case of a multiple employer plan to which § 413(c)(4)(A) does not apply, the rules of § 430 and this notice are applied as if all participants in the plan were employed by a single employer, and any reference to the plan sponsor means the plan administrator within the meaning of § 414(g).

N. NOTIFICATION TO PARTICIPANTS, BENEFICIARIES, AND THE PBGC

Section 303(c)(2)(D)(vi)(I) of ERISA and § 430(c)(2)(D)(vi)(I) of the Code require a plan sponsor that elects funding relief to give notice of the election to participants and beneficiaries of the plan (*pension funding relief notice*).

Section 303(c)(2)(D)(vi)(II) of ERISA and § 430(c)(2)(D)(vi)(II) of the Code require the plan sponsor to inform the PBGC of such election in such form and manner as the Director of the PBGC may prescribe. The PBGC has informed the Treasury Department and the Service that the form and manner for complying with this requirement are the rules described in Q&A N–6 and Q&A N–7 of this section III.N.

Q N–1: When must the pension funding relief notice be provided to participants and beneficiaries?

A N–1: The pension funding relief notice must be provided to participants and beneficiaries of the plan by 120 days after the end of the plan year for which an alternative amortization schedule is elected, or by May 2, 2011, if later. For example, if an alternative amortization schedule is elected for a plan year beginning June 1, 2010, then the notice must be provided to participants and beneficiaries by September 28, 2011. If the election for a plan is made simultaneously for two plan years, the notices for both elections can be combined as long as the notice identifies both years for which the election is made.

Q N–2: Which participants and beneficiaries must receive the notice?

A N–2: Except as otherwise provided in this section III.N, a pension funding relief notice is required to be provided to all plan participants and beneficiaries. However, the pension funding relief notice does not have to be provided to any person who either became a plan participant or beneficiary after the last day of the last plan year ending before the notice is due or ceased to be a participant or beneficiary prior to the date on which the pension funding relief notice is provided.

Q N–3: How does the notice requirement affect multiple employer plans?

A N–3: (a) In the case of a multiple employer plan to which § 413(c)(4)(A) applies, the rules of § 430 are applied separately for each employer under the plan. Accordingly, the notice in this section III.N must be provided only to those participants or beneficiaries as described in Q&A N–2 of this notice who are associated with a plan sponsor which elects to use an alternative amortization schedule.

(b) In the case of a multiple employer plan to which § 413(c)(4)(A) does not apply, the rules of § 430 are applied as if all participants in the plan were employed by a single employer. Therefore, if an election is made to use an alternative amortization schedule, such election applies to the entire plan and the notice must be provided to all participants and beneficiaries of the plan as described in Q&A N–2 of this notice.

Q N–4: What information is required to be in a pension funding relief notice?

A N–4: (a) A pension funding relief notice must provide (1) the name of the plan for which the election has been made, (2) the plan year for which the election has been made, (3) a general description of the effect of the election, including the fact that the election will delay pension funding and which of the two schedules has been elected, and (4) the name, address, and telephone number of the plan administrator or other contact person from whom more information may be obtained.

(b) A pension funding relief notice must be written in a manner calculated to be understood by the average plan participant or beneficiary. In addition, the notice must be written in such a manner that the average participant or beneficiary will understand the significance of the required information in the notice. While a pension funding relief notice may include any additional information that is necessary or helpful for recipients to understand the required information in the notice, the notice should not have the effect of misleading or misinforming recipients or of distracting recipients from the required information in the notice. A pension funding relief notice must be a separate notice and cannot be combined with other information. However, a pension funding relief notice can be provided at the same time as another notice is provided; for example, a pension funding relief notice does not fail to meet the requirements of this Q&A N–4 merely because it is provided at the same time as a notice under section 101(f) of ERISA.

(c) The following examples illustrate information that satisfies the requirements of paragraph (a) of this Q&A N–4:

(i) ALTERNATIVE 1 — pension funding relief notice reflecting an election for a plan for one plan year

<u>Notice Regarding [ENTER NAME OF PLAN]</u>

The employer sponsoring your pension plan has made an election permitted under Federal law to delay funding for the plan. The election applies to the plan year beginning on [ENTER DATE] and ending on [ENTER DATE].

[ALTERNATIVE IF 2 PLUS 7-YEAR SCHEDULE IS ELECTED: Without the election, Federal law generally requires that any increase in the amount by which the plan is underfunded for a plan year be paid off over 7 years. However, the election allows the increase in the amount by which the plan is underfunded for this plan year to be paid off over 9 years, with the payments for the first 2 years limited to interest on that increase.]

[ALTERNATIVE IF 15-YEAR SCHEDULE IS ELECTED: Without the election, Federal law generally requires that any increase in the amount by which the plan is underfunded for a plan year be paid off over 7 years. However, the election allows the increase in the amount by which the plan is underfunded for this plan year to be paid off in smaller annual payments over 15 years.]

If you have any questions, contact [ENTER NAME, ADDRESS, AND TELEPHONE NUMBER FOR CONTACT INFORMATION].

(ii) ALTERNATIVE 2 — pension funding relief notice reflecting an election for a plan for two plan years

<u>Notice Regarding [ENTER NAME OF PLAN]</u>

The employer sponsoring your pension plan has made elections permitted under Federal law to delay funding for the plan. The elections apply to the plan year beginning on [ENTER DATE] and ending on [ENTER DATE], and to the plan year beginning on [ENTER DATE] and ending on [ENTER DATE].

[ALTERNATIVE IF 2 PLUS 7-YEAR SCHEDULE IS ELECTED: Without the elections, Federal law generally requires that any increase in the amount by which the plan is underfunded for a plan year be paid off over 7 years. However, for each of these years, the election allows the increase in the amount by which the plan is underfunded for the plan year to be paid off over 9 years, with the payments for the first 2 years limited to interest on that increase.]

[ALTERNATIVE IF 15-YEAR SCHEDULE IS ELECTED: Without the elections, Federal law generally requires that any increase in the amount by which the plan is underfunded for a plan year be paid off over a period of 7 years. However, the election allows the increase in the amount by which the plan is underfunded for each of these plan years to be paid off in smaller annual payments over 15 years.

If you have any questions, contact [ENTER NAME, ADDRESS, AND TELEPHONE NUMBER FOR CONTACT INFORMATION].

Q N–5: What are the acceptable methods of providing the pension funding relief notice? In particular, can the notice be provided electronically?

A N–5: The pension funding relief notice must be in writing and may be furnished in any paper or electronic form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided. Permissible electronic methods include those permitted under regulations of the Department of Labor at 29 C.F.R. § 2520.104b–1(c) and those described at § 54.4980F–1, Q&A–13(c).

Q N–6: How does a plan sponsor electing pension funding relief comply with the requirement to notify the PBGC of such election?

A N–6: A copy of an election made for a plan that is covered by the PBGC must be e-mailed to the PBGC at *single-employer.funding.relief.election@pbgc.gov*. The subject line of the e-mail must contain the plan sponsor's employer identification number, the plan number, and the name of the plan. See Q&A T–1 of this notice for additional information that may be required for elections made before January 1, 2011.

Q N–7: What is the deadline for notifying the PBGC?

A N–7: PBGC notification must be made by the later of: (i) 30 days after the date the election is made or (ii) January 31, 2011.

CP. ELIGIBLE CHARITY PLANS

Section 202(b) of PRA 2010 provides that delayed effective dates under section 104 of PPA '06 are applicable to eligible charity plans.

Q CP–1: What is an eligible charity plan for purposes of section 202(b) of PRA 2010?

A CP–1: (a) A plan is an eligible charity plan for a plan year if it is maintained by more than one employer, each of which is described in § 501(c)(3), determined without regard to whether the employers are members of the same controlled group.

(b) In accordance with section 104(a) of PPA '06 as amended by section 202(b) of PRA 2010, the delayed effective dates under section 104 with respect to an eligible charity plan only apply to a plan that was in existence as of July 26, 2005, and that was an eligible charity plan for the plan year that includes that date. Under section 104 of PPA '06, the rules of §§ 430 and 436 do not apply with respect to an eligible charity plan until the earlier of (i) the first plan year in which the plan ceases to be an eligible charity plan and (ii) the first plan year beginning on or after January 1, 2017. Therefore, the delay in effective dates under section 104 with respect to an eligible charity plan does not apply to a plan established after July 26, 2005, or to a plan that was not an eligible charity plan on that date. In addition, for plan years that begin before January 1, 2017, §§ 430 and 436 apply to a plan that was an eligible charity plan on July 26, 2005, beginning with the first plan year during which the plan fails to be an eligible charity plan.

R. REPORTING REQUIREMENTS

Notice 2010–55, 2010–33 I.R.B. 253, provides that, in the case of a plan year that ends before guidance on the special funding rules under PRA 2010 is issued, a plan sponsor will be permitted to elect to use an alternative amortization schedule under PRA 2010 without regard to whether the Form 5500 (and Schedule SB) has been filed for that plan year. However, Notice 2010–55 did not preclude plan sponsors from electing to use the special funding rules before such guidance was issued, nor did it preclude enrolled actuaries from reporting shortfall amortization installment amounts on the Schedule SB reflecting their understanding of the calculations under the alternative amortization schedules.

The Service expects that some plan sponsors may have made an election to use an alternative amortization schedule prior to the issuance of this notice, and that at least some of these elections may not have complied with the requirements of this notice.

In addition, the Service expects that some plan sponsors have elected (or will elect) to use an alternative amortization schedule for a plan year that ended prior to the issuance of this notice. For some of these plans, the Schedule SB for that plan year may reflect (1) a minimum required contribution that does not take the alternative amortization schedule into account, or (2) a minimum required contribution that takes the alternative amortization schedule into account but is different than the amount determined using the rules in this notice.

Q R–1: If, in accordance with Notice 2010–55, the plan sponsor elected to use an alternative amortization schedule for the 2008 or 2009 plan year, and the election was not reflected in the computations on the Schedule SB filed with the Form 5500 or Form 5500–SF for the relevant plan year, how should the reduced shortfall amortization installments be reflected in the reporting for the plan?

A R–1: (a) The filing of an amended Form 5500 or Form 5500–SF for the 2008 or 2009 plan year is not required solely because the plan sponsor elected to use an alternative amortization schedule for that plan year which was not reflected in the computations on the Schedule SB. However, the Schedule SB filed with the Form 5500 or Form 5500–SF for a subsequent plan year no later than the 2010 plan year must accurately reflect the effect of any election to use an alternative amortization schedule for the 2008 or 2009 plan year on the calculation of the minimum required contribution, determined in accordance with this notice. To the extent that the amounts shown on the Schedule SB for the subsequent plan year are different than the amounts shown on the Schedule SB for prior years, this difference should be explained in attachments to the Schedule SB for such subsequent plan year as explained in paragraphs (b), (c), (d), and (e) of this Q&A R–1 (whichever apply).

(b) A plan sponsor's election to use an alternative amortization schedule for the 2008 plan year will affect the minimum required contribution and either the amount of excess contributions or the amount of the unpaid minimum required contribution for the 2008 and 2009 plan years. If, in accordance with Q&A T–2 of this notice, the plan sponsor elects to add an additional amount to the plan's prefunding balance as a result of the election for the 2008 plan year made after the Schedule SB for the 2009 plan year is filed, the plan's prefunding balance as of the beginning of the 2009 plan year as reported on Line 13 of the Schedule SB filed for the 2009 plan year will be different than the actual amount of the prefunding balance as of the beginning of the 2009 plan year that must be reported on Line 7 of the Schedule SB filed for the 2010 plan year. In this situation, this difference should be explained in an attachment to Line 7 of the Schedule SB filed for the 2010 plan year. Additionally, the election for the 2008 plan year will affect the amount of excess contributions for the 2009 plan year. Accordingly, the amount reported on Line 11a of the Schedule SB for the 2010 plan year will be different than the amount reported on Line 38 of the Schedule SB filed for the 2009 plan year. The attachment already described in the instructions for Line 9 of the Schedule SB filed for the 2010 plan year is an appropriate means for providing an explanation of this difference.

(c) A plan sponsor's election to use an alternative amortization schedule for the 2008 plan year will affect the plan's minimum required contribution for both the 2008 and 2009 plan years. If an unpaid minimum required contribution was reported on Line 40 of the Schedule SB filed for the 2009 plan year before the election to use an alternative amortization schedule was made, then the amount on Line 28 of the Schedule SB for the 2010 plan year will be different than that amount. The attachment already described in the instructions for Line 9 of the Schedule SB filed for the 2010 plan year is an appropriate means for providing an explanation of this difference.

(d) If the plan sponsor's election to use an alternative amortization schedule for the 2008 plan year is first reflected on the Schedule SB for the 2009 plan year, the amount on Line 11a of the Schedule SB for the 2009 plan year will be different than Line 38 of the Schedule SB for the 2008 plan year. The attachment already described in the instructions for Line 9 of the Schedule SB for the 2009 plan year is an appropriate means for providing an explanation of this difference.

(e) A plan sponsor's election to use an alternative amortization schedule for the 2009 plan year after the Schedule SB is filed for that plan year will affect the minimum required contribution and either the amount of excess contributions or the amount of the unpaid minimum required contribution for the 2009 plan year. Accordingly, the amount reported on Line 11a of the Schedule SB for the 2010 plan year will be different than the amount reported on Line 38 of the Schedule SB filed for the 2009 plan year (or in the case of a change in the amount of the unpaid minimum required contribution the amount reported on Line 28 of the Schedule SB for the 2010 plan year will be different than the amount reported on Line 40 of the Schedule SB for the 2009 plan year). The attachment already described in the instructions for Line 9 of the Schedule SB filed for the 2010 plan year is an appropriate means for providing an explanation of this difference.

Q R–2: If the plan sponsor elected to use an alternative amortization schedule for the 2008 or 2009 plan year before the Form 5500 or Form 5500–SF for those plan years were filed, and the calculations of the plan's alternative amortization schedule reflected on the forms filed before this guidance is reflected are different than the calculations required under this notice, how should the revised calculations be reflected in the reporting for the plan?

A R–2: (a) The minimum required contribution for the affected plan year must be calculated in accordance with the rules of this notice, regardless of whether the minimum required contribution amount was originally determined using a reasonable interpretation of the statute.

(b) The filing of an amended Form 5500 or Form 5500–SF for the 2008 or 2009 plan year is not required solely to reflect changes in the calculation of the minimum required contribution as a result of applying the rules in this notice. However, the Schedule SB filed with the Form 5500 or Form 5500–SF for a subsequent plan year no later than the 2010 plan year must accurately reflect the effect of any election to use an alternative amortization schedule for the 2008 or 2009 plan year on the calculation of the minimum required contribution determined in accordance with this notice. To the extent that the amounts shown on the Schedule SB for the subsequent plan year are different than the amounts shown on the Schedule SB for prior years, this difference should be explained in attachments to the Schedule SB for the 2010 plan year as explained in Q&A R–1.

Q R–3: May a plan sponsor's election to use an alternative amortization schedule for the 2008 or 2009 plan year be reflected in the filing of an amended Form 5500 or Form 5500–SF for the 2008 or 2009 plan year (or both, as applicable)?

A R–3: Yes. In lieu of the reporting procedure described in Q&A R–1 and Q&A R–2 of this notice, an amended Form 5500 or Form 5500–SF with a revised Schedule SB showing the amounts based on the alternative amortization schedule and the provisions of this notice is permitted to be filed.

Q R–4: How should the plan sponsor respond to any inquiries from the Service regarding Form 5330 if the plan sponsor elected to use an alternative amortization schedule after the Form 5500 or Form 5500–SF was filed with a Schedule SB that did not reflect the reduced shortfall amortization installments?

A R–4: (a) If a plan sponsor expects that an unpaid minimum required contribution shown on the Schedule SB will be eliminated by an election that the plan sponsor intends to make to use an alternative amortization schedule, Form 5330 should not be filed. However, when a Schedule SB showing an unpaid minimum required contribution is filed, and the plan sponsor does not timely file a Form 5330 to pay the associated excise tax under § 4971(a), the Service will normally send a notice that informs the plan sponsor that the Form 5330 and the excise tax are due. In this case, the plan sponsor should respond to the notice, advising the Service that the reported unpaid minimum required contribution will be eliminated by an election to use an alternative amortization schedule and providing supporting evidence thereof.

(b) If the plan sponsor expects to have an unpaid minimum required contribution for the plan year once the alternative amortization schedule is reflected but did not file a Form 5330 when due, the plan sponsor should file a Form 5330 reflecting the corrected unpaid minimum required contribution and pay the excise tax under § 4971(a) as soon as possible in order to minimize interest and penalty charges.

Q R–5: How should the effect of the plan sponsor's election to use an alternative amortization schedule be reflected on the Schedule SB?

A R–5: (a) If a plan sponsor's election to use an alternative amortization schedule is reflected on the Schedule SB for a plan year, the shortfall amortization installment reported on Line 32a of the Schedule SB (and the information reported in the attachment to Line 32a) must reflect the calculation of the installment as determined under this notice. However, any Schedule SB filed for plan years ending before December 17, 2010, is not required to reflect the election. See Q&A R–1 and Q&A R–2 of this notice for rules regarding reconciliation of amounts affected by the election when filing Schedule SB for the plan for a subsequent year.

Q R–6: How are the rules of this section III.R applied to plans for which Schedule SB is not required to be filed, pursuant to the instructions for Form 5500–EZ and Form 5500–SF?

A R–6: Schedule SB is not required to be filed for plans for which Form 5500–EZ is filed and certain plans for which Form 5500–SF is filed. For these plans, the Schedule SB must be completed (including being signed by the enrolled actuary) and delivered to the plan administrator, who must retain it. With respect to these plans, the rules of this section III.R are applied by substituting the completion and delivery of the Schedule SB for the filing of the Schedule SB.

T. TRANSITION RULES

Q T–1: What are the consequences if a plan sponsor made an election to use an alternative amortization schedule prior to January 1, 2011, but the election did not include all of the information required in Q&A E–1 of this notice?

A T–1: (a) If a plan sponsor made an election to use an alternative amortization schedule prior to January 1, 2011, but the sponsor did not fulfill all the requirements pertaining to an election to use an alternative amortization schedule in Q&A E–1 of this notice, the fact that the sponsor did not meet all such requirements does not invalidate the election, and does not permit the sponsor to revoke that election without receiving approval from the IRS.

(b) Any sponsor that made such an election must notify participants of that election by the deadline set forth in Q&A N–1 of this notice regardless of whether the election to use an alternative amortization schedule was made before, on, or after January 1, 2011.

(c) Any sponsor that made such an election for a plan that is covered by the PBGC must include in the email notification to the PBGC described in Q&A N–6 of this notice any information described in Q&A E–1 of this notice whether or not that information was included in the election.

Q T–2: If a plan sponsor's election to use an alternative amortization schedule for a plan year creates or increases the excess contributions for that plan year after the deadline for making an election to increase the prefunding balance for that year, can the plan sponsor still elect to increase the prefunding balance by the additional excess contributions?

A T–2: (a) The minimum required contribution for a plan may decrease as a result of an election to use an alternative amortization schedule when the provisions of this notice are applied. This can occur either if the plan sponsor makes an election to use an alternative amortization schedule that was not reflected in the Schedule SB originally prepared for the plan year, or if the plan's enrolled actuary had prepared the Schedule SB reflecting an election to use an alternative amortization schedule and showing a minimum required contribution amount that was larger than the amount required under this notice.

(b) If a plan sponsor timely made a valid standing election in accordance with § 1.430(f)–1(f)(1)(ii) to add the maximum amount to the prefunding balance, then any adjustments made to the minimum required contribution in accordance with this notice will automatically increase the prefunding balance if the minimum required contribution is reduced. However, a plan sponsor can make a written election to temporarily suspend the standing election retroactively so that all or part of the excess contributions created as a result of applying the provisions of this notice are not added to the prefunding balance.

(c) If a plan sponsor had not made a standing election for the affected plan year (or had temporarily suspended a standing election retroactively, as described in paragraph (b) of this Q&A T–2), the plan sponsor may make an election to increase the prefunding balance by an amount no greater than the amount of the increase in excess contributions for the plan year resulting from the election to use an alternative amortization schedule when the provisions of this notice are applied.

(d) Plan sponsors that wish to increase the prefunding balance by any increase in excess contributions that results from an election to use an alternative amortization schedule in accordance with the provisions of this notice should take into account the effect of the increase in the prefunding balance on the adjusted funding target attainment percentage ("AFTAP") as defined in § 1.436–1(j)(1), and the implications of that change on compliance with the requirements of section 206(g) of ERISA and § 436 of the Code for plan years beginning with the year to which that increase applies.

Q T–3: If a plan sponsor elected to use the funding standard carryover balance or the prefunding balance (funding balances) to offset the minimum required contribution for a plan year, and the minimum required contribution is decreased as a result of making an election to apply an alternative amortization schedule in accordance with the provisions of this notice, can the election to use the funding balance(s) be revoked?

A T–3: (a) The minimum required contribution for a plan may decrease when a plan sponsor makes an election to use an alternative amortization schedule in accordance with the provisions of this notice. This can occur either if the plan sponsor makes an election to use an alternative amortization schedule that was not reflected in the Schedule SB originally prepared for the plan year, or if the plan's enrolled actuary had prepared the Schedule SB reflecting an election to use an alternative amortization schedule and showing a minimum required contribution that was larger than the amount required under this notice.

(b) If the plan sponsor had made a timely, valid standing election under § 1.430(f)–1(f)(1)(ii) to use the funding balances to offset the minimum required contribution, the amount of the funding balances used to offset the minimum required contribution will automatically be adjusted to reflect the amount of the revised minimum required contribution. However, a plan sponsor can make a written election to temporarily suspend the standing election retroactively so that the amount of the funding standard carryover balance and the prefunding balance is unchanged as a result of applying the provisions of this notice.

(c) Section 1.430(f)–1(f)(3) provides in general that elections with respect to the plan's prefunding balance or funding standard carryover balance are irrevocable and must be unconditional. However, § 1.430(f)–1(f)(3)(ii) provides that an election to use the prefunding balance or funding standard carryover balance to offset the minimum required contribution for a plan year is permitted to be revoked to the extent the amount the plan sponsor elected to use to offset the minimum required contribution exceeds the minimum required contribution for the plan year. This election must generally be made by the end of the plan year for which the election was made (if the valuation date is the first day of the plan year) or the due date (including extensions) for filing

Schedule SB of Form 5500 (if the valuation date is not the first day of the plan year). However, a plan sponsor is permitted to make an additional election under § 1.430(f)–1(f)(3)(ii), to the extent that making an election to use an alternative amortization schedule in accordance with the provisions of this notice reduced the minimum required contribution for the plan year.

(d) Except as provided in paragraph (c) of this Q&A T–3, a plan sponsor is not permitted to revoke an affirmative election to use the funding balances to offset the minimum required contribution regardless of whether it was made before or after the application of the provisions of this notice.

(e) Plan sponsors who wish to adjust the funding standard carryover balance or the prefunding balance under paragraphs (b) or (c) above should take into account the effect of that adjustment on the AFTAP as defined in § 1.436–1(j)(1), and the implications of that change on compliance with the requirements of section 206(g) of ERISA and § 436 of the Code for plan years beginning with the year to which that adjustment applies.

Q T–4: What is the deadline for making the elections described in Q&A T–2 and Q&A T–3 of this notice?

A T–4: Any of the elections described in Q&A T–2 or Q&A T–3 of this notice (relating to changes in elections with respect to the funding standard carryover balance and the prefunding balance) must be made no later than the due date that would otherwise apply for making the election under § 1.430(f)–1(f) or March 31, 2011, if later.

IV. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2196.

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

The collections of information in this notice are in section III of this notice. The collections of information are required to determine the application of the special funding rules under § 430(c)(2)(D) and to comply with the statutory notice requirements related to those rules. The collections of information are mandatory for those plan sponsors making an election to apply the special funding rules. The likely respondents are sponsors of single employer defined benefit plans.

For all information except for Q&A N–6, Q&A N–7, and Q&A T–1(c) of this notice (relating to information provided to the Pension Benefit Guaranty Corporation (PBGC)), the estimated total number of respondents is 34,100 plans. The estimated annual burden per respondent varies from 30 minutes to 50 minutes, depending on individual circumstances, with an estimated average of 45 minutes. The estimated total annual reporting and/or recordkeeping burden is 25,700 hours.

The information collected in Q&A N–6, Q&A N–7, and Q&A T–1(c) applies only to single-employer defined benefit plans covered by the PBGC. For this information, the estimated total number of respondents is 13,820 plans. The estimated annual burden per respondent/recordkeeper is 15 minutes.[1] The estimated total annual reporting and/or recordkeeping burden is 3,455 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

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 § 6103.

V. DRAFTING INFORMATION

The principal author of this notice is Carolyn Zimmerman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Zimmerman at *RetirementPlanQuestions@irs.gov*.

Certain Changes in Method of Accounting for Organizations to Which Section 833 Applies

Notice 2011–4

SECTION 1. PURPOSE

This notice provides procedures for a taxpayer to obtain automatic consent to change its method of accounting for unearned premiums by reason of § 833(c)(5) of the Internal Revenue Code (Code). Rev. Proc. 2008–52, 2008–2 C.B. 587, *as amplified, clarified, and modified by* Rev. Proc. 2009–39, 2009–38 I.R.B. 371, is modified; Notice 2010–79, 2010–49 I.R.B. 809, is clarified and modified.

SECTION 2. BACKGROUND

Section 833 of the Code provides special rules for existing Blue Cross and Blue Shield organizations within the meaning of § 833(c)(2), and certain other organizations that are described in § 833(c)(3).

Section 9016 of the Patient Protection and Affordable Care Act (H.R. 3590, P.L. 111–148) (the "Affordable Care Act") added § 833(c)(5) to the Code, effective for taxable years beginning after December 31, 2009. Section 833(c)(5) provides that § 833 does not apply to an otherwise-eligible organization unless the organization's medical loss ratio (MLR) during the taxable year is not less than 85 percent.

The application of § 833 in a taxable year followed by nonapplication of that provision in the subsequent taxable year (or *vice versa*) may result in one or more changes in accounting method. For example, accounting for 100 percent of unearned premiums under § 833(a)(3) in one year, but only 80 percent of unearned premiums under § 832(b)(4) in the next year is a change in method of accounting. Likewise, the loss (or recovery) of insurance company status may implicate a number of changes in methods of accounting because some methods of accounting are available only to insurance companies under Subchapter L. The special deduction allowed under §§ 833(a)(2) and 833(b) is not, however, a method of accounting.

[1] The PBGC expects that single-employer plans will incur this burden twice, in 2011 and 2012. The figures shown represent the average annual number of respondents and reporting and/or recordkeeping burden over a 3-year period.

SECTION 3. SCOPE

This notice applies to an existing Blue Cross or Blue Shield organization within the meaning of § 833(c)(2), or an organization described in § 833(c)(3), that is required to change its method of accounting for unearned premiums by reason of failing to meet the MLR requirements of § 833(c)(5), or by reason of meeting the MLR requirements of § 833(c)(5) after failing to meet those requirements in a prior year.

SECTION 4. CHANGES IN METHOD OF ACCOUNTING

A taxpayer that is required to change methods of accounting for unearned premiums under a situation described in Section 3 of this notice, must use the automatic change in method procedures of Rev. Proc. 2008–52, or its successor, as modified by this notice.

SECTION 5. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2008–52 is modified to add new section 25.02 to the APPENDIX, to read as follows:

SECTION 25.02. *Certain Changes in Method of Accounting for Organizations to which Section 833 Applies*

(1) *Description of change*. This change applies to an existing Blue Cross or Blue Shield organization within the meaning of § 833(c)(2), or an organization described in § 833(c)(3), that is required to change its method of accounting for unearned premiums by reason of failing to meet the MLR requirements of § 833(c)(5), or by reason of meeting the MLR requirements of § 833(c)(5) after failing to meet those requirements in a prior year.

(2) *Scope limitations inapplicable*. The scope limitations of section 4.02 of this revenue procedure do not apply to this change.

(3) *Accelerated § 481(a) adjustment period in certain situations*. In addition to the circumstances set forth in section 5.04(3) of this revenue procedure, the § 481 adjustment period provided in section 5.04(1) will be accelerated in the event a taxpayer with a remaining balance of a § 481(a) adjustment that arose by reason of a change in method of accounting described in this section is required to effect another change in method of accounting described in this section. Thus, for example, a taxpayer that fails to satisfy the requirements of § 833(c)(5) and as a result has a positive § 481(a) adjustment is required to accelerate the remaining balance, if any, of that adjustment in a subsequent taxable year in which the taxpayer meets the requirements of § 833(c)(5).

(4) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 25 of this APPENDIX is "25.02." See section 6.02(4) of this revenue procedure.

(5) *Contact information*. For further information regarding this section, please contact Rebecca L. Baxter at (202) 622–7117 (not a toll-free call).

.02 Section 3.09 of Notice 2010–79 is clarified and modified to provide that changes in method of accounting for unearned premiums that are required as a result of the operation of § 833(c)(5) must be implemented under the automatic method change procedures of Rev. Proc. 2008–52, or its successor.

SECTION 6. EFFECTIVE DATE

This notice is effective December 27, 2010.

DRAFTING INFORMATION

The principal author of this notice is Rebecca L. Baxter of the Office of Associate Chief Counsel (Financial Institutions & Products (CC:FIP:B04)). For further information regarding this notice, contact Ms. Baxter at (202) 622–7117 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2011–9

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2011–6, 2011–1 I.R.B. 195 (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

Description of terms used in this revenue procedure

.01 For purposes of this revenue procedure —

(1) the term "Service" means the Internal Revenue Service.

(2) the term "application" means the appropriate form or letter that an organization must file or submit to the Service for recognition of exemption from Federal income tax under the applicable section of the Internal Revenue Code. *See* section 3 for information on specific forms.

(3) the term "EO Determinations" means the office of the Service that is primarily responsible for processing initial applications for tax-exempt status. It includes the main EO Determinations office located in Cincinnati, Ohio, and other field offices that are under the direction and control of the Manager, EO Determinations.

(4) the term "EO Technical" means the office of the Service that is primarily responsible for issuing letter rulings to taxpayers on exempt organization matters, and for providing technical advice or technical assistance to other offices of the Service on exempt organization matters. The EO Technical office is located in Washington, DC.

(5) the term "Appeals Office" means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation, on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) the term "determination letter" means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2011–5, 2011–1 I.R.B. 167.

(7) the term "ruling" means a written statement issued by EO Technical in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521.

Updated annually

.02 This revenue procedure is updated annually, but may be modified or amplified during the year.

SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES

Rev. Proc. 2010–9 is superseded and the processing of applications is now centralized

.01 This revenue procedure updates Rev. Proc. 2010–9, 2010–2 I.R.B. 258, which is hereby superseded.

(1) The responsibility for processing applications is now centralized in the EO Determinations office in Cincinnati, Ohio. Key district offices no longer exist.

(2) Although applications are generally processed in the Cincinnati office, some applications may be processed in other EO Determinations offices or referred to EO Technical.

Related revenue procedures

.02 This revenue procedure supplements Rev. Proc. 2011–10, this Bulletin, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80–27, 1980–1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72–5, 1972–1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2011–4, 2011–1 I.R.B. 123. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2011–8, 2011–1 I.R.B. 237.

SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?

In general

.01 An organization seeking recognition of exempt status under § 501 or § 521 is required to submit the appropriate application. In the case of a numbered application form, the current version of the form must be submitted. A central organization that has previously received recognition of its own exemption can request a group exemption letter by submitting a letter application with Form 8718, *User Fee for Exempt Organization Determination Letter Request. See* Rev. Proc. 80–27.

User fee

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2011–8.

Form 1023 application

.03 An organization seeking recognition of exemption under § 501(c)(3) and §§ 501(e), (f), (k), (n) or (q) must submit a completed Form 1023. In the case of an organization that provides credit counseling services, see § 501(q) of the Code.

Form 1024 application

.04 An organization seeking recognition of exemption under §§ 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19) or (25) must submit a completed Form 1024 with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), see § 501(q) of the Code.

Letter application

.05 An organization seeking recognition of exemption under §§ 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27) or (28) or under § 501(d) must submit a letter application with Form 8718.

Form 1028 application

.06 An organization seeking recognition of exemption under § 521 must submit a completed Form 1028 with Form 8718.

Form 8871 notice for political organizations

.07 A political party, a campaign committee for a candidate for federal, state or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. For details, go to the IRS website at *www.irs.gov/polorgs*.

Requirements for a substantially completed application

.08 A substantially completed application, including a letter application, is one that:

(1) is signed by an authorized individual.

(2) includes an Employer Identification Number (EIN).

(3) includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years). If the organization has not yet commenced operations, or has not completed one accounting period, a substantially completed application generally includes a proposed budget for two full accounting periods and a current statement of assets and liabilities.

(4) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures.

(5) includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a "conformed copy" as outlined in Rev. Proc. 68–14, 1968–1 C.B. 768.

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (*e.g.*, stamped "Filed" and dated by the Secretary of State). Alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state. If a copy is submitted, the written declaration must include the date the articles were filed with the state.

(7) if the organization has adopted by-laws, includes a current copy. The by-laws need not be signed if submitted as an attachment to the application for recognition of exemption. Otherwise, the by-laws must be verified as current by an authorized individual.

(8) is accompanied by the correct user fee and Form 8718, when applicable.

Terrorist organizations not eligible to apply for recognition of exemption

.09 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) of the Code is not eligible to apply for recognition of exemption.

SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?

Exempt status must be established in application and supporting documents

.01 A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.

Determination letter or ruling based solely on administrative record

.02 A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record.

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Exempt status may be recognized in advance of actual operations

.03 Exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling. *See also* section 7 of this revenue procedure.

No letter if exempt status issue in litigation or under consideration within the Service

.04 A determination letter or ruling on exempt status will not ordinarily be issued if an issue involving the organization's exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to pursue a declaratory judgment under § 7428 provided that it has exhausted its administrative remedies.

Incomplete application

.05 If an application does not contain all of the items set out in section 3.08, the Service may return it to the applicant for completion.

(1) In lieu of returning an incomplete application, the Service may retain the application and request additional information needed for a substantially completed application.

(2) In the case of an application under § 501(c)(3) that is returned incomplete, the 270-day period referred to in § 7428(b)(2) will not be considered as starting until the date a substantially completed Form 1023 is refiled with or remailed to the Service. If the application is mailed to the Service and a postmark is not evident, the 270-day period will start to run on the date the Service actually receives the substantially completed Form 1023. The same rules apply for purposes of the notice requirement of § 508.

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2011–8, section 10.

Even if application is complete, additional information may be required

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

(1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

(2) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

Expedited handling

.07 Applications are normally processed in the order of receipt by the Service. However, expedited handling of an application may be approved where a request is made in writing and contains a compelling reason for processing the application ahead of others. Upon approval of a request for expedited handling an application will be considered out of its normal order. This does not mean the application will be immediately approved or denied. Circumstances generally warranting expedited processing include:

(1) A grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate.

(2) The purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane.

(3) There have been undue delays in issuing a determination letter or ruling caused by a Service error.

SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?

EO Determinations issues a determination letter in most cases

.01 Under the general procedures outlined in Rev. Proc. 2011–4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

Certain applications referred to EO Technical

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

Technical advice may be requested in certain cases

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2011–5, section 4.04.

Technical advice must be requested in certain cases

.04 If EO Determinations proposes to recognize the exemption of an organization to which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations must seek technical advice from EO Technical before issuing a determination letter. This does not apply where EO Technical issued an adverse ruling and the organization subsequently made changes to its purposes, activities, or operations to remove the basis for which exempt status was denied.

SECTION 6. WITHDRAWAL OF AN APPLICATION

Application may be withdrawn prior to issuance of a determination letter or ruling

.01 An application may be withdrawn upon the written request of an authorized individual at any time prior to the issuance of a determination letter or ruling. Therefore, an application may not be withdrawn after the issuance of a proposed adverse determination letter or ruling.

(1) When an application is withdrawn, the Service will retain the application and all supporting documents. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization.

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2011–8, section 10.

§ 7428 implications of withdrawal of application under § 501(c)(3)

.02 The Service will not consider the withdrawal of an application under § 501(c)(3) as either a failure to make a determination within the meaning of § 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?

Proposed adverse determination letter or ruling

.01 If EO Determinations or EO Technical reaches the conclusion that the organization does not satisfy the requirements for exempt status pursuant to the section of the Internal Revenue

Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling, which will:

(1) Include a detailed discussion of the Service's rationale for the denial of tax-exempt status.

(2) Advise the organization of its opportunity to appeal or protest the decision and request a conference.

Appeal of a proposed adverse determination letter issued by EO Determinations

.02 A proposed adverse determination letter issued by EO Determinations will advise the organization of its opportunity to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit a statement of the facts, law and arguments in support of its position within 30 days from the date of the adverse determination letter. The organization must also state whether it wishes an Appeals Office conference. Any determination letter issued on the basis of technical advice from EO Technical may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

Protest of a proposed adverse ruling issued by EO Technical

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2011–4, section 12, are applicable.

Final adverse determination letter or ruling where no appeal or protest is submitted

.04 If an organization does not submit a timely appeal of a proposed adverse determination letter issued by EO Determinations, or a timely protest of a proposed adverse ruling issued by EO Technical, a final adverse determination letter or ruling will be issued to the organization. The final adverse letter or ruling will provide information about the filing of tax returns and the disclosure of the proposed and final adverse letters or rulings.

How EO Determinations handles an appeal of a proposed adverse determination letter

.05 If an organization submits an appeal of the proposed adverse determination letter, EO Determinations will first review the appeal, and if it determines that the organization qualifies for tax-exempt status issue a favorable exempt status determination letter. If EO Determinations maintains its adverse position after reviewing the appeal, it will forward the appeal and the exemption application case file to the Appeals Office.

Consideration by the Appeals Office

.06 The Appeals Office will consider the organization's appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2011–5, section 4.04.

If a protest of a proposed adverse ruling is submitted to EO Technical

.07 If an organization submits a protest of a proposed adverse exempt status ruling, EO Technical will review the protest statement. If the protest convinces EO Technical that the organization qualifies for tax-exempt status, a favorable ruling will be issued. If EO Technical maintains its adverse position after reviewing the protest, it will either issue a final adverse ruling or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, EO Technical will either issue a final adverse ruling or a favorable exempt status ruling.

An appeal or protest may be withdrawn

.08 An organization may withdraw its appeal or protest before the Service issues a final adverse determination letter or ruling. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received.

Appeal or protest and conference rights not applicable in certain situations

.09 The opportunity to appeal or protest a proposed adverse determination letter or ruling and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS

Sections 6104 and 6110 of the Code provide rules for the disclosure of applications, including supporting documents, and determination letters and rulings.

Disclosure of applications, supporting documents, and favorable determination letters or rulings

.01 The applications, any supporting documents, and the favorable determination letter or ruling issued are available for public inspection under § 6104(a)(1) of the Code. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus if the Service determines that the disclosure of the information would adversely affect the organization.

(1) The Service is required to make the applications, supporting documents, and favorable determination letters or rulings available upon request. The public can request this information by submitting Form 4506–A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.* Organizations should ensure that applications and supporting documents do not include unnecessary personal identifying information, such as bank account numbers or social security numbers, that could result in identity theft or other adverse consequences if publicly disclosed.

(2) The exempt organization is required to make its exemption application, supporting documents, and determination letter or ruling available for public inspection without charge. For more information about the exempt organization's disclosure obligations, *see* Publication 557, *Tax-Exempt Status for Your Organization.*

Disclosure of adverse determination letters or rulings

.02 The Service is required to make adverse determination letters and rulings available for public inspection under § 6110 of the Code. Upon issuance of the final adverse determination letter or ruling to an organization, both the proposed adverse determination letter or ruling and the final adverse determination letter or ruling will be released under § 6110.

(1) These documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. *See* § 6110(c) for other specific disclosure exemptions.

(2) The final adverse determination letter or ruling will enclose Notice 437, *Notice of Intention to Disclose,* and redacted copies of the final and proposed adverse determination letters or rulings. Notice 437 provides instructions if the organization disagrees with the deletions proposed by the Service.

Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)

.03 The Service may notify the appropriate State officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). *See* § 6104(c) of the Code. The notice to the State officials may include a copy of a proposed or final adverse determination letter or ruling the Service issued to the organization. In addition, upon request by the appropriate State official, the Service may make available for inspection and copying the exemption application and other information relating to the Service's determination on exempt status.

Disclosure to State officials of information about § 501(c)(3) applicants

.04 The Service may disclose to State officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3).

SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL

Determination letters may be reviewed by EO Technical to assure uniformity

.01 Determination letters issued by EO Determinations may be reviewed by EO Technical, or the Office of the Associate Chief Counsel (Passthroughs and Special Industries) (for cases under § 521), to assure uniform application of the statutes or regulations, or rulings, court opinions, or decisions published in the Internal Revenue Bulletin.

Procedures for cases where EO Technical takes exception to a determination letter

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice and the procedures in Rev. Proc. 2011–5 will be followed.

SECTION 10. DECLARATORY JUDGMENT PROVISIONS OF § 7428

Actual controversy involving certain issues

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); § 4942(j)(3) (operating foundation status); or § 521 (farmers cooperatives).

Exhaustion of administrative remedies

.02 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include:

(1) the filing of a substantially completed application Form 1023 or group exemption request under § 501(c)(3) pursuant to section 3.08 of this revenue procedure or the request for a determination of foundation status pursuant to Rev. Proc. 2011–10, this Bulletin, or its successor;

(2) in appropriate cases, requesting relief pursuant to Treas. Reg. 301.9100–1 of the Procedure and Administration Regulations regarding the extension of time for making an election or application for relief from tax (*see* Rev. Proc. 92–85, 1992–2 C.B. 490);

(3) the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

(4) exhaustion of all administrative appeals available within the Service pursuant to section 7 of this revenue procedure.

Not earlier than 270 days after seeking determination

.03 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

(1) the completion of the steps in section 10.02, and the sending by the Service by certified or registered mail of a final determination letter or ruling; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter or ruling and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter or ruling.

Service must have reasonable time to act on an appeal or protest

.04 The steps described in section 10.02 will not be considered completed until the Service has had a reasonable time to act upon an appeal or protest as the case may be.

Final determination to which § 7428 applies

.05 A final determination to which § 7428 of the Code applies is a determination letter or ruling, sent by certified or registered mail, which holds that the organization is not described in § 501(c)(3) or § 170(c)(2), is a public charity described in a part of § 509 or § 170(b)(1)(A) other than the part under which the organization requested classification, is not a private foundation as defined in § 4942(j)(3), or is a private foundation and not a public charity described in a part of § 509 or § 170(b)(1)(A).

SECTION 11. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

Effective date of exemption

.01 A determination letter or ruling recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities prior to the date of the determination letter or ruling were consistent with the requirements for exemption. However, special rules under § 508(a) of the Code may apply to an organization applying for exemption under § 501(c)(3), and special rules under § 505(c) may apply to an organization applying for exemption under §§ 501(c)(9), (17), or (20).

(1) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, the exemption will be effective as of the date specified in a determination letter or ruling.

(2) If the Service requires the organization to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter or ruling are consistent with the requirements for exemption.

Reliance on determination letter or ruling

.02 A determination letter or ruling recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization, or change in the applicable law. Also, a determination letter or ruling may not be relied upon if it was based on any inaccurate material factual representations. *See* section 12.01.

SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

A determination letter or ruling recognizing exemption may be revoked or modified by (1) a notice to the taxpayer to whom the determination letter or ruling was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) the issuance of temporary or final regulations, or (5) the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin.

Revocation or modification of a determination letter or ruling may be retroactive

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if there has been a change in the applicable law, the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2011–4.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (*see* sections 13 and 14 of Rev. Proc. 2011–4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

Appeal and conference procedures in the case of revocation or modification of exempt status letter

.02 In the case of a revocation or modification of a determination letter or ruling, the appeal and conference procedures are generally the same as set out in section 7 of this revenue procedure, including the right of the organization to request that EO Determinations or the Appeals Office seek technical advice from EO Technical. However, appeal and conference rights are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

(1) If the case involves an exempt status issue on which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations generally must seek technical advice from EO Technical.

(2) EO Determinations does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by EO Technical, the EO Technical ruling or technical advice was issued under the Internal Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, *Notification Concerning Foundation Status.*

SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2010–9 is superseded.

SECTION 14. EFECTIVE DATE

This revenue procedure is effective January 10, 2011.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information for a letter application under section 3.05 of this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2080. All other collections of information under this revenue procedure have been approved under separate OMB control numbers.

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

The collection of this information is required if an organization wants to be recognized as tax-exempt by the Service. We need the information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, this information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required by § 6110.

The time needed to complete and file a letter application will vary depending on individual circumstances. The estimated average time is 10 hours.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The rules governing the confidentiality of letter applications are covered in § 6104.

DRAFTING INFORMATION

The principal author of this revenue procedure is Matthew Giuliano of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829–5500 (a toll-free call).

Rev. Proc. 2011–10

SECTION 1. PURPOSE AND SCOPE

.01 The purpose of this revenue procedure is to set forth updated procedures of the Internal Revenue Service with respect to issuing rulings and determination letters on private foundation status under § 509(a) of the Internal Revenue Code, operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This revenue procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1).

SECTION 2. BACKGROUND

.01 All § 501(c)(3) organizations are classified as private foundations under § 509(a) unless they qualify as a public charity under § 509(a)(1) (which cross-references § 170(b)(1)(A)(i)-(vi)), 509(a)(2), 509(a)(3), or 509(a)(4). See Treas. Reg. §§ 1.170A–9T, 1.509(a)–1 through 1.509(a)–7. The IRS determines an organization's private foundation or public charity status when it files Form 1023. This status will be included in the organization's determination letter.

.02 In its Form 990 information return, a public charity indicates the paragraph of § 509(a), and subparagraph of § 170(b)(1)(A), if applicable, under which it qualifies as a public charity. Because of changes in its activities or operations, this may differ from the public charity status listed in its original determination letter. While an organization is not required to obtain a determination letter to qualify for the new public charity status, in order for IRS records to recognize any change in public charity status, an organization must obtain a new determination of foundation status pursuant to this revenue procedure.

.03 If a public charity no longer qualifies as a public charity under §§ 509(a)(1)-(4), then it becomes a private foundation and must file Form 990–PF annual information returns. It is not necessary for the organization to obtain a determination letter on its new private foundation status (although it is permitted to do so pursuant to this revenue procedure). The organization indicates this change in foundation status by filing its Form 990–PF return and following any procedures specified in the form, instructions or other published guidance. Thereafter, the organization may terminate its private foundation status, such as by giving notice and qualifying as a public charity again under §§ 509(a)(1)-(3) during a 60-month termination period in accordance with the procedures under § 507(b)(1)(B) and Treas. Reg. § 1.507–2T(b).

.04 This revenue procedure applies to organizations that may have erroneously determined that the organization was a private foundation and wish to correct the error. For example, an organization may have erroneously classified an item or items in its calculation of public support, causing the organization to classify itself as a private foundation and to file Forms 990–PF. Pursuant to this revenue procedure, the organization can request to be classified as a public charity by showing that it continuously met the public support tests during the relevant periods. See section 6.02(4) below.

.05 A private foundation may qualify as an operating foundation under § 4942(j)(3) without an IRS determination letter, but the IRS will not recognize such status in IRS records without an IRS determination letter. An organization claiming to be an exempt operating foundation under § 4940(d)(2) must obtain an IRS determination letter recognizing such status to be exempt from the § 4940 tax on net investment income.

SECTION 3. DETERMINATIONS OF FOUNDATION STATUS

.01 EO Determinations will issue determination letters on foundation status, including whether an organization is:

(1) a private foundation;

(2) a public charity described in §§ 509(a)(1) and 170(b)(1)(A) (other than clauses (v), (vii) and (viii));

(3) a public charity described in § 509(a)(2) or (4);

(4) a public charity described in § 509(a)(3), whether such organization is described in § 509(a)(3)(B)(i), (ii), or (iii) ("supporting organization type"), and whether or not a Type III supporting organization is functionally integrated;

(5) a private operating foundation described in § 4942(j)(3); or

(6) an exempt operating foundation described in § 4940(d)(2).

.02 EO Determinations will also issue determination letters on whether a nonexempt charitable trust described in § 4947(a)(1) is described in § 509(a)(3).

.03 EO Determinations will issue such determinations in response to applications for recognition of exempt status under § 501(c)(3), submitted by organizations pursuant to § 508(b). EO Determinations will also issue such determinations in response to separate requests for determination of foundation status.

SECTION 4. APPLICABILITY OF ANNUAL REVENUE PROCEDURES

.01 Rev. Proc. 2011–9 (updated annually) provides procedures of the IRS in processing applications for recognition of exemption from Federal income tax under § 501(c)(3). Rev. Proc. 2011–4 (updated annually) governs requests for rulings and determination letters. Rev. Proc. 2011–8 (updated annually) prescribes user fees for applications, rulings and other determinations. Except as specifically noted herein, those procedures and their annual successors also apply to requests for determinations of foundation status.

.02 The provisions of Rev. Proc. 2011–9 and any successor revenue procedure regarding § 7428, protest, conference, and appeal rights also apply to all determinations of foundation status described in section 3.01 (except 3.01(6) relating to exempt operating foundation status) and 3.02, whether or not the request for determination is made in connection with an application for recognition of tax-exempt status.

.03 Where the issue of exemption under § 501(c)(3) is referred to EO Technical for decision under the procedures of Rev. Proc. 2011–9, the foundation status issue will be referred along with it.

SECTION 5. GENERALLY NO NEW DETERMINATION LETTER IF SAME STATUS IS SOUGHT

The IRS will not generally issue a new determination letter to a taxpayer that seeks a determination of private foundation status that is identical to its current foundation status as determined by the IRS. For example, an organization that is already recognized as described in § §509(a)(1) and 170(b)(1)(A)(ii) as a school generally will not receive a new determination letter that it is still described in §§ 509(a)(1) and 170(b)(1)(A)(ii) under the currently extant facts. The organization in such case could request a letter ruling, pursuant to Rev. Proc. 2011–4, that a given change of facts and circumstances will not adversely affect its status under §§ 509(a)(1) and 170(b)(1)(A)(ii).

SECTION 6. FORMAT OF REQUEST

.01 Organizations that are seeking to change their foundation status from one public charity classification to another public charity classification, or seeking a determination as to supporting organization type or functionally integrated status, or seeking operating foundation or exempt operating foundation status, should submit a written request for a determination as to foundation status pursuant to Revenue Procedure 2011–4 or its successor revenue procedure.

.02 The request must include the following:

(1) A subject line or other indicator on the first page of the request in bold, underlined, or all-capitals font indicating "REQUEST FOR DETERMINATION AS TO FOUNDATION STATUS."

(2) A statement requesting reclassification from one specific foundation classification to another specific foundation classification, for example, § 509(a)(3) to § 509(a)(2).

(3) A statement describing the adverse tax impact on the organization (if any) if the organization does not receive the requested status.

(4) For requests for reclassification as an organization described in § 509(a)(1), and § 170(b)(1)(A)(vi) or 509(a)(2), either:

a. A copy of the organization's signed Form 990, Parts I through XI, or Form 990–EZ, Parts I through VI, with the completed Schedule A, *Public Charity Status and Public Support*, as filed with the Internal Revenue Service for the taxable year immediately preceding the taxable year in which the request is made; or

b. The organization's support information for the past five completed tax years, using the organization's overall method of accounting used to complete the Form 990 or Form 990–EZ for such years.

This information may be provided to the Internal Revenue Service on a completed Schedule A, *Public Charity Status and Public Support*, to the Form 990 or Form 990–EZ (2008 or later year, as appropriate).

c. For requests for reclassification as an organization described in § 509(a)(1) and § 170(b)(1)(A)(vi), a list showing the name of and amount contributed by each person (other than a governmental unit or an organization described in § 170(b)(1)(A)(vi), including a public charity that actually qualifies under § 170(b)(1)(A)(vi) but claims or is recognized under a different public charity status, such as a church or a hospital) whose total gifts for the past five completed tax years exceeded 2% of the organization's total support for this period, as described in Treas. Reg. § 1.170A–9T(f)(6) and (7). A "person" includes an organization as well as an individual. Also state the sum of these excess amounts (this amount is reported on Form 990, Schedule A, Part II, Section A, line 6).

d. For requests for reclassification as an organization described in § 509(a)(2), both:

(i) A list showing the name of each disqualified person (as defined in § 4946) that provided any support described in § 509(a)(2)(A), and the total amount of such support (without regard to the $5,000 and 1% limitations) received in each tax year from each such person. Also state the sum of such amounts for each tax year (these amounts are reported on Form 990, Schedule A, Part III, Section A, line 7a).

(ii) A list showing the name of each person other than a disqualified person (and showing the name of each bureau or similar agency of a governmental unit) that provided support described in § 509(a)(2)(A)(ii) in any of the organization's last five completed tax years in excess of the greater of (1) 1% of the organization's support in such year or (2) $5,000, and showing the amount of such excess for each tax year. Also state the sum of such excess amounts for each tax year (these amounts are reported on Form 990, Schedule A, Part III, Section A, line 7b).

(5) If the organization is a private foundation, evidence that it meets the governing instrument requirements of § 508(e). See Rev. Rul. 75–38, 1975–1 C.B. 161.

(6) Such other information as is necessary to support the reclassification request and as required by Rev. Proc. 2011–4 or its successor.

SECTION 7. REQUESTS BY NONEXEMPT CHARITABLE TRUSTS

.01 A nonexempt charitable trust described in § 4947(a)(1) seeking a determination that it is described in § 509(a)(3) should submit a written request for a determination pursuant to Revenue Procedure 2011–4 or its successor revenue procedure.

.02 The request for determination must include the following information items, from the date that the organization became described in § 4947(a)(1) (but not before October 9, 1969) to the present:

(1) A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating "NONEXEMPT CHARITABLE TRUST REQUEST FOR DETERMINATION THAT IT IS DESCRIBED IN § 509(a)(3)"

(2) The name, address, and Employer Identification Number of the beneficiary organizations, together with a statement whether each such beneficiary organization is described in § 509(a)(1) or (2);

(3) A list of all of the trustees that have served, together with a statement stating whether such trustees were disqualified persons within the meaning of § 4946(a) (other than as foundation managers);

(4) A copy of the original trust instrument and all amendments adopted thereafter; and

(5) Sufficient information to otherwise establish that the trust has met the requirements of § 509(a)(3) as provided for in Treas. Reg. § 1.509(a)–4 (other than § 1.509(a)–4(i)(4)). If the trust did not qualify under § 509(a)(3) in one or more prior years after October 9, 1969 in which it was described in § 4947(a)(1), then it cannot be issued a § 509(a)(3) determination letter except in accordance with the procedures for termination of private foundation status under § 507(b)(1)(B).

(6) Such other information as is required for a determination under Rev. Proc. 2011–4 or its successor revenue procedure.

SECTION 8. DETERMINATIONS OPEN TO PUBLIC INSPECTION

Determinations and rulings as to foundation status are open to public inspection pursuant to § 6104(a).

SECTION 9. NOT APPLICABLE TO PRIVATE FOUNDATION TERMINATIONS UNDER § 507 OR CHANGES OF STATUS PURSUANT TO EXAMINATION

These procedures do not apply to a private foundation seeking to terminate its status under § 507. These procedures also do not apply to the examination of an organization that results in changes to its foundation status.

SECTION 10. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 72–50, 1972–2 C.B. 830, and Rev. Proc. 76–34, 1976–2 C.B. 656, are hereby modified and superseded. Announcements 85–88 and 2009–62 are hereby obsoleted.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective January 10, 2011.

SECTION 12. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1520.

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

The collections of information in this revenue procedure are in sections 6.02 and 7.02. This information is required to evaluate and process the request for a letter ruling or determination letter. The collections of information are required to obtain a letter ruling or determination letter. The likely respondents are tax-exempt organizations.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ward Thomas of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information about this revenue procedure, contact Customer Account Services at 877–829–5500 (a toll-free number). Ward Thomas can be emailed at *tege.eo.ra@irs.gov*. Please put "Question about Rev. Proc. 2011–10" in the subject line.

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26 CFR 601.602: Tax forms and instructions.
(Also: Part I, §§ 1, 24, 25A, 32, 63, 132, 151, 221.)

Rev. Proc. 2011–12

TABLE OF CONTENTS

SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2011. Other inflation adjusted items for 2011 are in Rev. Proc. 2010–40, 2010–46 I.R.B. 663 (dated November 15, 2010).

SECTION 2. 2011 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2011, the tax rate tables under § 1 are as follows:

TABLE 1 — Section 1(a) — Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	*The Tax Is*:
Not over $17,000	10% of the taxable income
Over $17,000 but not over $69,000	$1,700 plus 15% of the excess over $17,000
Over $69,000 but not over $139,350	$9,500 plus 25% of the excess over $69,000
Over $139,350 but not over $212,300	$27,087.50 plus 28% of the excess over $139,350
Over $212,300 but not over $379,150	$47,513.50 plus 33% of the excess over $212,300
Over $379,150	$102,574 plus 35% of the excess over $379,150

TABLE 2 — Section 1(b) — Heads of Households

If Taxable Income Is:	*The Tax Is*:
Not over $12,150	10% of the taxable income
Over $12,150 but not over $46,250	$1,215 plus 15% of the excess over $12,150
Over $46,250 but not over $119,400	$6,330 plus 25% of the excess over $46,250
Over $119,400 but not over $193,350	$24,617.50 plus 28% of the excess over $119,400
Over $193,350 but not over $379,150	$45,323.50 plus 33% of the excess over $193,350
Over $379,150	$106,637.50 plus 35% of the excess over $379,150

TABLE 3 — Section 1(c) — Unmarried Individuals (other than Surviving Spouses and Heads of Households)

If Taxable Income Is:	*The Tax Is*:
Not over $8,500	10% of the taxable income
Over $8,500 but not over $34,500	$850 plus 15% of the excess over $8,500
Over $34,500 but not over $83,600	$4,750 plus 25% of the excess over $34,500
Over $83,600 but not over $174,400	$17,025 plus 28% of the excess over $83,600
Over $174,400 but not over $379,150	$42,449 plus 33% of the excess over $174,400
Over $379,150	$110,016.50 plus 35% of the excess over $379,150

TABLE 4 — Section 1(d) — Married Individuals Filing Separate Returns

If Taxable Income Is:	*The Tax Is*:
Not over $8,500	10% of the taxable income
Over $8,500 but not over $34,500	$850 plus 15% of the excess over $8,500
Over $34,500 but not over $69,675	$4,750 plus 25% of the excess over $34,500
Over $69,675 but not over $106,150	$13,543.75 plus 28% of the excess over $69,675
Over $106,150 but not over $189,575	$23,756.75 plus 33% of the excess over $106,150
Over $189,575	$51,287 plus 35% of the excess over $189,575

TABLE 5 — Section 1(e) — Estates and Trusts

If Taxable Income Is:	*The Tax Is*:
Not over $2,300	15% of the taxable income
Over $2,300 but not over $5,450	$345 plus 25% of the excess over $2,300
Over $5,450 but not over $8,300	$1,132.50 plus 28% of the excess over $5,450
Over $8,300 but not over $11,350	$1,930.50 plus 33% of the excess over $8,300
Over $11,350	$2,937 plus 35% of the excess over $11,350

.02 *Child Tax Credit*. For taxable years beginning in 2011, the value used in § 24(d)(1)(B)(i) to determine the amount of credit under § 24 that may be refundable is $3,000.

.03 *Hope Scholarship, American Opportunity, and Lifetime Learning Credits*.

(1) For taxable years beginning in 2011, the Hope Scholarship Credit under § 25A(b)(1), as increased under § 25A(i) (the American Opportunity Tax Credit), is an amount equal to 100 percent of qualified tuition and related expenses not in excess of $2,000 plus 25 percent of those expenses in excess of $2,000, but not in excess of $4,000. Accordingly, the maximum Hope Scholarship Credit allowable

under § 25A(b)(1) for taxable years beginning in 2011 is $2,500.

(2) For taxable years beginning in 2011, a taxpayer's modified adjusted gross income in excess of $80,000 ($160,000 for a joint return) is used to determine the reduction under § 25A(d)(2) in the amount of the Hope Scholarship Credit otherwise allowable under § 25A(a)(1). For taxable years beginning in 2011, a taxpayer's modified adjusted gross income in excess of $51,000 ($102,000 for a joint return) is used to determine the reduction under § 25A(d)(2) in the amount of the Lifetime Learning Credit otherwise allowable under § 25A(a)(2).

.04 *Earned Income Credit.*

(1) *In general*. For taxable years beginning in 2011, 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)(3)(B)(i), as adjusted for inflation for taxable years beginning in 2011.

	Number of Qualifying Children			
Item	*One*	*Two*	*Three or More*	*None*
Earned Income Amount	$ 9,100	$12,780	$12,780	$ 6,070
Maximum Amount of Credit	$ 3,094	$ 5,112	$ 5,751	$ 464
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$16,690	$16,690	$16,690	$ 7,590
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$36,052	$40,964	$43,998	$13,660
Threshold Phaseout Amount (Married Filing Jointly)	$21,770	$21,770	$21,770	$12,670
Completed Phaseout Amount (Married Filing Jointly)	$41,132	$46,044	$49,078	$18,740

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 2011, the earned income tax credit is not allowed under § 32(i) if the aggregate amount of certain investment income exceeds $3,150.

.05 *Standard Deduction*.

(1) *In general*. For taxable years beginning in 2011, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status	*Standard Deduction*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$11,600
Heads of Households (§ 1(b))	$ 8,500
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$ 5,800
Married Individuals Filing Separate Returns (§ 1(d))	$ 5,800

(2) *Dependent*. For taxable years beginning in 2011, 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) $950, or (2) the sum of $300 and the individual's earned income.

(3) *Aged or blind*. For taxable years beginning in 2011, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,150. These amounts are increased to $1,450 if the individual is also unmarried and not a surviving spouse.

.06 *Qualified Transportation Fringe*. For taxable years beginning in 2011, 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, and under § 132(f)(2)(B), regarding the fringe benefit exclusion amount for qualified parking, is $230.

.07 *Personal Exemption*.

(1) *Exemption amount*. For taxable years beginning in 2011, the personal exemption amount under § 151(d) is $3,700.

.08 *Interest on Education Loans*. For taxable years beginning in 2011, 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 $60,000 ($120,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $75,000 or more ($150,000 or more for joint returns).

SECTION 3. EFFECTIVE DATE

This revenue procedure applies to taxable years beginning in 2011.

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 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 and Notice of Public Hearing

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

REG–124018–10

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 the imposition of user fees for enrolled agents and enrolled retirement plan agents. The proposed regulations separate the enrolled retirement plan agent user fees from the enrolled agent user fees and lower the initial enrollment and renewal of enrollment fees for enrolled agents and enrolled retirement plan agents. The proposed regulations affect individuals who are or apply to become enrolled agents or enrolled retirement plan agents. The charging of user fees is authorized by the Independent Offices Appropriations Act of 1952.

DATES: Written or electronic comments must be received by January 10, 2011. Outlines of topics to be discussed at the public hearing scheduled for January 14, 2011, at 10 a.m. must be received by January 5, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–124018–10), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–124018–10), 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–124018–10). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Emily M. Lesniak at (202) 622–4570; concerning cost methodology, Eva J. Williams at (202) 435–5514; concerning submission of comments, the public hearing, or to be placed on the building access list to attend the public hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Circular 230 is administered by the IRS Office of Professional Responsibility (OPR).

Section 10.4(a) of Circular 230 authorizes the Director of OPR to grant status as an enrolled agent to applicants who demonstrate special competence in tax matters by passing a written examination administered by, or administered under the oversight of, the Director of OPR and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Every year OPR develops and administers a Special Enrollment Examination (SEE) that individuals must pass to become an enrolled agent through examination.

Section 10.4(b) of Circular 230 authorizes the Director of OPR to grant status as an enrolled retirement plan agent to applicants who demonstrate special competence in qualified retirement plan matters by passing a written examination administered by, or under the oversight of, the Director of OPR and who have not engaged in any conduct that would justify suspension or disbarment under Circular 230. Every year OPR develops and administers an Enrolled Retirement Plan Agent Special Enrollment Examination (ERPA–SEE) that individuals must pass to become an enrolled retirement plan agent through examination.

Section 10.4(b) also authorizes the Director of OPR to grant full or limited enrollment as an enrolled agent or full enrollment as an enrolled retirement plan agent to a former IRS employee if the former employee has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of Circular 230 and the employee meets certain other requirements. These requirements include minimum length of employment with the IRS and substantive tax expertise. Application for enrollment based on former employment with the IRS must be made within three years from the date of separation from such employment and the applicant is not required to pass the SEE or the ERPA–SEE, unless a former employee who previously was granted limited enrollment status wants to qualify for full enrollment.

Once eligible for enrollment as an enrolled agent or enrolled retirement plan agent, whether by examination or former employment with the IRS, an individual must file an application for enrollment with the Director of OPR. An individual granted status as an enrolled agent or enrolled retirement plan agent as provided in §10.6(d) must renew enrollment every three years to maintain active enrollment and be able to practice before the IRS. In order to qualify for renewal, an applicant must certify the completion of the continuing education requirements set forth in §10.6(e) of Circular 230 and compliance with certain ethical standards in Circular 230 and state regulatory agencies.

As part of the application to become an enrolled agent or enrolled retirement plan agent, an individual must currently pay a nonrefundable user fee of $125. This user fee is authorized under §300.5. An individual also must pay a $125 nonrefundable user fee to renew enrollment, which is authorized under §300.6. An individual must renew enrollment every three years. In addition, a user fee of $11 per part is currently imposed to take the SEE or the ERPA–SEE. The user fee to take the SEE and ERPA–SEE is currently authorized under §300.4.

The proposed regulations coordinate the user fees imposed on enrolled agents and enrolled retirement plan agents with the new user fee to apply for or renew a preparer tax identification number (PTIN). The Treasury Department and the IRS are implementing recommendations in Publication 4832, "*Return Preparer Review*," which was published on January 4, 2010. Based on these recommendations, the Treasury Department and the IRS recently published final regulations under section 6109 (T.D. 9501, 2010–46 I.R.B. 651 [75 FR 60309], September 30, 2010) that require tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to obtain a PTIN. Individuals applying for or renewing a PTIN are required to pay a $50 IRS user fee and a $14.25 vendor fee. The final regulations establishing the IRS user fee to apply for or renew a PTIN were published on September 30, 2010 (T.D. 9503, 2010–47 I.R.B. 706 [75 FR 60316]).

The process for reviewing an enrolled agent or an enrolled retirement plan agent initial enrollment or renewal of enrollment application is, in some ways, duplicative of the new process for reviewing a PTIN application. For example, the tax compliance checks and suitability checks conducted as part of a PTIN application are the same tax compliance checks and suitability checks currently performed as part of the process for becoming an enrolled agent or enrolled retirement plan agent. To avoid any potential duplication and unnecessary expense for individuals applying to become an enrolled agent or an enrolled retirement plan agent, the Treasury Department and the IRS intend to require all enrolled agents and enrolled retirement plan agents to obtain a PTIN. The Treasury Department and the IRS further intend to eliminate the tax compliance checks and suitability checks from the initial enrollment and renewal of enrollment process for enrolled agents and enrolled retirement plan agents because these checks will be performed as part of the requirement to obtain a PTIN. Thus, the Treasury Department and the IRS are eliminating the portion of the initial enrollment and renewal of enrollment user fees that recover the costs to perform the tax compliance checks and suitability checks (and any other review conducted as part of the PTIN application process).

Accordingly, the proposed regulations separate the initial enrollment and renewal of enrollment user fees imposed on enrolled agents from the initial enrollment and renewal of enrollment user fees imposed on enrolled retirement plan agents, which are all currently imposed in §§300.5 and 300.6. (The proposed regulations also separate the user fee to take the ERPA-SEE to become an enrolled retirement plan agent from the user fee to take the SEE to become an enrolled agent, which are both currently imposed in §300.4.)

The proposed regulations also reduce both the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment user fees to reflect that the review procedures (including tax compliance checks and suitability checks), previously conducted as part of the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment processes, will now be conducted as part of the PTIN application and renewal process. In particular, the proposed regulations amend §300.5 to reduce the enrolled agent initial enrollment user fee to $30 and §300.6 to reduce the enrolled agent renewal of enrollment user fee to $30. The enrolled retirement plan agent initial enrollment user fee is found in proposed §300.10 and is $30. The enrolled retirement plan agent renewal of enrollment user fee is found in proposed §300.11 and also is $30.

The initial enrollment and renewal of enrollment user fees imposed on enrolled agents and enrolled retirement plan agents in the proposed regulations reflect only the costs of the review processes that are not conducted as part of the PTIN application or renewal processes. The costs include processing the enrolled agent and enrolled retirement plan agent initial enrollment and renewal of enrollment applications, processing the accompanying user fees, and conducting a search for any violations of professional rules and standards of conduct.

Authority

The Independent Offices Appropriations Act (IOAA) of 1952, which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish charges for services provided by the agency, which includes charging user fees. The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are currently set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the full cost of providing the special service, unless the Office of Management and Budget grants an exception.

Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the enrolled agent and enrolled retirement plan agent program and PTIN application process. The full cost of administering these programs will be charged and the proposed user fees will be implemented under the authority of the IOAA and the OMB Circular.

Proposed Effective/Applicability Date

The Administrative Procedure Act provides that substantive rules will not be effective until thirty days after the final regulations are published in the **Federal Register** (5 U.S.C. 553(d)). Final regulations may be effective prior to thirty days after publication if the publishing agency finds that there is good cause for an earlier effective date.

The Treasury Department and the IRS recently finalized regulations that require all tax return preparers who prepare all or substantially all of a tax return or claim for refund for compensation to use a PTIN as their identifying number (T.D. 9501). The Treasury Department and the IRS also finalized regulations that require tax return preparers to pay a $64.25 user fee to apply for or renew a PTIN (T.D. 9503, 75 FR 60316, September 30, 2010). Tax return preparers who prepare all or substantially all of a tax return or claim for refund must obtain or renew their PTIN for the 2011 tax season.

Circular 230 requires that, to maintain active enrollment to practice before the IRS, enrolled agents must renew enrollment every third year after initial enrollment is granted. The renewal schedules are staggered with approximately one third of enrolled agents renewing every year. Enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6 are currently scheduled to renew their enrollment beginning on November 1, 2010 and ending on January 31, 2011. To enable these enrolled agents to renew their enrollment at the reduced fee, the IRS issued Announcement 2010–81 on October 14, 2010, which delayed the renewal period for enrolled agents with social security numbers or tax identification numbers ending in 4, 5, or 6. The renewal process cannot be reinstated until this regulation is finalized; otherwise, these enrolled agents will pay twice for the IRS to perform the compliance and suitability checks. To minimize the disruption to the enrolled agent program caused by the delay of renewal, the renewal process must be reinstated as quickly as possible. Thus, the Treasury Department and the IRS find that there is good cause for these regulations to be effective upon the publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based upon the information that follows. The proposed regulation does not place an additional filing requirement on enrolled agents or enrolled retirement plan agents and decreases the enrollment costs already in effect. Thus, this regulation should reduce the economic impact imposed by the current enrolled agent and enrolled retirement plan agent user fees.

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

Comments and 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 Treasury Department and the IRS request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 14, 2011, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by January 5, 2011. A period of 10 minutes will be allocated to each person for making comments.

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

Drafting Information

The principal author of these regulations is Emily M. Lesniak, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

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

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended by:

1. Redesignating paragraph (b)(9) as paragraph (b)(12).
2. Adding new paragraph (b)(9).
3. Adding paragraphs (b)(10) and (b)(11).

The additions and revisions read as follows.

§300.0 User fees; in general.

* * * * *

(b) * * *

(9) Taking the special enrollment examination to become an enrolled retirement plan agent.

(10) Enrolling an enrolled retirement plan agent.

(11) Renewing the enrollment of an enrolled retirement plan agent.

* * * * *

Par. 3. Section 300.4 is amended by revising the heading to read as follows:

§300.4 Enrolled agent special enrollment examination fee.

* * * * *

Par. 4. Section 300.5 is amended by revising paragraphs (b) and (d) to read as follows:

§300.5 Enrollment of enrolled agent fee.

* * * * *

(b) *Fee*. The fee for initially enrolling as an enrolled agent with the IRS Office of Professional Responsibility is $30.

* * * * *

(d) *Effective/applicability date*. This section is applicable the date that final regulations are published in the **Federal Register**.

Par. 5. Section 300.6 is amended by revising paragraphs (b) and (d) to read as follows:

§300.6 Renewal of enrollment of enrolled agent fee.

* * * * *

(b) *Fee*. The fee for renewal of enrollment as an enrolled agent with the IRS Office of Professional Responsibility is $30.

* * * * *

(d) *Effective/applicability date*. This section is applicable the date that final regulations are published in the **Federal Register**.

§300.9 [Redesignated as §300.12]

Par. 6. Redesignate §300.9 as §300.12.

Par. 7 Add new §300.9 to read as follows:

§300.9 Enrolled retirement plan agent special enrollment examination fee.

(a) *Applicability*. This section applies to the special enrollment examination to become an enrolled retirement plan agent pursuant to 31 CFR 10.4(b).

(b) *Fee*. The fee for taking the enrolled retirement plan agent special enrollment examination is $11 per part, which is the cost to the government for overseeing the examination and does not include any fees charged by the administrator of the examination.

(c) *Person liable for the fee*. The person liable for the enrolled retirement plan agent special enrollment examination fee is the applicant taking the examination.

(d) *Effective/applicability date*. This section is applicable the date that final regulations are published in the **Federal Register**.

Par. 7. Section 300.10 is added to read as follows:

§300.10 Enrollment of enrolled retirement plan agent fee.

(a) *Applicability*. This section applies to the initial enrollment of enrolled retirement plan agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.5(b).

(b) *Fee*. The fee for initially enrolling as an enrolled retirement plan agent with the IRS Office of Professional Responsibility is $30.

(c) *Person liable for the fee*. The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled retirement plan agent with the IRS Office of Professional Responsibility.

(d) *Effective/applicability date*. This section is applicable the date that final regulations are published in the **Federal Register**.

Par. 8. Section 300.11 is added to read as follows:

§300.11 Renewal of enrollment of enrolled retirement plan agent fee.

(a) *Applicability*. This section applies to the renewal of enrollment of enrolled retirement plan agents with the IRS Office of Professional Responsibility pursuant to 31 CFR 10.5(b).

(b) *Fee*. The fee for renewal of enrollment as an enrolled retirement plan agent with the IRS Office of Professional Responsibility is $30.

(c) *Person liable for the fee*. The person liable for the renewal of enrollment fee is the person renewing enrollment as an enrolled retirement plan agent with the IRS Office of Professional Responsibility.

(d) *Effective/applicability date*. This section is applicable the date that final regulations are published in the **Federal Register**.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on December 7, 2010, 4:15 p.m., and published in the issue of the Federal Register for December 10, 2010, 75 F.R. 76940)

Update to Publication 1220, Specification for Filing Forms 1097–BTC, 1098, 1099, 3921, 3922, 5498, 8935 and W–2G Electronically

Announcement 2011–1

Update to Publication 1220, ***Specifications for Filing Forms 1097–BTC, 1098, 1099, 3921, 3922, 5498, 8935 and W–2G Electronically*****.** This update is due to changes in the reporting requirements for Form 1099–R, *Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*.

The passage of the Small Business Jobs Act, Sections 2111 and 2112 affected Tax Year 2010 filing for Form 1099–R. Filers should follow guidelines located in *Instructions for Forms 1099–R and 5498* for reporting requirements. Electronic filers who have a reporting requirement for in plan Roth rollovers, can report the amount in the Special Data Entries field, positions 663–722 of the Payee B Record. Payment amounts must contain U.S. dollars and cents. The right-most two positions represent cents. Amounts should be right-justified in the field with leading blanks. If you have questions concerning filing requirements or electronic filing through the FIRE System, please call toll-free 1–866–455–7438.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

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