INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2017–46
November 13, 2017

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

INCOME TAX

T.D. 9825, page 500.

These final regulations amend existing regulations that address the federal income tax treatment of transactions in which federal financial assistance (FFA) is provided to banks and domestic building and loan associations, and they clarify the federal income tax consequences of those transactions to banks, domestic building and loan associations, and related parties.

Notice 2017–68, page 513.

This notice announces that obligations of a United States person received in exchange for certain property that was located in an area designated by FEMA as subject to damage from Hurricane Irma or Hurricane Irma will be considered to qualify for the exception from United States property in section 956(c)(2)(C) and Treas. Reg. § 1.956–2(b)(1)(v) if repaid by March 31, 2018.

REG–116256–17, page 514.

This document contains proposed amendments to 26 CFR part 1 under section 754 of the Code. Specifically, these proposed amendments would remove the signature requirement contained in § 1.754–1(b) (current regulation) in order to eliminate a regulatory burden.

ADMINISTRATIVE

REG–116256–17, page 514.

This document contains proposed amendments to 26 CFR part 1 under section 754 of the Code. Specifically, these proposed amendments would remove the signature requirement contained in § 1.754–1(b) (current regulation) in order to eliminate a regulatory burden.

EXEMPT ORGANIZATIONS

Announcement 2017–17, page 515.

Revocation of IRC 501(c)(3) Organizations for failure to meet the code section requirements. Contributions made to the organizations by individual donors are no longer deductible under IRC 170(b)(1)(A).

Finding Lists begin on page ii.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

T.D. 9825

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Treatment of Transactions in which Federal Financial Assistance is Provided

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 597 of the Internal Revenue Code (Code). These final regulations amend existing regulations that address the federal income tax treatment of transactions in which federal financial assistance (FFA) is provided to banks and domestic building and loan associations, and they clarify the federal income tax consequences of those transactions to banks, domestic building and loan associations, and related parties. These regulations affect banks, domestic building and loan associations, and related parties.

DATES: Effective Date: These regulations are effective on October 19, 2017.

Applicability date: These regulations apply on or after October 19, 2017, except with respect to FFA provided pursuant to an agreement entered into before such date. In the latter case, §§ 1.597–1 through 1.597–7 as contained in 26 CFR part 1, revised April 1, 2017, will continue to apply unless the taxpayer elects pursuant to § 1.597–7(c) of these regulations to apply §§ 1.597–1 through 1.597–6 of these regulations on a retroactive basis. The election to apply §§ 1.597–1 through 1.597–6 of these regulations on a retroactive basis cannot be made if the period for assessment and collection of federal income tax has expired under the rules of section 6501 for any taxable year in which §§ 1.597–1 through 1.597–6 would affect the determination of the electing entity's or group's income, deductions, gain, loss, basis, or other items.

FOR FURTHER INFORMATION CONTACT: Russell G. Jones, (202) 317-5357, or Ken Cohen, (202) 317-5367 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1545-1300. The collections of information in these final regulations are in §§ 1.597–2(c)(4), 1.597–4(g)(5), 1.597–6(c), and 1.597–7(c)(3). The collections of information in these regulations are necessary for the proper performance of the function of the IRS by providing relevant information concerning the deferred FFA account and the amount of income tax potentially not subject to collection. The collections also inform the IRS and certain financial institutions that certain elections in these regulations have been made.

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

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

Background

On May 20, 2015, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–140991–09) in the **Federal Register** (80 FR 28872), proposing to modify and clarify the existing regulations under §§ 1.597–1 through 1.597–7 concerning the treatment of certain transactions in which FFA is provided to banks and domestic building and loan associations (Institutions) and related parties. For purposes of section 597 and the regulations promulgated under that section, FFA generally includes any money or property provided by an "Agency" (such as the Federal Deposit Insurance Corporation) to an Institution or to a direct or indirect owner of stock in an Institution. Among other changes, the proposed regulations provided guidance regarding the determination of the fair market value of assets covered by a Loss Guarantee, the ownership of assets subject to a Loss Guarantee, and the transfer of property to an Agency by an Institution's non-consolidated affiliate. (The "Explanation of Provisions" in the notice of proposed rulemaking contained a detailed description of the proposed changes to the existing regulations.) The notice of proposed rulemaking also requested comments from the public and provided instructions for requesting a public hearing.

The Treasury Department and the IRS received no comments on the proposed regulations, and no public hearing was requested or held. This Treasury decision thus adopts the proposed regulations with only non-substantive, clarifying changes. For example, the final regulations clarify that, with respect to any election provided under the final regulations that is available for a consolidated group to make, the agent for the group, within the meaning of § 1.1502–77, must make the election.

Like the proposed regulations, these final regulations amend and restate all of §§ 1.597–2 through 1.597–7 in order to make the reading of the regulations more user-friendly. However, unlike the proposed regulations, rather than restating all of § 1.597–1, these final regulations expressly list the changes to the definitions in § 1.597–1. This change to the proposed regulations is merely for the sake of clarity and no substantive change is intended. These final regulations make no changes to § 1.597–8.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations apply only to transactions involving banks or domestic building and loan associations, which tend to be larger businesses. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Russell G. Jones of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.597–1, paragraph (b) is amended by:

a. Adding the definitions "Agency Receivership" and "Average Reimbursement Rate" in alphabetical order.

b. Revising the definitions of "Consolidated Subsidiary" and "Continuing Equity".

c. Adding the definitions "Covered Asset" and "Expected Value" in alphabetical order.

d. Revising the definition of "Loss Guarantee".

e. Adding the definitions "Loss Share Agreement" and "Third-Party Price" in alphabetical order.

The additions and revisions read as follows:

§ 1.597–1 Definitions.

* * * * *

(b) * * *

Agency Receivership. An Institution or entity is under *Agency Receivership* if an Agency is acting as receiver for such Institution or entity.

Average Reimbursement Rate. The term *Average Reimbursement Rate* means the percentage of losses (as determined under the terms of the Loss Share Agreement) that would be reimbursed by an Agency or a Controlled Entity if every asset subject to a Loss Share Agreement were disposed of for the Third-Party Price. The Average Reimbursement Rate is determined at the time of the Taxable Transfer and is not adjusted for any changes in Third-Party Price over the life of any asset subject to the Loss Share Agreement or the prior disposition of any asset subject to the Loss Share Agreement.

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Consolidated Subsidiary. The term *Consolidated Subsidiary* means a corporation that both:

(i) Is a member of the same consolidated group as an Institution; and

(ii) Would be a member of the affiliated group that would be determined under section 1504(a) if the Institution were the common parent thereof.

Continuing Equity. An Institution has *Continuing Equity* for any taxable year if, on the last day of the taxable year, the Institution is not a Bridge Bank, in Agency Receivership, or treated as a New Entity.

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Covered Asset. The term *Covered Asset* means an asset subject to a Loss Guarantee. The fair market value of a Covered Asset equals the asset's Expected Value.

Expected Value. The term *Expected Value* means the sum of the Third-Party Price for a Covered Asset and the amount that an Agency or a Controlled Entity would pay under the Loss Guarantee if the asset actually were sold for the Third-Party Price. For purposes of the preceding sentence, if an asset is subject to a Loss Share Agreement, the amount that an Agency or a Controlled Entity would pay under a Loss Guarantee with respect to the asset is determined by multiplying the amount of loss that would be realized under the terms of the Loss Share Agreement if the asset were disposed of at the Third-Party Price by the Average Reimbursement Rate.

* * * * *

Loss Guarantee. The term *Loss Guarantee* means an agreement pursuant to which an Agency or a Controlled Entity guarantees or agrees to pay an Institution a specified amount upon the disposition or charge-off (in whole or in part) of specific assets, an agreement pursuant to which an Institution has a right to put assets to an Agency or a Controlled Entity at a specified price, a Loss Share Agreement, or a similar arrangement.

Loss Share Agreement. The term *Loss Share Agreement* means an agreement pursuant to which an Agency or a Controlled Entity agrees to reimburse the guaranteed party a percentage of losses realized.

* * * * *

Third-Party Price. The term *Third-Party Price* means the amount that a third party would pay for an asset absent the existence of a Loss Guarantee.

Par. 3. Section 1.597–2 is revised to read as follows:

§ 1.597–2 Taxation of FFA.

(a) *Inclusion in income*—(1) *In general*. Except as otherwise provided in the regulations under section 597, all FFA is includible as ordinary income to the recipient at the time the FFA is received or accrued in accordance with the recipient's method of accounting. The amount of FFA received or accrued is the amount of any money, the fair market value of any property (other than an Agency Obligation), and the issue price of any Agency Obligation (determined under § 1.597–3(c)(2)). An Institution (and not the nominal recipient) is treated as receiving directly any FFA that an Agency provides in a taxable year to a direct or indirect shareholder of the Institution, to the extent the money or property is transferred to the Institution pursuant to an agreement with an Agency.

(2) *Cross references*. See paragraph (c) of this section for rules regarding the timing of inclusion of certain FFA. See paragraph (d) of this section for additional rules regarding the treatment of FFA received in connection with transfers of money or property to an Agency or a Controlled Entity, or paid pursuant to a Loss Guarantee. See § 1.597–5(c)(1) for additional rules regarding the inclusion of Net Worth Assistance in the income of an Institution.

(b) *Basis of property that is FFA*. If FFA consists of property, the Institution's basis in the property equals the fair market value of the property (other than an Agency Obligation) or the issue price of the Agency Obligation (as determined under § 1.597–3(c)(2)).

(c) *Timing of inclusion of certain FFA*—(1) *Scope*. This paragraph (c) limits the amount of FFA an Institution must include in income currently under certain circumstances and provides rules for the deferred inclusion in income of amounts in excess of those limits. This paragraph (c) does not apply to a New Entity or an Acquiring.

(2) *Amount currently included in income by an Institution without Continuing Equity*. The amount of FFA an Institution without Continuing Equity must include in income in a taxable year under paragraph (a)(1) of this section is limited to the sum of—

(i) The excess at the beginning of the taxable year of the Institution's liabilities over the adjusted bases of the Institution's assets; and

(ii) The amount by which the excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Internal Revenue Code (Code) (other than net operating and capital loss carryovers) over its gross income (determined without regard to FFA) is greater than the excess at the beginning of the taxable year of the adjusted bases of the Institution's assets over the Institution's liabilities.

(3) *Amount currently included in income by an Institution with Continuing Equity*. The amount of FFA an Institution with Continuing Equity must include in income in a taxable year under paragraph (a)(1) of this section is limited to the sum of—

(i) The excess at the beginning of the taxable year of the Institution's liabilities over the adjusted bases of the Institution's assets;

(ii) The greater of—

(A) The excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Code (other than net operating and capital loss carryovers) over its gross income (determined without regard to FFA); or

(B) The excess for the taxable year of the deductions allowed by chapter 1 of the Code (other than net operating and capital loss carryovers) of the consolidated group of which the Institution is a member on the last day of the Institution's taxable year over the group's gross income (determined without regard to FFA); and

(iii) The excess of the amount of any net operating loss carryover of the Institution (or in the case of a carryover from a consolidated return year of the Institution's current consolidated group, the net operating loss carryover of the group) to the taxable year over the amount described in paragraph (c)(3)(i) of this section.

(4) *Deferred FFA*—(i) *Maintenance of account*. An Institution must establish a deferred FFA account commencing in the first taxable year in which it receives FFA that is not currently included in income under paragraph (c)(2) or (3) of this section, and must maintain that account in accordance with the requirements of this paragraph (c)(4). The Institution must add the amount of any FFA that is not currently included in income under paragraph (c)(2) or (3) of this section to its deferred FFA account. The Institution must decrease the balance of its deferred FFA account by the amount of deferred FFA included in income under paragraphs (c)(4)(ii), (iv), and (v) of this section. (See also paragraphs (d)(4) and (d)(5)(i)(B) of this section for other adjustments that decrease the deferred FFA account.) If, under paragraph (c)(3) of this section, FFA is not currently included in income in a taxable year, the Institution thereafter must maintain its deferred FFA account on a FIFO (first in, first out) basis (for example, for purposes of the first sentence of paragraph (c)(4)(iv) of this section).

(ii) *Deferred FFA recapture*. In any taxable year in which an Institution has a balance in its deferred FFA account, it must include in income an amount equal to the lesser of the amount described in paragraph (c)(4)(iii) of this section or the balance in its deferred FFA account.

(iii) *Annual recapture amount*—(A) *Institutions without Continuing Equity*—(*1*) *In general*. In the case of an Institution without Continuing Equity, the amount described in this paragraph (c)(4)(iii) is the amount by which—

(*i*) The excess for the taxable year of the Institution's deductions allowed by chapter 1 of the Code (other than net operating and capital loss carryovers) over its gross income (taking into account FFA included in income under paragraph (c)(2) of this section) is greater than

(*ii*) The Institution's remaining equity as of the beginning of the taxable year.

(*2*) *Remaining equity*. The Institution's remaining equity is—

(*i*) The amount at the beginning of the taxable year in which the deferred FFA account was established equal to the adjusted bases of the Institution's assets minus the Institution's liabilities (which amount may be positive or negative); plus

(*ii*) The Institution's taxable income (computed without regard to any carryover from any other year) in any subsequent taxable year or years; minus

(*iii*) The excess in any subsequent taxable year or years of the Institution's deductions allowed by chapter 1 of the Code (other than net operating and capital loss carryovers) over its gross income.

(B) *Institutions with Continuing Equity*. In the case of an Institution with Continuing Equity, the amount described in this paragraph (c)(4)(iii) is the amount by which the Institution's deductions allowed by chapter 1 of the Code (other than net operating and capital loss carryovers) exceed its gross income (taking into account FFA included in income under paragraph (c)(3) of this section).

(iv) *Additional deferred FFA recapture by an Institution with Continuing Equity*. To the extent that, as of the end of a taxable year, the cumulative amount of FFA deferred under paragraph (c)(3) of this section that an Institution with Continuing Equity has recaptured under this paragraph (c)(4) is less than the cumulative amount of FFA deferred under paragraph (c)(3) of this section that the Institution would have recaptured if that FFA had been included in income ratably over the six taxable years immediately following the taxable year of deferral, the Institution must include that difference in income for the taxable year. An Institution with Continuing Equity must include in income the balance of its deferred FFA account in the taxable year in which it liquidates, ceases to do business, transfers (other than to a Bridge Bank) substantially all of its assets and liabilities, or is deemed to transfer all of its assets under § 1.597–5(b).

(v) *Optional accelerated recapture of deferred FFA*. An Institution that has a deferred FFA account may include in income the balance of its deferred FFA account on its timely filed (including extensions) original federal income tax return for any taxable year that it is not under Agency Control. The balance of its deferred FFA account is income on the last day of that year.

(5) *Exceptions to limitations on use of losses*. In computing an Institution's taxable income or alternative minimum taxable income for a taxable year, sections 56(d)(1), 382, and 383 and §§ 1.1502–15, 1.1502–21, and 1.1502–22 (or §§ 1.1502–15A, 1.1502–21A, and 1.1502–22A, as appropriate) do not limit the use of the attributes of the Institution to the extent, if any, that the inclusion of FFA (including recaptured FFA) in income results in taxable income or alternative minimum taxable income (determined without regard to this paragraph (c)(5)) for the taxable year. This paragraph (c)(5) does not apply to any limitation under section 382 or 383 or § 1.1502–15, § 1.1502–21, or § 1.1502–22 (or § 1.1502–15A, § 1.1502–21A, or § 1.1502–22A, as appropriate) that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(6) *Operating rules*—(i) *Bad debt reserves*. For purposes of paragraphs (c)(2), (3), and (4) of this section, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593.

(ii) *Aggregation of Consolidated Subsidiaries*. For purposes of this paragraph (c), an Institution is treated as a single entity that includes the income, expenses, assets, liabilities, and attributes of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication.

(iii) *Alternative minimum tax*. To compute the alternative minimum taxable income attributable to FFA of an Institution for any taxable year under section 55, the rules of this section, and related rules, are applied by using alternative minimum tax basis, deductions, and all other items required to be taken into account. All other alternative minimum tax provisions continue to apply.

(7) *Earnings and profits*. FFA that is not currently included in income under this paragraph (c) is included in earnings and profits for all purposes of the Code to the extent and at the time it is included in income under this paragraph (c).

(d) *Transfers of money or property to an Agency, and Covered Assets*—(1) *Transfers of property to an Agency*. Except as provided in paragraph (d)(4)(iii) of this section, the transfer of property to an Agency or a Controlled Entity is a taxable sale or exchange in which the Institution is treated as realizing an amount equal to the property's fair market value.

(2) *FFA with respect to Covered Assets other than on transfer to an Agency*—(i) FFA provided pursuant to a Loss Guarantee with respect to a Covered Asset is included in the amount realized with respect to the Covered Asset.

(ii) If an Agency makes a payment to an Institution pursuant to a Loss Guarantee with respect to a Covered Asset owned by an entity other than the Institution, the payment will be treated as made directly to the owner of the Covered Asset and included in the amount realized with respect to the Covered Asset when the Covered Asset is sold or charged off. The payment will be treated as further transferred through chains of ownership to the extent necessary to reflect the actual receipt of such payment. Any such transfer, if a deemed distribution, will not be a preferential dividend for purposes of sections 561, 562, 852, or 857.

(iii) For the purposes of this paragraph (d)(2), references to an amount realized include amounts obtained in whole or partial satisfaction of loans, amounts obtained by virtue of charging off or marking to market a Covered Asset, and other amounts similarly related to property, whether or not disposed of.

(3) *Treatment of FFA received in exchange for property*. FFA included in the amount realized for property under this paragraph (d) is not includible in income under paragraph (a)(1) of this section. The amount realized is treated in the same manner as if realized from a person other than an Agency or a Controlled Entity. For example, gain attributable to FFA received with respect to a capital asset retains its character as capital gain. Similarly, FFA received with respect to property that has been charged off for federal income tax purposes is treated as a recovery to the extent of the amount previously charged off. Any FFA provided in excess of the amount realized under this paragraph (d) is includible in income under paragraph (a)(1) of this section.

(4) *Adjustment to FFA*—(i) *In general*. If an Institution pays or transfers money or property to an Agency or a Controlled Entity, the amount of money and the fair market value of the property is an adjustment to its FFA to the extent the amount paid and transferred exceeds the amount of money and the fair market value of any property that an Agency or a Controlled Entity provides in exchange.

(ii) *Deposit insurance*. This paragraph (d)(4) does not apply to amounts paid to an Agency with respect to deposit insurance.

(iii) *Treatment of an interest held by an Agency or a Controlled Entity*—(A) *In general*. For purposes of this paragraph (d), an interest described in § 1.597–3(b) is not treated as property when transferred by the issuer to an Agency or a Controlled Entity nor when acquired from an Agency or a Controlled Entity by the issuer.

(B) *Dispositions to persons other than issuer*. On the date an Agency or a Controlled Entity transfers an interest described in § 1.597–3(b) to a holder other than the issuer, an Agency, or a Controlled Entity, the issuer is treated for purposes of this paragraph (d)(4) as having transferred to an Agency an amount of money equal to the sum of the amount of money and the fair market value of property that was paid by the new holder as consideration for the interest.

(iv) *Affiliated groups*. For purposes of this paragraph (d), an Institution is treated as having made any transfer to an Agency or a Controlled Entity that was made by any other member of its affiliated group. The affiliated group must make appropriate basis adjustments or other adjustments to the extent the member transferring money or other property is not the member that received FFA.

(5) *Manner of making adjustments to FFA*—(i) *Reduction of FFA and deferred FFA*. An Institution adjusts its FFA under paragraph (d)(4) of this section by reducing in the following order and in an aggregate amount not greater than the adjustment—

(A) The amount of any FFA that is otherwise includible in income for the taxable year (before application of paragraph (c) of this section); and

(B) The balance (but not below zero) in the deferred FFA account, if any, maintained under paragraph (c)(4) of this section.

(ii) *Deduction of excess amounts*. If the amount of the adjustment exceeds the sum of the amounts described in paragraph (d)(5)(i) of this section, the Institution may deduct the excess to the extent the deduction does not exceed the amount of FFA included in income for prior taxable years reduced by the amount of deductions allowable under this paragraph (d)(5)(ii) in prior taxable years.

(iii) *Additional adjustments*. Any adjustment to FFA in excess of the sum of the amounts described in paragraphs (d)(5)(i) and (ii) of this section is treated—

(A) By an Institution other than a New Entity or an Acquiring, as a deduction of the amount in excess of FFA received that is required to be transferred to an Agency under section 11(g) of the Federal Deposit Insurance Act (12 U.S.C. 1821(g)); or

(B) By a New Entity or an Acquiring, as an adjustment to the purchase price paid in the Taxable Transfer (see § 1.338–7).

(e) *Examples*. The following examples illustrate the provisions of this section:

Example 1. Timing of inclusion of FFA in income. (i) Institution M, a calendar-year taxpayer without Continuing Equity because it is in Agency Receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. On January 1, 2018, M has assets with a total adjusted basis of $100 million and total liabilities of $120 million. M's deductions do not exceed its gross income (determined without regard to FFA) for 2018. The Agency provides $30 million of FFA to M in 2018. The amount of this FFA that M must include in income in 2018 is limited by paragraph (c)(2) of this section to $20 million, the amount by which M's liabilities ($120 million) exceed the total adjusted basis of its assets ($100 million) at the beginning of the taxable year. Pursuant to paragraph (c)(4)(i) of this section, M must establish a deferred FFA account for the remaining $10 million.

(ii) If the Agency instead lends M the $30 million, M's indebtedness to the Agency is disregarded and the results are the same as in paragraph (i) of this *Example 1* under section 597(c), paragraph (b) of § 1.597–1, and paragraph (b) of § 1.597–3.

Example 2. Transfer of property to an Agency. (i) Institution M, a calendar-year taxpayer without Continuing Equity because it is in Agency Receivership, is not a member of a consolidated group and has not been acquired in a Taxable Transfer. At the beginning of 2018, M's remaining equity is $0 and M has a deferred FFA account of $10 million. The Agency does not provide any FFA to M in 2018. During the year, M transfers property not subject to a Loss Guarantee to the Agency and does not receive any consideration. The property has an adjusted basis of $5 million and a fair market value of $1 million at the time of the transfer. M has no other taxable income or loss in 2018.

(ii) Under paragraph (d)(1) of this section, M is treated as selling the property for $1 million, its fair market value, thus recognizing a $4 million loss ($5 million − $1 million). In addition, because M did not receive any consideration from the Agency, under paragraph (d)(4) of this section M has an adjustment to FFA of $1 million, the amount by which the fair market value of the transferred property ($1 million) exceeds the consideration M received from the Agency ($0). Because no FFA is provided to M in 2018, this adjustment reduces the balance of M's deferred FFA account to $9 million ($10 million − $1 million) under paragraph (d)(5)(i)(B) of this section. Because M's $4 million loss causes M's deductions to exceed its gross income by $4 million in 2018 and M has no remaining equity, under paragraph (c)(4)(iii)(A) of this section M must include $4 million of deferred FFA in income and must decrease the remaining $9 million balance of its deferred FFA account by the same amount, leaving a balance of $5 million.

Example 3. Loss Guarantee. Institution Q, a calendar-year taxpayer, holds a Covered Asset (Asset Z). Q's adjusted basis in Asset Z is $10,000. Q sells Asset Z to an unrelated third party for $4,000. Pursuant to the Loss Guarantee, an Agency pays Q $6,000 ($10,000 - $4,000). Q's amount realized from the sale of Asset Z is $10,000 ($4,000 from the third party and $6,000 from the Agency) under paragraph (d)(2) of this section. Q realizes no gain or loss on the sale ($10,000 - $10,000 = $0), and therefore includes none of the $6,000 of FFA it receives pursuant to the Loss Guarantee in income under paragraph (d)(3) of this section.

Par. 4. Section 1.597–3 is revised to read as follows:

§ 1.597–3 Other rules.

(a) *Ownership of assets*. For all federal income tax purposes, an Agency is not treated as the owner of assets subject to a Loss Guarantee, yield maintenance agreement, or cost to carry or cost of funds reimbursement agreement, regardless of whether it otherwise would be treated as the owner under general federal income tax principles.

(b) *Debt and equity interests received by an Agency*. Debt instruments, stock, warrants, or other rights to acquire stock of an Institution (or any of its affiliates) that an Agency or a Controlled Entity receives in connection with a transaction in which FFA is provided are not treated as debt, stock, or other equity interests of or in the issuer for any purpose of the Internal Revenue Code while held by an Agency or a Controlled Entity. On the date an Agency or a Controlled Entity transfers an interest described in this paragraph (b) to a holder other than an Agency or a Controlled Entity, the interest is treated as having been newly issued by the issuer to the holder with an issue price equal to the sum of the amount of money and the fair market value of property paid by the new holder in exchange for the interest.

(c) *Agency Obligations*—(1) *In general*. Except as otherwise provided in this paragraph (c), the original issue discount rules of sections 1271 et seq. apply to Agency Obligations.

(2) *Issue price of Agency Obligations provided as Net Worth Assistance*. The issue price of an Agency Obligation that is provided as Net Worth Assistance and that bears interest at either a single fixed rate or a qualified floating rate (and provides for no contingent payments) is the lesser of the sum of the present values of all payments due under the obligation, discounted at a rate equal to the applicable Federal rate (within the meaning of section 1274(d)(1) and (3)) in effect for the date of issuance, or the stated principal amount of the obligation. The issue price of an Agency Obligation that bears a qualified floating rate of interest (within the meaning of § 1.1275–5(b)) is determined by treating the obligation as bearing a fixed rate of interest equal to the rate in effect on the date of issuance under the obligation.

(3) *Adjustments to principal amount*. Except as provided in § 1.597–5(d)(2)(iv), this paragraph (c)(3) applies if an Agency

modifies or exchanges an Agency Obligation provided as Net Worth Assistance (or a successor obligation). The issue price of the modified or new Agency Obligation is determined under paragraphs (c)(1) and (2) of this section. If the issue price is greater than the adjusted issue price of the existing Agency Obligation, the difference is treated as FFA. If the issue price is less than the adjusted issue price of the existing Agency Obligation, the difference is treated as an adjustment to FFA under § 1.597–2(d)(4).

(d) *Successors*. To the extent necessary to effectuate the purposes of the regulations under section 597, an entity's treatment under the regulations applies to its successor. A successor includes a transferee in a transaction to which section 381(a) applies or a Bridge Bank to which another Bridge Bank transfers deposit liabilities.

(e) [Reserved]

(f) *Losses and deductions with respect to Covered Assets*. Prior to the disposition of a Covered Asset, the asset cannot be charged off, marked to a market value, depreciated, amortized, or otherwise treated in a manner that supposes an actual or possible diminution of value below the asset's fair market value. See § 1.597–1(b).

(g) *Anti-abuse rule*. The regulations under section 597 must be applied in a manner consistent with the purposes of section 597. Accordingly, if, in structuring or engaging in any transaction, a principal purpose is to achieve a federal income tax result that is inconsistent with the purposes of section 597 and the regulations thereunder, the Commissioner can make appropriate adjustments to income, deductions, and other items that would be consistent with those purposes.

Par. 5. Section 1.597–4 is revised to read as follows:

§ 1.597–4 Bridge Banks and Agency Control.

(a) *Scope*. This section provides rules that apply to a Bridge Bank or other Institution under Agency Control and to transactions in which an Institution transfers deposit liabilities (whether or not the Institution also transfers assets) to a Bridge Bank.

(b) *Status as taxpayer*. A Bridge Bank or other Institution under Agency Control is a corporation within the meaning of section 7701(a)(3) for all purposes of the Internal Revenue Code (Code) and is subject to all Code provisions that generally apply to corporations, including those relating to methods of accounting and to requirements for filing returns, even if an Agency owns stock of the Institution.

(c) *No section 382 ownership change*. The imposition of Agency Control, the cancellation of Institution stock by an Agency, a transaction in which an Institution transfers deposit liabilities to a Bridge Bank, and an election under paragraph (g) of this section are disregarded in determining whether an ownership change has occurred within the meaning of section 382(g).

(d) *Transfers to Bridge Banks*—(1) *In general*. Except as otherwise provided in paragraph (g) of this section, the rules of this paragraph (d) apply to transfers to Bridge Banks. In general, a Bridge Bank and its associated Residual Entity are together treated as the successor entity to the transferring Institution. If an Institution transfers deposit liabilities to a Bridge Bank (whether or not it also transfers assets), the Institution recognizes no gain or loss on the transfer and the Bridge Bank succeeds to the transferring Institution's basis in any transferred assets. The associated Residual Entity retains its basis in any assets it continues to hold. Immediately after the transfer, the Bridge Bank succeeds to and takes into account the transferring Institution's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)), taxpayer identification number (TIN), deferred FFA account, and account receivable for future FFA as described in paragraph (g)(4)(ii) of this section. The Bridge Bank also succeeds to and continues the transferring Institution's taxable year.

(2) *Transfers to a Bridge Bank from multiple Institutions*. If two or more Institutions transfer deposit liabilities to the same Bridge Bank, the rules in paragraph (d)(1) of this section are modified to the extent provided in this paragraph (d)(2). The Bridge Bank succeeds to the TIN and continues the taxable year of the Institution that transfers the largest amount of deposits. The taxable years of the other transferring Institutions close at the time of the transfer. If all the transferor Institutions are members of the same consolidated group, the Bridge Bank's carryback of losses to the Institution that transfers the largest amount of deposits is not limited by section 381(b)(3). The limitations of section 381(b)(3) do apply to the Bridge Bank's carrybacks of losses to all other transferor Institutions. If the transferor Institutions are not all members of the same consolidated group, the limitations of section 381(b)(3) apply with respect to all transferor Institutions. See paragraph (g)(6)(ii) of this section for additional rules that apply if two or more Institutions that are not members of the same consolidated group transfer deposit liabilities to the same Bridge Bank.

(e) *Treatment of Bridge Bank and Residual Entity as a single entity*. A Bridge Bank and its associated Residual Entity or Entities are treated as a single entity for federal income tax purposes and must file a single combined federal income tax return. The Bridge Bank is responsible for filing all federal income tax returns and statements for this single entity and is the agent of each associated Residual Entity to the same extent as if the Bridge Bank were the agent for a consolidated group, within the meaning of § 1.1502–77, including the Residual Entity. The term Institution includes a Residual Entity that files a combined return with its associated Bridge Bank.

(f) *Rules applicable to members of consolidated groups*—(1) *Status as members*. Unless an election is made under paragraph (g) of this section, Agency Control of an Institution does not terminate the Institution's membership in a consolidated group. Stock of a subsidiary that is canceled by an Agency is treated as held by the members of the consolidated group that held the stock prior to its cancellation. If an Institution is a member of a consolidated group immediately before it transfers deposit liabilities to a Bridge Bank, the Bridge Bank succeeds to the Institution's status as the common parent or, unless an election is made under paragraph (g) of this section, as a subsidiary of the group. If a Bridge Bank succeeds to an Institution's status as a subsidiary, its stock is treated as held by the shareholders of the transferring Institution, and the stock basis or excess loss account of the Institution carries over to the Bridge Bank. A Bridge Bank is treated as owning stock owned by its associated Residual Entities, including for purposes of determining membership in an affiliated group.

(2) *Coordination with consolidated return regulations*. The provisions of the regulations under section 597 take precedence over conflicting provisions in the regulations under section 1502.

(g) *Elective disaffiliation*—(1) *In general*. A consolidated group of which an Institution is a subsidiary may elect irrevocably not to include the Institution in its affiliated group if the Institution is placed in Agency Receivership (whether or not assets or deposit liabilities of the Institution are transferred to a Bridge Bank). See paragraph (g)(6) of this section for circumstances under which a consolidated group is deemed to make this election.

(2) *Consequences of election*. If the election under this paragraph (g) is made with respect to an Institution, the following consequences occur immediately before the subsidiary Institution to which the election applies is placed in Agency Receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election) and in the following order—

(i) All adjustments of the Institution and its Consolidated Subsidiaries under section 481 are accelerated;

(ii) Deferred intercompany gains and losses and intercompany items with respect to the Institution and its Consolidated Subsidiaries are taken into account and the Institution and its Consolidated Subsidiaries take into account any other items required under the regulations under section 1502 for members that become nonmembers within the meaning of § 1.1502–32(d)(4);

(iii) The taxable year of the Institution and its Consolidated Subsidiaries closes and the Institution includes the amount described in paragraph (g)(3) of this section in income as ordinary income as its last item for that taxable year;

(iv) The members of the consolidated group owning the common stock of the Institution include in income any excess loss account with respect to the Institution's stock under § 1.1502–19 and any other items required under the regulations under section 1502 for members that own stock of corporations that become nonmembers within the meaning of § 1.1502–32(d)(4); and

(v) If the Institution's liabilities exceed the aggregate fair market value of its assets on the date the Institution is placed in Agency Receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, on the date the consolidated group is deemed to make the election), the members of the consolidated group treat their stock in the Institution as worthless. (See §§ 1.337(d)–2, 1.1502–35(f), and 1.1502–36 for rules applicable when a member of a consolidated group is entitled to a worthless stock deduction with respect to stock of another member of the group.) In all other cases, the consolidated group will be treated as owning stock of a nonmember corporation until such stock is disposed of or becomes worthless under rules otherwise applicable.

(3) *Toll charge*. The amount described in this paragraph (g)(3) is the excess of the Institution's liabilities over the adjusted bases of its assets immediately before the Institution is placed in Agency Receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately before the consolidated group is deemed to make the election). In computing this amount, the adjusted bases of an Institution's assets are reduced by the amount of the Institution's reserves for bad debts under section 585 or 593, other than supplemental reserves under section 593. For purposes of this paragraph (g)(3), an Institution is treated as a single entity that includes the assets and liabilities of its Consolidated Subsidiaries, with appropriate adjustments to prevent duplication. The amount described in this paragraph (g)(3) for alternative minimum tax purposes is determined using alternative minimum tax basis, deductions, and all other items required to be taken into account. In computing the increase in the group's taxable income or alternative minimum taxable income, sections 56(d)(1), 382, and 383 and §§ 1.1502–15, 1.1502–21, and 1.1502–22 (or §§ 1.1502–15A, 1.1502–21A, and 1.1502–22A, as appropriate) do not limit the use of the attributes of the Institution and its Consolidated Subsidiaries to the extent, if any, that the inclusion of the amount described in this paragraph (g)(3) in income would result in the group having taxable income or alternative minimum taxable income (determined without regard to this sentence) for the taxable year. The preceding sentence does not apply to any limitation under section 382 or 383 or § 1.1502–15, § 1.1502–21, or § 1.1502–22 (or § 1.1502–15A, § 1.1502–21A, or § 1.1502–22A, as appropriate) that arose in connection with or prior to a corporation becoming a Consolidated Subsidiary of the Institution.

(4) *Treatment of Institutions after disaffiliation*—(i) *In general*. If the election under this paragraph (g) is made with respect to an Institution, immediately after the Institution is placed in Agency Receivership (or, in the case of a deemed election under paragraph (g)(6) of this section, immediately after the consolidated group is deemed to make the election), the Institution and each of its Consolidated Subsidiaries are treated for federal income tax purposes as new corporations that are not members of the electing group's affiliated group. Each new corporation retains the TIN of the corresponding disaffiliated corporation and is treated as having received the assets and liabilities of the corresponding disaffiliated corporation in a transaction to which section 351 applies (and in which no gain was recognized under section 357(c) or otherwise). Thus, the new corporation has no net operating or capital loss carryforwards. An election under this paragraph (g) does not terminate the single entity treatment of a Bridge Bank and its Residual Entities provided in paragraph (e) of this section.

(ii) *FFA*. A new Institution is treated as having a non-interest bearing, nontransferable account receivable for future FFA with a basis equal to the amount described in paragraph (g)(3) of this section. If a disaffiliated Institution has a deferred FFA account at the time of its disaffiliation, the corresponding new Institution succeeds to and takes into account that deferred FFA account.

(iii) *Filing of consolidated returns*. If a disaffiliated Institution has Consolidated Subsidiaries at the time of its disaffiliation, the corresponding new Institution is required to file a consolidated federal income tax return with the subsidiaries in accordance with the regulations under section 1502.

(iv) *Status as Institution*. If an Institution is disaffiliated under this paragraph (g), the resulting new corporation is treated as an Institution for purposes of the regulations under section 597 regardless of whether it is a bank or domestic building and loan association within the meaning of section 597.

(v) *Loss carrybacks*. To the extent a carryback of losses would result in a refund being paid to a fiduciary under section 6402(k), an Institution or Consolidated Subsidiary with respect to which an election under this paragraph (g) (other than under paragraph (g)(6)(ii) of this section) applies is allowed to carry back losses as if the Institution or Consolidated Subsidiary had continued to be a member of the consolidated group that made the election.

(5) *Affirmative election*—(i) *Original Institution*—(A) *Manner of making election*. Except as otherwise provided in paragraph (g)(6) of this section, a consolidated group makes the election provided by this paragraph (g) by sending a written statement by certified mail to the affected Institution on or before 120 days after its placement in Agency Receivership. The statement must contain the following legend at the top of the page: "THIS IS AN ELECTION UNDER § 1.597–4(g) TO EXCLUDE THE INSTITUTION AND CONSOLIDATED SUBSIDIARIES REFERENCED IN THIS STATEMENT FROM THE AFFILIATED GROUP," and must include the names and TINs of the common parent and of the Institution and Consolidated Subsidiaries to which the election applies, and the date on which the Institution was placed in Agency Receivership. The consolidated group must send a similar statement to all subsidiary Institutions placed in Agency Receivership during the consistency period described in paragraph (g)(5)(ii) of this section. (Failure to satisfy the requirement in the preceding sentence, however, does not invalidate the election with respect to any subsidiary Institution placed in Agency Receivership during the consistency period described in paragraph (g)(5)(ii) of this section.) The consolidated group must retain a copy of the statement sent to any affected or subsidiary Institution (and the accompanying certified mail receipt) as proof that it mailed the statement to the affected Institution, and the consolidated group must make the statement and receipt available for inspection by the Commissioner upon request. The consolidated group must include an election statement as part of its first federal income tax return filed after the due date under this paragraph (g)(5) for such statement. A statement must be attached to this return indicating that the individual who signed the election was authorized to do so on behalf of the consolidated group. The agent for the group, within the meaning of § 1.1502–77, takes all actions required under this paragraph (g)(5)(i)(A) to make the election provided under this paragraph (g)(5) for the consolidated group. An Agency cannot make the election provided under this paragraph (g)(5) under the authority of section 6402(k) or otherwise.

(B) *Consistency limitation on affirmative elections*. A consolidated group may make an affirmative election under this paragraph (g)(5) with respect to a subsidiary Institution placed in Agency Receivership only if the group made, or is deemed to have made, the election under this paragraph (g) with respect to every subsidiary Institution of the group placed in Agency Receivership within five years preceding the date the subject Institution was placed in Agency Receivership.

(ii) *Effect on Institutions placed in receivership simultaneously or subsequently*. An election under this paragraph (g), other than under paragraph (g)(6)(ii) of this section, applies to the Institution with respect to which the election is made or deemed made (the original Institution) and each subsidiary Institution of the group placed in Agency Receivership or deconsolidated in contemplation of Agency Control or the receipt of FFA simultaneously with the original Institution or within five years thereafter.

(6) *Deemed election*—(i) *Deconsolidations in contemplation*. If one or more members of a consolidated group deconsolidate (within the meaning of § 1.1502–19(c)(1)(ii)(B)) a subsidiary Institution in contemplation of Agency Control or the receipt of FFA, the consolidated group is deemed to make the election described in this paragraph (g) with respect to the Institution on the date the deconsolidation occurs. A subsidiary Institution is conclusively presumed to have been deconsolidated in contemplation of Agency Control or the receipt of FFA if either event occurs within six months after the deconsolidation.

(ii) *Transfers to a Bridge Bank from multiple groups*. On the day an Institution's transfer of deposit liabilities to a Bridge Bank results in the Bridge Bank holding deposit liabilities from both a subsidiary Institution and an Institution not included in the subsidiary Institution's consolidated group, each consolidated group of which a transferring Institution or the Bridge Bank is a subsidiary is deemed to make the election described in this paragraph (g) with respect to its subsidiary Institution. If deposit liabilities of another Institution that is a subsidiary member of any consolidated group subsequently are transferred to the Bridge Bank, the consolidated group of which the Institution is a subsidiary is deemed to make the election described in this paragraph (g) with respect to that Institution at the time of the subsequent transfer.

(h) *Examples*. The following examples illustrate the provisions of this section:

Facts. Corporation X, the common parent of a consolidated group, owns all the stock (with a basis of $4 million) of Institution M, an insolvent Institution with no Consolidated Subsidiaries. At the close of business on April 30, 2018, M has $4 million of deposit liabilities, $1 million of other liabilities, and assets with an adjusted basis of $4 million and a fair market value of $3 million.

Example 1. Effect of receivership on consolidation. On May 1, 2018, M is placed in Agency Receivership and the Agency begins liquidating M. X does not make an election under paragraph (g) of this section. M remains a member of the X consolidated group after May 1, 2018 under paragraph (f)(1) of this section.

Example 2. Effect of Bridge Bank on consolidation—(i) *Additional facts*. On May 1, 2018, M is placed in Agency Receivership and the Agency causes M to transfer all of its assets and deposit liabilities to Bridge Bank MB.

(ii) *Consequences without an election to disaffiliate*. M recognizes no gain or loss from the transfer and MB succeeds to M's basis in the transferred assets, M's items described in section 381(c) (subject to the conditions and limitations specified in section 381(c)), and TIN under paragraph (d)(1) of this section. (If M had a deferred FFA account, MB would also succeed to that account under paragraph (d)(1) of this section.) MB continues M's taxable year and succeeds to M's status as a member of the X consolidated group after May 1, 2018 under paragraphs (d)(1) and (f) of this section. MB and M are treated as a single entity for federal income tax purposes under paragraph (e) of this section.

(iii) *Consequences with an election to disaffiliate*. If, on July 1, 2018, X makes an election under paragraph (g) of this section with respect to M, the following consequences are treated as occurring immediately before M was placed in Agency Receivership. M must include $1 million ($5 million of liabilities − $4 million of adjusted basis) in income as of May 1, 2018 under paragraph (g)(2) and (3) of this section. M is then treated as a new corporation that is not a member of the X consolidated group and that has assets (including a $1 million account receivable for future FFA) with a basis of $5 million and $5 million of liabilities received from disaffiliated corporation M in a section 351 transaction. New corporation M retains the TIN of disaffiliated corporation M under paragraph (g)(4) of this section. Immediately after the disaffiliation, new corporation M is treated as transferring its assets and deposit liabilities to Bridge Bank MB. New corporation M recognizes no gain or loss from the transfer and MB succeeds to M's TIN and taxable year under paragraph (d)(1) of this section. Bridge Bank MB is treated as a single entity that includes M and has $5 million of liabilities, an account receivable for future FFA with a basis of $1 million, and other assets with a basis of $4 million under paragraph (d)(1) of this section.

Par. 6. Section 1.597–5 is revised to read as follows:

§ 1.597–5 Taxable Transfers.

(a) *Taxable Transfers*—(1) *Defined*. The term *Taxable Transfer* means—

(i) A transaction in which an entity transfers to a transferee other than a Bridge Bank—

(A) Any deposit liability (whether or not the Institution also transfers assets), if FFA is provided in connection with the transaction; or

(B) Any asset for which an Agency or a Controlled Entity has any financial obligation (for example, pursuant to a Loss Guarantee or Agency Obligation); or

(ii) A deemed transfer of assets described in paragraph (b) of this section.

(2) *Scope*. This section provides rules governing Taxable Transfers. Rules applicable to both actual and deemed asset acquisitions are provided in paragraphs (c) and (d) of this section. Special rules applicable only to deemed asset acquisitions are provided in paragraph (e) of this section.

(b) *Deemed asset acquisitions upon stock purchase*—(1) *In general*. In a deemed transfer of assets under this paragraph (b), an Institution (including a Bridge Bank or a Residual Entity) or a Consolidated Subsidiary of the Institution (the Old Entity) is treated as selling all of its assets in a single transaction and is treated as a new corporation (the New Entity) that purchases all of the Old Entity's assets at the close of the day immediately preceding the occurrence of an event described in paragraph (b)(2) of this section. However, such an event results in a deemed transfer of assets under this paragraph (b) only if it occurs—

(i) In connection with a transaction in which FFA is provided;

(ii) While the Institution is a Bridge Bank;

(iii) While the Institution has a positive balance in a deferred FFA account (see § 1.597–2(c)(4)(v) regarding the optional accelerated recapture of deferred FFA); or

(iv) With respect to a Consolidated Subsidiary, while the Institution of which it is a Consolidated Subsidiary is under Agency Control.

(2) *Events*. A deemed transfer of assets under this paragraph (b) results if the Institution or Consolidated Subsidiary—

(i) Becomes a non-member (within the meaning of § 1.1502–32(d)(4)) of its consolidated group, other than pursuant to an election under § 1.597–4(g);

(ii) Becomes a member of an affiliated group of which it was not previously a member, other than pursuant to an election under § 1.597–4(g); or

(iii) Issues stock such that the stock that was outstanding before the imposition of Agency Control or the occurrence of any transaction in connection with the provision of FFA represents 50 percent or less of the vote or value of its outstanding stock (disregarding stock described in section 1504(a)(4) and stock owned by an Agency or a Controlled Entity).

(3) *Bridge Banks and Residual Entities*. If a Bridge Bank is treated as selling all of its assets to a New Entity under this paragraph (b), each associated Residual Entity is treated as simultaneously selling its assets to a New Entity in a Taxable Transfer described in this paragraph (b).

(c) *Treatment of transferor*—(1) *FFA in connection with a Taxable Transfer*. A transferor in a Taxable Transfer is treated as having directly received immediately before a Taxable Transfer any Net Worth Assistance that an Agency provides to the New Entity or the Acquiring in connection with the transfer. (See § 1.597–2(a) and (c) for rules regarding the inclusion of FFA in income and § 1.597–2(a)(1) for related rules regarding FFA provided to shareholders.) The Net Worth Assistance is treated as an asset of the transferor that is sold to the New Entity or the Acquiring in the Taxable Transfer.

(2) *Amount realized in a Taxable Transfer*. In a Taxable Transfer described in paragraph (a)(1)(i) of this section, the amount realized is determined under section 1001(b) by reference to the consideration paid for the assets. In a Taxable Transfer described in paragraph (a)(1)(ii) of this section, the amount realized is the sum of the grossed-up basis of the stock acquired in connection with the Taxable Transfer (excluding stock acquired from the Old or New Entity), plus the amount of liabilities assumed or taken subject to in the deemed transfer, plus other relevant items. The grossed-up basis of the acquired stock equals the acquirers' basis in the acquired stock divided by the percentage of the Old Entity's stock (by value) attributable to the acquired stock.

(3) *Allocation of amount realized*—(i) *In general*. The amount realized under paragraph (c)(2) of this section is allocated among the assets transferred in the Taxable Transfer in the same manner as amounts are allocated among assets under § 1.338–6(b) and (c)(1) and (2).

(ii) *Modifications to general rule*. This paragraph (c)(3)(ii) modifies certain of the allocation rules of paragraph (c)(3)(i) of this section. Agency Obligations and Covered Assets in the hands of the New Entity or the Acquiring are treated as Class II assets. Stock of a Consolidated Subsidiary is treated as a Class II asset to the extent the fair market value of the Consolidated Subsidiary's Class I and Class II assets (see § 1.597–1(b)) exceeds the amount of its liabilities. The fair market value of an Agency Obligation is deemed to equal its adjusted issue price immediately before the Taxable Transfer.

(d) *Treatment of a New Entity and an Acquiring*—(1) *Purchase price*. The purchase price for assets acquired in a Taxable Transfer described in paragraph (a)(1)(i) of this section is the cost of the assets acquired. See § 1.1060–1(c)(1). All assets transferred in related transactions pursuant to an option included in an agreement between the transferor and the Acquiring in the Taxable Transfer are included in the group of assets among which the consideration paid is allocated for purposes of determining the New Entity's or the Acquiring's basis in each of the assets. The purchase price for assets acquired in a Taxable Transfer described in paragraph (a)(1)(ii) of this section is the sum of the grossed-up basis of the stock acquired in connection with the Taxable Transfer (excluding stock acquired from the Old or New Entity), plus the amount of liabilities assumed or taken subject to in the deemed transfer, plus other relevant items. The grossed-up basis of the acquired stock equals the acquirers' basis in the acquired stock divided by the percentage of the Old Entity's stock (by value) attributable to the acquired stock. FFA provided in connection with a Taxable Transfer is not included in the New Entity's or the Acquiring's purchase price for the acquired assets. Any Net Worth Assistance so provided is treated as an asset of the transferor sold to the New Entity or the Acquiring in the Taxable Transfer.

(2) *Allocation of basis*—(i) *In general*. Except as otherwise provided in this paragraph (d)(2), the purchase price determined under paragraph (d)(1) of this section is allocated among the assets transferred in the Taxable Transfer in the same manner as amounts are allocated among assets under § 1.338–6(b) and (c)(1) and (2).

(ii) *Modifications to general rule*. The allocation rules contained in paragraph (c)(3)(ii) of this section apply to the allocation of basis among assets acquired in a Taxable Transfer. No basis is allocable to an Agency's agreement to provide Loss Guarantees, yield maintenance payments, cost to carry or cost of funds reimbursement payments, or expense reimbursement or indemnity payments. A New Entity's basis in assets it receives from its shareholders is determined under general federal income tax principles and is not governed by this paragraph (d).

(iii) *Allowance and recapture of additional basis in certain cases*. The basis of Class I and Class II assets equals their fair market value. See § 1.597–1(b). If the fair market value of the Class I and Class II assets exceeds the purchase price for the acquired assets, the excess is included ratably as ordinary income by the New Entity or the Acquiring over a period of six taxable years beginning in the year of the Taxable Transfer. The New Entity or the Acquiring must include as ordinary income the entire amount remaining to be recaptured under the preceding sentence in the taxable year in which an event occurs that would accelerate inclusion of an adjustment under section 481.

(iv) *Certain post-transfer adjustments*—(A) *Agency Obligations*. If an adjustment to the principal amount of an Agency Obligation or cash payment to reflect a more accurate determination of the condition of the Institution at the time of the Taxable Transfer is made before the earlier of the date the New Entity or the Acquiring files its first post-transfer federal income tax return or the due date of that return (including extensions), the New Entity or the Acquiring must adjust its basis in its acquired assets to reflect the adjustment. In making adjustments to the New Entity's or the Acquiring's basis in its acquired assets, paragraph (c)(3)(ii) of this section is applied by treating an adjustment to the principal amount of an Agency Obligation pursuant to the first sentence of this paragraph (d)(2)(iv)(A) as occurring immediately before the Taxable Transfer. (See § 1.597–3(c)(3) for rules regarding other adjustments to the principal amount of an Agency Obligation.)

(B) *Covered Assets*. If, immediately after a Taxable Transfer, an asset is not subject to a Loss Guarantee but the New Entity or the Acquiring has the right to designate specific assets that will be subject to the Loss Guarantee, the New Entity or the Acquiring must treat any asset so designated as having been subject to the Loss Guarantee at the time of the Taxable Transfer. The New Entity or the Acquiring must adjust its basis in the Covered Assets and in its other acquired assets to reflect the designation in the manner provided by paragraph (d)(2) of this section. The New Entity or the Acquiring must make appropriate adjustments in subsequent taxable years if the designation is made after the New Entity or the Acquiring files its first post-transfer federal income tax return or the due date of that return (including extensions) has passed.

(e) *Special rules applicable to Taxable Transfers that are deemed asset acquisitions*—(1) *Taxpayer Identification Numbers*. Except as provided in paragraph (e)(3) of this section, the New Entity succeeds to the TIN of the Old Entity in a deemed sale under paragraph (b) of this section.

(2) *Consolidated Subsidiaries*—(i) *In general*. A Consolidated Subsidiary that is treated as selling its assets in a Taxable Transfer under paragraph (b) of this section is treated as engaging immediately thereafter in a complete liquidation to which section 332 applies. The consolidated group of which the Consolidated Subsidiary is a member does not take into account gain or loss on the sale, exchange, or cancellation of stock of the Consolidated Subsidiary in connection with the Taxable Transfer.

(ii) *Certain minority shareholders*. Shareholders of the Consolidated Subsidiary that are not members of the consolidated group that includes the Institution do not recognize gain or loss with respect to shares of Consolidated Subsidiary stock retained by the shareholder. The shareholder's basis for that stock is not affected by the Taxable Transfer.

(3) *Bridge Banks and Residual Entities*—(i) *In general*. A Bridge Bank or Residual Entity's sale of assets to a New Entity under paragraph (b) of this section is treated as made by a single entity under § 1.597–4(e). The New Entity deemed to acquire the assets of a Residual Entity under paragraph (b) of this section is not treated as a single entity with the Bridge Bank (or with the New Entity acquiring the Bridge Bank's assets) and must obtain a new TIN.

(ii) *Treatment of consolidated groups*. At the time of a Taxable Transfer described in paragraph (a)(1)(ii) of this section, treatment of a Bridge Bank as a subsidiary member of a consolidated group under § 1.597–4(f)(1) ceases. However, the New Entity that is deemed to acquire the assets of a Residual Entity is a member of the selling consolidated group after the deemed sale. The group's basis or excess loss account in the stock of the New Entity that is deemed to acquire the assets of the Residual Entity is the group's basis or excess loss account in the stock of the Bridge Bank immediately before the deemed sale, as adjusted for the results of the sale.

(4) *Certain returns*. If an Old Entity without Continuing Equity is not a subsidiary of a consolidated group at the time of the Taxable Transfer, the controlling Agency must file all federal income tax returns for the Old Entity for periods ending on or prior to the date of the deemed sale described in paragraph (b) of this section that are not filed as of that date.

(5) *Basis limited to fair market value*. If all of the stock of the corporation is not acquired on the date of the Taxable Transfer, the Commissioner may make appropriate adjustments under paragraphs (c) and (d) of this section to the extent using a grossed-up basis of the stock of a corporation results in an aggregate amount realized for, or basis in, the assets other than the aggregate fair market value of the assets.

(f) *Examples*. The following examples illustrate the provisions of this section. For purposes of these examples, an Institution's loans are treated as if they were a single asset. However, in applying these regulations, the fair market value of each loan (including, for purposes of a Covered Asset, the Third-Party Price and the Expected Value) must be determined separately.

Example 1. Branch sale resulting in Taxable Transfer. (i) Institution M is a calendar-year taxpayer in Agency Receivership. M is not a member of a consolidated group. On January 1, 2018, M has $200 million of liabilities (including deposit liabilities) and assets with an adjusted basis of $100 million. M has no income or loss for 2018 and, except as otherwise described in this paragraph (i), M receives no FFA. On September 30, 2018, the Agency causes M to transfer six branches (with assets having an adjusted basis of $1 million) together with $120 million of deposit liabilities to N. In connection with the transfer, the Agency provides $121 million in cash to N.

(ii) The transaction is a Taxable Transfer in which M receives $121 million of Net Worth Assistance under paragraph (a)(1) of this section. (M is treated as directly receiving the $121 million of Net Worth Assistance immediately before the Taxable Transfer under paragraph (c)(1) of this section.) M transfers branches having a basis of $1 million and is treated as transferring $121 million in cash (the Net Worth Assistance) to N in exchange for N's assumption of $120 million of liabilities. Thus, M realizes a loss of $2 million on the transfer. The amount of the FFA M must include in its income in 2018 is limited by paragraph (c) of § 1.597–2 to $102 million, which is the sum of the $100 million excess of M's liabilities ($200 million) over the total adjusted basis of its assets ($100 million) at the beginning of 2018 and the $2 million excess for the taxable year (which results from the Taxable Transfer) of M's deductions (other than carryovers) over its gross income other than FFA. M must establish a deferred FFA account for the remaining $19 million of FFA under paragraph (c)(4) of § 1.597–2.

(iii) N, as the Acquiring, must allocate its $120 million purchase price for the assets acquired from M among those assets. Cash is a Class I asset. The branch assets are in Classes III and IV. N's adjusted basis in the cash is its amount, that is, $121 million under paragraph (d)(2) of this section. Because this amount exceeds N's purchase price for all of the acquired assets by $1 million, N allocates no basis to the other acquired assets and, under paragraph (d)(2) of this section, must recapture the $1 million excess at an annual rate of $166,667 in the six consecutive taxable years beginning with 2018 (subject to acceleration for certain events).

Example 2. Stock issuance by Bridge Bank causing Taxable Transfer. (i) On April 1, 2018, Institution P is placed in Agency Receivership and the Agency causes P to transfer assets and liabilities to Bridge Bank PB. On August 31, 2018, the assets of PB consist of $20 million in cash, loans outstanding with an adjusted basis of $50 million and a Third-Party Price of $40 million, and other non-financial assets (primarily branch assets and equipment) with an adjusted basis of $5 million. PB has deposit liabilities of $95 million and other liabilities of $5 million. P, the Residual Entity, holds real estate with an adjusted basis of $10 million and claims in litigation having a zero basis. P retains no deposit liabilities and has no other liabilities (except its liability to the Agency for having caused its deposit liabilities to be satisfied).

(ii) On September 1, 2018, the Agency causes PB to issue 100 percent of its common stock for $2 million cash to X. On the same day, the Agency issues a $25 million note to PB. The note bears a fixed rate of interest in excess of the applicable Federal rate in effect for September 1, 2018. The Agency provides Loss Guarantees guaranteeing PB a value of $50 million for PB's loans outstanding.

(iii) The stock issuance is a Taxable Transfer in which PB is treated as selling all of its assets to a new corporation, New PB, under paragraph (b)(1) of this section. PB is treated as directly receiving $25 million of Net Worth Assistance (the issue price of the Agency Obligation) immediately before the Taxable Transfer under paragraph (c)(2) of § 1.597–3 and paragraph (c)(1) of this section. The amount of FFA PB must include in income is determined under paragraphs (a) and (c) of § 1.597–2. PB in turn is deemed to transfer the note (with a basis of $25 million) to New PB in the Taxable Transfer, together with $20 million of cash, all its loans outstanding (with a basis of $50 million) and its other non-financial assets (with a basis of $5 million). The amount realized by PB from the sale is $100 million (the amount of PB's liabilities deemed to be assumed by New PB). This amount realized equals PB's basis in its assets; thus, PB realizes no gain or loss on the transfer to New PB.

(iv) Residual Entity P also is treated as selling all its assets (consisting of real estate and claims in litigation) for $0 (the amount of consideration received by P) to a new corporation (New P) in a Taxable Transfer under paragraph (b)(3) of this section. (P's only liability is to the Agency and a liability to the Agency is not treated as a debt under paragraph (b) of § 1.597–3.) P's basis in its assets is $10 million; thus, P realizes a $10 million loss on the transfer to New P. The combined return filed by PB and P for 2018 will reflect a total loss on the Taxable Transfer of $10 million ($0 for PB and $10 million for P) under paragraph (e)(3) of this section. That return also will reflect FFA income from the Net Worth Assistance, determined under paragraphs (a) and (c) of § 1.597–2.

(v) New PB is treated as having acquired the assets it acquired from PB for $100 million, the amount of liabilities assumed. In allocating basis among these assets, New PB treats the Agency note and the loans outstanding (which are Covered Assets) as Class II assets. For the purpose of allocating basis, the fair market value of the Agency note is deemed to equal its adjusted issue price immediately before the transfer ($25 million), and the fair market value of the loans is their Expected Value, $50 million (the sum of the $40 million Third-Party Price and the $10 million that the Agency would pay if PB sold the loans for $40 million) under paragraph (b) of § 1.597–1. Alternatively, if the Third-Party Price for the loans were $60 million, then the fair market value of the loans would be $60 million, and there would be no payment from the Agency.

(vi) New P is treated as having acquired its assets for no consideration. Thus, its basis in its assets immediately after the transfer is zero. New PB and New P are not treated as a single entity under paragraph (e)(3) of this section.

Example 3. Taxable Transfer of previously disaffiliated Institution. (i) Corporation X, the common parent of a consolidated group, owns all the stock of Institution M, an insolvent Institution with no Consolidated Subsidiaries. On April 30, 2018, M has $4 million of deposit liabilities, $1 million of other liabilities, and assets with an adjusted basis of $4 million. On May 1, 2018, M is placed in Agency Receivership. X elects under paragraph (g) of § 1.597–4 to disaffiliate M. Accordingly, as of May 1, 2018, new corporation M is not a member of the X consolidated group. On May 1, 2018, the Agency causes M to transfer all of its assets and liabilities to Bridge Bank MB. Under paragraphs (e) and (g)(4) of § 1.597–4, MB and M are thereafter treated as a single entity which has $5 million of liabilities, an account receivable for future FFA with a basis of $1 million, and other assets with a basis of $4 million.

(ii) During May 2018, MB earns $25,000 of interest income and accrues $20,000 of interest expense on depositor accounts and there is no net change in deposits other than the additional $20,000 of interest expense accrued on depositor accounts. MB pays $5,000 of wage expenses and has no other items of income or expense.

(iii) On June 1, 2018, the Agency causes MB to issue 100 percent of its stock to Corporation Y. In connection with the stock issuance, the Agency provides an Agency Obligation for $2 million and no other FFA.

(iv) The stock issuance results in a Taxable Transfer under paragraph (b) of this section. MB is treated as receiving the Agency Obligation immediately prior to the Taxable Transfer under paragraph (c)(1) of this section. MB has $1 million of basis in its account receivable for FFA. This receivable is treated as satisfied, offsetting $1 million of the $2 million of FFA provided by the Agency in connection with the Taxable Transfer. The status of the remaining $1 million of FFA as includible income is determined as of the end of the taxable year under paragraph (c) of § 1.597–2. However, under paragraph (b) of § 1.597–2, MB obtains a $2 million basis in the Agency Obligation received as FFA.

(v) Under paragraph (c)(2) of this section, in the Taxable Transfer, Old Entity MB is treated as selling, to New Entity MB, all of Old Entity MB's assets, having a basis of $6,020,000 (the original $4 million of asset basis as of April 30, 2018, plus $20,000 net cash from May 2018 activities, plus the $2 million Agency Obligation received as FFA), for $5,020,000, the amount of Old Entity MB's liabilities assumed by New Entity MB pursuant to the Taxable Transfer. Therefore, Old Entity MB recognizes, in the aggregate, a loss of $1 million from the Taxable Transfer.

(vi) Because this $1 million loss causes Old Entity MB's deductions to exceed its gross income (determined without regard to FFA) by $1 million, Old Entity MB must include in its income the $1 million of FFA not offset by the FFA receivable under paragraph (c) of § 1.597–2. (As of May 1, 2018, Old Entity MB's liabilities ($5 million) did not exceed MB's $5 million adjusted basis of its assets. For the taxable year, MB's deductions of $1,025,000 ($1 million loss from the Taxable Transfer, $20,000 interest expense and $5,000 of wage expense) exceeded its gross income (disregarding FFA) of $25,000 (interest income) by $1 million. Thus, under paragraph (c) of § 1.597–2, MB includes in income the entire $1 million of FFA not offset by the FFA receivable.)

(vii) Therefore, Old Entity MB's taxable income for the taxable year ending on the date of the Taxable Transfer is $0.

(viii) Residual Entity M is also deemed to engage in a deemed sale of its assets to New Entity M under paragraph (b)(3) of this section, but there are no federal income tax consequences as M has no assets or liabilities at the time of the deemed sale.

(ix) Under paragraph (d)(1) of this section, New Entity MB is treated as purchasing Old Entity MB's assets for $5,020,000, the amount of New Entity MB's liabilities. Of this, $2 million is allocated to the $2 million Agency Obligation, and $3,020,000 is allocated to the other assets New Entity MB is treated as purchasing in the Taxable Transfer.

Example 4. Loss Guarantee. On January 1, 2018, Institution N acquires assets and assumes liabilities of another Institution in a Taxable Transfer. In exchange for assuming $1,100,000 of the transferring Institution's liabilities, N acquires Net Worth Assistance of $200,000, loans with an unpaid principal balance of $1 million, and two foreclosed properties each having a book value of $100,000 in the hands of the transferring Institution. In connection with the Taxable Transfer, an Agency guarantees N a price of $800,000 on the disposition or charge-off of the loans and a price of $80,000 on the disposition or charge-off of each of the foreclosed properties. This arrangement constitutes a Loss Guarantee. The Third-Party Price is $500,000 for the loans and $50,000 for each of the foreclosed properties. For basis allocation purposes, the loans and foreclosed properties are Class II assets because they are Covered Assets, and N must allocate basis to such assets equal to their fair market value under paragraphs (c)(3)(ii) and (d)(2)(ii) and (iii) of this section. The fair market value of the loans is their Expected Value, $800,000 (the sum of the $500,000 Third-Party Price and the $300,000 that the Agency would pay if N sold the loans for $500,000). The fair market value of each foreclosed property is its Expected Value, $80,000 (the sum of the $50,000 Third-Party Price and the $30,000 that the Agency would pay if N sold the foreclosed property for $50,000) under paragraph (b) of § 1.597–1. Accordingly, N's basis in the loans and in each of the foreclosed properties is $800,000 and $80,000, respectively. Because N's aggregate basis in the cash, loans, and foreclosed properties ($1,160,000) exceeds N's purchase price ($1,100,000) by $60,000, N must include $60,000 in income ratably over six years under paragraph (d)(2)(iii) of this section.

Example 5. Loss Share Agreement. (i) The facts are the same as in *Example 4* of this paragraph (f) except that, in connection with the Taxable Transfer, the Agency agrees to reimburse Institution N in an amount equal to zero percent of any loss realized (based on the $1 million unpaid principal balance of the loans and the $100,000 book value of each of the foreclosed properties) on the disposition or charge-off of the Covered Assets up to $200,000; 50 percent of any loss realized between $200,000 and $700,000; and 95 percent of any additional loss realized. This arrangement constitutes a Loss Guarantee that is a Loss Share Agreement. Thus, the Covered Assets are Class II assets, and N allocates basis to such assets equal to their fair market value under paragraphs (c)(3)(ii) and (d)(2)(ii) and (iii) of this section. Because the Third-Party Price for all of the Covered Assets is $600,000 ($500,000 for the loans and $50,000 for each of the foreclosed properties), the Average Reimbursement Rate is 33.33% ((($200,000 × 0%) + ($400,000 × 50%) + ($0 × 95%))/$600,000). The Expected Value of the loans is $666,667 ($500,000 Third-Party Price + $166,667 (the amount of the loss if the loans were disposed of for the Third-Party Price × 33.33%)), and the Expected Value of each foreclosed property is $66,667 ($50,000 Third-Party Price + $16,667 (the amount of the loss if the foreclosed property were sold for the Third-Party Price × 33.33%)) under paragraph (b) of § 1.597–1. For purposes of allocating basis, the fair market value of the loans is $666,667 (their Expected Value), and the fair market value of each foreclosed property is $66,667 (its Expected Value) under paragraph (b) of § 1.597–1.

(ii) At the end of 2018, the Third-Party Price for the loans drops to $400,000, and the Third-Party Price for each of the foreclosed properties remains at $50,000. The fair market value of the loans at the end of Year 2 is their Expected Value, $600,000 ($400,000 Third-Party Price + $200,000 (the amount of the loss if the loans were disposed of for the Third-Party Price × 33.33%) (the Average Reimbursement Rate does not change)). Thus, if the loans otherwise may be charged off, marked to a market value, depreciated, or amortized, then the loans may be marked down to $600,000. The fair market value of each of the foreclosed properties remains at $66,667 ($50,000 Third-Party Price + $16,667 (the amount of the loss if the foreclosed property were sold for the Third-Party Price × 33.33%)). Therefore, the foreclosed properties may not be charged off or depreciated in 2018.

Par. 7. Section 1.597–6 is revised to read as follows:

§ 1.597–6 Limitation on collection of federal income tax.

(a) *Limitation on collection where federal income tax is borne by an Agency*. If an Institution without Continuing Equity (or any of its Consolidated Subsidiaries) is liable for federal income tax that is attributable to the inclusion in income of FFA or gain from a Taxable Transfer, the federal income tax will not be collected if it would be borne by an Agency. The final determination of whether the federal income tax would be borne by an Agency is within the sole discretion of the Commissioner. In determining whether federal income tax would be borne by an Agency, the Commissioner will disregard indemnity, tax-sharing, or similar obligations of an Agency, an Institution, or its Consolidated Subsidiaries. Collection of the several federal income tax liability under § 1.1502–6 from members of an Institution's consolidated group other than the Institution or its Consolidated Subsidiaries is not affected by this section. Federal income tax will continue to be subject to collection except as specifically limited in this section. This section does not apply to taxes other than federal income taxes.

(b) *Amount of federal income tax attributable to FFA or gain on a Taxable Transfer*. For purposes of paragraph (a) of this section, the amount of federal income tax in a taxable year attributable to the inclusion of FFA or gain from a Taxable Transfer in the income of an Institution (or a Consolidated Subsidiary) is the excess of the actual federal income tax liability of the Institution (or the consolidated group in which the Institution is a member) over the federal income tax liability of the Institution (or the consolidated group in which the Institution is a member) determined without regard to FFA or gain or loss on the Taxable Transfer.

(c) *Reporting of uncollected federal income tax*. A taxpayer must specify on a statement included with its Form 1120 (U.S. Corporate Income Tax Return) the amount of federal income tax for the taxable year that is potentially not subject to collection under this section. If an Institution is a subsidiary member of a consolidated group, the amount specified as not subject to collection is zero.

(d) *Assessments of federal income tax to offset refunds*. Federal income tax that is not collected under this section will be assessed and, thus, used to offset any claim for refund made by or on behalf of the Institution, the Consolidated Subsidiary, or any other corporation with several liability for the federal income tax.

(e) *Collection of federal income taxes from an Acquiring or a New Entity*—(1) *Acquiring*. No federal income tax liability (including the several liability for federal income taxes under § 1.1502–6) of a transferor in a Taxable Transfer will be collected from an Acquiring.

(2) *New Entity*. Federal income tax liability (including the several liability for federal income taxes under § 1.1502–6) of a transferor in a Taxable Transfer will be collected from a New Entity only if stock that was outstanding in the Old Entity remains outstanding as stock in the New Entity or is reacquired or exchanged for consideration.

(f) *Effect on section 7507*. This section supersedes the application of section 7507, and the regulations thereunder, for the assessment and collection of federal income tax attributable to FFA.

Par. 8. Section 1.597–7 is revised to read as follows:

§ 1.597–7 Effective/applicability dates.

(a) *FIRREA effective date*. Section 597, as amended by section 1401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73, 103 Stat 183 (1989)) (FIRREA) is generally effective for any FFA received or accrued by an Institution on or after May 10, 1989, and for any transaction in connection with which such FFA is provided, unless the FFA is provided in connection with an acquisition occurring prior to May 10, 1989. See § 1.597–8 for rules regarding FFA received or accrued on or after May 10, 1989, that relates to an acquisition that occurred before May 10, 1989.

(b) *Applicability date of §§ 1.597–1 through 1.597–6*. Sections 1.597–1 through 1.597–6 apply on or after October 19, 2017, except with respect to FFA provided pursuant to a written agreement that is binding before October 19, 2017, and that continues to be binding at all times after such date, in which case §§ 1.597–1 through 1.597–6 as contained in 26 CFR part 1, revised April 1, 2017, will continue to apply unless the taxpayer elects to apply §§ 1.597–1 through 1.597–6 on a retroactive basis pursuant to paragraph (c) of this section.

(c) *Elective application to prior years and transactions*—(1) *In general*. Except as limited in this paragraph (c), an election is available to apply §§ 1.597–1 through 1.597–6 to taxable years beginning prior to October 19, 2017. A consolidated group may elect to apply §§ 1.597–1 through 1.597–6 for all members of the group in all taxable years to which section 597, as amended by FIRREA, applies. The agent for the group, within the meaning of § 1.1502–77, makes the election provided by this paragraph (c) for the consolidated group. An entity that is not a member of a consolidated group may elect to apply §§ 1.597–1 through 1.597–6 to all taxable years to which section 597, as amended by FIRREA, applies for which it is not a member of a consolidated group. The election provided by this paragraph (c) is irrevocable.

(2) *Election unavailable if statute of limitations closed*. The election provided by this paragraph (c) cannot be made if the period for assessment and collection of federal income tax has expired under the rules of section 6501 for any taxable year in which §§ 1.597–1 through 1.597–6 would affect the determination of the electing entity's or group's income, deductions, gain, loss, basis, or other items.

(3) *Manner of making election*. An Institution or consolidated group makes the election provided by this paragraph (c) by including a written statement as a part of the taxpayer's or consolidated group's first annual federal income tax return filed on or after October 19, 2017. The statement must contain the following legend at the top of the page: "THIS IS AN ELECTION UNDER § 1.597–7(c)," and must contain the name, address, and taxpayer identification number of the taxpayer or agent for the group making the election. The statement must include a declaration that "TAXPAYER AGREES TO EXTEND THE STATUTE OF LIMITATIONS ON ASSESSMENT FOR THREE YEARS FROM THE DATE OF THE FILING OF THIS ELECTION UNDER § 1.597–7(c), IF THE LIMITATIONS PERIOD WOULD EXPIRE EARLIER WITHOUT SUCH EXTENSION, FOR ANY ITEMS AFFECTED IN ANY TAXABLE YEAR BY THE FILING OF THIS ELECTION," and a declaration that either "AMENDED RETURNS WILL BE FILED FOR ALL TAXABLE YEARS AFFECTED BY THE FILING OF THIS ELECTION WITHIN 180 DAYS OF MAKING THIS STATEMENT, UNLESS SUCH REQUIREMENT IS WAIVED IN WRITING BY THE INTERNAL REVENUE SERVICE" or "ALL RETURNS PREVIOUSLY FILED ARE CONSISTENT WITH THE PROVISIONS OF §§ 1.597–1 THROUGH 1.597–6." An election with respect to a consolidated group must be made by the agent for the group, not an Agency, and applies to all members of the group.

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

Approved: August 22, 2017.

David J. Kautter,
Assistant Secretary for Tax Policy.

(Filed by the Office of the Federal Register on October 18, 2017, 8:45 a.m., and published in the issue of the Federal Register for October 19, 2017, 82 F.R. 48618)

Part III. Administrative, Procedural, and Miscellaneous

Treatment Under Section 956(c) of Certain Receivables Following Hurricane Irma or Hurricane Maria

Notice 2017–68

SECTION 1. OVERVIEW

Under section 956(c)(1)(C), United States property generally includes obligations of a United States person. However, section 956(c)(2)(C) provides an exception from United States property for an obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons. *See also* Treas. Reg. § 1.956–2(b)(1)(v). In response to the damage caused by Hurricane Irma and Hurricane Maria, including in the Commonwealth of Puerto Rico and the U.S. Virgin Islands, certain controlled foreign corporations (within the meaning of section 957(a)) ("CFCs") may need to sell (or may have sold) substantial amounts of property located in affected areas to related United Stated persons and may do so (or have done so) in exchange for obligations of such persons.

SECTION 2. TREATMENT OF CERTAIN OBLIGATIONS UNDER SECTION 956(c)

The damage caused by Hurricane Irma and Hurricane Maria has imperiled property located in affected areas. To facilitate necessary safekeeping of certain such property, Notice 2017–55, 2017–42 IRB 324 (October 16, 2017), announced that a CFC would not be treated as holding United States property as a result of temporarily storing such property in the United States. Treas. Reg. § 1.956–2(b)(1)(v) indicates that whether an obligation of a United States person received in exchange for a sale of such property would be excluded from United States property under section 956(c)(2)(C) and Treas. Reg. § 1.956–2(b)(1)(v) is determined based on all of the facts and circumstances. However, to provide certainty and thus further facilitate the safekeeping and ongoing distribution of such property, this notice announces that, for purposes of section 956, if a CFC holds an obligation of a United States person, such obligation will be considered to satisfy the requirements of section 956(c)(2)(C) and Treas. Reg. § 1.956–2(b)(1)(v) to be excluded from United States property, if (1) the obligation was received in exchange for property that, if transported to the United States for temporary storage for safekeeping in anticipation of, or as a result of, Hurricane Irma or Hurricane Maria, would not cause a CFC to be treated as holding United States property pursuant to Notice 2017–55, and (2) the obligation ceases to be outstanding on or before March 31, 2018. An obligation of a United States person that does not meet the conditions in the preceding sentence may nevertheless be excludable from United States property under 956(c)(2)(C) and Treas. Reg. § 1.956–2(b)(1)(v) depending on all of the facts and circumstances.

SECTION 3. DRAFTING INFORMATION

The principal author of this notice is Rose E. Jenkins of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Jenkins at (202) 317-6934 (not a toll-free number).

Part IV. Items of General Interest

Streamlining the Section 754 Election Statement

REG–116256–17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulation relating to the requirements for making a valid election under section 754 of the Internal Revenue Code of 1986 (Code), as amended. The proposed regulation affects partnerships and their partners by removing a regulatory burden in making an election to adjust the basis of partnership property.

DATES: Electronic or written comments and requests for a public hearing must be received by November 13, 2017.

ADDRESSES: Send submissions to Internal Revenue Service, CC:PA:LPD:PR (REG–116256–17), Room 5203, 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–116256–17), Courier's Desk, 1111 Constitution Avenue, N.W., Washington, DC, 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–116256–17).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulation, Meghan Howard, at (202) 317-5055; concerning submissions of comments and requests for a public hearing, Regina Johnson, at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provision

This document contains proposed amendments to 26 CFR part 1 under section 754 of the Code. Specifically, these proposed amendments would remove the signature requirement contained in § 1.754–1(b) (current regulation) in order to eliminate a regulatory burden.

Section 754 provides that if a partnership files an election (section 754 election), in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

The current regulation provides the method to make the section 754 election and states in relevant part that a section 754 election shall be made in a written statement (section 754 election statement) filed with the partnership return for the taxable year during which the distribution or transfer occurs. For the section 754 election to be valid, the return must be filed not later than the time prescribed for filing the return for such taxable year, including extensions. The current regulation requires that the section 754 election statement (i) set forth the name and address of the partnership making the election, (ii) be signed by any one of the partners, and (iii) contain a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b). Accordingly, under the current regulation, a partnership that files an unsigned section 754 election statement with its partnership return (whether filed electronically or in paper) has not made a valid section 754 election.

Currently the only remedy for failing to make a proper section 754 election is to request "9100 relief" to make a late section 754 election either: (1) through automatic relief, if the error is discovered within 12 months pursuant to § 301.9100–2 of the Procedure and Administration Regulations; or (2) through a private letter ruling request pursuant to § 301.9100–3. The IRS has received numerous requests for 9100 relief with respect to unsigned section 754 election statements, especially where returns have been filed electronically. In order to ease the burden on partnerships seeking to make a valid section 754 election and to eliminate the need to seek 9100 relief, the Treasury Department and the IRS are proposing to amend the current regulation to remove the signature requirement in § 1.754–1(b)(1). The amended regulation will provide that a taxpayer making a section 754 election must file a statement with its return that: (i) sets forth the name and address of the partnership making the section 754 election, and (ii) contains a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b).

Proposed Applicability Date

The amendments to this regulation are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as a final regulation in the **Federal Register**. Taxpayers, however, may rely on this proposed regulation for periods preceding the proposed applicability date. Accordingly, partnerships that filed a timely partnership return containing an otherwise valid section 754 election statement, but for the missing signature of a partner on the statement, will not need to seek 9100 relief in such cases.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that this regulation, if adopted, would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that this regulation reduces the information currently required to be collected in making an election to adjust the basis of partnership property and thereby reduces burden on small entities. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before this proposed regulation is adopted as a final regulation, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Meghan M. Howard of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Proposed Amendment to the Regulations

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

PART 1–INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:
Authority: 26 U.S.C. 7805 * * *

Section 1.754–1 also issued under 26 U.S.C. 754.

Par 2. Section 1.754–1 is amended by revising the fourth sentence of paragraph (b)(1) and adding new paragraph (d) to read as follows:

§ 1.754–1 Time and manner of making election to adjust basis of partnership property.

* * * * *

(b) * * *

(1) * * * The statement required by this paragraph (b)(1) must set forth the name and address of the partnership making the election, and contain a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b). * * *

* * * * *

(d) Applicability date. The fourth sentence of paragraph (b)(1) of this section applies to taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**. Taxpayers may, however, rely on the fourth sentence of paragraph (b)(1) of this section for periods prior to the date these regulations are published as final regulations in the **Federal Register**.

Deputy Commissioner for Services and Enforcement.

Deletions From Cumulative List of Organizations, Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2017–17

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The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the IRS will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the IRS is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on November 13, 2017 and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Listening Post Productions, Inc.	1/1/2014	Philadelphia, PA
Cathedral City Police Management Association	12/3/2012	Cathedral City, CA
Supportive Parents of Tigard Students	2/1/2014	Tigard, OR
Cougar Football Community	1/1/2014	Henderson, NV
Hope in Action, Inc.	1/1/2014	Upper Sandusky, OH
American Friends of Nishmas Yisroel	1/1/2014	Brooklyn, NY
Heartland Housing Assistance	1/1/2013	St. Clair Shores, MI
Brutontown Neighborhood Association	1/1/2015	Greenville, SC

NAME OF ORGANIZATION	Effective Date of Revocation	LOCATION
Individual Development, Inc.	1/1/2013	Washington, DC
Jesus Mary and Joseph Ministries	1/1/2009	Tucson, AZ
Smiley Projects – Humanitarian Division, Inc.	1/1/2014	St. Petersburg, FL
Beit Yehuda, Inc.	1/1/2010	Brooklyn, NY
Dynamics Booster Club, Inc.	8/1/2009	Chandler, AZ
Heaven Sent Pitbull Rescue	1/1/2013	Colorado Springs, CO
Fishers of Men Community Resource Center	1/1/2013	Denver, CO
Just Us 4 LMNN, Inc.	1/1/2014	Glendale, CA

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

We Welcome Comments About the Internal Revenue Bulletin

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