INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2018–49
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These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

Administrative

REV. PROC. 2018–57, page 827.
This procedure provides the 2019 cost-of-living adjustments to certain items due to inflation as required by various provisions of the Code and Service guidance.

Employee Plans

NOTICE 2018–88, page 817.
This notice is intended to initiate and inform the process of developing guidance under sections 4980H and 105(h) that would address issues raised in the NPRM (REG-135724–17) that was issued on October 29, 2018 (83 FR 54420), and requests comments on potential approaches developed by the Treasury Department and the IRS, so employers understand how to structure HRAs integrated with individual health insurance coverage to avoid assessable payments (section 4980H) and potential loss of the exclusion from income for employer-provided health benefits (section 105(h)).

REG-107813–18, page 841.
These proposed regulations would amend the current regulations under § 401(k) relating to hardship distributions. Section 41113 of the Bipartisan Budget Act of 2018 (BBA) directs the Secretary to remove the requirement in the current regulations that an employee's plan contributions be suspended for at least 6 months following a hardship distribution from the plan. The proposed amendments would conform the regulations with section 41113 and would update the regulations to reflect BBA § 41114 and certain other statutory changes to 401(k) plans.

Estate Tax

REV. PROC. 2018–57, page 827.
This procedure provides the 2019 cost-of-living adjustments to certain items due to inflation as required by various provisions of the Code and Service guidance.

Excise Tax

NOTICE 2018–88, page 817.
This notice is intended to initiate and inform the process of developing guidance under sections 4980H and 105(h) that would address issues raised in the NPRM (REG-135724–17) that was issued on October 29, 2018 (83 FR 54420), and requests comments on potential approaches developed by the Treasury Department and the IRS, so employers understand how to structure HRAs integrated with individual health insurance coverage to avoid assessable payments (section 4980H) and potential loss of the exclusion from income for employer-provided health benefits (section 105(h)).

REG-107163–18, page 839.
These proposed regulations prescribe filing Form 4720 to report excise tax under sections 4960, 4966, 4967, and 4968 by the 15th day of the fifth month after the end of the taxable year of the person or governmental entity reporting the tax, and update the abatement rules under section 4963 for section 4966 and 4967 taxes, consistent with a statutory change.

REV. PROC. 2018–57, page 827.
This procedure provides the 2019 cost-of-living adjustments to certain items due to inflation as required by various provisions of the Code and Service guidance.

Finding Lists begin on page ii.

Exempt Organizations

REG-107163–18, page 839.

These proposed regulations prescribe filing Form 4720 to report excise tax under sections 4960, 4966, 4967, and 4968 by the 15th day of the fifth month after the end of the taxable year of the person or governmental entity reporting the tax, and update the abatement rules under section 4963 for section 4966 and 4967 taxes, consistent with a statutory change.

Gift Tax

REV. PROC. 2018–57, page 827.

This procedure provides the 2019 cost-of-living adjustments to certain items due to inflation as required by various provisions of the Code and Service guidance.

Income Tax

NOTICE 2018–88, page 817.

This notice is intended to initiate and inform the process of developing guidance under sections 4980H and 105(h) that would address issues raised in the NPRM (REG-135724–17) that was issued on October 29, 2018 (83 FR 54420), and requests comments on potential approaches developed by the Treasury Department and the IRS, so employers understand how to structure HRAs integrated with individual health insurance coverage to avoid assessable payments (section 4980H) and potential loss of the exclusion from income for employer-provided health benefits (section 105(h)).

NOTICE 2018–89, page 826.

This notice provides that the IRS will not assert that cash payments an employer makes to § 170(c) organizations (in exchange for vacation, sick or personal leave that its employees elect to forgo) constitute gross income or wages of the employees under certain circumstances.

NOTICE 2018–90, page 826.

The notice provides that transition relief in Rev. Rul. 2018-17 (Withholding and Reporting With Respect to Payments from IRAs to State Unclaimed Property Funds) is extended so that a person will not be treated as failing to comply with the withholding and reporting requirements described in Rev. Rul. 2018–17 with respect to payments made before the earlier of January 1, 2020, or the date it becomes reasonably practicable for the person to comply with those requirements.

REV. PROC. 2018–57, page 827.

This procedure provides the 2019 cost-of-living adjustments to certain items due to inflation as required by various provisions of the Code and Service guidance.

REV. RUL. 2018–30, page 815.

Federal rates; adjusted federal rates; adjusted federal long-term rate, the long-term exempt rate, and the blended annual rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for December 2018.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

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

Rev. Rul. 2018–30

This revenue ruling provides various prescribed rates for federal income tax purposes for December 2018 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2018–30 TABLE 1
Applicable Federal Rates (AFR) for December 2018
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	2.76%	2.74%	2.73%	2.72%
110% AFR	3.03%	3.01%	3.00%	2.99%
120% AFR	3.32%	3.29%	3.28%	3.27%
130% AFR	3.59%	3.56%	3.54%	3.53%
		Mid-term		
AFR	3.07%	3.05%	3.04%	3.03%
110% AFR	3.39%	3.36%	3.35%	3.34%
120% AFR	3.69%	3.66%	3.64%	3.63%
130% AFR	4.01%	3.97%	3.95%	3.94%
150% AFR	4.63%	4.58%	4.55%	4.54%
175% AFR	5.41%	5.34%	5.30%	5.28%
		Long-term		
AFR	3.31%	3.28%	3.27%	3.26%
110% AFR	3.64%	3.61%	3.59%	3.58%
120% AFR	3.98%	3.94%	3.92%	3.91%
130% AFR	4.31%	4.26%	4.24%	4.22%

REV. RUL. 2018–30 TABLE 2
Adjusted AFR for December 2018
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	2.09%	2.08%	2.07%	2.07%
Mid-term adjusted AFR	2.33%	2.32%	2.31%	2.31%
Long-term adjusted AFR	2.51%	2.49%	2.48%	2.48%

REV. RUL. 2018–30 TABLE 3	
Rates Under Section 382 for December 2018	
Adjusted federal long-term rate for the current month	2.51%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.51%

REV. RUL. 2018–30 TABLE 4	
Appropriate Percentages Under Section 42(b)(1) for December 2018	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.74%
Appropriate percentage for the 30% present value low-income housing credit	3.32%

REV. RUL. 2018–30 TABLE 5	
Rate Under Section 7520 for December 2018	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	3.6%

Section 42.—Low-Income Housing Credit

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

Section 280G.—Golden Parachute Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

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

The adjusted applicable federal long-term rate is set forth for the month of December 2018. See Rev. Rul. 2018–30 , page 815.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

Section 482.—Allocation of Income and Deductions Among Taxpayers

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

Section 483.—Interest on Certain Deferred Payments

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

Section 7520.—Valuation Tables

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of December 2018. See Rev. Rul. 2018–30, page 815.

Part III. Administrative, Procedural, and Miscellaneous

Section 4980H—Shared Responsibility for Employers Regarding Health Coverage

Section 105—Amounts Received Under Accident and Health Plans

Notice 2018–88

I. PURPOSE AND OVERVIEW

On October 23, 2018, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS), the Department of Labor (DOL), and the Department of Health and Human Services (HHS) (collectively, the Departments) issued proposed regulations[1] under section 2711 of the Public Health Service Act (PHS Act)[2] and the health nondiscrimination provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, and the Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care Education Reconciliation Act of 2010, Public Law 111–152, (collectively PPACA) (HIPAA/PPACA nondiscrimination provisions).[3] The proposed regulations are intended to expand the usability of health reimbursement arrangements and other account-based group health plans (collectively referred to in this notice as HRAs).[4] In general, the proposed regulations would expand the usability of HRAs by eliminating the current prohibition on integrating HRAs with individual health insurance coverage (as defined in Treas. Reg. § 54.9801–2)[5], thereby permitting employers to offer HRAs to employees enrolled in individual health insurance coverage. Therefore, under the proposed regulations employees would be permitted to use amounts in an HRA integrated with individual health insurance coverage (referred to in this notice as an individual coverage HRA) to pay expenses for medical care (as defined in section 213(d), including premiums for individual health insurance coverage), subject to certain requirements (the proposed integration regulations). In addition, the Treasury Department and the IRS issued proposed regulations under section 36B regarding premium tax credit (PTC) eligibility for individuals offered coverage under an individual coverage HRA (the proposed PTC regulations).[6]

The proposed integration regulations and the proposed PTC regulations raise issues under the Code, in particular concerning the application of section 4980H (the employer shared responsibility provisions) and section 105(h) (addressing discriminatory self-insured group health plans). This notice is intended to initiate and inform the process of developing guidance that addresses these issues, and requests comments on potential approaches developed by the Treasury Department and the IRS.

II. BACKGROUND

A. The Proposed Integration Regulations

On October 12, 2017, President Trump issued Executive Order 13813,[7] "Promoting Healthcare Choice and Competition Across the United States," stating, in part, that the "Administration will prioritize three areas for improvement in the near term: association health plans (AHPs), short-term, limited-duration insurance, and health reimbursement arrangements (HRAs)." With regard to HRAs, the Executive Order directs the Secretaries of the Treasury, Labor, and Health and Human Services to "consider proposing regulations or revising guidance, to the extent permitted by law and supported by sound policy, to increase the usability of HRAs, to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage." The Executive Order further provides that expanding "the flexibility and use of HRAs would provide many Americans, including employees who work at small businesses, with more options for financing their healthcare."

In response to the Executive Order, on October 23, 2018, the Departments issued the proposed integration regulations[8] under PHS Act section 2711 and the HIPAA/PPACA nondiscrimination provisions. The proposed integration regula-

[1]*See* 83 FR 54420 (Oct. 29, 2018).

[2]The proposed regulations under section 2711 of the PHS Act also apply for purposes of section 2713 of the PHS Act.

[3]*See* Internal Revenue Code (Code) sections 9802 and 9815, Employee Retirement Income Security Act (ERISA) sections 702 and 715 and PHS Act section 2705. Although section 9802 of the Code and section 702 of ERISA were not amended by PPACA, the requirements of section 2705 of the PHS Act were also incorporated by reference into section 9815 of the Code and section 715 of ERISA. PPACA section 1201 moved the PHS Act nondiscrimination provisions from section 2702 to section 2705, with some modifications.

[4]*See* Prop. Treas. Reg. § 54.9815–2711(d)(6)(i) for the proposed definition of an account-based group health plan. This term does not include qualified small employer health reimbursement arrangements (QSEHRAs) (as defined under section 9831(d)), medical savings accounts (*see* section 220), or health savings accounts (*see* section 223). In addition, for purposes of the proposed rules, the proposed definition would not include an employer arrangement that reimburses the cost of individual health insurance coverage in a cafeteria plan under section 125.

[5]Under § 54.9801–2 the term "individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term, limited-duration insurance. Individual health insurance coverage can include dependent coverage and therefore can be self-only coverage or other-than-self-only coverage.

[6]*See* 83 FR 54420. In addition to the proposed integration regulations and the proposed PTC regulations: (1) the Departments proposed regulations setting forth conditions under which certain HRAs would be recognized as limited excepted benefits; (2) HHS proposed regulations that would provide a special enrollment period in the individual market for individuals who gain access to and enroll in an individual coverage HRA or who are provided a QSEHRA; and (3) DOL proposed a clarification to provide plan sponsors with assurance that the individual health insurance coverage the premiums of which are reimbursed by an HRA or a QSEHRA does not become part of an ERISA plan, if certain conditions are met (and the Departments provided a related clarification of the definition of the term "group health insurance coverage"). All of these regulations (the proposed regulations), including the proposed integration regulations and the proposed PTC regulations, are set forth in one notice of proposed rulemaking, at 83 FR 54420.

[7]*See* 82 FR 48385 (Oct. 17, 2017).

[8]*See* 83 FR 54420.

tions, if finalized in substantially the same form as proposed,[9] would expand the potential use of HRAs by eliminating the prohibition under the current regulations on an HRA being integrated with individual health insurance coverage[10] so long as the individual coverage HRA complies with certain requirements.[11] As proposed, those requirements generally include the following terms and conditions:

- A plan sponsor that offers an individual coverage HRA to a class of employees[12] must offer the individual coverage HRA on the same terms (that is, both in the same amount and otherwise on the same terms and conditions) to all employees in the class (subject to certain exceptions discussed later in this notice);
- The participant, and any of his or her dependent(s) whose medical care expenses are reimbursable under the individual coverage HRA, must be enrolled in individual health insurance coverage that is subject to and complies with PHS Act sections 2711 and 2713, and the regulations thereunder, for each month that the individual(s) are covered by the individual coverage HRA;[13]
- A plan sponsor that offers any class of employees an individual coverage HRA may not also offer a traditional group health plan to the same class of employees;[14]
- A participant must be permitted to opt out of and waive future reimbursements from the individual coverage HRA at least annually, and, upon the participant's termination of employment, either the remaining amounts in the individual coverage HRA are forfeited or the participant is permitted to permanently opt out of and waive future reimbursements from the individual coverage HRA;
- The individual coverage HRA must implement reasonable procedures to ensure that individuals whose medical care expenses are reimbursable by the individual coverage HRA are, or will be, enrolled in individual health insurance coverage for the plan year;[15] and
- The individual coverage HRA must provide a written notice to each participant, in general, at least 90 days before the beginning of each plan year, that explains the consequence of accepting the individual coverage HRA for PTC eligibility and provides information that the plan sponsor has and that the participant will need to determine the effect of being offered the individual coverage HRA on PTC eligibility.[16]

The proposed integration regulations are proposed to apply for plan years beginning on or after January 1, 2020.

B. Section 36B and the Proposed PTC Regulations

Section 36B allows the PTC to certain taxpayers to help with the cost of individual health insurance coverage enrolled in through an Exchange.[17] Under section 36B(a) and (b)(1) and § 1.36B–3(d), a taxpayer's PTC is the sum of the premium assistance amounts for all coverage months during the taxable year for individuals in the taxpayer's family.

An individual is eligible for the PTC for a month if the individual meets various requirements for the month (a coverage month). Among other requirements, under section 36B(c)(2), a month is not a coverage month for an individual if either: (1) the individual is eligible for coverage under an eligible employer-sponsored plan and the coverage is affordable and provides minimum value (MV); or (2) the individual enrolls in an eligible employer-sponsored plan, even if the coverage is not affordable or does not provide MV.[18] See section III.B of this notice for a description of when an eligible employer-sponsored plan is affordable and provides MV.

An eligible employer-sponsored plan includes coverage under a self-insured group health plan[19] and is minimum essential coverage unless it consists solely of excepted benefits.[20] An HRA is a self-insured group health plan and, therefore, is an eligible employer-sponsored plan.[21] Accordingly, an individual is ineligible for the PTC for a month if the individual is covered by an HRA or is eligible for an HRA that is affordable and provides MV for the month.

The Treasury Department and the IRS previously issued guidance that provides that individuals covered by an HRA are

[9]This notice sets out potential approaches that could apply if the proposed regulations are finalized in substantially the same form as proposed; thus, the potential safe harbors and the examples illustrating the safe harbors described in this notice use the framework from the proposed regulations. The proposed regulations are subject to notice and comment, and the Departments will consider all comments in the development of any final regulations. To the extent the final regulations differ from the proposed regulations, the Treasury Department and the IRS will consider necessary modifications to the potential approaches outlined in this notice.

[10]*See* § 54.9815–2711(d)(4).

[11]*See* Prop. Treas. Reg. § 54.9802–4(c).

[12]*See* Prop. Treas. Reg. § 54.9802–4(d) for the definition of "class of employees" that applies under the proposed integration regulations and for purposes of this notice.

[13]For this purpose, the proposed integration regulations would consider all individual health insurance coverage (other than coverage that consists solely of excepted benefits) to be subject to and comply with PHS Act sections 2711 and 2713. *See* Prop. Treas. Reg. § 54.9802–4(c)(1).

[14]*See* Prop. Treas. Reg. § 54.9802–4(c)(2) for the definition of traditional group health plan.

[15]This requirement would also include an ongoing substantiation obligation. *See* Prop. Treas. Reg. § 54.9802–4(c)(5).

[16]*See* Prop. Treas. Reg. § 54.9802–4(c)(6) for the rule as to when the notice would be required to be furnished to a participant who is not eligible to participate either at the beginning of the plan year or at the time the notice is provided before the beginning of the plan year.

[17]Exchanges are entities established under sections 1311 or 1321 of PPACA through which qualified individuals and qualified employers can purchase health insurance coverage.

[18]*See* section 36B(c)(2)(C)(iii) and § 1.36B–2(c)(3)(vii)(A). *See also* §§ 1.36B–2(c)(3) and 1.36B–3(c).

[19]*See* § 1.5000A–2(c).

[20]*See* section 5000A(f)(3) and § 1.5000A–2(g).

[21]*See* Notice 2013-54, 2013-40 I.R.B. 287, Q&A 10.

ineligible for the PTC.[22] However, prior to the proposed PTC regulations, the Treasury Department and the IRS did not provide guidance as to the circumstances in which an HRA is considered to be affordable or to provide MV.[23]

On October 23, 2018, the Treasury Department and the IRS issued the proposed PTC regulations, which propose rules for the circumstances in which an individual coverage HRA would be considered to be affordable and to provide MV.[24] The proposed PTC regulations are discussed in more detail in section III.B. of this notice. The proposed PTC regulations are proposed to apply for individuals' taxable years beginning on or after January 1, 2020.

C. Section 4980H

The employer shared responsibility provisions under section 4980H only apply to an employer that is an applicable large employer (ALE). In general, an employer is an ALE for a year if it had an average of 50 or more full-time employees (including full-time equivalent employees) during the preceding calendar year.[25]

There are two circumstances in which an ALE may owe an employer shared responsibility payment to the IRS. For any month, an ALE may owe a payment under either section 4980H(a) or 4980H(b), or neither, but an ALE will not owe a payment under both section 4980H(a) and 4980H(b). An ALE will owe a payment under section 4980H(a) for a month if it fails to offer coverage under an eligible employer-sponsored plan to at least 95 percent of its full-time employees (and their dependents) and at least one full-time employee is allowed the PTC for purchasing individual health insurance coverage from an Exchange.[26] An ALE will owe a payment under section 4980H(b) for a month if it offers coverage under an eligible employer-sponsored plan to at least 95 percent of its full-time employees (and their dependents) but at least one full-time employee is allowed the PTC for purchasing individual health insurance coverage from an Exchange, which may occur because the ALE did not offer coverage to that particular full-time employee or because the coverage the employer offered was unaffordable or did not provide MV.[27]

Whether an employee may claim the PTC depends on the rules under section 36B, including the rules for whether an offer of coverage is affordable and provides MV.[28] However, the regulations under section 4980H provide safe harbors for determining whether an ALE is treated as making an offer of coverage that is affordable[29] under section 4980H.[30] These section 4980H affordability safe harbors are described in more detail in section III.B of this notice.

D. Section 105(h)

In general, section 105(b) excludes from gross income amounts received by an employee through employer-provided accident or health insurance if those amounts are paid to reimburse medical care expenses incurred by the employee (for the employee, the employee's spouse, or the employee's dependents, as well as children of the employee who are not dependents but have not attained age 27 by the end of the taxable year) for personal injuries and sickness.

Section 105(h) provides, however, that excess reimbursements (as defined in section 105(h)(7)) paid to a highly compensated individual (as defined in section 105(h)(5) and § 1.105–11(d)) (HCI)[31] under a self-insured medical reimbursement plan are includible in the gross income of the HCI if either (a) the plan discriminates in favor of HCIs as to eligibility to participate in the plan, or (b) the benefits provided under the plan discriminate in favor of HCIs.[32] Section 105(h)(4) provides that a self-insured medical reimbursement plan does not satisfy the nondiscriminatory benefits rule unless all benefits provided to HCIs are also provided to all other participants.

The regulations under section 105(h) provide that, in order to satisfy the nondiscriminatory benefits rule under section 105(h)(4), all benefits made available under a self-insured medical reimbursement plan to an HCI (and the HCI's dependents) must also be made available to all other participants (and their dependents).[33] In addition, the regulations provide that "any maximum limit attributable to employer contributions must be uniform for all participants and for all dependents of employees who are participants and may not be modified by reason of a

[22]*Id.*

[23]The Treasury Department and the IRS have provided guidance regarding when amounts newly made available under an HRA count toward the affordability or MV of another group health plan offered by the same employer. *See* §§ 1.36B–2(c)(3)(v)(A)(5) and 1.36B–6(c)(4). *See also* Notice 2015-87, 2015-52 I.R.B. 889, Q&A 7. The proposed PTC regulations and the guidance in this notice would not make substantive revisions to those rules.

[24]*See* 83 FR 54420.

[25]*See* section 4980H(c)(2) and § 54.4980H–2. *See also* § 54.4980H–1(a) for definitions of the terms used in this background section and in section III of this notice.

[26]*See* § 54.4980H–4. Also note that if an ALE offers coverage to all but five of its full-time employees (and their dependents), and five is greater than five percent of the employer's full-time employees, the employer will not owe a payment under section 4980H(a).

[27]*See* § 54.4980H–5.

[28]*See* section 4980H(c)(3). *See also* §§ 54.4980H–1(a)(28) and 54.4980H–5(e)(1).

[29]*See* § 54.4980H–5(e)(2).

[30]Whether or not an employee has been offered affordable coverage for purposes of eligibility for the PTC is determined under section 36B(c)(2)(C)(i) and regulations thereunder (as opposed to the section 4980H safe harbors).

[31]Generally, HCIs include the highest paid 25 percent of all employees (including the five highest paid officers, but not including employees excludible under § 1.105–11(c)(2)(iii) who are not participants in any self-insured medical reimbursement plan of the employer), without regard to the HCI's level of compensation.

[32]*See* sections 105(h)(1) and (2).

[33]*See* § 1.105–11(c)(3)(i).

participant's age or years of service."[34] The consequence of a plan failing to satisfy this nondiscriminatory benefits requirement is that any excess reimbursements paid under the plan to an HCI are includible in the gross income of the HCI.

III. APPLICATION OF SECTION 4980H TO AN ALE THAT OFFERS AN INDIVIDUAL COVERAGE HRA, POTENTIAL SAFE HARBORS AND REQUEST FOR COMMENTS

Although the proposed regulations do not include proposed regulations under section 4980H, as part of implementing the objectives of Executive Order 13813, the Treasury Department and the IRS considered how section 4980H would apply to an ALE that offers an individual coverage HRA. In order to provide clarity to stakeholders, section III.A. of this notice explains how section 4980H(a) would apply to an ALE that offers an individual coverage HRA. In addition, section III.B of this notice explains how section 4980H(b) (including the current affordability safe harbors) would apply to an ALE that offers an individual coverage HRA, describes potential additional affordability safe harbors, requests comments, and provides examples.

A. Application of Section 4980H(a) to an ALE that Offers an Individual Coverage HRA

As described earlier in this notice, an ALE will owe a payment under section 4980H(a) for a month if it fails to offer an eligible employer-sponsored plan to at least 95 percent of its full-time employees (and their dependents) and at least one full-time employee is allowed the PTC for the month for purchasing individual health insurance coverage from an Exchange. An HRA, including an individual coverage HRA, is an eligible employer-sponsored plan. Therefore, if an ALE were to offer an eligible employer-sponsored plan (including an individual coverage HRA) to at least 95 percent of its full-time employees (and their dependents), the ALE would not be liable for a payment under section 4980H(a) for the month, regardless of whether any full-time employee is allowed the PTC for purchasing individual health insurance coverage from an Exchange.

B. Application of Section 4980H(b) to an ALE That Offers an Individual Coverage HRA

An ALE that offers an eligible employer-sponsored plan to at least 95 percent of its full-time employees (and their dependents), and therefore is not liable for a payment under section 4980H(a), will be liable for a payment under section 4980H(b) if at least one full-time employee is allowed the PTC for purchasing individual health insurance coverage from an Exchange. As described earlier in this notice, an employee is not eligible for the PTC if the employee has an offer of coverage under an eligible employer-sponsored plan that is affordable and that provides MV, as set forth under section 36B and the regulations thereunder.

Whether an offer of an individual coverage HRA would be considered to be affordable and provide MV would be based on the application of the proposed PTC regulations that are described in the following parts of this section III.B.

1. Affordability

In general, under section 36B, an eligible employer-sponsored plan is affordable for an employee if the amount the employee must pay for self-only coverage whether by salary reduction or otherwise (the employee's required contribution) does not exceed a percentage (the required contribution percentage[35]) of the employee's household income.[36]

For traditional group health plan coverage, the employee's required contribution is the amount the employee must pay for self-only coverage under the lowest cost MV plan the employer offers to the employee. Because the proposed integration regulations would not permit an employer that offers an individual coverage HRA to offer the employee a traditional group health plan, the proposed PTC regulations propose a method for identifying the plan to be used to determine affordability (generally, the affordability plan) and explain how the amounts made available under the individual coverage HRA would factor into the determination of the employee's required contribution.

More specifically, under the proposed PTC regulations, an individual coverage HRA would be affordable for an employee for a month if the required HRA contribution (as defined in Prop. Treas. Reg. § 1.36B–2(c)(5)(ii)) does not exceed 1/12 of the product of the employee's household income and the required contribution percentage. The required HRA contribution under the proposed PTC regulations would be the excess of: (1) the monthly premium for the lowest cost silver plan for the employee for self-only coverage offered by the Exchange for the rating area, as defined in 45 CFR 147.102(b), in which the employee resides (the HRA affordability plan); over (2) in general, the self-only amount the employer makes available to the employee under the individual coverage HRA for the month.[37]

a. Potential Section 4980H Safe Harbors and Request for Comments

i. Potential Section 4980H Safe Harbor Regarding the Location Used to Identify the Affordability Plan and Request for Comments on Age-Based Issues

Under the proposed PTC regulations, the HRA affordability plan would be determined on an employee-by-employee basis. That is, the HRA affordability plan for each employee would be based on that particular employee's age and that particular employee's place of residence. However, the Treasury Department and the IRS are concerned that requiring ALEs to determine the HRA affordability plan for

[34] *Id.*

[35] *See* § 1.36B–2(c)(3)(v)(C).

[36] *See* section 36B(c)(2)(C) and § 1.36B–2(c)(3)(v)(A)(1) and (2). *See* § 1.36B–2(c)(3)(v)(A)(3) for a safe harbor that, in certain circumstances, allows an employee to claim the PTC even if the offer of coverage ultimately is affordable.

[37] *See* Prop. Treas. Reg. § 1.36B–2(c)(5) for more information on how this amount would be determined, including how the amount would be determined if the employer makes the same amount available for all employees regardless of the number of individuals covered.

each full-time employee to assess whether an offer of an individual coverage HRA is affordable for purposes of section 4980H could raise significant administrative issues for employers and may be prohibitively burdensome. This, in turn, could undermine the goal of expanding the use of HRAs set forth in Executive Order 13813.

The Treasury Department and the IRS anticipate issuing guidance that would provide a safe harbor under which, for purposes of section 4980H, an ALE may use as the affordability plan for an employee the lowest cost silver plan for the employee for self-only coverage offered by the Exchange in the rating area in which the employee's primary site of employment is located (the location safe harbor).[38] Under this safe harbor, an ALE would be allowed to determine the affordability plan for each employee based on the employee's worksite location, rather than the employee's place of residence, the latter of which the Treasury Department and the IRS understand is information that might change over time and can be difficult for employers to keep up to date. The Treasury Department and the IRS request comments on the location safe harbor and whether an alternative safe harbor would be preferable and, if so, why.

This notice does not set out an anticipated section 4980H safe harbor related to the fact that the cost of the affordability plan for an employee is based on that employee's age. However, the Treasury Department and the IRS request comments on any administrative burdens that may arise due to the need to separately determine the employee's required contribution for each individual employee based on the employee's age. In particular, the Treasury Department and the IRS anticipate that some employers may wish to contribute an identical amount to an individual coverage HRA for each employee (or for each employee in a class of employees), in which case, under the proposed PTC regulations, each employee's required contribution likely would vary based on age, because the cost of the affordability plan used to determine the employee's required contribution likely would vary based on age. On the other hand, some employers may wish to contribute to an individual coverage HRA for each employee (or each employee in a class of employees) an amount sufficient to allow each employee to contribute the same amount to purchase individual health insurance coverage, in which case, because coverage for older employees will likely cost more, the amount made available under the HRA would likely need to increase with age. In each case, the employer may wish to predict or eliminate the potential for liability under section 4980H by ensuring that, for purposes of section 4980H, the offer of the individual coverage HRA is treated as affordable and as providing MV. The Treasury Department and the IRS request comments on the administrative issues and burdens that would arise for employers in determining the employee's required contribution, for section 4980H purposes, due to each employee's age being relevant to this determination. To the extent these burdens exist, the Treasury Department and the IRS request suggestions as to any safe harbors or other alternatives that would ease the burdens, that are also consistent with the purposes and policies underlying section 4980H. For example, the Treasury Department and the IRS request comments on whether the ability to use age bands or other assumptions concerning employee ages for this purpose would lower an employer's administrative burden without unduly undercutting the application of section 4980H and/or being subject to abuse, and if so, the extent to which such a safe harbor allowing the use of age bands or other assumptions about an employee's age should be required to apply to each employee (or each employee in a class of employees) regardless of the employee's actual age.

ii. Potential Section 4980H Safe Harbor Regarding Use of Prior Year Cost for Calendar Year Individual Coverage HRAs

Under the proposed PTC regulations, an employee's required contribution for a month is determined based, in part, on the cost of the HRA affordability plan for that month. For example, an employee's required contribution for January 2020 for an individual coverage HRA would be based on the cost of the HRA affordability plan for January 2020. Exchange plan premium information for a calendar year generally is not available until shortly before the beginning of the open enrollment period for that calendar year, which begins on November 1 of the prior calendar year.[39] Accordingly, the cost of the HRA affordability plan (and the cost of the plan determined under the location safe harbor, if applicable) that will apply for a calendar year, which is necessary to determine whether an offer of an individual coverage HRA will be affordable, will not be available until mid-to-late fall of the prior calendar year.

While this time frame is sufficient for individuals and Exchanges to determine PTC eligibility for the upcoming calendar year, the Treasury Department and the IRS are aware that employers generally determine the health benefits they will offer for an upcoming plan year well in advance of the start of the plan year. Therefore, for a plan with a calendar year plan year, employers generally would determine the benefits to offer, including the amount to make available in an HRA for the year, well before mid-to-late fall of the prior calendar year. Further, under section 4980H, ALEs are intended to be able to decide whether to offer coverage sufficient to avoid an employer shared responsibility payment or to decline to do so. ALEs are only able to make that choice if they have timely access to the information necessary to do so. Accordingly, the Treasury Department and the IRS anticipate issuing guidance that would provide a safe harbor under which, for purposes of section 4980H, an ALE may determine the affordability of an offer of an individual coverage HRA that has a calendar year plan year based on the cost of the applicable affordability plan (that is, either the HRA affordability plan or the affordability plan determined under the location safe harbor, if applicable) for the prior calendar year (the calendar year safe harbor). The Treasury Department and the

[38]Note that one of the classes of employees that would apply for purposes of the proposed integration regulations is "employees whose primary site of employment is in the same rating area as defined in 45 CFR 147.102(b)." *See* Prop. Treas. Reg. § 54.9802–4(d)(1)(viii).

[39]*See* 45 CFR 155.410(e)(3).

IRS intend to work with HHS to ensure that this information is readily available for use under this rule.

The Treasury Department and the IRS considered whether to apply an adjustment to the cost of the prior year's affordability plan for purposes of this safe harbor, but do not anticipate proposing such an adjustment, to avoid complexity and due to uncertainty regarding defining an adjustment that would be appropriate in all circumstances and for all years. The Treasury Department and the IRS request comments on whether such an adjustment should be included in future guidance and, if so, how the adjustment should be calculated.

It is anticipated that the calendar year safe harbor could be used by an ALE in addition to the location safe harbor or could be applied to the HRA affordability plan. The Treasury Department and the IRS also note that in the event the cost of the affordability plan that applies under the calendar year safe harbor exceeds the cost of the HRA affordability plan that applies for purposes of section 36B (that is, the premium for the applicable plan decreases from one year to the next), and, as a result, the offer is considered affordable under section 36B but unaffordable under the calendar year safe harbor, the ALE will not owe a payment under section 4980H(b) with respect to the applicable full-time employee(s) because, regardless of the calendar year safe harbor, an ALE is only liable for a payment under section 4980H(b) with respect to a full-time employee who is allowed the PTC. The Treasury Department and the IRS also reiterate that this safe harbor would not apply for purposes of section 36B and therefore, an individual with an offer of an individual coverage HRA that is affordable under the section 36B rules is ineligible for the PTC, without regard to whether that offer would be considered unaffordable under the calendar year safe harbor.

The Treasury Department and the IRS request comments on whether a similar safe harbor would be needed for employers that offer individual coverage HRAs with non-calendar year plan years, and, if so, the range of plan year start dates to which such a safe harbor should apply.

iii. Potential Section 4980H Safe Harbor Regarding Cost of Affordability Plan for Individual Coverage HRA with a Plan Year That Spans Two Taxable Years

Consistent with the rules for traditional group health plan coverage,[40] the proposed PTC regulations require that affordability be determined separately for the portions of the plan year of an individual coverage HRA that span different taxable years of the employee.[41] Thus, under the proposed PTC regulations, assuming an employee's taxable year is the calendar year, if the plan year of an individual coverage HRA spans two calendar years, the cost of the applicable affordability plan could change during the HRA plan year. For example, assume an employee with a taxable year that is a calendar year is offered an individual coverage HRA with a plan year starting July 1, 2020 and ending June 30, 2021. For purposes of the PTC generally, the cost of the HRA affordability plan in 2020 will apply for July 1, 2020 through December 31, 2020 and the cost of the HRA affordability plan in 2021 will apply for January 1, 2021 through June 30, 2021.[42]

In this circumstance, it is unlikely that the cost of the affordability plan (either the HRA affordability plan or the plan determined under the location safe harbor, if applicable) for the months in the plan year that fall in the second calendar year will be available at the time an ALE must determine the amount that will be made available under the HRA for the plan year. As a result, the Treasury Department and the IRS are concerned that application of this aspect of the proposed PTC regulations to section 4980H would be inconsistent with the intent of section 4980H because ALEs would be unable to plan, and to know whether they were offering sufficient coverage, to avoid an employer shared responsibility payment. In addition, in the context of a traditional group health plan, the cost of coverage that applies for affordability purposes is determinable before and consistent throughout the plan year.

Accordingly, the Treasury Department and the IRS anticipate providing that, for purposes of section 4980H, an ALE that offers an individual coverage HRA may assume that the cost of the affordability plan for the first month of the plan year will be the cost of the affordability plan for all the months in the plan year (non-calendar year safe harbor).[43] It is anticipated that the non-calendar year safe harbor could be used by an ALE in addition to the location safe harbor. The Treasury Department and the IRS request comments on this approach, including whether additional guidance is needed.

iv. Consistency Requirement

ALEs would not be required to use any of the anticipated section 4980H safe harbors described in this notice. The Treasury Department and the IRS anticipate that some level of consistency will be required in the application of the anticipated safe harbors by an employer to its employees, and request comments on the scope of such a requirement. In particular, the Treasury Department and the IRS request comments on whether employers should be allowed to choose to apply the safe harbors to reasonable categories of employees, such as some or all of the categories identified in § 54.4980H–5(e)(2)(i), including whether the application of such a standard in this context would permit arrangements inconsistent with the purpose and policies underlying section 4980H and, if so, how that issue should be addressed.

v. Reporting under Section 6056

Under section 6056 and Form 1095–C, Employer-Provided Health Insurance Offer and Coverage, which ALEs file and furnish in order to satisfy the reporting

[40]*See* § 1.36B–2(c)(3)(v)(B).

[41]*See* Prop. Treas. Reg. § 1.36B–2(c)(5)(vi).

[42]However, consistent with the rules for traditional employer coverage in § 1.36B–2(c)(3)(v)(A)(*3*), if an Exchange determines that the HRA is not affordable for the employee for the plan year, that determination will apply for purposes of the PTC for the entire plan year. *See* Prop. Treas. Reg. § 1.36B–2(c)(3)(v)(A)(*3*) and (c)(5)(iv).

[43]The Treasury Department and the IRS anticipate that the primary circumstance in which an individual coverage HRA plan year would span two taxable years of an individual is when the individual has a calendar year taxable year and the HRA has a non-calendar year plan year. Therefore, the discussion in this notice focuses on that set of facts. However, the safe harbor is not limited to individual coverage HRAs with non-calendar year plan years because there could be other circumstances in which the HRA plan year covers two taxable years, for example, if an HRA has a calendar year plan year and an individual has a non-calendar year taxable year.

requirements under section 6056, ALEs must report each full-time employee's required contribution. Because of the issues previously described in this notice, the Treasury Department and the IRS anticipate providing multiple safe harbors that relate to the determination of the employee's required contribution for purposes of section 4980H. Also, as a result of the concerns about burden previously noted, the Treasury Department and the IRS anticipate that ALEs would not be required to report the employee's required contribution that is calculated under the proposed PTC regulations and would instead be required to report the employee's required contribution determined under the safe harbors set forth in this notice, if applicable. However, the Treasury Department and the IRS continue to consider the application of section 6056 to ALEs that offer individual coverage HRAs and anticipate providing additional guidance on these issues in the future.

b. Application of Current Section 4980H Affordability Safe Harbors to Individual Coverage HRAs

As described earlier in this notice, whether an offer of coverage under an eligible employer-sponsored plan is affordable is based on whether the employee's required contribution exceeds a certain percentage of the employee's household income. Because an ALE generally will not know an employee's household income, the current section 4980H regulations set forth three safe harbors under which an employer may compare the employee's required contribution to information that is readily available to the employer, rather than to actual household income. These three safe harbors are the Form W–2 wages safe harbor, the rate of pay safe harbor, and the federal poverty line safe harbor (referred to in this notice as the HHI safe harbors (but referred to in the regulations under section 4980H as the affordability safe harbors)).[44]

The HHI safe harbors are optional and apply only for purposes of section 4980H. An ALE may choose to use one or more of the HHI safe harbors for all of its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category. In addition, an ALE may use an HHI safe harbor only if the ALE offers its full-time employees and their dependents eligible employer-sponsored coverage that provides MV with respect to the self-only coverage offered to the employee.

The Treasury Department and the IRS anticipate providing guidance clarifying that an ALE that offers an individual coverage HRA would be permitted to use the HHI safe harbors, subject to the applicable requirements, for purposes of section 4980H. The HHI safe harbors assume that the employee's required contribution will be based on the lowest cost self-only coverage that provides MV that the employer offers to the employee. The Treasury Department and the IRS anticipate issuing guidance to clarify that in applying the HHI safe harbors to an offer of an individual coverage HRA, the plan that would be used to determine the employee's required contribution would be the HRA affordability plan or the affordability plan that would apply under the potential safe harbors outlined in this notice, as applicable.

In addition, because of the way that MV would be determined for an individual coverage HRA, which is described in the next section of this notice, the Treasury Department and the IRS anticipate issuing guidance to clarify that the condition in § 54.4980H–5(e)(2)(i) (that an employer may only use the HHI safe harbor if the self-only coverage offered to the employee provides MV) would be met for an employer that offers an individual coverage HRA that is affordable, taking into account the HHI safe harbor and any of the safe harbors outlined in this notice, if applicable.

2. Minimum Value

In general, under section 36B, an eligible employer-sponsored plan provides MV if the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of the costs and if the plan provides substantial coverage of inpatient hospitalization and physician services.[45] Because of differences between HRAs and traditional group health plans, the proposed PTC regulations provide guidance regarding the circumstances in which an individual coverage HRA would be considered to provide MV.

Under the proposed PTC regulations, an individual coverage HRA that is affordable would be treated as providing MV. The MV definition under the proposed PTC regulations would apply for purposes of determining whether an ALE that offers an individual coverage HRA has made an offer that provides MV for purposes of section 4980H. Therefore, an individual coverage HRA that is affordable (taking into account the HHI safe harbors and any of the safe harbors outlined in this notice, if applicable) would be treated as providing MV for purposes of section 4980H.

3. Examples

The following examples illustrate issues addressed in this section III. For purposes of these examples, assume that the required contribution percentage for 2020 is 9.86%.

Example 1 (Section 4980H(a)). *Facts:* For 2020, Employer X is an ALE. It offers all of its full-time employees and their dependents an individual coverage HRA for each month in 2020.

Conclusion: Employer X would not owe a payment under section 4980H(a) for any month in 2020 regardless of whether any full-time employee is allowed the premium tax credit.

Example 2 (Section 4980H(b) – Location Safe Harbor and Calendar Year Safe Harbor). *Facts:* For 2020, Employer Y is an ALE. It offers all of its full-time employees and their dependents an individual coverage HRA and makes $6,000 available in the HRA for the calendar year plan year. All of Employer Y's employees have a primary site of employment in rating area 1. Employer Y chooses to use the location safe harbor and the calendar year safe harbor. Employee A is 40 years old. The lowest cost silver plan for self-only coverage for a 40 year old offered by the Exchange for rating area 1 in the prior year (that is, 2019) was $7,000. Employer Y also chooses to use the Form W–2 HHI safe harbor for its full-time employees. Employee A's Form W–2 wages for 2020 are $15,000. Employee A's required contribution under section 4980H is $1,000 ($7,000 (cost of affordability plan determined under the location safe harbor and calendar year safe harbor) minus $6,000 (HRA amount)).

Conclusion: Employer Y has made an offer of affordable MV coverage to Employee A because the employee's required contribution ($1,000) is less than the amount equal to the required contribution percentage multiplied by Employee A's Form W–2 wages (9.86% of $15,000 = $1,479). Employer Y

[44] *See* § 54.4980H–5(e)(2).

[45] *See* section 36B(c)(2)(C)(ii); *see also* 80 FR 52678 (Sept. 1, 2015).

would not owe a payment under section 4980H(b) with respect to Employee A for any month in 2020. (Also, Employer Y would not owe a payment under section 4980H(a) for any month in 2020 because it offered an individual coverage HRA to all of its full-time employees and their dependents for each month in 2020.)

Example 3. (Non-Calendar Year Safe Harbor). *Facts***:** Employer Z is an ALE. Employer Z offers an individual coverage HRA to all of its full-time employees and their dependents for a plan year beginning on July 1, 2020 and ending on June 30, 2021. Employee B is 30 years old. For 2020, the cost of the affordability plan that applies for Employee B is $6,000. In late October 2020, it is announced that the cost of the affordability plan that will apply for Employee B in 2021 will be $7,000.

Conclusion: Employer Z may apply the cost of the affordability plan for the first month of the plan year (that is, $6,000/12 = $500) to determine the employee's required contribution for each month of the plan year, including the months in 2021 (January 2021 through June 2021) when the cost of the HRA affordability plan ($7,000) will apply under section 36B.

IV. APPLICATION OF SECTION 105(h) TO THE PROPOSED INTEGRATION REGULATIONS AND POTENTIAL SAFE HARBORS

HRAs generally are subject to the rules under section 105(h) and its related regulations because they are self-insured medical reimbursement plans.[46] However, HRAs that reimburse employees only for premiums paid to purchase health insurance policies, including individual health insurance policies, are not subject to the rules under section 105(h) and its related regulations.[47] The proposed guidance described in this section IV addresses certain individual coverage HRAs that (1) would be subject to the rules under section 105(h) and the regulations thereunder, and (2) are offered to one or more HCIs. For purposes of section IV of this notice, these individual coverage HRAs are referred to as covered HRAs.

As described earlier in this notice, the proposed integration regulations would expand the potential use of HRAs by permitting employers to offer individual coverage HRAs to their employees, as long as certain requirements are satisfied. Among other requirements, the proposed integration regulations would allow the plan sponsor to limit the offer of the individual coverage HRA to members of certain classes of employees and to vary the amounts, terms, and conditions of individual coverage HRAs between the different classes of employees.[48] However, the proposed integration regulations would require that within each class of employees offered an individual coverage HRA, the plan sponsor would be required to offer the individual coverage HRA on the same terms and conditions (including, generally, in the same amount) to all employees who are members of that class of employees.[49]

Varying the maximum HRA amounts for different classes of employees would conflict with the requirement in the section 105 regulations that any maximum limit attributable to employer contributions must be uniform for all participants (later in this section of the notice the Treasury Department and the IRS address the permissibility of varying the maximum HRA amounts within a class of employees). The IRS interprets this rule to require that, while certain employees in certain classes may be excluded from a plan for discrimination testing purposes, if an employee in an excludible class is provided benefits, the benefits must be provided on a nondiscriminatory basis to all covered employees. Under the proposed integration regulations, employees in different classes may receive different HRA amounts, with the result that the maximum limit attributable to employer contributions, while generally uniform for all participants in a class (subject to certain exceptions set forth in Prop. Treas. Reg. § 54.9802–4(c)(3), as described later in this notice), would not be uniform for all HRA participants.

In order to facilitate the offering of covered HRAs as anticipated by the proposed integration regulations, the Treasury Department and the IRS anticipate that future guidance will provide that a covered HRA would be treated as not failing to meet the requirement in § 1.105–11(c)(3)(i) that any maximum limit attributable to employer contributions must be uniform for all participants, if the covered HRA provides the same maximum dollar amount to all employees who are members of a particular class of employees, limited to the classes specified under the proposed integration regulations (which includes combinations of specified classes) and subject to the exceptions set forth in Prop. Treas. Reg. § 54.9802–4(c)(3), as described later in this notice.

Further, as previously noted, while the proposed integration regulations would allow different HRA amounts for employees in different classes, the employer generally would be required to offer the HRA on the same terms to all employees who are members of the same class of employees. However, the proposed integration regulations include two exceptions to this rule.

The exception to this same-terms requirement that is relevant to the application of section 105(h) to the proposed integration regulations is that the covered HRA would be permitted to provide that the maximum dollar amount made available to an employee for any plan year increases as the age of the employee increases.[50] Under this exception, the same maximum dollar amount attributable to the increase in an employee's age would

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[46] *See* § 1.105–11(b)(1); *see also* Notice 2002-45, 2002-02 C.B. 93.

[47] *See* § 1.105–11(b)(2). HRAs that provide for the reimbursement of premiums to purchase health insurance policies in addition to other medical care expenses are subject to the rules under section 105(h) and the regulations thereunder because the HRA amounts may be used to reimburse medical care expenses other than premiums for health insurance policies. In addition, although HRAs are self-insured group health plans and PHS Act section 2716, as incorporated into the Code by section 9815, applies nondiscrimination rules similar to section 105(h) to insured coverage, PHS Act section 2716 may apply to HRAs that only provide for the reimbursement of premiums for the same reasons these HRAs are not subject to the rules under section 105(h). However, under Notice 2011-1, 2011-2 I.R.B. 259, the Departments determined that compliance with PHS Act section 2716 should not be required (and thus, any sanctions for failure to comply do not apply) until after regulations or other administrative guidance of general applicability has been issued under PHS Act section 2716.

[48] *See* Prop. Treas. Reg. § 54.9802–4(c)(2).

[49] *See* Prop. Treas. Reg. § 54.9802–4(c)(3).

[50] *See* Prop. Treas. Reg. § 54.9802–4(c)(3)(i). The other exception to the same terms requirement is that the individual coverage HRA would be permitted to provide that the maximum dollar amount made available to an employee who is a member of a class of employees to reimburse medical care expenses for any plan year may increase as the number of the employee's dependent(s) who are covered by the individual coverage HRA increases. However, the same maximum dollar amount attributable to the increase in family size must be made available to all employees who are members of the same class of employees with the same number of dependent(s) covered by the individual coverage HRA. *See* Prop. Treas. Reg. § 54.9802–4(c)(3)(ii).

be required to be made available to all employees who are members of the same class of employees who are the same age.[51]

Without further guidance, under section 105(h) and the regulations thereunder, however, certain amounts paid to an HCI under a covered HRA that implements such an age-based increase would be includible in the income of the HCI because the covered HRA would fail to meet the requirement in § 1.105–11(c)(3)(i) that prohibits the maximum limit attributable to employer contributions to the covered HRA from being modified by reason of a participant's age. The Treasury Department and the IRS recognize that some employers may wish to offer a covered HRA to their employees without causing HCIs to include in their income certain payments from the arrangement, as a result of the arrangement failing to meet that requirement in the section 105(h) regulations.

To facilitate the offering of this type of covered HRA, the Treasury Department and the IRS anticipate that future guidance would provide that a covered HRA would be treated as not failing to meet the requirement in § 1.105–11(c)(3)(i) that any maximum limit attributable to employer contributions be uniform for all participants and that prohibits the maximum limit attributable to employer contributions from being modified by reason of a participant's age, if the covered HRA meets certain conditions. Specifically, the covered HRA would have to provide that the maximum dollar amount made available to employees who are members of a particular class of employees increases in accordance with the increases in the price of an individual health insurance coverage policy in the relevant individual insurance market based on the ages of the employees who are members of that class of employees, provided that the same maximum dollar amount attributable to the increase in age is made available to all employees who are members of that class of employees who are the same age. For purposes of this notice, the "relevant individual insurance market" is an individual insurance market in which at least one employee who is a member of the class of employees is able to purchase individual health insurance coverage.

The following examples illustrate the potential safe harbors described in section IV of this notice that the Treasury Department and the IRS anticipate would be included in future guidance under section 105(h).

Example 1 (Covered HRA does not Fail to Satisfy Section 105(h) – Age Variation). *Facts*: In 2020, Employer A offers all full-time employees, including HCIs, an individual coverage HRA that reimburses all medical care expenses (including premiums for individual health insurance coverage). The maximum dollar amount available under the individual coverage HRA increases in accordance with the increases in the price of an individual health insurance policy in County X, based on the ages of all full-time employees. At least one full-time employee of Employer A is a resident of County X. The same maximum dollar amount attributable to the increase in age is made available to all full-time employees who are the same age.

Conclusion: The individual coverage HRA would be a covered HRA that would be treated as not failing to meet the requirement in § 1.105–11(c)(3)(i) that prohibits the maximum limit attributable to employer contributions from being modified by reason of a participant's age.

Example 2 (Covered HRA does not Fail to Satisfy Section 105(h) – Class by Class Variation). *Facts*: In 2020, Employer B offers all full-time and part-time employees, including HCIs, an individual coverage HRA that reimburses all medical care expenses (including premiums for individual health insurance coverage). The maximum dollar amount available under the individual coverage HRA for each full-time employee is $5,000 per plan year. The maximum dollar amount available under the individual coverage HRA for each part-time employee is $2,000 per plan year.

Conclusion: The individual coverage HRA would be a covered HRA that would be treated as not failing to meet the requirement in § 1.105–11(c)(3)(i) that any maximum limit attributable to employer contributions must be uniform for all participants.

Example 3 (Individual Coverage HRA is not Subject to Section 105(h) – Only Reimburses Premiums). *Facts*: In 2020, Employer C offers all full-time employees, including HCIs, an individual coverage HRA that only reimburses premiums for individual health insurance coverage.

Conclusion: The individual coverage HRA would not be a covered HRA because it would only reimburse premiums for individual health insurance coverage. Therefore, it would not be subject to the nondiscrimination requirements in section 105(h) and the regulations thereunder.

Example 4 (Individual Coverage HRA is not Subject to Section 105(h) – No HCIs). *Facts*: In 2020, Employer D offers all employees included in a unit of employees covered by a particular collective bargaining agreement in which Employer D participates (collectively bargained employees) an individual coverage HRA that reimburses all medical care expenses (including premiums for individual health insurance coverage). No collectively bargained employee is an HCI.

Conclusion: The individual coverage HRA would not be a covered HRA because it would not be offered to any HCIs. Therefore, it would not be subject to the nondiscrimination requirements in section 105(h) and the regulations thereunder.

V. REQUEST FOR COMMENTS

The Treasury Department and the IRS invite comments on the issues addressed in this notice, and on any other tax issues related to individual coverage HRAs as described in the proposed integration and PTC regulations. Also see section III.B of this notice for specific comment solicitations regarding section 4980H. The Treasury Department and the IRS intend to issue further guidance on the issues addressed in this notice in conjunction with the issuance of any final integration and PTC regulations. The Treasury Department and the IRS further intend to propose regulations to codify, and seek additional comment on, the safe harbors, if any, provided in the additional guidance anticipated to be released in conjunction with any final integration and PTC regulations.

Public comments should be submitted no later than December 28, 2018. Comments should include a reference to Notice 2018–88. Comments may be submitted electronically via the Federal eRulemaking Portal at ***www.regulations.gov*** (type IRS-2018–0032 in the search field on the ***regulations.*****gov** homepage to find this notice and submit comments). Alternatively, submissions may be sent to CC:PA:LPD:PR (Notice 2018–88), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2018–88), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety.

[51] *See* Prop. Treas. Reg. § 54.9802–4(c)(3)(i).

VI. RELIANCE

This notice does not provide guidance under section 4980H or section 105(h) upon which taxpayers may rely.

VII. NO INFERENCE

No inference should be drawn from any provision of this notice concerning any provision of section 4980H or section 105(h) or any other section of the Code, or PPACA, except those provisions specifically addressed in this notice.

VIII. DRAFTING INFORMATION

The principal author of this notice is Ronald Rutherford-Triche of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), although other Treasury Department and IRS officials participated in its development. For further information regarding this notice, contact Christopher Dellana or Kevin Knopf at (202) 317-5500 (not a toll-free number).

Notice 2018–89

Treatment of Amounts Paid to Section 170(c) Organizations under Employer Leave-Based Donation Programs to Aid Victims of Hurricane Michael

This notice provides guidance on the treatment of leave-based donation programs to aid victims of Hurricane Michael.

TREATMENT OF LEAVE-BASED DONATION PAYMENTS

In response to the extreme need for charitable relief for victims of Hurricane Michael, employers may have adopted or may be considering adopting leave-based donation programs. Under leave-based donation programs, employees can elect to forgo vacation, sick, or personal leave in exchange for cash payments that the employer makes to charitable organizations described in § 170(c) of the Internal Revenue Code (§ 170(c) organizations). This notice provides guidance for income and employment tax purposes on the treatment of cash payments made by employers under leave-based donation programs for the relief of victims of Hurricane Michael.

The Internal Revenue Service (the Service) will not assert that cash payments an employer makes to § 170(c) organizations in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees if the payments are: (1) made to the § 170(c) organizations for the relief of victims of Hurricane Michael; and (2) paid to the § 170(c) organizations before January 1, 2020.

Similarly, the Service will not assert that the opportunity to make such an election results in constructive receipt of gross income or wages for employees. Electing employees may not claim a charitable contribution deduction under § 170 with respect to the value of forgone leave excluded from compensation and wages.

The Service will not assert that an employer is permitted to deduct these cash payments exclusively under the rules of § 170 rather than the rules of § 162. Cash payments to which this guidance applies need not be included in Box 1, 3 (if applicable), or 5 of the Form W–2.

DRAFTING INFORMATION

For further information, please contact Suzanne R. Sinno of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718 (not a toll-free number).

Notice 2018–90

Extension of Transition Relief Under Rev. Rul. 2018–17 on Withholding and Reporting With Respect to Payments From IRAs to State Unclaimed Property Funds

I. PURPOSE

The purpose of this notice is to extend the withholding and reporting transition relief described in Rev. Rul. 2018–17, 2018–25 IRB 753, that applies with respect to payments made before the earlier of January 1, 2019, or the date it becomes reasonably practicable to comply with those requirements. Relief is extended to payments made before the earlier of January 1, 2020, or the date it becomes reasonably practicable to comply with the withholding and reporting requirements described in Rev. Rul. 2018–17.

II. BACKGROUND

Rev. Rul. 2018–17 addressed federal income tax withholding under § 3405 of the Internal Revenue Code and reporting under § 408(i) relating to payment of an individual's interest in an IRA to a State unclaimed property fund, as required by State law. Under the facts presented in Rev. Rul. 2018–17, payments from an IRA to a State unclaimed property fund are subject to federal income tax withholding and reporting.

However, Rev. Rul. 2018–17 included the following transition relief: "A person will not be treated as failing to comply with the withholding and reporting requirements described in this revenue ruling with respect to payments made before the earlier of January 1, 2019, or the date it becomes reasonably practicable for the person to comply with those requirements."

The Department of the Treasury and the Internal Revenue Service have received a number of requests for an extension of the transition relief in Rev. Rul. 2018–17.

III. EXTENSION OF TRANSITION RELIEF UNDER REV. RUL. 2018–17

The transition relief in Rev. Rul. 2018–17 is extended so that a person will not be treated as failing to comply with the withholding and reporting requirements described in Rev. Rul. 2018–17 with respect to payments made before the earlier of January 1, 2020, or the date it becomes reasonably practicable for the person to comply with those requirements.

IV. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2018–17 is modified.

V. DRAFTING INFORMATION

The principal author of this notice is Cynthia Van Bogaert of the Office of Associate Chief Counsel (Tax Exempt and

Government Entities). Ms. Van Bogaert may be reached at (202) 317-4102 (not a toll-free number).

Rev. Proc. 2018–57

26 CFR 601.602: Tax forms and instructions. (Also Part I, §§ 1, 23, 24, 25A, 32, 36B, 42, 45R, 55, 59, 62, 63, 125, 132(f),135, 137, 146, 147, 148, 152, 179, 199A, 213, 220, 221, 448, 461, 512, 513, 642, 831, 877, 877A, 911, 1274A, 2010, 2032A, 2503, 2523, 4161, 4261, 6033, 6039F, 6323, 6334, 6601, 6651, 6652, 6695, 6698, 6699, 6721, 6722, 7345, 7430, 7702B, 9831; 1.148–5.)

Table of Contents

.27 Qualified Business Income	199A
.28 Eligible Long-Term Care Premiums	213(d)(10)
.29 Medical Savings Accounts	220
.30 Interest on Education Loans	221
.31 Limitation on Use of Cash Method of Accounting	448
.32 Threshold for Excess Business Loss	461(l)
.33 Treatment of Dues Paid to Agricultural or Horticultural Organizations	512(d)
.34 Insubstantial Benefit Limitations for Contributions Associated With Charitable Fund-Raising Campaigns	513(h)
.35 Special Rules for Credits and Deductions	642
.36 Tax on Insurance Companies Other than Life Insurance Companies	831
.37 Expatriation to Avoid Tax	877
.38 Tax Responsibilities of Expatriation	877A
.39 Foreign Earned Income Exclusion	911
.40 Debt Instruments Arising Out of Sales or Exchanges	1274A
.41 Unified Credit Against Estate Tax	2010
.42 Valuation of Qualified Real Property in Decedent's Gross Estate	2032A
.43 Annual Exclusion for Gifts	2503; 2523
.44 Tax on Arrow Shafts	4161
.45 Passenger Air Transportation Excise Tax	4261
.46 Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures	6033(e)(3)
.47 Notice of Large Gifts Received from Foreign Persons	6039F
.48 Persons Against Whom a Federal Tax Lien Is Not Valid	6323
.49 Property Exempt from Levy	6334(a)
.50 Exempt Amount of Wages, Salary, or Other Income	6334(d)
.51 Interest on a Certain Portion of the Estate Tax Payable in Installments	6601(j)
.52 Failure to File Tax Return	6651
.53 Failure to File Certain Information Returns, Registration Statements, etc.	6652
.54 Other Assessable Penalties With Respect to the 6695 Preparation of Tax Returns for Other Persons	
.55 Failure to File Partnership Return	6698
.56 Failure to File S Corporation Return	6699
.57 Failure to File Correct Information Returns	6721
.58 Failure to Furnish Correct Payee Statements	6722
.59 Revocation or Denial of Passport in Case of Certain Tax Delinquencies	7345
.60 Attorney Fee Awards	7430
.61 Periodic Payments Received Under Qualified Long-Term Care Insurance Contracts or Under Certain Life Insurance Contracts	7702B(d)

.62 Qualified Small Employer Health Reimbursement Arrangement	9831
SECTION 4. EFFECTIVE DATE	
SECTION 5. DRAFTING INFORMATION	

SECTION 1. PURPOSE

This revenue procedure sets forth inflation-adjusted items for 2019 for various provisions of the Internal Revenue Code of 1986 (Code) as amended as of November 15, 2018. To the extent amendments to the Code are enacted for 2019 after November 15, 2018, taxpayers should consult additional guidance to determine whether these adjustments remain applicable for 2019.

SECTION 2. CHANGES

.01 Section 11001(a)(5) of An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. 115–97, 131 Stat. 2504 (the Act), adds § 1(j)(5), which provides a temporary modification to the dollar amounts in § 1(h)(1)(B) and (C) for taxable years beginning after December 31, 2017, and before January 1, 2026. Section 1(j)(5)(B)(i) provides that under § 1(h)(1)(B)(i) the maximum zero rate amount is $77,200 for a joint return or surviving spouse, $51,700 for a head of household, half of the amount for a joint return for an individual, and $2,600 for an estate or trust. Section 1(j)(5)(B)(ii) provides that under § 1(h)(1)(C)(ii)(I) the maximum 15% rate amount is $479,000 for a joint return or surviving spouse (half of this amount for a married individual filing a separate return), $452,400 for a head of household, $425,800 in the case of any other individual (other than an estate or trust), and $12,700 for an estate or trust. These amounts are adjusted for inflation for taxable years beginning after December 31, 2018.

.02 Section 11022(a) of the Act adds § 24(h), which provides special rules for taxable years beginning after December 31, 2017, and before January 1, 2026. Section 24(h) provides that the value used in § 24(d)(1)(A) to determine the amount of child tax credit under § 24 that may be refundable is $1,400. The $1,400 amount is adjusted for inflation for taxable years beginning after December 31, 2018.

.03 Section 11041 of the Act amends § 151(d)(5) to provide a temporary set dollar amount of zero for the personal exemption deduction for taxable years beginning after December 31, 2017, and before January 1, 2026. However, Notice 2018–70, 2018–38 I.R.B. 441, notifies taxpayers that the Department of the Treasury and the Internal Revenue Service intend to issue proposed regulations to clarify that the reduction of the exemption amount to zero in § 151(d)(5)(A) for taxable years 2018 through 2025 does not apply to the gross income limitation in the definition of a qualifying relative in § 152(d)(1)(B). Thus, the § 151(d) exemption amount referenced in § 152(d)(1)(B) will be treated as $4,150, as adjusted for inflation, for taxable years in which the § 151(d)(5)(A) exemption amount is zero.

.04 Section 13101 of the Act amends § 179(b)(6) to provide that the $25,000 limitation of the cost of any sport utility vehicle under § 179(b)(5)(A) is adjusted for inflation for taxable years beginning after December 31, 2018.

.05 Section 11011 of the Act adds § 199A, which provides in part that if for a taxable year a taxpayer has income less than the sum of the threshold amount plus $50,000 ($100,000 for joint returns), then any specified service trade or business of the taxpayer shall not fail to be treated as a qualified trade or business due to § 199A(d)(1)(A). Section 199A(e)(2)(A) defines the threshold amount as $157,500. This $157,500 amount is adjusted for inflation for taxable years beginning after December 31, 2018.

.06 Section 13102 of the Act amends § 448(c) to provide that a corporation or partnership meets the gross receipts tests for any taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with the taxable year which precedes such taxable year does not exceed $25,000,000. The $25,000,000 amount is adjusted for inflation for taxable years beginning after December 31, 2018.

.07 Section 11012 of the Act adds § 461(l) to provide that a taxpayer's excess business loss for the taxable year is the excess, if any, of the taxpayer's aggregate deductions attributable to trades or businesses of the taxpayer (determined without regard to the limitation of the provision) over the sum of the taxpayer's aggregate gross income or gain attributable to such trades or businesses, plus $250,000 (twice this amount for joint returns). The $250,000 amount under § 461(l)(3)(A)(ii)(II) is adjusted for inflation for taxable years beginning after December 31, 2018.

.08 Section 11041(b) of the Act adds § 642(b)(2)(C)(iii), which provides that in years when the personal exemption amount under § 151(d) is zero, § 642(b)(2)(C)(i) shall be applied by substituting $4,150 for the exemption amount under § 151(d). The $4,150 amount is adjusted for inflation for taxable years beginning after December 31, 2018.

.09 Section 11002(d)(10) of the Act amended § 1274A(d)(2) to change the calculation of the inflation-adjusted amounts for qualified debt instruments and cash method debt instruments for taxable years beginning after December 31, 2017. In prior years, the inflation-adjusted amounts under § 1274A have been published in a separate revenue ruling. Because of the change to the calculation of the inflation-adjusted amounts under § 1274A, these amounts will be included in this revenue procedure and will no longer be published in a separate revenue ruling. For inflation-adjusted amounts prior to January 1, 2019, see Rev. Rul. 2018–11, 2018–18 I.R.B. 518.

.10 Section 11081 of the Act amends § 5000A to provide that the applicable dollar amount used to determine the penalty under § 5000A(c) for failure to maintain minimum essential coverage is $0 for taxable years beginning after December 31, 2018. Accordingly, this amount is not included in this revenue procedure.

.11 Section 11041(d) of the Act adds § 6334(d)(4), which provides that in taxable years in which the personal exemption amount under § 151(d) is zero, the term "exempt amount" means an amount equal to (i) the sum of the amount determined under § 6334(d)(4)(B) and the standard deduction, divided by (ii) 52. The amount determined under § 6334(d)(4)(B) is $4,150 multiplied by the number of the taxpayer's dependents for the taxable year in which the levy occurs. The $4,150 amount is adjusted for inflation for taxable years beginning after December 31, 2018.

SECTION 3. 2019 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2019, the tax rate tables under § 1 are as follows:

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

If Taxable Income Is:	*The Tax Is:*
Not over $19,400	10% of the taxable income
Over $19,400 but not over $78,950	$1,940 plus 12% of the excess over $19,400
Over $78,950 but not over $168,400	$9,086 plus 22% of the excess over $78,950
Over $168,400 but not over $321,450	$28,765 plus 24% of the excess over $168,400
Over $321,450 but not over $408,200	$65,497 plus 32% of the excess over $321,450
Over $408,200 but not over $612,350	$93,257 plus 35% of the excess over $408,200
Over $612,350	$164,709.50 plus 37% of the excess over $612,350

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

If Taxable Income Is:	*The Tax Is:*
Not over $13,850	10% of the taxable income
Over $13,850 but not over $52,850	$1,385 plus 12% of the excess over $13,850
Over $52,850 but not over $84,200	$6,065 plus 22% of the excess over $52,850
Over $84,200 but not over $160,700	$12,962 plus 24% of the excess over $84,200
Over $160,700 but not over $204,100	$31,322 plus 32% of the excess over $160,700
Over $204,100 but not over $510,300	$45,210 plus 35% of the excess over $204,100
Over $510,300	$152,380 plus 37% of the excess over $510,300

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

If Taxable Income Is:	*The Tax Is:*
Not over $9,700	10% of the taxable income
Over $9,700 but not over $39,475	$970 plus 12% of the excess over $9,700
Over $39,475 but not over $84,200	$4,543 plus 22% of the excess over $39,475
Over $84,200 but not over $160,725	$14,382.50 plus 24% of the excess over $84,200
Over $160,725 but not over $204,100	$32,748.50 plus 32% of the excess over $160,725
Over $204,100 but not over $510,300	$46,628.50 plus 35% of the excess over $204,100
Over $510,300	$153,798.50 plus 37% of the excess over $510,300

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

If Taxable Income Is:	*The Tax Is:*
Not over $9,700	10% of the taxable income
Over $9,700 but not over $39,475	$970 plus 12% of the excess over $9,700
Over $39,475 but not over $84,200	$4,543 plus 22% of the excess over $39,475
Over $84,200 but not over $160,725	$14,382.50 plus 24% of the excess over $84,200
Over $160,725 but not over $204,100	$32,748.50 plus 32% of the excess over $160,725

If Taxable Income Is:	*The Tax Is:*
Over $204,100 but not over $306,175	$46,628.50 plus 35% of the excess over $204,100
Over $306,175	$82,354.75 plus 37% of the excess over $306,175

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

If Taxable Income Is:	*The Tax Is:*
Not over $2,600	10% of the taxable income
Over $2,600 but not over $9,300	$260 plus 24% of the excess over $2,600
Over $9,300 but not over $12,750	$1,868 plus 35% of the excess over $9,300
Over $12,750	$3,075.50 plus 37% of the excess over $12,750

.02 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax")*. For taxable years beginning in 2019, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $1,100. This $1,100 amount is the same as the amount provided in § 63(c)(5)(A), as adjusted for inflation. The same $1,100 amount is used for purposes of § 1(g)(7) (that is, to determine whether a parent may elect to include a child's gross income in the parent's gross income and to calculate the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times that amount; thus, a child's gross income for 2019 must be more than $1,100 but less than $11,000.

.03 *Maximum Capital Gains Rate*. For taxable years beginning in 2019, the Maximum Zero Rate Amount under § 1(h)(1)(B)(i) is $78,750 in the case of a joint return or surviving spouse, $52,750 in the case of an individual who is a head of household (§ 2(b)), $39,375 in the case of any other individual (other than an estate or trust), and $2,650 in the case of an estate or trust. The Maximum 15-percent Rate Amount under § 1(h)(C)(ii)(l) is $488,850 in the case of a joint return or surviving spouse (1/2 such amount in the case of a married individual filing a separate return), $461,700 in the case of an individual who is the head of a household (§ 2(b)), $434,550 in the case of any other individual (other than an estate or trust), and $12,950 in the case of an estate or trust.

.04 *Adoption Credit*. For taxable years beginning in 2019, under § 23(a)(3) the credit allowed for an adoption of a child with special needs is $14,080. For taxable years beginning in 2019, under § 23(b)(1) the maximum credit allowed for other adoptions is the amount of qualified adoption expenses up to $14,080. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $211,160 and is completely phased out for taxpayers with modified adjusted gross income of $251,160 or more. (See section 3.20 for the adjusted items relating to adoption assistance programs.)

.05 *Child Tax Credit*. For taxable years beginning in 2019, the value used in § 24(d)(1)(A) to determine the amount of credit under § 24 that may be refundable is $1,400.

.06 *Lifetime Learning Credit*. For taxable years beginning in 2019, a taxpayer's modified adjusted gross income in excess of $58,000 ($116,000 for a joint return) is used to determine the reduction under § 25A(d)(2) in the amount of the Lifetime Learning Credit otherwise allowable under § 25A(a)(2).

.07 *Earned Income Credit*.

(1) *In general*. For taxable years beginning in 2019, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) at or above which no credit is allowed. The threshold phaseout amounts and the completed phaseout amounts shown in the table below for married taxpayers filing a joint return include the increase provided in § 32(b)(3)(B)(i), as adjusted for inflation for taxable years beginning in 2019.

	Number of Qualifying Children			
Item	*One*	*Two*	*Three or More*	*None*
Earned Income Amount	$10,370	$14,570	$14,570	$6,920
Maximum Amount of Credit	$3,526	$5,828	$6,557	$529
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$19,030	$19,030	$19,030	$8,650

Item	*Number of Qualifying Children* *One*	*Two*	*Three or More*	*None*
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$41,094	$46,703	$50,162	$15,570
Threshold Phaseout Amount (Married Filing Jointly)	$24,820	$24,820	$24,820	$14,450
Completed Phaseout Amount (Married Filing Jointly)	$46,884	$52,493	$55,952	$21,370

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

(2) *Excessive Investment Income*. For taxable years beginning in 2019, the earned income tax credit is not allowed under § 32(i)(1) if the aggregate amount of certain investment income exceeds $3,600.

.08 *Refundable Credit for Coverage Under a Qualified Health Plan*. For taxable years beginning in 2019, the limitation on tax imposed under § 36B(f)(2)(B) for excess advance credit payments is determined using the following table:

If the household income (expressed as a percent of poverty line) is:	The limitation amount for unmarried individuals (other than surviving spouses and heads of household) is:	The limitation amount for (expressed as a percent all other taxpayers is: of poverty line) is:
Less than 200%	$300	$600
At least 200% but less than 300%	$800	$1,600
At least 300% but less than 400%	$1,325	$2,650

.09 *Rehabilitation Expenditures Treated as Separate New Building*. For calendar year 2019, the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) is $7,000.

.10 *Low-Income Housing Credit*. For calendar year 2019, the amount used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (1) $2.75625 multiplied by the State population, or (2) $3,166,875.

.11 *Employee Health Insurance Expense of Small Employers*. For taxable years beginning in 2019, the dollar amount in effect under § 45R(d)(3)(B) is $27,100. This amount is used under § 45R(c) for limiting the small employer health insurance credit and under § 45R(d)(1)(B) for determining who is an eligible small employer for purposes of the credit.

.12 *Exemption Amounts for Alternative Minimum Tax*. For taxable years beginning in 2019, the exemption amounts under § 55(d)(1) are:

Joint Returns or Surviving Spouses	$111,700
Unmarried Individuals (other than Surviving Spouses)	$71,700
Married Individuals Filing Separate Returns	$55,850
Estates and Trusts	$25,000

For taxable years beginning in 2019, under § 55(b)(1), the excess taxable income above which the 28 percent tax rate applies is:

Married Individuals Filing Separate Returns	$97,400
Joint Returns, Unmarried Individuals (other than surviving spouses), and Estates and Trusts	$194,800

For taxable years beginning in 2019, the amounts used under § 55(d)(3) to determine the phaseout of the exemption amounts are:

Joint Returns or Surviving Spouses	$1,020,600
Unmarried Individuals (other than Surviving Spouses)	$510,300
Married Individuals Filing Separate Returns	$510,300

Joint Returns or Surviving Spouses	$1,020,600
Estates and Trusts	$83,500

.13 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2019, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (1) the child's earned income for the taxable year, plus (2) $7,750.

.14 *Certain Expenses of Elementary and Secondary School Teachers*. For taxable years beginning in 2019, under § 62(a)(2)(D) the amount of the deduction allowed under § 162 that consists of expenses paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom is $250.

.15 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees Under Accountable Plans*. For calendar year 2019, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to $18 per hour for rig-related expenses that are deemed substantiated under an accountable plan if paid in accordance with Rev. Proc. 2002–41, 2002–1 C.B. 1098. If the employer provides fuel or otherwise reimburses fuel expenses, up to $11 per hour is deemed substantiated if paid under Rev. Proc. 2002–41.

.16 *Standard Deduction*.

(1) *In general*. For taxable years beginning in 2019, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status	*Standard Deduction*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(j)(2)(A))	$24,400
Heads of Households (§ 1(j)(2)(B))	$18,350
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(j)(2)(C))	$12,200
Married Individuals Filing Separate Returns (§ 1(j)(2)(D))	$12,200

(2) *Dependent*. For taxable years beginning in 2019, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of (1) $1,100, or (2) the sum of $350 and the individual's earned income.

(3) *Aged or blind*. For taxable years beginning in 2019, the additional standard deduction amount under § 63(f) for the aged or the blind is $1,300. The additional standard deduction amount is increased to $1,650 if the individual is also unmarried and not a surviving spouse.

.17 *Cafeteria Plans*. For taxable years beginning in 2019, the dollar limitation under § 125(i) on voluntary employee salary reductions for contributions to health flexible spending arrangements is $2,700.

.18 *Qualified Transportation Fringe Benefit*. For taxable years beginning in 2019, the monthly limitation under § 132(f)(2)(A) regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass is $265. The monthly limitation under § 132(f)(2)(B) regarding the fringe benefit exclusion amount for qualified parking is $265.

.19 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses*. For taxable years beginning in 2019, the exclusion under § 135, regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses, begins to phase out for modified adjusted gross income above $121,600 for joint returns and $81,100 for all other returns. The exclusion is completely phased out for modified adjusted gross income of $151,600 or more for joint returns and $96,100 or more for all other returns.

.20 *Adoption Assistance Programs*. For taxable years beginning in 2019, under § 137(a)(2), the amount that can be excluded from an employee's gross income for the adoption of a child with special needs is $14,080. For taxable years beginning in 2019, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by an employer for qualified adoption expenses furnished pursuant to an adoption assistance program for other adoptions by the employee is $14,080. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $211,160 and is completely phased out for taxpayers with modified adjusted gross income of $251,160 or more. (See section 3.04 of this revenue procedure for the adjusted items relating to the adoption credit.)

.21 *Private Activity Bonds Volume Cap*. For calendar year 2019, the amounts used under § 146(d) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (1) $105 multiplied by the State population, or (2) $316,745,000.

.22 *Loan Limits on Agricultural Bonds*. For calendar year 2019, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $543,800.

.23 *General Arbitrage Rebate Rules*. For bond years ending in 2019, the amount of the computation credit determined under the permission to rely on § 1.148–3(d)(4) of the proposed Income Tax Regulations is $1,730.

.24 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow*. For calendar year 2019, under § 1.148–

5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $41,000, and (B) 0.2 percent of the computational base (as defined in § 1.148–5(e)(2)(iii)(B)(*2*)) or, if more, $4,000; and (2) for any issue, the issuer does not treat more than $115,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.25 *Gross Income Limitation for a Qualifying Relative*. For taxable years beginning in 2019, the exemption amount referenced in § 152(d)(1)(B) is $4,200.

.26 *Election to Expense Certain Depreciable Assets*. For taxable years beginning in 2019, under § 179(b)(1), the aggregate cost of any § 179 property that a taxpayer elects to treat as an expense cannot exceed $1,020,000 and under § 179(b)(5)(A), the cost of any sport utility vehicle that may be taken into account under § 179 cannot exceed $25,500. Under § 179(b)(2), the $2,550,000 limitation is reduced (but not below zero) by the amount the cost of § 179 property placed in service during the 2019 taxable year exceeds $2,550,000.

.27 *Qualified Business Income*. For taxable years beginning in 2019, the threshold amount under § 199A(e)(2) is $321,400 for married filing joint returns, $160,725 for married filing separate returns, and $160,700 for single and head of household returns.

.28 *Eligible Long-Term Care Premiums*. For taxable years beginning in 2019, the limitations under § 213(d)(10), regarding eligible long-term care premiums includible in the term "medical care," are as follows:

Attained Age Before the Close of the Taxable Year	*Limitation on Premiums*
40 or less	$420
More than 40 but not more than 50	$790
More than 50 but not more than 60	$1,580
More than 60 but not more than 70	$4,220
More than 70	$5,270

.29 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2019, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $2,350 and not more than $3,500, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $4,650.

(2) *Family coverage*. For taxable years beginning in 2019, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $4,650 and not more than $7,000, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits do not exceed $8,550.

.30 *Interest on Education Loans*. For taxable years beginning in 2019, the $2,500 maximum deduction for interest paid on qualified education loans under § 221 begins to phase out under § 221(b)(2)(B) for taxpayers with modified adjusted gross income in excess of $70,000 ($140,000 for joint returns), and is completely phased out for taxpayers with modified adjusted gross income of $85,000 or more ($170,000 or more for joint returns).

.31 *Limitation on Use of Cash Method of Accounting*. For taxable years beginning in 2019, a corporation or partnership meets the gross receipts test of § 448(c) for any taxable year if the average annual gross receipts of such entity for the 3-taxable-year period ending with the taxable year which precedes such taxable year does not exceed $26,000,000.

.32 *Threshold for Excess Business Loss*. For taxable years beginning in 2019, in determining a taxpayer's excess business loss, the amount under § 461(l)(3)(A)(ii)(II) is $255,000 ($510,000 for joint returns).

.33 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2019, the limitation under § 512(d)(1), regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization, is $169.

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

(1) *Low cost article*. For taxable years beginning in 2019, for purposes of defining the term "unrelated trade or business" for certain exempt organizations under § 513(h)(2), "low cost articles" are articles costing $11.10 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2019, under § 170, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471 (as amplified by Rev. Proc. 92–49, 1992–1 C.B. 987, and modified by Rev. Proc. 92–102, 1992–2 C.B. 579), for the value of insubstantial benefits that may be received by a donor in return for a contribution, without causing the contribution to fail to be fully deductible, are $11.10, $55.50, and $111, respectively.

.35 *Special Rules for Credits and Deductions*. For taxable years beginning in 2019, the amount of the deduction under § 642(b)(2)(C)(i) is $4,200.

.36 *Tax on Insurance Companies Other than Life Insurance Companies.* For taxable years beginning in 2019, under § 831(b)(2)(A)(i) the amount of the limit on net written premiums or direct written premiums (whichever is greater) is $2,300,000 to elect the alternative tax for certain small companies under § 831(b)(1) to be taxed only on taxable investment income.

.37 *Expatriation to Avoid Tax*. For calendar year 2019, under § 877A(g)(1)(A), unless an exception under § 877A(g)(1)(B) applies, an individual is a covered expatriate if the individual's "average annual net income tax" under § 877(a)(2)(A) for the five taxable years ending before the expatriation date is more than $168,000.

.38 *Tax Responsibilities of Expatriation*. For taxable years beginning in 2019, the amount that would be includible in the gross income of a covered expatriate by reason of § 877A(a)(1) is reduced (but not below zero) by $725,000.

.39 *Foreign Earned Income Exclusion*. For taxable years beginning in 2019, the foreign earned income exclusion amount under § 911(b)(2)(D)(i) is $105,900.

.40 *Debt Instruments Arising Out of Sales or Exchanges*. For calendar year 2019, a qualified debt instrument under § 1274A(b) has stated principal that does not exceed $5,944,600, and a cash method debt instrument under § 1274A(c)(2) has stated principal that does not exceed $4,246,200.

.41 *Unified Credit Against Estate Tax*. For an estate of any decedent dying in calendar year 2019, the basic exclusion amount is $11,400,000 for determining the amount of the unified credit against estate tax under § 2010.

.42 *Valuation of Qualified Real Property in Decedent's Gross Estate*. For an estate of a decedent dying in calendar year 2019, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A for purposes of the estate tax cannot exceed $1,160,000.

.43 *Annual Exclusion for Gifts*.

(1) For calendar year 2019, the first $15,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2019, the first $155,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.44 *Tax on Arrow Shafts*. For calendar year 2019, the tax imposed under § 4161(b)(2)(A) on the first sale by the manufacturer, producer, or importer of any shaft of a type used in the manufacture of certain arrows is $0.52 per shaft.

.45 *Passenger Air Transportation Excise Tax*. For calendar year 2019, the tax under § 4261(b)(1) on the amount paid for each domestic segment of taxable air transportation is $4.20. For calendar year 2019, the tax under § 4261(c)(1) on any amount paid (whether within or without the United States) for any international air transportation, if the transportation begins or ends in the United States, generally is $18.60. Under § 4261(c)(3), however, a lower amount applies under § 4261(c)(1) to a domestic segment beginning or ending in Alaska or Hawaii, and the tax applies only to departures. For calendar year 2019, the rate is $9.30.

.46 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2019, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98–19, 1998–1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is $117 or less.

.47 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2019, § 6039F authorizes the Treasury Department and the Internal Revenue Service to require recipients of gifts from certain foreign persons to report these gifts if the aggregate value of gifts received in the taxable year exceeds $16,388.

.48 *Persons Against Whom a Federal Tax Lien Is Not Valid*. For calendar year 2019, a federal tax lien is not valid against (1) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than $1,590, or (2) a mechanic's lienor under § 6323(b)(7) who repaired or improved certain residential property if the contract price with the owner is not more than $7,970.

.49 *Property Exempt from Levy*. For calendar year 2019, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) cannot exceed $9,540. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) cannot exceed $4,770.

.50 *Exempt Amount of Wages, Salary, or Other Income*. For taxable years beginning in 2019, the dollar amount used to calculate the amount determined under § 6334(d)(4)(B) is $4,200.

.51 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2019, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is $1,550,000.

.52 *Failure to File Tax Return*. In the case of any return required to be filed in 2020, the amount of the addition to tax under § 6651(a) for failure to file a tax return within 60 days of the due date of such return (determined with regard to any extensions of time for filing) shall not be less than the lesser of $215 or 100 percent of the amount required to be shown as tax on such returns.

.53 *Failure to File Certain Information Returns, Registration Statements, etc*. For returns required to be filed in 2020, the penalty amounts under § 6652(c) are:

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

Scenario	Daily Penalty	Maximum Penalty
Organization (§ 6652(c)(1)(A))	$20	Lessor of $10,500 or 5% of gross receipts of the organization for the year.
Organization with gross receipts exceeding $1,067,000 (§ 6652(c)(1)(A))	$105	$53,000
Managers (§ 6652(c)(1)(B))	$10	$5,000
Public inspection of annual returns and reports (§ 6652(c)(1)(C))	$20	$10,500

Scenario	Daily Penalty	Maximum Penalty
Public inspection of applications for exemption and notice of status (§ 6652(c)(1)(D))	$20	No Limits

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

Scenario	Daily Penalty	Maximum Penalty
Organization or trust (§ 6652(c)(2)(A))	$10	$5,000
Managers (§ 6652(c)(2)(B))	$10	$5,000
Split-Interest Trust (§ 6652(c)(2)(C)(ii))	$20	$10,500
Any trust with gross income exceeding $266,500 (§ 6652(c)(2)(C)(ii))	$105	$53,000

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

Scenario	Daily Penalty	Maximum Penalty
Tax–exempt entity (§ 6652(c)(3)(A))	$105	$53,000
Failure to comply with written demand (§ 6652(c)(3)(B)(ii))	$105	$10,500

.54 *Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons*. In the case of any failure relating to a return or claim for refund filed in 2020, the penalty amounts under § 6695 are:

Scenario	Per Return or Claim for Refund	Maximum Penalty
Failure to furnish copy to taxpayer (§ 6695(a))	$50	$26,500
Failure to sign return (§ 6695(b))	$50	$26,500
Failure to furnish identifying number (§ 6695(c))	$50	$26,500
Failure to retain copy or list (§ 6695(d))	$50	$26,500
Failure to file correct information returns (§ 6695(e))	$50 per return and item in return	$26,500
Negotiation of check (§ 6695(f))	$530 per check	No limit
Failure to be diligent in determining eligibility for head of household filing status, child tax credit, American opportunity tax credit, and earned income credit (§ 6695(g))	$530 per failure	No limit

.55 *Failure to File Partnership Return*. In the case of any return required to be filed in 2020, the dollar amount used to determine the amount of the penalty under § 6698(b)(1) is $205.

.56 *Failure to File S Corporation Return*. In the case of any return required to be filed in 2020, the dollar amount used to determine the amount of the penalty under § 6699(b)(1) is $205.

.57 *Failure to File Correct Information Returns*. In the case of any failure relating to a return required to be filed in 2020, the penalty amounts under § 6721 are:

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

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(a)(1))	$270	$3,339,000
Corrected on or before 30 days after required filing date (§ 6721(b)(1))	$50	$556,500
Corrected after 30th day but on or before August 1 (§ 6721(b)(2))	$110	$1,669,500

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

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6721(d)(1)(A))	$270	$1,113,000
Corrected on or before 30 days after required filing date (§ 6721(d)(1)(B))	$50	$194,500
Corrected after 30th day but on or before August 1 (§ 6721(d)(1)(C))	$110	$556,500

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

Scenario	Penalty Per Return	Calendar Year Maximum
Return other than a return required to be filed under §§ 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, or 6050L (§ 6721(e)(2)(A))	Greater of (i) $550, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under §§ 6045(a), 6050K, or 6050L (§ 6721(e)(2)(B))	Greater of (i) $550, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit
Return required to be filed under § 6050I(a) (§ 6721(e)(2)(C))	Greater of (i) $27,820, or (ii) amount of cash received up to $111,000	No limit
Return required to be filed under § 6050V (§ 6721(e)(2)(D))	Greater of (i) $550, or (ii) 10% of the value of the benefit of any contract with respect to which information is required to be included on the return	No limit

.58 *Failure to Furnish Correct Payee Statements*. In the case of any failure relating to a statement required to be furnished in 2020, the penalty amounts under § 6722 are:

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

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6722(a)(1))	$270	$3,339,000
Corrected on or before 30 days after required filing date (§ 6722(b)(1))	$50	$556,500
Corrected after 30th day but on or before August 1 (§ 6722(b)(2))	$110	$1,669,500

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

Scenario	Penalty Per Return	Calendar Year Maximum
General Rule (§ 6722(d)(1)(A))	$270	$1,113,000
Corrected on or before 30 days after required filing date (§ 6722(d)(1)(B))	$50	$194,500
Corrected after 30th day but on or before August 1 (§ 6722(d)(1)(C))	$110	$556,500

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

Scenario	Penalty Per Return	Calendar Year Maximum
Statement other than a statement required under §§ 6045(b), 6041A(e) (in respect of a return required under § 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6050L(c) (§ 6722(e)(2)(A))	Greater of (i) $550, or (ii) 10% of aggregate amount of items required to be reported correctly	No limit
Payee statement required under §§ 6045(b), 6050K(b),or 6050L(c) (§ 6722(e)(2)(B))	Greater of (i) $550, or (ii) 5% of aggregate amount of items required to be reported correctly	No limit

.59 *Revocation or Denial of Passport in Case of Certain Tax Delinquencies*. For calendar year 2019, the amount of a serious delinquent tax debt under § 7345 is $52,000.

.60 *Attorney Fee Awards*. For fees incurred in calendar year 2019, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is $200 per hour.

.61 *Periodic Payments Received Under Qualified Long-Term Care Insurance Contracts or Under Certain Life Insurance Contracts*. For calendar year 2019, the stated dollar amount of the per diem limitation under § 7702B(d)(4), regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual, is $370.

.62 *Qualified Small Employer Health Reimbursement Arrangement*. For taxable years beginning in 2019, to qualify as a qualified small employer health reimbursement arrangement under § 9831(d), the arrangement must provide that the total amount of payments and reimbursements for any year cannot exceed $5,150 ($10,450 for family coverage).

SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2019.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2019 for purposes of sections 3.09 (rehabilitation expenditures treated as separate new building), 3.10 (low-income housing credit), 3.15 (transportation mainline pipeline construction industry optional expense substantiation rules for payments to employees under accountable plans), 3.21 (private activity bonds volume cap), 3.22 (loan limits on agricultural bonds), 3.23 (general arbitrage rebate rules), 3.24 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.37 (expatriation to avoid taxes), 3.40 (debt instruments arising out of sales or exchanges), 3.41 (unified credit against estate tax), 3.42 (valuation of qualified real property in decedent's gross estate), 3.43 (annual exclusion for gifts), 3.44 (tax on arrow shafts), 3.45 (passenger air transportation excise tax), 3.48 (persons against whom a federal tax lien is not valid), 3.49 (property exempt from levy), 3.51 (interest on a certain portion of the estate tax payable in installments), 3.59 (revocation or denial of passport in case of certain tax delinquencies), 3.60 (attorney fee awards), and 3.61 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

SECTION 5. DRAFTING INFORMATION

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

Part IV. Items of General Interest

Notice of proposed rulemaking Regulations to Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and to Update the Abatement Rules for Section 4966 and 4967 Taxes

REG–107163–18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations specifying which return to use to pay certain excise taxes and the time for filing the return. The regulations also implement the statutory addition of two excise taxes to the first-tier taxes subject to abatement. These regulations affect applicable tax-exempt organizations and their related organizations, applicable educational institutions, sponsoring organizations that maintain certain donor advised funds, fund managers of such sponsoring organizations, and certain donors, donor advisors and persons related to a donor or donor advisor of a donor advised fund.

DATES: Written or electronic comments and requests for a public hearing must be received by December 7, 2018.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-107163–18), Room 5203, Internal Revenue Service, P.O. 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-107163–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, 20224 or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov (indicate IRS REG-107163–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amber L. MacKenzie at (202) 317-4086 or Ward L. Thomas at (202) 317-6173; concerning submission of comments and request for hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending regulations under section 6011 of the Internal Revenue Code (Code) to specify the return to accompany payment of excise taxes under sections 4960, 4966, 4967, and 4968; amending regulations under section 6071 to specify the time for filing that return; and amending regulations under section 4963 that define the first-tier taxes subject to abatement under section 4962.

These regulations affect applicable tax-exempt organizations described in section 4960(c)(1) and their related organizations described in section 4960(c)(4)(B); applicable educational institutions described in section 4968(b)(1); sponsoring organizations described in section 4966(d)(1) that maintain donor advised funds described in section 4966(d)(2); fund managers of such sponsoring organizations described in sections 4966(d)(3) ; and donors, donor advisors and persons related to a donor or donor advisor of a donor advised fund described in section 4967(d).

These regulations implement section 1231 of the Pension Protection Act of 2006, Pub. L. 109–280, 120 Stat. 780, 1094 ("PPA"), as amended by section 3(h) of the Tax Technical Corrections Act of 2007, Pub. L. 110–172, 121 Stat. 2473, 2475, and sections 13602 and 13701 of the Tax Cuts and Jobs Act, Pub. L. 115–97, 131 Stat. 2054, 2157, 2167 (2017) ("TCJA").

The PPA added sections 4966 and 4967 to the Code. These sections impose excise taxes related to certain distributions from donor advised funds (defined in section 4966(d)(2)) maintained by organizations that are defined as sponsoring organizations in section 4966(d)(1).

Section 4966(a)(1) imposes a 20 percent excise tax on each "taxable distribution" from a donor advised fund, payable by the sponsoring organization of the donor advised fund. Section 4966(a)(2) imposes a separate 5 percent excise tax on the agreement of any fund manager (as defined in section 4966(d)(3)) to the making of the distribution, knowing that it is a taxable distribution. Section 4966(b)(1) states that if more than one fund manager is liable for the tax, all such managers are jointly and severally liable with respect to the taxable distribution. Section 4966(b)(2) provides that the maximum amount of tax that may be imposed on all fund managers for any one taxable distribution is $10,000.

Section 4966(c)(1) defines the term "taxable distribution" as any distribution from a donor advised fund: (A) To any natural person; or (B) to any other person if (i) the distribution is for any purpose other than one specified in section 170(c)(2)(B), or (ii) the sponsoring organization does not exercise expenditure responsibility in accordance with section 4945(h) with respect to such distribution. Section 4966(c)(2) excepts from the definition of taxable distribution: (A) Distributions to any organization described in section 170(b)(1)(A), other than a disqualified supporting organization (as defined in section 4966(d)(4)); (B) distributions to the sponsoring organization of such donor advised fund; and (C) distributions to any other donor advised fund.

Section 4967(a)(1) imposes a tax on the advice of a donor, donor advisor, or related person, described in subsection (d), if a distribution from a donor advised fund results in such person (or any other person described in subsection (d)) receiving, directly or indirectly, a more than incidental benefit (a "prohibited benefit"). The tax, which is equal to 125 percent of the amount of the prohibited benefit, is paid by any person described in subsection (d) who advises as to a distribution or who receives a prohibited benefit as a result of the distribution. Section 4967(c)(1) provides that if more than one person is liable for the tax under section 4967(a)(1), then all such persons are jointly and severally liable for the tax.

Section 4967(a)(2) imposes a tax on a fund manager (defined in section 4966(d)(3)) who agrees to the making of a distribution described in section 4967(a)(1), knowing that it would confer a more than incidental benefit on a donor, donor advisor, or related person. Section 4967(a)(2) states that the tax is equal to 10 percent of the amount of the prohibited benefit. Section 4967(c)(1) provides that if more than one fund manager is liable for the tax, all such fund managers are jointly and severally liable. Section 4967(c)(2) provides that the maximum amount of tax under section 4967(a)(2) on all fund managers for any one prohibited benefit transaction is $10,000. Section 4967(b) provides that no tax is imposed under section 4967 if a tax has been imposed with respect to the distribution under section 4958 (taxing excess benefit transactions).

In 2006, the PPA added section 4966 and section 4967 taxes to the definitions of "first tier tax" in section 4963(a) and "taxable event" in section 4963(c). In 2007, section 4962(b) was amended by the Tax Technical Corrections Act of 2007, Pub. L. 110–172, sec. 3(h), 121 Stat. 2473, 2475, to add subchapter G of chapter 42 (i.e., section 4966 and section 4967 taxes) to the definition of "qualified first tier tax" for purposes of tax abatement. Thus under the Code, section 4966 and section 4967 taxes are subject to abatement under the generally applicable rules. Treas. Reg. § 53.4963–1 sets forth definitions with respect to abatement of taxes.

The TCJA added sections 4960 and 4968 to the Code. Section 4960 imposes an excise tax equal to the product of the rate of tax under section 11 and the sum of (1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of $1,000,000, plus (2) any excess parachute payment paid by such an organization to any covered employee. Section 4960(c)(4)(A) provides that remuneration of a covered employee by an applicable tax-exempt organization includes any remuneration paid with respect to employment of such employee by any related person or governmental entity. Section 4960(c)(4)(C) provides that when remuneration from more than one employer is taken into account in determining the tax imposed by subsection (a), each such employer is liable for a pro rata share of the tax imposed by subsection (a) based on the ratio of the amount of remuneration paid by such employer with respect to such employee to the amount of remuneration paid by all such employers to such employee. Separately, section 4968 imposes an excise tax on each applicable educational institution based on the net investment income of such institution (including certain income of related organizations) for the taxable year.

Section 6011(a) generally provides that when required by regulations prescribed by the Secretary, any person liable for any tax imposed by the Code shall make a return or statement according to the forms and regulations prescribed by the Secretary. Section 6071 generally provides that when not otherwise provided for under the Code, return filing dates are prescribed by regulation. Treas. Reg. §§ 53.6011–1 and 53.6071–1 require persons subject to certain enumerated excise taxes under Chapter 42 of the Code to file a Form 4720 to accompany payment of those excise taxes and provide the time for filing the return. (Form 4720 is denominated "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.") Sections 4960, 4966, 4967, and 4968 were added to Chapter 42 of the Code, but are not enumerated in Treas. Reg. §§ 53.6011–1 and 53.6071–1.

Explanation of Provisions

1. Section 4962 Abatement.

These proposed regulations add section 4966 and section 4967 taxes to the definitions of "first tier tax" and "taxable event" in Treas. Reg. § 53.4963–1. Qualified first tier taxes are subject to abatement under section 4962.

2. Requirement to File a Form 4720.

These proposed regulations amend Treas. Reg. § 53.6011–1(b) to provide that persons (including governmental entities) that are liable for section 4960, 4966, 4967, or 4968 excise taxes are required to file a return on Form 4720.

3. Deadline for Filing a Form 4720.

Under § 53.6071–1(i) of these proposed regulations, a person required to file a Form 4720 to report an excise tax under section 4960, 4966, 4967, or 4968 must file a Form 4720 by the 15th day of the fifth month after the end of the person's taxable year during which the excise tax liability was incurred. Thus, for example, an organization reporting on a calendar-year basis that incurred excise tax during the calendar year ending December 31, 2018, would be required to file a Form 4720 and pay the tax due by May 15, 2019.

4. Effective/Applicability Date

These regulations are proposed to apply as of the date of publication of the final rule in the **Federal Register**.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This rule merely provides guidance as to the timing and filing of Form 4720 for persons liable for the specified excise taxes and who have a statutory filing obligation. Completing the applicable portion of the Form 4720 imposes little incremental burden in time or expense as compared to any other filing method. In addition, a person may already be required to file the Form 4720 under the existing final regulations in §§ 53.6011–1 and 53.6071–1 if it is liable for another excise tax for which filing of the Form is required. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in the preamble under the "ADDRESSES" section. All comments submitted will be made 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 hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Amber L. MacKenzie and Ward L. Thomas, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

PART 53–FOUNDATION AND SIMILAR EXCISE TAXES

Paragraph 1. The authority citation for part 53 continues to read, in part, as follows:

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

§ 53.4963–1 [Amended]

Par. 2. Section 53.4963–1 is amended as follows:

1. Paragraph (a) is amended by removing the language "4958, 4971" and adding "4958, 4966, 4967, 4971" in its place.

2. Paragraph (c) is amended by removing the language "4958, 4971" and adding "4958, 4966, 4967, 4971" in its place.

Par. 3. Section 53.6011–1 is amended by:

1. Revising the first sentence of paragraph (b).

2. Removing from the third sentence of paragraph (b) the language "4958(a), or 4965(a)," and adding "4958(a), 4960(a), 4965(a), 4966(a), or 4967(a)," in its place.

The revision reads as follows:

§ 53.6011–1 General requirement of return, statement or list.

* * * * *

(b) Every person (including a governmental entity) liable for tax imposed by sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4955(a), 4958(a), 4959, 4960(a), 4965(a), 4966(a), 4967(a), or 4968(a), and every private foundation and every trust described in section 4947(a)(2) which has engaged in an act of self-dealing (as defined in section 4941(d)) (other than an act giving rise to no tax under section 4941(a)) shall file an annual return on Form 4720 and shall include therein the information required by such form and the instructions issued with respect thereto. * * *

* * * * *

§ 53.6071–1 [Amended]

Par. 4. Section 53.6071–1 is amended by:

1. Redesignating paragraph (i) as paragraph (j).

2. Adding new paragraphs (i) and (j)(3).

The additions read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(i) *Taxes under section 4960, 4966, 4967, or 4968.* A person (including a governmental entity) required by § 53.6011–1(b) to file a return for a tax imposed by section 4960(a), 4966(a), 4967(a), or 4968(a) in a taxable year must file the Form 4720 on or before the 15th day of the fifth month after the end of the person's taxable year (or, if the person has not established a taxable year for Federal income tax purposes, the person's annual accounting period).

(j) * * *

(3) Paragraph (i) of this section applies on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register.**

Kirsten Wielobob
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on November 5, 2018, 4:15 p.m., and published in the issue of the Federal Register for November 7, 2018, 83 F.R. 55653)

Notice of Proposed Rulemaking

Hardship Distributions of Elective Contributions, Qualified Matching Contributions, Qualified Nonelective Contributions, and Earnings

REG–107813–18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to hardship distributions from section 401(k) plans. The amendments reflect statutory changes affecting section 401(k) plans, including recent changes made by the Bipartisan Budget Act of 2018. These regulations would affect participants in, beneficiaries of, employers maintaining, and administrators of plans that contain cash or deferred arrangements or provide for employee or matching contributions.

DATES: Comments and requests for a public hearing must be received by January 14, 2019.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-107813–18) Room 5203, Internal Revenue Service, P.O. 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-107813–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov/ (indicate IRS and REG-107813–18).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Roger Kuehnle at (202) 317-6060 or; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Regina L. Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking will be submitted, under approval number 1545-1669, to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 14, 2019. Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in this proposed regulation is in § 1.401(k)–1(d)(3)(iii)(B). The collection of information relates to the certification by participants in section 401(k) plans that they have insufficient cash or other liquid assets to cover expenses resulting from a hardship and, thus, will need a distribution from the plan to meet the expenses. The collections of information are required to obtain a benefit.

The likely recordkeepers are individuals.

Estimated total annual reporting burden: 101,250 hours.

Estimated average annual burden per respondent: 45 minutes.

Estimated number of respondents: 135,000.

Estimated frequency of responses: On occasion.

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

Background

Section 401(k)

Section 401(k)(1) of the Internal Revenue Code (Code) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a cash or deferred arrangement (CODA) that is a qualified CODA. Under section 401(k)(2), a CODA (generally, an arrangement providing for an election by an employee between contributions to a plan or payments directly in cash) constitutes a qualified CODA only if it satisfies certain requirements. Section 401(k)(2)(B) provides that contributions made pursuant to a qualified CODA (referred to as "elective contributions") may be distributed only on or after the occurrence of certain events, including death, disability, severance from employment, termination of the plan, attainment of age 59-1/2, hardship, or, in the case of a qualified reservist distribution, the date a reservist is called to active duty. Section 401(k)(2)(C) requires that elective contributions be nonforfeitable at all times.

Section 401(k)(3)(A)(ii) requires that elective contributions satisfy the actual deferral percentage (ADP) test set forth in section 401(k)(3). Sections 401(k)(11), 401(k)(12), and 401(k)(13) each provide an alternative method of meeting the ADP test. Under section 401(k)(3)(D), qualified nonelective contributions (QNECs) and qualified matching contributions (QMACs), as described in sections 401(m)(4)(C) and 401(k)(3)(D)(ii)(I), respectively, are permitted to be taken into account under the ADP test. Among other requirements, QNECs and QMACs must satisfy the distribution limitations of section 401(k)(2)(B) and the nonforfeitability requirements of section 401(k)(2)(C). Similarly, employer contributions that are made pursuant to the safe harbor plan designs of section 401(k)(12) or (13) must meet the distribution limitations of section 401(k)(2)(B).

Section 401(m)(2)(A) requires that matching contributions and employee contributions satisfy the actual contribution percentage (ACP) test set forth in section 401(m)(2). Sections 401(m)(10), 401(m)(11), and 401(m)(12) each provide an alternative method of meeting the ACP test with respect to matching contributions. As with contributions made to section 401(k) plans pursuant to safe harbor plan designs, employer contributions made pursuant to the safe harbor plan designs of section 401(m)(11) or (12) must meet the distribution limitations of section 401(k)(2)(B).

The Department of the Treasury (Treasury Department) and the IRS issued comprehensive final regulations under sections 401(k) and 401(m) on December 29, 2004 (TD 9169, 69 FR 78143). Since that time, the regulations have been updated to reflect certain subsequent changes to the applicable statute (see TD 9237, 71 FR 6, and TD 9324, 72 FR 21103, providing guidance on designated Roth contributions under section 402A; and TD 9447, 74 FR 8200, providing guidance on section 401(k)(13)). However, the regulations have not been updated to reflect other statutory changes. The regulations have been amended to address other specific issues (see TD 9319, 72 FR 16878, relating to the definition of compensation; TD 9641, 78 FR 68735, relating to mid-year amendments to safe harbor plan designs; and TD 9835, 83 FR 34469, relating to whether QNECs and QMACs must be nonforfeitable when contributed to the plan).

Section 1.401(k)–1(d)(3) provides rules for determining whether a distribution is made on account of an employee's hardship. Under those rules, a distribution is made on account of hardship only if the distribution is made on account of an immediate and heavy financial need and the amount of the distribution is not in excess of the amount necessary to satisfy that need (plus any amounts necessary to pay any taxes or penalties reasonably anticipated to result from the distribution). These determinations must be made on the basis of all the relevant facts and circumstances and in accordance with nondiscriminatory and objective standards set forth in the plan.

Section 1.401(k)–1(d)(3)(iv)(B) provides that a distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee to the extent the need may be relieved from other resources that are reasonably available to the employee. Under § 1.401(k)–1(d)(3)(iv)(C), in determining whether the need can be relieved from other resources that are reasonably available to an employee, the employer may rely on the employee's representation (unless the employer has actual knowledge to the contrary) that the need cannot reasonably be relieved from resources specified in § 1.401(k)–1(d)(3)(iv)(C).

To simplify administration, the regulations provide certain safe harbors that may be used to determine whether a distribution is made on account of an employee's hardship. Specifically, § 1.401(k)–1(d)(3)(iii)(B) provides a safe harbor under which distributions for six types of expenses are deemed to be made on account of an immediate and heavy financial need. One of the six types is "expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income)."

In addition, § 1.401(k)–1(d)(3)(iv)(E) provides a safe harbor under which a distribution is deemed necessary to satisfy an immediate and heavy financial need. Under that safe harbor, an employee must first obtain all currently available distributions (including distributions of employee stock ownership plan (ESOP) dividends under section 404(k), but not hardship distributions), and nontaxable plan loans from the plan and any other plan maintained by the employer. Under the safe harbor, an employee's ability to make elective contributions and employee contributions to the plan (and any other plan maintained by the employer) must be suspended for at least 6 months after receipt of the hardship distribution. Pursuant to § 1.401(k)–3(c)(6)(v)(B), in the case of a safe harbor plan described in section 401(k)(12) or (13), the suspension period may not exceed 6 months.

Under § 1.401(k)–1(d)(3)(ii), the maximum amount that may be distributed on account of hardship is the total of the employee's elective contributions that have not previously been distributed (plus earnings, QNECs, and QMACs credited before a specified grandfather date that generally is before 1989). Thus, the maximum amount that may be distributed on account of hardship does not include earnings, QNECs, or QMACs that are not grandfathered.

Section 403(b)

Section 403(b)(7)(A)(ii) provides distribution limitations on amounts contributed to a custodial account that is treated as a section 403(b) annuity contract. Section 403(b)(11) provides that contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) (generally referred to in the regulations under section 403(b) as "section 403(b) elective deferrals") may be distributed only on or after the occurrence of certain events, one of which is the employee's hardship. Section 403(b)(11) also provides that no income attributable to these contributions may be distributed on account of hardship.

Section 1.403(b)–6 provides rules for applying these distribution limitations. Section 1.403(b)–6(b) applies to distributions of amounts that are neither attributable to section 403(b) elective deferrals nor made from custodial accounts, § 1.403(b)–6(c) applies to distributions from custodial accounts that are not attributable to section 403(b) elective deferrals, and § 1.403(b)–6(d) applies to distributions of amounts attributable to section 403(b) elective deferrals. Section 1.403(b)–6(d)(2) provides that a hardship distribution of section 403(b) elective deferrals is subject to the rules and restrictions set forth in § 1.401(k)–1(d)(3) and is limited to the aggregate dollar amount of a participant's section 403(b) elective deferrals, without earnings thereon.

Statutory Changes Relating to Section 401(k)

Section 41113 of the Bipartisan Budget Act of 2018, Pub. L. 115–123 (BBA 2018), directs the Secretary of the Treasury to modify § 1.401(k)–1(d)(3)(iv)(E) to (1) delete the 6-month prohibition on contributions following a hardship distribution, and (2) make any other modifications necessary to carry out the purposes of section 401(k)(2)(B)(i)(IV). Section 41114 of BBA 2018 modifies the hardship distribution rules under section 401(k)(2)(B) by adding section 401(k)(14)(A) to the Code, which states that the maximum amount available for distribution upon hardship includes (i) contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, (ii) QNECs, (iii) QMACs, and (iv) earnings on these contributions. Section 41114 of BBA 2018 also adds section 401(k)(14)(B) to the Code, which provides that a distribution is not treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan.

Section 11044 of the Tax Cuts and Jobs Act, Pub. L. 115–97 (TCJA), added section 165(h)(5) to the Code. Section 165(h)(5) provides that, for taxable years 2018 through 2025, the deduction for a personal casualty loss generally is available only to the extent the loss is attributable to a federally declared disaster (as defined in section 165(i)(5)).

Section 826 of the Pension Protection Act of 2006, Pub. L. 109–280 (PPA '06), directs the Secretary of the Treasury to modify the rules relating to hardship distributions to permit a section 401(k) plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent in determining whether the participant has incurred a hardship. Notice 2007–07, 2007–5 I.R.B. 395, provides guidance for applying this provision.

Section 827(a) of PPA '06 added to the Code section 72(t)(2)(G), which exempts certain distributions from the application of the section 72(t) additional income tax on early distributions. These distributions, referred to as "qualified reservist distributions," include distributions attributable to elective contributions that are made during the period that a reservist has been called to active duty. Section 827(b)(1) of PPA '06 added section 401(k)(2)(B)(i)(V) to the Code, which permits qualified reservist distributions to be made from a section 401(k) plan.[1]

Section 105(b)(1)(A) of the Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. 110–245 (HEART Act), added section 414(u)(12) to the Code. Section 414(u)(12)(B)(ii) provides for a 6-month suspension of elective contributions and employee contributions after certain distributions to individuals performing service in the uniformed services.

Explanation of Provisions

Overview

These proposed regulations update the section 401(k) and (m) regulations to reflect: (1) the enactment of (a) sections 41113 and 41114 of BBA 2018, (b) sections 826 and 827 of PPA '06, and (c) section 105(b)(1)(A) of the HEART Act; and (2) the application of the hardship distribution rules in light of the modification to the casualty loss deduction rules made by section 11044 of the TCJA.

Deemed Immediate and Heavy Financial Need

The proposed regulations modify the safe harbor list of expenses in current § 1.401(k)–1(d)(3)(iii)(B) for which distributions are deemed to be made on account of an immediate and heavy financial need by: (1) adding "primary beneficiary under the plan" as an individual for whom qualifying medical, educational, and funeral expenses may be incurred; (2) modifying the expense listed in § 1.401(k)–1(d)(3)(iii)(B)(*6*) (relating to damage to a principal residence that would qualify for a casualty deduction under section 165) to provide that for this purpose the new limitations in section 165(h)(5) (added by section 11044 of the TCJA) do not apply; and (3) adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters. This new safe harbor expense is similar to relief given by the IRS after certain major federally declared disasters, such as the relief relating to Hurricane Maria and California wildfires provided in Announcement 2017–15, 2017–47 I.R.B. 534, and is intended to eliminate any delay or uncertainty concerning access to plan funds following a disaster that occurs in an area designated by the Federal Emergency Management Agency (FEMA) for individual assistance.

Distribution Necessary to Satisfy Financial Need

Pursuant to BBA 2018 sections 41113 and 41114, the proposed regulations modify the rules for determining whether a distribution is necessary to satisfy an immediate and heavy financial need by eliminating (1) any requirement that an employee be prohibited from making elective contributions and employee contributions after receipt of a hardship distribution, and (2) any requirement to take plan loans prior to obtaining a hardship distribution. In particular, the proposed regulations eliminate the safe harbor in current § 1.401(k)–1(d)(3)(iv)(E), under which a distribution is deemed necessary to satisfy the financial need only if elective contributions and employee contributions are suspended for at least 6 months after a hardship distribution is made and, if available, nontaxable plan loans are taken.

In addition, the proposed regulations eliminate the rules in current § 1.401(k)–1(d)(3)(iv)(B) (under which the determination of whether a distribution is necessary to satisfy a financial need is based on all the relevant facts and circumstances) and provide one general standard for determining whether a distribution is necessary. Under this general standard, a hardship distribution may not exceed the amount of an employee's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), the employee must have obtained other available distributions under the employer's plans, and the employee must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need. A plan administrator may rely on such a representation unless the plan administrator has actual knowledge to the contrary. In light of the timing of the publication of these proposed regulations, the requirement to obtain this representation would only apply for a distribution that is made on or after January 1, 2020.

The proposed regulations clarify that a plan generally may provide for additional conditions, such as those described in 26 CFR 1.401(k)–1(d)(3)(iv)(B) and (C) (revised as of April 1, 2018) or, for distributions made before January 1, 2020, the representation described in the preceding paragraph, to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need of an employee. To implement Congress' purpose in enacting section 41113 of BBA 2018 (for example, Congress' concern that a suspension impedes an employee's ability to replace distributed funds), the proposed regulations do not permit a plan to provide for a suspension of elective contributions or employee contributions as a condition of obtaining a hardship distribution. However, in light of the timing of the publication of these proposed regulations, this prohibition would only apply for a distribution that is made on or after January 1, 2020.

Expanded Sources for Hardship Distributions

Pursuant to section 41114 of BBA 2018, the proposed regulations modify § 1.401(k)–1(d)(3) to permit hardship distributions from section 401(k) plans of elective contributions, QNECs, QMACs, and earnings on these amounts, regardless of when contributed or earned. However, plans may limit the type of contributions available for hardship distributions and whether earnings on those contributions

[1]While section 827(b)(2) and (3) of PPA '06 amended sections 403(b)(7)(A)(ii) and 403(b)(11) to permit qualified reservist distributions to be made from a section 403(b) plan, the regulations under section 403(b) have not yet been updated to reflect these statutory amendments.

are included. Safe harbor contributions made to a plan described in section 401(k)(13) may also be distributed on account of an employee's hardship (because these contributions are subject to the same distribution limitations applicable to QNECs and QMACs). See § 1.401(k)–3(k)(3)(i).

Section 403(b) Plans

Section 1.403(b)–6(d)(2) provides that a hardship distribution of section 403(b) elective deferrals is subject to the rules and restrictions set forth in § 1.401(k)–1(d)(3); thus, the proposed new rules relating to a hardship distribution of elective contributions from a section 401(k) plan generally apply to section 403(b) plans. However, Code section 403(b)(11) was not amended by section 41114 of BBA 2018; therefore, income attributable to section 403(b) elective deferrals continues to be ineligible for distribution on account of hardship.

Amounts attributable to QNECs and QMACs may be distributed from a section 403(b) plan on account of hardship only to the extent that, under § 1.403(b)–6(b) and (c), hardship is a permitted distributable event for amounts that are not attributable to section 403(b) elective deferrals. Thus, QNECs and QMACs in a section 403(b) plan that are not in a custodial account may be distributed on account of hardship, but QNECs and QMACs in a section 403(b) plan that are in a custodial account continue to be ineligible for distribution on account of hardship.

Relief for Victims of Hurricanes Florence and Michael

The Treasury Department and the IRS realize that employees adversely affected by Hurricane Florence or Hurricane Michael may need expedited access to plan funds. Accordingly, the relief provided under Announcement 2017–15 is extended to similarly situated victims of Hurricanes Florence and Michael, except that the "Incident Dates" (as defined in that announcement) are as specified by FEMA for these 2018 hurricanes, relief is provided through March 15, 2019, and any necessary amendments must be made no later than the deadline for plan amendments set forth in this preamble under *Plan Amendments*.

Applicability Dates and Reliance

The changes to the hardship distribution rules made by BBA 2018 are effective for plan years beginning after December 31, 2018, and the proposed regulations provide that they generally would apply to distributions made in plan years beginning after December 31, 2018. However, the prohibition on suspending an employee's elective contributions and employee contributions as a condition of obtaining a hardship distribution may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year. Thus, for example, a calendar-year plan that provides for hardship distributions under the pre-2019 safe harbor standards may be amended to provide that an employee who receives a hardship distribution in the second half of the 2018 plan year will be prohibited from making contributions only until January 1, 2019 (or may continue to provide that contributions will be suspended for the originally scheduled 6 months).

In addition, the revised list of safe harbor expenses may be applied to distributions made on or after a date that is as early as January 1, 2018. Thus, for example, a plan that made hardship distributions relating to casualty losses deductible under section 165 without regard to the changes made to section 165 by the TCJA (which, effective in 2018, require that, to be deductible, losses must result from a federally declared disaster) may be amended to apply the revised safe harbor expense relating to casualty losses to distributions made in 2018 so that plan provisions will conform to the plan's operation. Similarly, a plan may be amended to apply the revised safe harbor expense relating to losses (including loss of income) incurred by an employee on account of a disaster that occurs in 2018 (such as Hurricane Florence or Hurricane Michael), provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

Plan Amendments

The Treasury Department and the IRS expect that, if these regulations are finalized as they have been proposed, plan sponsors will need to amend their plans' hardship distribution provisions. The deadline for amending a disqualifying provision is set forth in Rev. Proc. 2016–37, 2016–29 I.R.B. 136. For example, with respect to an individually designed plan that is not a governmental plan, the deadline for amending the plan to reflect a change in qualification requirements is the end of the second calendar year that begins after the issuance of the Required Amendments List described in section 9 of Rev. Proc. 2016–37 that includes the change. A plan provision that is not a disqualifying provision, but is integrally related to a plan provision that is a disqualifying provision, may be amended by the same deadline applicable to a disqualifying provision.

A plan amendment that is related to the final regulations, but does not correct a disqualifying provision, including a plan amendment reflecting (1) the change to section 165 (relating to casualty losses) or (2) the addition of the new safe harbor expense (relating to expenses incurred as a result of certain federally declared disasters), will be treated as integrally related to a disqualifying provision. Therefore all amendments that relate to the final regulations will have the same amendment deadline. This deadline will also apply to an amendment reflecting the extension of the relief under Announcement 2017–15 to victims of Hurricanes Florence and Michael, as provided in this preamble.

Special Analyses

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has waived review of this proposed rule in accordance with section 6(a)(3)(A) of Executive Order 12866. OIRA will subsequently make a significance determination of the final rule, pursuant to section 3(f) of Executive Order (E.O.) 12866 and the April 11, 2018, Memorandum of Agreement between the Department of the Treasury and the Office of Management and Budget (OMB).

Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any 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 rules. 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 these regulations is Roger Kuehnle of the Office of Associate Chief Counsel (Tax Exempt and Governmental Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 401(m)(9) and 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(k)–1 is amended by:

1. Revising paragraphs (d)(1)(ii) and (iii) and adding new paragraph (d)(1)(iv).

2. Removing paragraph (d)(3)(ii) and redesignating paragraphs (d)(3)(iii), (iv) and (v) as paragraphs (d)(3)(ii), (iii) and (iv).

3. Revising newly redesignated paragraph (d)(3)(ii)(B) and adding new paragraph (d)(3)(ii)(C).

4. Revising newly redesignated paragraphs (d)(3)(iii) and (iv) and adding new paragraph (d)(3)(v).

5. In paragraph (d)(6), removing examples 3, 4, and 5 and redesignating example 6 as example 3.

The additions and revisions read as follows:

§ 1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(d) * * *

(1) * * *

(ii) In the case of a profit-sharing, stock bonus or rural cooperative plan—

(A) The employee's attainment of age 59 ½; or

(B) In accordance with section 401(k)(14), the employee's hardship;

(iii) In accordance with section 401(k)(10), the termination of the plan; or

(iv) In the case of a qualified reservist distribution defined in section 72(t)(2)(G)(iii), the date the reservist was ordered or called to active duty.

* * * * *

(3) * * *

(ii) * * *

(B) *Deemed immediate and heavy financial need.* A distribution is deemed to be made on account of an immediate and heavy financial need of the employee if the distribution is for–

(*1*) Expenses for (or necessary to obtain) medical care that would be deductible under section 213(d), determined without regard to the limitations in section 213(a) (relating to the applicable percentage of adjusted gross income and the recipients of the medical care) provided that, if the recipient of the medical care is not listed in section 213(a), the recipient is a primary beneficiary under the plan;

(*2*) Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);

(*3*) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the employee, for the employee's spouse, child or dependent (as defined in section 152 without regard to section 152(b)(1), (b)(2) and (d)(1)(B)), or for a primary beneficiary under the plan;

(*4*) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence;

(*5*) Payments for burial or funeral expenses for the employee's deceased parent, spouse, child or dependent (as defined in section 152 without regard to section 152(d)(1)(B)) or for a deceased primary beneficiary under the plan;

(*6*) Expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under section 165 (determined without regard to section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income); or

(*7*) Expenses and losses (including loss of income) incurred by the employee on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100–707, provided that the employee's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

(C) *Primary beneficiary under the plan.* For purposes of paragraph (d)(3)(ii)(B) of this section, a "primary beneficiary under the plan" is an individual who is named as a beneficiary under the plan and has an unconditional right, upon the death of the employee, to all or a portion of the employee's account balance under the plan.

(iii) *Distribution necessary to satisfy financial need*—(A) *Distribution may not exceed amount of need.* A distribution is treated as necessary to satisfy an immediate and heavy financial need of an employee only to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(B) *No alternative means reasonably available.* A distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee unless the employee has obtained all other currently available distributions (including distributions of ESOP dividends under section 404(k), but not hardship distributions) under the plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the employer. In addition, for a distribution that is made on or after January 1, 2020, the employee must represent (in writing, by an electronic medium, or in such other form as may be prescribed by the Commissioner) that he or she has insufficient cash or other liquid assets to satisfy the need. The plan administrator may rely on the employee's representation unless the plan administrator has actual knowledge to the contrary.

(C) *Additional conditions.* A plan generally may provide for additional conditions, such as those described in 26 CFR 1.401(k)–1(d)(3)(iv)(B) and (C) (revised as of April 1, 2018) or, for distributions made before January 1, 2020, the representation described in paragraph (d)(3)(iii)(B) of this section, to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need of an employee. For example, a plan may provide that, before a hardship distribution may be made, an employee must obtain all nontaxable loans (determined at the time a loan is made) available under the plan and all other plans maintained by the employer. However, for a distribution that is made on or after January 1, 2020, a plan may not provide for a suspension of an employee's elective contributions or employee contributions as a condition of obtaining a hardship distribution.

(iv) *Commissioner may expand standards.* The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), expanding the list of distributions deemed to be made on account of immediate and heavy financial needs and setting forth additional methods to demonstrate that a distribution is necessary to satisfy an immediate and heavy financial need.

(v) *Effective/applicability date*—(A) *General rule*. This paragraph (d)(3) applies to distributions made in plan years beginning after December 31, 2018. Except as otherwise provided in this paragraph (d)(3)(v), the rules in 26 CFR 1.401(k)–1(d)(3) (revised as of April 1, 2018) apply to distributions made in plan years beginning before January 1, 2019.

(B) *Options for earlier application.* The last sentence of paragraph (d)(3)(iii)(C) of this section (prohibiting the suspension of contributions as a condition of obtaining a hardship distribution) may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year. Thus, for example, a calendar-year plan that provides for hardship distributions under the rules in 26 CFR 1.401(k)–1(d)(3)(iv)(E) (revised as of April 1, 2018) may be amended to provide that an employee who receives a hardship distribution in the second half of the 2018 plan year will be prohibited from making contributions only until January 1, 2019 (or may continue to provide that contributions will be suspended for the originally scheduled 6 months). In addition, paragraph (d)(3)(ii)(B) of this section may be applied to distributions made on or after a date that is as early as January 1, 2018.

* * * * *

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

1. Revising paragraph (c)(6)(v).

2. Removing the language ", and, in the case of a hardship distribution, suspends an employee's ability to make elective contributions for 6 months in accordance with § 1.401(k)–1(d)(3)(iv)(E)" in the fifth sentence in paragraph (c)(7), *Example 1*.

3. Removing the second sentence in paragraph (j)(2)(iv).

The revision reads as follows:

§ 1.401(k)–3 Safe harbor requirements.

* * * * *

(c) * * *

(6) * * *

(v) *Restrictions due to limitations under the Internal Revenue Code*. A plan may limit the amount of elective contributions made by an eligible employee under a plan–

(A) Because of the limitations of section 402(g) or 415;

(B) Due to a suspension under section 414(u)(12)(B)(ii); or

(C) Because, on account of a hardship distribution made before January 1, 2020, an employee's ability to make elective contributions has been suspended for 6 months.

* * * * *

§ 1.401(k)–6 [Amended]

Par. 4. Section 1.401(k)–6 is amended by:

1. Removing the fourth sentence in paragraph (2) of the definition of *Eligible employee.*

2. Removing the language ", except as provided otherwise in § 1.401(k)–1(c) and (d)," in the definitions of *Qualified matching contributions (QMACs)* and *Qualified nonelective contributions (QNECs)*.

Par. 5. Section 1.401(m)–3 is amended by revising paragraph (d)(6)(v) to read as follows:

§ 1.401(m)–3 Safe harbor requirements.

* * * * *

(d) * * *

(6) * * *

(v) *Restrictions due to limitations under the Internal Revenue Code*. A plan may limit the amount of contributions made by an eligible employee under a plan-

(A) Because of the limitations of section 402(g) or section 415;

(B) Due to a suspension under section 414(u)(12)(B)(ii); or

(C) Because, on account of a hardship distribution made before January 1, 2020, an employee's ability to make contributions has been suspended for 6 months.

* * * * *

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on November 9, 2018, 4:15 p.m., and published in the issue of the Federal Register for November 14, 2018, 83 F.R. 56763)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletin 2018–27 through 2018–49

Announcements:

2018-09, 2018-28 I.R.B. *206*
2018-12, 2018-30 I.R.B. *232*
2018-13, 2018-43 I.R.B. *232*
2018-14, 2018-46 I.R.B. *773*

Notices:

2018-48, 2018-28 I.R.B. *9*
2018-56, 2018-27 I.R.B. *3*
2018-58, 2018-33 I.R.B. *305*
2018-59, 2018-28 I.R.B. *196*
2018-60, 2018-31 I.R.B. *275*
2018-61, 2018-31 I.R.B. *278*
2018-62, 2018-34 I.R.B. *316*
2018-63, 2018-34 I.R.B. *318*
2018-64, 2018-35 I.R.B. *347*
2018-65, 2018-35 I.R.B. *350*
2018-67, 2018-36 I.R.B. *409*
2018-68, 2018-36 I.R.B. *418*
2018-69, 2018-37 I.R.B. *426*
2018-70, 2018-38 I.R.B. *441*
2018-71, 2018-41 I.R.B. *548*
2018-72, 2018-40 I.R.B. *522*
2018-73, 2018-40 I.R.B. *526*
2018-74, 2018-40 I.R.B. *529*
2018-75, 2018-41 I.R.B. *556*
2018-76, 2018-42 I.R.B. *599*
2018-77, 2018-42 I.R.B. *601*
2018-78, 2018-42 I.R.B. *604*
2018-79, 2018-42 I.R.B. *606*
2018-80, 2018-42 I.R.B. *609*
2018-81, 2018-43 I.R.B. *666*
2018-82, 2018-44 I.R.B. *718*
2018-83, 2018-47 I.R.B. *774*
2018-84, 2018-45 I.R.B. *768*
2018-85, 2018-48 I.R.B. *788*
2018-88, 2018-49 I.R.B. *817*
2018-89, 2018-49 I.R.B. *826*
2018-90, 2018-49 I.R.B. *826*

Proposed Regulations:

REG-130244-17, 2018-41 I.R.B. *593*
REG-103474-18, 2018-32 I.R.B. *284*
REG-104390-18, 2018-43 I.R.B. *671*
REG-104397-18, 2018-41 I.R.B. *560*
REG-104872-18, 2018-44 I.R.B. *762*
REG-106977-18, 2018-27 I.R.B. *6*
REG-107163-18, 2018-49 I.R.B. *839*
REG-107813-18, 2018-49 I.R.B. *841*
REG-107892-18, 2018-35 I.R.B. *353*
REG-112176-18, 2018-37 I.R.B. *430*
REG-114540-18, 2018-47 I.R.B. *777*
REG-118826-16, 2018-48 I.R.B. *789*

Revenue Procedures:

2018-35, 2018-28 I.R.B. *204*
2018-36, 2018-38 I.R.B. *442*
2018-37, 2018-29 I.R.B. *210*
2018-38, 2018-31 I.R.B. *280*
2018-39, 2018-34 I.R.B. *319*
2018-40, 2018-34 I.R.B. *320*
2018-42, 2018-36 I.R.B. *424*
2018-43, 2018-36 I.R.B. *425*
2018-44, 2018-37 I.R.B. *426*
2018-45, 2018-37 I.R.B. *428*
2018-46, 2018-39 I.R.B. *460*
2018-47, 2018-39 I.R.B. *518*
2018-48, 2018-40 I.R.B. *521*
2018-49, 2018-41 I.R.B. *548*
2018-50, 2018-42 I.R.B. *610*
2018-51, 2018-44 I.R.B. *721*
2018-52, 2018-42 I.R.B. *611*
2018-53, 2018-43 I.R.B. *667*
2018-54, 2018-45 I.R.B. *769*
2018-55, 2018-47 I.R.B. *775*
2018-57, 2018-49 I.R.B. *827*

Revenue Rulings:

2018-19, 2018-27 I.R.B. *1*
2018-20, 2018-28 I.R.B. *8*
2018-21, 2018-32 I.R.B. *282*
2018-22, 2018-34 I.R.B. *308*
2018-23, 2018-36 I.R.B. *405*
2018-24, 2018-36 I.R.B. *407*
2018-25, 2018-39 I.R.B. *445*
2018-26, 2018-40 I.R.B. *520*
2018-27, 2018-41 I.R.B. *546*
2018-28, 2018-45 I.R.B. *764*
2018-29, 2018-45 I.R.B. *765*
2018-30, 2018-49 I.R.B. *815*

Treasury Decisions:

9834, 2018-31 I.R.B. *233*
9835, 2018-33 I.R.B. *288*
9836, 2018-33 I.R.B. *291*
9838, 2018-34 I.R.B. *309*
9839, 2018-35 I.R.B. *325*
9842, 2018-48 I.R.B. *783*

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[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–01 through 2018–26 is in Internal Revenue Bulletin 2018–26, dated June 27, 2018.

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

Bulletin 2018–27 through 2018–49

Notices:

2014-5
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

2015-28
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

2016-57
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

2017-45
Modified by
Notice 2018-69, 2018-37 I.R.B. *426*

Revenue Procedures:

2015-27
Amplified by
Rev. Proc. 2018-39, 2018-34 I.R.B. *319*

2017-24
Amplified by
Rev. Proc. 2018-39, 2018-34 I.R.B. *319*

2018-31
Modified by
Rev. Proc. 2018-44, 2018-37 I.R.B. *426*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–01 through 2018–26 is in Internal Revenue Bulletin 2018–26, dated June 27, 2018.

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INTERNAL REVENUE BULLETIN

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

We Welcome Comments About the Internal Revenue Bulletin

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