

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2012-28, page 476.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for October 2012.

Notice 2012-62, page 489.

Extension of replacement period for livestock sold on account of drought. This notice explains the circumstances under which the 4-year replacement period under section 1033(e)(2) of the Code is extended for livestock sold on account of drought. The Appendix to this notice contains a list of the counties that experienced exceptional, extreme, or severe drought during the preceding 12-month period ending August 31, 2012. Taxpayers may use this list to determine if an extension is available.

EMPLOYEE PLANS

Notice 2012-61, page 479.

This notice provides guidance on the special rules relating to pension funding stabilization for single employer defined benefit pension plans under amendments to the Internal Revenue Code (Code) and the Employee Retirement Income Security Act of 1974 (ERISA) made by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141. MAP-21, which was enacted July 6, 2012, contains a number of pension provisions in Division D (Finance).

EXCISE TAX

Rev. Rul. 2012-29, page 475.

Capital loss carryforward effective date. This ruling holds that the effective date of section 101 of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010), for excise tax purposes is the calendar year following the date of enactment, or the calendar year beginning January 1, 2011.

ADMINISTRATIVE

Notice 2012-63, page 496.

Optional special per diem rates. This notice provides the 2012-2013 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home, specifically (1) the special transportation industry rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for the high-low substantiation method. This notice also announces a change in the definition of incidental expenses under the Federal Travel Regulations. Notice 2011-81 superseded.

Announcement 2012-29, page 500.

This document provides notice of public hearing on proposed regulations (REG-13066-11, 2012-32 I.R.B. 126) that provide guidance regarding the requirements for charitable hospital organizations relating to financial assistance and emergency medical care policies, charges for certain care provided to individuals eligible for financial assistance, and billing and collections. A public hearing is scheduled for October 29, 2012.

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



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force the law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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Actions Relating to Decisions of the Tax Court

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

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

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

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all

of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

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

The Commissioner does NOT ACQUIESCE in the following decision:

L & S Industrial & Marine, Inc. v. United States,¹
633 F.Supp.2d 727 (D. Minn.2009)

¹ Nonacquiescence to the District Court’s decision that the parenthetical language in § 4042(d)(1)(B) regarding fish must also exempt a vessel’s fishing equipment and, by analogy, dredging equipment.

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

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 October 2012. See Rev. Rul. 2012-28, page 476.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Section 1212.—Capital Loss Carrybacks and Carryovers

A revenue ruling holds that the effective date of section 101 of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010), for excise tax purposes is the calendar year following the date of enactment, or the calendar year beginning January 1, 2011. See Rev. Rul. 2012-29, page 475.

(Also Section 4982.)

Capital loss carryforward effective date. This ruling holds that the effective date of section 101 of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010), for excise tax purposes is the calendar year following

the date of enactment, or the calendar year beginning January 1, 2011.

Rev. Rul. 2012-29

ISSUE

How does the effective date provision of section 101(c) of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010) (“Act”), pertaining to the Act’s amendments to section 1212(a) of the Internal Revenue Code, apply for purposes of the excise tax imposed by section 4982?

FACTS

Corporation *R* is taxed as a regulated investment company (“RIC”) under part I of subchapter M of the Code and uses a taxable year ending on June 30 for income tax purposes. *R* recognized long-term capital losses on November 1, 2010, January 3, 2011, and July 1, 2011, but recognized no other capital gains or losses from July 1, 2010, through June 30, 2012.

LAW AND ANALYSIS

Section 4982(a) of the Code imposes “on every regulated investment company for each calendar year” an excise tax equal to 4 percent of the excess, if any, of (1) the required distribution for the calendar year, over (2) the distributed amount for that same calendar year. Section 4982(b)(1) defines “required distribution” to mean, with respect to any calendar year, the sum of (A) 98 percent of the RIC’s ordinary income for that calendar year, plus (B) 98.2 percent of the RIC’s “capital gain net income for the 1-year period ending on October 31 of such calendar year.” Section 4982(e)(2)(A) defines “capital gain net income” as having the same meaning given to that term by section 1222(9), “determined by treating the one-year period ending on October 31 of any calendar year as the company’s taxable year.” Section 1222(9) provides that “[t]he term ‘capital gain net income’ means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.”

Section 101 of the Act amended section 1212(a) to allow RICs to carry forward net capital losses indefinitely and to preserve the treatment of components of those losses as long-term or short-term. Section 101(c) of the Act provides that “[t]he amendments made by [section 101 of the Act] shall apply to net capital losses for taxable years beginning after the date of the enactment of [the] Act.” The date of enactment was December 22, 2010. Before the Act, RICs could carry net capital losses forward only for eight years, with any losses carried forward being treated as short-term capital losses in the year of use. This previous rule continues to apply to net capital losses recognized by RICs in taxable years beginning on or before December 22, 2010. Thus, for Federal income tax purposes, R’s July 1, 2011, net capital loss carries forward indefinitely, but R’s net capital losses recognized before that date are subject to prior law and can only be carried forward for eight years (treated as short-term capital losses).

Section 101(c) of the Act does not specify how its effective date rule applies for purposes of the excise tax under section 4982. The section 4982 excise tax is imposed on the basis of whether sufficient dividends are paid during a calendar year. Thus, for any RIC, the taxable year for purposes of the excise tax is the calendar year. The calendar year beginning on January 1, 2011, is the first excise tax period that begins after the December 22, 2010, date of enactment.

The sufficiency of dividends paid during a calendar year for excise tax purposes is measured by taking into account both a RIC’s ordinary income for that calendar year and (absent an election under section 4982(e)(4) for a RIC eligible to make such an election) the RIC’s capital gain net income, determined with regard to any carried-forward capital losses, for the November 1–October 31 period that ends within that calendar year. Thus, the excise

tax distribution requirements for calendar year 2011 (the first excise tax period beginning after the date of enactment of the Act) are determined based in part on capital gains and losses that are recognized for the period that runs from November 1, 2010, to October 31, 2011. Accordingly, to the extent that the capital gains and losses recognized for the November 1, 2010–October 31, 2011, period result in a net capital loss, the net capital loss is carried forward indefinitely for purposes of section 4982. The carryforward is effected in a manner consistent with section 1212(a), as amended by Section 101 of the Act.

As applied to R, all three of R’s capital losses (including the November 1, 2010, loss) are taken into account for the first excise tax period that begins after the date of enactment (calendar year 2011). Accordingly, the net capital loss composed of those three capital losses is carried forward indefinitely for excise tax purposes.

HOLDING

For purposes of the excise tax imposed by section 4982, the Act’s amendments to the loss carryover rules in section 1212(a) apply beginning with any net capital loss recognized in the period that determines a RIC’s required distribution for calendar year 2011. Accordingly, the amendments apply to net capital losses recognized during the one year period that (absent an election under section 4982(e)(4)) begins on November 1, 2010.

DRAFTING INFORMATION

The principal author of this revenue ruling is Andrea M. Hoffenson of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Andrea M. Hoffenson at (202) 622–2930 (not a toll-free call).

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for October 2012.

Rev. Rul. 2012–28

This revenue ruling provides various prescribed rates for federal income tax purposes for October 2012 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. 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. 2012-28 TABLE 1
Applicable Federal Rates (AFR) for October 2012

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.23%	.23%	.23%	.23%
110% AFR	.25%	.25%	.25%	.25%
120% AFR	.28%	.28%	.28%	.28%
130% AFR	.30%	.30%	.30%	.30%
<i>Mid-term</i>				
AFR	.93%	.93%	.93%	.93%
110% AFR	1.02%	1.02%	1.02%	1.02%
120% AFR	1.12%	1.12%	1.12%	1.12%
130% AFR	1.21%	1.21%	1.21%	1.21%
150% AFR	1.40%	1.40%	1.40%	1.40%
175% AFR	1.64%	1.63%	1.63%	1.62%
<i>Long-term</i>				
AFR	2.36%	2.35%	2.34%	2.34%
110% AFR	2.61%	2.59%	2.58%	2.58%
120% AFR	2.84%	2.82%	2.81%	2.80%
130% AFR	3.08%	3.06%	3.05%	3.04%

REV. RUL. 2012-28 TABLE 2
Adjusted AFR for October 2012

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.23%	.23%	.23%	.23%
Mid-term adjusted AFR	1.04%	1.04%	1.04%	1.04%
Long-term adjusted AFR	2.87%	2.85%	2.84%	2.83%

REV. RUL. 2012-28 TABLE 3
Rates Under Section 382 for October 2012

Adjusted federal long-term rate for the current month	2.87%
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.)	3.01%

REV. RUL. 2012-28 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for October 2012

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

Appropriate percentage for the 70% present value low-income housing credit	7.38%
Appropriate percentage for the 30% present value low-income housing credit	3.16%

REV. RUL. 2012-28 TABLE 5
Rate Under Section 7520 for October 2012

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

1.2%

**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 October 2012. See Rev. Rul. 2012-28, page 476.

**Section 4982.—Excise Tax
on Undistributed Income
of Regulated Investment
Companies**

A revenue ruling holds that the effective date of section 101 of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010), for excise tax purposes is the calendar year following the date of enactment, or the calendar year beginning January 1, 2011. See Rev. Rul. 2012-29, page 475.

**Section 7520.—Valuation
Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2012. See Rev. Rul. 2012-28, page 476.

Part III. Administrative, Procedural, and Miscellaneous

Guidance on Pension Funding Stabilization Under the Moving Ahead for Progress in the 21st Century Act (MAP-21)

Notice 2012-61

I. PURPOSE

This notice provides guidance on the special rules relating to pension funding stabilization for single-employer defined benefit pension plans under amendments to the Internal Revenue Code (Code) and the Employee Retirement Income Security Act of 1974 (ERISA)¹ made by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141. MAP-21 was enacted July 6, 2012, and contains a number of pension provisions in Division D (Finance).

II. BACKGROUND

Section 430 specifies the minimum funding requirements that generally apply to single-employer defined benefit pension plans pursuant to § 412. Section 430(h)(2) specifies interest rates that are used for purposes of calculating the minimum required contribution. The interest rates that are used for this purpose are a set of three segment rates described in § 430(h)(2)(C)(i), (ii), and (iii), or, alternatively, a full yield curve described in § 430(h)(2)(D)(ii). These rates are used for a number of purposes under § 430, including:

- The calculation of target normal cost and funding target under §§ 430(b) and 430(d), in accordance with the rules of § 1.430(d)-1 of the Income Tax Regulations;
- The calculation of the present value of remaining shortfall and waiver amortization installments for purposes of determining any shortfall amortization base established in the current plan year under § 430(c)(3);
- The determination of amortization installments with respect to a shortfall

or waiver amortization base under § 430(c)(2) or § 430(e)(2); and

- The limitation on the assumed rate of return when determining the average value of assets under § 430(g)(3)(B).

The segment rates under § 430(h)(2)(C) are used for other purposes as well. Sections 104 and 105 of the Pension Protection Act of 2006, Pub. L. No. 109-280, as amended (PPA '06), provide that the effective dates for the minimum funding rules under § 430 and funding-based benefit restrictions under § 436 are delayed for certain plans.² Sections 104 and 105 of PPA '06 provide that in applying § 412(b)(5)(B) (as in effect prior to amendment by PPA '06) for plan years beginning after December 31, 2007, and before the first plan year to which §§ 430 and 436 apply, the third segment rate determined under § 430(h)(2)(C)(iii) is to be used in lieu of the interest rate otherwise used to determine current liability.

The third segment interest rate under § 430(h)(2)(C)(iii) is also specified as an interest crediting rate not in excess of a market rate of return for a statutory hybrid benefit formula under § 1.411(b)(5)-1(d)(3). In addition, § 1.411(b)(5)-1(d)(4) provides that the first and second segment rates under §§ 430(h)(2)(C)(i) and (ii) are deemed not to exceed a market rate of return.

Section 40211(a) of MAP-21 adds § 430(h)(2)(C)(iv), generally effective for plan years beginning on or after January 1, 2012. Section 430(h)(2)(C)(iv) provides that each of the three segment rates described in § 430(h)(2)(C)(i), (ii), and (iii) for a plan year is adjusted as necessary to fall within a specified range that is determined based on an average of the corresponding segment rates for the 25-year period ending on September 30 of the calendar year preceding the first day of that plan year. Under § 430(h)(2)(C)(iv)(II), for plan years beginning in 2012, each segment rate is adjusted so that it is no less than 90% and no more than 110% of the corresponding

25-year average segment rate. For later plan years, this range is gradually increased, so that the segment rates for plan years beginning after 2015 are no less than 70% and no more than 130% of the corresponding 25-year average segment rates. Notice 2012-55, 2012-36 I.R.B. 332, sets forth the initial set of MAP-21 segment rates under § 430(h)(2)(C)(iv)(II) for plan years beginning in 2012.

Sections 40211(a)(2) and 40211(b)(3) of MAP-21 amend the Code and ERISA to provide that the adjustments based on the 25-year average segment rates under § 430(h)(2)(C)(iv) do not apply for certain purposes involving:

- Section 404(o) (relating to the determination of the maximum deductible limit under § 404);
- Section 417(e)(3) (relating to the calculation of the minimum present value requirement for distributions);
- Section 420 (relating to the determination of the amount of excess assets that can be transferred to retiree health and retiree group term life insurance accounts);
- Section 4006 of ERISA (relating to the calculation of PBGC variable-rate premiums); and
- Section 4010 of ERISA (relating to the requirement to report additional information to the PBGC that applies to contributing sponsors of certain underfunded plans).

In addition, section 40211(b)(2)(A) of MAP-21 amends section 101(f) of ERISA to require additional disclosures for certain plans as part of the annual funding notice to participants. These additional disclosures relate to the effect of the application of the 25-year average segment rates.

Section 40211(c)(1) of MAP-21 provides that the amendments to the Code and ERISA made by section 40211 of MAP-21 are generally effective for plan years beginning after December 31, 2011. However, under section 40211(c)(2)(A) of MAP-21, a plan sponsor may elect not to

¹ Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in this notice for purposes of ERISA, as well as the Code. Thus, the provisions of this notice pertaining to sections 430 and 436 of the Code also apply for purposes of sections 206(g) and 303 of ERISA.

² For plans described in section 106 of PPA '06, the provisions of §§ 430 and 436 apply for plan years beginning on or after January 1, 2011, which is before the effective date of section 40211 of MAP-21. Therefore, the amendments made by section 40211 of MAP-21 apply to these plans in the same manner as for other plans that are subject to §§ 430 and 436.

have these amendments apply to any plan year beginning before January 1, 2013, either (i) for all purposes, or (ii) solely for purposes of determining the adjusted funding target attainment percentage (AFTAP) under § 436. Section 40211(c)(2)(A) also provides that a plan shall not be treated as failing to meet the requirements of § 411(d)(6) and section 204(g) of ERISA solely by reason of such an election.

Section 40211(c)(2)(B) of MAP-21 provides that if, as of the date of enactment of MAP-21 (July 6, 2012), an election is in effect with respect to a plan to use the full yield curve as provided under § 430(h)(2)(D)(ii), a plan sponsor may revoke that election without the consent of the Secretary of the Treasury. This revocation may be made any time before the date that is one year after the date of

enactment of MAP-21, and is effective for the first plan year to which the MAP-21 amendments apply.

III. QUESTIONS AND ANSWERS

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

G - General guidance relative to application of MAP-21 segment rates

NA - Measurements for which MAP-21 segment rates do not apply

H - Statutory hybrid plans

T - Transition issues

E - MAP-21 elections

R - Schedule SB reporting

G — GENERAL GUIDANCE RELATIVE TO APPLICATION OF MAP-21 SEGMENT RATES

Q G-1: How are the adjusted segment rates under § 430(h)(2)(C)(iv) (“MAP-21 segment rates”) determined for a plan year?

A G-1: (a) For determinations for which the MAP-21 segment rates apply, each segment rate for the plan year that is determined under § 430(h)(2)(C)(i), § 430(h)(2)(C)(ii), or § 430(h)(2)(C)(iii) is adjusted to the extent necessary so that it is no less than the applicable minimum percentage of the corresponding 25-year

average segment rate for the calendar year that contains the first day of the plan year and no more than the applicable maximum percentage of that 25-year average segment rate.

(b) The applicable minimum and maximum percentages of the 25-year average segment rates are as follows:

For plan years beginning in	Applicable minimum percentage	Applicable maximum percentage
2012	90%	110%
2013	85%	115%
2014	80%	120%
2015	75%	125%
2016 and later	70%	130%

(c) The 25-year average segment rates for a calendar year are the rates published by the Service based on the average of the segment rates for the 25-year period ending on September 30 of the prior calendar year. The applicable corridors around the 25-year average segment rates apply for plan years beginning in a given calendar year, regardless of the valuation date and regardless of whether an election to

use the segment rates for a lookback month is in effect for the plan year. The Service will publish the resulting MAP-21 segment rates each month.

Example G-1: Plan A has a calendar year plan year and a January 1 valuation date. For the January 1, 2015 valuation, the plan sponsor has elected to use the segment rates for December 2014. Assume for the purposes of this example that the unadjusted first, second and third segment rates for December 2014 are 2.50%, 5.75%, and 6.90%, respec-

tively. Further assume that the first, second and third 25-year average segment rates as of September 30, 2014, are 6.00%, 7.50%, and 8.15%, respectively. The MAP-21 first, second and third segment rates for the January 1, 2015 valuation are 4.50%, 5.75%, and 6.90%, respectively, determined as shown in the following table:

(1) Segment rate	(2) Unadjusted rate for December 2014	(3) 25-year average segment rate	(4) Applicable minimum rate for 2015 (75% of column (3))	(5) Applicable maximum rate for 2015 (125% of column (3))	(6) MAP-21 segment rate for 2015 plan year
First	2.50%	6.00%	4.50%	7.50%	4.50%
Second	5.75%	7.50%	5.63%	9.38%	5.75%
Third	6.90%	8.15%	6.11%	10.19%	6.90%

Example G-2: Plan B, which is a small plan described in § 430(g)(2)(B), has a plan year beginning November 1 and ending October 31. Plan B's valuation date is October 31, and the plan sponsor has elected to use the segment rates under § 430(h)(2)(C) for the month including the valuation date. The MAP-21 segment rates for the plan year beginning November 1, 2013, are determined based on the unadjusted segment rates for the month of October 2014, limited to no less than 85% and no more than 115% of the 25-year average segment rates as of September 30, 2012.

Q G-2: For what purposes do the MAP-21 segment rates apply?

A G-2: (a) Except as provided under the amendments made by MAP-21 and applicable guidance, the MAP-21 segment rates apply to all measurements that are based on the segment rates described in § 430(h)(2)(C)(i), (ii) and (iii). Accordingly, once the amendments made by MAP-21 are effective for a plan year:

(1) The MAP-21 segment rates apply for the purpose of determining the minimum required contribution under § 430, including the calculation of target normal cost and funding target under §§ 430(b) and 430(d) and § 1.430(d)-1, the calculation of the present value of remaining shortfall and waiver amortization installments for purposes of determining any shortfall amortization base established in the current plan year under § 430(c)(3), the determination of shortfall and waiver amortization installments under § 430(c)(2) and § 430(e)(2), and the limitation on the assumed rate of return for purposes of determining the average value of assets under § 430(g)(3)(B), as described in section III.B. or III.C. of Notice 2009-22, 2009-14 I.R.B. 741.

(2) The MAP-21 segment rates apply for purposes of applying the benefit restrictions under § 436, including the calculation of the adjusted funding target under § 1.436-1(j)(1)(iii), the adjusted plan assets under § 1.436-1(j)(1)(ii), and the resulting adjusted funding target attainment percentage (AFTAP) under § 436(j)(2) and § 1.436-1(j)(1).

(3) Under sections 104 and 105 of PPA '06, when applying § 412(b)(5)(B) (as in effect before PPA '06) for plan years beginning after December 31, 2007, and before the first year to which § 430 applies to the plan, current liability is determined using the third segment interest rate under § 430(h)(2)(C)(iii) in lieu of the interest rate otherwise used. For purposes of determining the minimum contribution requirements under § 412 (as in effect before PPA '06), current liability is determined reflecting the MAP-21 adjustments to the third segment rate in accordance with § 430(h)(2)(C)(iv).

(b) The MAP-21 segment rates do *not* apply for purposes for which they are specifically excluded under the provisions of MAP-21 or related guidance. See Q&A NA-1 through NA-3 of this notice for a list of those purposes and related guidance.

(c) See Q&A H-1 and H-2 of this notice for guidance regarding the effect of § 430(h)(2)(C)(iv) on interest crediting rates for a statutory hybrid plan pursuant to § 1.411(b)(5)-1(d).

Q G-3: Do the amendments made by MAP-21 affect the application of the interest rates for a plan for which an election to use the full yield curve under § 430(h)(2)(D)(ii) is in effect for the plan year?

A G-3: (a) Generally, no. However, if the plan uses an average value of assets under § 430(g)(3)(B), the assumed rate of return is limited by the MAP-21 third segment rate. See Q&A G-5(c)(2) of this notice.

(b) The plan sponsor may elect to revoke the election to use the full yield curve without the approval of the Secretary, as provided in section 40211(c)(2)(B) of MAP-21 and described in Q&A E-4 and E-5 of this notice.

Q G-4: Do the amendments made by MAP-21 affect the annuity substitution rule in § 1.430(d)-1(f)(4)(iii) used to determine the value of expected distributions

subject to § 417(e)(3) that are included in the funding target and target normal cost?

A G-4: (a) Section § 1.430(d)-1(f)(4)(iii) generally provides that, for purposes of calculating the funding target and target normal cost, the present value of a distribution that is subject to § 417(e)(3) is determined as the present value, using specified assumptions, of the annuity that is used under the plan to determine the amount of the distribution (the "annuity substitution rule"). This rule is applied using the valuation interest rates under § 430(h)(2) for purposes of discounting the projected annuity payments from their expected payment dates to the valuation date.

(b) MAP-21 does not change the annuity substitution rule. Accordingly, for purposes of measurements to which the MAP-21 segment rates apply, the present value of a distribution that is subject to § 417(e)(3) is determined using the MAP-21 segment rates to discount the projected annuity payments in accordance with § 1.430(d)-1(f)(4)(iii).

Q G-5: How do the MAP-21 segment rates affect the value of plan assets for purposes for which the MAP-21 segment rates apply?

A G-5: (a) The value of plan assets is calculated in accordance with §§ 430(g)(3) and (g)(4), § 1.430(g)-1, and Notice 2009-22, based on the interest rates used for the relevant plan years and the purpose for which the asset value is calculated. This Q&A G-5 describes the calculation of the value of plan assets for purposes for which MAP-21 segment rates apply. See Q&A NA-3 of this notice for guidance on calculating the value of plan assets for purposes for which the MAP-21 segment rates do not apply.

(b)(1) Under § 430(g)(4), the value of plan assets as of a valuation date reflects contributions for the prior year that were made after the current year's valuation date, adjusted to the current year's valuation date using the plan's effective

interest rate for the prior year as defined in § 430(h)(2)(A). The effective interest rate is generally based on the segment rates or rates from the full yield curve, whichever is used to determine the funding target for the plan. Accordingly, if the MAP-21 segment rates were used to determine the funding target for the plan for the prior plan year, the effective interest rate used to adjust these contributions receivable reflects the MAP-21 segment rates for the prior year.

(2) For a plan with a valuation date that is not the first day of the plan year, the value of assets for purposes of § 430 excludes contributions for the current plan year that were made prior to the valuation date. The value of contributions so excluded is adjusted for interest from the date of payment to the valuation date using the effective interest rate for the current plan year. Accordingly, if the MAP-21 segment rates are used to determine the funding target for the current plan year, the effective interest rate used to adjust these contributions reflects the MAP-21 segment rates.

(c)(1) If the actuarial value of assets is calculated as the average value of assets under § 430(g)(3)(B) and either the funding target or the target normal cost for a plan year is determined using the three segment rates, section III.B. of Notice 2009-22 provides that for purposes of calculating the expected earnings for a plan year, the assumed rate of earnings is limited to the third segment rate used for that determination. Therefore, if the MAP-21 segment rates are used to determine the funding target or target normal cost for a plan year, then the assumed rate of return used to determine the expected earnings for that plan year is limited to the MAP-21 third segment rate used for the plan for that plan year.

(2) Pursuant to section III.C of Notice 2009-22, if neither the funding target nor the target normal cost for a plan year is determined using the segment rates, and the value of plan assets is determined using the average value of assets under § 430(g)(3)(B), then for purposes of calculating the expected earnings for a plan year, the assumed rate of return for periods within the plan year generally must be limited so that it does not exceed the average of the spot third segment rates for the 24-month period ending with the

month preceding the month that contains the valuation date for the plan year. Accordingly, if the amendments made by MAP-21 apply to the plan for a plan year, the assumed rate of return used to calculate the expected earnings for that plan year is limited to the MAP-21 third segment rate for the month that contains the valuation date for that plan year.

Q G-6: How do the MAP-21 segment rates affect the determination of the funding standard carryover balance and prefunding balance for purposes for which the MAP-21 segment rates apply?

A G-6: For certain purposes, the value of plan assets is reduced by the funding standard carryover balance and the prefunding balance. Applying the MAP-21 segment rates can have both direct and indirect impacts on these balances.

(a) Applying the MAP-21 segment rates has an impact on the calculation of the minimum required contribution for a year, and hence on the determination of the excess contributions that may be added to the prefunding balance under § 430(f)(6)(B).

(b) Under § 430(f)(6)(B)(ii) and § 1.430(f)-1(b)(1)(iv), contributions are generally adjusted for interest based on the effective interest rate for purposes of determining the amount of excess contributions that may be credited to the prefunding balance. If the MAP-21 segment rates are used to calculate the funding target (or the target normal cost in the case of a plan with a zero funding target) for the plan year to which the contributions relate, then the effective interest rate used to make these adjustments reflects the MAP-21 segment rates.

(c) In addition, § 430(f)(5), § 1.430(f)-1(e), § 436(f), § 1.436-1(a)(5), and § 1.436-1(f)(1) provide that the funding standard carryover balance and the prefunding balance may be reduced by voluntary or deemed elections to avoid benefit restrictions based on the certified AFTAP for the plan year or to increase the value of plan assets (for example, so that the plan can reach various funding thresholds). Also, plan sponsors may elect to use these balances to offset minimum required contributions. These adjustments are made in accordance with the rules of § 430(f), § 436(f)(3), § 1.430(f)-1(d), § 1.430(f)-1(e) and § 1.436-1(a)(5), and reflect whichever interest rates are

in effect for the plan for the applicable measurements.

Q G-7: To the extent that this notice describes expected changes in the existing regulations that will conform to the provisions of this notice that conflict with those regulations, can these provisions be relied upon before the regulations are issued?

A G-7: The changes described in the sections of this notice listed below may be relied upon pending issuance of proposed regulations that reflect such changes:

(a) Q&A T-2(c)(1) and Q&A T-3(e)(2), relating to an additional exception to the rule in § 1.430(f)-1(f)(3) generally requiring elections to reduce a plan's funding standard carryover balance or prefunding balance to be irrevocable;

(b) Q&A T-3(d), relating to the addition to the list of deemed immaterial changes in § 1.436-1(h)(4)(iii)(C); and

(c) Q&A T-3(e)(3), relating to an additional exception to the rule under § 1.436-1(f)(2)(ii)(A) generally prohibiting the application of section 436 contributions toward minimum required contributions.

NA — MEASUREMENTS FOR WHICH MAP-21 SEGMENT RATES DO NOT APPLY

Q NA-1: For what purposes do the MAP-21 segment rates *not* apply?

A NA-1: The MAP-21 segment rates do not apply for purposes for which they are specifically excluded under the provisions of sections 40211(a)(2) and 40211(b)(3) of MAP-21 or related guidance (including this notice). Accordingly, except as provided in Q&A NA-3 of this notice, the MAP-21 segment rates should not be used for the purpose of applying § 404(o) to determine the maximum deductible limit under § 404; calculating the minimum present value requirement for distributions subject to § 417(e)(3); determining the amount of excess assets that can be transferred to retiree health or retiree group term life insurance accounts under § 420; or calculating the FTAP used to determine whether certain information must be reported to the PBGC relative to a plan under section 4010 of ERISA. See Q&A NA-2 and NA-3 of this notice for additional details. (See also section 40211(b)(3)(C) of MAP-21 regarding the

determination of variable-rate PBGC premiums.)

Q NA-2: How do the MAP-21 segment rates affect the application of the rules regarding at-risk status under § 430(i) for purposes for which the MAP-21 segment rates do not apply?

A NA-2: (a) Section 430(i) and § 1.430(i)-1 define special “at-risk” assumptions that apply if a plan is in at-risk status for a given plan year. A plan is in at-risk status for a plan year if both (1) the funding target attainment percentage described in § 430(d)(2) for the preceding plan year (without reflecting the special at-risk assumptions) was less than 80% and (2) the funding target attainment percentage for the preceding plan year (reflecting the special at-risk assumptions) was less than 70%. If a plan is in at-risk status, the funding target and target normal cost may reflect a loading factor under § 430(i)(1)(C) and may also reflect a transition adjustment under § 430(i)(5), depending on whether the plan was in at-risk status for past years.

(b) The determination of whether a plan is in at-risk status for a given plan year (and the extent to which the § 430(i)(1)(C) load and § 430(i)(5) transition adjustment apply) is made separately for purposes for which the MAP-21 segment rates apply and for purposes for which the MAP-21 segment rates do not apply, based on the segment rates or rates from the full yield curve that were used to calculate the funding target for that specific purpose for the preceding plan year. For example, a plan may be in at-risk status for a given plan year for purposes of determining the deductible limit under § 404(o), but not be in at-risk status for purposes of determining the minimum required contribution for that same plan year.

(c) See PBGC Technical Update 12-1 with respect to the determination of at-risk status for the purpose of calculating variable-rate premiums.

Q NA-3: How is the value of plan assets determined for purposes for which the MAP-21 segment rates do not apply?

A NA-3: (a) Except as otherwise permitted under paragraph (b) of this Q&A NA-3, when determining the value of plan assets for a purpose for which the MAP-21

segment rates do not apply: (1) the interest adjustments for contributions receivable (and contributions made for the plan year that are made before the valuation date) are determined using the effective interest rate that does not reflect the MAP-21 segment rates; and (2) the limit on the assumed rate of return used to calculate expected earnings under § 430(g)(3) must be the unadjusted third segment rate. Therefore, the value of plan assets used for a purpose for which the MAP-21 segment rates do not apply may differ from the value of plan assets used for purposes for which the MAP-21 segment rates apply. Note that this rule applies to a plan for which an election to use the full yield curve under § 430(h)(2)(D)(ii) is in effect, even though the funding target and target normal cost are not affected by the changes made by MAP-21.

(b) For purposes of determining the maximum deductible limit on pension contributions under § 404, a taxpayer is permitted instead to determine the maximum deductible limit under § 404 using the value of plan assets based on a limit on the expected earnings that reflects the MAP-21 third segment rate and adjusting contributions at the plan’s effective interest rate determined based on the interest rates used to calculate the minimum required contribution under § 430. Taxpayers are permitted to use this approach only for determinations for which the MAP-21 third segment rate is higher than the unadjusted third segment rate.

(c) Certain measurements (such as the determination of excess assets under § 420 and the funding target attainment percentage) are based on the value of the plan’s assets reduced by the funding standard carryover balance and the prefunding balance. A plan’s funding standard carryover balance and prefunding balance depend on voluntary and deemed elections made by the plan sponsor (1) to add excess contributions to the prefunding balance, (2) to reduce the balances (usually to attain certain funding benchmarks or to avoid benefit restrictions), or (3) to use the funding balances to offset minimum required contributions. Accordingly, it would be complex to determine what these balances would have been had MAP-21 not been

enacted. Furthermore, if separate tracking were required, it is not clear whether the balances would be smaller or larger than the actual balance.³ Therefore, the actual balances developed for purposes of determining the minimum funding requirements under § 430 must be used for measurements in which the assets are determined by subtracting the funding balances, even if the MAP-21 segment rates are not otherwise used for that measurement.

(d) See PBGC Technical Update 12-1 with respect to the determination of the value of plan assets for the purpose of calculating variable-rate premiums. See PBGC Technical Update 12-2 for information about how the asset calculation noted in this Q&A NA-3 affects reporting requirements under section 4010 of ERISA.

H — STATUTORY HYBRID PLANS

Q H-1: How do the changes made by MAP-21 affect the interest crediting rates for statutory hybrid plans?

A H-1: (a) In order to comply with § 411(b)(1)(H), a statutory hybrid plan cannot provide for interest credits at an interest crediting rate that exceeds a market rate of return. Section 1.411(b)(5)-1(d)(3) provides that the third segment rate under § 430(h)(2)(C)(iii) is an interest crediting rate that is not in excess of a market rate of return. In addition, § 1.411(b)(5)-1(d)(4) specifies that the first and second segment rates under §§ 430(h)(2)(C)(i) and (ii) are safe harbor rates that are deemed not to exceed a market rate of return.

(b) Section 1.411(b)(5)-1(d)(1)(iii) provides that an interest crediting rate is not in excess of a market rate of return only if it is described in § 1.411(b)(5)-1(d)(3), (d)(4), or (d)(5). Section 1.411(b)(5)-1(f)(2)(i)(B) provides that § 1.411(b)(5)-1(d)(1)(iii) is effective for plan years beginning on or after January 1, 2012. However, Notice 2011-85, 2011-44 I.R.B. 605, indicates that the Treasury Department and the Service intend to amend the regulations to postpone the effective/applicability date of § 1.411(b)(5)-1(d)(1)(iii) to match the applicability date that will apply to regulations finalizing other rules regarding the market rate of return requirement. Those final regulations will not be ef-

³ For example, the operation of rules which require reductions in those balances if the reduction would be sufficient to avoid certain benefit limitations under § 436 means that a smaller funding standard carryover balance and prefunding balance could be retained if it were insufficient to avoid the benefit limitation, while a larger one would be required to be reduced.

fective for plan years beginning before January 1, 2014.

(c) For a plan that currently defines the interest crediting rate by reference to a segment rate under §§ 430(h)(2)(C)(i), (ii), or (iii), prior to the effective date of the regulations that are described in Notice 2011–85, a plan administrator’s reasonable interpretation of plan terms that provide for interest credits by reference to one of the § 430(h)(2)(C) segment rates could reflect either of the following: (1) that the plan terms provide an interest crediting rate by reference to the segment rate without reflecting the changes made by MAP–21; or (2) that the plan terms provide an interest crediting rate by reference to the corresponding MAP–21 segment rate.

(d) If a plan that currently defines the interest crediting rate by reference to a segment rate under § 430(h)(2)(C)(i), (ii), or (iii) is amended to reflect the plan administrator’s reasonable interpretation of plan terms to specify that the reference is to the unadjusted segment rate (or, alternatively, to specify that the reference is to the MAP–21 segment rate) by the deadline for amending the plan to comply with the regulations described in Notice 2011–85, then the amendment is not considered to reduce section 411(d)(6) protected benefits. In addition, the amendment would not trigger the requirement to furnish a notice to participants under section 204(h) of ERISA.

(e) Whether any of the MAP–21 segment rates will be specified in the regulations described in Notice 2011–85 as interest crediting rates that do not exceed a market rate of return has not yet been determined, and this determination will be made when those regulations are finalized. If those regulations do not permit a statutory hybrid plan to use an interest crediting rate by reference to the MAP–21 segment rates, a plan that is crediting interest by reference to such rates will be required to change the interest crediting rate in accordance with the applicable transition rules that will apply to other plans that have an interest crediting rate in excess of a market rate of return. As provided in paragraph (b) of this Q&A H–1, those regulations will not be effective for plan years beginning before January 1, 2014.

Q H–2: If a plan currently defines the interest crediting rate by reference to a segment rate under § 430(h)(2)(C)(i), (ii), or (iii), and the plan administrator reasonably

interprets plan terms as providing an interest crediting rate by reference to the corresponding MAP–21 segment rate, when must interest credits reflect the changes made by MAP–21?

A H–2: If the plan administrator reasonably interprets plan terms as providing an interest crediting rate by reference to a MAP–21 segment rate, then the interest credits under the plan must be increased to reflect the MAP–21 segment rate for interest credited after the first day of the plan year for which the MAP–21 segment rates apply to the plan for purposes of § 430. Alternatively, such a plan administrator may interpret the plan as providing for the use of the MAP–21 segment rate for determining interest credits under the plan beginning the first day of a plan year beginning in 2012, even if the plan sponsor has elected to delay the application of MAP–21 segment rates for purposes of § 430. Once a plan administrator reasonably interprets plan terms as providing an interest crediting rate by reference to a MAP–21 segment rate, the plan terms cannot subsequently be interpreted to provide an interest crediting rate by reference to the corresponding unadjusted segment rate without creating the need to protect the accrued benefit as required under § 411(d)(6) (unless the regulations or other guidance provide otherwise).

T — TRANSITION ISSUES

Q T–1: When are the MAP–21 segment rates effective?

A T–1: The MAP–21 segment rates are generally effective for plan years beginning after December 31, 2011. However, the plan sponsor may elect to defer the application of the MAP–21 segment rates to plan years beginning on or after January 1, 2013, either (a) for all purposes, or (b) solely for purposes of determining the AFTAP when applying the funding-based benefit restrictions under § 436. See Q&A E–1 of this notice for additional details.

Q T–2: If the MAP–21 segment rates are used for purposes of determining the minimum required contribution under § 430 for a plan year beginning in 2012, when are the changes in the minimum funding requirements effective?

A T–2: (a) If the MAP–21 segment rates are used to determine the minimum required contribution for a plan year begin-

ning in 2012, the change in the minimum funding requirements is effective as of the first day of that plan year. For example, if reflecting the MAP–21 segment rates in the calculation of the minimum required contribution for the plan year beginning January 1, 2012, would reduce the required quarterly installments for that plan year, the required quarterly installments for that plan year are retroactively reduced for installments due prior to the enactment of MAP–21.

(b) A plan sponsor may not reverse an election under § 1.430(f)–1(d) to use a plan’s funding standard carryover balance or prefunding balance to offset the minimum required contribution for a plan year beginning in 2012, except as provided by § 1.430(f)–1(f)(3)(ii) and (iii) (relating to elections to use the funding standard carryover balance or prefunding balance that exceed the amount of the minimum required contribution for the plan year). This rule applies even if applying the MAP–21 segment rates retroactively reduces the required quarterly contributions for that plan year. However, see the special rule for excess contributions attributable to the use of funding balances in § 1.430(f)–1(b)(3)(iii).

(c) (1) A plan sponsor may elect to reverse all or part of any election under § 1.430(f)–1(e) to reduce the plan’s funding standard carryover balance or prefunding balance as of the first day of a plan year beginning in 2012 if (i) the reduction election was made on or before September 30, 2012, and (ii) the MAP–21 segment rates apply for purposes of determining the minimum required contribution for that plan year. It is expected that the regulations under § 430(f) will be revised to reflect this exception to the general rule that such an election is irrevocable.

(2) In addition, despite the general position of the Service that a contribution designated for a particular plan year cannot be redesignated to apply for another plan year after the Schedule SB is filed, the plan sponsor may choose to redesignate all or a portion of a contribution that was originally designated as applying to the plan year beginning in 2011 to apply to a plan year that begins in 2012. This rule applies only to contributions made after the end of the 2011 plan year but on or before September 30, 2012, and applies even

if the 2011 Schedule SB had already been filed on or before September 30, 2012.

(3) However, any reversal of an election or redesignation of contributions under paragraph (c)(1) or (c)(2) of this Q&A T-2 is not permitted to the extent it would result in the imposition of benefit restrictions under § 436 for the plan year beginning in 2012 that would not otherwise be imposed or would result in an unpaid minimum required contribution for any plan year.

(4) See Q&A E-3, Q&A R-3, and Q&A R-4 of this notice for further information on how to make and report the elections described in this Q&A T-2.

Q T-3: If the MAP-21 segment rates are used for purposes of applying the funding-based benefit restrictions under § 436 for a plan year beginning in 2012, when are changes in the plan's benefit restrictions effective?

A T-3: (a) (1) The application of the MAP-21 segment rates does not affect the application of the presumption rules under § 436(h) for the first plan year that MAP-21 segment rates apply to the plan for purposes of § 436. Accordingly, the restrictions for a plan year beginning in 2012 must be applied based on the presumed AFTAP before the date, if any, that the AFTAP is certified for the plan year.

(2) Consistent with § 1.436-1(h)(4)(ii), the rules of this Q&A T-3 apply to a range certification in the same way they would apply to the certification of a specific AFTAP.

(b) If the first AFTAP certification for a plan year beginning in 2012 uses the MAP-21 segment rates, the benefit restrictions under § 436 apply based on that AFTAP in accordance with the rules of §§ 1.436-1(g) and (h).

(c) (1) If, on or before September 30, 2012, the AFTAP was certified for a plan year beginning in 2012 using the unadjusted segment rates or the full yield curve, and the plan sponsor subsequently uses the MAP-21 segment rates for purposes of the § 436 benefit restrictions for that plan year, then the plan sponsor can either choose to apply any change in those restrictions either (i) prospectively, as described in paragraph (d) of this Q&A T-3 or (ii) retroactively to the date that the 2012 AFTAP was originally certified, as described in paragraph (e) of this Q&A T-3. In the absence of an affirmative

election to apply the changes retroactively as described in paragraph (e) of this Q&A T-3, the plan sponsor will be treated as having elected to apply any changes prospectively as described in paragraph (d) of this Q&A T-3. In either case, all plan operations and elections must be consistent with this choice, and any plan operations that were inconsistent with this choice must be corrected as described in Q&A T-4 of this notice.

(2) If any AFTAP certification for a plan year beginning in 2012 using the unadjusted segment rates or the full yield curve is made after September 30, 2012, then the rules regarding a material change in the AFTAP set forth in § 1.436-1(h)(4)(iii) and (iv) apply with respect to any subsequent certification for that plan year (including a certification that is based on the MAP-21 segment rates).

(d) (1) If, on or before September 30, 2012, the AFTAP was certified for a plan year beginning in 2012 using the unadjusted segment rates or the full yield curve, the plan sponsor subsequently uses the MAP-21 segment rates for purposes of calculating the AFTAP that is used to apply the § 436 benefit restrictions for that plan year, and the plan sponsor does not choose to apply any change in those restrictions retroactively as described in paragraph (e) of this Q&A T-3, then any subsequent certification for that plan year that is based on the MAP-21 segment rates is subject to the rules regarding a material change in the AFTAP set forth in § 1.436-1(h)(4)(iii) and (iv).

(2) Section 1.436-1(h)(4)(iii) sets forth rules relating to changes in certified AFTAPs and provides a special rule that deems a change in the AFTAP attributable to certain events as "immaterial," even if the change would otherwise be a material change. The effect of having an event for which the change in AFTAP is deemed immaterial is that a plan administrator can reflect the event on a prospective basis beginning with the date of the event, provided that the AFTAP is recertified as soon as practicable thereafter. The Service and the Treasury intend to propose amendments to the list of deemed immaterial changes set forth in § 1.436-1(h)(4)(iii)(C) that would provide that additional events can be added to the list of deemed immaterial events in

guidance of general applicability. One such event is the event described in this paragraph (d) of Q&A T-3.

(3) Pursuant to this planned change in the regulations, the event that would be treated as a deemed immaterial change is the change in AFTAP attributable to the use of the MAP-21 rate segments for a plan year beginning in 2012. The date of the event would be October 1, 2012, (or the date of the revised AFTAP certification, if earlier). Accordingly, if the plan sponsor chooses to apply any changes in the § 436 restrictions prospectively for a plan year beginning in 2012 as described in this paragraph (d) of Q&A T-3, any change in benefit restrictions resulting from the updated AFTAP determination using MAP-21 segment rates must be effective as of the earlier of (i) October 1, 2012, or (ii) the date of certification of the 2012 AFTAP determined using MAP-21 segment rates. In such a case, all elections relative to funding balances remain in place and all section 436 contributions remain as originally designated.

(4) The requirement that the AFTAP be recertified to reflect the MAP-21 segment rates as soon as practicable after the event giving rise to the deemed immaterial change as described in paragraph (d)(3) of this Q&A T-3 will not be satisfied if the recertification occurs later than December 31, 2012.

(e) (1) If, on or before September 30, 2012, the AFTAP had been certified for a plan year beginning in 2012 using the unadjusted segment rates or the full yield curve, the plan sponsor subsequently uses the MAP-21 segment rates for purposes of calculating the AFTAP that is used to apply the § 436 benefit restrictions to that plan year, and the plan sponsor elects to apply the AFTAP determined using the MAP-21 segment rates retroactively as described in this paragraph (e) of Q&A T-3, then the operations of the plan must be conformed to that updated AFTAP for the period beginning when the AFTAP for the plan year was originally certified. See Q&A E-2 of this notice for additional details as to how to elect to apply the AFTAP determined using MAP-21 rates retroactively as described in this paragraph (e) of Q&A T-3.

(2) If the MAP-21 segment rates are applied retroactively for purposes of § 436 for a plan year beginning in 2012 as described in this paragraph (e) of Q&A

T-3, the plan sponsor may elect to reverse all or a portion of any voluntary or deemed elections to reduce the funding standard carryover balance or prefunding balance that were made to avoid or remove benefit restrictions under § 436. Because §1.436(g)(5)(i)(C) provides that any reductions in prefunding and funding standard account balances made prior to the AFTAP certification continue to apply, no reversal is permitted with respect to elections that were made in connection with the presumed AFTAP for a plan year beginning in 2012. In addition, no reversal of an election under this paragraph (e)(2) is permitted to the extent it would result in the imposition of benefit restrictions under § 436 for the plan year that would not otherwise be imposed or if it would result in an unpaid minimum required contribution under § 430 for any plan year.

(3) If the MAP-21 segment rates are applied retroactively for purposes of § 436 for a plan year beginning in 2012 as described in this paragraph (e) of Q&A T-3, any section 436 contribution that was made in connection with the certified AFTAP is applied toward a minimum required contribution to the extent the contribution is no longer required to remove the benefit restriction. However, no change is permitted with respect to section 436 contributions that were made in connection with the presumed AFTAP for a plan year beginning in 2012.

(4) It is expected that the applicable regulations will be amended to conform to the provisions of this paragraph (e) of Q&A T-3, permitting certain reversals of elections and redesignation of section 436 contributions if an AFTAP based on MAP-21 segment rates is applied retroactively.

Q T-4: What actions must be taken if a certification of a plan's AFTAP reflecting MAP-21 segment rates for a plan year beginning in 2012 creates the need to correct for prior operations as described in Q&A T-3(d)(3) and Q&A T-3(e) of this notice?

A T-4: (a) (1) If the MAP-21 segment rates are used for purposes of applying the funding-based restrictions under § 436 for a plan year beginning in 2012, a plan must take any corrective actions necessary to conform plan operations to the AFTAP reflecting MAP-21 segment rates, if applying the MAP-21 segment rates would have changed the application of the § 436 restrictions for the period (i) beginning with

the date of the immaterial event described in Q&A T-3(d)(3) of this notice or (ii) beginning with the date the AFTAP for the year was first certified, as described in Q&A T-3(e) of this notice, as applicable.

(2) If the corrective actions described in paragraphs (b) through (f) of this Q&A T-4 are taken to reflect the application of MAP-21, then the plan's operations are treated as having been consistent with the provisions of the plan document relative to the requirements of § 436. For this purpose, the provisions of the Employee Plans Compliance Resolution System (EPCRS), as set forth in Rev. Proc. 2008-50, 2008-35 I.R.B. 464, apply, except that a plan is eligible for self-correction under sections 7, 8, and 9 of Rev. Proc. 2008-50 without regard to the requirements of sections 4.03 (requiring a favorable IRS determination letter) and 4.04 (requiring certain established practices and procedures) of that revenue procedure.

(b) Consistent with § 1.436-1(a)(4)(iii), if unpredictable contingent event benefits due to an event occurring during a plan year beginning in 2012 are not permitted to be paid because of restrictions under § 436, but are permitted to be paid later in that plan year as a result of a new certification of the AFTAP reflecting MAP-21 segment rates, then those unpredictable contingent event benefits must become payable, retroactive to the period those benefits would have been payable under the terms of the plan (other than plan terms implementing the requirements of § 436(b)).

(c) Consistent with § 1.436-1(a)(4)(iv), if a plan amendment with an effective date during a plan year beginning in 2012 does not take effect because of the limitations of § 436(c), but is permitted to take effect later in that plan year as a result of a new certification of the AFTAP reflecting MAP-21 segment rates, then the plan amendment must automatically take effect as of the first day of that plan year beginning in 2012 (or, if later, the original effective date of the amendment).

(d) For any prohibited payment that was not permitted to be paid during a plan year beginning in 2012 because of restrictions under § 436, but is permitted to be paid on or after the dates described in Q&A T-3(d)(3) and Q&A T-3(e) of this notice as a result of a new certification of the AFTAP reflecting

MAP-21 segment rates, the plan has taken adequate corrective action if it makes the prohibited payment available to participants or beneficiaries who would have been eligible for the prohibited payment (including a prohibited payment that is available on a restricted basis under § 436(d)(3)).

(e) For any accruals that were not permitted during the period for which § 436(e) retroactively ceases to apply by reason of the change made by MAP-21 as described in Q&A T-3(d)(3) and Q&A T-3(e) of this notice, the plan has taken adequate corrective action if it restores benefits that accrue during the period to which the MAP-21 segment rates are retroactively applied.

(f) In the case of a participant or beneficiary who, as a result of any of the changes described in paragraphs (b) through (e) of this Q&A T-4, is entitled to increased benefits, to benefits payable at a special early retirement date, or to benefits payable in a different form of payment (and who elects such different form of payment, with spousal consent, if applicable), the required correction is to provide the benefit payments in the increased amount or other form of payment commencing with a new prospective annuity starting date. However, if payments have already commenced, the correction is to provide the participant with (1) future benefit payments that are paid in the same manner and amount as if the participant had begun receiving the corrected payment at his or her original annuity starting date, and (2) a make-up for past underpayments. The make-up for past underpayments is equal to the aggregate difference between the past payments actually received and the amounts that would have been received had the benefit commenced in the correct form of payment at the participant's original annuity starting date, plus interest to the date of the correction (in accordance with EPCRS), and may be paid as either (i) a single-sum payment, or (ii) an actuarially equivalent increase in the amount of future benefit payments.

E — MAP-21 ELECTIONS

QE-1: How does the plan sponsor elect to defer the use of MAP-21 segment rates until the first plan year beginning on or after January 1, 2013?

A E-1: (a) A plan sponsor elects to defer the use of MAP-21 segment rates until the first plan year beginning on or after January 1, 2013, by providing written notice to the enrolled actuary for the plan and to the plan administrator. The notice must specify the name of the plan, employer identification number and plan number, and whether the use of MAP-21 segment rates is deferred for all purposes or only for determination of the AFTAP used to apply benefit restrictions under § 436.

(b) The election described in paragraph (a) of this Q&A E-1 is irrevocable, and must be made no later than the deadline for filing the Form 5500, Form 5500-SF, or Form 5500-EZ (including extensions) for a plan year beginning in 2012, or the date the applicable form is actually filed, if earlier. However, the decision as to whether to defer the use of MAP-21 segment rates may have to be made earlier if it affects the application of benefit restrictions under § 436. See Q&A R-1 and R-2 of this notice for information on reporting information on Schedule SB of Form 5500 if the MAP-21 segment rates are applied for a plan year beginning in 2012 for purposes of determining the minimum required contribution under § 430 but not for purposes of determining the AFTAP used to apply the benefit restrictions under § 436.

Q E-2: How does a plan sponsor elect to apply an AFTAP based on MAP-21 segment rates retroactively for a plan year beginning in 2012 as described in Q&A T-3(e) of this notice?

A E-2: (a) A plan sponsor elects to apply an AFTAP based on MAP-21 segment rates retroactively as described in paragraph Q&A T-3(e) (rather than prospectively as described in paragraph Q&A T-3(d)) of this notice by providing written notice to the enrolled actuary for the plan and to the plan administrator. The notice must specify the name of the plan, employer identification number and plan number, and the date as of which the AFTAP based on MAP-21 segment rates is retroactively effective, as determined under Q&A T-3(e) of this notice.

(b) The election described in paragraph (a) of this Q&A E-2 is irrevocable, and must be made no later than the deadline for filing the Form 5500, Form 5500-SF, or Form 5500-EZ (including extensions) for a plan year beginning in 2012, or the

date the applicable form is actually filed, if earlier. However, see paragraph Q&A T-3(d)(4) of this notice regarding the timing requirement for eligibility for the deemed immaterial change rule described in paragraph Q&A T-3(d) of this notice.

Q E-3: How does a plan sponsor elect to reverse elections made to reduce the funding standard carryover balance or prefunding balance, or to redesignate contributions originally intended for the 2011 plan year, as permitted under Q&A T-2(c) and Q&A T-3(e)(2) of this notice?

A E-3: (a) Any election to reverse an election to reduce a funding standard carryover balance or prefunding balance that was made before October 1, 2012, or to redesignate a contribution made before October 1, 2012, that was originally designated as applying to the 2011 plan year so that it applies to the 2012 plan year (taking into account the requirements of Q&A T-2 and Q&A T-3 of this notice) is made by the plan sponsor by providing written notification to the plan's enrolled actuary and plan administrator. The written notification must specify the name of the plan, employer identification number and plan number, and must set forth the relevant details of the election, including the specific dollar amount involved in the election. A conditional or formula-based election does not satisfy this requirement.

(b) Any election to reverse a previous election to reduce the funding standard carryover balance or prefunding balance must be made by the last day of the plan year beginning in 2012 to which the election relates.

(c) Any election to redesignate contributions that were originally designated for the 2011 plan year to the 2012 plan year as a result of the changes made by MAP-21 must be made by the deadline for filing the Form 5500, Form 5500-SF, or Form 5500-EZ (including extensions) for the 2012 plan year or the date the applicable form is actually filed, if earlier.

Q E-4: How does a plan sponsor revoke an election to use the full yield curve under § 430(h)(2)(D)(ii), pursuant to section 40211(c)(2)(B) of MAP-21?

A E-4: (a) The sponsor of a plan for which an election to use the full yield curve under § 430(h)(2)(D)(ii) is in effect as of July 6, 2012, revokes that election by providing written notice to the enrolled actuary for the plan and to the plan ad-

ministrator no later than July 5, 2013. The notice must specify the name of the plan, employer identification number and plan number, the first plan year for which the election is revoked, and (if applicable) the lookback month used to determine the segment rates in accordance with § 430(h)(2)-1(e)(2).

(b) Once a plan sponsor has revoked the election to use the full yield curve for a plan for a plan year pursuant to section 40211(c)(2)(B) of MAP-21, that revocation cannot be changed for that plan year.

Q E-5: What additional rules apply to a plan sponsor who elects to revoke an election to use the full yield curve under § 430(h)(2)(D)(ii) that is in effect for a plan as of July 6, 2012?

A E-5: (a) If an election to use the full yield curve under § 430(h)(2)(D)(ii) is in effect for a plan as of July 6, 2012, the plan sponsor may revoke the election to use the full yield curve for the first plan year to which MAP-21 segment rates are used under the plan without the approval of the Secretary of the Treasury. This could apply to a plan year beginning in 2012 or 2013 depending on the employer's election to defer the application of MAP-21 segment rates under 40211(c)(2)(A) and Q&A E-1 of this notice. For this purpose, if a plan sponsor elects to defer the application of MAP-21 segment rates for a plan to the first plan year beginning on or after January 1, 2013, solely for purposes of calculating the AFTAP used to apply the funding-based benefit restrictions under § 436, then the amendments made by MAP-21 apply (1) to the first plan year beginning on or after January 1, 2013, for purposes of determining the AFTAP used to apply the benefit restrictions under § 436, and (2) to a plan year beginning in 2012 for all other purposes. In such a case, the election described in Q&A E-4 of this notice would specify those separate plan years for those separate purposes.

(b) If the plan sponsor revokes the election to use the full yield curve for a plan year beginning in 2012 and applies the MAP-21 segment rates for that plan year, then that revocation also applies for purpose of applying the benefit restrictions under § 436. However, if a plan sponsor elects to defer the application of MAP-21 segment rates for a plan to the first plan year beginning on or after January 1, 2013, solely for purposes of

calculating the AFTAP used to apply the funding-based benefit restrictions under § 436, then the full yield curve continues to apply to the plan for such purpose for the plan year beginning in 2012.

R — SCHEDULE SB REPORTING

Q R-1: Should the information reported on the 2012 Schedule SB reflect the MAP-21 segment rates?

A R-1: (a) The information reported on the 2012 Schedule SB should generally reflect the assumptions used to determine the minimum required contribution under § 430. Therefore, for example, the funding target, effective interest rate and target normal cost reported on lines 3 through 6 and the assumed discount rates reported on line 21 of the 2012 Schedule SB must reflect the MAP-21 segment rates if those are used to determine the minimum required contribution for 2012. Otherwise, the information reported should generally be based on the unadjusted segment rates or the full yield curve, whichever is used to determine the 2012 minimum required contribution.

Q R-2: Should the AFTAP reported on line 15 of the 2012 Schedule SB reflect the MAP-21 segment rates?

A R-2: (a) The AFTAP reported on line 15 of the 2012 Schedule SB is the final certified AFTAP for the plan year, reflecting any adjustments to reflect the MAP-21 rates, if applicable, and any adjustments pertaining to the plan year made subsequent to the valuation.

(b) (1) If the plan sponsor elects to defer the effective date of MAP-21 for purposes of applying the funding-based benefit restrictions under § 436 until the plan year beginning on or after January 1, 2013, as permitted under section 40211(c)(2)(A) of MAP-21, the AFTAP reported on line 15 of the 2012 Schedule SB must not reflect the MAP-21 segment rates.

(2) For plans with valuation dates other than the first day of the plan year, the instructions to Schedule SB generally require that the AFTAP reported on line 15 of Schedule SB be the final certified AFTAP based on the valuation results for the plan year for which the Schedule SB is prepared, reflecting other adjustments as defined in applicable guidance, even if that AFTAP is not used to apply the

restrictions under § 436 until the following plan year.

(3) If the segment rates used to determine the AFTAP reported on line 15 of the Schedule SB differ from those used to determine the minimum required contribution, include in the attachment for line 15 a description of the segment rates or the full yield curve in the same level of detail as the information reported on line 21 of the 2012 Schedule SB.

Q R-3: How are any elections to reverse previous elections to reduce the funding standard carryover balance or the prefunding balance as permitted under Q&A T-2(c) and Q&A T-3(e)(2) of this notice reported on the 2012 Schedule SB?

A R-3: If an election is made to reverse earlier elections to reduce the funding standard carryover balance or prefunding balance for a 2012 plan year, complete the entries on line 12 of the 2012 Schedule SB reflecting the net effect of the original election and the election to reverse all or part of that election, as if the net amount of the reduction was the amount of the original election. Include a reconciliation of the reductions under the original election and subsequent reversal of all or part of that election in the attachment to line 9, "Schedule SB, line 9 – *Explanation of Credit Balance Discrepancy*."

Example R-1. Plan sponsor A elected (or was deemed to have elected, under § 436(f)(3) and § 1.436-1(a)(5)) to reduce a plan's funding standard carryover account balance by \$100,000 in connection with the certification of an AFTAP on or before September 30, 2012, and prior to the application of the MAP-21 segment rates. If A chooses to apply the MAP-21 segment rates retroactively in accordance with Q&A T-3(e) of this notice and elects to reverse \$25,000 of the reduction after reflecting the MAP-21 segment rates, then line 12, column (a) of the 2012 Schedule SB would reflect the net \$75,000 reduction in the funding standard carryover balance as if that had been the amount reduced by the original election. The attachment to line 9 would include a reconciliation showing the date and amount of the original \$100,000 reduction in the plan's funding standard carryover balance and the date and amount of the subsequent reversal of \$25,000 after the application of the MAP-21 segment rates.

Q R-4: How does Schedule SB reflect (1) any elections to redesignate contributions made on or before September 30, 2012, to the 2012 plan year which were originally designated as applying to the 2011 plan year in accordance with Q&A T-2(c)(2) of this notice or (2) any section 436 contributions that were made on or before September 30, 2012, that are

applied to the minimum required contribution for 2012 in accordance with Q&A T-3(e)(3) of this notice?

A R-4: If any contributions originally designated as applying to the 2011 plan year that were paid on or before September 30, 2012, are redesignated as applying to a plan year beginning in 2012 as provided in Q&A T-2(c)(2) of this notice, or if any section 436 contributions that were made on or before September 30, 2012, are applied to the minimum required contribution for 2012 as provided in Q&A T-3(e)(3) of this notice, complete the 2012 Schedule SB as if such contributions had originally been intended to apply toward the minimum required contribution for the 2012 plan year. Accordingly:

(a) Exclude the interest-adjusted contributions redesignated from the 2011 plan year from the entries on line 11a through 11c of the 2012 Schedule SB, instead of reporting the present value of excess contributions reported on lines 38a and 38b of the 2011 Schedule SB. Include a reconciliation of the difference between the entries in lines 11a through 11c on the 2012 Schedule SB and the information on lines 38a and 38b of the 2011 Schedule SB in the attachment to line 9, "Schedule SB, line 9 – *Explanation of Credit Balance Discrepancy*". Alternatively, the plan sponsor may file an amended 2011 Schedule SB, excluding any contributions that are redesignated for a 2012 plan year.

(b) Include the amount of the contributions redesignated from the 2011 plan year and section 436 contributions applied to the minimum required contribution on the 2012 Schedule SB, in line 18 and in the interest-adjusted contributions in line 19c (adjusted with interest to the valuation date for the 2012 plan year). Report these contributions in the schedule described in the attachment to line 19, "Schedule SB, line 19 – *Discounted Employer Contributions*," and include the fact that these contributions were originally credited to the 2011 plan year when reporting the plan year to which these contributions (or the portions of individual contributions) are applied.

IV. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the

Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1610.

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

The collections of information in this notice are in section III of this notice. The collections of information are required to implement the application of the funding relief under section 40211 of MAP-21. The collections of information are mandatory for those plan sponsors making various elections when applying the amendments made by MAP-21 to a plan.

The likely respondents are sponsors of approximately 39,000 single-employer defined benefit plans, including one-participant plans. Currently, it is estimated that any effect on burden as previously reported to OMB will not be significant.

Any potential changes on burden will be reported through the renewal of the current OMB approval numbers.

Estimates of the annualized cost to respondents are not available at this time.

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

V. DRAFTING INFORMATION

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

Extension of Replacement Period for Livestock Sold on Account of Drought

Notice 2012-62

SECTION 1. PURPOSE

This notice provides guidance regarding an extension of the replacement period under § 1033(e) of the Internal Revenue Code for livestock sold on account of drought in specified counties.

SECTION 2. BACKGROUND

.01 *Nonrecognition of Gain on Involuntary Conversion of Livestock.* Section 1033(a) generally provides for nonrecognition of gain when property is involuntarily converted and replaced with property that is similar or related in service or use. Section 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions.

.02 *Replacement Period.* Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period. If a sale or exchange of livestock is treated as an involuntary conversion under § 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the federal government, § 1033(e)(2)(A) provides that the replacement period ends four years after the close of the first taxable year in which any part of the gain from the conversion is realized. Section 1033(e)(2)(B) provides that the Secretary may extend this replacement period on a regional basis for such additional time as the Secretary determines appropriate if the weather-related conditions that resulted in the area being designated as eligible for assistance by the federal government continue for more than three years. Section 1033(e)(2) is effective for

any taxable year with respect to which the due date (without regard to extensions) for a taxpayer's return is after December 31, 2002.

SECTION 3. EXTENSION OF REPLACEMENT PERIOD UNDER § 1033(e)(2)(B)

Notice 2006-82, 2006-2 C.B. 529, provides for extensions of the replacement period under § 1033(e)(2)(B). If a sale or exchange of livestock is treated as an involuntary conversion on account of drought and the taxpayer's replacement period is determined under § 1033(e)(2)(A), the replacement period will be extended under § 1033(e)(2)(B) and Notice 2006-82 until the end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's 4-year replacement period determined under § 1033(e)(2)(A); and (3) does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region. The applicable region is the county that experienced the drought conditions on account of which the livestock was sold or exchanged and all counties that are contiguous to that county.

A taxpayer may determine whether exceptional, extreme, or severe drought is reported for any location in the applicable region by reference to U.S. Drought Monitor maps that are produced on a weekly basis by the National Drought Mitigation Center. U.S. Drought Monitor maps are archived at <http://droughtmonitor.unl.edu/archive.html>.

In addition, Notice 2006-82 provides that the Internal Revenue Service will publish in September of each year a list of counties, districts, cities, or parishes (hereinafter "counties") for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor maps to determine whether exceptional, extreme, or severe drought has been reported for any location in the applicable region.

The Appendix to this notice contains the list of counties for which exceptional, extreme, or severe drought was reported

during the 12-month period ending August 31, 2012. Under Notice 2006–82, the 12-month period ending on August 31, 2012, is not a drought-free year for an applicable region that includes any county on this list. Accordingly, for a taxpayer who qualified for a four-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of

2012 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2012), the replacement period will be extended under § 1033(e)(2) and Notice 2006–82 if the applicable region includes any county on this list. This extension will continue until the end of the taxpayer’s first taxable year ending after a drought-free year for the applicable region.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Sue-Jean Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Kim at (202) 622–4960 (not a toll-free call).

APPENDIX

Alabama

Counties of Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Etowah, Franklin, Geneva, Hale, Henry, Houston, Jackson, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Mobile, Monroe, Montgomery, Morgan, Perry, Pike, Randolph, Russell, Saint Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox.

Arizona

Counties of Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, Yuma.

Arkansas

Counties of Arkansas, Ashley, Baxter, Benton, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Craighead, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, IZard, Jackson, Jefferson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Marion, Miller, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saint Francis, Saline, Scott, Searcy, Sebastian, Sevier, Sharp, Stone, Union, Van Buren, Washington, White, Woodruff, Yell.

California

Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba.

Colorado

Counties of Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Broomfield, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Douglas, Eagle, El Paso, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, La Plata, Lake, Larimer, Las Animas, Lincoln, Logan, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Weld, Yuma.

Connecticut

Counties of Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, Windham.

Delaware

Counties of Kent, New Castle, Sussex.

Florida

Counties of Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Saint Johns, Saint Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, Washington.

Georgia

Counties of Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Carroll, Charlton, Chatham, Chattahoochee, Cherokee, Clarke, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Decatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Elbert, Emanuel, Evans, Fayette, Floyd, Forsyth, Franklin, Fulton, Glascock, Glynn, Grady, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Seminole, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Troup, Turner, Twiggs, Upson, Walton, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Wilcox, Wilkes, Wilkinson, Worth.

Hawaii

Counties of Hawaii, Honolulu, Kauai, Maui.

Idaho

Counties of Bear Lake, Caribou, Franklin, Lemhi, Oneida.

Illinois

Counties of Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Witt, DeKalb, Douglas, DuPage, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Jo Daviess, Johnson, Kane, Kankakee, Kendall, Knox, La Salle, Lake, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saint Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Williamson, Winnebago, Woodford.

Indiana

Counties of Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clark, Clay, Clinton, Crawford, Daviess, Dearborn, Decatur, DeKalb, Delaware, Dubois, Elkhart, Fayette, Floyd, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Hamilton, Hancock, Harrison, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Knox, Kosciusko, LaGrange, LaPorte, Lawrence, Madison, Marion, Marshall, Martin, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Orange, Owen, Parke, Perry, Pike, Porter, Posey, Pulaski, Putnam, Randolph, Ripley, Rush, Saint Joseph, Scott, Shelby, Spencer, Starke, Steuben, Sullivan, Switzerland, Tippecanoe, Tipton, Union, Vanderburgh, Vermillion, Vigo, Wabash, Warren, Warrick, Washington, Wayne, Wells, White, Whitley.

Iowa

Counties of Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Scott, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright.

Kansas

Counties of Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Douglas, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Johnson, Kearny, Kingman, Kiowa, Labette, Lane, Leavenworth, Lincoln, Linn, Logan, Lyon, Marion, Marshall, McPherson, Meade, Miami, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Sedgwick, Seward, Shawnee, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson, Wyandotte.

Kentucky

Counties of Adair, Allen, Anderson, Ballard, Barren, Bell, Boone, Bourbon, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Campbell, Carlisle, Carroll, Casey, Christian, Clark, Clay, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Estill, Fayette, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Hancock, Hardin, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Jessamine, Kenton, Knox, Larue, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, McCracken, McCreary, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Russell, Scott, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Woodford.

Louisiana

Parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, Jefferson, La Salle, Lafayette, Lafourche, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Landry, Saint Martin, Saint Mary, Saint Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Webster, West Carroll, West Feliciana, Winn.

Maryland

Counties of Anne Arundel, Calvert, Caroline, Charles, Dorchester, Kent, Prince George's, Queen Anne's, Saint Mary's, Somerset, Talbot, Wicomico, Worcester.

Massachusetts

Counties of Barnstable, Bristol, Dukes, Essex, Hampden, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, Worcester.

Michigan

Counties of Allegan, Baraga, Barry, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Hillsdale, Houghton, Huron, Ingham, Ionia, Jackson, Kalamazoo, Kent, Keweenaw, Lapeer, Lenawee, Livingston, Marquette, Monroe, Muskegon, Oakland, Ottawa, Saint Clair, Saint Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne.

Minnesota

Counties of Becker, Beltrami, Blue Earth, Brown, Carver, Chippewa, Clay, Cook, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Jackson, Kittson, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahanomen, Marshall, Martin, McLeod, Mower, Murray, Nicollet, Nobles, Norman, Olmsted, Pennington, Pipestone, Polk, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Saint Louis, Scott, Sibley, Steele, Wabasha, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine.

Mississippi

Counties of Benton, Coahoma, DeSoto, George, Greene, Hancock, Harrison, Issaquena, Jackson, Lafayette, Marshall, Panola, Pearl River, Quitman, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tunica, Washington, Yalobusha.

Missouri

City of Saint Louis. Counties of Adair, Andrew, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Dunklin, Franklin, Gasconade, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lewis, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Newton, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Platte, Polk, Pulaski, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, Saint Charles, Saint Clair, Saint Francois, Saint Louis, Sainte Genevieve, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.

Montana

Counties of Beaverhead, Big Horn, Broadwater, Carbon, Carter, Cascade, Custer, Fallon, Fergus, Gallatin, Garfield, Golden Valley, Jefferson, Judith Basin, Madison, Meagher, Musselshell, Park, Petroleum, Powder River, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, Wibaux, Yellowstone.

Nebraska

Counties of Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, York.

Nevada

Carson City. Counties of Churchill, Clark, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, Washoe, White Pine.

New Hampshire

Counties of Hillsborough, Rockingham.

New Mexico

Counties of Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, DeBaca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sandoval, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia.

New York

Counties of Dutchess, Nassau, Putnam, Rockland, Suffolk, Westchester.

North Carolina

Counties of Bladen, Brunswick, Cleveland, Columbus, Gaston, Henderson, Jackson, Lincoln, Macon, Mecklenburg, New Hanover, Onslow, Pender, Polk, Rutherford, Sampson.

North Dakota

Counties of Barnes, Benson, Billings, Bowman, Cass, Dickey, Eddy, Foster, Golden Valley, Grand Forks, Griggs, LaMoure, Logan, McIntosh, Nelson, Ramsey, Ransom, Richland, Sargent, Slope, Stark, Steele, Stutsman, Traill, Walsh.

Ohio

Counties of Allen, Auglaize, Brown, Butler, Clermont, Clinton, Darke, Defiance, Fayette, Franklin, Fulton, Greene, Hamilton, Hancock, Hardin, Henry, Logan, Lucas, Madison, Mercer, Miami, Montgomery, Paulding, Pickaway, Preble, Putnam, Ross, Shelby, Van Wert, Warren, Williams, Wood.

Oklahoma

Counties of Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cimarron, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, Major, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, Woodward.

Oregon

Counties of Harney, Klamath, Lake, Malheur.

Rhode Island

Counties of Bristol, Kent, Newport, Providence, Washington.

South Carolina

Counties of Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Clarendon, Colleton, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lexington, Marion, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, York.

South Dakota

Counties of Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Charles Mix, Clay, Codington, Custer, Davison, Deuel, Dewey, Douglas, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall, McCook, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Sanborn, Shannon, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach.

Tennessee

Counties of Bedford, Benton, Campbell, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Madison, Marshall, Maury, McNairy, Montgomery, Moore, Morgan, Obion, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Scott, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, Wilson.

Texas

Counties of Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala.

Utah

Counties of Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

Virginia

County of Accomack.

Wisconsin

Counties of Adams, Calumet, Clark, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, Wood.

Wyoming

Counties of Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Uinta, Washakie, Weston.

2012–2013 Special Per Diem Rates

Notice 2012–63

SECTION 1. PURPOSE

This annual notice provides the 2012–2013 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home, specifically (1) the special transportation industry meal and incidental expenses (M&IE) rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for purposes of the high-low substantiation method.

SECTION 2. BACKGROUND

Rev. Proc. 2011–47, 2011–42 I.R.B. 520, provides rules for using a *per diem* rate to substantiate, under § 274(d) of the Internal Revenue Code and § 1.274–5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers using the rates and list of high-cost localities provided in this notice must comply with Rev. Proc. 2011–47. Notice 2011–81, 2011–42 I.R.B. 513, provides the rates and list of high-cost localities for the period October 1, 2011, to September 30, 2012.

Section 3.02(3) of Rev. Proc. 2011–47 provides that the term “incidental expenses” has the same meaning as in the

Federal Travel Regulations, 41 C.F.R. 300–3.1, and that future changes to the definition of incidental expenses in the Federal Travel Regulations would be announced in the annual *per diem* notice. On September 7, 2011, the General Services Administration published interim (temporary) regulations revising the definition of incidental expenses under the Federal Travel Regulations to include only fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. Transportation between places of lodging or business and places where meals are taken, and the mailing cost of filing travel vouchers and paying employer-sponsored charge card billings, are no longer included in incidental expenses. Accordingly, taxpayers using *per diem* rates may separately deduct or be reimbursed for transportation and mailing expenses.

SECTION 3. SPECIAL M&IE RATES FOR TRANSPORTATION INDUSTRY

The special M&IE rates for taxpayers in the transportation industry are \$59 for any locality of travel in the continental United States (CONUS) and \$65 for any locality of travel outside the continental United States (OCONUS). See section 4.04 of Rev. Proc. 2011–47.

SECTION 4. RATE FOR INCIDENTAL EXPENSES ONLY DEDUCTION

The rate for any CONUS or OCONUS locality of travel for the incidental ex-

penses only deduction is \$5 per day. See section 4.05 of Rev. Proc. 2011–47.

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

1. *Annual high-low rates.* For purposes of the high-low substantiation method, the *per diem* rates in lieu of the rates described in section 4.01 of Rev. Proc. 2011–47 (the *per diem* substantiation method) are \$242 for travel to any high-cost locality and \$163 for travel to any other locality within CONUS. The amount of the \$242 high rate and \$163 low rate that is treated as paid for meals for purposes of § 274(n) is \$65 for travel to any high-cost locality and \$52 for travel to any other locality within CONUS. See section 5.02 of Rev. Proc. 2011–47. The *per diem* rates in lieu of the rates described in section 4.02 of Rev. Proc. 2011–47 (the meal and incidental expenses only substantiation method) are \$65 for travel to any high-cost locality and \$52 for travel to any other locality within CONUS.

2. *High-cost localities.* The following localities have a federal *per diem* rate of \$202 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parentheses under the key city name.

Key City

Arizona

Sedona

(March 1–April 30)

California

Monterey

Napa

(October 1–November 30 and April 1–September 30)

San Diego

San Francisco

Santa Barbara

Santa Monica

Yosemite National Park

(June 1–August 31)

County or other defined location

City limits of Sedona

Monterey

Napa

San Diego

San Francisco

Santa Barbara

City limits of Santa Monica

Mariposa

<i>Key City</i>	<i>County or other defined location</i>
Colorado	
Aspen (December 1-March 31 and June 1-August 31)	Pitkin
Denver/Aurora Steamboat Springs (December 1-March 31)	Denver, Adams, Arapahoe, and Jefferson Routt
Telluride (December 1-March 31)	San Miguel
Vail (December 1-August 31)	Eagle
District of Columbia	
Washington D.C. (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia)	
Florida	
Fort Lauderdale (January 1-May 31)	Broward
Fort Walton Beach/De Funiak Springs (June 1-July 31)	Okaloosa and Walton
Key West	Monroe
Miami (December 1-March 31)	Miami-Dade
Naples (January 1-April 30)	Collier
Illinois	
Chicago (October 1-November 30 and April 1-September 30)	Cook and Lake
Louisiana	
New Orleans (October 1-June 30)	Orleans, St. Bernard, Jefferson and Plaquemine Parishes
Maine	
Bar Harbor (July 1-August 31)	Hancock
Maryland	
Baltimore City (October 1-November 30 and March 1-September 30)	Baltimore City
Cambridge/St. Michaels (June 1-August 31)	Dorchester and Talbot
Ocean City (June 1-August 31)	Worcester
Washington, DC Metro Area	Montgomery and Prince George's
Massachusetts	
Boston/Cambridge	Suffolk, City of Cambridge
Falmouth (July 1-August 31)	City limits of Falmouth

<i>Key City</i>	<i>County or other defined location</i>
Martha's Vineyard (July 1-August 31)	Dukes
Nantucket (June 1-September 30)	Nantucket
New Hampshire Conway (July 1-August 31)	Carroll
New York Floral Park/Garden City/Great Neck Glens Falls (July 1-August 31)	Nassau Warren
Lake Placid (July 1-August 31)	Essex
Manhattan (includes the boroughs of Manhattan, Brooklyn, the Bronx, Queens and Staten Island)	Bronx, Kings, New York, Queens, Richmond
Saratoga Springs/Schenectady (July 1-August 31)	Saratoga and Schenectady
Tarrytown/White Plains/New Rochelle	Westchester
North Carolina Kill Devil (June 1-August 31)	Dare
Pennsylvania Philadelphia	Philadelphia
Rhode Island Jamestown/Middletown/Newport (October 1-October 31 and May 1-September 30)	Newport
Utah Park City (January 1-March 31)	Summit
Virginia Washington, DC Metro Area	Cities of Alexandria, Fairfax, and Falls Church; counties of Arlington and Fairfax
Virginia Beach (June 1-August 31)	City of Virginia Beach
Washington Seattle	King
Wyoming Jackson/Pinedale (July 1-August 31)	Teton and Sublette

3. *Changes in high-cost localities.* There are no changes in the list of high-cost localities in this notice from the list of high-cost localities in section 5 of Notice 2011-81.

SECTION 6. EFFECTIVE DATE

This notice is effective for *per diem* allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only, that are paid to any employee on or after October 1, 2012, for travel away from home on or after October 1, 2012. For purposes of computing the amount allowable as a deduction for travel away from home, this notice is effective

for meal and incidental expenses or for incidental expenses only paid or incurred on or after October 1, 2012. See sections 4.06 and 5.04 of Rev. Proc. 2011-47 for transition rules for the last 3 months of calendar year 2012.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2011-81 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Eric D. Brauer of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Brauer at (202) 622-4970 (not a toll-free call).

Part IV. Items of General Interest

Additional Requirements for Charitable Hospitals; Hearing

Announcement 2012–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on notice proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations (REG–130266–11, 2012–32 I.R.B. 126) that provide guidance regarding the requirements for charitable hospital organizations relating to financial assistance and emergency medical care policies, charges for certain care provided to individuals eligible for financial assistance, and billing and collections.

DATES: The public hearing is being held on Monday, October 29, 2012, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, October 12, 2012.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors

must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–130266–11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–130266–11), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (REG–130266–11).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Amber L. Mackenzie or Preston J. Quesenberry at (202) 622–6070; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–130266–11) that was published in the **Federal Register** on Tuesday, June 26, 2012 (77 FR 38148).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hear-

ing that submitted written comments by September 24, 2012, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW, entrance, 1111 Constitution Avenue, NW, Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this document.

LaNita VanDyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

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