Internal Revenue
bulletin

Bulletin No. 2001–29
July 16, 2001

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. 2001–35, page 59.
LIFO; price indexes; department stores. The May 2001 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, May 31, 2001.

T.D. 8951, page 63.
Final regulations under section 6323 of the Code set forth limited circumstances under which the Service may withdraw a notice of federal tax lien. The regulations provide procedures for requesting the withdrawal of a notice and the notification of credit agencies, financial institutions, and creditors.

T.D. 8953, page 44.
Final regulations under section 32 of the Code provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and who wish to claim the EIC in a subsequent year.

REG–100548–01, page 67.
This document withdraws proposed regulations (LR–107–84, 1984–2 C.B. 902) under section 341 of the Code that relate to collapsible corporations and proposed regulations (LR–97–79, 1984–2 C.B. 821) under section 1502 of the Code that relate to corporations filing consolidated income tax returns.

EMPLOYEE PLANS

Rev. Rul. 2001–30, page 46.
Nondiscrimination; cross-testing. This ruling describes specific conditions that a defined contribution plan allocation must meet to be treated as a defined benefit replacement allocation under section 1.401(a)(4)–8(b) of the regulations.

T.D. 8954, page 47.
Final regulations under section 401(a)(4) of the Code prescribe conditions under which certain defined contribution retirement plans (sometimes referred to as "new comparability" plans) can comply with applicable nondiscrimination requirements based on plan benefits rather than plan contributions.

EXEMPT ORGANIZATIONS

Announcement 2001–76, page 67.
A list is provided of organizations now classified as private foundations.

ADMINISTRATIVE

T.D. 8952, page 60.
Final regulations under section 6302 of the Code permanently remove as authorized depositaries the twelve Federal Reserve banks and their approximately two dozen branches.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated 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 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

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

Section 32.—Earned Income

26 CFR 1.32–3: Eligibility requirements after denial of the earned income credit.

T.D. 8953

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Eligibility Requirements After Denial of the Earned Income Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance to taxpayers who have been denied the earned income credit (EIC) as a result of the deficiency procedures and wish to claim the EIC in a subsequent year. The temporary regulations apply to taxpayers claiming the EIC for taxable years beginning after December 31, 1997, where the taxpayer's EIC claim was denied for a taxable year beginning after December 31, 1996.

DATES: *Effective date*: These regulations are effective June 25, 2001.

Applicability dates: For dates of applicability, see §1.32–3(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Karin Loverud at 202-622-6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has 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 1545–1575. Responses to this collection of information are mandatory.

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

The burden is reflected in the burden of Form 8862.

Comments and suggestions for reducing the burden imposed by this regulation should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

Section 32(k) was added by the Taxpayer Relief Act of 1997. Section 32(k)(2) provides that, in the case of a taxpayer who is denied the EIC as a result of the deficiency procedures, no EIC is allowed for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for the credit. On June 25, 1998, temporary regulations (T.D. 8773, 1998–2 C.B. 70) relating to earned income credit eligibility requirements under section 32(k)(2) were published in the **Federal Register** (63 FR 34594). A notice of proposed rulemaking (REG–116608–97, 1998–2 C.B. 78) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (63 FR 34615).

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held.

As part of an audit pertaining to the IRS's management of the EIC eligibility program, the Treasury Inspector General for Tax Administration recommended that the Treasury and the IRS reconsider (1) the time at which the taxpayer should be required to establish eligibility to claim the EIC, and (2) whether the eligibility requirement should pertain to the reason the EIC was denied. For example, under the temporary regulations, a taxpayer who is denied the credit on the basis of a child who is determined not to be a qualifying child must establish eligibility the next time the taxpayer claims the EIC, regardless of whether the taxpayer is claiming the credit on the basis of one or more qualifying children or on the basis of no qualifying children. Treasury and the IRS believe that the purpose of the eligibility requirement (to prevent erroneous claims) is better effectuated if the taxpayer establishes eligibility the next time the taxpayer claims the credit with one or more qualifying children, rather than the next time the taxpayer claims the credit.

The IRS is currently exploring whether, and to what extent, its system is capable of undertaking such a change. If a change is made, it would not affect the method of establishing eligibility, that is, the taxpayer would continue to be required to attach a completed Form 8862 to his or her tax return. The Treasury and the IRS do not expect any change will affect returns for tax year 2001.

If a change is made, the IRS expects to inform taxpayers of the change in two specific ways. First, the IRS would revise Letter 3094, which informs the taxpayer of the eligibility requirements. Second, the IRS would revise the instructions for Form 8862 to clarify the return to which it must be attached. In addition, the IRS would include information regarding the change in all IRS taxpayer publications that deal with the EIC eligibility requirements.

The proposed regulations under section 32(k)(2) are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Revisions

To permit the IRS to make changes to the EIC eligibility program as indicated above, §1.32–3(c) is revised to state that the Form 8862 instructions will instruct the taxpayer when to file Form 8862. A new sentence is added to §1.32–3(c) to the effect that, if the taxpayer attaches Form 8862 to an incorrect return, the taxpayer will nevertheless be required to attach Form 8862 to the correct return.

The IRS and Treasury will consider written comments pertaining to these revisions. Submissions should be sent to: CC:ITA:RU (T.D. 8953), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (T.D. 8953), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/regslist.html*.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the underlying statute applies only to individuals. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

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

Drafting Information

The principal author of these regulations is Karin Loverud, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.32–3 is added to read as follows:

§1.32–3 Eligibility requirements after denial of the earned income credit.

(a) *In general*. A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.

(b) *Denial of the EIC as a result of the deficiency procedures*. For purposes of this section, denial of the EIC as a result of the deficiency procedures occurs when a tax on account of the EIC is assessed as a deficiency (other than as a mathematical or clerical error under section 6213(b)(1)).

(c) *Demonstration of eligibility*. In the case of a taxpayer to whom paragraph (a) of this section applies, and except as otherwise provided by the Commissioner in the instructions for Form 8862, "*Information To Claim Earned Income Credit After Disallowance*," no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, demonstrating eligibility for the EIC, and otherwise is eligible for the EIC. If any item of information on Form 8862 is incorrect or inconsistent with any item on the return, the taxpayer will be treated as not demonstrating eligibility for the EIC. The taxpayer must follow the instructions for Form 8862 to determine the income tax return to which Form 8862 must be attached. If the taxpayer attaches Form 8862 to an incorrect tax return, the taxpayer will not be relieved of the requirement that the taxpayer attach Form 8862 to the correct tax return and will, therefore, not be treated as meeting the taxpayer's obligation under paragraph (a) of this section.

(d) *Failure to demonstrate eligibility*. If a taxpayer to whom paragraph (a) of this section applies fails to satisfy the requirements of paragraph (c) of this section with respect to a particular taxable year, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(K).

(e) *Special rule where one spouse denied EIC*. The eligibility requirements set forth in this section apply to taxpayers filing a joint return where one spouse was denied the EIC for a taxable year prior to marriage and has not established eligibility as either an unmarried or married taxpayer for a subsequent taxable year.

(f) *Effective date*. This section applies to returns claiming the EIC for taxable years beginning after December 31, 1997, where the EIC was denied for a taxable year beginning after December 31, 1996.

§1.32–3T [Removed]

Par. 3. Section 1.32–3T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended by:

1. Removing the entry for 1.32–3T from the table.

2. Adding an entry for 1.32–3 to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.32–3	1545–1575
* * * * *	

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

Approved June 20, 2001.

Mark Weinberger,
Assistant Secretary
of the Treasury.

(Filed by the Office of the Federal Register on June 22, 2001, 8:45 a.m., and published in the issue of the Federal Register for June 25, 2001, 66 F.R. 33636)

Section 401.—Qualified Pension, Profit Sharing and Stock Bonus Plans

26 CFR 1.401(a)(4)–8: Cross-testing.

This revenue ruling describes specific conditions in order for defined benefit replacement allocations under a defined contribution plan to meet section 1.401(a)(4)–8(b) of the Income Tax Regulations.

Rev. Rul. 2001–30

I. PURPOSE

This revenue ruling provides guidance with respect to the application of § 1.401(a)(4)–8(b) of the Income Tax Regulations relating to compliance of certain new comparability and similar defined contribution plans with the nondiscrimination requirements of § 401(a)(4) of the Internal Revenue Code.

Under those regulations, a qualified defined contribution plan that has broadly available allocation rates can be tested for nondiscrimination based on plan benefits (rather than contributions) whether or not it meets the minimum allocation gateway. In determining whether a plan has broadly available allocation rates, the regulations permit an allocation to be disregarded to the extent that it is a defined benefit replacement allocation or other transition allocation. Allocations are defined benefit replacement allocations if they satisfy the basic conditions in the regulations and the specific conditions prescribed in this revenue ruling.

II. BACKGROUND

Under final regulations (T.D. 8954, 2001–29 I.R.B. 47) amending §1.401(a)(4)–8(b), published in the Federal Register on June 29, 2001, a defined contribution plan must satisfy a minimum allocation gateway in order to be eligible to meet the nondiscrimination requirements of § 401(a)(4) on the basis of plan benefits rather than contributions, unless, for the plan year, the plan has broadly available allocation rates (as defined in the regulations) or certain age-based allocations.

Section 1.401(a)(4)–8(b)(1)(iii)(A) provides that a plan has broadly available allocation rates for a plan year if each allocation rate under the plan is currently available during the plan year (within the meaning of § 1.401(a)(4)–4(b)(2)) to a group of employees that satisfies § 410(b) (without regard to the average benefit percentage test of § 1.410(b)–5). In determining whether a plan has broadly available allocation rates for the plan year, an employee's allocation may be disregarded to the extent that it is a transition allocation. In order to be treated as a transition allocation, the allocation must be either a defined benefit replacement allocation (DBRA) described in § 1.401(a)(4)–8(b)(1)(iii)(D), or a pre-existing replacement allocation or pre-existing merger and acquisition allocation described in § 1.401(a)(4)–8(b)(1)(iii)(E). Plan provisions relating to transition allocations must meet the requirements of § 1.401(a)(4)–8(b)(1)(iii)(C).

Under § 1.401(a)(4)–8(b)(1)(iii)(D), in order for an allocation to be a DBRA it must be provided in accordance with guidance prescribed by the Commissioner in the Internal Revenue Bulletin (see "III. Specific Conditions" below) and the basic conditions set forth in § 1.401(a)(4)–8(b)(1)(iii)(D)(*1*)–(*4*).

III. SPECIFIC CONDITIONS

(1) This revenue ruling sets forth the specific conditions that an allocation must satisfy to be treated as a DBRA under § 1.401(a)(4)–8(b)(1)(iii)(D). These specific conditions are designed to permit employers to provide, in a nondiscriminatory manner, allocations replacing the retirement benefits that would have been provided under a defined benefit plan, without having to satisfy the minimum allocation gateway. At the same time, the specific conditions are designed to prevent the inappropriate avoidance of the gateway in the case of plans that provide special allocations for employees who formerly benefited under a defined benefit plan.

(2) Pursuant to this revenue ruling, to be treated as a DBRA, an allocation must meet the following conditions for a plan year:

(a) To satisfy the basic condition in § 1.401(a)(4)–8(b)(1)(iii)(D)(*1*) that the allocations are provided to a group of employees who formerly benefitted under an established nondiscriminatory defined benefit plan of the employer or of a prior employer that provided age-based equivalent allocation rates, the allocations must be based on a defined benefit plan that satisfies the following specific conditions:

(i) The defined benefit plan's benefit formula applicable to the group of employees generated equivalent normal allocation rates (determined without regard to changes in accrual rates attributable to changes in an employee's years of service) that increased from year to year as employees attained higher ages.

(ii) The defined benefit plan satisfied §§ 410(b) and 401(a)(4), without regard to § 410(b)(6)(C) and without aggregating with any other plan, for the plan year immediately preceding the first plan year for which the allocation is provided to the employees. If the defined benefit plan was sponsored by a prior employer, but not by the employer, this condition does not apply.

(iii) The defined benefit plan was in effect for at least the 5-year period ending on the date benefit accruals for the employees under the defined benefit plan cease (with one year substituted for 5 years in the case of a defined benefit plan of a former employer), and neither the plan formula nor the coverage of the plan has been substantially changed during such period.

(b) To satisfy the basic condition in § 1.401(a)(4)–8(b)(1)(iii)(D)(*2*) that the allocations for each employee in the group were reasonably calculated, in a consistent manner, to replace the retirement benefits that the employee would have been provided under a defined benefit plan of the employer or of the

prior employer, the allocation must be reasonably calculated to replace the employee's retirement benefits under the defined benefit plan based on the terms of the defined benefit plan (including the § 415(b)(1)(A) limit) as in effect immediately prior to the date benefit accruals under the defined benefit plan ceased.

(c) To satisfy the basic condition in § 1.401(a)(4)–8(b)(1)(iii)(D)(*4*) that the composition of the group of employees who receive the allocations for the plan year is nondiscriminatory, the group of employees who receive the allocations must satisfy § 410(b) (determined without regard to the average benefit percentage test of § 1.410(b)–5) for the plan year.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Kenneth R. Conn of the Employee Plans, Tax Exempt and Government Entities Division and John T. Ricotta and Linda S. F. Marshall of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, by calling (202) 283-9516. Mr. Conn's number is (202) 283-9526. Mr. Ricotta's number is (202) 622-6060. Ms. Marshall's number is (202) 622-6090. (These telephone numbers are not toll-free.)

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26 CFR 1.401(a)(4)–8: Cross-testing.

T.D. 8954

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Nondiscrimination Requirements for Certain Defined Contribution Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that permit certain defined contribution retirement plans to demonstrate compliance with the nondiscrimination requirements based on plan benefits rather than contributions. Under the final regulations, a defined contribution plan can test on a benefits basis if it provides broadly available allocation rates, age-based allocations, or passes a gateway requiring allocation rates for nonhighly compensated employees to be at least 5% of pay or at least 1/3 of the highest allocation rate for highly compensated employees. The regulations also permit qualified defined contribution and defined benefit plans that are tested together as a single, aggregated plan (and that are not primarily defined benefit or broadly available separate plans) to test on a benefits basis after passing a similar gateway, under which the allocation rate for nonhighly compensated employees need not exceed 7 1/2 % of pay. These final regulations affect employers that maintain qualified retirement plans and qualified retirement plan participants.

DATES: *Effective Date*: These regulations are effective June 29, 2001.

Applicability Date: These regulations apply for plan years beginning on or after January 1, 2002.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta, 202-622-6060, or Linda S. F. Marshall, 202-622-6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 401(a)(4) of the Internal Revenue Code of 1986 (Code).

Section 401(a)(4) provides that a plan or trust forming part of a stock bonus, pension, or profit-sharing plan of an employer shall not constitute a qualified plan under section 401(a) of the Code unless the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (HCEs) (within the meaning of section 414(q)). Whether a plan satisfies this requirement depends on the form of the plan and its effect in operation.

Section 415(b)(6)(A) provides that the computation of benefits under a defined contribution plan, for purposes of section 401(a)(4), shall not be made on a basis inconsistent with regulations prescribed by the Secretary. The legislative history of this provision explains that, in the case of target benefit and other defined contribution plans, "regulations may establish reasonable earnings assumptions and other factors for these plans to prevent discrimination." Conf. Rep. No. 1280, 93d Cong., 2d Sess. 277 (1974).

Under the section 401(a)(4) regulations, a plan can demonstrate that either the contributions or the benefits provided under the plan are nondiscriminatory in amount. Defined contribution plans generally satisfy the regulations by demonstrating that contributions are nondiscriminatory in amount, through certain safe harbors provided for under the regulations or through general testing.

A defined contribution plan (other than an ESOP) may, however, satisfy the regulations on the basis of benefits by using cross-testing pursuant to rules provided in §1.401(a)(4)–8 of the regulations. Under this cross-testing method, contributions are converted, using actuarial assumptions, to equivalent benefits payable at normal retirement age, and these equivalent benefits are tested in a manner similar to the testing of employer-provided benefits under a defined benefit plan.

In Notice 2000–14 (2000–10 I.R.B. 737), released February 24, 2000, the IRS and the Treasury Department initiated a review of issues related to use of the cross-testing method by so-called new comparability plans and requested public comments on this plan design from plan sponsors, participants and other interested parties. In general, new comparability plans are defined contribution plans that have built-in disparities between the allocation rates for classifications of participants consisting entirely or predominantly of HCEs and the allocation rates for other employees.

In a typical new comparability plan, HCEs receive high allocation rates, while nonhighly compensated employees (NHCEs), regardless of their age or years of service, receive comparatively low allocation rates. For example, HCEs in such a plan might receive allocations of 18 or 20% of compensation, while NHCEs might receive allocations of 3% of compensation. A similar plan design, sometimes known as a super-integrated

plan, provides for an additional allocation rate that applies only to compensation in excess of a specified threshold, but the specified threshold (*e.g.*, $100,000) or the additional allocation rate (*e.g.*, 10%) is higher than the maximum threshold and rate allowed under the permitted disparity rules of section 401(*l*).

These new comparability and similar plans rely on the cross-testing method to demonstrate compliance with the nondiscrimination rules by comparing the actuarially projected value of the employer contributions for the younger NHCEs with the actuarial projections of the larger contributions (as a percentage of compensation) for the older HCEs. As a result, these plans are able generally to provide higher rates of employer contributions to HCEs, while NHCEs are not allowed to earn the higher allocation rates as they work additional years for the employer or grow older. Notwithstanding the analytical underpinnings of cross-testing, the IRS and Treasury Department became concerned that new comparability and similar plans were not consistent with the basic purpose of the nondiscrimination rules under section 401(a)(4).

After consideration of the comments received in response to Notice 2000–14, the IRS and Treasury issued proposed regulations on this subject (REG–114697–00, 2000–43 I.R.B. 421), which were published in the **Federal Register** on October 6, 2000 (65 FR 59774). The proposed regulations preserved the cross-testing rules of the section 401(a)(4) regulations, but prescribed a gateway condition for new comparability and similar plans to meet in order to be eligible to use cross-testing to satisfy the nondiscrimination rules on the basis of benefits. However, defined contribution plans that provide broadly available allocation rates, as defined in the proposed regulations, did not have to satisfy the gateway. The definition of broadly available allocation rates under the proposed regulations covered plans that provide different allocation rates to different, nondiscriminatory groups of employees. Under the proposed regulations, the definition also covered plans that base allocations or allocation rates on age or years of service, that, in contrast to new comparability plans, provide an opportunity for participants to "grow into" higher allocation rates as they age or accumulate additional service.

The proposed regulations also addressed a new comparability-type plan design that aggregates a defined benefit plan that benefits primarily HCEs with a defined contribution plan that benefits primarily NHCEs. This design would permit an employer to circumvent the minimum allocation gateway by aggregating (for purposes of the nondiscrimination rules) a new comparability or similar defined contribution plan with a defined benefit plan that provides only minimal benefits to NHCEs or covers only a relatively small number of NHCEs. In addition, a defined benefit plan that benefits primarily HCEs, and that is aggregated with a defined contribution plan for nondiscrimination testing, could produce results similar to a new comparability plan but with a potential for substantially more valuable benefits for HCEs. The proposed regulations provided a gateway for testing the aggregated plans on the basis of benefits that must be satisfied unless the aggregated defined contribution and defined benefit plan (the DB/DC plan) is primarily defined benefit in character (as defined in the proposed regulations), or unless each of the defined contribution and defined benefit portions of the DB/DC plan is a broadly available separate plan (as defined in the proposed regulations).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on January 25, 2001, at the request of one commentator. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

A. *Overview*

Like the proposed regulations, these final regulations permit defined contribution plans with either broadly available allocation rates or certain age-based allocation rates to test on a benefits basis (cross-test) in the same manner as under current law, and permit other defined contribution plans to cross-test once they pass a gateway that prescribes minimum allocation rates for NHCEs. Similarly, these final regulations retain the rule in the proposed regulations that permits a DB/DC plan to test on a benefits basis in the same manner as under current law if the DB/DC plan either is primarily defined benefit in character or consists of broadly available separate plans. Other DB/DC plans are permitted to test on a benefits basis once they pass a corresponding gateway prescribing minimum aggregate normal allocation rates for NHCEs.

B. *Gateway for Cross-Testing of New Comparability and Similar Plans*

These final regulations retain the rule in the proposed regulations that requires a defined contribution plan that does not provide broadly available allocation rates or certain age-based allocation rates (as these terms are defined in these final regulations) to satisfy a gateway in order to be eligible to use the cross-testing rules to meet the nondiscrimination requirements of section 401(a)(4). Under these final regulations, as under the proposed regulations, a plan satisfies this minimum allocation gateway if each NHCE in the plan has an allocation rate that is at least one third of the allocation rate of the HCE with the highest allocation rate, but a plan is deemed to satisfy the gateway if each NHCE receives an allocation of at least 5% of the NHCE's compensation (within the meaning of section 415(c)(3)).

Several commentators raised questions about the interaction of the requirements under the proposed regulations and other regulatory rules relating to testing for nondiscrimination. For example, some commentators asked what was intended by the gateway requirement that all NHCEs receive the minimum required allocation. Except as specifically provided, the regulatory definitions and rules that apply for purposes of section 401(a)(4) also apply for purposes of these regulations. For example, the term employee, as used in these regulations, is defined in §1.401(a)(4)–12 as an employee (within the meaning of §1.410(b)–9) who benefits as an employee under the plan for the plan year, and an NHCE is defined in §1.401(a)(4)–12 as an employee who is not an HCE. Thus, an individual who does not otherwise benefit under the plan for the plan year is not an employee under these regulations, hence not an NHCE, and need not be given the minimum required allocation under the gateway.

Similarly, the allocation rate referred to in the gateway is determined under §1.401(a)(4)–2(c) as the allocations to an employee's account for a plan year, expressed either as a percentage of plan year compensation (which must be calculated using a definition of compensation that satisfies the requirements of section 414(s)) or as a dollar amount.

The general rules and regulatory definitions applicable under section 410(b) apply also for purposes of these regulations. For example, these regulations do not change the general rule prohibiting aggregation of a 401(k) plan or 401(m) plan with a plan providing nonelective contributions. Accordingly, matching contributions are not taken into account for purposes of the gateway. Similarly, pursuant to §1.410(b)–6(b)(3), if a plan benefits employees who have not met the minimum age and service requirements of section 410(a)(1), the plan may be treated as two separate plans, one for those otherwise excludable employees and one for the other employees benefitting under the plan. Thus, if the plan is treated as two separate plans in this manner, cross-testing the portion of the plan benefitting the nonexcludable employees will not result in minimum required allocations under the gateway for the employees who have not met the section 410(a)(1) minimum age and service requirements.

One commentator suggested that the regulatory provision that permits a plan to satisfy the gateway requirement by providing an allocation of at least 5% of compensation within the meaning of section 415(c)(3) not require that the allocation be based on a full year's compensation in the case of an employee who participates in the plan for only a portion of the plan year. The final regulations modify this requirement as suggested. The final regulations allow a plan to satisfy the gateway by providing an allocation of at least 5% of compensation within the meaning of section 415(c)(3), limited to a period otherwise permissible under the timing rules applicable under the definition of plan year compensation, in the same manner as the general rules under the section 401(a)(4) regulations. The definition of plan year compensation permits use of amounts paid only during the period of participation within the plan year.

Some commentators questioned whether it was necessary to require the use of compensation within the meaning of section 415(c)(3) for purposes of the 5% of compensation component of the minimum allocation gateway. One of these commentators argued that using compensation within the meaning of section 414(s) would be more appropriate. Two other commentators argued that, for this purpose, plans should be able to use a definition of compensation that would be a reasonable definition of compensation for purposes of section 414(s) without regard to whether the definition of compensation meets the nondiscrimination standard under the section 414(s) regulations.

After consideration of these comments, the requirement that section 415(c)(3) compensation be used for purposes of the 5% of compensation component of the minimum allocation gateway has been retained. For purposes of the "one third" component of the gateway, a definition of compensation that satisfies section 414(s) is an appropriate measure because this component is based on the ratio of HCE allocation rates to NHCE allocation rates. By contrast, the 5% of compensation component of the gateway does not reflect a comparison of NHCE allocations to HCE allocations, but is based on a particular level of NHCE allocations. Without the comparison between HCE and NHCE allocations, a rule permitting the use of a definition of compensation that satisfies section 414(s), but is less inclusive than total compensation, could lead to NHCE allocations that are significantly smaller than the minimum that is contemplated by the regulations. Therefore, it is appropriate to require the use of total compensation, as defined in section 415(c)(3), for the 5% allocation component of the gateway. Furthermore, permitting the use of a potentially discriminatory definition of compensation would be inconsistent with the nondiscrimination requirements in general, including the minimum allocation gateway.

C. *Plans with Broadly Available Allocation Rates*

Like the proposed regulations, these final regulations provide that a plan that has broadly available allocation rates need not satisfy the minimum allocation gateway. In order to be broadly available, each allocation rate under the plan must be currently available to a group of employees that satisfies section 410(b) (without regard to the average benefit percentage test). Thus, if, within one plan, an employer provides different allocation rates for nondiscriminatory groups of employees at different locations or different profit centers, the plan would not need to satisfy the minimum allocation gateway in order to use cross-testing.

For purposes of determining whether an allocation rate that was available only to employees who satisfied an age or service condition was currently available to a section 410(b) group, the proposed regulations allowed such a condition to be disregarded if certain standards were met. The final regulations retain this exception from the application of the minimum allocation gateway. However, this exception has been relocated and is now part of an expanded provision for plans with age-based allocations (see Plans with Age-Based Allocations portion of this preamble).

In response to comments, the final regulations also liberalize the determination of whether a plan has broadly available allocation rates. First, the final regulations permit two allocation rates to be aggregated in a manner similar to the rule that permits aggregation of certain benefits, rights or features. This rule permits excess NHCEs with a higher allocation rate to be used to support a lower allocation rate. For example, under this rule, if under a plan there are two groups of participants, one group that receives an allocation rate of 10% and another that receives an allocation rate of 3%, and if the group of employees who receive the 10% allocation rate satisfies section 410(b) (without regard to the average benefit percentage test), then the 10% rate and the 3% rate can be aggregated and treated as a single allocation rate for purposes of determining whether the plan has broadly available allocation rates. In addition, the final regulations provide that, in determining whether a plan provides broadly available allocation rates, differences in allocation rates resulting from any method of permitted disparity provided for under the section 401(l) regulations are disregarded.

D. *Transition Allocations*

Several commentators raised the concern that a defined contribution plan may

fail the broadly available test because of grandfathered allocation rates provided to employees who formerly participated in a defined benefit plan or provided to a group of employees in connection with a merger, acquisition, or other similar transaction. In response to these comments, the final regulations permit an employee's allocation to be disregarded, to the extent the employee's allocation is a transition allocation (as defined in the regulations) for the plan year. Transition allocations which can be disregarded can be defined benefit replacement allocations, pre-existing replacement allocations, or pre-existing merger and acquisition allocations (as defined in the regulations).

In each case, the transition allocations must be provided to a closed group of employees and must be established under plan provisions. Once the allocations are established under the plan, they cannot be modified, except to reduce allocations for HCEs, or because of *de minimis* changes (such as a change in the definition of compensation to include section 132(f) elective reductions). A plan also does not violate this requirement because of an amendment that either adds or removes a provision applicable to all employees in the group eligible for the allocations under which each employee who is eligible for a transition allocation receives the greater of the transition allocation or another allocation for which the employee would otherwise be eligible. If the plan provides that all employees who are eligible for the transition allocation receive the greater of the transition allocation or an otherwise available allocation, the otherwise available allocation is considered currently available to all such employees, including employees for whom the transition allocation is greater.

These final regulations set forth basic conditions for defined benefit replacement allocations. These conditions provide a framework that is designed to ensure that these allocations are provided in a manner consistent with the general principles underlying the provisions for broadly available allocation rates under these regulations. The regulations then delegate authority to the Commissioner to prescribe rules for defined benefit replacement allocations in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. Rev. Rul. 2001–30 (2001–29 I.R.B. 46), dated July 16, 2001, published in conjunction with these final regulations, prescribes specific conditions for defined benefit replacement allocations that relate to the basic conditions set forth in the regulations. This division of the medium of guidance is designed to provide ongoing flexibility to the IRS and Treasury to respond to changing circumstances, or additional information relating to defined benefit replacement allocations.

The basic conditions that allocations must satisfy in order to be defined benefit replacement allocations are as follows: (1) The allocations are provided to a group of employees who formerly benefitted under an established nondiscriminatory defined benefit plan of the employer or of a prior employer that provided age-based equivalent allocation rates; (2) the allocations for each employee were reasonably calculated, in a consistent manner, to replace the retirement benefits that the employee would have been provided under the defined benefit plan if the employee had continued to benefit under the defined benefit plan; (3) no employee who receives the allocation receives any other allocations under the plan for the plan year (except as provided in these regulations); and (4) the composition of the group of employees who receive the allocations is nondiscriminatory.

Rev. Rul. 2001–30 fleshes out these basic conditions for determining whether an allocation is a defined benefit replacement allocation. Under the revenue ruling, the defined benefit plan's benefit formula applicable to the group of employees must be one that generated equivalent normal allocation rates (determined without regard to changes in accrual rates attributable to changes in an employee's years of service) that increased from year to year as employees attained higher ages. Further, if the defined benefit plan was sponsored by the employer, the defined benefit plan satisfied sections 410(b) and 401(a)(4), without regard to section 410(b)(6)(C) and without aggregating with any other plan, for the plan year which immediately precedes the first plan year for which the allocations are provided. Finally, the defined benefit plan must be one that has been established and maintained without substantial change for at least the 5 years ending on the date benefit accruals under the defined benefit plan cease (with one year substituted for 5 years in the case of a defined benefit plan of a former employer).

In order to be defined benefit replacement allocations for the plan year, the allocations for each employee in the group must be reasonably calculated, in a consistent manner, to replace the employee's retirement benefits under the defined benefit plan based on the terms of the defined benefit plan (including the section 415(b)(1)(A) limit) as in effect immediately prior to the date accruals under the defined benefit plan cease. In addition, the group of employees who receive the allocations in a plan year must satisfy section 410(b) (determined without regard to the average benefit percentage test of §1.410(b)–5).

Although the regulations and Rev. Rul. 2001–30 prescribe conditions for the defined benefit replacement allocations, they still leave employers with flexibility in structuring these benefits. For example, there is more than one way in which the allocations may reasonably be calculated, such as a level percentage of pay for each year or an amount that increases as the employee ages.

The final regulations provide special rules applicable to allocations that are either pre-existing replacement allocations or pre-existing merger and acquisition allocations. Allocations are pre-existing replacement allocations if the allocations are provided pursuant to a plan provision adopted before June 29, 2001, are provided to employees who formerly benefitted under a defined benefit plan and are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under the defined benefit plan and any other plan or arrangement of the employer if the employee had continued to benefit under such defined benefit plan and such other plan or arrangement. Allocations are pre-existing merger and acquisition allocations if the allocations were established in connection with a stock or asset acquisition, merger, or other similar transaction occurring prior to August 28, 2001, for a group of employees who were employed by the acquired trade or business prior to a specified date, provided that the class of employees eligible

for the allocations is closed no later than two years after the transaction (or January 1, 2002, if earlier), the allocations are provided pursuant to a plan amendment adopted by the date the class was closed, and the allocations for each employee in the group are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under any plan of the employer if the new employer had continued to provide the retirement benefits that the prior employer was providing for employees of the trade or business.

E. *Plans with Age-Based Allocations*

These final regulations provide a separate exception from the application of the minimum allocation gateway for certain plans with age-based allocation rates. This provision incorporates the exception under the proposed regulations for plans with gradual age or service schedules, and expands the exception to include plans that provide for allocation rates based on a uniform target benefit allocation.

A plan has a gradual age or service schedule if the schedule of allocation rates under the plan's formula is available to all employees in the plan and provides for allocation rates that increase smoothly at regular intervals. The rules applicable to the schedule of allocation rates are designed to be sufficiently flexible to accommodate a wide variety of age- or service-based plans (including age-weighted profit-sharing plans that provide for allocations resulting in the same equivalent accrual rate for all employees). The final regulations clarify that a plan projecting future age or service may not use imputed disparity in determining whether the allocation rates under the schedule increase smoothly at regular intervals. In response to comments, the final regulations also accommodate smoothly increasing schedules of allocation rates that are based on the sum of age and years of service. In addition, to conform with the rules for computation of service under §1.401(a)(4)–12, references to service have been changed to years of service.

The requirement that the allocation rates under a schedule increase smoothly at regular intervals provides important protection for employees, because this requirement limits the exception from the minimum allocation gateway to plans in which NHCEs actually receive the benefit of higher rates as they attain higher ages or complete additional years of service. Some commentators expressed concern that employers could be forced to reduce allocations to younger or shorter-service NHCEs in order to satisfy the conditions for allocation rates that increase smoothly at regular intervals. In response to these comments, the final regulations provide that a plan's schedule of allocation rates does not fail to increase smoothly at regular intervals merely because a specified minimum uniform allocation rate is provided for all employees or because the minimum benefit described in section 416(c)(2) is provided for all non-key employees (either because the plan is top heavy or without regard to whether the plan is top heavy) if one of two alternative conditions is satisfied. These two alternative conditions are intended to limit the potential use of a minimum allocation to provide a schedule of rates that delivers allocations similar to those under a new comparability plan (*i.e.*, a flat allocation rate applicable for all employees below a certain age, followed by a sharply increasing schedule of rates that effectively benefits only HCEs) without satisfying the minimum allocation gateway.

A plan satisfies the first alternative condition if the allocation rates under the plan that exceed the specified minimum rate could form part of a schedule of allocation rates that increase smoothly at regular intervals (as defined in these regulations) in which the lowest allocation rate is at least 1% of plan year compensation. The second alternative condition, available for a plan using an age-based schedule, allows the use of a minimum allocation rate if, for each age band above the minimum allocation rate, the allocation rate applicable for that band is less than or equal to the allocation rate that would yield an equivalent accrual rate at the highest age in the band that is the same as the equivalent accrual rate determined for the oldest hypothetical employee who would receive just the minimum allocation rate. Thus, under this condition, the allocation rates above the minimum allocation rate do not rise more steeply than expected under an age-weighted profit-sharing plan generally intended to provide the same accrual rate at all ages.

The exception to the minimum allocation gateway for plans with age-based allocation rates also applies to certain uniform target benefit plans that do not comply with the safe-harbor testing method provided in §1.401(a)(4)–8(b)(3).[1] A plan has allocation rates based on a uniform target benefit allocation if it would comply with the requirements for a safe harbor target benefit plan in §1.401(a)(4)–8(b)(3) except that the interest rate for determining the actuarial present value of the stated plan benefit and the theoretical reserve is lower than a standard interest rate, the stated benefit is calculated assuming compensation increases, or the plan computes the current year contribution using the actual account balance instead of the theoretical reserve.

F. *Application to Defined Contribution Plans That Are Combined with Defined Benefit Plans (DB/DC Plans)*

These regulations prescribe rules for testing defined contribution plans that are aggregated with defined benefit plans for purposes of sections 401(a)(4) and 410(b). These rules apply in situations in which the employer aggregates the plans because one of the plans does not satisfy sections 401(a)(4) and 410(b) standing alone. These rules do not apply to safe harbor floor-offset arrangements described in §1.401(a)(4)–8(d), or to the situation in which plans are aggregated solely for purposes of satisfying the average benefit percentage test of §1.410(b)–5.

These regulations retain the rule of the proposed regulations that the combination of a defined contribution plan and a defined benefit plan may demonstrate nondiscrimination on the basis of benefits if the combined plan (the DB/DC plan) is primarily defined benefit in character, consists of broadly available separate plans (as these terms are defined in the regulations), or satisfies a minimum aggregate allocation gateway requirement that is generally similar to the minimum allocation gateway for defined contribution plans that are not combined with a defined benefit plan.

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[1] No exception to the minimum allocation gateway is needed for target benefit plans that comply with the safe-harbor testing provisions of §1.401(a)(4)-8(b)(3), because they are deemed to satisfy section 401(a)(4) with respect to an equivalent amount of benefits.

1. *Gateway for benefits testing of combined plans*

In order to apply this minimum aggregate allocation gateway, the employee's aggregate normal allocation rate is determined by adding the employee's allocation rate under the defined contribution plan to the employee's equivalent allocation rate under the defined benefit plan. This aggregation allows an employer that provides NHCEs with both a defined contribution and a defined benefit plan to take both plans into account in determining whether the minimum aggregate allocation gateway is met.

Under the gateway, if the aggregate normal allocation rate of the HCE with the highest aggregate normal allocation rate under the plan (HCE rate) is less than 15%, the aggregate normal allocation rate for all NHCEs must be at least 1/3 of the HCE rate. If the HCE rate is between 15% and 25%, the aggregate normal allocation rate for all NHCEs must be at least 5%. If the HCE rate exceeds 25%, then the aggregate normal allocation rate for each NHCE must be at least 5% plus one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (*e.g.*, the NHCE minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%).

Several commentators expressed a concern that the minimum aggregate allocation gateway in the proposed regulations could require contributions for NHCEs that would make DB/DC plans too expensive for employers in certain circumstances. This could occur in cases where one HCE had a very high equivalent allocation rate on account of age or some other factor, and could prompt such an employer to redesign its plans in ways that could disadvantage NHCEs. In response to these comments, these final regulations provide that a plan is deemed to satisfy this minimum aggregate allocation gateway if the aggregate normal allocation rate for each NHCE is at least 7 1/2% of compensation within the meaning of section 415(c)(3), determined over a period otherwise permissible under the timing rules applicable under the definition of plan year compensation.

These regulations retain the rule that, in determining the equivalent allocation rate for an NHCE under a defined benefit plan, a plan is permitted to treat each NHCE who benefits under the defined benefit plan as having an equivalent allocation rate equal to the average of the equivalent allocation rates under the defined benefit plan for all NHCEs benefitting under that plan. This averaging rule recognizes the grow-in feature inherent in traditional defined benefit plans (*i.e.*, the defined benefit plan provides higher equivalent allocation rates at higher ages).

2. *Primarily defined benefit in character*

Like the proposed regulations, these final regulations provide that a DB/DC plan that is primarily defined benefit in character is not subject to the gateway requirement and may continue to be tested for nondiscrimination on the basis of benefits as under former law. A DB/DC plan is primarily defined benefit in character if, for more than 50% of the NHCEs benefitting under the plan, the normal accrual rate attributable to benefits provided under defined benefit plans for the NHCE exceeds the equivalent accrual rate attributable to contributions under defined contribution plans for the NHCE. For example, a DB/DC plan is primarily defined benefit in character where the defined contribution plan covers only salaried employees, the defined benefit plan covers only hourly employees, and more than half of the NHCEs participating in the DB/DC plan are hourly employees participating only in the defined benefit plan.

Some comments suggested a loosening of the standard as to when a DB/DC plan is primarily defined benefit in character, but no changes have been made. The Treasury and IRS believe that the determination of whether a DB/DC plan is primarily defined benefit in character should be based on the relative size of the defined benefit accruals and the defined contribution allocations for individual employees, as reflected in the actual benefits testing that is being done under section 401(a)(4). In particular, the actuarial assumptions used to determine whether a DB/DC plan is primarily defined benefit in character must be the same assumptions that are used to apply the cross-testing rules.

3. *Broadly available separate plans*

Like the proposed regulations, these final regulations provide that a DB/DC plan that consists of broadly available separate plans may continue to be tested for nondiscrimination on the basis of benefits as under current law, even if it does not satisfy the gateway requirement. A DB/DC plan consists of broadly available separate plans if the defined contribution plan and the defined benefit plan, tested separately, would each satisfy the requirements of section 410(b) and the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2), assuming satisfaction of the average benefit percentage test of §1.410(b)–5. Thus, the defined contribution plan must separately satisfy the nondiscrimination requirements (taking into account these regulations as applicable), but for this purpose assuming satisfaction of the average benefit percentage test. Similarly, the defined benefit plan must separately satisfy the nondiscrimination requirements, assuming for this purpose satisfaction of the average benefit percentage test. In conducting the required separate testing, all plans of a single type (defined contribution or defined benefit) within the DB/DC plan are aggregated, but those plans are tested without regard to plans of the other type.

This alternative is useful, for example, where an employer maintains a defined contribution plan that provides a uniform allocation rate for all covered employees at one business unit and a safe harbor defined benefit plan for all covered employees at another unit, and where the group of employees covered by each of those plans is a group that satisfies the nondiscriminatory classification requirement of section 410(b). Because the employer provides broadly available separate plans, it may continue to aggregate the plans and test for nondiscrimination on the basis of benefits, as an alternative to using the qualified separate line of business rules or demonstrating satisfaction of the average benefit percentage test.

G. *Use of Component Plans*

As under the proposed regulations, the rules set forth in these final regulations cannot be satisfied using component plans under the restructuring rules. Although some commentators requested that restructuring be permitted for this purpose, the IRS and Treasury have determined that such use of component plans would be inconsistent with the purpose of these regulations.

Effective Date

These regulations apply for plan years beginning on or after January 1, 2002.

Special Analyses

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

Drafting Information

The principal authors of these regulations are John T. Ricotta and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

Par. 2. In §1.401(a)(4)–0, the entry for §1.401(a)(4)–8(b)(1) is revised to read as follows:

§1.401(a)(4)–0 Table of contents.

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§1.401(a)(4)–8 Cross-testing.

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(b) * * *

(1) General rule and gateway.

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Par. 3. In §1.401(a)(4)–8, paragraph (b)(1) is revised to read as follows:

§1.401(a)(4)–8 Cross-testing.

* * * * *

(b) *Nondiscrimination in amount of benefits provided under a defined contribution plan*—(1) *General rule and gateway*—(i) *General rule*. Equivalent benefits under a defined contribution plan (other than an ESOP) are nondiscriminatory in amount for a plan year if—

(A) The plan would satisfy §1.401(a)(4)–2(c)(1) for the plan year if an equivalent accrual rate, as determined under paragraph (b)(2) of this section, were substituted for each employee's allocation rate in the determination of rate groups; and

(B) For plan years beginning on or after January 1, 2002, the plan satisfies one of the following conditions—

(*1*) The plan has broadly available allocation rates (within the meaning of paragraph (b)(1)(iii) of this section) for the plan year;

(*2*) The plan has age-based allocation rates that are based on either a gradual age or service schedule (within the meaning of paragraph (b)(1)(iv) of this section) or a uniform target benefit allocation (within the meaning of paragraph (b)(1)(v) of this section) for the plan year; or

(*3*) The plan satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section for the plan year.

(ii) *Allocations after testing age*. A plan does not fail to satisfy paragraph (b)(1)(i)(A) of this section merely because allocations are made at the same rate for employees who are older than their testing age (determined without regard to the current-age rule in paragraph (4) of the definition of *testing age* in §1.401(a)(4)–12) as they are made for employees who are at that age.

(iii) *Broadly available allocation rates*—(A) *In general*. A plan has broadly available allocation rates for the plan year if each allocation rate under the plan is currently available during the plan year (within the meaning of §1.401(a)(4)–4(b)(2)), to a group of employees that satisfies section 410(b) (without regard to the average benefit percentage test of §1.410(b)–5). For this purpose, if two allocation rates could be permissively aggregated under §1.401(a)(4)–4(d)(4), assuming the allocation rates were treated as benefits, rights or features, they may be aggregated and treated as a single allocation rate. In addition, the disregard of age and service conditions described in §1.401(a)(4)–4(b)(2)(ii)(A) does not apply for purposes of this paragraph (b)(1)(iii)(A).

(B) *Certain transition allocations*. In determining whether a plan has broadly available allocation rates for the plan year within the meaning of paragraph (b)(1)(iii)(A) of this section, an employee's allocation may be disregarded to the extent that the allocation is a transition allocation for the plan year. In order for an allocation to be a transition allocation, the allocation must comply with the requirements of paragraph (b)(1)(iii)(C) of this section and must be either—

(*1*) A defined benefit replacement allocation within the meaning of paragraph (b)(1)(iii)(D) of this section; or

(*2*) A pre-existing replacement allocation or pre-existing merger and acquisition allocation, within the meaning of paragraph (b)(1)(iii)(E) of this section.

(C) *Plan provisions relating to transition allocations*—(*1*) *In general*. Plan provisions providing for transition allocations for the plan year must specify both the group of employees who are eligible for the transition allocations and the amount of the transition allocations.

(*2*) *Limited plan amendments*. Allocations are not transition allocations within the meaning of paragraph (b)(1)(iii)(B) of this section for the plan year if the plan provisions relating to the allocations are amended after the date those plan provisions are both adopted and effective. The preceding sentence in this paragraph (b)(1)(iii)(C)(*2*) does not apply to a plan amendment that reduces transition allocations to HCEs, makes *de minimis* changes in the calculation of the transition allocations (such as a change in the definition of compensation to include section 132(f) elective reductions), or adds or removes a provision permitted under paragraph (b)(1)(iii)(C)(*3*) of this section.

(*3*) *Certain permitted plan provisions*. An allocation does not fail to be a transition allocation within the meaning of paragraph (b)(1)(iii)(B) of this section merely because the plan provides that each employee who is eligible for a transition allocation receives the greater of

such allocation and the allocation for which the employee would otherwise be eligible under the plan. In a plan that contains such a provision, for purposes of determining whether the plan has broadly available allocation rates within the meaning of paragraph (b)(1)(iii)(A) of this section, the allocation for which an employee would otherwise be eligible is considered currently available to the employee, even if the employee's transition allocation is greater.

(D) *Defined benefit replacement allocation.* An allocation is a defined benefit replacement allocation for the plan year if it is provided in accordance with guidance prescribed by the Commissioner published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) and satisfies the following conditions—

(*1*) The allocations are provided to a group of employees who formerly benefitted under an established nondiscriminatory defined benefit plan of the employer or of a prior employer that provided age-based equivalent allocation rates;

(*2*) The allocations for each employee in the group were reasonably calculated, in a consistent manner, to replace the retirement benefits that the employee would have been provided under the defined benefit plan if the employee had continued to benefit under the defined benefit plan;

(*3*) Except as provided in paragraph (b)(1)(iii)(C) of this section, no employee who receives the allocation receives any other allocations under the plan for the plan year; and

(*4*) The composition of the group of employees who receive the allocations is nondiscriminatory.

(E) *Pre-existing transition allocations*—(*1*) *Pre-existing replacement allocations.* An allocation is a pre-existing replacement allocation for the plan year if the allocation satisfies the following conditions—

(*i*) The allocations are provided pursuant to a plan provision adopted before June 29, 2001;

(*ii*) The allocations are provided to employees who formerly benefitted under a defined benefit plan of the employer; and

(*iii*) The allocations for each employee in the group are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under the defined benefit plan and any other plan or arrangement of the employer if the employee had continued to benefit under such defined benefit plan and such other plan or arrangement.

(*2*) *Pre-existing merger and acquisition allocations.* An allocation is a pre-existing merger and acquisition allocation for the plan year if the allocation satisfies the following conditions—

(*i*) The allocations are provided solely to employees of a trade or business that has been acquired by the employer in a stock or asset acquisition, merger, or other similar transaction occurring prior to August 28, 2001, involving a change in the employer of the employees of the trade or business;

(*ii*) The allocations are provided only to employees who were employed by the acquired trade or business before a specified date that is no later than two years after the transaction (or January 1, 2002, if earlier);

(*iii*) The allocations are provided pursuant to a plan provision adopted no later than the specified date; and

(*iv*) The allocations for each employee in the group are reasonably calculated, in a consistent manner, to replace some or all of the retirement benefits that the employee would have received under any plan of the employer if the new employer had continued to provide the retirement benefits that the prior employer was providing for employees of the trade or business.

(F) *Successor employers.* An employer that accepts a transfer of assets (within the meaning of section 414(l)) from the plan of a prior employer may continue to treat any transition allocations provided under that plan as transition allocations under paragraph (b)(1)(iii)(B) of this section, provided that the successor employer continues to satisfy the applicable requirements set forth in paragraphs (b)(1)(iii)(C) through (E) of this section for the plan year.

(iv) *Gradual age or service schedule*—(A) *In general.* A plan has a gradual age or service schedule for the plan year if the allocation formula for all employees under the plan provides for a single schedule of allocation rates under which—

(*1*) The schedule defines a series of bands based solely on age, years of service, or the number of points representing the sum of age and years of service (age and service points), under which the same allocation rate applies to all employees whose age, years of service, or age and service points are within each band; and

(*2*) The allocation rates under the schedule increase smoothly at regular intervals, within the meaning of paragraphs (b)(1)(iv)(B) and (C) of this section.

(B) *Smoothly increasing schedule of allocation rates.* A schedule of allocation rates increases smoothly if the allocation rate for each band within the schedule is greater than the allocation rate for the immediately preceding band (*i.e.*, the band with the next lower number of years of age, years of service, or age and service points) but by no more than 5 percentage points. However, a schedule of allocation rates will not be treated as increasing smoothly if the ratio of the allocation rate for any band to the rate for the immediately preceding band is more than 2.0 or if it exceeds the ratio of allocation rates between the two immediately preceding bands.

(C) *Regular intervals.* A schedule of allocation rates has regular intervals of age, years of service or age and service points, if each band, other than the band associated with the highest age, years of service, or age and service points, is the same length. For this purpose, if the schedule is based on age, the first band is deemed to be of the same length as the other bands if it ends at or before age 25. If the first age band ends after age 25, then, in determining whether the length of the first band is the same as the length of other bands, the starting age for the first age band is permitted to be treated as age 25 or any age earlier than 25. For a schedule of allocation rates based on age and service points, the rules of the preceding two sentences are applied by substituting 25 age and service points for age 25. For a schedule of allocation rates based on service, the starting service for the first service band is permitted to be treated as one year of service or any lesser amount of service.

(D) *Minimum allocation rates permitted.* A schedule of allocation rates under a plan does not fail to increase smoothly at regular intervals, within the meaning of paragraphs (b)(1)(iv)(B) and (C) of this section, merely because a minimum uni-

form allocation rate is provided for all employees or the minimum benefit described in section 416(c)(2) is provided for all non-key employees (either because the plan is top heavy or without regard to whether the plan is top heavy) if the schedule satisfies one of the following conditions—

(*1*) The allocation rates under the plan that are greater than the minimum allocation rate can be included in a hypothetical schedule of allocation rates that increases smoothly at regular intervals, within the meaning of paragraphs (b)(1)(iv)(B) and (C) of this section, where the hypothetical schedule has a lowest allocation rate no lower than 1% of plan year compensation; or

(*2*) For a plan using a schedule of allocation rates based on age, for each age band in the schedule that provides an allocation rate greater than the minimum allocation rate, there could be an employee in that age band with an equivalent accrual rate that is less than or equal to the equivalent accrual rate that would apply to an employee whose age is the highest age for which the allocation rate equals the minimum allocation rate.

(v) *Uniform target benefit allocations*. A plan has allocation rates that are based on a uniform target benefit allocation for the plan year if the plan fails to satisfy the requirements for the safe harbor testing method in paragraph (b)(3) of this section merely because the determination of the allocations under the plan differs from the allocations determined under that safe harbor testing method for any of the following reasons—

(A) The interest rate used for determining the actuarial present value of the stated plan benefit and the theoretical reserve is lower than a standard interest rate;

(B) The stated benefit is calculated assuming compensation increases at a specified rate; or

(C) The plan computes the current year contribution using the actual account balance instead of the theoretical reserve.

(vi) *Minimum allocation gateway*—(A) *General rule.* A plan satisfies the minimum allocation gateway of this paragraph (b)(1)(vi) if each NHCE has an allocation rate that is at least one third of the allocation rate of the HCE with the highest allocation rate.

(B) *Deemed satisfaction*. A plan is deemed to satisfy the minimum allocation gateway of this paragraph (b)(1)(vi) if each NHCE receives an allocation of at least 5% of the NHCE's compensation within the meaning of section 415(c)(3), measured over a period of time permitted under the definition of plan year compensation.

(vii) *Determination of allocation rate*. For purposes of paragraph (b)(1)(i)(B) of this section, allocations and allocation rates are determined under §1.401(a)(4)–2(c)(2), but without taking into account the imputation of permitted disparity under §1.401(a)(4)–7. However, in determining whether the plan has broadly available allocation rates as provided in paragraph (b)(1)(iii) of this section, differences in allocation rates attributable solely to the use of permitted disparity described in §1.401(l)–2 are disregarded.

(viii) *Examples.* The following examples illustrate the rules in this paragraph (b)(1):

Example 1. (i) Plan M, a defined contribution plan without a minimum service requirement, provides an allocation formula under which allocations are provided to all employees according to the following schedule:

Completed Years of Service	Allocation Rate	Ratio of Allocation Rate for Band to Allocation Rate for Immediately Preceding Band
0-5	3.0%	not applicable
6-10	4.5%	1.50
11-15	6.5%	1.44
16-20	8.5%	1.31
21-25	10.0%	1.18
26 or more	11.5%	1.15

(ii) Plan M provides that allocation rates for all employees are determined using a single schedule based solely on service, as described in paragraph (b)(1)(iv)(A)(*1*) of this section. Therefore, if the allocation rates under the schedule increase smoothly at regular intervals as described in paragraph (b)(1)(iv)(A)(*2*) of this section, then the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section.

(iii) The schedule of allocation rates under Plan M does not increase by more than 5 percentage points between adjacent bands and the ratio of the allocation rate for any band to the allocation rate for the immediately preceding band is never more than 2.0 and does not increase. Therefore, the allocation rates increase smoothly as described in paragraph (b)(1)(iv)(B) of this section. In addition, the bands (other than the highest band) are all 5 years long, so the increases occur at regular intervals as described in paragraph (b)(1)(iv)(C) of this section. Thus, the allocation rates under the plan's schedule increase smoothly at regular intervals as described in paragraph (b)(1)(iv)(A)(*2*) of this section. Accordingly, the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section.

(iv) Under paragraph (b)(1)(i) of this section, Plan M satisfies the nondiscrimination in amount requirement of §1.401(a)(4)-1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except that the 4.5% allocation rate applies for all employees with 10 years of service or less.

(ii) Plan M provides that allocation rates for all employees are determined using a single schedule based solely on service, as described in paragraph (b)(1)(iv)(A)(*1*) of this section. Therefore, if the allocation rates under the schedule increase smoothly at regular intervals as described in paragraph (b)(1)(iv)(A)(*2*) of this section, then the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section.

(iii) The bands (other than the highest band) in the schedule are not all the same length, since the first band is 10 years long while other bands are 5 years long. Thus, the schedule does not have regular intervals as described in paragraph (b)(1)(iv)(C) of this section. However, under paragraph (b)(1)(iv)(D) of this section, the schedule of allocation rates does not fail to increase smoothly at regular intervals merely because the minimum allocation

rate of 4.5% results in a first band that is longer than the other bands, if either of the conditions of paragraph (b)(1)(iv)(D)(*1*) or (*2*) of this section is satisfied.

(iv) In this case, the schedule of allocation rates satisfies the condition in paragraph (b)(1)(iv)(D)(*1*) of this section because the allocation rates under the plan that are greater than the 4.5% minimum allocation rate can be included in the following hypothetical schedule of allocation rates that increases smoothly at regular intervals and has a lowest allocation rate of at least 1% of plan year compensation:

Completed Years of Service	Allocation Rate	Ratio of Allocation Rate for Band to Allocation Rate for Immediately Preceding Band
0-5	2.5%	not applicable
6-10	4.5%	1.80
11-15	6.5%	1.44
16-20	8.5%	1.31
21-25	10.0%	1.18
26 or more	11.5%	1.15

(v) Accordingly, the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section. Under paragraph (b)(1)(i) of this section, Plan M satisfies the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section.

Example 3. (i) Plan N, a defined contribution plan, provides an allocation formula under which allocations are provided to all employees according to the following schedule:

Age	Allocation rate	Ratio of Allocation Rate for Band to Allocation Rate for Immediately Preceding Band
under 25	3.0%	not applicable
25-34	6.0%	2.00
35-44	9.0%	1.50
45-54	12.0%	1.33
55-64	16.0%	1.33
65 or older	21.0%	1.31

(ii) Plan N provides that allocation rates for all employees are determined using a single schedule based solely on age, as described in paragraph (b)(1)(iv)(A)(*1*) of this section. Therefore, if the allocation rates under the schedule increase smoothly at regular intervals as described in paragraph (b)(1)(iv)(A)(*2*) of this section, then the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section.

(iii) The schedule of allocation rates under Plan N does not increase by more than 5 percentage points between adjacent bands and the ratio of the allocation rate for any band to the allocation rate for the immediately preceding band is never more than 2.0 and does not increase. Therefore, the allocation rates increase smoothly as described in paragraph (b)(1)(iv)(B) of this section. In addition, the bands (other than the highest band and the first band, which is deemed to be the same length as the other bands because it ends prior to age 25) are all 5 years long, so the increases occur at regular intervals as described in paragraph (b)(1)(iv)(C) of this section. Thus, the allocation rates under the plan's schedule increase smoothly at regular intervals as described in paragraph (b)(1)(iv)(A)(*2*) of this section. Accordingly, the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section.

(iv) Under paragraph (b)(1)(i) of this section, Plan N satisfies the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section.

Example 4. (i) Plan O, a defined contribution plan, provides an allocation formula under which allocations are provided to all employees according to the following schedule:

Age	Allocation rate	Ratio of Allocation Rate for Band to Allocation Rate for Immediately Preceding Band
under 40	3%	not applicable
40-44	6%	2.00
45-49	9%	1.50
50-54	12%	1.33
55-59	16%	1.33
60-64	20%	1.25
65 or older	25%	1.25

(ii) Plan O provides that allocation rates for all employees are determined using a single schedule based solely on age, as described in paragraph (b)(1)(iv)(A)(*1*) of this section. Therefore, if the allocation rates under the schedule increase smoothly at regular intervals as described in paragraph (b)(1)(iv)(A)(*2*) of this section, then the plan has a gradual age or service schedule described in paragraph (b)(1)(iv) of this section.

(iii) The bands (other than the highest band) in the schedule are not all the same length, since the first band is treated as 15 years long while other bands are 5 years long. Thus, the schedule does not have regular intervals as described in paragraph (b)(1)(iv)(C) of this section. However, under paragraph (b)(1)(iv)(D) of this section, the schedule of allocation rates does not fail to increase smoothly at regular intervals merely because the minimum allocation rate of 3% results in a first band that is longer than the other bands, if either of the conditions of paragraph (b)(1)(iv)(D)(*1*) or (*2*) of this section is satisfied.

(iv) In this case, in order to define a hypothetical schedule that could include the allocation rates in the actual schedule of allocation rates, each of the bands below age 40 would have to be 5 years long (or be treated as 5 years long). Accordingly, the hypothetical schedule would have to provide for a band for employees under age 30, a band for employees in the range 30-34 and a band for employees age 35-39.

(v) The ratio of the allocation rate for the age 40-44 band to the next lower band is 2.0. Accordingly, in order for the applicable allocations rates under this hypothetical schedule to increase smoothly, the ratio of the allocation rate for each band in the hypothetical schedule below age 40 to the allocation rate for the immediately preceding band would have to be 2.0. Thus, the allocation rate for the hypothetical band applicable for employees under age 30 would be .75%, the allocation rate for the hypothetical band for employees in the range 30-34 would be 1.5% and the allocation rate for employees in the range 35-39 would be 3%.

(vi) Because the lowest allocation rate under any possible hypothetical schedule is less than 1% of plan year compensation, Plan O will be treated as satisfying the requirements of paragraphs (b)(1)(iv)(B) and (C) of this section only if the schedule of allocation rates satisfies the steepness condition described in paragraph (b)(1)(iv)(D)(*2*) of this section. In this case, the steepness condition is not satisfied because the equivalent accrual rate for an employee age 39 is 2.81%, but there is no hypothetical employee in the band for ages 40-44 with an equal or lower equivalent accrual rate (since the lowest equivalent accrual rate for hypothetical employees within this band is 3.74% at age 44).

(vii) Since the schedule of allocation rates under the plan does not increase smoothly at regular intervals, Plan O's schedule of allocation rates is not a gradual age or service schedule. Further, Plan O does not provide uniform target benefit allocations. Therefore, under paragraph (b)(1)(i) of this section, Plan O cannot satisfy the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) for the plan year on the basis of benefits unless either Plan O provides for broadly available allocation rates for the plan year as described in paragraph (b)(1)(iii) of this section (*i.e.*, the allocation rate at each age is provided to a group of employees that satisfies section 410(b) without regard to the average benefit percentage test), or Plan O satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section for the plan year.

Example 5. (i) Plan P is a profit-sharing plan maintained by Employer A that covers all of Employer A's employees, consisting of two HCEs, X and Y, and 7 NHCEs. Employee X's compensation is $170,000 and Employee Y's compensation is $150,000. The allocation for Employees X and Y is $30,000 each, resulting in an allocation rate of 17.65% for Employee X and 20% for Employee Y. Under Plan P, each NHCE receives an allocation of 5% of compensation within the meaning of section 415(c)(3), measured over a period of time permitted under the definition of plan year compensation.

(ii) Because the allocation rate for X is not currently available to any NHCE, Plan P does not have broadly available allocation rates within the meaning of paragraph (b)(1)(iii) of this section. Furthermore, Plan P does not provide for age based-allocation rates within the meaning of paragraph (b)(1)(iv) or (v) of this section. Thus, under paragraph (b)(1)(i) of this section, Plan P can satisfy the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) for the plan year on the basis of benefits only if Plan P satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section for the plan year.

(iii) The highest allocation rate for any HCE under Plan P is 20%. Accordingly, Plan P would satisfy the minimum allocation gateway of paragraph (b)(1)(vi) of this section if all NHCEs have an allocation rate of at least 6.67%, or if all NHCEs receive an allocation of at least 5% of compensation within the meaning of section 415(c)(3) (measured over a period of time permitted under the definition of plan year compensation).

(iv) Under Plan P, each NHCE receives an allocation of 5% of compensation within the meaning of section 415(c)(3) (measured over a period of time permitted under the definition of plan year compensation). Accordingly, Plan P satisfies the minimum allocation gateway of paragraph (b)(1)(vi) of this section.

(v) Under paragraph (b)(1)(i) of this section, Plan P satisfies the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section.

* * * * *

Par. 4. Section 1.401(a)(4)–9 is amended by adding paragraph (b)(2)(v) and revising paragraph (c)(3)(ii) to read as follows:

§1.401(a)(4)–9 Plan aggregation and restructuring.

* * * * *

(b) * * *

(2) * * *

(v) *Eligibility for testing on a benefits basis*—(A) *General rule*. For plan years beginning on or after January 1, 2002, unless, for the plan year, a DB/DC plan is primarily defined benefit in character (within the meaning of paragraph (b)(2)(v)(B) of this section) or consists of broadly available separate plans (within the meaning of paragraph (b)(2)(v)(C) of this section), the DB/DC plan must satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section for the plan year in order to be permitted to demonstrate satisfaction of the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) on the basis of benefits.

(B) *Primarily defined benefit in character.* A DB/DC plan is primarily defined benefit in character if, for more than 50% of the NHCEs benefitting under the plan, the normal accrual rate for the NHCE attributable to benefits provided under defined benefit plans that are part of the DB/DC plan exceeds the equivalent accrual rate for the NHCE attributable to contributions under defined contribution plans that are part of the DB/DC plan.

(C) *Broadly available separate plans*. A DB/DC plan consists of broadly available separate plans if the defined contribution plan and the defined benefit plan that are part of the DB/DC plan each would satisfy the requirements of section 410(b) and the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) if each plan were tested separately and assuming that the average benefit percentage test of §1.410(b)–5 were satisfied. For this purpose, all defined contribution plans that are part of the DB/DC plan are treated as a single defined contribution plan and all defined benefit plans that are part of the DB/DC plan are treated as a single defined benefit plan. In addition, if permitted disparity is used for an employee for purposes of satisfying the separate testing requirement of this paragraph (b)(2)(v)(C) for plans of one type, it may not be used in satisfying the separate testing requirement for plans of the other type for the employee.

(D) *Minimum aggregate allocation gateway*—(*1*) *General rule*. A DB/DC plan satisfies the minimum aggregate allocation gateway if each NHCE has an aggregate normal allocation rate that is at least one third of the aggregate normal allocation rate of the HCE with the highest such rate (HCE rate), or, if less, 5% of the NHCE's compensation, provided that the HCE rate does not exceed 25% of compensation. If the HCE rate exceeds 25%

of compensation, then the aggregate normal allocation rate for each NHCE must be at least 5% increased by one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (*e.g.*, the NHCE minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%).

(*2*) *Deemed satisfaction*. A plan is deemed to satisfy the minimum aggregate allocation gateway of this paragraph (b)(2)(v)(D) if the aggregate normal allocation rate for each NHCE is at least 7 1/2% of the NHCE's compensation within the meaning of section 415(c)(3), measured over a period of time permitted under the definition of plan year compensation.

(*3*) *Averaging of equivalent allocation rates for NHCEs*. For purposes of this paragraph (b)(2)(v)(D), a plan is permitted to treat each NHCE who benefits under the defined benefit plan as having an equivalent normal allocation rate equal to the average of the equivalent normal allocation rates under the defined benefit plan for all NHCEs benefitting under that plan.

(E) *Determination of rates*. For purposes of this paragraph (b)(2)(v), the normal accrual rate and the equivalent normal allocation rate attributable to defined benefit plans, the equivalent accrual rate attributable to defined contribution plans, and the aggregate normal allocation rate are determined under paragraph (b)(2)(ii) of this section, but without taking into account the imputation of permitted disparity under §1.401(a)(4)–7, except as otherwise permitted under paragraph (b)(2)(v)(C) of this section.

(F) *Examples*. The following examples illustrate the application of this paragraph (b)(2)(v):

Example 1. (i) Employer A maintains Plan M, a defined benefit plan, and Plan N, a defined contribution plan. All HCEs of Employer A are covered by Plan M (at a 1% accrual rate), but are not covered by Plan N. All NHCEs of Employer A are covered by Plan N (at a 3% allocation rate), but are not covered by Plan M. Because Plan M does not satisfy section 410(b) standing alone, Plans M and N are aggregated for purposes of satisfying sections 410(b) and 401(a)(4).

(ii) Because none of the NHCEs participate in the defined benefit plan, the aggregated DB/DC plan is not primarily defined benefit in character within the meaning of paragraph (b)(2)(v)(B) of this section nor does it consist of broadly available separate plans within the meaning of paragraph (b)(2)(v)(C) of this section. Accordingly, the aggregated Plan M and Plan N must satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section in order to be permitted to demonstrate satisfaction of the nondiscrimination in amount requirement of §1.401(a)(4)–1(b)(2) on the basis of benefits.

Example 2. (i) Employer B maintains Plan O, a defined benefit plan, and Plan P, a defined contribution plan. All of the six employees of Employer B are covered under both Plan O and Plan P. Under Plan O, all employees have a uniform normal accrual rate of 1% of compensation. Under Plan P, Employees A and B, who are HCEs, receive an allocation rate of 15%, and participants C, D, E and F, who are NHCEs, receive an allocation rate of 3%. Employer B aggregates Plans O and P for purposes of satisfying sections 410(b) and 401(a)(4). The equivalent normal allocation and normal accrual rates under Plans O and P are as follows:

Employee	Equivalent Normal Allocation Rates for the 1% Accrual under Plan O (defined benefit plan)	Equivalent Normal Accrual Rates for the 15%/3% Allocations under Plan P (defined contribution plan)
HCE A (age 55)	3.93%	3.82%
HCE B (age 50)	2.61%	5.74%
C (age 60)	5.91%	.51%
D (age 45)	1.74%	1.73%
E (age 35)	.77%	3.90%
F (age 25)	.34%	8.82%

(ii) Although all of the NHCEs benefit under Plan O (the defined benefit plan), the aggregated DB/DC plan is not primarily defined benefit in character because the normal accrual rate attributable to defined benefit plans (which is 1% for each of the NHCEs) is greater than the equivalent accrual rate under defined contribution plans only for Employee C. In addition, because the 15% allocation rate is available only to HCEs, the defined contribution plan cannot satisfy the requirements of §1.401(a)(4)–2 and does not have broadly available allocation rates within the meaning of §1.401(a)(4)–8(b)(1)(iii). Further, the defined contribution plan does not satisfy the minimum allocation gateway of §1.401(a)(4)–8(b)(1)(vi) (3% is less than 1/3 of the 15% HCE rate). Therefore, the defined contribution plan within the DB/DC plan cannot separately satisfy §1.401(a)(4)–1(b)(2) and does not constitute a broadly available separate plan within the meaning of paragraph (b)(2)(v)(C) of this section. Accordingly, the aggregated plans are permitted to demonstrate satisfaction of the nondiscrimination in amounts requirement of §1.401(a)(4)–1(b)(2) on the basis of benefits only if the aggregated plans satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

(iii) Employee A has an aggregate normal allocation rate of 18.93% under the aggregated plans (3.93% from Plan O plus 15% from Plan P), which is the highest aggregate normal allocation rate for any HCE under the plans. Employee F has an aggregate normal allocation rate of 3.34% under the aggregated plans (.34% from Plan O plus 3% from Plan P) which is less than the 5% aggregate normal allocation rate that Employee F would be required to have to satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

(iv) However, for purposes of satisfying the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section, Employer B is permitted to treat each NHCE who benefits under Plan O (the defined benefit plan) as having an equivalent allocation rate equal to the average of the equivalent allocation rates under Plan O for all NHCEs benefitting under that plan. The average of the equivalent allocation rates for all of the NHCEs under Plan O is 2.19% (the sum of 5.91%, 1.74%, .77%, and .34%, divided by 4). Accordingly, Employer B is permitted to treat all of the NHCEs as having an equivalent allocation rate attributable to Plan O equal to 2.19%. Thus, all of the NHCEs can be treated as having an aggregate normal allocation rate of 5.19% for this purpose (3% from the defined contribution plan and 2.19% from the defined benefit plan) and the aggregated DB/DC plan satisfies the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) *Restructuring not available for certain testing purposes*. The safe harbor in §1.401(a)(4)–2(b)(3) for plans with uniform points allocation formulas is not available in testing (and thus cannot be satisfied by) contributions under a component plan. Similarly, component plans

cannot be used for purposes of determining whether a plan provides broadly available allocation rates (as defined in §1.401(a)(4)–8(b)(1)(iii)), determining whether a plan has a gradual age or service schedule (as defined in §1.401 (a)(4)–8(b)(1)(iv)), determining whether a plan has allocation rates that are based on a uniform target benefit allocation (as defined in §1.401(a)(4)–8(b)(1)(v)), or determining whether a plan is primarily defined benefit in character or consists of broadly available separate plans (as defined in paragraphs (b)(2)(v)(B) and (C) of this section). In addition, the minimum allocation gateway of §1.401(a) (4)–8(b)(1)(vi) and the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section cannot be satisfied on the basis of component plans. See §§1.401(k)–1(b)(3)(iii) and 1.401(m)–1(b)(3)(iii) for rules regarding the inapplicability of restructuring to section 401(k) plans and section 401(m) plans.

* * * * *

Par. 5. Section 1.401(a)(4)–12 is amended by adding a sentence to the end of the definition of *Standard mortality table* to read as follows:

§1.401(a)(4)–12 Definitions.

* * * * *

Standard mortality table. * * * The applicable mortality table under section 417(e)(3)(A)(ii)(I) is also a standard mortality table.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved June 21, 2001.

Mark Weinberger,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on June 28, 2001, 8:45 a.m., and published in the issue of the Federal Register for June 29, 2001, 66 F.R. 34545)

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The May 2001 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, May 31, 2001.

Rev. Rul. 2001–35

The following Department Store Inventory Price Indexes for May 2001 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, May 31, 2001.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	May 2000	May 2001	Percent Change from May 2000 to May 2001[1]
1. Piece Goods	501.7	491.2	-2.1
2. Domestics and Draperies	620.4	598.8	-3.5
3. Women's and Children's Shoes	642.2	653.9	1.8
4. Men's Shoes	923.1	889.7	-3.6
5. Infants' Wear	641.0	625.4	-2.4
6. Women's Underwear	573.4	570.4	-0.5
7. Women's Hosiery	335.1	352.0	5.0
8. Women's and Girls' Accessories	543.4	553.1	1.8
9. Women's Outerwear and Girls' Wear	401.5	394.6	-1.7
10. Men's Clothing	623.7	595.5	-4.5
11. Men's Furnishings	636.3	619.2	-2.7
12. Boys' Clothing and Furnishings	502.5	497.1	-1.1
13. Jewelry	943.4	934.7	-0.9
14. Notions	775.9	776.3	0.1
15. Toilet Articles and Drugs	971.1	947.8	-2.4
16. Furniture and Bedding	672.5	641.8	-4.6
17. Floor Coverings	608.6	623.7	2.5
18. Housewares	779.4	767.1	-1.6
19. Major Appliances	233.7	224.3	-4.0

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS, Continued
(January 1941 = 100, unless otherwise noted)

Groups	May 2000	May 2001	Percent Change from May 2000 to May 2001[1]
20. Radio and Television	60.1	54.7	-9.0
21. Recreation and Education[2]	93.9	90.2	-3.9
22. Home Improvements[2]	128.5	125.7	-2.2
23. Auto Accessories[2]	106.5	108.9	2.3
Groups 1 - 15: Soft Goods	604.5	594.0	-1.7
Groups 16 - 20: Durable Goods	438.3	423.0	-3.5
Groups 21 - 23: Misc. Goods[2]	100.9	98.6	-2.3
Store Total[3]	542.5	530.8	-2.2

[1] Absence of a minus sign before the percentage change in this column signifies a price increase.

[2] Indexes on a January 1986 =100 base.

[3] The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Alan J. Tomsic of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Tomsic at (202) 622-4970 (not a toll-free call).

Section 6302.—Mode or Time of Collection

26 CFR 31.6302–1: Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

T.D. 8952

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1, 31, 35, 36, 40, 301, and 601

Removal of Federal Reserve Banks as Federal Depositaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations which remove the Federal Reserve Banks as authorized depositaries for Federal tax deposits. The regulations affect taxpayers who make Federal tax deposits using paper Federal Tax Deposit (FTD) coupons (Form 8109) at Federal Reserve Banks.

DATES: *Effective Date*: These regulations are effective June 26, 2001**.**

Applicability Date: These regulations apply to deposits made after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Brinton T. Warren (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Background

This document contains amendments to 26 CFR parts 1, 31, 35, 36, 40, 301, and 601 relating to Federal tax deposits under section 6302(c) of the Internal Revenue Code (Code). On December 26, 2000, temporary regulations (T.D. 8918, 2001–4 I.R.B. 372) relating to the removal of Federal Reserve Banks as federal depositaries were published in the **Federal Register** (65 FR 81356). A notice of proposed rulemaking (REG–107176–00, 2001–4 I.R.B. 428) that proposed the removal of Federal Reserve Banks as federal depositaries was published in the **Federal Register** for the same day (65 FR 81453). No comments were received from the public in response to the notice of proposed rulemaking.

Explanation of Provisions

These final regulations, which permanently remove Federal Reserve Banks as authorized depositaries for Federal tax deposits, adopt the rules of the proposed regulations and remove the corresponding temporary regulations. The term Federal Reserve Bank includes twelve banks and their approximately two dozen branches that constitute the nation's central banking system. The term does not include the thousands of federally and state chartered banks that are recognized as members of the Federal Reserve System. Accordingly, these final regulations do not affect Federal Tax Deposits (FTDs) made with paper coupons at any of the more than 10,000 financial institutions nationwide that serve as Treasury Tax and Loan (TT&L) depositaries. Deposits made through the Electronic Federal Tax Payment System (EFTPS) are also not affected.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on

small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Brinton T. Warren of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, and under the authority of 26 U.S.C. 7805 and 5 U.S.C. 301, 26 CFR parts 1, 31, 35, 36, 40, 301 and 601 are amended as follows:

PART 1—INCOME TAXES

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

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

§1.6302–1 [Amended]

Par. 2. Section 1.6302–1 is amended by removing the fifth sentence in paragraph (b)(1).

§1.6302–2 [Amended]

Par. 3. Section 1.6302–2 is amended by removing the third sentence in paragraph (b)(1).

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 4. The authority citation for part 31 continues to read in part as follows:

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

§31.6302–1 [Amended]

Par. 5. Section 31.6302–1 is amended by removing the fourth sentence in paragraph (i)(3).

§31.6302(c)–3 [Amended]

Par. 6. Section 31.6302(c)–3 is amended by removing the third sentence in paragraph (b)(2).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 7. The authority for part 301 continues to read in part as follows:

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

§301.6302–1T [Removed]

Par. 8. Section 301.6302–1T is removed.

PARTS 1, 31, 35, 36, 40, 301, 601 [AMENDED]

Par. 9. In the list below, for each section indicated in the left column, remove the language in the middle column and add, if any, the language in the right column:

Section	*Remove*	*Add*
1.1461–1(a)(1), first sentence	a Federal reserve bank or	an
1.1502–5(a)(1), fourth sentence	commercial dispositary or Federal Reserve Bank	financial institution
1.6151–1(d)(1)	Federal Reserve Banks or	
1.6302–1(b)(1) fourth sentence	214 or, at the election of the corporation, to a Federal Reserve bank	203
1.6302–1(b)(1), fifth sentence	the Federal Reserve bank or	
1.6302–2(a)(1)(i), first sentence	a Federal Reserve bank or	an
1.6302–2(a)(1)(ii), first sentence	a Federal Reserve bank or	an
1.6302–2(a)(1)(iv), first sentence	a Federal Reserve bank or	an
1.6302–2(b)(1), second sentence	214 or, at the election of the withholding agent, to a Federal Reserve bank	203
1.6302–2(b)(1), third sentence	the Federal Reserve bank or	
1.6302–3(a)	or with a Federal Reserve Bank	
31.6071(a)–1(a)(1), last sentence	or by a Federal Reserve bank	

Section	*Remove*	*Add*
31.6071(a)–1(c), last sentence	a Federal Reserve bank or by	
31.6151–1(b), first sentence	Federal Reserve banks and	
31.6302–1(c)(1), first sentence	a Federal Reserve bank or	an
31.6302–1(c)(2)(i) introductory text	a Federal Reserve bank or	an
31.6302–1(c)(3)	a Federal Reserve bank or	an
31.6302–1(i)(3) introductory text, first sentence	214 or, at the election of the employer, to a Federal Reserve bank	203
31.6302–1(i)(5)	the Federal Reserve bank or	
31.6302(c)–2A(b)(1)(i)	with a Federal Reserve bank or	
31.6302(c)–2A(b)(3)	with a Federal Reserve bank or	
31.6302(c)–3(a)(1)(i)	with a Federal Reserve bank or	
31.6302(c)–3(a)(1)(ii)	with a Federal Reserve bank or	
31.6302(c)–3(a)(3)	with a Federal Reserve bank or	
31.6302(c)–3(b)(2) second sentence	214 or, at the election of the employer, to a Federal Reserve bank	203
31.6302(c)–3(b)(2), third sentence	the Federal Reserve bank or	
35.3405–1T e–10A., first sentence	a Federal Reserve Bank or	
36.3121(l)(10)–4	a Federal Reserve bank or	an
40.6302(c)–1(d)(1)	214) or to a Federal Reserve bank	203)
301.6302–1(a)	Federal Reserve banks and authorized commercial banks	authorized financial institutions
301.6302–1(b)(1)	Federal Reserve banks or authorized commercial banks	authorized financial institutions
301.6302–1(b)(2)	Federal Reserve banks or authorized commercial banks	authorized financial institutions
301.9100–5T(c) concluding text	Federal Reserve banks and	
601.401(a)(5) heading	Federal Reserve banks and	
601.401(a)(5)(iii) first sentence	a Federal Reserve bank or	an
601.401(a)(5)(iii) second sentence	a Federal Reserve bank or	an
601.401(a)(5)(iv), first sentence	a Federal Reserve bank or a financial institution authorized in accordance with Treasury Department Circular No. 1079, revised, to accept remittances of these taxes for transmission to a Federal Reserve bank	an authorized financial institution

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved June 15, 2001.

Mark A. Weinberger,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on June 25, 2001, 8:45 a.m., and published in the issue of the Federal Register for June 26, 2001, 66 F.R. 33830)

Section 6323.—Validity and Priority Against Certain Persons

26 CFR 301.6323(j)–1: Withdrawal of notice of federal tax lien in certain circumstances.

T.D. 8951

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Withdrawal of Notice of Federal Tax Lien in Certain Circumstances

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the withdrawal of notices of federal tax liens in certain circumstances. The final regulations reflect changes made to section 6323 of the Internal Revenue Code of 1986 by the Taxpayer Bill of Rights 2. The final regulations affect all taxpayers seeking withdrawals of notices of federal tax liens.

EFFECTIVE DATE: These regulations apply on or after June 22, 2001.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622-3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the withdrawal of notices of federal tax liens under section 6323 of the Internal Revenue Code (Code). Section 501(a) of the Taxpayer Bill of Rights 2 (TBOR2), Public Law 104–168, 110 Stat. 1452 (1996), amended section 6323 to authorize the Secretary to withdraw a notice of federal tax lien in certain limited circumstances. Section 501(a) also requires the Secretary to notify credit reporting agencies, financial institutions, and creditors of the withdrawal upon the written request of the taxpayer. On June 30, 1999, a notice of proposed rulemaking (REG–101519–97, 1999–2 C.B. 114) reflecting these changes was published in the **Federal Register** (64 FR 35102). Several parties commented on the notice of proposed rulemaking and a hearing was held on November 30, 1999. The final regulations are adopted with minor changes.

Explanation of Provisions

Section 501(a) of TBOR2 amended section 6323 of the Code by authorizing the Secretary to withdraw a notice of federal tax lien under certain conditions and providing that upon written request of the taxpayer the Secretary will notify any credit reporting agency and any financial institution or creditor identified by the taxpayer. These regulations implement section 501(a).

The proposed regulations provided that the district director had the authority to withdraw a notice of federal tax lien if the district director determined that one of the four conditions enumerated in paragraph (b) of the regulations existed. Because of the reorganization of the Internal Revenue Service (IRS), which eliminated the district director position, the final regulations provide that the Commissioner or his delegate (Commissioner) may withdraw a notice of federal tax lien under the proper conditions.

The notice of federal tax lien is withdrawn by filing a notice of withdrawal in the office in which the notice of federal tax lien is filed and providing the taxpayer with a copy of the notice. Following the withdrawal of a notice of federal tax lien, chapter 64 of subtitle F, relating to collection, is applied as if the IRS had never filed a notice of federal tax lien. The withdrawal of a notice of federal tax lien does not affect the underlying tax lien. The withdrawal simply relinquishes any lien priority the IRS had obtained under section 6323 of the Code when the IRS filed the notice being withdrawn.

Paragraph (b) of the regulations provides that the Commissioner has the authority to withdraw a notice of federal tax lien if one of the following conditions exists: (1) the filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary; (2) the taxpayer has entered into an agreement under section 6159 to satisfy the liability for which the lien was imposed by means of installment payments, unless the agreement by its terms provides that the notice will not be withdrawn; (3) the withdrawal of notice will facilitate collection of the tax liability for which the lien was imposed; or (4) the withdrawal of notice is in the best interests of the taxpayer and the United States.

A new example has been added (*Example 1*) that illustrates when the Commissioner may withdraw a notice of federal tax lien under paragraph (b)(1) because the IRS failed to follow administrative procedures when filing notice. Each example now refers to just one of the four withdrawal criteria under paragraph (b)(1). In addition, the examples have been renumbered to correspond to the numbers of the criteria in paragraph (b) that the examples illustrate.

One of the commenting parties recommended that the final regulations define the terms "facilitate collection" and "best interests of the taxpayer and the United States," found in paragraphs (b)(3) and (b)(4). The final regulations purposely do not define these terms. Congress intended "to give the IRS discretion to withdraw a notice of lien" in these circumstances. H.R. Rep. No. 506, 104th Cong., 2d Sess. 32 (Mar. 28, 1996). The circumstances under which a lien may be withdrawn are inherently factual. Further refinement of the statutory terms may unnecessarily limit the IRS's ability to withdraw a notice where appropriate.

A commenting party asked the IRS to add a paragraph providing that, if the National Taxpayer Advocate (or his delegate) determines that a taxpayer is suffering or about to suffer a significant hardship, the National Taxpayer Advocate (or his delegate) may, in appropriate cases, issue a taxpayer assistance order

(TAO) requiring the Commissioner to withdraw a notice of federal tax lien. This issue, concerning whether the National Taxpayer Advocate (or his delegate) may issue a TAO ordering the withdrawal of a notice, involves an interpretation of section 7811, and the authority granted to the National Taxpayer Advocate, which are not pertinent to this regulation.

The final regulations provide that a person may request the withdrawal of a notice of federal tax lien by writing to the Commissioner. A written request for withdrawal must include: (1) the name, current address, and taxpayer identification number of the person requesting withdrawal of the notice of federal tax lien; (2) a copy of the notice of federal tax lien affecting the property, if available; (3) the grounds upon which the withdrawal of notice of federal tax lien is being requested; (4) a list of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien; and (5) a request to disclose information relating to the withdrawal to the persons or entities listed.

The Commissioner must consider each taxpayer's request for withdrawal of notice of federal tax lien and determine whether any of the conditions authorizing withdrawal exist and whether to issue a withdrawal. The Commissioner also may issue a notice of withdrawal based on information received from a source other than the taxpayer.

If the Commissioner grants a request for the withdrawal of notice of federal tax lien, the taxpayer may supplement the list of credit reporting agencies and financial institutions or creditors provided with the request for withdrawal. If no list was submitted with the request for withdrawal, a list may be submitted after the notice is withdrawn. A request to supplement the list must be sent in writing to the Commissioner. The request must contain: (1) the name, current address, and taxpayer identification number of the person requesting the notification; (2) a copy of the notice of withdrawal; (3) the names and addresses of the persons or entities the taxpayer wishes the IRS to contact; and (4) a request to disclose the withdrawal to the persons or entities listed.

A commenting party suggested that the IRS send notification to credit agencies and financial institutions by certified mail. Certified mail generally is required where there is a statute of limitations dependent on service. This is not the case with respect to notification under section 6323(j)(2).

A commenting party also requested that language be added to the regulations stating that, upon receipt of notification that the IRS has withdrawn a notice of federal tax lien, a credit agency will be immune from any damage claim a taxpayer may have against it for its handling of the notice if the credit agency acts within reasonable time after receiving notice. The statute simply instructs the IRS to notify credit agencies of a notice of withdrawal upon request of the taxpayer. The IRS does not have the statutory authority to shield a credit agency from a taxpayer's claim for damages due to how the credit agency handled the notice.

The regulations will be applicable on or after June 22, 2001, with respect to withdrawals of any notice of federal tax lien occurring after such date regardless of when the notice was filed.

Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the collection of information in the regulations is exempt pursuant to 5 U.S.C. 601(7)(B), the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection Bankruptcy & Summons Division, CC:PA:CBS, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Final Amendments to the Regulations

Accordingly, the IRS amends 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6323(j)–1 is added to read as follows:

§301.6323(j)–1 Withdrawal of notice of federal tax lien in certain circumstances.

(a) *In general.* The Commissioner or his delegate (Commissioner) may withdraw a notice of federal tax lien filed under this section, if the Commissioner determines that any of the conditions in paragraph (b) of this section exist. A notice of federal tax lien is withdrawn by the filing by the Commissioner of a notice of withdrawal in the office in which the notice of federal tax lien is filed. If a notice of withdrawal is filed, chapter 64 of subtitle F, relating to collection, will be applied as if the withdrawn notice had never been filed. A copy of the notice of withdrawal will be provided to the taxpayer. Upon written request by a taxpayer with respect to whom a notice of federal tax lien has been or will be withdrawn, the Commissioner will promptly make reasonable efforts to notify any credit reporting agency and any financial institution or creditor identified by the taxpayer of the withdrawal of such notice. The withdrawal of a notice of federal tax lien will not affect the underlying federal tax lien.

(b) *Conditions authorizing withdrawal*. The Commissioner may authorize the withdrawal of a notice of federal tax lien upon determining that one of the following conditions exists:

(1) *Premature or not in accordance with administrative procedures*. The filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary.

(2) *Installment agreement*. The taxpayer has entered into an agreement under section 6159 to satisfy the liability for

which the lien was imposed by means of installment payments. Entry into an installment agreement may not, however, be the basis for withdrawal of a notice of lien if the installment agreement specifically provides that a notice of federal tax lien will not be withdrawn.

(3) *Facilitate collection*. The withdrawal of the notice of federal tax lien will facilitate the collection of the tax liability for which the lien was imposed.

(4) *Best interests of the United States and the taxpayer*—(i) *In general*. The taxpayer or the National Taxpayer Advocate (or his delegate) has consented to the withdrawal of the notice of federal tax lien, and withdrawal of the notice would be in the best interest of the taxpayer, as determined by the taxpayer or the National Taxpayer Advocate (or his delegate), and in the best interest of the United States, as determined by the Commissioner.

(ii) *Best interest of the taxpayer*. When a taxpayer requests the withdrawal of notice of federal tax lien based on the best interests of the United States and the taxpayer, the National Taxpayer Advocate (or his delegate) generally will determine whether the withdrawal of the notice of federal tax lien is in the best interest of the taxpayer. If, however, a taxpayer requests the Commissioner to withdraw a notice and has not specifically requested the National Taxpayer Advocate (or his delegate) to determine the taxpayer's best interest, a finding by the Commissioner that the withdrawal of notice is in the best interest of the taxpayer will be sufficient to support withdrawal. If the Commissioner decides independently of a request by the taxpayer to withdraw a notice of federal tax lien, the taxpayer or the National Taxpayer Advocate (or his delegate) must consent to the withdrawal.

(5) *Examples*. The following examples illustrate the provisions of this paragraph (b):

Example 1. A owes $1,000 in Federal income taxes. The IRS files a notice of federal tax lien to secure A's tax liability. However, the IRS failed to follow procedure provided by the Internal Revenue Manual (but not required by statute) with regard to managerial approval prior to the filing of a notice of federal tax lien. The Commissioner may withdraw the notice of federal tax lien because the filing of the notice was not in accordance with the Secretary's administrative procedures.

Example 2. A owes $1,000 in federal income taxes. A enters into an agreement to pay the outstanding federal income tax liability in installments. The agreement provides that a notice of federal tax lien may be filed if the taxpayer defaults. A timely pays the installments each month and has not defaulted in any way. Eleven months after entering into the installment agreement, the Internal Revenue Service files a notice of federal tax lien. Noting that there has been no default, the taxpayer asks the Internal Revenue Service to withdraw the notice of federal tax lien. In this situation, the Commissioner may withdraw the notice of federal tax lien because the taxpayer has entered into an installment agreement.

Example 3. A is an employee of X Corporation. A notice of federal tax lien has been filed to secure an outstanding tax liability against A. A, who has no assets and no other secured creditors, has agreed to pay the balance of tax due through payroll deductions at a rate higher than the Internal Revenue Service could obtain through a wage levy in order to get the notice of federal tax lien withdrawn. X Corporation has agreed to allow A to enter into a payroll deduction agreement. In this situation, the Commissioner may withdraw the notice of federal tax lien to facilitate collection.

Example 4. A is owner of a farm machinery dealership against whom a notice of federal tax lien has been filed to secure an outstanding tax liability. A currently is paying the tax liability by an installment agreement. X Corporation has agreed to provide A with 100 tractors to increase A's inventory if the notice of federal tax lien is withdrawn. A asks the Internal Revenue Service to withdraw the notice of federal tax lien. The Commissioner determines that the larger inventory would enable A to generate additional tractor sales. Increased sales would enable A to increase the amount of installment payments and, consequently, reduce the amount of time needed to satisfy the liability. A, who has no other assets or secured creditors, has agreed to modify the installment agreement. The Commissioner may withdraw the notice of federal tax lien because the withdrawal is in the best interest of the taxpayer and the United States.

(c) *Determinations by the Commissioner.* The Commissioner must determine whether any of the conditions authorizing the withdrawal of a notice of federal tax lien exist if a taxpayer submits a request for withdrawal in accordance with paragraph (d) of this section. The Commissioner may also make this determination independent of a request from the taxpayer based on information received from a source other than the taxpayer. If the Commissioner determines that conditions authorizing the withdrawal are not present, the Commissioner may not authorize the withdrawal. If the Commissioner determines conditions for withdrawal are present, the Commissioner may (but is not required to) authorize the withdrawal.

(d) *Procedures for request for withdrawal*—(1) *Manner*. A request for the withdrawal of a notice of federal tax lien must be made in writing in accordance with procedures prescribed by the Commissioner.

(2) *Form.* The written request will include the following information and documents—

(i) Name, current address, and taxpayer identification number of the person requesting the withdrawal of notice of federal tax lien;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) The grounds upon which the withdrawal of notice of federal tax lien is being requested;

(iv) A list of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien; and

(v) A request to disclose the withdrawal of notice of federal tax lien to the persons listed in paragraph (d)(2)(iv) of this section.

(e) *Supplemental list of credit agencies, financial institutions, and creditors*—(1) *In general.* If the Commissioner grants a withdrawal of notice of federal tax lien, the taxpayer may supplement the list in paragraph (d)(2)(iv) of this section. If no list was provided in the request to withdraw the notice of federal tax lien, the list in paragraph (d)(2)(iv) of this section and the request for notification in paragraph (d)(2)(v) of this section may be submitted after the notice is withdrawn.

(2) *Manner*. A request to supplement the list of any credit agencies and any financial institutions or creditors that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien must be made in writing in accordance with procedures prescribed by the Commissioner.

(3) *Form*. The request must include the following information and documents—

(i) Name, current address, and taxpayer identification number of the taxpayer requesting the notification of any credit agency or any financial institution or creditor of the withdrawal of notice of federal tax lien;

(ii) A copy of the notice of withdrawal, if available;

(iii) A supplemental list, identified as such, of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien; and

(iv) A request to disclose the withdrawal of notice of federal tax lien to the persons listed in paragraph (e)(3)(iii) of this section.

(f) *Effective date*. This section applies on or after June 22, 2001, with respect to a withdrawal of any notice of federal tax lien.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved June 13, 2001.

Mark A. Weinberger,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on June 21, 2001, 8:45 a.m., and published in the issue of the Federal Register for June 22, 2001, 66 F.R. 33464)

Part IV. Items of General Interest

Withdrawal of Notices of Proposed Rulemaking

Withdrawal of Proposed Regulations Relating to Corporations Filing Consolidated Returns and Proposed Regulations Relating to Collapsible Corporations

REG–100548–01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: This document withdraws two notices of proposed rulemaking, one relating to corporations filing consolidated income tax returns and the other relating to collapsible corporations. The proposed regulations were published before the enactment of the Internal Revenue Code of 1986, do not reflect changes to the tax law made after their publication, and will not be finalized unless reproposed.

DATES: These proposed regulations are withdrawn June 27, 2001.

FOR FURTHER INFORMATION CONTACT: Charles M. Whedbee (202) 622-7550 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1984, the IRS issued proposed regulations (LR–97–79, 1984–2 C.B. 821) relating to corporations filing consolidated returns (49 FR 30528). Portions of these proposed consolidated return regulations were withdrawn by subsequent notices of proposed rulemaking (CO–78–90, 1991–1 C.B. 757 and REG–103805–99, 2000–42 I.R.B. 376) published in the **Federal Register** on February 4, 1991 (56 FR 4228) and September 26, 2000 (65 FR 57755).

On August 31, 1984, the IRS issued proposed regulations (LR–107–84, 1984–2 C.B. 902) relating to collapsible corporations (49 FR 34523).

The IRS is withdrawing these proposed regulations because of intervening amendments to the Internal Revenue Code and because these regulations projects will not be undertaken in the foreseeable future (or if undertaken, the regulations will be reproposed).

Drafting Information

The principal author of this withdrawal notice is Charles M. Whedbee of the Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in its development.

* * * * *

Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notices of proposed rulemaking published in the **Federal Register** on July 31, 1984 (49 FR 30528) and August 31, 1984 (49 FR 34523) are withdrawn.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 26, 2001, 8:45 a.m., and published in the issue of the Federal Register for June 27, 2001, 66 F.R. 34136)

Foundations Status of Certain Organizations

Announcement 2001–76

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

ACFE Foundation, Inc., Springfield, MO
Akaryd Trust, Inc., Leawood, KS
American Institute of Jewish Studies, Overland Park, KS
American Neuropsychiatric Association, Detroit, MI
Another Way the Fund for Progress, Wichita, KS
Association for a Free Burma, Fairbanks, AK
Avonda Land, Inc., St. Louis, MO
Bethany Free Methodist Church-District 40 School Historical Preservation Society, Inc., Bennington, KS
Beyond Bounds, Inc., Kansas City, MO
Biblical Archeology Educational Services, Inc., Lincoln, NE
Bismarck-Mandan Interfaith Hospitality Network, Bismarck, ND
Boomerang Kids, Inc., Kirksville, MO
Boonslick Area Citizens Advisory Board, Columbia, MO
Box Butte County Family Focus Coalition, Inc., Alliance, NE
Boys and Girls Club of Standing Rock, Fort Yates, ND
Brown Hotel, Inc., Neodesha, KS
Brown Institute Association of Topeka, Topeka, KS
BSDC Foundation, Inc., Beatrice, NE
Call to Commitment, Branson, MO
Capital City Men of Integrity, Jefferson City, MO
Care of Poor People, Inc., Kansas City, MO
City Sprouts, Inc., Omaha, NE
Civil War Round Table of Wilmington Delaware, Inc., Wilmington, DE
Concerned Citizens for Topeka, Inc., Topeka, KS
Crawford County Domestic Violence Coalition, Steelville, MO
Crete Athletic Booster Club, Inc., Crete, NE
Crown, Inc., Fulton, MO
Dakota Flyers, Inc., Fargo, ND
Derby Historical Society, Derby, KS
Divine Resurrection Ministries, Inc., Oakland, CA
Dolan Residential Care Centers, Inc., Chesterfield, MO
Douglas County Fire-Rescue Departments, Inc., Boys Town, NE
Eagle Feather Indian Center, Inc., Minot, ND
Emerald Door, Inc., Fargo, ND

En Gedi Ministries, Inc., Branson, MO
Eye Laser Center, Springfield, MO
Fargo-Moorehead Express, Inc., Saint Paul, MN
Farm & Ranch Educational Exchange, Morrill, NE
First Place Racing Ministries Foundation, Lawrence, KS
Flying Circus Air and Sea Museum, Gravois Mills, MO
Fowler Hospital District, Inc., Fowler, KS
Freedom Prison Ministries, Inc., Minot, ND
Friends of Kagawad, St. Louis, MO
Gateway Moo Do Kwan Association, Inc., St. Louis, MO
Gentle Giants Equestrian Therapy, Incorporation, Russell, KS
Gladd, Inc., Jefferson City, MO
Greater Missouri Area C.A., University City, MO
Greater St. Louis Community Prevention Partnership, St. Louis, MO
Greater St. Louis Regional, Inc., St. Louis, MO
Greenway Manor Resident Management Association, Inc., Wichita, KS
Grundy County R-VI Instructional Fund, Inc., Trenton, MO
Harvey Sports Boosters, Harvey, ND
Heartland Dance Company, Bellevue, NE
Henderson Health Care Foundation, Henderson, NE
Home Charitable Foundation, Kensington, KS
Idhal, Inc., Poplar Bluff, MO
Igbo Union of St. Louis, Inc., Florissant, MO
Improve the Educational Process, Inc., Topeka, KS
Innovation Institute, Inc., Lawrence, KS
John H. Hinrichs PDCA Scholarship Fund, St. Louis, MO
Johnson County Volleyball Club, Inc., Kansas City, KS
Juda, Inc., Buffalo Gap, SD
Kanarts, Incorporated, Lawrence, KS
Kansas Business Education Coalition, Inc., Overland Park, KS
Kansas City Irish Festival Organization, Olathe, KS
Kansas International Museum, Inc., Topeka, KS
Kansas Search & Rescue Dog Association, Topeka, KS
Kanza Development, Inc., Wilson, KS
Kids Can Foundation, Inc., Blair, NE
Kids First, Inc., Independence, MO
Kidspace Childrens Museum, Inc., Springfield, MO
Kinder Town, Inc., Waverly, KS
La Roca Boxing Club of Leavenworth, Leavenworth, KS
Lawson Cardinal Soccer Club, Lawson, MO
Lexington Senior Center, Inc., Lexington, MO
Liberty Area Chamber Community Foundation, Inc., Liberty, MO
Long Time Coming, Inc., Kansas City, MO
Maize Youth Baseball & Softball Association, Maize, KS
Masonic Charity Fund of Wichita AF&AM, Inc., Wichita, KS
May Morley Elementary School Parent Teacher Organization, Lincoln, NE
Merry Go Round Day Care Center, Inc., Boonville, MO
Midwest Ecological Resources Foundation, Inc., Lawrence, KS
Midwest Railroad Workers Scholarship Foundation, St. Louis, MO
Mission Out-Reach to Siberia, Frohna, MO
Missouri Kids with Neimann-Pick C, Imperial, MO
Molly M. Rickel Research Library, Inc., Manhattan, KS
Myria Lee Youth House, St. Louis, MO
Native American Foundation of Nebraska, Lincoln, NE
Nebraska Operation Lifesaver, Lincoln, NE
New Wineskins, Inc., Omaha, NE
Noel Community Development Council, Inc., Noel, MO
North American Fiddlers Association - NAFA, Warrenburg, MO
North Dakota Olympic Dreamers, Inc., Williston, ND
North Kansas City Kiwanis Foundation, Gladstone, MO
Old Engine Company 8, Inc., Ottawa, KS
Omicron XI Foundation, Kansas City, MO
Optimist Club of Deep River - Northview North Carolina, Sanford, NC
Over the Road Gang, Inc., Ottawa, KS
Pakistan American Society of Greater Kansas City, Olathe, KS
Parshall 2000, Inc., Parshall, ND
Parsons Community Service Fund, Inc., Parsons, KS
Partners in Progress, Portland, ND
Pet Adoption & Welfare Society, Inc., Branson, MO
Peter Erickson Ministries, Inc., Fargo, ND
Pi Bear Childrens Charities, Inc., Hays, KS
Polk County Foundation, Inc., Osceola, NE
Posi-Rx, Wichita, KS
Quakes Softball, Inc., Omaha, NE
Ray Menefee Amateur Boxing Club, Inc., Lincoln, NE
Reno County Planning Council for Children and Families, Inc., Hutchinson, KS
Saddle Champ Therapeutic Riding Center, Inc., Kansas City, MO
Safe Harbor, Inc., Scottsbluff, NE
Saline County Fair Association, Marshall, MO
Sarcoidosis Resource Center of Delaware, Inc., Wilmington, DE
Seeds for Leadership, Talmage, NE
Senior Center of Carroll County, Carrollton, MO
S.E.T. Community Youth Center of the Kansas Business Womens Assn., Inc., Kansas City, KS
Shawnee Mission East Friends of the Arts, Inc., Prairie Village, KS
Shelton Township Library Foundation, Shelton, NE
Sioux Empire Housing Partnership, Inc., Sioux Falls, SD
Smart Motorcyclists Attend Rider Training, Inc., (S.M.A.R.T., Inc.), Topeka, KS
Soft Steps, Inc., Mandan, ND
Spirit Four Indian Center of Topeka, Inc., Topeka, KS
Splitrock Rail Station, Garretson, SD
St. Louis Advisory Board of Caring Communities, St. Louis, MO
St. Peters Beautification Task Force, Inc., St. Louis, MO
Stepping-Stone Ranch, Inc., Spearfish, SD
Sumner Youth Services, Inc., Wellington, KS
Teton Lakota Museum Board, Hill City, SD
Topeka Model Railroaders, Incorporated, Topeka, KS
Tuttle Area Development Corporation, Tuttle, ND
Veterans Foundation of America, Columbia, MO

Vietnam Veterans Support Foundation, Inc., Kansas City, MO
Voices of the Children Auxiliary Fund, Wichita, KS
Watertown Banquet, Watertown, SD
Watertown Inline Skating Association, Watertown, SD
Wilco Interagency Corporation, Fredonia, KS
Wilmington Youth Organization, Inc., Wilmington, DE

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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 law 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 the 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.—Statements 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 2001–1 through 2001–26 is in Internal Revenue Bulletin 2001–27, dated July 2, 2001.

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