Internal Revenue bulletin

Bulletin No. 2013-20
May 13, 2013

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. 2013–11, page 1059.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2013.

T.D. 9616, page 1061.
REG–154563–12, page 1097.

Final regulations under section 6045 provide guidance to brokers who must report basis for the sale of a debt instrument or an option. The final regulations under sections 6045A and 6045B provide guidance to brokers for transfers of debt instruments and options and to certain issuers of securities for corporate actions that affect the basis of a debt instrument or an option. The final regulations under section 1275 provide guidance to an issuer when a debt instrument that is not registered with the SEC on the date of issue is registered with the SEC at some later date. Temporary and proposed regulations under section 6049 provide guidance to a broker who must report interest or OID income on a debt instrument that has either bond premium or acquisition premium.

REG–160873–04, page 1089.

Proposed regulations relate to the penalty under section 6708 of the Code for failing to make available lists of advisees with respect to reportable transactions. A public hearing is scheduled for July 2, 2013.

Notice 2013–29, page 1085.

Under the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313, a qualified facility (as described in section 45(d) of the Code) will be eligible to receive the renewable electricity production tax credit (PTC) under section 45, or the energy investment tax credit (ITC) under section 48 in lieu of the PTC, if construction of such facility begins before January 1, 2014. This notice provides guidelines and a safe harbor to determine when construction has begun on such a facility.

EMPLOYEE PLANS

Notice 2013–17, page 1082.

This notice provides relief from the anti-cutback requirements of § 411(d)(6) of the Code for plan amendments that eliminate a distribution option described in § 401(a)(28)(B)(ii)(I) from an employee stock ownership plan, as defined in § 4975(e)(7) (ESOP), that becomes subject to the diversification requirements of § 401(a)(35), which apply to certain defined contribution plans that hold (or are treated as holding) publicly traded employer securities. The relief provided by this notice allows amendment of the ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). The relief applies to amendments that are both adopted and put into effect under a plan by the last day of the first plan year beginning on or after January 1, 2013, or by the time the plan must be amended to satisfy § 401(a)(35), if later.

ADMINISTRATIVE

REG–160873–04, page 1089.

Proposed regulations relate to the penalty under section 6708 of the Code for failing to make available lists of advisees with respect to reportable transactions. A public hearing is scheduled for July 2, 2013.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Announcement 2013–33, page 1098.
This document contains corrections to Announcement 2013–29, 2013–18 I.R.B. 1024, regarding “Request for Comments on Voluntary Tip Compliance Agreements.”

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

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

The adjusted applicable federal long-term rate is set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

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

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

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2013.

Rev. Rul. 2013–11

This revenue ruling provides various prescribed rates for federal income tax purposes for May 2013 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2013–11 TABLE 1

Applicable Federal Rates (AFR) for May 2013

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.20%	.20%	.20%	.20%
110% AFR	.22%	.22%	.22%	.22%
120% AFR	.24%	.24%	.24%	.24%
130% AFR	.26%	.26%	.26%	.26%
Mid-term				
AFR	1.00%	1.00%	1.00%	1.00%
110% AFR	1.10%	1.10%	1.10%	1.10%
120% AFR	1.20%	1.20%	1.20%	1.20%
130% AFR	1.30%	1.30%	1.30%	1.30%
150% AFR	1.51%	1.50%	1.50%	1.50%
175% AFR	1.76%	1.75%	1.75%	1.74%
Long-term				
AFR	2.60%	2.58%	2.57%	2.57%
110% AFR	2.86%	2.84%	2.83%	2.82%
120% AFR	3.12%	3.10%	3.09%	3.08%
130% AFR	3.38%	3.35%	3.34%	3.33%

REV. RUL. 2013–11 TABLE 2

Adjusted AFR for May 2013

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.20%	.20%	.20%	.20%
Mid-term adjusted AFR	1.00%	1.00%	1.00%	1.00%
Long-term adjusted AFR	2.60%	2.58%	2.57%	2.57%

REV. RUL. 2013–11 TABLE 3

Rates Under Section 382 for May 2013

Adjusted federal long-term rate for the current month	2.60%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.70%

REV. RUL. 2013–11 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for May 2013

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

Appropriate percentage for the 70% present value low-income housing credit	7.41%
Appropriate percentage for the 30% present value low-income housing credit	3.18%

REV. RUL. 2013–11 TABLE 5	
Rate Under Section 7520 for May 2013	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.2%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Section 6045.—Returns of Brokers

T.D. 9616

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

Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Reporting for Premium

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to reporting by brokers for transactions involving debt instruments and options. These final regulations reflect changes in the law made by the Energy Improvement and Extension Act of 2008 that require brokers when reporting the sale of securities to the IRS to include the customer's adjusted basis in the sold securities and to classify any gain or loss as long-term or short-term. These final regulations also implement the requirement that a broker report gross proceeds from a sale or closing transaction with respect to certain options. In addition, this document contains final regulations that implement reporting requirements for a transfer of a debt instrument or an option to another broker and for an organizational action that affects the basis of a debt instrument or an option. Moreover, this document contains final regulations relating to the filing of Form 8281, "*Information Return for Publicly Offered Original Issue Discount Instruments*," for certain debt instruments with original issue discount and temporary regulations relating to information reporting for premium. The text of the temporary regulations in this document also serves as the text of the proposed regulations (REG–154563–12) set forth in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on April 18, 2013.

Applicability Dates: For dates of applicability, *see* §§1.1275–3(c)(4), 1.6045–1(a)(15)(i)(C) through 1.6045–1(a)(15)(i)(F), 1.6045–1(a)(18), 1.6045–1(c)(3)(vii)(C) and (D), 1.6045–1(c)(3)(x), 1.6045–1(c)(3)(xiii), 1.6045–1(d)(2), 1.6045–1(d)(5), 1.6045–1(d)(6)(ii)(A), 1.6045–1(m), 1.6045–1(n), 1.6045A–1(d), 1.6045B–1(j), and 1.6049–9T(a).

FOR FURTHER INFORMATION CONTACT: Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations related to the furnishing of information in connection with the transfer of securities has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2186. The collection of information in these final regulations in §§1.6045–1(c)(3)(xi)(C) and 1.6045A–1 is necessary to allow brokers that effect sales of transferred covered securities to determine and report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term in compliance with section 6045(g) of the Internal Revenue Code (Code). This collection of information is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)) (the Act).

In addition, the collection of information contained in §1.6045–1(n)(5) of these final regulations related to the furnishing of information in connection with the sale or transfer of a debt instrument that is a covered security is an increase in the total annual burden under control number 1545–2186. Under section 6045(g), a broker is required to determine and report the adjusted basis upon the sale or transfer of a debt instrument that is a covered security. If a sale has occurred, a broker must also determine and report whether any gain or loss with respect to the debt instrument is long-term or short-term in compliance with section 6045(g). The holder of a debt instrument is permitted to make a number of elections that affect how basis is computed. To minimize the need for reconciliation between information reported by a broker to both a customer and the IRS and the amounts reported on the customer's tax return, a broker is required to take into account certain specified elections in reporting information to the customer. A customer, therefore, must provide certain information concerning an election to the broker in a written notification, which includes a writing in electronic format. The adjusted basis information will be used for audit and examination purposes. The likely respondents are recipients of Form 1099-B.

Estimated total annual reporting burden is 1,417 hours.

Estimated average annual burden per respondent is 0.12 hours.

Estimated average burden per response is 7 minutes.

Estimated number of respondents is 11,500.

Estimated total frequency of responses is 11,500.

This collection of information is required to comply with the provisions of section 403 of the Act.

The burden for the collection of information contained in the amendment to §1.1275–3 will be reflected in the burden on Form 8281, "*Information Return for Publicly Offered Original Issue Discount Instruments*," when revised to request the additional information in the regulations. The burden for the collection of information contained in the other amendments to §1.6045–1 will be reflected in the burden on Form 1099-B, "*Proceeds from Broker and Barter Exchange Transactions*," when revised to request the additional information in the regulations. The burden for the collection of information contained in the amendments to §1.6045B–1 will be reflected in the burden on Form 8937, "*Report of Organizational Actions Affecting Basis of Securities*," when revised to request the additional information in the regulations. The burden for the collection of information contained in §1.6049–9T will be reflected in the burdens on Form 1099-INT and Form 1099-OID when revised to request the additional information in the regulations. The information described in this paragraph is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses or deductions.

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

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting by brokers and others as required by section 6045 of the Code. This section was amended by section 403 of the Act to require the reporting of adjusted basis for a covered security and whether any gain or loss upon the sale of the security is long-term or short-term if gross proceeds reporting is required with respect to such security. The Act also requires the reporting of gross proceeds for an option that is a covered security. In addition, the Act added section 6045A, which requires certain information to be reported in connection with a transfer of a covered security to another broker, and section 6045B, which requires an issuer of a specified security to file a return relating to certain actions that affect the basis of the security. Final regulations under these provisions relating to stock were published in the **Federal Register** on October 18, 2010, in TD 9504 (the 2010 final regulations).

On November 25, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 72652) proposed regulations (REG–102988–11) relating to information reporting by brokers, transferors, and issuers of securities under sections 6045, 6045A, and 6045B for debt instruments and options. Written and electronic comments responding to the notice of proposed rulemaking were received and are available for public inspection at *http://www.regulations.gov* or upon request. A public hearing was held on March 16, 2012.

After considering the comments, the Treasury Department and the IRS adopt the proposed regulations as amended by this Treasury decision. The comments and revisions are discussed in this preamble.

Summary of Comments

A. *Effective Dates and Penalty Relief*

The proposed regulations had a proposed effective date for both debt instruments and options of January 1, 2013. The Treasury Department and the IRS received numerous requests to delay the proposed effective dates for both debt instruments and options. Brokers and other interested parties maintained that the proposed effective date of January 1, 2013, did not provide them sufficient time to build and test the systems required to implement the reporting rules for debt instruments and options. In response to these requests, Notice 2012–34, 2012–21 I.R.B. 937, was issued to announce that the effective dates in the final regulations would be postponed to January 1, 2014.

A number of commenters also requested relief related to various aspects of reporting under sections 6045, 6045A, and 6045B. One commenter requested a 36-month general penalty relief period to allow brokers to test and refine their reporting systems.

In response to these comments, as was announced in Notice 2012–34, the effective date of these final regulations is postponed so that basis reporting is required for debt instruments and options no earlier than January 1, 2014. Moreover, these final regulations implement the reporting requirements for debt instruments in phases, as described in more detail later in this preamble. These final regulations also implement transfer reporting in phases. These features of the regulations are intended to give brokers ample time to develop and implement reporting systems.

Another commenter requested a safe harbor for good faith reliance upon debt instrument data that is provided by third-party vendors for purposes of both basis and transfer reporting. With respect to information from third-party vendors, §§1.6045–1(d)(2)(iv)(B) and 1.6045A–1(b)(8)(ii) of the 2010 final regulations provide that a broker is deemed to rely upon the information provided by a third party in good faith if the broker neither knows nor has reason to know that the information is incorrect (§1.6045A–1(b)(8)(ii) is redesignated in these final regulations as §1.6045A–1(b)(11)(ii)). Therefore, because the 2010 final regulations already address the concerns raised by these comments, no change on this issue is needed in these final regulations.

Several commenters requested a safe harbor for purposes of both basis and transfer reporting for good faith reliance upon information received on a section 6045A transfer statement. With respect to basis reporting, §1.6045–1(d)(2)(iv)(A) of the 2010 final regulations provides for penalty relief if a broker relies upon transferred information when preparing a return under section 6045. With respect to transfer reporting, §1.6045A–1(b)(8)(i) of the 2010 final regulations (redesignated in these final regulations as §1.6045A–1(b)(11)(i)) provides for penalty relief if a broker relies upon transferred information when preparing a transfer statement under section 6045A. Because the 2010 final regulations already address the concerns raised by these comments, no change on this issue is needed in these final regulations.

B. ***Debt Instruments***

1. ***Scope of Debt Instrument Reporting and Phased Implementation***

The proposed regulations required basis reporting for all debt instruments, other than a debt instrument subject to section 1272(a)(6) (in general, a debt instrument with principal subject to acceleration). Numerous commenters requested that the final regulations narrow the scope of basis reporting for debt instruments. Many commenters requested permanent exemptions from basis reporting for debt instruments that the commenters believe present data collection or computational difficulties, including convertible debt instruments, debt instruments denominated in non-U.S. dollar currencies, contingent payment debt instruments, variable rate debt instruments, municipal obligations, tax credit bonds, payment-in-kind (PIK) bonds, certificates of deposit, debt instruments issued by foreign persons, U.S. Treasury strips and other stripped debt instruments, inflation-indexed debt instruments, privately placed debt instruments, commercial paper, hybrid securities, investment units, debt instruments subject to put or call options, debt instruments with stepped interest rates, factored bonds, and short-term debt instruments. Alternatively, some commenters suggested that basis reporting be deferred for debt instruments until data is more readily available for some of the instruments described in the preceding sentence. One commenter renewed a request for exempting corporate trustees from basis reporting for registered debt instruments issued in a physical form. Some commenters asked for a permanent exemption or deferred reporting for debt instruments because, unlike the rules for equity, there are numerous rules in the Code and regulations, including holder elections, that affect the adjusted basis of a debt instrument, such as the rules relating to original issue discount (OID), bond premium, market discount, and acquisition premium.

Several commenters requested that the final regulations provide a specific list of the debt instruments subject to basis reporting rather than a list of the debt instruments not subject to basis reporting. Other commenters suggested limiting basis reporting to a debt instrument that has a fixed yield and fixed maturity date. One commenter indicated that fixed yield, fixed maturity date debt instruments comprise approximately 90% of the reportable debt instrument transactions.

Section 6045(g) by its terms requires basis reporting by brokers with respect to any note, bond, debenture, or other evidence of indebtedness that is a covered security. After consideration of the comments, however, the Treasury Department and the IRS appreciate that the proper implementation of broker basis reporting for debt instruments will require time to build and implement reporting systems, especially for debt instruments with more complex features. Thus, to facilitate an orderly transition to basis reporting for debt instruments, these final regulations implement basis reporting for debt instruments in phases.

For a debt instrument with less complex features, these final regulations require basis reporting by a broker if the debt instrument is acquired on or after January 1, 2014, consistent with Notice 2012–34. This category of less complex debt instruments includes a debt instrument that provides for a single fixed payment schedule for which a yield and maturity can be determined for the instrument under §1.1272–1(b), a debt instrument that provides for alternate payment schedules for which a yield and maturity can be determined for the instrument under §1.1272–1(c) (such as a debt instrument with an embedded put or call option), and a demand loan for which a yield can be determined under §1.1272–1(d). Commenters requested delayed reporting for any debt instrument with an embedded put or call option. The Treasury Department and the IRS believe that brokers should be able to implement reporting for a debt instrument with an embedded option that entitles the issuer to call or the holder to put the debt instrument prior to its scheduled maturity. Moreover, because an embedded put or call option is a common feature of debt instruments, delaying basis reporting for debt instruments with such a feature could delay basis reporting for an unduly large proportion of debt instruments.

Some debt instruments with a fixed yield and a fixed maturity date nevertheless pose challenges for information reporting. For these debt instruments and for more complex debt instruments that do not have a fixed yield and a fixed maturity date, these final regulations require basis reporting for debt instruments acquired on or after January 1, 2016. The Treasury Department and the IRS believe that brokers may need additional time to implement basis reporting for these debt instruments because of their more complex features or the lack of public information for the debt instruments. Fixed yield, fixed maturity debt instruments that are subject to reporting if they are acquired on or after January 1, 2016, include a debt instrument that provides for more than one rate of stated interest (such as a debt instrument with stepped interest rates), a convertible debt instrument, a stripped bond or coupon, a debt instrument that requires payment of either interest or principal in a non-U.S. dollar currency, certain tax credit bonds, a debt instrument that provides for a PIK feature, a debt instrument issued by a non-U.S. issuer, a debt instrument for which the terms of the instrument are not reasonably available to the broker within 90 days of the date the debt instrument was acquired by the customer, a debt instrument that is issued as part of an investment unit, and a debt instrument evidenced by a physical certificate unless such certificate is held (whether directly or through a nominee, agent, or subsidiary) by a securities depository or by a clearing organization described in §1.1471–1(b)(18). Other debt instruments that do not have a fixed yield and fixed maturity date but are subject to reporting if they are acquired on or after January 1, 2016, include a contingent payment debt instrument, a variable rate debt instrument, and an inflation-indexed debt instrument.

As noted earlier in this preamble, due to the difficulties in implementing basis reporting, the proposed regulations provided that a debt instrument described in section 1272(a)(6) (in general, a debt instrument with principal subject to acceleration) would not be subject to basis reporting. In response to favorable comments on this exception, these final regulations retain this exception from basis reporting.

A number of commenters requested delayed reporting or no basis reporting for short-term debt instruments (that is, debt instruments with a fixed maturity date not more than one year from the date of issue). One commenter argued that the application of the OID, bond premium, market discount, and acquisition premium rules to a short-term debt instrument, including the numerous elections applicable to short-term debt instruments, is complicated, that the effects on the basis of a short-term debt instrument would be marginal, and that basis reporting for short-term debt instruments may impose a significant burden on brokers and provide little benefit to taxpayers or the IRS. Because the Treasury Department and the IRS agree with this comment, these final regulations except short-term debt instruments from basis reporting.

Another commenter requested that the rules pertaining to short-term debt instruments be extended to all debt instruments that are acquired with a remaining term of one year or less. This exemption from information reporting would apply to a debt instrument originally issued with a term of greater than one year and acquired in a secondary market purchase when there is a remaining term of one year or less. The request to extend the short-term debt instrument rules to a long-term debt instrument with one year or less until maturity is not adopted because the rules that govern a debt instrument with a term over one year do not change when the maturity has declined to one year or less. While the potential for significant gain or loss on the debt instrument usually diminishes in the final year, the reporting is useful to the customer and the IRS, and all information required for reporting will be available to the broker.

One commenter requested that the final regulations exempt from reporting securities issued in connection with a bankruptcy restructuring because it is not always clear if a particular security is a debt instrument. After consideration of the comment, this request was not adopted because these final regulations provide that a security is treated as debt for reporting purposes only if the issuer has classified the security as debt or, if the issuer has not classified the security, if the broker knows that the security is reasonably classified as debt under general Federal tax principles.

2. *Lack of Industry Consistency Could Affect Reporting*

A number of commenters raised concerns and suggestions about how to make reporting more consistent, both between transferring and receiving brokers and between brokers and customers. Many commenters expressed a strong desire to ensure that a customer who transfers a security from one broker to another will receive consistent reporting from the two brokers. Many commenters also asked for assistance in minimizing the amount of potential reconciliation between an amount reported by a broker to a customer and the IRS and the amount reported by that customer on a tax return.

a. *Support of Taxpayer Elections*

The proposed regulations attempted to simplify reporting requirements by specifying the elections brokers were to assume to compute OID, market discount, bond premium, and acquisition premium reported to holders, and not permitting brokers to support alternative customer elections. A number of commenters, however, indicated a desire by brokers to support debt instrument elections made by their customers rather than rely on assumptions provided in the regulations. Some commenters stated that they already support some or all elections for debt as a service to their customers, and these commenters predict that similar customer service demands will eventually require all brokers to support customer elections, just as they support customer elections with respect to stock. Other commenters pointed out that the default assumptions in the proposed regulations might be preferred by most individual taxpayers, but other customers, such as trusts or partnerships, might not prefer the default assumptions. One commenter noted that the reporting rules provided in the proposed regulations would make computations by brokers simpler, but that educating customers about permissible elections, and the computations that each election would entail if an election is made, would become critical. This commenter recommended permitting a broker to support customer elections in the future as systems are upgraded.

However, other commenters indicated that some of the statutory defaults were generally simpler to apply and produced economic results that were only negligibly different than the defaults prescribed by the proposed regulations. For example, while the proposed regulations would have required reporting of market discount using a constant yield method, several commenters indicated a preference for reporting accrued market discount using a straight line method.

The Treasury Department and the IRS also received comments regarding the treatment of amortizable bond premium under section 171. One commenter requested that the section 171 election not be mandatory for reporting purposes because most taxpayers have not made the election, but suggested that a broker be required to support the section 171 election if a customer informs the broker that the election was or will be made.

After consideration of all the comments, the Treasury Department and the IRS have concluded that the best way to balance certainty and flexibility is to require brokers to report information using the default assumptions provided in the relevant statute and regulations, except in the case of the section 171 election, but to require brokers to accommodate elections by taxpayers that choose to depart from the defaults. Under these final regulations, upon written notification by a customer, a broker must take into account the following elections for basis reporting purposes: the election to accrue market discount using a constant yield; the election to include market discount in income currently; the election to treat all interest as OID; and the spot rate election for interest accruals with respect to a covered debt instrument denominated in a currency other than the U.S. dollar. The Treasury Department and the IRS do not anticipate that many taxpayers will make these elections. As a practical matter, by removing short-term debt instruments from the basis reporting rules, the number of elections available for a covered security has been reduced to a manageable number, and it is reasonable to require that the remaining debt instrument elections be supported.

These final regulations make an exception to the general rule requiring brokers to use the default elections provided in the statute and regulations in the case of bond premium. Section 171 generally requires taxpayers to affirmatively elect to amortize bond premium on taxable bonds, which then offsets interest income on the bond. Except in the rare case of a holder that prefers a capital loss, the election to amortize bond premium generally will benefit the holder of a debt instrument. Thus, consistent with the proposed regulations, these final regulations require brokers to assume that customers have made the election to amortize bond premium provided in section 171 when reporting basis, unless the customer has notified the broker otherwise.

The rules regarding basis reporting for bond premium in the proposed regulations prompted a number of commenters to request that the rules for reporting interest income associated with a bond acquired at a premium be conformed to the rules regarding basis reporting for these same debt instruments. In response to these commenters, this document contains temporary regulations addressing reporting of premium under section 6049. See Part H of this preamble for additional discussion of this issue.

The Treasury Department and the IRS considered making broker support of debt instrument elections a permitted, but not required, activity, but the additional administrative problems that can arise if a transferring broker supports certain elections while the receiving broker does not support the same elections made a permissive approach problematic. For example, if the receiving broker did not support the same elections as the transferring broker, and the customer properly made one of the elections permitted with respect to a debt instrument and notified the transferring broker of the election, the information provided by the receiving broker on the relevant Form 1099 would not reflect the customer's election, requiring the customer to provide a reconciliation on the customer's income tax return. These administrative problems lead to the conclusion that brokers should be required to support either all of the permitted elections for debt instruments or none of them. Given the numerous requests to support customer elections, coupled with requests to reduce the need for a customer to reconcile tax return data to the data provided by a broker, the Treasury Department and the IRS decided that support for customer debt instrument elections would be beneficial to taxpayers and would not impose an undue burden on brokers. It should be noted that supporting customer elections will require additional transfer statement information to advise a receiving broker of any elections that were used to compute the information provided.

b. ***Industry Conventions***

Several commenters pointed out that brokers do not necessarily use common terms or conventions for debt instrument computations. For example, 30 days per month/360 days per year, actual days per month/360 days per year, and actual days per month/365 days per year are possible interest computation day count conventions. Different brokers may use different amortization and accretion assumptions, different accrual periods, and different rounding conventions.

The proposed regulations prescribed conventions to determine the accrual period to be used for reporting purposes. These final regulations generally adopt the conventions in the proposed regulations. Under these final regulations, a broker must use the same accrual period that is used to report OID or stated interest to a customer under section 6049. In any other situation, a broker is required to use a semi-annual accrual period unless the debt instrument provides for scheduled payments of principal or interest at regular intervals of less than six months over its term, in which case a broker must use an accrual period equal in length to this shorter interval. In response to a comment, these final regulations use a semi-annual accrual period rather than an annual accrual period as the default accrual period.

These final regulations do not prescribe a particular day count convention brokers must use for basis reporting. Instead, these final regulations provide that a broker may use any reasonable day count convention. The terms of a debt instrument, however, generally include the day count convention that the issuer will use to compute interest payments. The Treasury Department and the IRS expect that a broker generally will choose to use this day count convention to determine the accruals of interest and OID on the debt instrument and the related basis adjustments, which will facilitate reconciliation of the accruals with the amount of cash received by a broker and distributed to a customer. These final regulations also do not prescribe a particular rounding convention.

Commenters also indicated disagreement on the effect of puts and calls on calculations associated with a debt instrument. One commenter asked for clarification about whether issuer choice or holder choice will govern the treatment of put and call dates and recommended amortizing all callable debt instruments to their maturity dates rather than call dates. Another commenter requested standardizing the deemed maturity date and limiting the application of the put/call rules to cases in which the broker has actual knowledge of payment terms that could result in a different maturity date if the put/call rules are applied.

These final regulations continue the approach taken in the proposed regulations. The basis reporting rules are not intended to, and do not, change the substantive rules applicable to debt instruments. Thus, when assessing the effect of an embedded put or call option on a debt instrument, a broker must apply the rules described in §1.1272–1(c)(5) or §1.171–3(c)(4), whichever is applicable, to determine the correct date to be used in accrual calculations. The rules described in §1.1272–1(c)(5) have been in effect since 1994 and the rules described in §1.171–3(c)(4) have been in effect since 1997. Both rules provide a clear and workable framework for determining the effect, if any, of an embedded put or call option on a debt instrument.

One commenter requested that, to the extent brokers are not required to report using a single set of assumptions and computation conventions, explicit language should be added to the regulations covering transfer statements to require transfer of all information needed for a receiving broker to compute adjustments in a manner consistent with the transferor broker, including payment terms and assumptions used by the transferor broker, as well as any taxpayer elections that were supported by the transferor broker. These final regulations adopt this comment by expanding the information that must be included in a transfer statement for a debt instrument.

3. *Other Issues*

One commenter stated that there could be problems tracking the adjustments for discount and premium if different measurement periods are used (for example, a daily period versus a period ending on payment dates), especially for a customer that has purchased debt from the same issue at a discount and at a premium. The commenter indicated that tracking OID, market discount, bond premium, and/or acquisition premium adjustments for multiple lots of a single issue will be complex.

One commenter, noting that reporting to the IRS and taxpayers is only required once a year, asked whether a duty exists to compute the debt instrument accruals and display them more frequently than once each year, such as for each accrual or payment period. Another commenter indicated that to facilitate the preparation of transfer statements at any time during a year, it may be necessary to compute all debt instrument accruals each day.

These final regulations generally continue the approach taken in the proposed regulations regarding computations that affect the basis of a debt instrument. In particular, these final regulations do not require a broker to compute debt instrument accruals more than once per year unless a transfer takes place during a tax year, in which case the transferring broker must provide a transfer statement to the receiving broker. If a broker's systems generate more frequent computations to support transfer statements, the broker is permitted to compute the accruals more than once per tax year.

The proposed regulations require accrued market discount to be reported upon the sale of a debt instrument. One commenter asked whether accrued market discount should be reported at the time of a call or at maturity. The commenter also noted that two rules in the proposed regulations relating to market discount may have required the filing of a Form 1099-INT and a Form 1099-B to report accrued market discount. The commenter recommended that accrued market discount be reported only on a Form 1099-B, "*Proceeds from Broker and Barter Exchange Transactions*," and associated with a specific sale.

For purposes of section 6045, §1.6045–1(a)(9) defines a sale to include any disposition of a debt instrument, which includes a retirement of a debt instrument at or prior to its stated maturity. These final regulations do not change this definition of a sale with respect to a debt instrument; however, these final regulations clarify that a sale for purposes of section 6045 includes a partial principal payment. Moreover, under these final regulations, in the case of a sale, accrued market discount will be reported only on the Form 1099-B, which would associate the accrued market discount with a specific sale of a single security. In connection with this comment, these final regulations amend the rule in §1.6045–1(d)(3) for reporting accrued stated interest on a Form 1099-INT when a debt instrument is sold between interest payment dates to make it clear that the rule does not apply to accrued market discount.

A number of comments were received that address narrower issues. One commenter requested guidance about how to determine and translate interest income or expense (including OID) on certain nonfunctional currency debt. Rules regarding the determination and translation of interest income and expense on certain debt instruments denominated in a non-functional currency are explicitly addressed in the regulations under section 988. *See*, for example, §1.988–2(b).

During the preparation of these final regulations, the Treasury Department and the IRS reviewed the existing reporting requirements for short-term debt instruments. Based on this review, these final regulations exempt from gross proceeds reporting all short-term debt instruments. This exemption is consistent with the existing exemption from reporting for certain short-term debt instruments in §1.6045–1(c)(3)(vii)(C), and the provisions in these final regulations that exempt short-term debt instruments from basis reporting. Moreover, almost all income related to short-term debt instruments is captured through the income reporting rules under section 6049 and any capital gain or loss related to a short-term debt instrument is expected to be very small.

C. *Comments on Option Transactions*

1. *Scope of Option Reporting*

In general, under the proposed regulations, basis and gross proceeds reporting applied to the following options granted or acquired on or after January 1, 2013: an option on one or more specified securities, including an option on an index substantially all the components of which are specified securities; an option on financial attributes of specified securities, such as interest rates or dividend yields; and a warrant or a stock right on a specified security. The scope provisions in these final regulations are generally the same as the scope provisions in the proposed regulations, except that these final regulations explicitly exclude a compensatory option. As announced in Notice 2012–34, these final regulations generally apply to an option granted or acquired on or after January 1, 2014.

One commenter asked for clarification of the concept of "financial attributes" in the scope provision. After reviewing the proposed language, the Treasury Department and the IRS believe that the list of items provided in §1.6045–1(m)(2)(i)(B) provides adequate detail to describe the concept.

Commenters also requested that the regulations not apply to options that are subject to section 1256. As explained immediately below, this comment was not adopted in these final regulations.

2. *Option Transactions Subject to Section 1256*

Numerous comments were received related to nonequity options that are covered by section 1256(b)(1)(C) ("section 1256 options"), which includes a listed option on a stock index that is not a narrow-based security index. Several commenters noted that the substantive rules that apply to section 1256 options are different from the rules that apply to non-section 1256 options and asked for different reporting treatment for the two types of options. Some commenters requested an exemption from reporting for all section 1256 options. The commenters suggested that if a blanket exemption from reporting is not provided, the IRS should consider extending the reporting rules for regulated futures contracts described in §1.6045–1(c)(5) to section 1256 options. One commenter noted that although the current rules only require reporting for regulated futures contracts on Form 1099-B, some brokers may already be reporting section 1256 options in a similar manner.

The Treasury Department and the IRS agree that there should be different reporting rules for section 1256 options and non-section 1256 options. In general, an option is subject to reporting under section 6045 only if the option references one or more specified securities. For a nonequity option described in section 1256(b)(1)(C) on one or more specified securities, a broker will apply the reporting rules that apply to a regulated futures contract, which are described in §1.6045–1(c)(5). For an option on one or more specified securities that is not described in section 1256(b)(1)(C), a broker will report gross proceeds and basis in accordance with the rules in these final regulations for a non-section 1256 option, which are described later in this preamble.

a. ***Scope Issues Related to Section 1256 Options***

A number of comments focused on potential difficulties in distinguishing between an option on a broad-based index, which would be covered by section 1256, and an option on a narrow-based index, which would be treated in the same manner as an option on a single equity. Commenters requested guidance about how to determine whether an index is broad-based or narrow-based, and some commenters requested that the IRS annually publish a list of what constitutes a section 1256 option. Alternatively, the commenters requested complete exclusion of all stock index options. These final regulations do not provide substantive rules on index options. Rather, to determine whether an index substantially all the components of which are specified securities is a broad-based index under section 1256(g)(6)(B), a broker must look to rules established by the Securities Exchange Commission and the Commodities Futures Trading Commission that determine which regulator has jurisdiction over an option on the index. An option on a broad-based index is a nonequity option described in section 1256(b)(1)(C).

Several commenters requested broker penalty relief for good faith determinations of section 1256 status for index options. The Treasury Department and the IRS appreciate the difficulty in making determinations of section 1256 status. Therefore, these final regulations grant relief under sections 6721 and 6722 if a broker determines in good faith that an index is, or is not, a narrow-based index described in section 1256(g)(6) and reports in a manner consistent with that determination.

One commenter asked for an exemption from basis reporting for options on foreign currency and suggested that foreign currency be treated as a commodity. Because commodities and foreign currency are not specified securities, basis reporting by a broker for an option on foreign currency or an option on a commodity is not currently required under section 6045. Accordingly, no change is made in these final regulations in response to this comment.

b. ***Other Issues Related to Section 1256 Options***

A number of commenters asserted that neither the wash sale rules under section 1091 nor the short sale rules described in section 1233 should apply to a section 1256 option. One commenter asked for clarification about how holding period adjustments due to application of the wash sale provisions should be applied to section 1256 options. These comments have not been adopted because the changes requested are substantive in nature and outside the scope of the reporting rules.

3. ***Non-section 1256 Options***

Comments were also received on the rules in the proposed regulations relating to non-section 1256 options. Several commenters asserted that there are administrative issues involved in reporting over-the-counter (OTC) options and asked that OTC options be exempted from reporting. One commenter suggested that if exemptions were not granted, the IRS should create a "best efforts" safe harbor for OTC options. The Treasury Department and the IRS believe that it is reasonable to expect a broker to know the information required to report on an OTC option when it is entered into or when it is transferred into a customer's account. Moreover, the regulations under section 6045A require the transferor of an OTC option to provide detailed information to a receiving broker sufficient to describe the option. This could include data about the underlying asset, contract size, non-standardized strike price, and expiration date. These final regulations therefore apply to any OTC option on a specified security.

For a cash settled non-section 1256 option, the proposed regulations required a broker to adjust gross proceeds related to an option transaction by increasing gross proceeds by the amount of any payments received for issuing the option and decreasing gross proceeds by the amount of any payments made on the option. A number of commenters requested that, instead of decreasing gross proceeds by amounts paid out, brokers be permitted to report gross amounts paid and received with respect to the option. Under this approach, the gross proceeds box on Form 1099-B would include all payments received, and the basis box on Form 1099-B would reflect any payments made. These commenters noted that some broker systems already deal with equity options this way. This suggestion has not been adopted because it is not consistent with the overall concept of gross proceeds and basis reporting, which applies to all covered securities. The rules in these final regulations for a cash settled option are based upon the basic idea that costs related to the acquisition of a position affect basis, while the costs related to the sale or closeout of a position affect gross proceeds. This is consistent with the changes to the definition of gross proceeds in the proposed regulations.

Under these final regulations, expenses related to the sale of an asset must be deducted from gross proceeds and may not be added to basis. For a purchased option, the basis in the option will include the premium paid as well as any commissions, fees, or other transaction costs related to the purchase. Gross proceeds on the cash settlement of the purchased option should be adjusted to account for any commissions, fees, or other transaction costs related to the cash settlement. In the case of a written option, a broker must determine the amount of reportable proceeds by subtracting from the amount of the premium received for writing the option any settlement payments, commissions, or other costs related to the close out or cash settlement. At the suggestion of several commenters, a clarification has been added that the basis under this scenario should be reported as $0.

One commenter requested that for cash-settled options, acquisition costs be treated as adjustments to gross proceeds and that no adjustments be made to basis for acquisition costs. This comment has not been adopted because it is contrary to the requirements of §1.263(a)–4(c), which require that acquisition costs be treated as part of basis.

One commenter requested that if multiple option contracts are bundled into a single investment vehicle and the components cannot be separately exercised, the investment will be treated as a single instrument with a single basis. These final regulations do not adopt this comment because the basis of each financial instrument is required to be accounted for separately.

Another commenter asked that the regulations explicitly address whether a broker must take into account the straddle rules under section 1092, including the qualified covered call rules in section 1092(c)(4). Consistent with the approach taken for broker basis reporting for stock, these final regulations explicitly provide that a broker will not take section 1092 into consideration when determining basis of an option that is a covered security.

Several comments were received asking for guidance in determining which options would be considered substantially identical for the purpose of applying the wash sale rules under section 1091. The 2010 final regulations only require a broker to apply the wash sale rules when the transaction involves covered securities with the same CUSIP number, and these final regulations do not change this rule.

4. *Stock Acquired Through the Exercise of a Compensatory Option*

The proposed regulations provided that a broker was permitted, but not required, to increase a customer's initial basis in stock for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangement. The preamble to the proposed regulations also stated that the IRS might add a field to Form 1099-B to indicate when stock was acquired via the exercise of a compensatory option. In response, commenters asked that there be no change to the Form 1099-B to reflect compensation status or, alternatively, that using the indicator be permitted, but not required. These commenters indicated that compensation information is not accessible to most brokers, and extensive reprogramming for both the underlying database and the reporting process would be required. The commenters also expressed concerns that, in many situations, a broker would have to accept customer-provided information in order to track the compensation-related status.

After consideration of the comments, the Treasury Department and the IRS agree a compensation-related field should not be added to the Form 1099-B. The lack of a mechanism to communicate whether the basis of stock has been adjusted for the exercise of a compensatory option coupled with a system involving discretionary broker adjustments for compensatory options would, however, be unworkable. Therefore, these final regulations provide that brokers are not permitted to adjust basis to account for the exercise of a compensatory option that is granted or acquired on or after January 1, 2014. This approach will eliminate confusion and uncertainty for an employee who has exercised a compensatory option. Under the permissive adjustment rule in the proposed regulations, without an indicator on Form 1099-B, an employee would not necessarily know whether the basis of the stock acquired through the exercise of a compensatory option had been adjusted by a broker to account for any income recognized by the employee due to the option exercise. By prohibiting adjustment by a broker, an employee will know that the basis number reported by the broker only reflects the strike price paid for the stock and that a basis adjustment may be necessary to reflect the full amount paid by the employee.

5. *Backup Withholding for Option Transactions*

One commenter asked for guidance on how to implement backup withholding for option transactions. In particular, the commenter asked for clarification about whether a rule similar to §31.3406(b)(3)–2(b)(4) applies, permitting a broker to withhold at either the time of sale or upon a closing transaction or lapse. The commenter also asked how to apply backup withholding to several situations involving physically settled options or when the taxpayer transfers an option or ends up closing out an option transaction at a loss. This comment is not adopted because backup withholding rules are outside the scope of these final regulations.

6. *Stock Rights and Warrants under Sections 305 and 307*

Several commenters requested that stock rights and warrants be excluded from basis reporting. Several other commenters addressed issues under sections 305 and 307. One commenter pointed out some administrative problems with the taxpayer election to allocate basis under section 307, including the fact that the election to allocate basis can be made after a broker's Form 1099-B reporting window closes. This commenter recommended requiring basis adjustments to reflect the issuance of stock rights or warrants only when section 307 requires allocation of basis because the value of the stock right or warrant represents 15% or more of the fair market value of the old stock. Another commenter noted that distributions of stock rights or warrants representing 15% or more of the value of the old stock are uncommon and recommended that brokers should not make an adjustment for the effects of section 307.

One commenter requested a clarification of the rules for a stock right or warrant that terminates other than by exercise or actual sale, so that a closing transaction that results in $0 proceeds is not a sale subject to reporting on a Form 1099-B. The commenter was concerned that in many cases a broker would have to report a lapse of a stock right or warrant by reporting $0 as proceeds on the Form 1099-B, even in situations where there is no basis to report.

After consideration of the comments, these final regulations provide that a broker is permitted, but not required, to apply the rules of sections 305 and 307 when reporting the basis of a stock right or warrant or any stock related to a stock right or warrant. This rule will permit the industry to deploy its resources most efficiently. A broker who already supports adjustments under sections 305 and 307 will not need to reprogram its systems, while a broker who does not currently support the adjustments can decide to do so later, or not at all. Note that, under these final regulations, a stock right or a warrant purchased from the original recipient is treated as an option.

D. ***Other Financial Instruments Subject to Reporting***

One commenter asked for an explicit exemption from reporting for single stock futures that fall under section 1234B or for guidance on how to apply section 1234B. This request was not adopted; instead, these final regulations add section 1234B contracts to the definitions of specified security and covered security. The Treasury Department and the IRS believe that there is no reason to exclude single stock futures on a specified security from information reporting when information reporting is generally required on stock, options on stock, and regulated futures contracts.

E. ***Transfer Reporting under Section 6045A***

Numerous comments were received related to transfer reporting for debt instruments, as required by section 6045A. Many comments focused on the information that was to be included on the transfer statement. Some commenters argued for the transfer of original purchase information related to debt instruments because some brokers will recompute OID, market discount, bond premium, and acquisition premium through the transfer date and will use the recomputed numbers, instead of the numbers provided by the prior broker, to populate their data systems. Other commenters argued that only adjusted basis needs to be transferred to provide for subsequent accrual computations; these commenters point out that some adjustments, such as wash sale loss deferrals and holding period adjustments, will be reported accurately if adjusted basis is reported on a transfer statement, but may not be reflected if basis is recomputed based on original purchase information. Further, to the extent that a transferor broker might have used a computational method that is different from the method used by the receiving broker, as long as each broker is internally consistent in reporting income and adjusting basis, permitting the receiving broker to start from adjusted basis will help ensure that there is no duplication or omission of income and adjustments. Another commenter argued that the market discount, acquisition premium, and bond premium amounts should be implicit in the combination of adjusted issue price and adjusted cost basis, and transfer of the details is not needed. One commenter suggested treating each transfer as though it were a new purchase. This would entail comparing the reported adjusted basis to the adjusted issue price, determining new amounts of bond premium, market discount, or acquisition premium, and then basing all further accruals on these numbers.

After consideration of the comments, the Treasury Department and the IRS believe that brokers and customers are better served when all relevant information is provided when a security is transferred. These final regulations therefore generally require the information specified in the proposed regulations, and have expanded the list of information that must be provided to support the new requirement that a broker support customer debt instrument elections. It is not anticipated that a particular receiving broker will necessarily use all of the information received. For example, if a receiving broker's systems are set up to recompute debt instrument accruals from the issue date, that broker may not find the data for adjusted issue price as of the transfer date to be useful.

Several commenters also expressed concerns about transferring data purchased from third-party vendors. One commenter suggested that communicating the CUSIP identifier for a debt instrument might be sufficient to enable a receiving broker to retrieve information that applies to all debt instruments in a particular issue, such that some of the data described in the proposed regulations might not be necessary. Another commenter argued that data specific to a customer, such as initial purchase price and date, and the CUSIP should provide a receiving broker with all information needed to properly compute debt instrument accruals.

These final regulations, like the proposed regulations, require that a transferor broker provide all information necessary to allow a receiving broker to comply with its information reporting obligations. Consistent with the comments, if providing a CUSIP number or similar security identifier is adequate to enable the receiving broker to obtain some of the required information, a transferring broker is permitted to supply the CUSIP number or security identifier as a substitute for that information. For example, data that applies to all debt instruments in an issue, such as issuer name, issue date, coupon rate, coupon payment dates, or issue price, might be data that could be derived from a CUSIP or other security identifier. However, under these final regulations, like the proposed regulations, a receiving broker may request to receive the information specified in the regulations from the transferor broker. Further, data specific to a customer, such as price paid by the customer, the acquisition date, or yield, must be transmitted separately as these data will be different for each customer and cannot be derived from the CUSIP number.

A few commenters focused specifically on the list of debt instrument-specific data that was included in proposed §1.6045A–1(b)(3). One commenter asked if the amount of acquisition premium already amortized should be added to the list, pointing out that accrued market discount and amortized bond premium are already reportable. One commenter asked that the date through which the transferor broker made adjustments be added to the list. These final regulations adopt these comments and add these data to the list of transfer statement items.

One commenter asked whether, when complying with the transfer statement rules under section 6045A for a section 1256 option, a broker may report the adjusted basis instead of the original basis for a position that has been marked to market. Section 1.6045A–1(b)(1)(vii) of the 2010 final regulations requires a broker to report the adjusted basis of a specified security. Therefore, no change is needed to address this comment.

One commenter asked for penalty relief for transfer reporting analogous to the relief that was provided for transfer reporting for stock in Notice 2010–67, 2010–43 I.R.B. 529. Under Notice 2010–67, although broker reporting for basis began for some stock acquired on or after January 1, 2011, transferring brokers were given penalty relief if they did not provide transfer statements for transfers occurring during 2011, and receiving brokers were instructed to treat a transfer during 2011 for which no transfer statement was received as the transfer of a noncovered security. Instead of penalty relief, the Treasury Department and the IRS believe that it is appropriate to provide additional time for brokers to phase in transfer reporting for transfers of debt instruments, options, and securities futures contracts, and the final regulations provide that transfer reporting for debt instruments, options, and securities futures contracts will be applicable no earlier than January 1, 2015.

F. *Issuer Reporting under Section 6045B*

A number of comments were received concerning returns relating to issuer actions affecting the basis of securities under section 6045B. Several commenters asked whether certain types of events would be reportable under section 6045B, including the issuance of a debt instrument, a reissuance of a debt instrument, and a reorganization in bankruptcy where new debt instruments are issued for old debt instruments. Section 6045B only applies to an issuer action that affects basis. The issuance of a debt instrument generally is not an issuer action affecting the basis of a debt instrument. Accordingly, in many cases, the issuance of a debt instrument is not subject to section 6045B. The legislative history, however, indicates that reorganizations, such as mergers and acquisitions, are among the organizational actions that can trigger reporting under section 6045B. Thus, for example, the issuance of a debt instrument in a recapitalization, including a recapitalization resulting from a significant modification or a bankruptcy reorganization, can be an issuer action affecting the basis of a debt instrument for purposes of section 6045B.

One commenter pointed out that a REMIC regular interest is excluded from being a covered security, but is not excluded from being a specified security. With respect to reporting under section 6045B, the commenter requested that if a specified security is not subject to basis reporting, issuer reporting under section 6045B should not be required. These final regulations clarify that a REMIC regular interest is not a specified security and, therefore, is not subject to reporting under section 6045B.

Section 1.6045B–1(a)(3) of the 2010 final regulations provides that an issuer may meet its reporting obligation under section 6045B by posting a copy of Form 8937 to its public website. One commenter renewed a request that the IRS permit an issuer to provide the information required by section 6045B on a website without posting a copy of Form 8937. The regulations do not adopt this suggestion because posting a copy of Form 8937 ensures consistent presentation of the reported information. Another commenter noted that posting a copy of Form 8937 could facilitate identity theft because the written signature of the certifying company official would be widely available. These final regulations allow an issuer to publicly post a Form 8937 with an electronic signature as an alternative to a written signature.

One commenter requested that a clearing organization involved in clearing exchange-traded options be treated as an issuer rather than a writer for purposes of section 6045B. Other commenters suggested language to clarify the identification of the party responsible for reporting in the case of an OTC option. In response to the commenters, these final regulations specify that a clearing organization that is the counterparty to an exchange-traded option is the issuer of the option for purposes of section 6045B, and the writer of an OTC option is the issuer for purposes of section 6045B.

One commenter pointed out that currently there is no safe harbor for modifications to non-debt instruments, so any modification of an option technically might result in a taxable event. The commenter recommended providing an assumption for brokers that changes to option terms do not result in a taxable event if section 1001 does not apply. This request is outside the scope of the current project and so no changes were made to these final regulations in response to this comment. It should be noted, however, that under these final regulations, an option issuer only needs to comply with §1.6045B–1 if the change in the underlying asset results in a different number of option contracts. If the terms of the option are changed to reflect a corporate event, but the number of option contracts does not change, a section 6045B event has not occurred.

G. *Foreign Intermediaries*

One commenter requested that foreign entities that are not U.S. payors and are either qualified intermediaries or participating foreign financial institutions be excluded from basis reporting requirements. The Treasury Department and the IRS intend to issue future guidance coordinating the reporting requirements applicable to qualified intermediaries and participating foreign financial institutions under chapter 61 (including section 6045) with the applicable chapter 4 reporting requirements.

H. *Temporary Regulations Related to Reporting of Bond Premium and Acquisition Premium*

As noted earlier in this preamble, a number of commenters requested that the rules for reporting interest income associated with a debt instrument acquired at a premium be conformed to the rules regarding basis reporting for these same debt instruments. Under the current information reporting rules under section 6049, interest income is reported without adjustment for bond premium or acquisition premium.

Under section 171(e) (which was added to the Code in 1988) and §1.171–1 (which was amended in 1997 to reflect the addition of section 171(e)), amortized bond premium offsets stated interest payments. As a result, only the portion of a stated interest payment that is not offset by the amortized premium is treated as interest for federal income tax purposes. Under section 6049(a), the Secretary can prescribe regulations to implement the reporting of interest payments, which includes the determination of the amount of a payment that is reportable interest. Similarly, notwithstanding section 6049(d)(6)(A)(i), under section 6049(a), the Secretary can prescribe regulations to implement the reporting of OID, which includes the determination of the amount reportable as OID (interest).

The Treasury Department and the IRS believe that the income reporting and basis reporting rules should be consistent. Therefore, to improve consistency between income reporting and basis reporting and to provide immediate guidance to brokers and investors, this document adds temporary regulations under section 6049 to require broker reporting of interest (OID) income to reflect amounts of amortized bond premium or acquisition premium for a covered debt instrument.

Under the temporary regulations, for purposes of section 6049, a broker will assume that a customer has elected to amortize bond premium unless the broker has been notified that the customer has not made the election. It should be noted that this change applies only to the information reported by the broker to its customer. Thus, a customer that does not prefer to make the section 171 election can report interest on the customer's income tax return unadjusted for bond premium because the information reporting rules do not change the substantive rules affecting bond premium (or any of the other rules pertaining to OID, market discount, or acquisition premium). Moreover, a customer can notify a broker that the customer has not made or has revoked a section 171 election, and the broker is required to reflect this fact on the Form 1099-INT and the Form 1099-B. If a broker is required to report amounts reflecting amortization of bond premium, the temporary regulations allow a broker to report either a gross amount for both stated interest and amortized bond premium or a net amount of stated interest that reflects the offset of the stated interest payment by the amount of amortized bond premium allocable to the payment.

In addition, under the temporary regulations, for purposes of section 6049, a broker must report OID adjusted for acquisition premium in accordance with §1.1272–2 by assuming that a customer has not elected to amortize acquisition premium based on a constant yield. However, if the broker has been notified that the customer has made an election to amortize acquisition premium based on a constant yield, the broker is required to reflect this fact on the Form 1099-OID and the Form 1099-B. The temporary regulations allow a broker to report either a gross amount for both OID and acquisition premium, or a net amount of OID that reflects the offset of the OID by the amount of amortized acquisition premium allocable to the OID.

I. ***Form 8281***

Under §1.1275–3(c) of the current final regulations, an issuer of a publicly offered debt instrument issued with OID must file a Form 8281, "*Information Return for Publicly Offered Original Issue Discount Instruments*," within 30 days after the issue date of the debt instrument. The information from Form 8281 is used to develop the tables of OID information that are part of Publication 1212, "Guide to Original Issue Discount (OID) Instruments." To be publicly offered, a debt instrument generally must be registered with the Securities and Exchange Commission as of the instrument's issue date. In many instances, a debt instrument issued in a private placement is registered with the Securities and Exchange Commission after the issue date. As a result, a Form 8281 is not required to be filed with the IRS and, therefore, the OID information generally does not appear in the Publication 1212 tables. A number of commenters on the proposed regulations asked that OID information on more debt instruments be provided in the tables to Publication 1212. In response to these comments, the regulations under §1.1275–3(c) are amended to require the filing of a Form 8281 for a debt instrument that is part of an issue the offering of which is registered with the Securities and Exchange Commission after the issue date of the debt instrument. The Form 8281 is required to be filed within 30 days of the date the offering is registered with the Securities and Exchange Commission.

J. ***Consideration of Administrative Burdens Related to Basis Reporting***

A number of commenters indicated that compliance with basis reporting requirements and the use of basis and other information reported by brokers will require considerable resources and effort on the part of return preparers and information recipients. The Treasury Department and the IRS are continuing to review all aspects of the information reporting process and are exploring ways to reduce the compliance burden for both brokers and for information recipients.

Effective/Applicability Dates

These regulations are effective when published in the **Federal Register** as final regulations. In general, the regulations regarding reporting of basis and whether any gain or loss on a sale is long-term or short-term under section 6045(g) apply to certain debt instruments acquired on or after January 1, 2014. *See* §1.6045–1(n)(2). In general, for all other debt instruments, the regulations apply to debt instruments acquired on or after January 1, 2016. *See* §1.6045–1(n)(3). The regulations regarding reporting of gross proceeds, basis, and whether gain or loss on a sale is long-term or short-term under section 6045(h) apply to options granted or acquired on or after January 1, 2014. The regulations regarding reporting of basis and whether any gain or loss on a sale is long-term or short-term apply to securities futures contracts entered into on or after January 1, 2014. In general, the regulations regarding transfer reporting for certain debt instruments, options, and securities futures contracts apply to transfers occurring on or after January 1, 2015. The regulations regarding transfer reporting for more complex debt instruments apply to transfers occurring on or after January 1, 2017. *See* §1.6045A–1(d). The regulations regarding reporting for issuer actions that affect the basis of certain debt instruments, options, and securities futures contracts apply to issuer actions occurring on or after January 1, 2014. The regulations regarding reporting for issuer actions that affect the basis of more complex debt instruments apply to issuer actions occurring on or after January 1, 2016. *See* §1.6045B–1(j). The final regulations regarding the filing of Form 8281 apply to a debt instrument that is part of an issue the offering of which is registered with the Securities and Exchange Commission on or after January 1, 2014. The temporary regulations under section 6049 relating to the reporting of premium apply to covered securities acquired on or after January 1, 2014.

Special Analyses

It has been determined that this rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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 temporary regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to the temporary regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the final regulations in this document will not have a significant economic impact on a substantial number of small entities. Any effect on small entities by the rules in the final regulations flows directly from section 403 of the Act.

Section 403(a) of the Act modifies section 6045 to require that, when reporting the sale of a covered security, brokers report the adjusted basis of the security and whether any gain or loss with respect to the security is long-term or short-term. The Act also requires gross proceeds reporting for options. It is anticipated that these statutory requirements will fall only on financial services firms with annual receipts greater than $7 million and, therefore, on no small entities. Further, in implementing the statutory requirements, the final regulations generally limit reporting to information required under the Act.

Section 403(a) of the Act requires a broker to report the adjusted basis of a debt instrument that is a covered security. The holder of a debt instrument is permitted to make a number of elections that affect how basis is computed. To minimize the need for reconciliation between information reported by a broker to both a customer and the IRS and the amounts reported on the customer's tax return, the final regulations require a broker to take into account certain specified elections in reporting information to the customer. Therefore, under the final regulations, a customer must provide certain information concerning an election to the broker in a written notification, which includes a writing in electronic format. It is anticipated that this collection of information will not fall on a substantial number of small entities. Further, the final regulations generally implement the statutory requirements for reporting adjusted basis. Moreover, any economic impact is expected to be minimal because it should take a customer no more than seven minutes to satisfy the information-sharing requirement in these final regulations.

Section 403(c) of the Act added section 6045A, which requires applicable persons to furnish a transfer statement in connection with the transfer of custody of a covered security. The modifications to §1.6045A–1 effectuate the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to a debt instrument or option is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, the final regulations do not add to the impact on small entities imposed by the statutory scheme. Instead, it limits the information to be reported to only those items necessary to effectuate the statutory scheme.

Section 403(d) of the Act added section 6045B, which requires issuer reporting by all issuers of specified securities regardless of size and even when the securities are not publicly offered. The modifications to §1.6045B–1 limit reporting to the additional information for debt instruments and options necessary to meet the Act's requirements. Additionally, the final regulations, as modified, retain the rule that permits an issuer to report each action publicly instead of filing a return and furnishing each nominee or holder a statement about the action. The final regulations therefore do not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits.

Therefore, because the final regulations in this document will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding the final regulations in this document were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received. In addition, the proposed regulations accompanying the section 6049 temporary regulations in this document have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.6049–9T also issued under 26 U.S.C. 6049(a). * * *

Par. 2. Section 1.1271–0(b) is amended by adding an entry for §1.1275–3(c)(4) to read as follows:

§1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * *

§1.1275–3 OID information reporting requirements.

* * * * *

(c) * * *

(4) Subsequent registration.

* * * * *

Par. 3. Section 1.1275–3 is amended by adding paragraph (c)(4) to read as follows:

§1.1275–3 OID information reporting requirements.

* * * * *

(c) * * *

(4) *Subsequent registration*. Except as provided in paragraph (c)(3) or (d) of this section, the information reporting requirements of paragraph (c)(1) of this section apply to any debt instrument that has original issue discount if the instrument is part of an issue the offering of which is registered with the Securities and Exchange Commission (SEC) after the issue date of the debt instrument. For example, this paragraph (c)(4) applies to a newly issued debt instrument (B bond) exchanged for an otherwise identical non-SEC-registered debt instrument (A bond) if the B bond is part of an issue the offering of which is registered with the SEC and the B bond has an issue date that is the same as the issue date of the A bond for federal tax purposes because the exchange is not a realization event under §1.1001–3. If a debt instrument is subject to this paragraph (c)(4), the prescribed form (Form 8281 or any successor) must be filed with the Internal Revenue Service within 30 days after the date the offering is registered with the SEC.

This paragraph (c)(4) applies to a debt instrument that is part of an issue the offering of which is registered with the SEC on or after January 1, 2014.

* * * * *

Par. 4. Section 1.6045–1 is amended by:

1. Revising paragraphs (a)(3)(v) and (a)(3)(vi) and adding paragraphs (a)(3)(vii) and (a)(3)(viii).

2. Revising paragraphs (a)(8) and (a)(9).

3. Revising paragraphs (a)(14) and (a)(15)(i)(A).

4. Redesignating paragraph (a)(15)(i)(C) as paragraph (a)(15)(i)(G) and adding new paragraphs (a)(15)(i)(C) through (a)(15)(i)(F).

5. Adding a new sentence at the end of paragraph (a)(15)(ii).

6. Adding new paragraphs (a)(17) and (a)(18).

7. Adding two new sentences at the end of paragraph (c)(3)(vii)(C) and adding a new sentence at the end of paragraph (c)(3)(vii)(D).

8. Adding a new sentence at the end of paragraph (c)(3)(x) and revising the first two sentences in paragraph (c)(3)(xi)(C).

9. Adding new paragraph (c)(3)(xiii).

10. Revising the last sentence of paragraph (c)(4) *Example 9* (i).

11. Adding two new sentences at the end of paragraph (d)(2)(i) and revising paragraph (d)(2)(ii) and the first sentence of paragraph (d)(2)(iii).

12. Revising paragraph (d)(3).

13. Removing the first four sentences of paragraph (d)(5) and adding six sentences in their place.

14. Revising the second sentence and adding two new sentences at the end of paragraph (d)(6)(i).

15. Removing the first three sentences of paragraph (d)(6)(ii)(A) and adding five sentences in their place.

16. Revising the heading for paragraph (d)(6)(ii)(B).

17. Revising the last sentence of paragraph (d)(6)(iii)(A).

18. Revising paragraph (d)(6)(iv).

19. Revising paragraph (d)(6)(vii) *Example 4*.

20. Revising the second sentence of paragraph (d)(7)(i).

21. Removing the first sentence of paragraph (d)(8)(i)(A) and adding a sentence and a parenthetical phrase in its place.

22. Adding paragraphs (m) and (n).

The additions and revisions read as follows:

§1.6045–1 Returns of information of brokers and barter exchanges.

(a) * * *

(3) * * *

(v) An interest in or right to purchase any of the foregoing in connection with the issuance thereof from the issuer or an agent of the issuer or from an underwriter that purchases any of the foregoing from the issuer;

(vi) An interest in a security described in paragraph (a)(3)(i) or (iv) of this section (but not including executory contracts that require delivery of such type of security);

(vii) An option described in paragraph (m)(2) of this section; or

(viii) A securities futures contract.

* * * * *

(8) The term *closing transaction* means a lapse, expiration, settlement, abandonment, or other termination of a position. For purposes of the preceding sentence, a position includes a right or an obligation under a forward contract, a regulated futures contract, a securities futures contract, or an option.

(9) The term *sale* means any disposition of securities, commodities, options, regulated futures contracts, securities futures contracts, or forward contracts, and includes redemptions of stock, retirements of debt instruments (including a partial retirement attributable to a principal payment received on or after January 1, 2014), and enterings into short sales, but only to the extent any of these actions are conducted for cash. In the case of an option, a regulated futures contract, a securities futures contract, or a forward contract, a sale includes any closing transaction. When a closing transaction for a contract described in section 1256(b)(1)(A) involves making or taking delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. When a closing transaction for a contract described in section 988(c)(5) involves making delivery, there are two sales, one resulting in profit or loss on the contract, and a separate sale on the delivery. For purposes of the preceding sentence, a broker may assume that any customer's functional currency is the U.S. dollar. When a closing transaction in a forward contract involves making or taking delivery, the broker may treat the delivery as a sale without separating the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term *sale* does not include entering into a contract that requires delivery of personal property or an interest therein, the initial grant or purchase of an option, or the exercise of a purchased call option for physical delivery (except for a contract described in section 988(c)(5)). For purposes of this section only, a constructive sale under section 1259 and a mark to fair market value under section 475 or 1296 are not sales.

* * * * *

(14) The term *specified security* means:

(i) Any share of stock (or any interest treated as stock, including, for example, an American Depositary Receipt) in an entity organized as, or treated for Federal tax purposes as, a corporation, either foreign or domestic (provided that, solely for purposes of this paragraph (a)(14)(i), a security classified as stock by the issuer is treated as stock, and if the issuer has not classified the security, the security is not treated as stock unless the broker knows that the security is reasonably classified as stock under general Federal tax principles);

(ii) Any debt instrument described in paragraph (a)(17) of this section, other than a debt instrument subject to section 1272(a)(6) (certain interests in or mortgages held by a REMIC, certain other debt instruments with payments subject to acceleration, and pools of debt instruments the yield on which may be affected by prepayments) or a short-term obligation described in section 1272(a)(2)(C);

(iii) Any option described in paragraph (m)(2) of this section; or

(iv) Any securities futures contract.

(15) * * *

(i) * * *

(A) A specified security described in paragraph (a)(14)(i) of this section acquired for cash in an account on or after January 1, 2011, except stock for which the average basis method is available under §1.1012–1(e).

* * * * *

(C) A specified security described in paragraphs (a)(14)(ii) and (n)(2)(i) of this section (not including the debt instruments described in paragraph (n)(2)(ii) of this section) acquired for cash in an account on or after January 1, 2014.

(D) A specified security described in paragraphs (a)(14)(ii) and (n)(3) of this section acquired for cash in an account on or after January 1, 2016.

(E) An option described in paragraph (a)(14)(iii) of this section granted or acquired for cash in an account on or after January 1, 2014.

(F) A securities futures contract described in paragraph (a)(14)(iv) of this section entered into in an account on or after January 1, 2014.

* * * * *

(ii) * * * Acquiring a security in an account includes granting an option and entering into a short sale.

* * * * *

(17) For purposes of this section, the terms *debt instrument*, *bond*, *debt obligation*, and *obligation* mean a debt instrument as defined in §1.1275–1(d) and any instrument or position that is treated as a debt instrument under a specific provision of the Internal Revenue Code (for example, a regular interest in a REMIC as defined in section 860G(a)(1) and §1.860G–1). Solely for purposes of this section, a security classified as debt by the issuer is treated as debt. If the issuer has not classified the security, the security is not treated as debt unless the broker knows that the security is reasonably classified as debt under general Federal tax principles or that the instrument or position is treated as a debt instrument under a specific provision of the Internal Revenue Code.

(18) For purposes of this section, the term *securities futures contract* means a contract described in section 1234B(c) whose underlying asset is described in paragraph (a)(14)(i) of this section and which is entered into on or after January 1, 2014.

* * * * *

(c) * * *

(3) * * *

(vii) * * *

(C) * * * The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014. For a short-term obligation issued on or after January 1, 2014, see paragraph (c)(3)(xiii) of this section.

(D) * * * The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

* * * * *

(x) *Certain retirements*. * * * The preceding sentence does not apply to a debt instrument issued on or after January 1, 2014.

(xi) * * *

(C) *Short sale obligation transferred to another account*. If a short sale obligation is satisfied by delivery of a security transferred into a customer's account accompanied by a transfer statement (as described in §1.6045A–1(b)(7)) indicating that the security was borrowed, the broker receiving custody of the security may not file a return of information under this section. The receiving broker must furnish a statement to the transferor that reports the amount of gross proceeds received from the short sale, the date of the sale, the quantity of shares, units, or amounts sold, and the Committee on Uniform Security Identification Procedures (CUSIP) number of the sold security (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). * * *

* * * * *

(xiii) *Short-term obligations issued on or after January 1, 2014*. No return of information is required under this section with respect to a sale (including a retirement) of a short-term obligation, as described in section 1272(a)(2)(C), that is issued on or after January 1, 2014.

(4) * * *

Example 9. (i) * * * N indicates on the transfer statement that the transferred stock was borrowed in accordance with §1.6045A–1(b)(7).

* * * * *

(d) * * *

(2) *Transactional reporting*—(i) *Required information*. * * * In addition, for a sale of a covered security on or after January 1, 2014, a broker must report on Form 1099-B whether any gain or loss is ordinary. See paragraph (m) of this section for additional rules related to options and paragraph (n) of this section for additional rules related to debt instruments.

(ii) *Specific identification of securities*. Except as provided in §1.1012–1(e)(7)(ii), for a specified security described in paragraph (a)(14)(i) of this section sold on or after January 1, 2011, or for a specified security described in paragraph (a)(14)(ii) of this section sold on or after January 1, 2014, a broker must report a sale of less than the entire position in an account of a specified security that was acquired on different dates or at different prices consistently with a customer's adequate and timely identification of the security to be sold. *See* §1.1012–1(c). If the customer does not provide an adequate and timely identification for the sale, the broker must first report the sale of securities in the account for which the broker does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

(iii) *Sales of noncovered securities*. A broker is not required to report adjusted basis and the character of any gain or loss for the sale of a noncovered security if the return identifies the sale as a sale of a noncovered security. * * *

* * * * *

(3) *Sales between interest payment dates*. For each sale of a debt instrument prior to maturity with respect to which a broker is required to make a return of information under this section, a broker must show separately on Form 1099 the amount of accrued and unpaid qualified stated interest as of the sale date that must be reported by the customer as interest income under §1.61–7(d). *See* §1.1273–1(c) for the definition of qualified stated interest. Such interest information must be shown in the manner and at the time required by Form 1099 and section 6049.

* * * * *

(5) *Gross proceeds*. For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of the sale reduced by the amount of any qualified stated interest reported under paragraph (d)(3) of this section and increased by any amount not paid or credited by reason of repayment of margin loans. In the case of a closing transaction (other than a closing transaction related to an option) that results in a loss, gross proceeds are the amount debited from the customer's ac-

count. For sales before January 1, 2014, a broker may, but is not required to, reduce gross proceeds by the amount of commissions and transfer taxes, provided the treatment chosen is consistent with the books of the broker. For sales on or after January 1, 2014, a broker must reduce gross proceeds by the amount of commissions and transfer taxes related to the sale of the security. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2014, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired on or after January 1, 2014, or for the treatment of an option granted or acquired on or after January 1, 2014, see paragraph (m) of this section. * * *

(6) *Adjusted basis*—(i) *In general*. * * * A broker is not required to consider transactions or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in §1.6045B–1) furnished or deemed furnished to the broker. Except as otherwise provided in paragraph (n) of this section, a broker is not required to consider customer elections. For rules related to the adjusted basis of a debt instrument, see paragraph (n) of this section.

(ii) *Initial basis*—(A) *Cost basis*. For a security acquired for cash, the initial basis generally is the total amount of cash paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition. A broker may, but is not required to, take option premiums into account in determining the initial basis of securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2014. For rules related to options granted or acquired on or after January 1, 2014, see paragraph (m) of this section. A broker may, but is not required to, increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired before January 1, 2014. A broker may not increase initial basis for income recognized upon the exercise of a compensatory option or the vesting or exercise of other equity-based compensation arrangements, granted or acquired on or after January 1, 2014. * * *

(B) *Basis of transferred securities* * * *

* * * * *

(iii) *Adjustments for wash sales*—(A) *In general*. * * * The broker must increase the basis of the purchased security by the amount of loss disallowed on the sale transaction.

* * * * *

(iv) *Certain adjustments not taken into account*. A broker is not required to apply section 1259 (regarding constructive sales), section 475 (regarding the mark-to-market method of accounting), section 1296 (regarding the mark-to-market method of accounting for marketable stock in a passive foreign investment company), or section 1092 (regarding straddles) when reporting adjusted basis.

* * * * *

(vii) * * *

Example 4. R, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2014, C grants R a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2015. On October 2, 2015, R exercises the option and purchases 100 shares. On December 2, 2015, R sells the 100 shares. Under paragraph (d)(6)(ii)(A) of this section, C is required to determine adjusted basis from the amount R pays under the terms of the option. Under paragraph (d)(6)(ii)(A) of this section, C is not permitted to adjust basis for any amount R must include as wage income with respect to the October 2, 2015, stock purchase.

(7) *Long-term or short-term gain or loss*—(i) *In general*. * * * A broker is not required to consider transactions, elections, or events occurring outside the account except for an organizational action taken by an issuer during the period the broker holds custody of the security (beginning with the date that the broker receives a transferred security) reported on an issuer statement (as described in §1.6045B–1) furnished or deemed furnished to the broker.

* * * * *

(8) *Conversion into United States dollars of amounts paid or received in foreign currency*—(i) *Conversion rules*—(A) When a payment other than a payment of interest is made in a foreign currency, a broker must determine the U.S. dollar amount of the payment by converting the foreign currency into U.S. dollars on the date it receives, credits, or makes the payment, as applicable, at the spot rate (as defined in §1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. (For interest payments, see paragraph (n)(4)(v) of this section concerning a customer's spot rate election.) * * *

* * * * *

(m) *Additional rules for option transactions*—(1) *In general*. This paragraph (m) provides rules for a broker to determine and report the information required under this section for an option that is a covered security under paragraph (a)(15)(i)(E) of this section.

(2) *Scope*—(i) *In general*. Paragraph (m) of this section applies to the following types of options granted or acquired on or after January 1, 2014:

(A) An option on one or more specified securities (which includes an index substantially all the components of which are specified securities);

(B) An option on financial attributes of specified securities, such as interest rates or dividend yields; or

(C) A warrant or a stock right.

(ii) *Delayed effective date for certain options*. Notwithstanding paragraph (m)(2)(i) of this section, if an option, stock right, or warrant is issued as part of an investment unit described in §1.1273–2(h), paragraph (m) of this section applies to the option, stock right, or warrant if it is acquired on or after January 1, 2016.

(iii) *Compensatory option*. Notwithstanding paragraphs (m)(2)(i) and (m)(2)(ii) of this section, paragraph (m) of this section does not apply to compensatory options.

(3) *Option subject to section 1256*. If an option described in paragraph (m)(2) of this section is also described in section 1256(b), a broker must apply the rules described in paragraph (c)(5) of this section by treating the option as if it were a regulated futures contract and must report the information required under paragraph (c)(5) of this section. A broker is permitted, but not required, to report the amounts for options and the amounts for regulated futures contracts determined under paragraph (c)(5) of this section as a net amount for each reportable item.

(4) *Option not subject to section 1256*. The following rules apply to an option that is described in paragraph (m)(2) of this section but is not also described in paragraph (m)(3) of this section:

(i) *Physical settlement*. For purposes of paragraph (d) of this section, if a specified security (other than an option) is acquired or disposed of pursuant to the exercise of an option, the broker must adjust the basis of the acquired asset or the gross proceeds amount as appropriate to account for any payment related to the option, including the premium.

(ii) *Cash settlement*. For purposes of paragraph (d) of this section, for an option that is settled for cash, a broker must reflect on Form 1099-B all payments made or received on the option. For a purchased option, a broker must report as basis the premium paid plus any costs (for example, commissions) related to the acquisition of the option and must report as proceeds the gross proceeds from settlement minus any costs related to the settlement of the option. For a written option, a broker must report as proceeds the premium received decreased by any amounts paid on the option and report $0 as the basis of the option.

(iii) *Rules for warrants and stock rights acquired in a section 305 distribution*. For a right (including a warrant) to acquire stock received in the same account as the underlying security in a distribution that is described in section 305(a), a broker is permitted, but not required, to apply the rules described in sections 305 and 307 when reporting or accounting for the basis of the option and the underlying equity. If a stock right or warrant is acquired from the initial distributee, the buyer or transferee must treat it as an option covered by either paragraph (m)(4)(i) or (m)(4)(ii) of this section.

(iv) *Examples*. The following examples illustrate the rules in this paragraph (m)(4):

Example 1. (i) On January 15, 2014, C, an individual who is neither a dealer nor a trader in securities, writes a 2-year exchange-traded option on 100 shares of Company X through Broker D. C receives a premium for the option of $100 and pays no commission. In C's hands, the option produces capital gain or loss and Company X stock is a capital asset. On December 16, 2014, C pays $110 to close out the option.

(ii) D is required to report information about the closing transaction because the option is a covered security as described in paragraph (a)(15)(i)(E) of this section and was part of a closing transaction described in paragraph (a)(8) of this section. Under paragraph (m)(4)(ii) of this section, D must report as gross proceeds on C's Form 1099-B -$10 (the $100 received as option premium minus the $110 C paid to close out the option) and report $0 in the basis box on the Form 1099-B. Under section 1234(b)(1) and paragraph (d)(2) of this section, D must also report the loss on the closing transaction as a short-term capital loss.

Example 2. (i) On January 15, 2014, E, an individual who is neither a dealer nor a trader in securities, buys a 2-year exchange-traded option on 100 shares of Company X through Broker F. E pays a premium of $100 for the option and pays no commission. In E's hands, both the option and Company X stock are capital assets. On December 16, 2014, E receives $110 to close out the option.

(ii) F is required to report information about the closing transaction because the option is a covered security as described in paragraph (a)(15)(i)(E) of this section and was part of a closing transaction described in paragraph (a)(8) of this section. Because the option is on the shares of a single company, it is an equity option described in section 1256(g)(6) and is not described in section 1256(b)(1)(C). Therefore, the rules of paragraph (m)(3) of this section do not apply, and F must report under paragraph (m)(4) of this section. Under paragraph (m)(4)(ii) of this section, F must report $110 as gross proceeds on the Form 1099-B for the gross proceeds E received and $100 in the basis box on the Form 1099-B to reflect the $100 option premium paid. Under section 1234(b)(1) and paragraph (d)(2) of this section, F must also report the gain on the closing transaction as a short-term capital gain.

(5) *Multiple options documented in a single contract*. If more than one option described in paragraph (m)(2) of this section is documented in a single contract, a broker must separately report the required information for each option as that option is sold.

(6) *Determination of index status*. Penalties will not be asserted under sections 6721 and 6722 if a broker in good faith determines that an index is, or is not, a narrow-based index described in section 1256(g)(6) and reports in a manner consistent with this determination.

(n) *Reporting for debt instrument transactions*—(1) *In general*. For purposes of this section, this paragraph (n) provides rules for a broker to determine and report information for a debt instrument that is a covered security under paragraph (a)(15)(i)(C) or (D) of this section. Neither a debt instrument subject to section 1272(a)(6) nor a short-term obligation described in section 1272(a)(2)(C) is subject to this paragraph (n) because neither is a specified security under paragraph (a)(14)(ii) of this section (a requirement for a debt instrument to be a covered security).

(2) *Debt instruments subject to January 1, 2014, reporting*—(i) *In general*. For purposes of paragraph (a)(15)(i)(C) of this section, except as provided in paragraph (n)(2)(ii) of this section, a debt instrument is described in this paragraph (n)(2)(i) if the debt instrument is one of the following:

(A) A debt instrument that provides for a single fixed payment schedule for which a yield and maturity can be determined for the instrument under §1.1272–1(b);

(B) A debt instrument that provides for alternate payment schedules for which a yield and maturity can be determined for the instrument under §1.1272–1(c); or

(C) A debt instrument for which the yield of the debt instrument can be determined under §1.1272–1(d).

(ii) *Exceptions*. A debt instrument is not described in paragraph (n)(2)(i) of this section if the debt instrument is one of the following:

(A) A debt instrument that provides for more than one rate of stated interest (including a debt instrument that provides for stepped interest rates);

(B) A convertible debt instrument described in §1.1272–1(e);

(C) A stripped bond or stripped coupon subject to section 1286;

(D) A debt instrument that requires payment of either interest or principal in a currency other than the U.S. dollar;

(E) A debt instrument that, at one or more times in the future, entitles a holder to a tax credit;

(F) A debt instrument that provides for a payment-in-kind (PIK) feature (that is, under the terms of the debt instrument, a holder may receive one or more additional debt instruments of the issuer);

(G) A debt instrument issued by a non-U.S. issuer;

(H) A debt instrument for which the terms of the instrument are not reasonably available to the broker within 90 days of the date the debt instrument was acquired by the customer;

(I) A debt instrument that is issued as part of an investment unit described in §1.1273–2(h); or

(J) A debt instrument evidenced by a physical certificate unless such certificate is held (whether directly or through a nominee, agent, or subsidiary) by a securities depository or by a clearing organization described in §1.1471–1(b)(18).

(iii) *Remote or incidental*. For purposes of paragraphs (n)(2)(i) and (n)(2)(ii) of this section, a remote or incidental contingency (as determined under §1.1275–2(h)) is ignored.

(iv) *Penalty rate*. For purposes of paragraph (n)(2)(ii)(A) of this section, a debt instrument does not provide for more than one rate of stated interest merely because the instrument provides for a penalty interest rate or an adjustment to the stated interest rate in the event of a default or similar event.

(3) *Debt instruments subject to January 1, 2016, reporting*. For purposes of paragraph (a)(15)(i)(D) of this section, a debt instrument is described in this paragraph (n)(3) if it is described in paragraph (n)(2)(ii) of this section or it otherwise is not described in paragraph (n)(2)(i) of this section. For example, this paragraph (n)(3) applies to variable rate debt instruments, inflation-indexed debt instruments, and contingent payment debt instruments because these instruments are not described in paragraph (n)(2)(i) of this section.

(4) *Holder elections*. For purposes of this section, a broker is required to take into account an election described in this paragraph (n)(4), and the broker must take the election into account in accordance with the rules in paragraph (n)(5) of this section. A broker, however, may not take into account any other election.

(i) *Election to amortize bond premium*. An election under section 171 and §1.171–4 to amortize bond premium on a taxable debt instrument (this election applies to all taxable debt instruments held by a taxpayer during the taxable year the election is effective and thereafter; this election may be revoked with the consent of the Commissioner).

(ii) *Election to currently include accrued market discount*. An election under section 1278(b) to include market discount in income as it accrues (this election applies to all debt instruments acquired by a taxpayer during the taxable year the election is effective and thereafter; this election may be revoked with the consent of the Commissioner).

(iii) *Election to accrue market discount based on a constant yield*. An election under section 1276(b)(2) to compute accruals of market discount using a constant yield method (this election is generally made on an instrument-by-instrument basis and must be made for the earliest taxable year for which the taxpayer is required to determine accrued market discount on the debt instrument; this election may not be revoked).

(iv) *Election to treat all interest as OID*. An election under §1.1272–3 to treat all interest on a taxable debt instrument (adjusted for any acquisition premium or premium) as original issue discount (this election is generally made on an instrument-by-instrument basis and must be made for the taxable year the debt instrument is acquired by the taxpayer; this election may be revoked with the consent of the Commissioner).

(v) *Election to translate interest income and expense at the spot rate*. An election under §1.988–2(b)(2)(iii)(B) to translate interest income and expense at the spot rate on the last day of the interest accrual period or, in the case of a partial accrual period, the last day of the taxable year (this election applies to all taxable debt instruments held by a taxpayer during the taxable year the election is effective and thereafter; this election may be revoked with the consent of the Commissioner).

(5) *Broker assumptions and customer notice to brokers*—(i) *Broker assumptions if the customer does not notify the broker*. Except as provided in paragraph (n)(5)(ii)(A) of this section, a broker must report the information required under paragraph (d) of this section by assuming that a customer has made the election to amortize bond premium described in paragraph (n)(4)(i) of this section. In addition, except as provided in paragraph (n)(5)(ii)(B) of this section, a broker must report the information required under paragraph (d) of this section by assuming that a customer has not made an election described in paragraph (n)(4)(ii), (n)(4)(iii), (n)(4)(iv), or (n)(4)(v) of this section.

(ii) *Effect of customer notification of an election or revocation*—(A) *Election to amortize bond premium*. If a customer notifies a broker in writing that the customer does not want the broker to take into account the election to amortize bond premium, the broker must report the information required under paragraph (d) of this section without taking into account the election to amortize bond premium. The customer must provide this notification to the broker by the end of the calendar year for which the customer does not want to amortize bond premium. If for a subsequent calendar year, the customer wants the broker to take into account the election to amortize bond premium, the customer must notify the broker in writing by the end of the calendar year that the customer wants to amortize bond premium. If the customer provides such notification, the broker must report the information required under paragraph (d) of this section as if the customer made the election to amortize bond premium for that year.

(B) *Other debt elections*. If a customer notifies a broker in writing that the customer has made or will make an election described in paragraph (n)(4)(ii), (iii), (iv), or (v) of this section, the broker must report the information required under paragraph (d) of this section by taking into account the election. A customer must notify the broker in writing of the election by the end of the calendar year in which a debt instrument subject to the election is acquired in, or transferred into, an account with the broker or, if later, by the end of the calendar year for which the election is effective. If a customer has revoked or will revoke an election described in paragraph (n)(4)(ii), (n)(4)(iv), or (n)(4)(v) of this section for a calendar year, the customer must notify the broker of the revocation in writing by the end of the calendar year for which the revocation is effective. If the customer provides such notification, the broker must report the information required under paragraph (d) of this section by taking into account the revocation.

(iii) *Electronic notification*. For purposes of paragraph (n)(5)(ii) of this section, the written notification to the broker includes a writing in electronic format.

(6) *Reporting of accrued market discount*. In addition to the information required to be reported under paragraph (d) of this section, if a debt instrument is subject to the market discount rules in sections 1276 through 1278, a broker also must report the information described in paragraph (n)(6)(i) or (n)(6)(ii) of this section, whichever is applicable. Such information must be shown in the manner and at the time required by Form 1099 and section 6045.

(i) *Sale*. A broker must report the amount of market discount that has accrued on a debt instrument as of the date of the instrument's sale, as defined in paragraph (a)(9) of this section. See paragraph (n)(5) of this section to determine whether the amount reported should take into account a customer election under section 1276(b)(2). See paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of market discount. This paragraph (n)(6)(i) does not apply if the customer notifies the broker under the rules in paragraph (n)(5) of this section that the customer elects under section 1278(b) to include market discount in income as it accrues.

(ii) *Current inclusion election.* If a customer notifies a broker under the rules in paragraph (n)(5) of this section that the customer elects under section 1278(b) to include market discount in income as it accrues, the broker is required to report to the customer the amount of market discount that accrued on a debt instrument during a taxable year while held by the customer in the account. The broker also must adjust basis in accordance with section 1278(b)(4). If a customer notifies a broker under the rules in paragraph (n)(5) of this section that the customer is revoking its election under section 1278(b), the broker will not report the market discount accrued during the taxable year of the revocation and thereafter and will cease to adjust basis in accordance with section 1278(b)(4). See paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of market discount.

(7) *Adjusted basis*. For purposes of this section, a broker must use the rules in paragraph (n) of this section to determine the adjusted basis of a debt instrument.

(i) *Original issue discount*. If a debt instrument is subject to the original issue discount rules in sections 1271 through 1275, section 1286, or section 1288, a broker must increase a customer's basis in the debt instrument by the amount of original issue discount that accrued on the debt instrument while held by the customer in the account. See paragraph (n)(8) of this section to determine the accrual period to be used to compute the accruals of original issue discount.

(ii) *Amortizable bond premium*—(A) *Taxable bond*. A broker is required to adjust the customer's basis for any taxable bond acquired at a premium and held in the account in accordance with §1.1016–5(b). If a customer, however, informs a broker under the rules in paragraph (n)(5)(ii)(A) of this section that the customer does not want to amortize bond premium, the broker must not adjust the customer's basis for any premium.

(B) *Tax-exempt bonds*. A broker is required to adjust the customer's basis for any tax-exempt obligation acquired at a premium and held in the account in accordance with §1.1016–5(b).

(iii) *Acquisition premium*. If a debt instrument is acquired at an acquisition premium (as determined under §1.1272–2(b)(3)), a broker must decrease the customer's basis in the debt instrument by the amount of acquisition premium that is taken into account each year to reduce the amount of the original issue discount that is otherwise includible in the customer's income for that year. *See* §1.1272–2(b)(4) to determine the amount of the acquisition premium taken into account each year. However, if a customer informs a broker under the rules in paragraph (n)(5) of this section that the customer elects under §1.1272–3 to use a constant yield to amortize the acquisition premium, then the broker must decrease the customer's basis in the debt instrument by the amount of acquisition premium that is taken into account each year to reduce the amount of the original issue discount that is otherwise includible in the customer's income for that year in accordance with §1.1272–2(b)(5) and §1.1272–3.

(iv) *Market discount*. See paragraph (n)(6) of this section for rules to determine the adjusted basis of a debt instrument with market discount.

(v) *Principal and certain other payments*. A broker must decrease the customer's basis in a debt instrument by the amount of any payment made to the customer during the period the debt instrument is held in the account, other than a payment of qualified stated interest as defined in §1.1273–1(c).

(8) *Accrual period*. For purposes of this section, a broker generally must use the same accrual period that is used to report any original issue discount or stated interest to a customer under section 6049 for a debt instrument. In any other situation, a broker must use a semi-annual accrual period or, if a debt instrument provides for scheduled payments of principal or interest at regular intervals of less than six months over the entire term of the debt instrument, a broker must use an accrual period equal in length to this shorter interval. For example, if a debt instrument provides for monthly payments of interest over the entire term of the debt instrument, the broker must use a monthly accrual period. The rules in §1.1272–1(b)(4)(iii) apply for purposes of an initial short accrual period. In computing the length of an accrual period, any reasonable counting convention may be used (for example, 30 days per month/360 days per year, or actual days per month/365 days per year).

(9) *Premium on convertible bond*. If a customer acquires a convertible bond (as defined in §1.171–1(e)(1)(iii)(C)) at a premium (as determined under §1.171–1(d)), then, solely for purposes of this section and §1.6049–9T, a broker must assume that the premium is attributable to the conversion feature. Based on this assumption, no portion of the premium is amortizable for purposes of this section and §1.6049–9T.

(10) *Effect of broker assumptions on customer*. The rules in this paragraph (n) only apply for purposes of a broker's reporting obligation under section 6045. A customer is not bound by the assumptions that the broker uses to satisfy the broker's reporting obligations under section 6045. In addition, a notification to the broker under paragraph (n)(5) of this section does not constitute an effective election or revocation under the applicable rules for the election.

* * * * *

Par. 5. Section 1.6045A–1 is amended by:

1. Adding new paragraph (a)(1)(vi) and revising paragraph (b)(1) introductory text and paragraph (b)(1)(v).

2. Revising the second sentence of paragraph (b)(1)(vii).

3. Redesignating paragraphs (b)(2) through (b)(9) as paragraphs (b)(5) through (b)(12) respectively.

4. Redesignating paragraph (b)(1)(viii) as paragraph (b)(2).

5. Revising the introductory text to newly redesignated paragraph (b)(2).

6. Adding new paragraphs (b)(3) and (b)(4).

7. Revising newly redesignated paragraph (b)(5).

8. Revising the first and last sentences of newly redesignated paragraph (b)(6).

9. Revising newly redesignated paragraph (b)(8)(ii).

10. Revising the first sentence of newly redesignated paragraph (b)(9)(ii).

11. Revising the introductory text to newly redesignated paragraph (b)(9)(iii), the fifth sentence of paragraph (b)(9)(iii) *Example 1*, and the second sentence of paragraph (b)(9)(iii) *Example 2*.

12. Revising the last sentence of newly redesignated paragraph (b)(10).

13. Redesignating the text of newly redesignated paragraph (b)(12) as paragraph (b)(12)(i), adding a heading for newly redesignated paragraph (b)(12)(i), and adding new paragraph (b)(12)(ii).

14. Revising paragraph (d).

The additions and revisions read as follows:

§1.6045A–1 Statements of information required in connection with transfers of securities.

(a) * * *

(1) * * *

(vi) *Section 1256 options.* A transferor of an option described in §1.6045–1(m)(3) is not required to furnish a transfer statement.

(b) *Information required*—(1) *In general.* For all specified securities, each transfer statement must include the information described in this paragraph (b)(1).

* * * * *

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* §601.601(d)(2) of this chapter), quantity of shares, units, or amounts, and classification of the security (such as stock or debt).

* * * * *

(vii) *Adjusted basis and acquisition date.** * * The transferor must determine this information as provided under §§1.6045–1(d), 1.6045–1(m), and 1.6045–1(n), including reporting the adjusted basis of the security in U.S. dollars. * * *

(2) *Examples.* The following examples illustrate the rules of paragraph (b)(1) of this section:

* * * * *

(3) *Additional information required for a transfer of a debt instrument.* In addition to the information required in paragraph (b)(1) of this section, for a transfer of a debt instrument that is a covered security, the following additional information is required:

(i) A description of the payment terms used by the broker to compute any basis adjustments under §1.6045–1(n);

(ii) The issue price of the debt instrument;

(iii) The issue date of the debt instrument (if different from the original acquisition date of the debt instrument);

(iv) The adjusted issue price of the debt instrument as of the transfer date;

(v) The customer's initial basis in the debt instrument;

(vi) Any market discount that has accrued as of the transfer date (as determined under §1.6045–1(n));

(vii) Any bond premium that has been amortized as of the transfer date (as determined under §1.6045–1(n));

(viii) Any acquisition premium that has been amortized as of the transfer date (as determined under §1.6045–1(n)); and

(ix) Whether the transferring broker has computed any of the information described in this paragraph (b)(3) by taking into account one or more elections described in §1.6045–1(n), and, if so, which election or elections were taken into account by the transferring broker.

(4) *Additional information required for option transfers.* In addition to the information required in paragraph (b)(1) of this section, for a transfer of an option that is a covered security, the following additional information is required:

(i) The date of grant or acquisition of the option;

(ii) The amount of premium paid or received; and

(iii) Any other information required to fully describe the option, which may include a security identifier used by option exchanges, or details about the underlying asset, quantity covered, exercise type, strike price, and maturity date.

(5) *Format of identification.* An applicable person furnishing a transfer statement and a broker receiving the transfer statement may agree to combine the information required in paragraphs (b)(1), (b)(3), and (b)(4) of this section in any format or to use a code in place of one or more required items. For example, a transferor and a receiving broker may agree to use a single code to represent the broker instead of the broker's name, address, and telephone number, or may use a security symbol or other identification number or scheme instead of the security identifier required by paragraphs (b)(1), (b)(3), and (b)(4) of this section. As another example, a transferor and a receiving broker may agree to use a security identifier for an exchange-traded option if that information would be sufficient to inform the receiving broker of the terms for that option.

(6) *Transfers of noncovered securities.* The information described in paragraphs (b)(1)(vii), (b)(3), (b)(4), (b)(8), and (b)(9) of this section is not required for a transfer of a noncovered security if the transfer statement identifies the security as a noncovered security. * * * For purposes of this paragraph (b)(6), a transferor must treat a security for which a broker makes a single-account election described in §1.1012–1(e)(11)(i) as a covered security.

* * * * *

(8) * * *

(ii) *Transfers of securities to satisfy a cash legacy.* If a security is transferred from a decedent or a decedent's estate to satisfy a cash legacy, paragraphs (b)(1), (b)(3), and (b)(4) of this section apply and paragraph (b)(8)(i) of this section does not apply.

* * * * *

(9) * * *

(ii) *Subsequent transfers of gifts by the same customer.* If a transferor transfers to a different account of the same customer a security that a prior transfer statement reported as a gifted security, the transferor must include on the transfer statement the information described in paragraph (b)(9)(i) of this section for the date of the gift to the customer. * * *

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(9):

Example 1. * * * Under paragraph (b)(9)(i) of this section, S must provide a transfer statement to T that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date. * * *

Example 2. * * * Under paragraph (b)(9)(ii) of this section, T must provide a transfer statement to U that identifies the securities as gifted securities and indicates X's adjusted basis and original acquisition date of the stock. * * *

(10) * * * If the customer does not provide an adequate and timely identification for the transfer, a transferor must first report the transfer of any securities in the account for which the transferor does not know the acquisition or purchase date followed by the earliest securities purchased or acquired, whether covered securities or noncovered securities.

* * * * *

(12) *Failure to receive a complete transfer statement*—(i) *In general*. * * *

(ii) *Transition rules for transfers of debt instruments, options, and securities futures contracts*. If an option described in §1.6045–1(a)(14)(iii), a securities futures contract described in §1.6045–1(a)(14)(iv), or a debt instrument described in §1.6045–1(a)(15)(i)(C) is transferred in 2014 and no transfer statement is received, the receiving broker is not required to request a transfer statement from the transferor and may treat the security as a noncovered security. If a debt instrument described in §1.6045–1(a)(15)(i)(D) is transferred in 2016 and no transfer statement is received, the receiving broker is not required to request a transfer statement from the transferor and may treat the security as a noncovered security.

* * * * *

(d) *Effective/applicability dates*. This section applies to:

(1) A transfer on or after January 1, 2011, of stock other than stock in a regulated investment company within the meaning of §1.1012–1(e)(5);

(2) A transfer on or after January 1, 2012, of stock in a regulated investment company;

(3) A transfer on or after January 1, 2015, of an option described in §1.6045–1(a)(14)(iii), a securities futures contract described in §1.6045–1(a)(14)(iv), or a debt instrument described in §1.6045–1(a)(15)(i)(C); and

(4) A transfer on or after January 1, 2017, of a debt instrument described in §1.6045–1(a)(15)(i)(D).

Par. 6. Section 1.6045B–1 is amended by:

1. Adding two new sentences at the end of paragraph (a)(3).

2. Redesignating paragraph (h) as paragraph (j), adding new paragraph (h), adding and reserving paragraph (i), and revising newly-designated paragraph (j).

The additions and revisions read as follows:

§1.6045B–1 Returns relating to actions affecting basis of securities.

(a) * * *

(3) *Exception for public reporting*. * * * An issuer may electronically sign a return that is publicly reported in accordance with this paragraph (a)(3). The electronic signature must identify the individual who attests to the declaration in the jurat.

* * * * *

(h) *Rule for options*—(1) *In general*. For an option granted or acquired on or after January 1, 2014, if the original contract is replaced by a different number of option contracts, the following rules apply:

(i) If the option is an exchange-traded option, any clearinghouse or clearing facility that serves as a counterparty is treated as the issuer of the option for purposes of section 6045B.

(ii) If the option is not an exchange-traded option, the option writer is treated as the issuer of the option for purposes of section 6045B.

(2) *Examples*. The following examples illustrate the rules of paragraph (h)(1) of this section:

Example 1. On January 15, 2014, F, an individual, purchases a one-year exchange-traded call option on 100 shares of Company X stock, with a strike price of $110. The call option is cleared through Clearinghouse G. Company X executes a 2-for-1 stock split as of April 1, 2014. Due to the stock split, the terms of F's option are altered, resulting in two option contracts, each on 100 shares of Company X stock with a strike price of $55. All other terms remain the same. Under paragraph (h)(1)(i) of this section, Clearinghouse G is required to prepare an issuer report for F.

Example 2. On January 31, 2014, J, an individual, purchases from K a non-exchange traded 7-month call option on 100 shares of Company X stock, with a strike price of $110. Company X executes a 2-for-1 stock split as of April 1, 2014. Due to the stock split, the terms of J's option are altered, resulting in one option contract on 200 shares of Company X stock with a strike price of $55. All other terms of the option remain the same. Under paragraph (h)(1) of this section, because the number of option contracts did not change, K is not required to prepare an issuer report for J.

(i) [Reserved]

(j) *Effective/applicability dates*. This section applies to—

(1) Organizational actions occurring on or after January 1, 2011, that affect the basis of specified securities within the meaning of §1.6045–1(a)(14)(i) other than stock in a regulated investment company within the meaning of §1.1012–1(e)(5);

(2) Organizational actions occurring on or after January 1, 2012, that affect the basis of stock in a regulated investment company;

(3) Organizational actions occurring on or after January 1, 2014, that affect the basis of debt instruments described in §1.6045–1(n)(2)(i) (not including the debt instruments described in §1.6045–1(n)(2)(ii));

(4) Organizational actions occurring on or after January 1, 2016, that affect the basis of debt instruments described in §1.6045–1(n)(3);

(5) Organizational actions occurring on or after January 1, 2014, that affect the basis of options described in §1.6045–1(a)(14)(iii); and

(6) Organizational actions occurring on or after January 1, 2014, that affect the basis of securities futures contracts described in §1.6045–1(a)(14)(iv).

Par. 7. Section 1.6049–9T is added to read as follows:

§1.6049–9T Premium subject to reporting for a debt instrument acquired on or after January 1, 2014 (temporary).

(a) *General rule*. Notwithstanding §1.6049–5(f), for a debt instrument acquired on or after January 1, 2014, if a broker (as defined in §1.6045–1(a)(1)) is required to file a statement for a debt instrument under §1.6049–6, the broker generally must report any bond premium (as defined in §1.171–1(d)) or acquisition premium (as defined in §1.1272–2(b)(3)) for the calendar year. This section, however, only applies to a debt instrument that is a covered security as defined in §1.6045–1(a)(15).

(b) *Reporting of bond premium amortization*. Unless a broker has been notified in writing in accordance with §1.6045–1(n)(5) that a customer does not want to amortize bond premium under section 171, the broker must report the amount of any amortizable bond premium allocable to a stated interest payment made to the customer during the calendar year. See §§1.171–2 and 1.171–3 to determine the amount of amortizable bond premium allocable to a stated interest payment. Instead of reporting a gross amount for both stated interest and amortizable bond premium, a broker may report a net amount of stated interest that reflects the offset of the stated interest payment by the amount of amortizable bond premium allocable to the payment. In this case, the broker must not report the amortizable bond premium as a separate item. This paragraph (b) also applies to amortizable bond premium on a tax-exempt obligation, which is required to be amortized under section 171.

(c) *Reporting of acquisition premium amortization*. A broker must report the amount of any acquisition premium that reduces the amount of original issue discount includible in income by the customer during a calendar year. Unless a broker has been notified in writing in accordance with §1.6045–1(n)(5) that a customer has made an election under §1.1272–3 to use a constant yield to amortize the acquisition premium, the broker must use the rules in §1.1272–2(b)(4) to determine the amount of acquisition premium. Instead of reporting a gross amount for both original issue discount and acquisition premium, a broker may report a net amount of original issue discount that reflects the offset of the original issue discount includible in income by the customer for the calendar year by the amount of acquisition premium allocable to the original issue discount. In this case, the broker must not report the acquisition premium as a separate item. This paragraph (c) does not apply to a tax-exempt obligation.

(d) *Expiration date*. The applicability of this section expires on or before April 15, 2016.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where Identified and described	Current OMB Control No.
* * * * *	
1.6045–1(n)(5)	1545–2186
* * * * *	

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

Approved: April 11, 2013.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on April 17, 2013, 8:45 a.m., and published in the issue of the Federal Register for April 18, 2013, 78 F.R. 23116)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2013. See Rev. Rul. 2013-11, page 1059.

Part III. Administrative, Procedural, and Miscellaneous

Relief from the Anti-cutback Requirements of § 411(d)(6) for Certain ESOP Amendments

Notice 2013–17

I. Purpose

This notice provides relief from the anti-cutback requirements of § 411(d)(6) of the Internal Revenue Code for plan amendments that eliminate a distribution option described in § 401(a)(28)(B)(ii)(I) from an employee stock ownership plan, as defined in § 4975(e)(7) (ESOP), that becomes subject to the diversification requirements of § 401(a)(35), which apply to certain defined contribution plans that hold (or are treated as holding) publicly traded employer securities. This notice addresses circumstances in which an ESOP that satisfied the diversification requirements of § 401(a)(28)(B)(i) by allowing distribution of a portion of a participant's account has become subject to the diversification requirements of § 401(a)(35). As a result of becoming subject to § 401(a)(35)(E), § 401(a)(28)(B) no longer applies and such an ESOP is no longer able to make distributions that (in the absence of the applicability of § 401(a)(28)(B)(i)) would be impermissible under other rules restricting the distribution of plan benefits before termination of employment or the occurrence of certain other events. Thus, under current rules for such plans, some in-service distribution options used to satisfy the diversification requirements under § 401(a)(28)(B) are no longer permissible.

The relief provided by this notice allows amendment of the ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). The relief applies to amendments that are both adopted and put into effect under a plan by the last day of the first plan year beginning on or after January 1, 2013, or by the time the plan must be amended to satisfy § 401(a)(35), if later. In cases in which an ESOP has been timely amended to satisfy § 401(a)(35) and the remedial amendment period with respect to that amendment expires before the ending date of § 411(d)(6) relief, this notice also extends the remedial amendment period to the last day of the first plan year beginning on or after January 1, 2013, to permit the adoption of an amendment to the ESOP eliminating a distribution option described in § 401(a)(28)(B)(ii)(I).

II. Background

Section 401(a)(28)(B) requires an ESOP to satisfy certain requirements relating to diversification of investments. In general, under § 401(a)(28)(B)(i), an ESOP must provide certain participants the opportunity to elect to direct the plan as to the investment of at least 25 percent of the participant's account. The election must be available to a participant during the 90-day period following the close of each plan year in the 6-plan-year period beginning with the first plan year in which the participant has both attained age 55 and completed 10 years of participation. Section 401(a)(28)(B)(ii) allows an ESOP to satisfy the diversification requirements of § 401(a)(28)(B)(i) by, among other means, distributing the portion of a participant's account that is covered by the election within 90 days after the period during which the election may be made. Section 401(a)(28)(B)(v) provides that the diversification requirements of § 401(a)(28)(B) do not apply to an applicable defined contribution plan as defined in § 401(a)(35)(E). Thus, the diversification requirements of § 401(a)(28)(B) do not apply to a plan that is subject to § 401(a)(35).

Section 401(a)(35), which was added by section 901(a)(1) of the Pension Protection Act of 2006 ("PPA '06"), Pub. L. 109–280, requires an applicable defined contribution plan within the meaning of § 401(a)(35)(E) to meet certain diversification requirements with respect to investments in employer securities. Unlike § 401(a)(28)(B), the § 401(a)(35) diversification requirements cannot be satisfied by distributing a portion of the participant's account. The requirements of § 401(a)(35) generally apply to plan years that begin after December 31, 2006. Final regulations under § 401(a)(35) were published on May 19, 2010, 75 F.R. 27933. Under § 401(a)(35)(E) and § 1.401(a)(35)–1(f)(2)(ii) of the regulations, an ESOP that holds employer securities that are readily tradable on an established securities market is an "applicable defined contribution plan" that is subject to the requirements of § 401(a)(35) if either the ESOP is not a separate plan for purposes of § 414(l) but rather is a portion of a larger plan, or the ESOP holds contributions that are or were subject to § 401(k) or § 401(m).

An ESOP that is an applicable defined contribution plan ceases to be subject to the diversification requirements of § 401(a)(28)(B) (and must instead satisfy the diversification requirements of § 401(a)(35)) as of the effective date of § 401(a)(35). See § 401(a)(28)(B)(v).

Section 411(d)(6)(A) provides generally that a plan does not satisfy § 401(a) if an amendment to the plan decreases a participant's accrued benefit. Section 411(d)(6)(B) provides that a plan amendment that has the effect of eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits. Section 411(d)(6)(C) provides that an ESOP is not treated as failing to meet the requirements of § 411(d)(6) merely because it modifies distribution options in a nondiscriminatory manner.

Section 1.411(d)–4, A–2(d), describes certain exceptions from the general requirements of § 411(d)(6) with respect to ESOPs and stock bonus plans. Section 1.411(d)–4, A–2(d)(4), authorizes the Commissioner to prescribe additional rules and exceptions.

Notice 88–56, 1988–1 C.B. 540, provides guidance regarding the requirements of § 401(a)(28)(B). Q&A–14 of Notice 88–56 provides, in part, that a distribution in satisfaction of a diversification election under § 401(a)(28)(B) is not subject to the rules under § 401(a) restricting the distribution of plan benefits before termination of employment (in the case of a pension plan) or the occurrence of certain other events (in the case of a profit-sharing plan). Thus, an ESOP that includes a qualified cash or deferred arrangement, as defined in § 401(k)(2), may provide for and make a distribution, in satisfaction of a diversification election under § 401(a)(28)(B)(ii)(I), of amounts attributable to elective contributions, even if that distribution would otherwise be prohibited under § 401(k)(2)(B) and § 1.401(k)–1(d).

Section 1107 of PPA ’06 provides that a plan amendment made pursuant to PPA ’06 or regulations thereunder was not required to be adopted until a specified date (the “section 1107 date”) that was the last day of the first plan year that begins on or after January 1, 2009 (or January 1, 2011, in the case of a governmental plan as defined in § 414(d)), provided that certain conditions were satisfied. Section 1107 of PPA ’06 also provides that, except as provided by the Secretary, a plan does not fail to satisfy the anti-cutback requirements of § 411(d)(6) as a result of amendments made pursuant to PPA ’06 or regulations thereunder that were adopted by the plan’s section 1107 date, provided that the same conditions were satisfied. Generally, the conditions under section 1107 are satisfied if:

(1) the plan amendment is made pursuant to a provision of PPA ’06 or regulations thereunder;

(2) the plan amendment is adopted no later than the plan’s section 1107 date; and

(3) the plan is operated as if the plan amendment were in effect during the period beginning on the effective date of the amendment and ending on the plan’s section 1107 date or, if earlier, the date the amendment is adopted.

A plan is not treated as failing to be operated in accordance with its terms during the period described in (3), provided that the conditions in (1) through (3) are met.

Section 401(b) provides a period during which a plan may be amended retroactively to comply with the Code’s qualification requirements. Section 1.401(b)–1 describes “disqualifying provisions” that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. Under § 1.401(b)–1(b)(3), the term “disqualifying provisions” includes a plan provision designated by the Commissioner as a disqualifying provision that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements, or (2) is integral to a qualification requirement of the Code that has been changed. Section 1.401(b)–1(f) gives the Commissioner the discretion to extend the remedial amendment period with respect to a disqualifying provision.

Rev. Proc. 2007–44, 2007–2 C.B. 54, provides guidance regarding the timing of plan amendments. Section 5.01 of Rev. Proc. 2007–44 designates as a disqualifying provision any plan provision that (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001, or (2) is integral to a qualification requirement of the Code that has been changed effective after December 31, 2001, but only if the provision is integral to a plan provision that is a disqualifying provision. Section 5.02 of Rev. Proc. 2007–44 clarifies that, for this purpose, a change in a qualification requirement includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin. In addition, for this purpose, a disqualifying provision includes the absence from the plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code.

Section 5.05 of Rev. Proc. 2007–44 provides that, when there are statutory or regulatory changes to the plan qualification requirements that will affect provisions of the written plan document, the adoption of an interim amendment generally will be required by the later of the end of the plan year in which the change is first effective or the due date of the employer’s tax return for the tax year that includes the date the change is first effective. Section 5.07(2) of Rev. Proc. 2007–44 provides an exception from the general deadline for adopting interim amendments. This section provides that the deadline for adopting an interim amendment pursuant to a provision of PPA ’06 or regulations thereunder is a plan’s section 1107 date. This date is also the deadline for adopting a discretionary amendment (within the meaning of section 5.05(2) of Rev. Proc. 2007–44) pursuant to a provision of PPA ’06 or regulations thereunder.

Pursuant to section 6.02 of Rev. Proc. 2007–44, an interim amendment adopted timely and in good faith to correct a disqualifying provision as described in section 5.01 of Rev. Proc. 2007–44 can itself be a disqualifying provision as described in § 1.401(b)–2(b)(1). In this situation, a remedial amendment to correct this second disqualifying provision (that is, the interim amendment which was found to be itself a disqualifying provision) must be adopted by the end of the applicable 5- or 6-year remedial amendment cycle.

Notice 2009–97, 2009–52 I.R.B. 972, extends the deadline for adopting an interim or discretionary plan amendment pursuant to certain sections of the Code that were added or amended by PPA ’06, including § 401(a)(35), to the last day of the first plan year that began on or after January 1, 2010. Continued satisfaction of the operational compliance requirements of section 1107 of PPA’06 was required as a condition of the extension of the deadline for adopting plan amendments. Section 401(b) does not relieve a plan of the requirement to satisfy § 411(d)(6) with respect to any amendment. Notice 2009–97 does not provide relief from the requirements of § 411(d)(6) for plan amendments adopted pursuant to § 401(a)(35) by the extended deadline but after a plan’s section 1107 date.

In certain cases, the deadline to adopt an amendment to satisfy § 401(a)(35) is later than the last day of the first plan year that begins on or after January 1, 2010. For example, assume § 401(a)(35) is first effective with respect to a single employer calendar year ESOP on January 1, 2015, because the employer securities held by the ESOP first become readily tradable on an established securities market in the last quarter of 2014. In this case, the deadline to adopt an amendment to the plan to satisfy § 401(a)(35) is the later of December 31, 2015, or the due date of the employer’s tax return for the tax year that includes January 1, 2015. The amendment must also satisfy the requirements of § 411(d)(6).

III. Relief from the Anti-cutback Requirements of § 411(d)(6)

In the case of an ESOP that satisfies the diversification requirements of § 401(a)(28)(B) by distributing a portion of the participant’s account in accordance with § 401(a)(28)(B)(ii)(I) and that becomes subject to the requirements of § 401(a)(35), a plan amendment to eliminate the distribution option is adopted pursuant to a provision of PPA ’06 if the amendment is effective no earlier than the effective date of § 401(a)(35) with respect to the plan. Thus, under section 1107 of PPA ’06, such an amendment does not cause the plan to fail to satisfy the requirements of § 411(d)(6), provided that the amendment was adopted by the plan's section 1107 date and the other requirements of section 1107 of PPA '06 are met.

The relief from the requirements of § 411(d)(6) under section 1107 of PPA '06 does not apply to amendments adopted after a plan's section 1107 date, including amendments adopted pursuant to § 401(a)(35), regardless of when § 401(a)(35) is first effective with respect to the plan. The exceptions described in § 1.411(d)–4, A–2(d), also do not provide relief from the requirements of § 411(d)(6) for such amendments. Thus, without additional relief, a sponsor of an ESOP that is an applicable defined contribution plan might be prevented from amending the plan to eliminate a distribution option that was previously added to the plan to satisfy a requirement that no longer applies to the plan.

The Treasury Department and the Service recognize that additional relief from the requirements of § 411(d)(6) is appropriate. Accordingly, pursuant to § 1.411(d)–4, A–2(d)(4), an amendment to an ESOP that becomes subject to § 401(a)(35) to eliminate a distribution option previously provided to satisfy § 401(a)(28)(B)(i) does not cause the plan to fail to satisfy the requirements of § 411(d)(6) notwithstanding that the amendment is adopted after the plan's section 1107 date, but only if the amendment satisfies the conditions for relief under this notice. An amendment satisfies the conditions for relief under this notice if (i) the amendment is both adopted and put into effect under the plan by the last day of the first plan year beginning on or after January 1, 2013, or by the deadline for adopting an interim amendment to the plan to satisfy § 401(a)(35), if later, and (ii) the requirements of section 1107 of PPA '06 are met with respect to the amendment (other than the requirement that the amendment be adopted by the plan's section 1107 date). Such an amendment may, in certain cases (such as if the plan includes elective contributions under § 401(k)), be necessary to satisfy other qualification requirements.

IV. Extension of Deadline for Certain Amendments

An ESOP that satisfies the diversification requirements of § 401(a)(28)(B) by distributing a portion of the participant's account in accordance with § 401(a)(28)(B)(ii)(I) is not prevented from making the distribution by the rules under § 401(a) or § 401(k)(2)(B) and § 1.401(k)–1(d) that restrict the distribution of plan benefits. In contrast, an ESOP that becomes subject to § 401(a)(35), and that therefore ceases to be subject to § 401(a)(28)(B), must comply with the restrictions on distributions that apply before termination of employment (in the case of a pension plan), before the occurrence of certain other events (in the case of a profit-sharing or stock bonus plan), or before one of the events specified in § 401(k)(2)(B)(i) (in the case of amounts attributable to elective contributions and certain other amounts under a qualified cash or deferred arrangement). Thus, with respect to an ESOP that was subject to the requirements of § 401(a)(28)(B) and becomes an applicable defined contribution plan that is subject to the requirements of § 401(a)(35), a provision of the plan that allows a distribution to be made before the termination of employment (in the case of a pension plan) or before one of the events specified in § 401(k)(2)(B)(i) (in the case of amounts attributable to elective contributions and certain other amounts under a qualified cash or deferred arrangement) is a disqualifying provision. Under § 401(b) and this notice, such a disqualifying provision will not cause a plan to be disqualified provided that a remedial amendment is adopted and put into effect under the plan within the remedial amendment period.

As provided in Rev. Proc. 2007–44 and Notice 2009–97, with respect to an ESOP subject to the requirements of § 401(a)(35), an interim amendment implementing those requirements was required to be adopted by the last day of the first plan year that began on or after January 1, 2010 (unless a later interim amendment deadline applies to the plan because § 401(a)(35) is first effective with respect to the plan after the PPA '06 effective date). This notice does not further extend the remedial amendment period for adopting such an interim amendment. However, for a plan that adopted such an interim amendment and that did not eliminate the distribution option described in § 401(a)(28)(B)(ii)(I), section 6.02 of Rev. Proc. 2007–44 provides that the remedial amendment period for the interim amendment extends until the end of the applicable 5- or 6-year remedial amendment cycle.

For example, assume the following facts. An ESOP that includes a qualified cash or deferred arrangement satisfies the diversification requirements of § 401(a)(28)(B) by distributing a portion of the participant's account attributable to elective contributions in accordance with § 401(a)(28)(B)(ii)(I). The ESOP's remedial amendment cycle is Cycle A. The ESOP becomes subject to § 401(a)(35) on January 1, 2007, and is timely amended to satisfy § 401(a)(35) by the last day of the first plan year beginning on or after January 1, 2010. The amendment to satisfy § 401(a)(35) does not eliminate the distribution option that was provided to satisfy § 401(a)(28)(B). Because the plan has ceased to be subject to § 401(a)(28)(B), however, the distribution option is prohibited by the rules under § 401(k)(2)(B) and § 1.401(k)–1(d) and results in a disqualifying provision. Under section 6.02 of Rev. Proc. 2007–44, the remedial amendment period for this disqualifying provision extends until the end of the applicable 5- or 6-year remedial amendment cycle. In this case, but for the further extension provided under the next paragraph of this notice, the remedial amendment period during which the ESOP must be amended to eliminate the prohibited distribution option would end on January 31, 2012, that is, the end of the plan's 5-year cycle (Cycle A) in which the remedial amendment period would otherwise expire.

If, as in the preceding example, the remedial amendment period with respect to the interim amendment that implements the requirements of § 401(a)(35) (*i.e.*, the end of the plan's applicable 5- or 6-year remedial amendment cycle) expires prior to the ending date of the § 411(d)(6) relief granted by this notice for a plan amendment that eliminates the distribution option described in § 401(a)(28)(B)(ii)(I), this notice provides an extension of the remedial amendment period to enable a plan to adopt such an amendment for which § 411(d)(6) relief is granted. Accordingly, with respect to a subsequent plan amendment that eliminates the distribution option described in § 401(a)(28)(B)(ii)(I), the remedial amendment period provided under section 6.02 of Rev. Proc. 2007–44 is hereby extended until the last day of the first plan year beginning on or after January 1, 2013, if that remedial amendment period would otherwise expire at an earlier date. Thus, pursuant to this notice, with respect to an ESOP that is subject to § 401(a)(35), a plan provision that provides for a distribution option described in § 401(a)(28)(B)(ii)(I) will not cause the plan to be disqualified if a plan amendment eliminating the distribution option is both adopted and effective by the last day of the first plan year beginning on or after January 1, 2013 (or, if later, by the deadline for adopting an interim amendment to the plan to satisfy § 401(a)(35)).

If the remedial amendment period with respect to the interim amendment that implements the requirements of § 401(a)(35) expires after the ending date of the § 411(d)(6) relief granted by this notice for a plan amendment that eliminates the distribution option described in § 401(a)(28)(B)(ii)(I), the amendment must be both adopted and effective by the end of the period during which the § 411(d)(6) relief applies.

Drafting Information

The principal author of this notice is James P. Flannery of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to *retirementplanquestions@irs.gov.*

Beginning of Construction for Purposes of the Renewable Electricity Production Tax Credit and Energy Investment Tax Credit

Notice 2013–29

SECTION 1. PURPOSE

Under the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (ATRA), a qualified facility (as described in section 45(d) of the Internal Revenue Code) will be eligible to receive the renewable electricity production tax credit (PTC) under section 45, or the energy investment tax credit (ITC) under section 48 in lieu of the PTC, if construction of such facility begins before January 1, 2014. This notice provides guidelines and a safe harbor to determine when construction has begun on such a facility.

SECTION 2. BACKGROUND

A taxpayer can claim a PTC with respect to electricity produced at a "qualified facility" within the meaning of section 45(d). If the taxpayer makes an election under section 48(a)(5), the taxpayer may instead claim an ITC with respect to that facility. Prior to ATRA, to be a qualified facility, a facility was required to be placed in service before January 1, 2014, except for qualified wind facilities, which had to be placed in service before January 1, 2013. Section 407 of ATRA modified section 45 by extending the PTC for wind facilities through 2013. ATRA also modified the definition of qualified facility by replacing the requirement to place a facility in service before January 1, 2014, with the requirement to begin construction of a facility before January 1, 2014. For purposes of sections 45(d) and 48(a)(5), qualified facilities include wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal facilities, landfill gas facilities, trash facilities, hydropower facilities, and marine and hydrokinetic facilities.

SECTION 3. METHODS FOR ESTABLISHING BEGINNING OF CONSTRUCTION

This notice provides two methods that a taxpayer may use to establish that construction of a qualified facility has begun. A taxpayer may establish the beginning of construction by starting physical work of a significant nature as described in section 4. Alternatively, a taxpayer may establish the beginning of construction by meeting the safe harbor provided in section 5 (Safe Harbor). Although a taxpayer may satisfy both methods, a taxpayer need only satisfy one method to establish that construction of a facility has begun for the purpose of qualifying for the PTC or ITC.

SECTION 4. PHYSICAL WORK

.01 *In general*. Construction of a qualified facility begins when physical work of a significant nature begins. Work performed by the taxpayer and work performed for the taxpayer by other persons under a binding written contract that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in the taxpayer's trade or business (or for the taxpayer's production of income) is taken into account in determining whether construction has begun. Whether a taxpayer has begun construction of a facility before January 1, 2014, will depend on the relevant facts and circumstances. The Internal Revenue Service will closely scrutinize a facility, and may determine that construction has not begun on a facility before January 1, 2014, if a taxpayer does not maintain a continuous program of construction as determined under section 4.06.

.02 *Physical work of a significant nature*. Both on-site and off-site work (performed either by the taxpayer or by another person under a binding written contract) may be taken into account for purposes of demonstrating that physical work of a significant nature has begun. For example, in the case of a facility for the production of electricity from a wind turbine, on-site physical work of a significant nature begins with the beginning of the excavation for the foundation, the setting of anchor bolts into the ground, or the pouring of the concrete pads of the foundation. If the facility's wind turbines and tower units are to be assembled on-site from components manufactured off-site by a person other than the taxpayer and delivered to the site, physical work of a significant nature begins when the manufacture of the components begins at the off-site location, but only if (i) the manufacturer's work is done pursuant to a binding written contract (as described in section 4.03(1)) and (ii) these components are not held in the manufacturer's inventory (as described in section 4.02(2)). If a manufacturer produces components for multiple facilities, a reasonable method must be used to associate individual components with particular facilities.

(1) *Preliminary activities*. Physical work of a significant nature does not include preliminary activities, even if the cost of those preliminary activities is prop-

erly included in the depreciable basis of the facility. Preliminary activities include planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, clearing a site, test drilling of a geothermal deposit, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings and foundations). Removal of existing turbines and towers is preliminary work and, therefore, does not constitute physical work of a significant nature with respect to the facility.

(2) *Inventory*. Physical work of a significant nature does not include work (performed either by the taxpayer or by another person under a binding written contract) to produce property that is either in existing inventory or is normally held in inventory by a vendor.

.03 *Construction by contract*. For property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract (as described in section 4.03(1)), the work performed under the contract is taken into account in determining when physical work of a significant nature begins, provided the contract is entered into prior to the work taking place.

(1) *Binding written contract*. A contract is binding only if it is enforceable under local law against the taxpayer or a predecessor and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least five percent of the total contract price will not be treated as limiting damages to a specified amount. For additional guidance regarding the definition of a binding contract, see § 1.168(k)–1(b)(4)(ii)(A)–(D).

(2) *Master contract*. If a taxpayer enters into a binding written contract for a specific number of components to be manufactured, constructed, or produced for the taxpayer by another person under a binding written contract (a "master contract"), and then through a new binding written contract (a "project contract") the taxpayer assigns its rights to certain components to an affiliated special purpose vehicle that will own the facility for which such property is to be used, work performed with respect to the master contract may be taken into account in determining when physical work of a significant nature begins with respect to the facility.

.04 *Facility* — (1) *In general*. A facility (within the meaning of section 45(d)) generally includes all components of property that are functionally interdependent. Components of property are functionally interdependent if the placing in service of each of the components is dependent upon the placing in service of each of the other components in order to generate electricity. For example, on a wind farm for the production of electricity from wind energy, an electricity-generating wind turbine, its tower, and its supporting pad comprise a single facility. Each such facility can be separately operated and metered and can begin producing electricity separately. *See* Rev. Rul. 94–31, 1994–1 C.B. 16.

(2) *Single project*. Solely for purposes of determining whether construction of a facility has begun for purposes of sections 45 and 48, multiple facilities that are operated as part of a single project (along with any property, such as a computer control system, that serves some or all such facilities) will be treated as a single facility. Whether multiple facilities are operated as part of a single project will depend on the relevant facts and circumstances. Factors indicating that multiple facilities are operated as part of a single project include, but are not limited to:

(a) The facilities are owned by a single legal entity;

(b) The facilities are constructed on contiguous pieces of land;

(c) The facilities are described in a common power purchase agreement or agreements;

(d) The facilities have a common intertie;

(e) The facilities share a common substation;

(f) The facilities are described in one or more common environmental or other regulatory permits;

(g) The facilities were constructed pursuant to a single master construction contract; and

(h) The construction of the facilities was financed pursuant to the same loan agreement.

(3) *Example*. X is developing a wind farm that will consist of 50 turbines, their associated towers, their supporting pads, a computer system that monitors and controls the turbines, and associated power conditioning equipment. The entire wind farm will be connected to the power grid through a single intertie, and power generated by the wind farm will be sold to a local utility through a single power purchase agreement. In 2013, for 10 of the 50 turbines, X excavates the site for the foundations of the wind turbines and pours concrete for the supporting pads. Thereafter, X completes the construction of all 50 turbines and related facilities pursuant to a continuous program of construction (as determined under section 4.06). For purposes of sections 45 and 48, the entire wind farm is a single project that will be treated as a single facility, and X has performed physical work of a significant nature that constitutes the beginning of construction of that facility in 2013.

.05 *Property integral to the facility* — (1) *In general*. Only physical work of a significant nature on tangible personal property and other tangible property used as an integral part of the activity performed by the facility will be considered for purposes of determining whether a taxpayer has begun construction of a facility. This includes property integral to the production of electricity, but does not include property used for electrical transmission. Thus, physical work on a transmission tower located at the site is not physical work of a significant nature because the transmission is not an integral part of the activity performed by the facility. However, physical work on a custom-designed transformer that steps up the voltage of electricity produced at the facility to the voltage needed for transmission is physical work of a significant nature with respect to the facility because power conditioning equipment is an integral part of the activity performed by the facility.

(2) *Roads*. Roads that are integral to the facility are integral to the activity performed by the facility; these include onsite roads that are used for moving materials to be processed (for example, biomass) and roads for equipment to operate and maintain the qualified facility. Starting construction on these roads constitutes physical work of a significant nature with respect to the facility. Roads primarily for access to the site, or roads used primarily for employee or visitor vehicles are not integral to the activity performed by the facility; physical work of a significant nature

on these roads is not considered for purposes of determining whether a taxpayer has begun construction of a facility.

(3) *Fencing*. Generally, fencing is not an integral part of the facility because it is not integral to the activity performed by the facility.

(4) *Buildings*. Generally, buildings are not integral parts of the facility because they are not integral to the activity of the facility. However, the following structures are not treated as buildings for this purpose: (1) a structure that is essentially an item of machinery or equipment, or (2) a structure that houses property that is integral to the activity of the facility if the use of the structure is so closely related to the use of the housed property that the structure clearly can be expected to be replaced when the property it initially houses is replaced. *See* Treas. Regs. § 1.48–1(e)(1).

.06 *Continuous construction* — (1) *In general*. A continuous program of construction involves continuing physical work of a significant nature (as described in section 4.02). Whether a taxpayer maintains a continuous program of construction will be determined by the relevant facts and circumstances.

(2) *Construction disruptions*. Certain disruptions in the taxpayer's construction of a facility that are beyond the taxpayer's control will not be considered as indicating that a taxpayer has failed to maintain a continuous program of construction. Examples of such disruptions include, but are not limited to:

(a) severe weather conditions;

(b) natural disasters;

(c) licensing and permitting delays;

(d) delays at the written request of a state or federal agency regarding matters of safety, security, or similar concerns;

(e) labor stoppages;

(f) inability to obtain specialized equipment of limited availability;

(g) the presence of endangered species;

(h) financing delays of less than six months; and

(i) supply shortages.

SECTION 5. SAFE HARBOR

.01 *In general*. Construction of a facility will be considered as having begun before January 1, 2014, if (1) a taxpayer pays or incurs (within the meaning of Treas. Reg. § 1.461–1(a)(1) and (2)) five percent or more of the total cost of the facility, except as provided in section 5.01(2), before January 1, 2014, and (2) thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility (as determined under section 5.02).

(1) *Total cost of the facility*. All costs properly included in the depreciable basis of the facility are taken into account to determine whether the Safe Harbor has been met. The total cost of the facility does not include the cost of land or any property not integral to the facility, as described in section 4.05(1).

(2) *Look-through for economic performance*. Solely for purposes of this notice, for property that is manufactured, constructed, or produced for the taxpayer by another person under a binding written contract with the taxpayer, costs incurred with respect to the property by the other person before the property is provided to the taxpayer are deemed incurred by the taxpayer when the costs are incurred by the other person under the principles of section 461.

(3) *Example*. In 2013, accrual-method taxpayer W enters into a binding written contract with A pursuant to which W will provide a wind turbine to A in June 2015. In 2013, W pays Y pursuant to a contract for Y to provide parts in May 2014 for use in the wind turbine. W's employees provide W with services necessary to design and plan for the production of the wind turbine in 2013 and with services to manufacture (assemble) the wind turbine in 2015. W incurs the cost to design and plan for the production of the turbine assembly in 2013, incurs the costs for the parts in May 2014 when Y delivers the parts to W (even though the parts were paid for in 2013), and incurs the costs for W's employees to manufacture the wind turbine in 2015. *See* § 1.461–4(d) and § 1.446–1(c)(1)(ii). The costs W incurred in 2013 for its employees' performance of turbine design and planning activities are costs deemed incurred by A before January 1, 2014, for purposes of the Safe Harbor. The other costs in this example were incurred by W in 2014 and 2015 and are costs that A includes in the total cost of the facility, but these other costs were not deemed incurred by A before January 1, 2014.

.02 *Continuous efforts* — (1) *In general*. Whether a taxpayer makes continuous efforts to advance towards completion of the facility will be determined by the relevant facts and circumstances. Facts and circumstances indicating continuous efforts to advance towards completion of the facility may include, but are not limited to:

(a) paying or incurring additional amounts included in the total cost of the facility;

(b) entering into binding written contracts for components or future work on construction of the facility;

(c) obtaining necessary permits; and

(d) performing physical work of a significant nature (as described in section 4.02).

(2) *Disruptions to continuous efforts*. Certain disruptions in the taxpayer's continuous efforts to advance towards completion of the facility that are beyond the taxpayer's control will not be considered as indicating that a taxpayer has failed to make continuous efforts to advance towards completion of the facility. Examples of such disruptions include, but are not limited to:

(a) severe weather conditions;

(b) natural disasters;

(c) licensing and permitting delays;

(d) delays at the written request of a state or federal agency regarding matters of safety, security, or similar concerns;

(e) labor stoppages;

(f) inability to obtain specialized equipment of limited availability;

(g) the presence of endangered species;

(h) financing delays of less than six months; and

(i) supply shortages.

.03 *Cost overruns* — (1) *Single project*. If the total cost of a facility that is a single project comprised of multiple facilities (as described in section 4.04(2)) exceeds its anticipated total cost, so that the amount a taxpayer actually paid or incurred with respect to the facility before January 1, 2014, is less than five percent of the total cost of the facility at the time the facility is placed in service, the Safe Harbor is not fully satisfied. However, the Safe Harbor will be satisfied and the PTC or ITC may be claimed with respect to some, but not all, of the individual facilities (as described in section 4.04(1)) comprising the single project, as long as the total aggregate cost of those individual facilities is not more than twenty times greater than the amount the taxpayer paid or incurred before January 1, 2014 (see Example 1 in section 5.03(3)(a)).

(2) *Single facility*. If the total cost of a single facility that is not a single project comprised of multiple facilities (as described in section 4.04(2)), and cannot be separated into smaller facilities, exceeds its anticipated total cost so that the amount a taxpayer actually paid or incurred with respect to the facility before January 1, 2014, is less than five percent of the total cost of the facility at the time the facility is placed in service, then the taxpayer will not satisfy the Safe Harbor with respect to any portion of the facility.

(3) *Examples* — (a) *Example 1*. A taxpayer incurs $25,000 in costs in 2013 constructing a five-turbine wind farm that will be operated as a single project (as described in section 4.04(2)), anticipating that each turbine (including its own tower and pad) will cost $100,000 for a total cost for the facility of $500,000. Thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility. At the time the taxpayer places the wind farm in service, the actual total cost of the facility amounts to $600,000, with each turbine costing $120,000. Although the taxpayer did not pay or incur five percent of the actual total cost of the facility before January 1, 2014, the taxpayer will be treated as satisfying the Safe Harbor with respect to four of the turbines, as their actual total cost of $480,000 is not more than twenty times greater than the $25,000 in costs incurred by the taxpayer in 2013. Thus, the taxpayer may claim the PTC on electricity produced from four of the turbines, or the ITC based on $480,000, the cost of four of the turbines. Alternatively, if construction of the facility began (within the meaning of section 4.01) before January 1, 2014, the taxpayer may be able to claim the PTC or the ITC with respect to the entire facility (all five turbines).

(b) *Example 2*. A taxpayer incurs $25,000 in costs in 2013 in constructing an open-loop biomass facility, anticipating that the total cost of the facility, including one boiler and one turbine generator, will be $500,000. The boiler and turbine generator are functionally interdependent. Thereafter, the taxpayer makes continuous efforts to advance towards completion of the facility. At the time the taxpayer places the facility in service, its actual total cost amounts to $600,000. Because the boiler and turbine generator are a single facility that is not a single project comprised of multiple facilities (as described in section 4.04(2)), the taxpayer will not satisfy the Safe Harbor. However, if construction of the facility began (within the meaning of section 4.01) before January 1, 2014, the taxpayer may be able to claim the PTC or the ITC with respect to the entire facility.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Brian J. Americus of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Brian J. Americus on (202) 622–3110 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

American Jobs Creation Act Modifications to Section 6708, Failure to Maintain List of Advisees With Respect to Reportable Transactions

REG–160873–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the penalty under section 6708 of the Internal Revenue Code for failing to make available lists of advisees with respect to reportable transactions. Section 6708 imposes a penalty upon material advisors for the failure to make available to the Secretary, upon written request, lists required by section 6112 within the time prescribed by section 6708(a)(1). These proposed regulations reflect changes to section 6708 made by the American Jobs Creation Act of 2004 and provide guidance regarding the imposition of the section 6708 penalty on material advisors who are required to maintain lists of advisees pursuant to section 6112. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 6, 2013. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 2, 2013 at 10:00 A.M. must be received by June 10, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–160873–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LDP:PR (REG–160873–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–160873–04). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Emily M. Lesniak at (202) 622–4910; concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 7, 2013. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information or of the certification contained under the heading "Special Analyses";

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

How the burden of complying with the proposed collection of information may be minimized; and

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

The collection of information in this proposed regulation is in §301.6708–1(c)(3)(ii). This information is required for the IRS to determine whether good cause exists to allow a person affected by these regulations an extension of the legislatively established 20-business-day period to furnish a lawfully requested list to the IRS. The collection of information is voluntary to obtain a benefit. The likely respondents are persons (individuals and entities) who qualify as material advisors, as defined in section 6111, who are unable to respond to a valid and statutorily authorized section 6112 list request within the statutory period of time provided by section 6708.

Estimated total annual reporting burden: 200 hours.

Estimated average annual burden hours per respondent: 8 hours.

Estimated number of respondents: 25.

Estimated annual frequency of responses: on occasion.

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

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

Background

This document contains proposed amendments to 26 CFR part 301 relating to the section 6708 penalty for failing to make available, as required by section 6112, lists of advisees with respect to reportable transactions. Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions and to make that information available to the Secretary upon written request.

Section 6708 was added to the Internal Revenue Code by the Deficit Reduction Act of 1984 (Public Law 98–369, 98 Stat. 680). At that time, section 6708 imposed a penalty on each organizer or seller of a potentially abusive tax shelter who failed to meet the requirements of section 6112 unless the person showed that the failure occurred as a result of reasonable cause and not as a result of willful neglect. The amount of the penalty was $50 for each person who was sold an interest in a tax shelter and whose name (or other required information) was not listed or maintained pursuant to the requirements of section 6112. The maximum penalty imposed was $50,000 for each tax shelter for a calendar year. Treasury Reg. §301.6708–1T was issued shortly after section 6708 became law. Subsequently, the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2090) increased the maximum calendar year penalty to $100,000.

The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (AJCA), was enacted on October 22, 2004. AJCA section 817 amended section 6708, significantly increasing the amount of the penalty and eliminating the maximum calendar-year limit on the penalty. As amended by the AJCA, section 6708 imposes a penalty on a person required to maintain a list under section 6112 (a "material advisor") who fails to make the list available to the IRS upon written request. Under section 6708(a)(1), if a material advisor fails to comply with a written request for the section 6112 list within 20 business days after the request is made, the material advisor is subject to a penalty in the amount of $10,000 for each day of the failure after the 20th business day. Under section 6708(a)(2), the penalty will not be imposed on any day that the failure is due to reasonable cause. There is no statutory limitation to the amount of the penalty that can be imposed under section 6708. Section 6708(b) provides that the penalty imposed under section 6708(a) shall be in addition to any other penalty provided by law. Section 6708, as amended, is effective for requests made after October 22, 2004, and it encompasses requests made for lists required to be maintained under section 6112 before section 6112 was amended by the AJCA.

To implement the pertinent provisions of the AJCA, the Treasury Department and IRS issued Notice 2004–80, 2004–2 C.B. 963 (see §601.601(d)(2)(ii)(b)), which provided interim guidance relating to section 6708, as well as section 6112. With respect to section 6708, Notice 2004–80 provides that the 20-business-day period within which a person must provide the list required to be maintained under section 6112 shall begin on the first business day following the earlier of the date that the IRS: (1) mails a request for the list by certified or registered mail to the last known address of the material advisor required to maintain the list; or (2) hand-delivers the written request in person. The Treasury Department and IRS also issued interim guidance relating to section 6112 in Notice 2005–17, 2005–1 C.B. 606; Notice 2005–22, 2005–1 C.B. 756; and Notice 2006–6, 2006–1 C.B. 385. On July 31, 2007, the Treasury Department and IRS issued final regulations under section 6112 (TD 9352) replacing the interim guidance relating to section 6112. The Treasury Department and IRS have received various comments and questions regarding the application of section 6708 as amended by the AJCA. Consequently, after consideration of these comments and questions, the Treasury Department and IRS are publishing proposed rules reflecting the AJCA amendments to section 6708.

Explanation of Provisions

Proposed §301.6708–1(a) provides that, in general, section 6708 imposes a penalty of $10,000 per day for the failure of a person required to maintain a list under section 6112 to furnish the list to the IRS, upon written request, within 20 business days after the date of the request, absent reasonable cause.

Proposed §301.6708–1(b) provides that the 20-business-day period begins on the first business day following the earlier of the date that the IRS: (1) mails the request for the section 6112 list by certified or registered mail to the person required to maintain the list; (2) hand delivers the request for the section 6112 list directly to the person; or (3) leaves the request for the section 6112 list at the last and usual place of abode or usual place of business of the person. Proposed §301.6708–1(c) provides that the person may make the requested list available to the IRS as required by section 6112 by delivering it to the IRS by either hand delivery, the U.S. mail, a private delivery service, or by arranging with the IRS to produce the list by another agreed-upon method within the 20-business-day period following the list request.

The Treasury Department and the IRS believe that there are situations in which it is necessary to permit an extension of the 20-business-day response period. Proposed §301.6708–1(c)(3) permits the IRS to grant an extension, at its discretion, if prior to the expiration of the 20-business-day period, the person establishes that the person cannot reasonably meet the 20-business-day deadline despite diligent efforts to maintain the materials constituting a list and to make that list available to the IRS in the time and manner required by the Secretary under section 6112. The proposed regulations explain how to request an extension and discuss the various factors that the IRS will consider in determining whether to grant the person's extension request. The IRS may, in its discretion, grant the person's extension request in full or in part. The failure of the IRS to grant the person's extension request in full or in part may not be reviewed in any judicial proceeding.

The conference report accompanying the enactment of the AJCA amendments to section 6708 describes the penalty as a "time-sensitive penalty," and, accordingly, no extensions will be granted where the IRS determines that a significant reason for the extension request is to delay production of the list. See H.R. Rep. No. 108–755, 108th Cong., 2d Sess., at 597. In this regard, §301.6708–1(c)(3)(ii) of the proposed regulations requires persons seeking extensions to affirmatively state that the extension request is not made for purposes of avoiding the person's list maintenance obligations imposed by section 6112 and its corresponding regulations. The Treasury Department and IRS believe that the time-sensitive nature of the penalty, in addition to the IRS's need for the section 6112 information in a timely manner, supports the position that extensions, when granted, will generally be granted for a short time period. Persons who are required to maintain a list under section 6112 are required and expected to maintain the list in a readily accessible form. See Treas. Reg. §301.6112–1(d).

Accordingly, the Treasury Department and the IRS do not expect that extensions should be routinely requested or granted. The grant of an extension of the 20-business-day response period will be warranted only in situations when the person requesting the extension establishes to the satisfaction of the IRS good cause for why the deadline cannot be reasonably met despite diligent efforts to comply with section 6112. The IRS will adhere to the guidance in these proposed regulations regarding extensions pending the publication of final regulations addressing the matter.

The conference report accompanying the AJCA modifications to the section 6708 penalty provides that the "penalty applies to a person who fails to maintain a list, maintains an incomplete list, or has in fact maintained a list but does not make the list available to the Secretary." H.R. Rep. No. 108–755, 108th Cong., 2d Sess., at 598. Consistent with the legislative history of the AJCA, a failure to furnish the list that triggers the imposition of the section 6708 penalty may take various forms. Proposed §301.6708–1(d) provides that a failure for purposes of section 6708 includes the failure to furnish a list in a timely manner and in the form required under section 6112 and its corresponding regulations. Regarding the determination of whether the list is furnished in the form required under section 6112 and its corresponding regulations, the Treasury Department and the IRS recognize that they have issued several regulations under section 6112 and that the description of the required contents of a list maintained under section 6112 has varied over time. The Treasury Department and the IRS intend that the description of the contents of the list that is used for purposes of this penalty is the description required by section 6112 (and any corresponding regulations) that was in effect on the date the material advisor's list preparation and maintenance requirement arose with respect to the reportable transaction.

The IRS will make reasonable efforts to review responses submitted under section 6112 and inform the person of any potential or identified failures in the person's response on a timely basis. If the person's response is determined to be incomplete, or untimely, the IRS may impose the section 6708 penalty on a daily basis, consistent with section 6708(a) and proposed §301.6708–1(e). Proposed §301.6708–1(e) provides that the section 6708 penalty accrues on a daily basis, absent reasonable cause, beginning on the first calendar day after the expiration of the 20-business-day period following a written list request, and continues for each calendar day until, and including, the day the person furnishes a list that complies with the requirements of section 6112 and its corresponding regulations. If the IRS grants an extension of the 20-business-day period, proposed §301.6708–1(e)(2) provides that the section 6708 penalty accrues on a daily basis, absent reasonable cause, beginning on the first calendar day after the expiration of the extension period, and continues each calendar day thereafter until, and including, the day the person furnishes a list that complies with the requirements of section 6112 and its corresponding regulations.

Proposed §301.6708–1(e)(3) provides guidance on the obligations of, and assessment of penalties against, a material advisor when more than one material advisor provided advice on a particular transaction and the material advisors are parties to a designation agreement pursuant to section 6112 and its corresponding regulations.

The section 6708 penalty will not be imposed for any day for which the material advisor establishes that there was reasonable cause for the failure to make the list available. Proposed §§301.6708–1(g) and (h) describe reasonable cause for purposes of the section 6708 penalty. Reasonable cause is determined on a day-by-day and case-by-case basis, taking into account all the relevant facts and circumstances. The material advisor against whom the penalty is imposed has the burden of proving that reasonable cause exists for a specific day or days. Facts and circumstances relevant to a material advisor's reasonable cause for failing to provide the list on a specific day include facts and circumstances arising subsequent to the request for the list and the material advisor's response to the request. Thus, if the material advisor establishes reasonable cause, the IRS will abate the penalty completely or for the period to which the established reasonable cause relates, which may be for a specific day, days, or the entire period. Proposed §301.6708–1(g)(6) provides examples involving reasonable cause.

Because reasonable cause can be shown to exist in situations involving a variety of facts and circumstances, the proposed regulations include a nonexclusive list of categories of reasonable cause factors that the IRS will consider. Pursuant to proposed §301.6708–1(g)(2), the most important factors in a reasonable cause analysis are those that reflect the extent of the material advisor's good-faith efforts to timely and fully comply with section 6112. Proposed §301.6708–1(g)(3) provides that the exercise of ordinary business care by a material advisor may constitute reasonable cause, but only where the material advisor shows that it took immediate steps to correct any failure upon its discovery. A material advisor's failure to take immediate steps to correct a failure shall be a factor weighing against a finding that the material advisor exercised ordinary business care.

Proposed §301.6708–1(g)(4) provides that reasonable cause may exist if a failure is due solely to a supervening event, such as illness, theft, fire, flood, storm, or other similar, unexpected event that is beyond the material advisor's control and that prevents the material advisor from making the list available pursuant to the requirements of section 6112.

Proposed §301.6708–1(g)(5) provides that reasonable cause may be established if the material advisor relied on the advice of an "independent tax professional" as defined in the proposed regulations. The proposed regulations explain that the reliance on an independent tax professional's advice must be reasonable and in good faith, and will be viewed in light of all the relevant facts and circumstances. In addition to other factors described in the regulations, the advice must be received by the person prior to the time that the list is required to be furnished to the IRS. If the person received advice from an independent tax professional, the person's reliance on that advice will be considered reasonable only if the independent tax professional expressed a reasonable belief that it is more likely than not that the person is compliant with section 6112 or does not have an obligation imposed by section 6112. Advice from a nonindependent tax professional may be considered in conjunction with all other relevant facts and circumstances but by itself is not sufficient to establish reasonable cause.

Proposed §301.6708–1(h) describes additional reasonable cause factors that are applicable in limited factual circumstances. Proposed §301.6708–1(h)(1) provides that if a material advisor dissolves, is liquidated, or is otherwise no longer in existence, the IRS will consider facts surrounding the winding up of the business of the material advisor as well as any efforts made by the material advisor to comply with section 6112 prior to its dissolution or liquidation when considering whether a successor material advisor has reasonable cause for any failure.

If the material advisor establishes that it acted in good faith (within the meaning of proposed §301.6708–1(g)(2)) in its efforts to fully comply with the requirements of section 6112, the material advisor will have reasonable cause for the days between when the material advisor provided the list to the IRS and when the IRS reviews the list. If the material advisor does not establish that it acted in good faith, the IRS will not consider the time taken by the IRS to review a list or inform a material advisor of identified failures as a factor in determining whether the material advisor has reasonable cause for that period.

Proposed §301.6708–1(h)(3) provides examples to illustrate when a material advisor has acted in good faith.

Proposed Effective Date

The regulations, as proposed, apply to all written requests made after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register** for lists required to be maintained under section 6112, including lists persons were required to maintain under section 6112(a) as in effect before October 22, 2004, the date of enactment of the AJCA. The rules in these proposed regulations may be relied upon by persons required to maintain a list under section 6112 regarding list requests made before the publication of the Treasury decision.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 13563. 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 the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described above under the heading "Paperwork Reduction Act" only affects persons who qualify as material advisors as defined in section 6111, who are statutorily required by section 6112 to maintain and furnish the underlying documents and information upon which the collection of information is based, and who are unable to meet the section 6708 statutorily provided period of time for furnishing these documents and information. Moreover, requiring those persons to report the information described above imposes only a minimal burden in time or expense. 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 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 business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS specifically request comments on the clarity of the proposed regulations and on how they can be made easier to understand. All comments submitted by the public will be made available for public inspection and copying.

A public hearing has been scheduled for July 2, 2013, beginning at 10:00 A.M. in the Auditorium (7th Floor) of the Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by June 6, 2013 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 10, 2013. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Lawrence E. Mack, Office of the Associate Chief Counsel (Procedure and Administration).

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301 — PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6708–1 also issued under 26 U.S.C. 6708 * * *

Par. 2. Section 301.6708–1 is added to read as follows:

§301.6708–1 Failure to maintain lists of advisees with respect to reportable transactions.

(a) *In general*. Any person who is required to maintain a list under section 6112 who, upon written request for the list, fails to make the list available to the Secretary within 20 business days after the date of the request shall be subject to a penalty in the amount of $10,000 for each subsequent calendar day on which the person fails to furnish a list containing the information and in the form required by section 6112 and its corresponding regulations. The penalty will not be imposed on any particular day or days for which the person establishes that the failure to comply on that day is due to reasonable cause.

(b) *Calculation of the 20-business-day period*. The 20-business-day period shall begin on the first business day after the earliest of the date that the IRS —

(1) Mails a request for the list required to be maintained under section 6112(a) by certified or registered mail to the person required to maintain the list;

(2) Hand delivers the written request to the person required to maintain the list; or

(3) Leaves the written request at the last and usual place of abode or usual place of business of the person required to maintain the list.

(c) *Making a list available*—(1) A person who is required to maintain a list required by section 6112 may make the list available by mailing or delivering it to the IRS within 20 business days after the date of the list request. Section 7502 and the regulations thereunder shall apply to this section.

(2) A person who is required to maintain a list required by section 6112 may also make the list available to the IRS by making it available for inspection during normal business hours, as provided by section 6112, or by another agreed-upon method, on an agreed upon date that falls within the 20-business-day period following the list request.

(3) *Extension*. (i) *In general*. Upon a showing of good cause by the person prior to the expiration of the 20-business-day period following a list request, the IRS may, in its discretion, agree to extend the period within which to make all or part of the list available. For purposes of this paragraph, "good cause" is shown if the person establishes that the 20-business-day deadline cannot reasonably be met despite diligent efforts by the person to maintain the materials constituting a list and to make that list available to the IRS in the time and manner required by the Secretary under section 6112.

(ii) *Requesting an extension*. Any request for an extension of the 20-business-day period must be made in writing to the person at the IRS who requested the list. The person requesting an extension must briefly describe the information and documents that comprise the list as required by section 6112, explain the circumstances that would warrant additional time, propose a schedule for the completion of the production of the list, state that to the best of the person's knowledge all information and records relating to the list under the possession, custody, or control of the person have been maintained in accordance with procedures and policies that are consistent with sections 6001 and 6112 of the Internal Revenue Code, and state that the extension request is not being made for purposes of avoiding the person's list maintenance obligations imposed by section 6112 and its corresponding regulations. The IRS may, in its discretion, grant the person's extension request in full or in part. The IRS will consider whether granting an extension may impair its ability to make a timely assessment against any of the participants in the transaction associated with the requested list. No extensions will be granted if the IRS determines that a significant reason for the extension request is to delay production of the list. The failure of the IRS to grant the person's extension request in full or in part may not be reviewed in any judicial proceeding. A pending extension request by itself does not constitute reasonable cause for purposes of section 6708.

(4) *Example*. The following example illustrates paragraph (c)(3)(i) and (ii) of this section:

Example. Firm A is a large law firm that is a material advisor. Firm A conducts annual sessions to educate its professionals about reportable transactions and the obligations of the firm related to those reportable transactions. Firm A instructs its professionals to provide information on tax engagements that involve reportable transactions and to provide the documents required to be maintained under section 6112 to Firm A's compliance officer for list maintenance purposes. Firm A's policy provides that, for each engagement involving a reportable transaction, one firm professional will send an email to the firm's compliance officer about the engagement and then direct a subordinate to send the documents required to be maintained to the firm's compliance officer.

Firm A receives a request from the IRS for a section 6112 list. In compiling its list to turn over to the IRS during the 20-business-day period following the list request, Firm A discovers that, with respect to one reportable transaction, a subordinate did not provide the documentation required by Firm A's policy. In addition, Firm A experiences difficulty locating the required documents as both the professional and the subordinate who worked on the matter are no longer employed by Firm A, requiring the firm to undertake an extensive search of its storage facility for the documents responsive to the list request. Firm A also seeks the materials from the firm's clients, but they are unable to respond timely to the request. Firm A notifies the IRS, in writing, of the difficulties it is experiencing, and provides all other required list information to the IRS, together with a description of the documents that are being searched for at the storage facility, a proposed schedule of production of the documents within 10 business days, and all statements required by these regulations, within the 20-business-day period while it locates the documents for this one engagement.

Under these circumstances, Firm A demonstrated that it could not reasonably make the portion of the list relating to the one engagement, including the documents in the storage facility, available within the 20-business-day period and thus qualified for an extension. Firm A had established procedures reasonably designed and implemented to ensure compliance with the requirements of section 6112. The facts indicate that Firm A made diligent efforts to maintain the materials constituting the list in a readily accessible form and as otherwise required by the Secretary under section 6112. Based on the above, the IRS should grant a 10-business-day extension with respect to the portion of the list including the documents that are located at the storage facility.

(d) *Failure to make list available*. A failure to make the list available includes any failure to furnish the requested list to the IRS in a timely manner and in the form required under section 6112 and its corresponding regulations. Examples of failures to make a list available include instances in which a person fails to furnish any list; furnishes an incomplete list; or furnishes a list, whether or not complete, after the time required by this section.

(e) *Computation of penalty*—(1) *In general*. The penalty imposed by section 6708 accrues daily, beginning on the first calendar day after the expiration of the 20-business-day period following a written list request, and continues for each calendar day thereafter until, and including, the day the person's failure to furnish a list in the form required by section 6112 and its corresponding regulations ends.

(2) *Computation of penalty after grant of extension.* If the IRS grants an extension of the 20-business-day period pursuant to paragraph (c)(3) of this section, the penalty imposed by section 6708 accrues daily, beginning on the first calendar day after the expiration of the extension period, and continues for each calendar day thereafter until, and including, the day the person's failure to furnish a list in the form required by section 6112 and its corresponding regulations ends.

(3) *Designation agreements and concurrent application of penalty*. If material advisors with respect to the same

reportable transaction enter into a designation agreement pursuant to section 6112(b)(2) and §301.6112–1(f), separate penalties shall be imposed upon designated material advisors and nondesignated material advisors who are parties to the designation agreement for their respective periods of failure or noncompliance with a list request. A penalty shall continue to accrue against a material advisor who is a party to a designation agreement until such time when a list complying with the requirements of section 6112 and its corresponding regulations is furnished by that material advisor or any other material advisor who is a party to the designation agreement.

(4) *Example*. The following example illustrates paragraphs (b) through (e) of this section.

Example. The IRS hand delivers a written request for the list required to be maintained under section 6112 to Firm B, a material advisor, on Friday, March 4, 2011. Firm B must make the list available to the IRS on or before Friday, April 1, 2011, the 20th business day after the request was hand delivered. If Firm B fails to make the list available to the IRS by that day, absent reasonable cause or the IRS grant of an extension for the response time, the $10,000-per-day penalty begins on Saturday, April 2, 2011. The $10,000 per day penalty will continue for each subsequent calendar day until Firm B makes the complete list available, except for those days for which Firm B demonstrates reasonable cause. If Firm B hand delivers a complete copy of the requested list to the IRS on the morning of Tuesday, April 5, 2011, absent reasonable cause or the IRS prior grant of an extension for the response time, a penalty of $40,000 will be imposed upon Firm B. See paragraphs (g) and (h) of this section for an explanation of reasonable cause.

(f) *Definitions*. For purposes of this section, the following definitions apply:

(1) *Material advisor* means a person described in section 6111 and §301.6111–3(b).

(2) *Business day* means every calendar day other than a Saturday, Sunday, or legal holiday within the meaning of section 7503.

(3) *Reportable transaction* means a transaction described in section 6707A(c)(1) and section 1.6011–4(b)(1).

(4) *Listed transaction* means a transaction described in section 6707A(c)(2) and §1.6011–4(b)(2) of this chapter.

(g) *Reasonable cause – general applicability*—(1) *Overview*. The section 6708 penalty will not be imposed for any day or days for which the person shows that the failure to make a complete list available to the IRS was due to reasonable cause. The determination of whether a person had reasonable cause is made on a case-by-case and day-by-day basis, taking into account all the relevant facts and circumstances. Facts and circumstances relevant to a material advisor's reasonable cause for failing to provide the list on a specific day include facts and circumstances arising subsequent to the request for the list. The showing of reasonable cause made by the person should relate to each specific day or days for which the person failed to provide the requested list. Reasonable cause includes, but is not limited to, factors identified in paragraphs (g) and (h) of this section.

(2) *Good-faith factors*. The most important factors to establish reasonable cause are those that reflect the extent of the person's good-faith efforts to comply with section 6112. The following factors, which are not exclusive, will be considered in determining whether a person has made a good-faith effort to comply with the requirements of section 6112:

(i) The person's efforts to determine or assess its status as a material advisor as defined by section 6111;

(ii) The person's efforts to determine the information and documentation required to be maintained under section 6112;

(iii) The person's efforts to meet its obligations to maintain a readily-producible list as required by section 6112;

(iv) The person's efforts to make the list available to the IRS within the 20-business-day period (or extended period) following the list request; and

(v) The person's efforts to ensure that the list that is furnished to the IRS is accurate and complete.

(3) *Ordinary business care*. The exercise of ordinary business care may constitute reasonable cause. To show ordinary business care, the person may, for example, show that it established, and adhered to, procedures reasonably designed and implemented to ensure compliance with the requirements of section 6112. In all instances when ordinary business care is claimed as constituting reasonable cause, a person must show that it took immediate steps to correct any failure relating to the list upon its discovery. The failure of a person to take immediate steps to correct a failure related to the list upon the discovery of the failure shall be a factor weighing against a conclusion that the person exercised ordinary business care. Notwithstanding the occurrence of an isolated and inadvertent failure, a person still may be able to demonstrate that the person exercised ordinary business care, considering all the relevant facts and circumstances, but only if the person had established and adhered to procedures reasonably designed and implemented to ensure compliance with the requirements of section 6112.

(4) *Supervening events*. A person may establish reasonable cause for one or more days for which, considering all the relevant facts and circumstances, the failure to timely furnish the list required by section 6112 was due solely to a supervening event beyond the person's control. Events beyond a person's control may include fire, flood, storm, or other casualty; illness; theft; or other similarly unexpected event that damages or impairs the person's relevant business records or system for processing and providing these records, or that affects the person's ability to maintain the section 6112 list or make it available to the IRS. Reasonable cause may be established only for the period that a person who exercised ordinary business care would need to provide the list from alternative records in existence, or make the list available, under the specific facts and circumstances.

(5) *Reliance on opinion or advice*. (i) *In general*. A person may rely on the advice of an independent tax professional to establish reasonable cause. The reliance, however, must be reasonable and in good faith, in light of all the other facts and circumstances. For a person to be considered to have relied on the advice, the advice must have been received by the person prior to the date upon which that person would otherwise have failed to make the list available as required by section 6112 and these regulations. If the person received advice from an independent tax professional, the person's reliance on that advice will be considered reasonable only if the independent tax professional expressed a reasonable belief that it is more likely than not that the person does not have an obligation imposed by section 6112. For example, this advice may conclude that the person is not a material advisor; that the transaction upon which the person provided material aid, assistance, or advice is not a reportable

transaction for which a list was required to be maintained as of the date of the advice; that the information and documents to be produced constitute the required list; or that the information or documents withheld by the person are not required to be produced. The advice must also take into account and consider all relevant facts and circumstances, not rely on unreasonable legal or factual assumptions, not rely on or take into account the possibility that a list request may not be made, and not rely on unreasonable representations or statements of the person seeking the advice. Advice from a nonindependent tax professional may be considered in the determination of reasonable cause in light of and in relation to all the other facts and circumstances, but by itself is not sufficient to establish reasonable cause.

(ii) *Independent tax professional*. For purposes of this section, an independent tax professional is a person who is knowledgeable in the relevant aspects of Federal tax law and who is not a material advisor with respect to the specific transaction that is the subject of the list request. For advice related to a listed transaction, a person who is a material advisor with respect to any transaction that is the same as or substantially similar to the type of transaction that is the subject of the list request will not be considered an independent tax professional.

(6) *Examples*. The following examples illustrate this paragraph (g). These examples are intended to illustrate how the facts and circumstances in paragraphs (g)(2) through (g)(5) of this section may apply; however, in any given case, all of the facts and circumstances must be analyzed.

Example 1. On August 11, 2011, the IRS sends a list request via certified mail to Firm C, a material advisor. Firm C consists of a sole practitioner, X, who is away from the office on vacation on this date. X has arranged for a colleague, Y, to review Firm C's mail, email, and telephone messages daily during his absence. X returns to the office the day after his vacation ends, on September 2, 2011, and immediately contacts the IRS to notify it of his absence. Firm C provides a complete list to the IRS on September 19, 2011, 10 business days after he has returned from vacation. Firm C establishes that X was on vacation at the time the list request was sent to Firm C, and Firm C promptly provided the requested list in a manner and time period reflecting ordinary business care and prudence upon X's return to the office. Under these circumstances, Firm C is considered to have made a good-faith effort to comply with the requirements of section 6112. Firm C has established reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date the list was provided to the IRS. See paragraphs (g)(2) and (3) of this section.

Example 2. On March 3, 2011, the IRS hand delivers to Firm D, a material advisor, a list request related to a transaction believed by the IRS to have been implemented in November 2008 by a group of Firm D's clients (the advisees). Firm D's involvement in the transaction included implementing the transaction on behalf of some but not all of the advisees. Firm D timely provides the requested list to the IRS. Upon review, the IRS determines that the information provided by Firm D appears to be accurate, but the IRS believes that some of the information is incomplete because it does not contain information about certain individuals who were identified through other investigative means as clients of Firm D who may have engaged in the transaction. In response to a follow-up inquiry by the IRS, Firm D establishes, however, that it is not a material advisor with respect to these taxpayers. Under these circumstances, Firm D has furnished the list as required by section 6112. Because the list was complete when furnished, Firm D need not make a showing of reasonable cause. See paragraph (g)(1) of this section.

Example 3. The IRS sends a list request by certified mail to Firm E, a material advisor. Firm E maintains the materials responsive to the list request in a CD-ROM format. Under Firm E's established procedures for maintaining section 6112 lists, once the transaction is completed, the documents are scanned and saved to a CD-ROM. After the scanning process is completed, the paper copies of the documents are sent to an off-site storage facility. Three days prior to the 20th business day following the date of the written request, Firm E's office is damaged in a building fire and the CD-ROM is destroyed. Firm E contacts the IRS representative listed as a contact person on the section 6112 list request to advise him that the relevant records were damaged by fire. Under these circumstances, Firm E has reasonable cause for the period of time that Firm E cannot respond to the list request due to circumstances out of Firm E's control. The reasonable cause exception, however, will only be available to Firm E for the period of time that a person who exercises ordinary business care would need to obtain the paper copies of the documents from the off-site storage facility and provide the list to the IRS. See paragraphs (g)(3) and (4) of section.

Example 4. On February 1, 2011, the IRS hand delivers a list request to Firm F, a material advisor. Firm F filed with the IRS the disclosure statement required by section 6111 for the reportable transaction that is the subject of the list request but did not maintain the section 6112 list documentation in a readily accessible format after the filing of the section 6111 statement. On March 2, 2011, the 20th business day after the list request is provided to Firm F, Firm F calls the IRS to ask for additional time to comply with the list request, stating that it could not gather the list information together in 20 business days. Because Firm F is not able to show that it made diligent efforts to maintain the materials constituting the list in a readily accessible form, the IRS should not grant Firm F an extension of time. See paragraph (c)(3) of this section. Further, Firm F does not have reasonable cause because it has demonstrated a lack of a good faith effort to comply with the requirements of section 6112 and a lack of ordinary business care. See paragraphs (g)(2) and (3) of this section.

Example 5. On August 11, 2011, the IRS sends a list request, via certified mail, to Firm G, a material advisor. Firm G, consisting of a sole practitioner, P, maintains the materials responsive to the list request in a CD-ROM format. Generally, once the transaction is completed, the documents are scanned and then saved to a CD-ROM. The hard copies of the documents are sent to off-site storage. P is aware of the list request but ignores it. On September 22, 2011, the 13th calendar day after the 20-business-day period following the list request, P suffers a temporary but debilitating illness that lasts 22 days. Following the illness, P immediately returns to work. After returning to work, P continues to ignore the list request. In this situation, the facts and circumstances indicate that Firm G does not have reasonable cause for any day in which there was a failure to make the list available to the IRS, because the failure was not due solely to the supervening event occurring on September 22, 2011, that lasts for 22 days. Firm G did not make a good-faith effort to make the list available to the IRS prior to the occurrence of the supervening event. Firm G is liable for the $10,000 per day penalty from the first day following the expiration of the 20-business-day period until a complete list is provided to the IRS. See paragraphs (g)(2) and (4) of this section.

Example 6. On August 11, 2011, the IRS sends a list request, via certified mail, to Firm H, a material advisor. Firm H, consisting of a sole practitioner, P, maintains the materials responsive to the list request in a CD-ROM format. Generally, once the transaction is completed, the documents are scanned and then saved to a CD-ROM. The hard copies of the documents are sent to off-site storage. P is aware of the list request and begins compiling the documents to respond to the IRS within the 20-business-day period ending on September 9, 2011. Prior to responding to the list request, P suffers a temporary but debilitating illness on September 3, 2011, that lasts through September 20, 2011. Upon returning to work on September 21, 2011, P contacts the IRS to explain that P experienced a temporary but debilitating illness from September 3, 2011, through September 20, 2011, and that P has returned to the office and intends to provide the list response to the IRS within a short period of time. Firm H provides the list response to the IRS on September 23, 2011. In this situation, the facts and circumstances indicate that Firm H has reasonable cause for the period from September 10, 2011 until September 23, 2011, attributable to P's illness. The failure to furnish the list in a timely fashion was solely attributable to the supervening event occurring on September 3, 2011, and Firm H promptly provided the requested list in a manner and time period reflecting ordinary business care upon P's return to the office. Firm H is considered to have made a good-faith effort to comply with the requirements of section 6112. Firm H has established reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date the list was provided to the IRS. See paragraphs (g)(2) and (4) of this section.

Example 7. Firm I receives a list request for transactions that are the same or substantially similar to the listed transaction described in Notice 2002–21, 2002–1 C.B. 730. Firm I will be considered a material advisor with respect to a particular transaction for which it provided advice if the transaction is the same as or substantially similar to the transaction described in Notice 2002–21. Firm I, however, is unsure whether the transaction is the same as or substantially similar to the transaction described in Notice 2002–21. Therefore, Firm I seeks an opinion from Firm L, a law firm, on this issue. P, a partner in Firm L, provided tax advice to clients who invested in other Notice 2002–21 transactions regarding reporting the purported tax benefits on their income tax returns, and Firm L is a material advisor with respect to those transactions. Because Firm L is a material advisor with respect to the type of transaction that is the same as or substantially similar to the transaction described in Notice 2002–21, Firm L is not considered an independent tax professional. Therefore, Firm I cannot rely on advice provided by Firm L to establish reasonable cause under this section. The IRS may consider Firm L's advice in the determination of reasonable cause in light of other facts and circumstances, but Firm's L's advice is not sufficient to establish reasonable cause independently. See paragraph (g)(5) of this section.

Example 8. Firm J, a law firm, provides advice to various clients of the firm regarding the potential tax benefits of a reportable transaction under §1.6011–4(b)(5) of this chapter (involving a section 165 loss) and is a material advisor with respect to the transaction. Firm J also provides advice to Firm M, an accounting firm, regarding the same transaction. Firm M then advises various Firm M clients regarding this same transaction, and is a material advisor. The transaction is not a listed transaction. Firm N, a law firm that is not associated with Firm J and has not provided advice with respect to the same transaction to Firm M, has provided advice to its own clients regarding other transactions subject to §1.6011–4(b)(5) of this chapter, but not the particular transaction that was the subject of Firm J's advice to Firm M. The IRS hand delivers a list request to Firm M, the subject of which is the transaction regarding which Firm J provided advice to Firm M. At a point prior to the expiration of the 20-business-day period, Firm M seeks advice from Firm J and Firm N about the propriety of withholding certain documents related to the transaction. Because Firm J provided advice with respect to the particular transaction that is the subject of the list request, Firm J is not an independent tax professional. Although Firm N has provided advice on a transaction that is considered a reportable transaction under §1.6011–4(b)(5) of this chapter, Firm N is considered to be an independent tax professional, because Firm N did not provide material assistance with respect to the particular transaction that is the subject of the list request. See paragraph (g)(5) of this section.

(h) *Reasonable cause – special considerations*—(1) *Material advisor no longer in existence*. If a material advisor has dissolved, been liquidated, or otherwise is no longer in existence, the person required by section 6112 to maintain the list (the "responsible person") is subject to the penalty for failing to make the list available. In considering whether a responsible person or successor in interest has reasonable cause for any failure to timely make the list available to the IRS, the IRS will consider all of the facts and circumstances, including those facts and circumstances relating to the dissolution, liquidation, and winding up of the business of the original material advisor, and any efforts made by the original material advisor to comply with the requirements of section 6112 prior to the dissolution or liquidation. When appropriate or applicable, due diligence, if any, performed by a responsible person or successor in interest will be considered, and due consideration will be given for acts taken by that person to minimize the potential for violation of the section 6112 requirements.

(2) *Review by IRS*. Whether reasonable cause exists for a period of time will be determined based on all the relevant facts and circumstances, including facts and circumstances arising subsequent to the request for the list. If a material advisor establishes that it acted in good faith, as defined in paragraph (g)(2) of this section, in its efforts to comply with the provisions of section 6112 and its corresponding regulations, the material advisor will be deemed to have reasonable cause for the periods of time taken by the IRS to review a furnished list for compliance with the requirements of section 6112 and to inform the material advisor of any identified failures in the list. If the material advisor does not establish that it acted in good faith, the IRS will not consider the time taken by the IRS to review a list or inform a material advisor of identified failures as a factor in determining whether the material advisor has reasonable cause for that period.

(3) *Examples*. The following examples illustrate paragraph (h)(2) of this section.

Example 1. On February 1, 2011, the IRS hand delivers a list request to Firm O, a material advisor. On March 2, 2011, the 20th business day after the list request is delivered to Firm O, Firm O sends a list to the IRS that was contemporaneously prepared after the issuance of advice with respect to the reportable transaction and continuously maintained in accordance with the requirements of section 6112 and the related regulations. Prior to sending the list, a supervisor at Firm O carefully reviewed the list to verify that it was comprehensive and accurate. The IRS completes its review on March 22, 2011, and determines that the list is not complete because O furnished a draft copy of the tax opinion, rather than the final document as the final document had been mistakenly misfiled. After Firm O is notified of the missing information, Firm O immediately furnishes a complete copy of the final version of the tax opinion. Firm O made a good-faith effort to comply with the requirements of section 6112, including its efforts to ensure that the list that was furnished to the IRS was accurate and complete. Firm O has reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date the complete list was provided to the IRS.

Example 2. On February 1, 2011, the IRS hand delivers a list request to Firm P, a material advisor. Firm P's involvement in the reportable transaction included implementing the transaction on behalf of some but not all of Firm P's clients. On March 2, 2011, the 20th business day after the list request is delivered to Firm P, Firm P sends the list to the IRS. The IRS completes its review on March 22, 2011. The IRS believes the client list is incomplete because it does not contain information about certain individuals who were identified through other investigative means as clients of Firm P who may have engaged in the transaction. On March 25, 2011, in response to a follow-up inquiry by the IRS, Firm P establishes that it is not a material advisor with respect to these taxpayers. Therefore, the March 2, 2011 list was complete and accurate. Under these circumstances, Firm P has timely furnished the list as required by section 6112. Because Firm P complied with the requirements of section 6112, Firm P does not need to establish reasonable cause for the period from March 3, 2011, through March 25, 2011.

Example 3. On February 1, 2011, the IRS hand delivers a list request to Firm Q, a material advisor. On March 2, 2011, the 20th business day after the list request is delivered to Firm Q, Firm Q sends the list to the IRS. Firm Q had not maintained a list contemporaneously after the issuance of advice with respect to the reportable transaction, and during the 20 business days prior to providing the list to the IRS, Firm Q created the list. To meet the 20-business-day deadline, a supervisor did not review the final list prior to sending the list to the IRS. The IRS completes its review on March 22, 2011, and determines that the list is not complete because the list does not include 15 persons for whom Firm Q acted as a material advisor with respect to the reportable transaction. Firm Q provides the additional information on March 25, 2011. Because Firm Q is not able to show that it made diligent efforts to maintain the materials constituting the list in a readily accessible form and that it made a reasonable effort to ensure that the list that was furnished to the IRS was accurate and complete, Firm Q cannot establish that it exhibited a good faith effort to comply with the requirements of section 6112. Firm Q does not have reasonable cause for the failure to furnish the complete list from March 3, 2011, through March 25, 2011.

Example 4. Within the 20-business-day period following a list request, Firm R sends four boxes of documents comprising the required list to the IRS using a commercial delivery service. The IRS receives only three of the boxes because Box 4 was erroneously self-addressed using Firm R's office address. Box 4 arrives at Firm R's office on January 6, 2012, the 22nd business day after the list request was made. Firm R immediately recognizes its clerical error, promptly contacts the IRS, and resends the original and unopened Box 4, properly addressed, to the IRS together with documentation supporting the error. The IRS receives Box 4 on January 9, 2012. Under these circumstances, Firm R has reasonable cause for the late delivery of Box 4, because it made a good-faith attempt to timely comply with the list request and immediately corrected an inadvertent error upon its discovery. As a result, no penalty will be imposed based on the delay in providing Box 4. If, after inspection, the IRS determines that the list is incomplete or defective, even with the contents of Box 4, Firm R must establish reasonable cause for the incomplete nature of the list or the defect to avoid imposition of a penalty for the period beginning January 5, 2012, until the day that a complete list is provided by Firm R.

(i) *Effective/applicability date*. This section applies to all requests for lists required to be maintained under section 6112, including lists persons were required to maintain under section 6112(a) as in effect before October 22, 2004, made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on March 7, 2013, 8:45 a.m., and published in the issue of the Federal Register for March 8, 2013, 78 F.R. 14939)

Notice of Proposed Rulemaking

Reporting for Premium

REG–154563–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations relating to the reporting of bond premium and acquisition premium. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by July 17, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–154563–12), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–154563–12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–154563–12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Lew, (202) 622–3950; concerning submissions of comments, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 6049. The temporary regulations set forth information reporting requirements related to bond premium and acquisition premium. The text of the temporary regulations also serves as the text of these proposed regulations.

Consideration of Administrative Burdens Related to Basis Reporting

A number of commenters have indicated that compliance with basis reporting requirements and the use of basis and other information reported by brokers will require considerable resources and effort on the part of return preparers and information recipients. The Treasury Department and the IRS are continuing to review all aspects of the information reporting process and are exploring ways to reduce the compliance burden for both brokers and for information recipients.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. 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, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in the preamble under the "Addresses" heading. The Treasury Department and the IRS welcome comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available at *www.regulations.gov* for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for a public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Pamela Lew, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.6049–9 also issued under 26 U.S.C. 6049(a). * * *

Par. 2. Section 1.6049–9 is added to read as follows:

§ 1.6049–9 Premium subject to reporting for a debt instrument acquired on or after January 1, 2014.

[The text of proposed § 1.6049–9 is the same as the text of § 1.6049–9T published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on April 17, 2013, 8:45 a.m., and published in the issue of the Federal Register for April 18, 2013, 78 F.R. 23183)

Request for Comments on Voluntary Tip Compliance Agreements; Correction

Announcement 2013–33

This document contains corrections to **Announcement 2013–29, 2013–18 I.R.B. 1024**, regarding "Request for Comments on Voluntary Tip Compliance Agreements." On page 1025, under "How to Submit Comments," the paragraph reads: Comments may be submitted on or before [**insert 90 day period**].

It should read:

Comments may be submitted on or before **July 31, 2013**.

If you have any questions, please contact the National Tip Reporting Compliance Program electronically at *TIP.Program@irs.gov* or in writing at the following IRS office:

Internal Revenue Service
National Tip Reporting Compliance
3251 North Evergreen Dr. NE
Grand Rapids, MI 49525

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–27 through 2012–52 is in Internal Revenue Bulletin 2012–52, dated December 27, 2012.

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

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