INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–5
January 29, 2024

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

ADMINISTRATIVE

Notice 2024-18, page 625.

This notice addresses the availability of administrative exemptions from and waivers of the requirements to file returns and other documents in electronic form. This notice provides information about publications pertaining to failed attempts to electronically file Forms 1120, 1120-S, and 1120-F using Internal Revenue Service (IRS) filing systems. In addition, this notice obsoletes Notice 2010-13, 2010-4 I.R.B. 327 (January 25, 2010), *Form 1120, Form 1120-F, Form 1120S, Form 990, and Form 990-PF Electronic Filing Waiver Request Procedures*. This notice also modifies Notice 2023-60 as released on August 11, 2023, but not published in the Internal Revenue Bulletin.

ADMINISTRATIVE, INCOME TAX

Notice 2024-19, page 627.

This notice provides relief from certain penalties imposed solely for failure of a partnership with unrealized receivables or inventory items to furnish Part IV of Form 8308, Report of a Sale or Exchange of Certain Partnership Interests, by January 31, 2024, to the transferor and transferee in certain transfers of partnership interests that occurred in calendar year 2023.

EXEMPT ORGANIZATIONS

Announcement 2024-6, page 635.

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

EMPLOYEE PLANS

T.D. 9986, page 610.

These regulations specify the methodology for constructing the corporate bond yield curve that is used to derive the interest rates used in calculating present value and making other calculations under a defined benefit plan, as well as for discounting unpaid losses and estimated salvage recoverable of insurance companies.

EXCISE TAX

T.D. 9985, page 573.

This document finalizes rules related to the fees established by the No Surprises Act for the Federal independent dispute resolution (IDR) process, as established by the Consolidated Appropriations Act, 2021 (CAA). These final rules amend existing regulations to provide that the administrative fee amount charged by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (the Departments) to participate in the Federal IDR process, and the ranges for certified IDR entity fees for single and batched determinations, will be set by the Departments through notice and comment rulemaking. The preamble to these final rules also sets forth the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. This document also finalizes the amount of the administrative fee for disputes initiated on or after the effective date of these rules. Finally, this document finalizes the certified IDR entity fee ranges for disputes initiated on or after the effective date of these rules.

Finding Lists begin on page ii.

EMPLOYEE PLANS

Notice 2024-16, page 622.

This notice announces that Treasury and the IRS intend to issue proposed regulations that will address certain basis consequences of internal restructuring transactions in which a U.S. corporation acquires stock of a controlled foreign corporation ("CFC") from another CFC. In particular, the notice announces rules under which basis provided under section 961(c) in stock of a second-tier CFC held by a first-tier CFC will be transferred to a U.S. corporation that acquires the second-tier CFC from the first-tier CFC in a liquidation described in section 332 or an asset reorganization described in section 368(a)(1).

INCOME TAX

Notice 2024-12, page 616.

Notice 2024-12 clarifies and modifies Notice 2023-63, which provided interim guidance to address issues regarding specified research or experimental expenditures under § 174. Specifically, Notice 2024-12 clarifies and modifies Notice 2023-63 regarding (1) the treatment of costs paid or incurred by a research provider for research performed under contract, (2) the requirement that a taxpayer that chooses to rely on any of the rules described in Notice 2023-63 must rely on all the rules described in sections 3 through 9 of the notice, and (3) the obsoletion of section 5 of Revenue Procedure 2000-50.

Notice 2024-13, page 618.

This notice announces that the Department of the Treasury and the Internal Revenue Service intend to propose regulations to implement the product identification number (PIN) requirement with respect to the energy efficient home improvement credit under § 25C of the Internal Revenue Code, as amended by § 13301 of Public Law 117-169, 136. Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022. This notice requests comments on this PIN requirement.

REG-121010-17, page 636.

This document contains proposed regulations that would provide guidance under section 166 regarding whether a debt instrument is worthless for Federal income tax purposes. The proposed regulations update the standard for determining when a debt instrument held by a regulated financial company or a member of a regulated financial group will be conclusively presumed to be worthless.

Rev. Proc. 2024-9, page 628.

Revenue Procedure 2024-9 provides procedures for obtaining automatic consent to change methods of accounting for specified research or experimental expenditures under § 174 paid or incurred in taxable years beginning after December 31, 2021. Revenue Procedure 2024-9 also clarifies section 9 of Revenue Procedure 2023-24 to provide that section 5 of Revenue Procedure 2000-50 is obsoleted for costs of developing computer software paid or incurred in any taxable year beginning after December 31, 2021, and continues to apply to costs of developing computer software paid or incurred in any taxable year beginning on or before December 31, 2021.

TAX CONVENTIONS

Announcement 2024-5, page 635.

The United States provided a diplomatic notification, dated July 8, 2022, to the Government of the Republic of Hungary of its termination of the United States-Hungary Tax Treaty. In respect of tax withheld at source, the United States-Hungary Tax Treaty ceases to have effect with respect to amounts paid or credited on or after January 1, 2024. In respect of other taxes, the United States-Hungary Tax Treaty ceases to have effect with respect to taxable periods beginning on or after January 1, 2024.

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.

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

Part I

(26 CFR 54.9816-8 Independent dispute resolution process; 26 CFR 54.9816-8T Independent dispute resolution process (temporary))

T.D. 9985

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 54

DEPARTMENT OF LABOR
Employee Benefits Security Administration
29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES
45 CFR Part 149

Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges

AGENCY: Internal Revenue Service (IRS), Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services (HHS).

ACTION: Final rules.

SUMMARY: This document finalizes rules related to the fees established by the No Surprises Act for the Federal independent dispute resolution (IDR) process, as established by the Consolidated Appropriations Act, 2021 (CAA). These final rules amend existing regulations to provide that the administrative fee amount charged by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services (the Departments) to participate in the Federal IDR process, and the ranges for certified IDR entity fees for single and batched determinations, will be set by the Departments through notice and comment rulemaking. The preamble to these final rules also sets forth the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. This document also finalizes the amount of the administrative fee for disputes initiated on or after the effective date of these rules. Finally, this document finalizes the certified IDR entity fee ranges for disputes initiated on or after the effective date of these rules.

DATES: These final rules are effective on [insert date 30 days after date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Shira B. McKinlay or William Fischer, Internal Revenue Service, Department of the Treasury, 202-317-5500; Shannon Hysjulien or Rebecca Miller, Employee Benefits Security Administration, Department of Labor, 202-693-8335; and Jacquelyn Rudich or Nora Simmons, Centers for Medicare & Medicaid Services, Department of Health and Human Services, 301-492-5211.

SUPPLEMENTARY INFORMATION:

I. Background

A. Preventing Surprise Medical Bills and Establishing the Federal IDR Process under the Consolidated Appropriations Act, 2021

On December 27, 2020, the CAA was enacted.[1] Title I, also known as the No Surprises Act, and title II (Transparency) of Division BB of the CAA amended chapter 100 of the Internal Revenue Code (Code), part 7 of the Employee Retirement Income Security Act (ERISA), and title XXVII of the Public Health Service Act (PHS Act). The No Surprises Act provides Federal protections against surprise billing by limiting out-of-network cost sharing and prohibiting balance billing in many of the circumstances in which surprise bills most frequently arise. In particular, the No Surprises Act added new provisions applicable to group health plans and health insurance issuers offering group or individual health insurance coverage. Section 102 of the No Surprises Act added section 9816 of the Code,[2] section 716 of ERISA,[3] and section 2799A-1 of the PHS Act,[4] which contain limitations on cost sharing and requirements regarding the timing of initial payments and notices of denial of payment by plans and issuers for emergency services furnished by nonparticipating providers and nonparticipating emergency facilities, and for non-emergency services furnished by nonparticipating providers for patient visits to participating health care facilities, generally defined as hospitals, hospital outpatient departments,

[1] Public Law 116-260 (Dec. 27, 2020).
[2] 26 U.S.C. 9816, *et seq.*
[3] 29 U.S.C. 1185e, *et seq.*
[4] 42 U.S.C. 300gg–111, *et seq.*

critical access hospitals, and ambulatory surgical centers.[5]

Section 103 of the No Surprises Act established a Federal IDR process that plans and issuers and nonparticipating providers and facilities may utilize to resolve certain disputes regarding out-of-network rates under section 9816 of the Code,[6] section 716 of ERISA,[7] and section 2799A-1 of the PHS Act.[8] Section 9816(c)(8) of the Code,[9] section 716(c)(8) of ERISA,[10] and section 2799A-1(c)(8) of the PHS Act[11] provide that each party to a determination under the Federal IDR process shall pay a fee for participating in the Federal IDR process, and the amount of the fee is an amount established by the Departments in a manner such that the total amount of fees paid by all parties is estimated to be equal to the amount of expenditures estimated to be made by the Departments for the year in carrying out the Federal IDR process.

Section 105 of the No Surprises Act added section 9817 of the Code,[12] section 717 of ERISA,[13] and section 2799A-2 of the PHS Act.[14] These sections contain limitations on cost sharing and requirements for the timing of initial payments and notices of denial of payment by plans and issuers for air ambulance services furnished by nonparticipating providers of air ambulance services, and allow plans and issuers and nonparticipating providers of air ambulance services to utilize the Federal IDR process.

The No Surprises Act also added provisions to title XXVII of the PHS Act in a new part E[15] that apply to health care providers, facilities, and providers of air ambulance services, such as prohibitions on balance billing for certain items and services and requirements related to disclosures about balance billing protections.

The Departments, along with the Office of Personnel Management (OPM), have issued rules in 2021 and 2022 to implement various provisions of the No Surprises Act. More specifically relevant to this rulemaking, the Departments and OPM issued interim final rules (July 2021 interim final rules[16] and October 2021 interim final rules[17]) and final rules (August 2022 final rules[18]) implementing provisions of sections 9816 and 9817 of the Code,[19] sections 716 and 717 of ERISA,[20] and sections 2799A-1 and 2799A-2 of the PHS Act.[21] Those rules implement provisions to protect consumers from surprise medical bills for emergency services, non-emergency services furnished by nonparticipating providers for patient visits to participating facilities[22] in certain circumstances, and air ambulance services furnished by nonparticipating providers of air ambulance services. Those rules also implement provisions to establish a Federal IDR process to determine payment amounts when there is a dispute between plans or issuers and providers, facilities, or providers of air ambulance services about the out-of-network rate for these services if a specified State law as defined in 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30 or an applicable All-Payer Model Agreement under section 1115A of the Social Security Act does not provide a method for determining the total amount payable.

The July 2021 interim final rules and October 2021 interim final rules generally apply to plans and issuers (including grandfathered health plans) for plan years (in the individual market, policy years) beginning on or after January 1, 2022, and to health care providers, facilities, and providers of air ambulance services for items and services furnished during plan years (in the individual market, policy years) beginning on or after January 1, 2022.[23] The August 2022 final rules became effective October 25, 2022, and are applicable for items or services provided or furnished on or after October 25, 2022, for plan years (in the individual market, policy years) beginning on or after January 1, 2022.

B. October 2021 Interim Final Rules and Related Guidance

The October 2021 interim final rules implement the Federal IDR process under sections 9816(c) and 9817(b) of the Code,[24] sections 716(c) and 717(b) of ERISA,[25] and sections 2799A-1(c) and 2799A-2(b)

[5] Section 102(d)(1) of the No Surprises Act amended the Federal Employees Health Benefits (FEHB) Act, 5 U.S.C. 8901 *et seq.,* by adding a new subsection (p) to 5 U.S.C. 8902. Under this new provision, each FEHB Program contract must require a carrier to comply with requirements described in sections 9816 and 9817 of the Code, sections 716 and 717 of ERISA, and sections 2799A-1 and 2799A-2 of the PHS Act (as applicable) in the same manner as these provisions apply with respect to a group health plan or health insurance issuer offering group or individual health insurance coverage.

[6] 26 U.S.C. 9816.

[7] 29 U.S.C. 1185e, *et seq.*

[8] 42 U.S.C. 300gg–111, *et seq*.

[9] 26 U.S.C. 9816(c)(8).

[10] 29 U.S.C. 1185e(c)(8).

[11] 42 U.S.C. 300gg–111(c)(8).

[12] 26 U.S.C. 9817.

[13] 29 U.S.C. 1185f, *et seq.*

[14] 42 U.S.C. 300gg–112, *et seq.*

[15] 42 U.S.C. 300gg-131-139.

[16] 86 FR 36872 (July 13, 2021).

[17] 86 FR 55980 (October 7, 2021).

[18] 87 FR 52618 (August 26, 2022).

[19] 26 U.S.C. 9816 and 26 U.S.C. 9817.

[20] 29 U.S.C. 1185e, *et seq*. and 29 U.S.C. 1185f, *et seq.*

[21] 42 U.S.C. 300gg–111, *et seq.* and 42 U.S.C. 300gg–112, *et seq.*

[22] References to a "participating facility" in this preamble mean a "participating health care facility," as defined at 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30.

[23] The interim final rules also include interim final regulations under 5 U.S.C. 8902(p) issued by OPM that specify how certain provisions of the No Surprises Act apply to health benefit plans offered by carriers under the FEHB Act. These provisions apply to carriers in the FEHB Program with respect to contract years beginning on or after January 1, 2022. The disclosure requirements at 45 CFR 149.430 regarding patient protections against balance billing are applicable as of January 1, 2022.

[24] 26 U.S.C. 9816(c) and 26 U.S.C. 9817(b).

[25] 29 U.S.C. 1185e(c) and 29 U.S.C. 1185f(b).

of the PHS Act.[26] The rules apply to emergency services, non-emergency services furnished by nonparticipating providers for patient visits to certain types of participating health care facilities[27] (unless an individual has been provided notice and waived the individual's surprise billing protections, in accordance with 45 CFR 149.410 or 149.420, as applicable), and air ambulance services furnished by nonparticipating providers of air ambulance services, for situations in which neither a specified State law as defined in 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30 nor an All-Payer Model Agreement under section 1115A of the Social Security Act applies.

To implement the Federal IDR process, the October 2021 interim final rules include requirements governing the costs of the Federal IDR process. Under section 9816(c)(5)(F)(i) of the Code,[28] section 716(c)(5)(F)(i) of ERISA,[29] section 2799A-1(c)(5)(F)(i) of the PHS Act,[30] and the October 2021 interim final rules, the party whose offer is not selected is responsible for the payment of the fee charged by the certified IDR entity (certified IDR entity fee).[31] Under the October 2021 interim final rules, as a condition of certification, the certified IDR entity must notify the Departments of the amount of the certified IDR entity fees it intends to charge for payment determinations, which is limited to a fixed certified IDR entity fee amount for single determinations and a separate fixed certified IDR entity fee amount for batched determinations.[32] Each of these fixed certified IDR entity fees must be within a range set forth in guidance by the Departments, unless the certified IDR entity receives written approval from the Departments to charge a certified IDR entity fee outside that range.[33] The October 2021 interim final rules describe the considerations that the Departments will use to develop the certified IDR entity fee ranges, including the anticipated time and resources needed for certified IDR entities to meet the requirements of those interim final rules, the volume of payment determinations, and the capacity of the Federal IDR process to efficiently handle the volume of IDR initiations and payment determinations, and provide that the Departments will review and update the allowable fee ranges annually based on these factors, the impact of inflation, and other cost increases. Those rules also provide that on an annual basis, the certified IDR entity may update its certified IDR entity fees within the ranges set forth in current guidance and seek approval from the Departments to charge fixed certified IDR entity fees beyond the upper or lower limits for certified IDR entity fees.[34]

Additionally, pursuant to section 9816(c)(8) of the Code,[35] section 716(c)(8) of ERISA,[36] and section 2799A-1(c)(8) of the PHS Act,[37] and under the October 2021 interim final rules, each party must pay an administrative fee for participating in the Federal IDR process. The administrative fee is established in guidance in a manner so that, in accordance with the requirements of section 9816(c)(8)(B) of the Code,[38] section 716(c)(8)(B) of ERISA,[39] and section 2799A-1(c)(8)(B) of the PHS Act,[40] the total administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process for that year.[41]

Contemporaneously with the October 2021 interim final rules, the Departments released the Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act (October 2021 guidance), setting the administrative fee for both parties to a dispute at $50 per party.[42] The October 2021 guidance also established the range for fixed certified IDR entity fees for single determinations as $200–$500, and the range for fixed certified IDR entity fees for batched determinations as $268–$670, unless the Departments otherwise grant approval for the certified IDR entity to charge a fee outside these ranges. In October 2022, the Departments released the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act (October 2022 guidance), again setting the administrative fee for both parties to a dispute at $50 per party.[43] The October 2022 guidance explained that the data available regarding usage of the Federal IDR process was not sufficiently reliable to support a change to either the

[26] 42 U.S.C. 300gg–111(c) and 42 U.S.C. 300gg–112(b).

[27] A health care facility, in the context of non-emergency services, is defined as (1) a hospital (as defined in section 1861(e) of the Social Security Act), (2) a hospital outpatient department, (3) a critical access hospital (as defined in section 1861(mm)(1) of the Social Security Act), or (4) an ambulatory surgical center described in section 1833(i)(1)(A) of the Social Security Act. Code section 9816(b)(2)(A)(ii), ERISA section 716(b)(2)(A)(ii), and PHS Act section 2799A–1(b)(2)(A)(ii). 26 CFR 54.9816-3T, 29 CFR 2590.716-3, and 45 CFR 149.30.

[28] 26 U.S.C. 9816(c)(5)(F)(i).

[29] 29 U.S.C. 1185e(c)(5)(F)(i).

[30] 42 U.S.C. 300gg–111(c)(5)(F)(i).

[31] In the case of a batched dispute, the party with fewest determinations in its favor is considered the non-prevailing party and is responsible for paying the certified IDR entity fee. In the event that each party prevails in an equal number of determinations, the certified IDR entity fee will be split evenly between the parties. 86 FR 55980, 56001.

[32] 26 CFR 54.9816-8T(e)(2)(vii), 29 CFR 2590.716-8(e)(2)(vii), and 45 CFR 149.510(e)(2)(vii).

[33] *Id.*

[34] *Id.*

[35] 26 U.S.C. 9816(c)(8).

[36] 29 U.S.C. 1185e(c)(8).

[37] 42 U.S.C. 300gg–111(c)(8).

[38] 26 U.S.C. 9816(c)(8)(B).

[39] 29 U.S.C. 1185e(c)(8)(B).

[40] 42 U.S.C. 300gg–111(c)(8)(B).

[41] 26 CFR 54.9816-8T(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii).

[42] Centers for Medicare & Medicaid Services (September 30, 2021). *Calendar Year 2022 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act. https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Technical-Guidance-CY2022-Fee-Guidance-Federal-Independent-Dispute-Resolution-Process-NSA.pdf.*

[43] Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act. https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

estimated number of payment determinations for which administrative fees would be paid or the estimated ongoing program costs for 2023; therefore, the 2023 administrative fee amount due from each party for participating in the Federal IDR process would remain the same as the 2022 administrative fee amount. The October 2022 guidance permits certified IDR entities to charge a fee between $200 and $700 for single determinations and between $268 and $938 for batched determinations, unless the Departments otherwise grant approval for the certified IDR entity to charge a fee outside of these ranges. In addition, to account for the heightened workload for batched determinations, the October 2022 guidance permits a certified IDR entity to charge the following percentage of its approved certified IDR entity batched determination fee ("batching percentage") for batched determinations, which are based on the number of line items initially submitted in the batch:

- 2-20 line items: 100 percent of the approved batched determination fee;
- 21-50 line items: 110 percent of the approved batched determination fee;
- 51-80 line items: 120 percent of the approved batched determination fee; and
- 81 line items or more: 130 percent of the approved batched determination fee.

In December 2022, the Departments released the Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee (December 2022 guidance), which amended the $50 per party administrative fee set in the October 2022 guidance to $350 for calendar year 2023.[44] The change in the administrative fee for 2023 reflected the additional costs to the Departments to carry out the Federal IDR process as a result of the Departments' enhanced role in calendar year 2023 in conducting pre-eligibility reviews to allow the certified IDR entities to complete their eligibility determinations more efficiently,[45] as well as systemic improvements that allowed for the aggregation of data needed to estimate the rate at which disputes were determined eligible for the Federal IDR process and the rate at which one or both parties paid the administrative fee for purposes of calculating the administrative fee. The December 2022 guidance did not amend the certified IDR entity fee ranges provided in the October 2022 guidance.

C. Recent Litigation

On November 30, *2022*, the Texas Medical Association, Tyler Regional Hospital, and a Texas physician filed a lawsuit (*TMA III*)[46] against the Departments and OPM, asserting that the July 2021 interim final rules,[47] including the regulations governing how the qualifying payment amount (QPA) should be calculated, and certain related guidance documents conflicted with the statutory language. On August 24, 2023, the U.S. District Court for the Eastern District of Texas (District Court) issued a memorandum opinion and order[48] that vacated certain portions of the July 2021 interim final rules and associated regulatory provisions[49] and portions of guidance documents,[50] including portions that provided the methodology for calculating the QPA and interpretations for certified IDR entities related to the processing of disputes for air ambulance services.

On January 30, 2023, the Texas Medical Association, Houston Radiology Associated, Texas Radiological Society, Tyler Regional Hospital, and a Texas physician filed a lawsuit (*TMA IV*)[51] against the Departments and OPM, asserting that the December 2022 guidance[52] that set the $350 per party administrative fee amount for 2023 was unlawfully issued without notice and comment rulemaking.[53] On August 3, 2023, the District Court issued a memorandum opinion and order[54] vacating the portion of the December 2022 guidance[55] that increased the administrative fee for the Federal IDR process to $350 per party for disputes initiated during the calendar year beginning January 1, 2023. The District Court also vacated certain provisions of the October 2021 interim final rules setting forth the batching criteria under which multiple IDR items or services may be considered jointly as part of a single IDR dispute.[56] On August 11, 2023, the Departments

[44] Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee*. *https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

[45] Centers for Medicare & Medicaid Services (November 21, 2022). *Notice of the Federal Independent Dispute Resolution (IDR) Team Technical Assistance to Certified Independent Dispute Resolution Entities (IDREs) in the Dispute Eligibility Determination Process. https://www.cms.gov/files/document/idre-eligibility-support-guidance-11212022-final-updated.pdf.*

[46] Complaint, *Tex. Med. Ass'n v. U. S. Dep't of Health and Human Servs.,* No. 6:22-cv-00450-JDK (E.D. Tex. Nov. 30, 2022) (ECF No. 1).

[47] 86 FR 36872 (July 13, 2021).

[48] *See* Memorandum Opinion and Order, *Tex. Med. Ass'n. v. U.S. Dep't of Health & Hum. Servs.,* No. 6:22-cv-00450-JDK, 2023 WL 5489028 (E.D. Tex. Aug. 24, 2023).

[49] Specifically, the District Court vacated certain provisions of 26 CFR 54.9816-6T and 54.9817-1T, 29 CFR 2590.716-6 and 2590.717-1, and 45 CFR 149.130 and 149.140. The District Court also vacated 5 CFR 890.114(a), insofar as it requires compliance with the vacated regulations and guidance.

[50] Specifically, the District Court vacated FAQs 14 and 15 of *FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55* (August 19, 2022), as well as portions of *Technical Guidance for Certified IDR Entities* at 2-3 (August 18, 2022).

[51] Complaint, *Tex. Med. Ass'n. v. U. S. Dep't of Health and Human Servs.,* No. 6:23-cv-00059-JDK (E.D. Tex. Jan. 30, 2023) (ECF No. 1).

[52] Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process Under the No Surprises Act: Change in Administrative Fee. https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

[53] Complaint, *Tex. Med. Ass'n. v. U. S. Dep't of Health and Human Servs.,* No. 6:23-cv-00059-JDK (E.D. Tex. Jan. 30, 2023) (ECF No. 1).

[54] *See* Memorandum Opinion and Order, *Tex. Med. Ass'n. v. U.S. Dep't of Health & Hum. Servs.,* No. 6:23-cv-00059-JDK, 2023 WL 4977746 (E.D. Tex. Aug. 3, 2023).

[55] Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee*. *https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

[56] Specifically, the District Court vacated the requirement under 26 CFR 54.9816-8T(c)(3)(i)(C), 29 CFR 2590.716-8(c)(3)(i)(C), and 45 CFR 149.510(c)(3)(i)(C) that for a qualified IDR item and service to be considered the same or similar item and service, it must be billed under the same service code or a comparable code under a different procedural code system, such as the Current Procedural Terminology (CPT) codes with modifiers, if applicable, Healthcare Common Procedure Coding System (HCPCS) with modifiers, if applicable, or Diagnosis-Related Group (DRG) codes with modifiers, if applicable.

released guidance[57] to reflect the *TMA IV* opinion and order related to the administrative fee to clarify that the $50 per party per dispute administrative fee amount established in the October 2022 guidance applies for disputes initiated on or after August 3, 2023, and until the Departments take action to set a new administrative fee amount.

On October 6, 2023, the Departments and OPM released "FAQs About Consolidated Appropriations Act, 2021 Implementation Part 62"[58] to provide guidance related to the *TMA III* opinion and order. On November 28, 2023, the Departments released guidance in accordance with the *TMA III* and *TMA IV* opinions and orders[59] to clarify how certified IDR entities should determine whether a dispute is appropriately batched and how to submit single and batched air ambulance disputes.[60]

D. Federal Independent Dispute Resolution Operations Proposed Rules

On November 3, 2023, the Departments published the Federal Independent Dispute Resolution Operations proposed rules[61] (IDR Operations proposed rules). Those proposed rules included new proposed requirements for disclosing information when initiating the Federal IDR process and the provision of certain claims codes with paper or electronic remittances. Additionally, those proposed rules would amend certain requirements related to the open negotiation period, initiation of the Federal IDR process, eligibility determinations, batched disputes, extensions due to extenuating circumstances, and the collection of administrative fees and certified IDR entity fees. Lastly, those proposed rules would require plans and issuers to register with the Federal IDR portal.

With respect to the administrative fee, the Departments proposed in the IDR Operations proposed rules to collect the administrative fee directly from the parties rather than having the certified IDR entities collect the administrative fee on the Departments' behalf. The Departments also proposed required timeframes for the initiating and non-initiating parties to pay the administrative fee and proposed to establish consequences for non-payment of the administrative fee for each party. Finally, to ensure that the Federal IDR process is accessible to all parties, the Departments proposed to charge both parties a reduced administrative fee when the highest offer made during open negotiation by either party was less than a predetermined threshold and proposed to charge the non-initiating party a reduced administrative fee when the dispute is determined ineligible by either the certified IDR entity or the Departments, as applicable.

To align with these proposals, the Departments also set forth the methodology inputs used to calculate the proposed administrative fee amounts in the preamble to the IDR Operations proposed rules that would be effective for disputes initiated on or after January 1, 2025. The Departments proposed that the full administrative fee amount would be $150 per party per dispute, the reduced administrative fee for both parties when the highest offer made by either party during open negotiation was less than the threshold would be $75 per party per dispute (50 percent of the full administrative fee amount), and the reduced administrative fee for non-initiating parties in ineligible disputes would be $30 per non-initiating party per ineligible dispute (20 percent of the full administrative fee amount).

The inputs to the methodology set forth in this preamble and the administrative fee amount the Departments are finalizing in these final rules are effective for disputes initiated on or after the effective date of these final rules. In contrast, the proposed administrative fee structure and administrative fee amounts based on inputs to the methodology set forth in the IDR Operations proposed rules, if finalized, would be effective for disputes initiated on or after January 1, 2025. The administrative fee policies finalized in these final rules are effective, and unchanged by the proposals in the IDR Operations proposed rules, unless and until superseding administrative fee policies in the IDR Operations proposed rules are adopted.

E. Public Comments Received in Response to Proposed Rules

In the September 26, 2023 **Federal Register**, the Departments published the Federal Independent Dispute Resolution (IDR) Process Administrative Fee and Certified IDR Entity Fee Ranges proposed rules (IDR Fees proposed rules),[62] which proposed to amend existing regulations to provide that the administrative fee amount charged by the Departments to participate in the Federal IDR process, and the ranges for certified IDR entity fees for single and batched determinations, would be set by the Departments through notice and comment rulemaking. The IDR Fees proposed rules also discussed the methodology used to calculate the administrative fee and the considerations used to develop the certified IDR entity fee ranges. Finally, the IDR Fees proposed rules proposed the amount of the administrative fee and the certified IDR entity fee ranges for disputes initiated on or after the later of the effective date of these rules or January 1, 2024.

The Departments received 44 comments on many different aspects of the IDR Fees proposed rules. In particular, the Departments received many comments stating that the administrative fee amount

[57] U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury (August 2023). *Federal Independent Dispute Resolution (IDR) Process Administrative Fee FAQs. https://www.cms.gov/files/document/idr-admin-fees-faqs-081123-508.pdf-0.*

[58] *See* U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of Treasury, Office of Personnel Management (October 6, 2023), *FAQs about Consolidated Appropriations Act, 2021 Implementation Part 62,* available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-62.pdf and https://www.cms.gov/files/document/faqs-part-62.pdf.*

[59] *See* U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of Treasury, Office of Personnel Management (November 28, 2023), *FAQs about Consolidated Appropriations Act, 2021 Implementation Part 63,* available at *https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-62.pdf* and *https://www.cms.gov/files/document/faqs-part-63.pdf.*

[60] *See* U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of Treasury, Office of Personnel Management (November 28, 2023), *Federal Independent Dispute Resolution (IDR) Process Batching and Air Ambulance FAQs*, available at *https://www.cms.gov/files/document/faqs-batching-air-ambulance.pdf.*

[61] 88 FR 75744.

[62] 88 FR 65888.

and the certified IDR entity fee ranges create a barrier to accessing the Federal IDR process for many parties, particularly small, rural, or independent providers, and these comments supported retaining the current $50 per party per dispute administrative fee amount. The Departments also received many comments on the proposed certified IDR entity fee ranges, particularly the proposed additional tiered batched fee range for disputes with more than 25 line items. While some commenters supported the increased flexibility for certified IDR entity fee ranges, many commenters were concerned about the proposed further increases in the certified IDR entity fee ranges. The Departments respond to these comments in section II of this preamble.

Many comments concerned matters that were outside of the scope of the proposed rules and therefore are not addressed in these final rules. For example, the Departments received comments stating that the current Federal IDR process lacks the efficiency needed to resolve disputes quickly. The Departments also received many comments related to the eligibility determination process, including on difficulties determining eligibility in States with a specified State law and the lack of information provided by plans and issuers. Comments on the efficiency of the Federal IDR process and eligibility determinations relate to operations that are outside of the scope of these final rules' limited focus on the administrative fee and certified IDR entity fee ranges and the processes for setting such amounts. The Departments encourage interested parties to submit comments regarding the proposals included in the IDR Operations proposed rules, including the proposal to establish a Departmental eligibility review process, in accordance with the instructions set forth in those proposed rules.[63]

Some other out-of-scope comments addressed the impacts of the Federal IDR portal closure, which occurred in response to litigation previously described in this preamble. For example, the Departments received comments requesting that, as a result of *TMA IV*, the Departments should refund $300 to each party that paid a $350 administrative fee between January 1, 2023 and August 3, 2023, and the Departments should offer an extension to parties that would have initiated a dispute if the administrative fee during that time was $50, rather than $350, to now initiate that dispute. The Departments note that this relief was requested by the plaintiffs in *TMA IV* and was denied by the court.[64] Comments also addressed the impact of *TMA III* on the calculation of the QPA, specifically asking the Departments to address underpayments to providers due to purported artificially suppressed QPAs. Additionally, the Departments received comments related to the batching requirements for submission of disputes. Some of these comments addressed specific difficulties in batching emergency medicine, radiology, and anesthesiology services and expressed a desire to broaden the batching criteria. While the IDR Operations proposed rules included proposals related to the batching requirements, these comments were outside the scope of this rulemaking because the IDR Fees proposed rules did not propose any changes to the batching requirements or calculation of the QPA.

Finally, the Departments received many comments suggesting different administrative fee structures. For example, the Departments received comments suggesting that the administrative fee amount be split between the parties, be refundable to the prevailing party, be funded 75 percent by plans and issuers and 25 percent by providers or be payable at the end of the Federal IDR process. The Departments also received comments recommending a variable administrative fee amount tied to the amount in dispute or the QPA, either for all disputes or just for batched disputes. Further comments suggested capping the administrative fee amount or imposing a base administrative fee amount and an additional tiered fee amount based on the amount in dispute.

As a result of the *TMA IV* opinion and order having set aside the Departments' guidance establishing administrative fees, the Departments set a goal of establishing in rulemaking administrative fee amounts that would be effective as close to January 1, 2024 as possible, because the current $50 administrative fee amount is insufficient to satisfy the statutory requirement that the total amount of fees paid for the year be estimated to be equal to the amount of expenditures estimated to be made for the year in carrying out the Federal IDR process. If the Departments were to continue to impose a $50 per party per dispute administrative fee amount throughout 2024, the Departments estimate that they would collect approximately $24.6 million in administrative fees for the year (492,000 administrative fees paid x $50 per party per dispute), as discussed further in section IV.D.2.a of this preamble. As discussed further in section II.A of this preamble, the Departments estimate that their expenditures to carry out the Federal IDR process in 2024 will be approximately $56.6 million. Therefore, if the administrative fee amount remains at $50 per party per dispute in 2024, the Departments would significantly under-collect administrative fees required to carry out the Federal IDR process. Accordingly, to be able to implement an increase to the administrative fee amount as soon as possible, consistent with the statutory requirement, the IDR Fees proposed rules proposed the amount of the administrative fee and the preamble to the proposed rules described the methodology for calculating it.

The Departments did not propose any changes to the structure of the administrative fee as this would take longer to develop and implement and would be more efficiently operationalized with the changes proposed in the IDR Operations proposed rules, which are intended to be more comprehensive. While the Departments considered alternative fee structures in this rulemaking, the Departments were of the view that addressing the structure of the administrative fee in the IDR Operations proposed rules would give interested parties more time to comment, consider, and prepare for any fee structure change, because the effective date of the IDR Operations proposed rules, if finalized, will be later than the effective date of these final rules.

Additionally, the policies proposed in the IDR Operations proposed rules would

[63] *See* 88 FR 75744.

[64] *See* Memorandum Opinion and Order, *Tex. Med. Ass'n., et al. v. U.S. Dep't of Health and Human Servs., et al.,* No. 6:23-cv-00059-JDK (E.D. Tex. August 3, 2023).

require more time for the Departments to develop and implement due to the substantial changes to the Federal IDR portal required by those proposals, if finalized, including adopting new processes to collect the administrative fees directly from the parties and collecting differing amounts of administrative fees from different parties in certain circumstances, as described further in the IDR Operations proposed rules. Therefore, the Departments deferred those proposed changes to the Federal IDR process and administrative fee structure and collection procedures to the IDR Operations proposed rules and prioritized completing this rulemaking.

The Departments encourage interested parties to submit relevant comments regarding batching and the administrative fee structure, the new inputs to the administrative fee methodology, and the amount of the fee proposed in the IDR Operations proposed rules, in response to those proposed rules.[65]

The Departments also sought to establish in rulemaking certified IDR entity fee ranges that would be effective as close to January 1, 2024 as possible, because this effective date would provide predictability for certified IDR entities, who must plan for and finalize their 2024 certified IDR entity fixed fee amounts, and parties, who must budget for their participation in the Federal IDR process taking into account both the administrative and certified IDR entity fees. Establishing the certified IDR entity fee ranges in rulemaking with an effective date close to January 1, 2024 would also allow for greater transparency than the current method of establishing the fee ranges in guidance.

F. Scope and Purpose of Rulemaking

These final rules amend 26 CFR 54.9816-8(d)(2)(ii) and (e)(2)(vii), 29 CFR 2590.716-8(d)(2)(ii) and (e)(2)(vii), and 45 CFR 149.510(d)(2)(ii) and (e)(2)(vii) to provide that the administrative fee amount and the ranges for certified IDR entity fees for single and batched disputes will be set by the Departments through notice and comment rulemaking, rather than in guidance published annually. The preamble to this rulemaking also sets forth the methodology used to calculate the administrative fee amount and the considerations used to develop the certified IDR entity fee ranges. These rules also finalize the administrative fee amount and certified IDR entity fee ranges for disputes initiated on or after the effective date of these rules. The finalized administrative fee amount and certified IDR entity fee ranges in these rules will remain in effect until changed by notice and comment rulemaking.

The IDR Fees proposed rules proposed that the administrative fee amount and certified IDR entity fee ranges finalized in these final rules would be effective for disputes initiated on or after the later of the effective date of these rules or January 1, 2024. As these final rules will not be effective by January 1, 2024, the Departments are finalizing the proposal that the administrative fee amount and certified IDR entity fee ranges in these rules will be effective for disputes initiated on or after the effective date of these rules, which is 30 calendar days from publication in the **Federal Register**.

II. Overview of the Final Rules—Departments of the Treasury, Labor, and HHS

A. Administrative Fee Amount and Methodology

1. Summary of Proposed and Finalized Policies

Under section 9816(c)(8)(A) of the Code,[66] section 716(c)(8)(A) of ERISA,[67] section 2799A-1(c)(8)(A) of the PHS Act,[68] and the October 2021 interim final rules,[69] each party to a determination for which a certified IDR entity is selected must pay an administrative fee for participating in the Federal IDR process. Under section 9816(c)(8)(B) of the Code,[70] section 716(c)(8)(B) of ERISA,[71] section 2799A-1(c)(8)(B) of the PHS Act,[72] and the October 2021 interim final rules,[73] the administrative fee is established in a manner such that the total amount of administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process for that year.

The Departments proposed to establish the amount of the administrative fee through notice and comment rulemaking by amending 26 CFR 54.9816-8(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii). The Departments also proposed at 26 CFR 54.9816-8(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii) that, for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, the administrative fee amount would be $150 per party per dispute, which would remain in effect until changed by subsequent rulemaking.[74] Under the proposed rules, the Departments would have retained the flexibility to update the administrative fee more or less frequently than annually if the total estimated amount of administrative fees paid or amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process changed such that a new administrative fee amount would be required to satisfy the requirement that the total amount of administrative fees paid is estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process.

[65] *See* 88 FR 75744.
[66] 26 U.S.C. 9816(c)(8)(A).
[67] 29 U.S.C. 1185e(c)(8)(A).
[68] 42 U.S.C. 300gg–111(c)(8)(A).
[69] 26 CFR 54.9816-8T(d)(2)(i), 29 CFR 2590.716-8(d)(2)(i), and 45 CFR 149.510(d)(2)(i).
[70] 26 U.S.C. 9816(c)(8)(B).
[71] 29 U.S.C. 1185e(c)(8)(B).
[72] 42 U.S.C. 300gg–111(c)(8)(B).
[73] 26 CFR 54.9816-8T(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii).
[74] As previously mentioned, in the event the effective date of these final rules is after January 1, 2024, the $50 per party per dispute administrative fee amount in effect for 2023, as provided in the October 2022 guidance, will continue to apply to disputes initiated between January 1, 2024 and the effective date of these rules.

The Departments proposed to set the administrative fee amount by estimating the amount of expenditures made by the Departments in carrying out the Federal IDR process and dividing this amount by the estimated total number of administrative fees paid by the parties. As explained in the preamble to the IDR Fees proposed rules, the Departments estimated the total number of administrative fees paid based on the total volume of closed disputes.

For the purpose of calculating the administrative fee amount in the IDR Fees proposed rules, the Departments projected that approximately 225,000 disputes would be closed annually, resulting in 450,000 administrative fees paid. Additionally, the Departments estimated that the expenditures made by the Departments for carrying out the Federal IDR process in 2024 would be approximately $70 million.[75] Using this methodology, proposed in paragraphs 26 CFR 54.9816-8(d)(2)(ii), 29 CFR 2590.716-8(d)(2)(ii), and 45 CFR 149.510(d)(2)(ii), the Departments calculated the proposed administrative fee for disputes initiated on or after the effective date of these rules, and continuing until changed by subsequent rulemaking, by dividing the annual expenditures of approximately $70 million estimated to be made by the Departments in carrying out the Federal IDR process by 450,000, the estimated annual number of administrative fees to be paid by the disputing parties. This resulted in a proposed administrative fee amount of $150 per party per dispute.[76]

After considering comments received on the proposals, as discussed further in this preamble section, the Departments are finalizing the policy to set the administrative fee amount in notice and comment rulemaking no more frequently than once per calendar year. The Departments may set the administrative fee less frequently than annually if the Departments estimate that the total amount of administrative fees paid under the current administrative fee amount would continue to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process for the upcoming calendar year.

Additionally, in response to comments received on the proposals, the Departments are modifying the administrative fee methodology used to estimate the number of administrative fees paid. The Departments will use the estimated number of administrative fees paid to certified IDR entities, rather than the estimated number of closed disputes, to estimate the total number of administrative fees paid. In addition, the Departments will not assume, as set forth in the IDR Fees proposed rules, a 25 percent reduction in the volume of disputes as the result of the District Court vacating certain batching requirements in *TMA IV*. The Departments are also revising the expenditures estimated to be made by the Departments in carrying out the Federal IDR process from approximately $70 million to approximately $56.6 million to reflect a reduction in the Departments' anticipated assistance with eligibility determinations, as discussed later in this preamble. Collectively, these modifications to the methodology result in a finalized administrative fee amount of $115 per party per dispute for disputes initiated on or after the effective date of these rules. As the administrative fee methodology in the IDR Operations proposed rules included some of the same elements as the administrative fee methodology in the IDR Fees proposed rules, the Departments will consider whether any modifications made to the administrative fee methodology in these final rules should also be adopted when finalizing the administrative fee amount using the methodology proposed in the IDR Operations proposed rules.

2. Summary of Comments Received and Responses to Comments

a. Establishing the Administrative Fee in Notice and Comment Rulemaking

Many commenters supported the proposal to establish the administrative fee in notice and comment rulemaking. Commenters stated that this transparent process would allow the public to evaluate the administrative fee amount and provide feedback on the feasibility of providers using the Federal IDR process. However, several commenters opposed the proposal to establish the administrative fee amount more or less frequently than annually and stated that adopting this proposal would introduce uncertainty in the Federal IDR process and would make budgeting more challenging. These commenters requested that the Departments update the administrative fee annually, to balance stability, transparency, and responsiveness, which they stated would mitigate the impact of changes to the administrative fee. One commenter supported the proposal to establish the administrative fee amount more or less frequently than annually, but only if a mid-year change led to a decrease to the administrative fee amount. Commenters also stated that any increases to the administrative fee amount should be on an annual basis with advance notice to interested parties. One of these commenters stated that the administrative fee amount should be set predictably and with at least 90 days' advance notice. Some commenters requested further clarification on the process for proposing and finalizing administrative fee amounts in notice and comment rulemaking.

The Departments agree that one of the goals of establishing the administrative fee amount in notice and comment rulemaking is to foster transparency and allow interested parties to provide feedback on the methodology and process for setting the proposed fee amount. The Departments recognize commenters' concerns about establishing the administrative fee amount more or less frequently than annually, and the Departments are finalizing a policy under which they would establish the administrative fee amount no more frequently than once per calendar year. In addition, the Departments are finalizing as proposed the proposal to change the administrative fee amount less frequently than annually if the expenditures estimated to be made by the Departments in carrying

[75] The list of expenditures associated with the estimated $70 million was provided in the IDR Fees proposed rules at 88 FR 65893.

[76] As described in the IDR Fees proposed rules, the Departments estimated that the proposed administrative fee amount of $150 per party per dispute would result in an estimated annual collection approximately equal to the estimated annual expenditures of approximately $70 million. *See* 88 FR 65888 at 65899.

out the Federal IDR process and the estimated total amount of administrative fees paid in the upcoming year are estimated to be equal. If the Departments determine that the estimated total amount of administrative fees paid in a future year at the current administrative fee amount would be less than the expenditures estimated to be made by the Departments in carrying out the Federal IDR process for that year, the Departments would propose to raise the administrative fee amount in notice and comment rulemaking. Alternatively, if the Departments determine that the estimated total amount of administrative fees paid in a future year at the current administrative fee amount would be more than the expenditures estimated to be made in carrying out the Federal IDR process for that year, the Departments would propose to lower the administrative fee amount in notice and comment rulemaking. Consistent with the statute, the Departments will set the administrative fee such that the estimated total amount of administrative fees paid is equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process.[77]

The Departments also reiterate that using the notice and comment rulemaking process to establish the administrative fee amount will provide interested parties with substantial advance notice of fee changes, so additional advance notice is not needed. As described in the IDR Fees proposed rules, the Departments will provide details on the methodology used to determine the proposed administrative fee amount, and the proposed administrative fee amount, if finalized, would be effective prospectively. Interested parties will be provided with a period to submit public comments on the proposals, and the Departments will consider all comments submitted within the comment period in developing the final rules.

In addition, other commenters raised concerns regarding the amount of the administrative fee changing between any proposed and final rules. One commenter did not support making changes to the administrative fee amount between the proposed and final rules, while another commenter stated that any such changes should be by no more than 10 percent.

The Departments acknowledge these commenters' suggestions but note that the Departments may have more recent data available to estimate the total amount of administrative fees paid or the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process while developing the final rules than they had while developing the IDR Fees proposed rules, and it is reasonable for the Departments to rely on the more recent data in developing the final rules, provided that they use the methodology described in the preamble to the IDR Fees proposed rules or a methodology modified from the preamble to the IDR Fees proposed rules in response to comments. As in these final rules, these circumstances may result in the Departments finalizing a different administrative fee amount than the amount proposed. The finalized administrative fee amount will differ from the amount proposed, if necessary, to comply with the statutory requirement that the total administrative fees paid are estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process.[78]

One commenter was concerned about the ability to comment on the administrative fee amount rather than just the methodology used to calculate the amount and stated that only seeking comment on the methodology could inhibit commenters' ability to accurately express the impact of the proposed fee amount on a disputing party's access to the Federal IDR process.

As previously explained, the Departments are finalizing a policy to establish the administrative fee amount in notice and comment rulemaking no more frequently than once per calendar year and will provide opportunity for comment on any new proposed administrative fee amount, as well as any changes to the methodology used to calculate the administrative fee amount.

b. Administrative Fee Methodology – Estimated Total Number of Administrative Fees Paid

Many commenters opposed the Departments' proposed administrative fee methodology for estimating the total number of administrative fees to be paid. Many commenters suggested that estimating the total number of administrative fees paid based on the projected total number of disputes closed would not capture all disputes in which administrative fees are paid. Some commenters were concerned that this methodology could result in an overpayment of administrative fees to the Departments. One of these commenters was concerned that the data from the six-month period in 2023 used to estimate the number of disputes closed would be radically different from 2024 data. Several commenters suggested using other metrics to calculate the estimated total number of administrative fees paid, including the number of disputes initiated, the number of disputes for which a certified IDR entity fee was paid, and the number of disputes for which parties submitted offers. Moreover, some commenters asserted that using disputes closed contradicts the Departments' regulations requiring each party to pay the administrative fee at the time the certified IDR entity is selected and the Departments' guidance permitting certified IDR entities to collect the administrative fee from parties up to the time of offer submission.[79]

The Departments proposed to use the projected total number of disputes closed to calculate the administrative fee amount because that metric reflected collections under current collections processes,[80] and

[77] Section 9816(c)(8)(B) of the Code, section 716(c)(8)(B) of ERISA, and section 2799A-1(c)(8)(B) of the PHS Act.

[78] *Id.*

[79] *See* 26 CFR 54.9816-8(d)(2)(i), 29 CFR 2590.716-8(d)(2)(i), and 45 CFR 149.510(d)(2)(i); *see also* section 4.8 of the *Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities*. October 2022. *https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/federal-independent-dispute-resolution-process-guidance-for-certified-idr-entities.pdf.*

[80] Under current guidance, the administrative fee may be collected by certified IDR entities up until the time the parties submit their offers, and therefore the administrative fee is not collected for all disputes initiated. *See,* for example, Centers for Medicare & Medicaid Services (March 2023). *Federal Independent Dispute Resolution (IDR) Process Guidance for Certified IDR Entities. https://www.cms.gov/files/document/federal-idr-guidance-idr-entities-march-2023.pdf.*

the Departments were of the view that it was a reliable metric upon which to base the estimated total number of administrative fees to be paid. However, after considering the comments, the Departments agree with the commenters who stated that estimating the total number of administrative fees paid using the projected number of disputes closed would not capture all disputes in which administrative fees are paid because administrative fees may be paid for disputes that have not yet been closed. To capture all disputes in which parties pay administrative fees, the Departments are finalizing the administrative fee amount based on a methodology that estimates the total number of administrative fees paid by projecting Federal IDR portal data on the number of administrative fees paid to certified IDR entities, as explained in the subsequent paragraphs. The number of administrative fees paid to certified IDR entities is currently the best available metric in the Federal IDR portal data to capture all administrative fees parties pay for disputes in any stage of the Federal IDR process.

In the preamble to the IDR Fees proposed rules, the Departments set the administrative fee amount based on the projection that 225,000 disputes would be closed annually. Because both initiating and non-initiating parties to a dispute are required to pay the administrative fee, the Departments estimated in the preamble to the IDR Fees proposed rules that 450,000 administrative fees would be paid annually, or 37,500 per month. As explained above, in setting the administrative fee in these final rules, the Departments are using the total number of administrative fees paid to certified IDR entities for disputes in any stage of the Federal IDR process after certified IDR entity selection. Using the methodology being adopted in these final rules, the Departments estimate that 492,000 administrative fees will be paid annually, or 41,000 administrative fees will be paid per month, by the parties. The Departments estimate the total number of administrative fees paid annually based on the monthly average number of administrative fees paid to certified IDR entities between February 2023 and July 2023. This monthly average was approximately 41,000, and the Departments projected this figure forward by 12 months to estimate that 492,000 administrative fees will be paid annually.

The Departments are using data from the same time period that was used in the IDR Fees proposed rules (February 2023 to July 2023), without updating to newer data. Data from this time period remains the best available data to project future trends due to portal closures and other Federal IDR process changes that began in August 2023 due to the *TMA III* and *TMA IV* opinions and orders. While the Departments considered using data from the most recent six-month period prior to the finalization of this rule (June 2023 to November 2023), they concluded this would inaccurately reflect the monthly average number of administrative fees paid, as various aspects of the Federal IDR process were temporarily suspended from August 4, 2023 to October 6, 2023 for all disputes.[81]

The Departments considered comments providing alternatives for estimating the total number of administrative fees paid in calculating the administrative fee amount. Some commenters wanted the Departments to estimate the total number of administrative fees paid based on the number of disputes initiated. This metric is inaccurate for purposes of calculating the administrative fee amount because the administrative fee may not be collected for all disputes initiated. The obligation for parties to pay the administrative fee attaches at the time of certified IDR entity selection (with guidance permitting certified IDR entities to collect the administrative fee from parties until the time of offer submission). Therefore, if a dispute is withdrawn before selection of the certified IDR entity, there is no obligation for the parties to pay administrative fees for that dispute. For this reason, using the total number of disputes initiated to estimate the number of administrative fees to be paid in the administrative fee methodology risks the Departments underfunding the Federal IDR process.[82]

Other commenters requested the Departments to estimate the total number of administrative fees paid based on the number of disputes for which a certified IDR entity fee was paid. Because parties are not required to pay their certified IDR entity fees and administrative fees at the same time, the number of certified IDR entity fees paid would not necessarily reflect the number of administrative fees paid. Therefore, this metric would also be inaccurate for purposes of calculating the administrative fee amount.

Finally, the Departments also considered estimating the total number of administrative fees paid based on the number of disputes for which parties submitted offers. However, the Departments did not believe this metric would accurately reflect the estimated number of administrative fees that would be paid, since parties may pay administrative fees without submitting offers. Thus, the metric could understate the total number of administrative fees paid.

In summary, the Departments are of the view that it is most accurate to use the total number of administrative fees paid to certified IDR entities in the administrative fee methodology rather than the other metrics suggested by commenters in the prior paragraphs, as this metric reflects actual administrative fees that have been paid for disputes in any stage of the Federal IDR process after certified IDR entity selection.[83] Therefore, in recognition of commenters' concerns about a methodology that could underestimate the total number of administrative fees paid in 2024, resulting in an overestimate of the amount of the administrative fee needed

[81] Of note, batched disputes and single disputes involving air ambulance services also remained suspended after October 6, 2023 and would not be reflected in the most recent data.

[82] In the IDR Operations proposed rules, the Departments proposed to use the total volume of disputes projected to be initiated because the proposed operational changes in those rules, if finalized, would result in the Departments' collection of administrative fees closer to a dispute's date of initiation, and therefore, it may be appropriate to estimate the total volume of administrative fees paid using the total volume of disputes initiated. 88 FR 75793.

[83] As explained in these final rules, under current processes, the total volume of administrative fees paid to certified IDR entities is the best metric to use in the administrative fee methodology to align with statute requiring the Departments to estimate the total number of administrative fees paid. As operations of the Federal IDR process improve over time, the Departments will consider changes to the methodology to best estimate the total number of administrative fees paid.

for 2024, the Departments are establishing the administrative fee methodology using the total number of administrative fees paid to certified IDR entities, rather than the total number of closed disputes, to estimate the total number of administrative fees paid in 2024.

The Departments also received comments regarding the Departments' projections of the total number of closed disputes used to estimate the total number of administrative fees paid. Several commenters suggested that the Departments' estimate of 225,000 closed disputes is too low. A few commenters suggested that the Departments are underestimating utilization of the Federal IDR process and recommended that the Departments analyze the available data from States implementing similar policies before the No Surprises Act.

In the IDR Fees proposed rules, the Departments estimated that 225,000 disputes would be closed annually, and because both the initiating and non-initiating parties to a dispute are required to pay the administrative fee, 450,000 administrative fees would be paid annually. The Departments now estimate that 492,000 administrative fees will be paid to certified IDR entities in the year, as described earlier in this preamble section. The Departments continue to be of the view that Federal IDR process data is the best available data to project trends in the Federal IDR process, especially because regulations and volume differ in State IDR processes. As mentioned in the IDR Fees proposed rules, the Departments initially anticipated 17,333 disputes involving non-air ambulance services would be initiated during the first year of implementation of the Federal IDR process. The Departments developed this estimate based on the experience of New York State. However, the use of State data resulted in the Departments underestimating utilization of the Federal IDR process, as nearly 335,000 disputes were initiated in the Federal IDR process between April 2022 and March 2023.[84] As demonstrated by this result, past data from State processes has limited applicability in predicting future use of the Federal IDR process. For this reason, the Departments are of the view that it is better to use Federal IDR process data rather than State data to estimate the total number of administrative fees paid.

In addition, several commenters disagreed with the Departments' assumption of a 25 percent reduction in the volume of disputes in estimating the total number of administrative fees paid to account for the impact of *TMA IV*'s vacatur of batching regulations and guidance, or asked for more detail on how the projected 25 percent reduction factor was determined, including the details on how the batching of claims will be treated in the future. One commenter noted that the vacatur of the $350 administrative fee amount and batching regulations as a result of *TMA IV* allows many additional claims to become economically viable, so the Departments should expect dispute volume to increase. Another commenter stated that the Departments cannot know with certainty that the *TMA IV* opinion and order will decrease the number of disputes. This commenter also asserted that *TMA IV* did not affect the batching criteria that serve as the largest obstacle for emergency medicine, and therefore there will not be large batches in emergency medicine, which the commenter noted comprised over 70 percent of disputes reflected in the Partial Report on the Independent Dispute Resolution (IDR) Process October 1 – December 31, 2022.[85] Moreover, a few commenters suggested that the *TMA III* opinion and order will increase dispute volume as providers will continue to see low QPAs from plans and issuers and will rely on the Federal IDR process for appropriate payment. One commenter agreed with the Departments' assumption that the *TMA IV* opinion and order will decrease the volume of disputes but disagreed with the Departments' rationale that the increased number of line items will take more time to close. This commenter expected that providers batching claims rather than submitting claims individually would increase efficiencies in the Federal IDR process.

After reviewing the comments, the Departments have reconsidered the assumption that the number of disputes will decrease by 25 percent as a result of *TMA IV*'s vacatur of batching regulations and guidance. Therefore, the Departments are not finalizing the projected 25 percent reduction in the estimated total number of administrative fees paid.

The Departments recognize that certain batching criteria remain in place, such as criteria that impact the batching of emergency medicine claims, and items and services included in such claims will have to be submitted as separate disputes if they do not comply with the applicable batching criteria.[86] Moreover, because the Departments are finalizing the administrative fee amount based on a methodology that estimates the total number of administrative fees paid based on the total number of administrative fees paid to certified IDR entities, rather than the total number of closed disputes, the methodology no longer requires the Departments to make an assumption on whether batched disputes will take more time to close after the vacatur of the batching regulations as a result of *TMA IV*. In addition, the Departments do not have data available to support commenters' assertion that *TMA III* will lead more providers to rely on the Federal IDR process for appropriate claims payment. Plans and issuers are required to calculate QPAs using a good faith, reasonable interpretation of the applicable statutes and regulations that remain in effect after the *TMA III* opinion and order.[87] Furthermore, in their experience operating the Federal IDR process, the Departments have not seen a clear or quantifiable relationship between changes in policy and changes in the number of disputes initiated. The

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[84] Centers for Medicare & Medicaid Services (April 27, 2023). *Federal Independent Dispute Resolution Process - Status Update. https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf.*

[85] U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of the Treasury. *Partial Report on the Independent Dispute Resolution (IDR) Process October 1 – December 31, 2022. https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf.*

[86] U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of Treasury, Office of Personnel Management (October 6, 2023). *FAQs about Consolidated Appropriations Act, 2021 Implementation Part 62. https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-62.pdf* and *https://www.cms.gov/files/document/faqs-part-62.pdf.*

[87] *Id*.

Departments are of the view that the historical data from February 2023 to July 2023 is the best available data at this time to project utilization of the Federal IDR process in 2024, and the Departments are therefore finalizing the administrative fee amount based on a methodology that does not include a 25 percent reduction in the volume of disputes.

c. Administrative Fee Methodology – Estimated Expenditures

The Departments also received comments related to their estimated expenditures for purposes of calculating the administrative fee amount. Several commenters suggested that the Departments should disclose more data supporting the estimated costs to carry out the Federal IDR process in the administrative fee methodology to provide the public with an opportunity to comment. Some of these commenters asserted that the IDR Fees proposed rules did not provide enough detail on the estimated expenditures to allow interested parties to provide meaningful comment on the proposed administrative fee amount. One commenter urged the Departments to establish a regular process for detailing the Departments' data on the administrative fee, including an annual disclosure statement with a balance sheet, to promote transparency and predictability. A few commenters disputed the Departments' reference that Freedom of Information Act (FOIA) regulations prevent the Departments from providing detail on certain estimated expenditure amounts. These commenters stated that without this transparency, interested parties were not afforded an opportunity to meaningfully comment on the proposals related to the administrative fee amount and methodology inputs.

The Departments are finalizing the administrative fee amount based on a methodology that divides the "estimated," rather than "projected," expenditures to carry out the Federal IDR process by the estimated total number of administrative fees to be paid in the year. The use of "estimated" rather than "projected" expenditures is to ensure the terminology used to describe the methodology is consistent with that of the statutory text.[88] To calculate the estimated expenditures to carry out the Federal IDR process, the Departments included the Federal resources needed to carry out the Federal IDR process, such as future personnel and contract costs. The preamble to the IDR Fees proposed rules provided an overview of the future contract costs and Federal resources included in the estimated expenditures and explained that the estimated expenditures to carry out the Federal IDR process in 2024 were approximately $70 million. The Departments disagree with commenters that the Departments did not provide sufficient information to allow meaningful comment. In particular, in the preamble to the IDR Fees proposed rules, the Departments provided details on the types of costs that are included in the estimated expenditures.[89]

While the Departments described the contract costs and Federal resources associated with estimated expenditures to carry out the Federal IDR process in the preamble to the IDR Fees proposed rules, in response to comments requesting additional specifics on the estimated expenditures and in an effort to promote transparency, the Departments are providing further detail on costs included in the total estimated expenditures in these final rules within the bounds of the Departments' ability to disclose these amounts. To avoid releasing sensitive contract information, the Departments are breaking down the costs, which include the future contract and Federal personnel costs, by category of expenditure, and providing approximate cost estimates for carrying out the following categories of Federal IDR process activities:[90]

- Maintaining, operating, and improving the Federal IDR portal, certifying IDR entities, and collecting data from certified IDR entities (approximately $26,360,000);
- Conducting program integrity activities, such as certain QPA audits (as further described subsequently in this preamble) and IDR decision audits, and receiving and investigating Federal IDR process-related complaints (approximately $13,060,000, of which QPA audits resulting from complaints filed by providers, facilities, or providers of air ambulance services comprise approximately $5,000,000);
- Providing outreach to parties and technical assistance to certified IDR entities, including assisting with eligibility determinations when the volume of disputes submitted exceeds the capacity of certified IDR entities to perform those determinations (approximately $11,630,000, of which assisting with eligibility determinations comprises approximately $10,000,000);[91] and
- Collecting administrative fees (approximately $5,530,000), which includes costs to invoice certified IDR entities for administrative fees collected, provide the system infrastructure for certified IDR entities to record and remit administrative fees collected, track data on fees collected and make continuous improvements to the collections process and invoicing systems.

The Departments are publishing summary-level estimated budget information and have provided meaningful data for public input for the purposes of calculating the administrative fee amount. The Departments intend to continue to provide data on the Federal IDR process to promote transparency and predictability in the administrative fee amount, including publishing quarterly public reports with

[88] Section 9816(c)(8)(B) of the Code, section 716(c)(8)(B) of ERISA, and section 2799A-1(c)(8)(B) of the PHS Act.

[89] 88 FR 65893.

[90] As discussed further later in this preamble section, the Departments have reconsidered costs associated with total estimated expenditures of carrying out the Federal IDR process and are revising the total estimated expenditures for 2024 from approximately $70 million to approximately $56.6 million. Additionally, certain expenses apply across multiple categories that were included in the IDR Fees proposed rules. This revised combination of categories better provides a meaningful cost estimate of these activities.

[91] Centers for Medicare & Medicaid Services (November 21, 2022). *Notice of the Federal Independent Dispute Resolution (IDR) Team Technical Assistance to Certified Independent Dispute Resolution Entities (IDREs) in the Dispute Eligibility Determination Process. https://www.cms.gov/files/document/idre-eligibility-support-guidance-11212022-final-updated.pdf.*

the Departments' expenditures and administrative fee collections.[92]

In response to commenters' concerns regarding the Departments' reference to the applicability of FOIA exemptions to information shared during the rulemaking process, the Departments clarify that they will disclose information in response to any requests in accordance with the FOIA and accompanying regulations. However, the Departments are not publishing specific future contract estimates in this rule in response to commenters' requests for more detail on estimated expenditures of Federal IDR process activities and the data underlying those estimates because publishing those contract estimates could undermine future contract procurements. For example, if the Departments were to publish the projected future cost of the contracts used to maintain the Federal IDR portal, the Federal Government would be meaningfully disadvantaged in future contract negotiations related to the Federal IDR portal, as bidders would know how much the Departments anticipate such a future contract being worth. Although current contract awards are published and publicly available,[93] these award amounts do not necessarily reflect the future value of the contract, as there may be future changes in policy and operations and the scope of work.

The Departments are of the view that interested parties had sufficient information to meaningfully comment on the IDR Fees proposed rules. For example, commenters provided valuable information in their comments regarding how the Departments should estimate the total number of administrative fees paid. Based on these comments, the Departments modified the methodology accordingly. Similarly, the Departments provided detailed information in the IDR Fees proposed rules on their calculation of the estimated expenditures to carry out the Federal IDR process. Specifically, the Departments detailed the types of activities included in estimating the annual expenditures of approximately $70 million and received comments on these activities. After considering comments received on these details of the administrative fee methodology, the Departments have revised this estimate of annual expenditures down to approximately $56.6 million, as explained in later paragraphs.

In addition, many commenters raised concerns about the inclusion of certain types of expenses in the administrative fee methodology. Several commenters recommended excluding all or some of the QPA audit costs given that the QPA also serves a purpose outside of the Federal IDR process in calculating patient cost sharing. Some commenters asked the Departments to disclose their total expenditures on QPA audits and the portion proposed to be funded by administrative fees compared to other sources.

As previously mentioned, the Departments are required to include estimated expenditures to carry out the Federal IDR process, which include contract costs and Federal resources, in calculating the administrative fee amount. Accordingly, the Departments disagree with commenters who suggested that QPA audit costs should not be included in the calculation of the administrative fee amount and are adopting an administrative fee methodology that includes certain QPA audit costs in the estimated expenditures. For any dispute in the Federal IDR process, a plan or issuer would have been required to disclose the QPA to the provider along with the initial payment or notice of denial of payment for items and services, and disputing parties must include the QPA for items and services when initiating a dispute. Certified IDR entities are required to consider the QPA when selecting between the offers submitted by disputing parties when determining the total out-of-network payment rate for items and services subject to the Federal IDR process.[94]

Furthermore, it is the responsibility of the Departments (or the applicable State authorities), rather than the provider, facility, provider of air ambulance services, or the certified IDR entity, to monitor plan and issuer compliance with the QPA requirements.[95] To date, the Departments have only conducted audits as part of investigations of complaints, and anticipate continuing to conduct these risk-based audits in the future, though the No Surprises Act permits the Departments to conduct random and risk-based audits.[96] Given the role of the QPA in the Federal IDR process and the direct impact on providers, performing audits on plans and issuers in response to allegations that the plan's or issuer's QPAs are inaccurate is necessary to carry out the Federal IDR process and promotes the integrity of and confidence in the Federal IDR process.

Moreover, addressing concerns about inaccurately calculated QPAs helps to ensure plans and issuers provide correctly calculated QPAs when they participate in the Federal IDR process. For example, in the absence of QPA audits to investigate complaints from providers, facilities, and providers of air ambulance services that one or more of a plan's or issuer's QPAs are inaccurate, plan and issuer compliance with QPA requirements would go unchecked.[97] Certified IDR entities must consider the relevant QPA in making each payment determination under the No Surprises Act,[98] and unchecked QPAs would significantly threaten the integrity of QPAs and the payment determinations

[92] *See, e.g.*, U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of the Treasury. *Initial Report on the Independent Dispute Resolution (IDR) Process April 15 – September 30, 2022. https://www.cms.gov/files/document/initial-report-idr-april-15-september-30-2022.pdf.* U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of the Treasury. *Partial Report on the Independent Dispute Resolution (IDR) Process October 1 – December 31, 2022. https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf.*

[93] *Available at www.sam.gov*.

[94] Section 9816(c)(5)(C)(i)(I) of the Code, section 716(c)(5)(C)(i)(I) of ERISA, and section 2799A-1(c)(5)(C)(i)(I) of the PHS Act.

[95] Section 9816(a)(2)(A)(i) of the Code, section 716(a)(2)(A) of ERISA, and section 2799A-1(a)(2)(A)(i) of the PHS Act. *See also* 86 FR 36899. However, a provider or facility may always assert to the certified IDR entity that additional information points in favor of the selection of its offer as the out-of-network payment amount, even where that offer is for a payment amount that is different from the QPA. 87 FR 52627.

[96] Section 9816(a)(2)(A)(ii) of the Code, and section 2799A-1(a)(2)(A)(ii) of the PHS Act. The July 2021 interim final rules describe the enforcement responsibilities for each Department and OPM. 86 FR 36899 (July 13, 2021). https://www.federalregister.gov/documents/2021/07/13/2021-14382/requirements-related-to-surprise-billing-part-i.

[97] The accuracy of a plan's or issuer's QPA (or QPA methodology) may not be reviewed within a payment determination under the Federal IDR process. *See* 86 FR 55996.

[98] Section 9816(c)(5)(C)(i)(I) of the Code, section 716(c)(5)(C)(i)(I) of ERISA, and section 2799A-1(c)(5)(C)(i)(I) of the PHS Act.

made by certified IDR entities. These audits help to increase transparency into the QPA calculation methodology and encourage compliance among plans and issuers. Accordingly, QPA audits are an integral part of the Federal IDR process, the costs of which are reasonably included in the calculation of the administrative fee amount.

In estimating the expenditures to carry out the Federal IDR process, the Departments are including estimated costs only for certain QPA audits that the Departments anticipate incurring to investigate complaints regarding inaccurate QPAs made by providers, facilities, and providers of air ambulance services under the Federal IDR process. The Departments are not including the costs of QPA audits conducted: (1) in connection with Department of Labor, OPM, or Department of the Treasury investigations; (2) randomly; or (3) in response to complaints from consumers, as not all of these audits are necessarily related to the Federal IDR process. The Departments are of the view that only the costs related to QPA audits conducted in response to complaints from entities that are potential parties to a payment determination are sufficiently related to the Federal IDR process to justify their inclusion in the administrative fee calculation. For example, consumers who complain that a plan or issuer inaccurately calculated their cost sharing based on an erroneously calculated QPA will not be involved in the Federal IDR process, and therefore the costs of such audits are appropriately excluded from those costs supported by administrative fees paid by parties to the Federal IDR process. Because HHS is primarily responsible for the implementation of the Federal IDR process, the Departments view similarly random QPA audits that may be conducted by the Departments, as well as any QPA audits in connection with Department of Labor, OPM, and Department of the Treasury investigations.

The costs of HHS conducting QPA audits for complaints that a plan's or issuer's QPAs are inaccurate are estimated to be approximately $5,000,000 in 2024. As plans and issuers improve their compliance in calculating QPAs correctly, the Departments anticipate that the costs of conducting these audits will decrease, which would be reflected in the estimated expenditures used to determine future administrative fee amounts.

Several commenters also disagreed with including costs associated with assisting with eligibility reviews in the estimated expenditures to carry out the Federal IDR process. A few of these commenters noted that certified IDR entities are responsible for conducting eligibility reviews and therefore certified IDR entity fees should cover this cost. Some commenters asserted that such costs should be recovered through the non-prevailing party's certified IDR entity fee, as the eligibility determination is part of the payment determination. One of these commenters expressed concern that including this expense would incentivize certified IDR entities to understaff as HHS would intervene to address a staffing shortage.

The Departments disagree that the costs of assisting with eligibility determinations should be excluded from estimated expenditures. Certified IDR entities voluntarily participate in the Federal IDR process and set their certified IDR entity fees within ranges established by the Departments to ensure they remain financially viable and that such fees can cover their operating expenses to participate in the Federal IDR process, which include the costs incurred in determining the eligibility of items and services for the Federal IDR process. While certified IDR entities are responsible for making eligibility determinations, and therefore incur costs associated with this activity, the Departments have also incurred costs since November 2022 to assist certified IDR entities in making these determinations by performing research and outreach on disputes pending eligibility determinations, including identifying and obtaining information necessary for certified IDR entities to make eligibility determinations, and will continue to incur such costs in 2024.[99] The Departments disagree with the commenter that stated that the Departments' assistance would incentivize certified IDR entities to understaff. Certified IDR entities could not have reasonably predicted the amount of personnel they would need to make eligibility determinations within the required timeframe given the extremely high volume of disputes. Moreover, it has been difficult for certified IDR entities to make staffing adjustments in response to utilization of the Federal IDR process due to the repeated temporary pauses in the Federal IDR portal resulting from litigation matters and changes in operations.

When the Departments first developed the Federal IDR process and the rules and guidance establishing how certified IDR entities were to calculate their fees for the scope of work they were expected to perform, the Departments and the certified IDR entities did not anticipate the significant difficulty and costs involved in determining eligibility for the Federal IDR process. After six months of operating the Federal IDR process and receiving feedback from disputing parties and certified IDR entities, the Departments determined that it was necessary to assist certified IDR entities with determining eligibility through performing research and outreach on disputes pending eligibility determinations, including identifying and obtaining information necessary to make an eligibility determination.[100] The Departments determined that this course of action was necessary when it became clear that eligibility determinations were taking significantly longer than the Departments had anticipated.

In the IDR Operations proposed rules, the Departments proposed several policies aimed at improving communication between the parties that would make eligibility determinations less burdensome for certified IDR entities and speed up the Federal IDR process, as well as allow the Departments to make eligibility determinations under extenuating circumstances.[101] However, these policies, if

[99] Centers for Medicare & Medicaid Services (November 21, 2022). *Notice of the Federal Independent Dispute Resolution (IDR) Team Technical Assistance to Certified Independent Dispute Resolution Entities (IDREs) in the Dispute Eligibility Determination Process. https://www.cms.gov/files/document/idre-eligibility-support-guidance-11212022-final-updated.pdf.*

[100] The Departments are providing technical assistance regarding eligibility but are not making eligibility determinations, as, under current regulations, only certified IDR entities may make eligibility determinations.
Id.

[101] 88 FR 75744.

finalized, will take time to implement. In the interim, the Departments are working to balance feedback from interested parties asking the Departments to increase the efficiency of the Federal IDR process and decrease the backlog of disputes with other feedback asking the Departments to minimize expenditures and avoid increases to the administrative fee. The Departments have also received comments urging them to shorten the time it takes for payment determinations to be reached. The Departments continue to believe that some level of assistance is necessary to address the high volume of disputes submitted and the backlog of disputes, due in part to the closing and reopening of the Federal IDR process to make necessary systems updates in light of the *TMA III* and *TMA IV* opinion and orders.

However, after reviewing comments, the Departments have reconsidered the amount of estimated costs associated with pre-eligibility reviews that should be included in the estimated expenditures to carry out the Federal IDR process in calendar year 2024. In estimating the expenditures of approximately $70 million in the IDR Fees proposed rules, the Departments included an increase in costs to reflect the Departments taking on a greater role in assisting with eligibility determinations to improve the efficiency of the Federal IDR process.[102] Based on comments received urging the Departments to avoid increasing the administrative fee, the Departments will not take on a greater role in broadly assisting certified IDR entities with eligibility determinations at this time. Instead, the Departments will limit their assistance with eligibility determinations to more complex disputes, such as disputes where there is missing information to determine Federal versus State jurisdictions in a State with a specified State law. This approach will ensure efficient use of the Departments' resources by leveraging the Departments' assistance and expertise in handling pre-eligibility reviews for disputes that certified IDR entities may need to spend more time on, such as disputes for which information was limited due to the systems in place when those disputes were initiated, and will allow certified IDR entities to focus on moving disputes through the Federal IDR process. Furthermore, this will allow the Departments to keep the costs of assisting with eligibility determinations lower in 2024 such that the expenditures estimated to be made by the Departments to carry out the Federal IDR process are now estimated to be approximately $56.6 million in 2024. The total estimated expenditures in the IDR Fees proposed rules included approximately $20 million for the Departments to assist with eligibility determinations via conducting research and outreach. The estimated cost of assisting with eligibility determinations in 2024, as used to calculate the administrative fee as finalized, is approximately $10 million.

Furthermore, the Departments do not anticipate that the decision to focus their assistance with pre-eligibility reviews on more complex disputes and the revised administrative fee amount finalized in these rules will impact the fees certified IDR entities choose to charge. Given the backlog of disputes, utilization of the Federal IDR process strains the current capacity of certified IDR entities to make timely determinations. While the Departments' assistance with eligibility determinations is currently helping to alleviate the backlog of disputes, certified IDR entities' operating expenses are not expected to decrease as a result. If the Departments are able to decrease their assistance with eligibility determinations, the costs of pre-eligibility reviews would decrease, which would be reflected in the estimated expenditures used to determine future administrative fee amounts.

In addition, some commenters disagreed with including the costs of investigating complaints of non-compliance in the administrative fee methodology. Commenters asked for clarity in the "investigating relevant complaints" expense and asserted that "relevant" complaints beyond the Federal IDR process would be inappropriate to include in the calculation of the administrative fee amount. A few of these commenters suggested that the party found to be non-compliant should bear the costs of the investigation and asked the Departments to publicly report summary data on these investigations and the costs covered by non-compliant parties compared to those covered by administrative fees. One commenter suggested that the investigation of complaints related to violations of the No Surprises Act should be funded by a congressional appropriation as these are largely unrelated to the Federal IDR process.

The Departments clarify that the complaints costs included in the estimated expenditures in the administrative fee methodology only include costs associated with receiving and investigating Federal IDR process-related complaints. For example, such costs include investigating complaints within the Departments' jurisdiction regarding the failure of a non-prevailing party to pay the payment determination amount to the prevailing party within 30 days of the certified IDR entity's payment determination as required by the No Surprises Act.[103] Complaints costs do not include costs for complaints that are not related to the Federal IDR process, such as those related to the QPA for patient cost sharing. Therefore, the Departments are of the view that those costs are appropriate to include in the administrative fee methodology and are necessary to ensure compliance with the Federal IDR process.[104]

Many commenters suggested that the Departments consider other funding sources besides the administrative fee to fund expenditures. Several commenters

[102] While there is an implementation appropriation, the initial appropriation of $500 million in the CAA is finite and only remains available until expended through 2024. Moreover, the Departments note that additional mandatory funding for the Federal IDR process has not been appropriated beyond the initial $500 million made available in the CAA. However, the Departments cannot rely on budget requests or on appropriations enacted by Congress when calculating this fee. The statute requires the fee to be set at an amount such that the total amount of fees paid is estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process.

[103] Section 9816(c)(6) of the Code, section 716(c)(6) of ERISA, and section 2799A-1(c)(6) of the PHS Act.

[104] While there is an implementation appropriation, the initial appropriation of $500 million in the CAA is finite and only remains available until expended through 2024. Moreover, the Departments note that additional mandatory funding for the Federal IDR process has not been appropriated beyond the initial $500 million made available in the CAA. The Departments are unable to appropriate this funding themselves, although they have made numerous requests to Congress for additional funding, and therefore this is not a reliable source of Federal IDR process funding.

suggested that implementing penalties could help fund expenditures, including penalties for submitting ineligible disputes, failing to comply with disclosure obligations, or delaying the Federal IDR process. Some commenters suggested the CAA's $500 million appropriation to implement the No Surprises Act should cover at least a portion of the Departments' estimated expenditures. One commenter asked for confirmation that the implementation appropriation has been exhausted fully and suggested requesting additional funds from Congress in upcoming budget requests to support the funding of the Departments' ongoing implementation. Another commenter asserted that the administrative fee methodology set forth in the IDR Fees proposed rules did not take into account any appropriations funding.

As required by the No Surprises Act,[105] both parties to a dispute must pay an administrative fee for participating in the Federal IDR process. By statute, the administrative fee amount must be calculated such that the total amount of fees paid for a year is estimated to be equal to the amount of expenditures estimated to be made by the Departments for such year in carrying out the Federal IDR process. While the CAA appropriated $500 million to remain available until expended through 2024 for preparing regulations, guidance, and reports, collecting data, conducting audits and enforcement activities,[106] and establishing and initially implementing the No Surprises Act and Title II Transparency provisions through calendar year 2024, this finite appropriation is not solely for the Federal IDR process. Additionally, while the Fiscal Year 2024 President's budget included another $500 million appropriation request for the continued implementation of the No Surprises Act and Title II Transparency provisions, the administrative fee amount finalized in these rules must still be consistent with the statutory requirement to set the administrative fee amount such that the total amount of administrative fees paid is estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process. As a result, when calculating this fee, the Departments cannot rely on budget requests or on appropriations enacted by Congress.

In addition, commenters urged the Departments to consider strategies to decrease utilization of the Federal IDR process, decrease administrative burden, increase the efficiency of the Federal IDR process, and ultimately reduce the cost of administering the Federal IDR process. Examples of commenters' suggestions include enforcing disclosure requirements, requiring plans and issuers to include remittance advance remark codes (RARCs) at the time of initial claim determination, easing batching requirements, disincentivizing bad faith conduct, making improvements to the Federal IDR portal, and implementing a required initial payment amount for out-of-network emergency services. Several commenters suggested that the volume of ineligible disputes and the cost of conducting eligibility reviews would be reduced or eliminated if the Departments enforced disclosure requirements or required plans and issuers to provide adequate information for providers to determine whether a claim is eligible for the Federal IDR process. One commenter suggested that plans and issuers should cover the cost of eligibility reviews when they fail to inform the provider of eligibility for the Federal IDR process. Another commenter suggested that the cost of eligibility reviews should be assessed to the party that challenges eligibility as this cost would be avoidable if the plan or issuer provided sufficient information. One commenter suggested that the Departments could reduce the administrative burden of the Federal IDR process by contracting with an established claims processing clearinghouse that currently possesses the capabilities to perform real-time eligibility determinations to create an in-portal eligibility validation process.

The Departments continue to consider improvements to the Federal IDR process and recently published the IDR Operations proposed rules,[107] which include policies aimed at reducing the volume of ineligible disputes, establishing additional disclosure requirements (such as requiring plans and issuers to use approved claim adjustment reason codes (CARCs) and RARCs), incentivizing good faith conduct with respect to open negotiation and exchange of information, and otherwise improving the Federal IDR process. Overall, these policies would, if finalized, support efficiency in Federal IDR process operations and reduce the cost of administering the Federal IDR process in the future.

Recognizing that the cost of certifying IDR entities is included in the administrative fee methodology, one commenter sought clarity on how the methodology considers efficiencies gained from certifying more IDR entities to make payment determinations and therefore reduce the backlog.

The Departments note that the benefits of certifying new IDR entities will be achieved over time, as new certified IDR entities acclimate to the process and increase the speed at which they move disputes through the Federal IDR process. As efficiencies in the Federal IDR process are adopted over time, the expenditures required to carry out the Federal IDR process could decrease, exerting downwards pressure on the administrative fee amount. If any of these situations results in changes to the data used to calculate the administrative fee amount, the Departments intend to take these changes into consideration when establishing the administrative fee amount in the future.

[105] Section 9816(c)(8)(A) of the Code, section 716(c)(8)(A) of ERISA, and section 2799A-1(c)(8)(A) of the PHS Act.

[106] As previously explained in the preamble to these final rules, the Departments may conduct random or risk-based QPA audits. The Departments consider it appropriate to include some of the costs of conducting risk-based QPA audits resulting from complaints filed by providers, facilities, or providers of air ambulance services alleging that the QPA was inaccurate as expenditures made in carrying out the Federal IDR process, and therefore include the costs of conducting these audits in estimating the expenditures made by the Departments in carrying out the Federal IDR process. Other audit costs, such as the QPA audits conducted in connection with Department of Labor, OPM, or Department of Treasury investigations; audits conducted randomly; or audits conducted in response to complaints from consumers regarding QPAs may be funded using other appropriations, as applicable.

[107] 88 FR 75744.

d. Administrative Fee Methodology – Other Comments

The Departments sought comments on whether, when calculating the administrative fee amount in future years, they should apply an inflationary adjustment, such as the consumer price index for all urban consumers (CPI–U), to the amount of estimated expenditures to be made by the Departments in carrying out the Federal IDR process. A few commenters supported using an inflationary adjustment, such as the CPI-U, to adjust the administrative fee amount in future years. Other commenters opposed this approach, stating that it would not necessarily correlate with the Departments' expenditures to operate the Federal IDR process and may not align with the established methodology of dividing the Departments' estimated expenditures by the estimated total number of administrative fees to be paid. Another commenter stated that this proposal would be unnecessary if the Departments finalize the proposal to establish the administrative fee amount more or less frequently than annually. Finally, another commenter asked the Departments to revisit this proposal when data are more predictable after implementing planned improvements to the Federal IDR process.

Upon consideration of the comments, the Departments are not finalizing the use of an inflationary adjustment, such as the CPI-U, to adjust the administrative fee amount in future years. The Departments agree with commenters that the CPI-U may not correlate with projected increases in the Departments' estimated expenditures to carry out the Federal IDR process and therefore using it could be inconsistent with the statute.

Several commenters urged the Departments to improve the Federal IDR process before increasing the administrative fee amount by decreasing the backlog, enforcing timely payment, and holding all parties accountable to the regulatory requirements. Some commenters recommended maintaining the current administrative fee amount until there is stability in the Federal IDR process and more data are available to accurately forecast long-term costs. A few commenters suggested that the Departments modify the administrative fee amount in future years to make up for any shortfall or surplus created by the finalized administrative fee amount.

As previously mentioned, the Departments continue to consider improvements to the Federal IDR process; however, implementing these improvements would increase the costs of carrying out the Federal IDR process in the short term and would take time to operationalize. As previously mentioned, the Departments proposed policies in the IDR Operations proposed rules aimed to improve the overall efficiency and operations of the Federal IDR process.[108] The Departments were unable to propose those policies in the IDR Fees proposed rules because they are much more comprehensive than the fee-related policies proposed in the IDR Fees proposed rules and would require more time to develop and implement, if finalized. There is an urgency to publish these final rules due to the need to sufficiently fund the Federal IDR process in 2024, because, as explained above, the current $50 administrative fee amount is insufficient to provide total administrative fees that are estimated to be equal to the expenditures estimated to be made by the Departments in carrying out the Federal IDR process, as required by the No Surprises Act.[109]

e. Administrative Fee Amount and Impact

Many commenters opposed the proposed $150 per party per dispute administrative fee amount and stated that it would make the Federal IDR process cost-prohibitive to pursue for many providers, especially small providers, rural providers, independent practices, and certain medical specialties, such as psychiatry, emergency medicine, radiology, and anesthesiology. Some commenters requested that the Departments analyze how the proposed administrative fee amount would be cost-prohibitive for providers and would deter and limit dispute resolution for small providers. A few commenters asserted that the administrative fee amount would unfairly favor plans and issuers over providers in the Federal IDR process. One commenter recommended against using a methodology to calculate the administrative fee amount that did not consider the increased financial burdens on providers compared to plans and issuers. Another commenter stated that the proposed administrative fee amount prioritizes the interest of certified IDR entities and the Departments in covering their costs at the expense of parties' access to the Federal IDR process.

Similarly, some commenters stressed that it is important to keep the administrative fee amount low to prevent the administrative fee from serving as a *de facto* barrier to the Federal IDR process. These commenters asserted that such a *de facto* barrier would not align with congressional intent, as Congress decided against adding a dollar-value threshold to the No Surprises Act despite considering this while developing the legislation. Several commenters raised concerns that reducing access to the Federal IDR process would reduce providers' reimbursements for out-of-network services, as it would not be cost-effective to dispute certain payment amounts in the Federal IDR process. Some commenters asserted that a cost-prohibitive administrative fee amount would reduce incentives for plans and issuers to negotiate fair in-network contracts or, in some cases, renew contracts, forcing providers out of networks.

A few commenters suggested that patients would also be impacted by the increased administrative fee amount, either through plans and issuers narrowing provider networks or increasing premiums and cost-sharing amounts, or providers passing on costs to patients or going out of business. However, several commenters noted that the proposed fee amount was an improvement from the previous $350 amount.

For reasons described throughout this preamble, the Departments are finalizing the administrative fee amount for disputes initiated on or after the effective date of these rules as $115 per party per dispute.

[108] 88 FR 75744.

[109] Section 9816(c)(8)(B) of the Code, section 716(c)(8)(B) of ERISA, and section 2799A-1(c)(8)(B) of the PHS Act.

This change in the administrative fee amount between the proposed and final rules reflects modifications to the estimated expenditures and to the administrative fee methodology described elsewhere in this preamble.

While the Departments are statutorily required to set the administrative fee amount such that the total amount of administrative fees paid is estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process, the Departments acknowledge the concerns of commenters related to accessibility and affordability of the Federal IDR process and the impact of the proposed administrative fee amount on the parties and patients. In the Departments' effort to balance their statutory obligations with the priority of ensuring equitable access for parties to engage in the Federal IDR process, the Departments proposed in the IDR Operations proposed rules to reduce the administrative fee amount in certain circumstances. In the IDR Operations proposed rules, the Departments proposed to reduce the administrative fee amount to $75 (50 percent of the full administrative fee amount proposed in those proposed rules) for both parties when the highest offer by either party in open negotiation was less than the full administrative fee amount ($150 as proposed in those proposed rules)[110] and to $30 (20 percent of the full administrative fee amount proposed in those proposed rules) for non-initiating parties in ineligible disputes.[111] The Departments also proposed in the IDR Operations proposed rules to revise the requirements for batching qualified IDR items and services together into a single Federal IDR process dispute.[112] The Departments anticipate that these proposals would make the Federal IDR process more accessible for all parties, but especially the parties for whom commenters expressed concerns, such as small and rural providers and certain medical specialties.

The administrative fee amount being finalized in these final rules is applied equally to both parties to a dispute. The Departments are of the view that it would be inequitable to charge a smaller party a lower administrative fee, because a dispute initiated by a smaller party costs the Departments the same amount to process as a dispute initiated by a larger party. Furthermore, the value of a dispute, rather than the size of the party, determines whether it will be cost-effective for the party to pursue the dispute. For example, a smaller party could initiate a high dollar value dispute, while a larger party could initiate a small dollar value dispute. The Departments proposed in the IDR Operations proposed rules to charge both parties a reduced administrative fee when the highest offer made during open negotiation is less than the full administrative fee amount,[113] which is intended to improve the accessibility of the Federal IDR process for parties to low-dollar disputes. The Departments anticipate that such parties may be smaller providers and facilities or independent practices. However, larger parties to low-dollar disputes would not be precluded from paying the reduced administrative fee as long as the dispute meets the aforementioned requirement.

The Departments considered the impact of the proposed $150 administrative fee amount on the parties compared to the current $50 administrative fee amount and the previous $350 administrative fee amount. While the Departments understand that it may be economically infeasible to initiate some claims in the Federal IDR process due to the administrative and certified IDR entity fees associated with accessing the process, as discussed previously, the Departments are statutorily obligated to charge an administrative fee amount such that the administrative fees paid are estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process.[114] The methodology used by the Departments is derived from this statutory language.

Congress did not include a dollar-value threshold for Federal IDR process disputes in the No Surprises Act. Rather, Congress opted to include a requirement in the No Surprises Act for each party to a dispute for which a certified IDR entity is selected to pay to the Departments, at such time and in such manner as specified by the Departments, a fee for participating in the Federal IDR process.[115] Therefore, regardless of the administrative fee amount, disputing parties must always evaluate whether it would be economically efficient to initiate a dispute in the Federal IDR process. Congress also provided in the No Surprises Act that the administrative fee amount is established by the Departments in a manner such that the total amount of fees paid for such year is estimated to be equal to the amount of expenditures estimated to be made by the Departments for such year in carrying out the Federal IDR process.[116]

In regard to comments stating that the administrative fee could result in narrowing networks, many factors may impact whether a provider, facility, or provider of air ambulance services and a plan or issuer will enter a network agreement with one another, including the market power of each party, Federal and State network adequacy laws, and other factors. The Departments acknowledge that the amount paid for out-of-network services is one of the factors that impacts market participants' decisions whether to enter network agreements. The No Surprises Act represents a substantial change to the way the parties come to agreement on payment for out-of-network services by prohibiting, in many circumstances, the practice of sending surprise medical bills to patients and establishing a Federal IDR process for determining the appropriate out-of-network rate. Many providers report that initial payments made by plans and issuers for out-of-network services are now

[110] 88 FR 75799.

[111] 88 FR 75800.

[112] 88 FR 75783 through 75791.

[113] 88 FR 75799.

[114] Section 9816(c)(8)(B) of the Code, section 716(c)(8)(B) of ERISA, and section 2799A-1(c)(8)(B) of the PHS Act.

[115] Section 9816(c)(8)(A) of the Code, section 716(c)(8)(A) of ERISA, and section 2799A-1(c)(8)(A) of the PHS Act.

[116] Section 9816(c)(8)(B) of the Code, section 716(c)(8)(B) of ERISA, and section 2799A-1(c)(8)(B) of the PHS Act.

substantially lower than such payments were before enactment of the No Surprises Act. Some providers report that plans' and issuers' abilities to make lower payments for out-of-network services has impacted their willingness to offer acceptable in-network payment rates in network agreement negotiations. To the extent that the Federal IDR process and the prohibition on surprise medical billing change this equilibrium among parties, they could impact the number of providers and plans and issuers that are able to agree on terms for entering a network agreement and consequently network breadth.

In the IDR Operations proposed rules, the Departments are proposing a number of steps to accelerate throughput in the Federal IDR process,[117] which would make it easier for the parties to use the process to determine the appropriate payment amount for out-of-network services. That said, the appropriate payment rate for out-of-network services is only one factor among many that influences network breadth. It is also important for the parties to meaningfully engage in open negotiation to determine an appropriate out-of-network payment rate, since agreeing to rates in open negotiation allow the parties to avoid the costs of using the Federal IDR process. Even as the Federal IDR process becomes faster and more parties avail themselves of the opportunity to agree to out-of-network payment rates during the open negotiation period, the price paid for out-of-network services will remain one among many factors in a dynamic market. Furthermore, the Departments anticipate that a Federal IDR process with consistent payment determination outcomes will lead to fewer dispute initiations, because parties will have a better understanding of what a determination will likely be and more disputes would likely be settled in open negotiation or even earlier, resulting in the parties avoiding the costs associated with the Federal IDR process.

The Departments also do not anticipate that the policies finalized in these rules would cause plans and issuers to increase premiums, as further discussed in section IV.G of this preamble, or patient cost sharing, because administrative fees paid would likely represent a very small percentage of the costs considered by plans and issuers in calculating annual premiums or cost sharing.

Many commenters emphasized the importance of considering the proposed administrative fee amount alongside batching requirements to determine whether the administrative fee amount would be cost-prohibitive. Some commenters suggested that batching policies could mitigate the financial challenges providers and facilities face, especially when pursuing low-dollar claims. A few commenters suggested it was premature to update the administrative fee amount or provide feedback on a proposed amount until batching guidance is updated. One commenter viewed an administrative fee of $150 per party as reasonable so long as a claim is defined as an episode of care or a single medical encounter in the batching policy.

The Departments are continuing to assess batching flexibilities and the impact of batching on various parts of the Federal IDR process. To further improve batching requirements, the Departments proposed provisions in the IDR Operations proposed rules[118] that would allow for more clarity, certainty, and flexibility in batching multiple items or services in a single dispute.[119] These batching proposals are designed so that the expenses of engaging in the Federal IDR process, including the administrative fee, do not unreasonably impede parties' access to the Federal IDR process. As previously mentioned, the IDR Operations proposed rules[120] also proposed a reduced administrative fee for low-dollar disputes, identified as disputes for which the highest offer by either party in open negotiation was less than the administrative fee amount, which, if finalized, would mitigate financial burden on providers and facilities when pursuing payment on low-dollar claims. The Departments encourage interested parties to submit comments on the IDR Operations proposed rules prior to the comment deadline.[121]

While the Departments continue to consider improvements to the Federal IDR process, including policies surrounding batching and low-dollar claims, the No Surprises Act requires that the administrative fee be estimated to cover the expenditures estimated to be made by the Departments in carrying out the Federal IDR process in the year, and the Departments estimate that $115 per party per dispute is the appropriate administrative fee amount to meet this requirement for disputes initiated on or after the effective date of these rules.

B. Certified IDR Entity Fee Ranges

Under current regulations at 26 CFR 54.9816-8T(e)(2)(vii), 29 CFR 2590.716-8(e)(2)(vii), and 45 CFR 149.510(e)(2)(vii), the certified IDR entity fees for single and batched determinations are set by the certified IDR entities within the upper and lower limits of ranges for each as set forth in guidance issued annually by the Departments.

In the IDR Fees proposed rules, the Departments proposed to amend the provisions of the regulations establishing the ranges for certified IDR entity fees for single and batched disputes to establish the ranges in notice and comment rulemaking, rather than in guidance, at 26 CFR

[117] 88 FR 75744.

[118] 88 FR 75744.

[119] On November 28, 2023, the Departments released FAQs pertaining to batching that will be effective until the IDR Operations proposed rules are finalized and take effect. These FAQs discuss how, in light of the *TMA IV* and *TMA III* opinions and orders, the batching requirements of the No Surprises Act apply to qualified IDR items and services for disputes eligible for initiation of the Federal IDR process on or after August 3, 2023, until the Departments engage in future notice and comment rulemaking. *See* U.S. Department of Health and Human Services, U.S. Department of Labor, U.S. Department of Treasury, Office of Personnel Management (November 28, 2023), *FAQs about Consolidated Appropriations Act, 2021 Implementation Part 63,* available at *https://www.cms.gov/files/document/faqs-part-63.pdf.*

[120] *Id*.

[121] As discussed earlier in this preamble section, the Departments were unable to propose these operational policies in the IDR Fees proposed rules because they are more comprehensive than the fee-related policies proposed in the IDR Fees proposed rules and require more time to develop and implement if finalized. There is an urgency to publish these final rules due to the need to sufficiently fund the Federal IDR process in 2024.

54.9816-8(e)(2)(vii), 29 CFR 2590.716-8(e)(2)(vii), and 45 CFR 149.510(e)(2)(vii). Further, the IDR Fees proposed rules provided that, consistent with current rules, certified IDR entities must annually provide a fixed fee for single determinations and separate fixed fees for batched determinations within the upper and lower limits for each as set in notice and comment rulemaking. Additionally, the IDR Fees proposed rules provided that the certified IDR entity fee ranges established by the Departments in rulemaking would remain in effect until new certified IDR entity fee ranges are established by subsequent notice and comment rulemaking,[122] allowing the Departments to update the certified IDR entity fee ranges more or less frequently than annually. Finally, the Departments proposed that the certified IDR entity or IDR entity seeking certification may seek advance written approval from the Departments to update its fees more often than once annually.

The Departments proposed that for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, certified IDR entities would be permitted to charge a fixed certified IDR entity fee for single determinations within the range of $200 to $840, unless a fee not within that range is approved by the Departments pursuant to paragraphs 26 CFR 54.9816-8(e)(2)(vii)(A) and (B), 29 CFR 2590.716-8(e)(2)(vii)(A) and (B), and 45 CFR 149.510(e)(2)(vii)(A) and (B). The Departments also proposed that for disputes initiated on or after the later of the effective date of these rules or January 1, 2024, certified IDR entities would be permitted to charge a fixed certified IDR entity fee for batched determinations within the range of $268 to $1,173, unless a fee outside this range is approved by the Departments pursuant to paragraphs 26 CFR 54.9816-8(e)(2)(vii)(A) and (B), 29 CFR 2590.716-8(e)(2)(vii)(A) and (B), and 45 CFR 149.510(e)(2)(vii)(A) and (B). The Departments proposed to continue to use a tiered fee structure based on the number of line items within the batch.[123] Under the IDR Fees proposed rules, certified IDR entities would be permitted to charge a fixed tiered fee within the range of $75 to $250 for every additional 25 line items within a batched dispute beginning with the 26th line item.[124] The IDR Fees proposed rules explained the Departments' considerations for proposing the certified IDR entity fee ranges, which included the anticipated time and resources needed for certified IDR entities to make payment determinations meeting the requirements of the statute, rules, and guidance; the anticipated time and resources needed for data reporting; the anticipated time and resources needed to comply with audit requirements; the anticipated volume of Federal IDR initiations and payment determination quality assessments; the anticipated volume of Federal IDR initiations ineligible for the Federal IDR process; and the level of complexity in determining the eligibility of items and services for the Federal IDR process.[125] These fee ranges would apply until another set of fee ranges is proposed and finalized through subsequent notice and comment rulemaking.

If a certified IDR entity wishes to charge a fee outside either of these fee ranges, it would continue to follow the existing process for requesting written approval from the Departments outlined in 26 CFR 54.9816-8(e)(2)(vii)(A) and (B), 29 CFR 2590.716-8(e)(2)(vii)(A) and (B), and 45 CFR 149.510(e)(2)(vii)(A) and (B).

Since the publication of the IDR Fees proposed rules, the Departments have analyzed updated data and assumptions as applied to the factors considered in the IDR Fees proposed rules' preamble to set the fee ranges, and the Departments found that the results of the analysis remain the same. The Departments received comments on these proposals.

The Departments are finalizing as proposed the policy to establish the certified IDR entity fee ranges through notice and comment rulemaking, rather than guidance. The Departments are also finalizing the certified IDR entity fee ranges for single and batched disputes as proposed. Finally, the Departments are finalizing the fixed tier fee structure for batched disputes, as well as the range for this structure, as proposed.

However, after considering the public comments, the Departments are not finalizing the proposal which would have allowed the Departments to set the certified IDR entity fee ranges more frequently than annually but are instead finalizing the proposal with modifications to reflect that the certified IDR entity fee ranges may be established by the Departments no more frequently than annually through notice and comment rulemaking. Further, the Departments are finalizing the proposal that the certified IDR entity or IDR entity seeking certification may seek advance written approval from the Departments to update its fees more often than once annually, with modifications to reflect that in addition to setting their initial fee for the calendar year, certified IDR entities may only request approval from the Departments to update their fees one additional time per year, and with additional non-substantive modifications for readability. Finalizing this policy would result in a process where the certified IDR entity or IDR entity seeking certification sets their fixed fees for single and batched determinations for the year, and then is allowed one opportunity at any point during the calendar year to update their fixed fees, provided that their request is approved by the Departments.

Many commenters supported the proposal to establish the certified IDR entity fee ranges through notice and comment rulemaking. Several commenters noted that establishing the certified IDR entity fee ranges through notice and comment

[122] 88 FR 65888.

[123] A tiered fee structure was first proposed in the Calendar Year 2023 Fee Guidance *for the* Federal Independent Dispute Resolution Process *under* the No Surprises Act and implemented for all disputes initiated as of January 1, 2023. *See* Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act. https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

[124] 88 FR 65888.

[125] 88 FR 65888 at 65895 through 65896.

rulemaking would increase transparency and allow interested parties to provide feedback that would help the Departments appropriately adjust the fee ranges. Many commenters expressed opposition to the Departments' proposal to establish the certified IDR entity fee ranges more or less frequently than annually. The majority of these commenters encouraged the Departments to update the certified IDR entity fee ranges only once annually to create a more predictable and stable Federal IDR process. Several commenters expressed concern that changing the certified IDR entity fee ranges more frequently than once annually would prevent providers from effectively budgeting for participation in the Federal IDR process, which would create a barrier to access. A few commenters noted that unpredictable changes to the certified IDR entity fee ranges could impact plans' and issuers' abilities to budget for the Federal IDR process and could lead plans and issuers to budget more conservatively and pass on the cost increase to consumers.

A few commenters generally supported the flexibility to update the certified IDR entity fee ranges more or less frequently than annually. However, one commenter supported the proposed flexibility only if the Departments adjusted the fee ranges less frequently than annually, while another commenter supported the proposed flexibility if the Departments provided adequate notice, such as 90 days, before implementing the changed fee ranges. Further, several commenters opposed the proposal to allow certified IDR entities or IDR entities seeking certification to seek advance written approval from the Departments to set their certified IDR entity fees more often than annually. Similar to the proposal to establish the certified IDR entity fees through notice and comment rulemaking more or less frequently than annually, some commenters expressed concerns that the proposed policy would cause unpredictability for the parties, which would impact their ability to effectively budget for the Federal IDR process. One commenter misinterpreted the proposed policy as proposing to require certified IDR entities to adjust their fees whenever operational or technological efficiencies could justify a decrease in cost, and expressed concern that the proposed policy may discourage certified IDR entities from participating in the Federal IDR process. One commenter opposed multiple fee adjustments within a given year but supported allowing certified IDR entities a limit of one additional fee adjustment per year following a compelling request and formal approval.

The Departments agree with commenters that the proposal to establish the certified IDR entity fee ranges through notice and comment rulemaking will improve transparency and provide opportunity for greater engagement by interested parties in the establishment of the ranges. The Departments recognize commenters' concerns that the proposed flexibility to set the certified IDR entity fee ranges through notice and comment rulemaking more or less frequently than annually would enable multiple changes to the certified IDR entity fee ranges over the course of a year. In general, the Departments recognize that frequent changes to the established certified IDR entity fee ranges could increase unpredictability in the Federal IDR process and potentially burden parties, but note that they did not propose this policy with the intention of pursuing such frequent changes. The Departments contemplated establishing this proposed flexibility so that the certified IDR entity fee ranges could remain effective for multiple years. Further, updating the certified IDR entity fee ranges does not guarantee that certified IDR entities will set new fixed fee amounts. Each certified IDR entity determines their fee amounts independently, and there is no requirement to make a corresponding adjustment each time the certified IDR entity fee ranges established by the Departments change, provided the certified IDR entity's fee stays within the new range.

While it would be unlikely that the Departments would pursue multiple notice and comment rulemakings in a single year to adjust the certified IDR entity fee ranges, the Departments acknowledge the potential for the proposed policy to increase uncertainty within the Federal IDR process. Therefore, to be responsive to commenters' concerns, the Departments are finalizing this proposal with modifications to reflect that the certified IDR entity fee ranges may be established no more frequently than once per calendar year. This allows the certified IDR entity fee ranges to remain effective over multiple years until they are updated in subsequent notice and comment rulemaking, while addressing commenters' concerns by preventing multiple adjustments of the certified IDR entity fee ranges in a single year.

The Departments acknowledge that frequent increases to certified IDR entity fees could lead to unpredictability and complicate the ability of the parties to effectively budget for the Federal IDR process. The Departments are of the view that the proposed mechanism for certified IDR entities to request to set their fees more than once annually includes sufficient guardrails to ensure that any changes to the certified IDR entities' fees would not prevent parties from accessing the Federal IDR process. Specifically, the Departments proposed to require certified IDR entities to submit the following information to the Departments in their requests: (1) the fixed fee that the certified IDR entity is seeking to charge; (2) a description that reasonably explains the circumstances that require a change to its fee; and (3) a detailed description that reasonably explains how the change to its fee will be used to mitigate the effects of these circumstances. The Departments would use their discretion to determine if the explanations included in the request demonstrate that the change would ensure the certified IDR entity's financial viability and would not impose on parties an undue barrier to accessing the Federal IDR process.

The Departments seek to strike a balance between predictable fees for parties participating in the Federal IDR process and certified IDR entities' need for flexibility to respond to circumstances that require fee adjustments to maintain program operations. For example, the Departments acknowledge that certified IDR entities consider various factors, including operational costs, in setting fees for the Federal IDR process. However, certified IDR entities have needed to increase staff resources, implement system updates, and adjust operations to respond to unexpectedly frequent changes to guidance or regulations governing the Federal IDR process or the volume of disputes initiated and closed under the Federal IDR process.

To ensure that certified IDR entities have sufficient funding to respond to such circumstances, providing certified IDR entities with the ability to request an update to their fees one additional time during a calendar year is appropriate.

To address some of the concerns expressed by commenters, the Departments are finalizing this proposal with modifications to reflect that certified IDR entities may only request approval from the Departments to set their fee one additional time for a calendar year. In other words, if a certified IDR entity wishes to update its fees an additional time after already setting fees for the calendar year, the certified IDR entity must seek approval from the Departments to do so. A certified IDR entity may set its fees at most two times for a calendar year, once at the initial setting of the fees, and once after receiving approval from the Departments to update the fees, regardless of whether the Departments have established new certified IDR fee ranges in notice and comment rulemaking. If the Departments reject a certified IDR entity's request to update its fees during the calendar year, the certified IDR entity may continue to seek approval by submitting subsequent requests as long as these requests comply with the requirements finalized in this rule.

If a certified IDR entity requests to update its fees after initially setting its fee for the calendar year, and the request is approved by the Departments, the change to its fees will be made public before those fees are effective, in a form and manner specified by the Secretary, to allow the parties time to consider the fee change in their decision making. Updated fees will apply to disputes initiated on or after the effective date of the fee amount. The modified policy will provide an appropriate amount of flexibility to certified IDR entities to make a fee adjustment to account for efficiencies and fluctuations in the conditions of the Federal IDR process in future years, while also capping the number of fee adjustments in a given calendar year and limiting cost volatility for parties participating in the Federal IDR process.

The Departments solicited comment on whether they should apply an inflationary adjustment, such as the CPI-U, to the considerations used to develop the certified IDR entity fee ranges in future years. One commenter supported the use of an inflationary adjustment and suggested updating the certified IDR entity fee ranges annually based on inflation rather than through notice and comment rulemaking. A few commenters opposed updating the certified IDR entity fee ranges using an inflationary adjustment such as the CPI-U. Specifically, one commenter posited that since the CPI-U is updated on a monthly basis, the Departments might pursue monthly adjustments to the certified IDR entity fee ranges, which would severely complicate the Federal IDR process. Another commenter expressed concern that applying an inflationary adjustment would only drive costs up over time, prompting plans and issuers to pass any additional costs on to consumers. One commenter neither explicitly supported nor opposed the general use of an inflationary adjustment to set the certified IDR entity fee ranges but noted that setting the certified IDR entity fee ranges through notice and comment rulemaking could be an opportunity to adjust based on inflation. This commenter cautioned that if the Departments pursued the use of an inflationary adjustment, such an adjustment should be the only consideration used to update the certified IDR entity ranges.

The Departments appreciate the comments on the use of an inflationary adjustment to update the certified IDR entity fee in future years. The Department share the commenters' desire to maintain predictable and accessible costs for participating in the Federal IDR process and agree that additional adjustments to the fee ranges more frequently than annually would complicate the Federal IDR process for all parties. As stated earlier in this preamble, based on the comments received, the Departments are finalizing the proposal to establish the certified IDR entity fee ranges through notice and comment rulemaking, which will allow for greater transparency and feedback related to the establishment of the ranges. Further, the Departments are of the view that the considerations being finalized in this rulemaking are necessary to develop reasonable certified IDR entity fee ranges, and that the addition of inflationary adjustment to the considerations, or the exclusive use of an inflationary adjustment to develop the ranges, is not practical or necessary at this time. The Departments will continue to carefully consider whether such a policy may be appropriate in future rulemaking.

Several commenters expressed concerns with the proposed certified IDR entity fee ranges' increased upper limits. Some of these commenters stated that the proposed certified IDR entity fee ranges may be cost-prohibitive and limit access to the Federal IDR process, particularly for small providers. A few of the commenters opposed to the proposed increase in the upper limits of the certified IDR entity fee ranges asserted that any increase in the certified IDR entity fee ranges would limit participation in the Federal IDR process. Specifically, one of these commenters asserted that the proposed ranges would result in costs passed on to patients in the form of increased premiums and cost-sharing amounts.

Some commenters, however, supported the proposed certified IDR entity fee ranges. Some of these commenters asserted that the increase to the upper limit of the certified IDR fee ranges is reasonable and will encourage greater plan and issuer participation prior to the Federal IDR process, such as during open negotiation, and will reduce the time needed for certified IDR entities to render payment determinations.

The Departments maintain the view that the proposed certified IDR entity fee ranges will keep costs reasonable such that participating in the Federal IDR process will not be cost-prohibitive, including for smaller providers, while also ensuring that certified IDR entities are able to cover their operating costs and continue participating in the Federal IDR process. The Departments acknowledge that broadening the certified IDR entity fee ranges could have an impact on the cost to parties to engage in the Federal IDR process. However, the current range of fees charged by certified IDR entities reflects that, since the opening of the Federal IDR process, certified IDR entities do not all charge the same fees, nor do they all charge the maximum fee amount in the ranges set by the Departments.[126] To

[126] *See* https://www.cms.gov/nosurprises/help-resolve-payment-disputes/certified-idre-list.

remain competitive, the certified IDR entities have an incentive to charge fees on the lower end of the established range. As a result, the Departments do not believe that an increase to the upper limits of the certified IDR entity fee ranges will result in drastic increases to the fees charged by certified IDR entities. Further, the Departments have not seen any data suggesting that the proposed increases to the certified IDR entity fee ranges will result in a substantial enough increase in costs to plans and issuers that they will impact patients in the form of increased premiums and cost-sharing amounts. However, the Departments will continue to monitor this dynamic.

The Departments agree with commenters asserting that the increases to the certified IDR entity fee ranges will encourage greater plan and issuer participation prior to the Federal IDR process, such as during open negotiation. The Departments believe that the increases to the certified IDR entity fee ranges will encourage parties to actively participate in open negotiation to preclude the need for the Federal IDR process, thereby eliminating the need for parties to pay the certified IDR entity fee.

The Departments emphasize that while they establish ranges for the certified IDR entity fees, certified IDR entities choose the fixed fees they charge for single and batched determinations based on a number of factors. As noted earlier in this preamble, certified IDR entities have needed to make numerous adjustments in response to high volumes of disputes, complex determinations, and litigation resulting in changes to guidance and regulations governing the Federal IDR process. The proposed ranges for the single and batched determination fees, including the proposed range for the tiered fee for batched determinations, allow for appropriate compensation corresponding to the complexity and effort associated with making eligibility and payment determinations. The Departments remain of the view that the proposed ranges would keep costs for participating in the Federal IDR process reasonable and reduce the potential for increased costs to be passed on to patients.

Several commenters opposed the proposed tiered fee structure for batched determinations. Commenters were concerned that the proposed tiered fee structure would be cost-prohibitive, particularly due to the absence of a limitation on the number of line items considered in the price tiers (that is, no line item cap to the application of the tiered fee, as currently exists). Further, some commenters asserted that the proposed tiered fee structure and range would disincentivize the submission of batched disputes.

A few commenters supported an increased fee for larger batched determinations but recommended that the tiering structure reflect intervals of 50 line items rather than 25. Further, one commenter supported a fixed-dollar tiered fee, as opposed to a range, suggesting that a fixed-dollar fee would provide more consistency across the fees charged by different certified IDR entities and avoid potential issues such as certified IDR entities being overwhelmed with disputes and resulting delays in the Federal IDR process.

The proposed tiered fee structure and range reflect the Departments' intent to keep the costs of participating in the Federal IDR process affordable while ensuring that certified IDR entities are compensated for their work in rendering payment determinations on complex batched disputes. Certified IDR entities have indicated to the Departments that making determinations on large batches of dissimilar items and services is particularly complex and burdensome and that they generally do not realize economies of scale as the number of batched line items increases. The Departments considered the impact of the *TMA IV* opinion and order as discussed in section I.C of this preamble on the anticipated complexity and volume of batched disputes while determining the certified IDR entity fee ranges. The Departments acknowledge the efficiencies gained by batching and believe that the proposed tiered fee structure would maintain those efficiencies while allowing certified IDR entities to charge a reasonable fee for the level of work involved in batched determinations.

Several commenters stated that the proposed tiered fee structure might increase the costs to disputing parties submitting batched disputes with many line items because there is no cap to the number of line items within a batched dispute after which the tiered fee would no longer apply.

A tiered fee selected by each certified IDR entity from a dollar range established by the Departments allows for greater flexibility, as opposed to applying a standard fixed dollar amount or applying a percentage of the certified IDR entity's batched determination fee as is currently used.[127] The tiered fee range reflects the costs associated with increasing line items in a batched dispute and provides certified IDR entities the appropriate flexibility to set fees commensurate with their costs. Additionally, the Departments believe that a dollar range based on the number of line items in a batched dispute would provide transparent and consistent pricing for both parties and certified IDR entities. The Departments agree that instances of batched disputes with exceedingly high numbers of line items occur infrequently but remain a possible occurrence. In addition, as mentioned previously, certified IDR entities have indicated that they generally do not realize economies of scale for batched disputes with high numbers of line items. For instance, certified IDR entities often need to verify the acuity of every patient in a batch, even when the service is the same. Given the anticipated infrequency of batched disputes with exceedingly high numbers of line items and in recognition of the need for the certified IDR entity to cover its costs for such batched disputes, the Departments believe the tiered fee structure is a reasonable approach.

The Departments also considered whether certified IDR entities should be permitted to charge only an additional fixed dollar amount (for example, $125, $150, $200, etc.) per every additional 25 line items but determined that the pro-

[127] *See* Centers for Medicare & Medicaid Services (December 23, 2022). *Amendment to the Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act: Change in Administrative Fee. https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/amended-cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

posed range for a tiered fee would provide the appropriate operational flexibility for certified IDR entities. Providing this flexibility is important to maintain participation of certified IDR entities in the Federal IDR process. The operational costs for the Federal IDR process incurred by each certified IDR entity may vary, requiring certified IDR entities to consider their unique circumstances in determining their fixed fee amounts to maintain financial viability. Therefore, allowing certified IDR entities to select a tiered fee within a dollar range established by the Departments will allow the certified IDR entities the flexibility to tailor their pricing to fit their company's needs, while ensuring reasonable costs for parties participating in the Federal IDR process.

For the purposes of the batched tiered fee range intervals, the Departments considered whether a grouping of 50 line items would be a more appropriate interval than the proposed interval of 25 line items. A few commenters suggested that 50 line items would be a more appropriate interval than the proposed 25-line-item increment. In determining the interval appropriate for the tiered fee range for batched determinations, the Departments considered historical trends in the number of line items submitted in batched disputes in addition to the anticipated changes in batching behaviors due to the *TMA IV* vacatur of certain batching provisions. The Departments remain of the view that a 25-line-item increment is the most reasonable increment to balance the affordability to parties and the amount of resources expended by the certified IDR entities to review those line items. As a result, the Departments are finalizing this policy as proposed.

III. Severability

In the event that any portion of these final rules is declared invalid, the Departments intend that the various aspects of the finalized administrative fee provisions and certified IDR entity fee provisions be severable. The Departments proposed at 26 CFR 54.9816-8(d)(3)(i), 29 CFR 2590.716-8(d)(3)(i), and 45 CFR 149.510(d)(3)(i) that any provision of paragraph (d) or paragraphs (e)(2)(vii) through (e)(2)(ix) held to be invalid or unenforceable as applied to any person or circumstance would be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of these paragraphs is invalid and unenforceable in all circumstances, in which event the provision would be severable from the remainder of these paragraphs and would not affect the remainder thereof. The Departments further proposed at new 26 CFR 54.9816-8(d)(3)(ii), 29 CFR 2590.716-8(d)(3)(ii), and 45 CFR 149.510(d)(3)(ii) that the provisions in paragraphs (d) and (e)(2)(vii) through (ix) are intended to be severable from each other. Additionally, the Departments further proposed that if a court were to find unlawful the administrative fee policies, the certified IDR entity fee policies should stand. In the alternative, if a court were to find unlawful the certified IDR entity fee policies, the administrative fee policies should stand.

A few commenters supported the proposed severability provisions. These commenters stated that the provisions would help mitigate uncertainty that may result from future court decisions if a lawsuit occurs.

The Departments agree that the severability clause will help mitigate uncertainty. After considering the comments, the Departments are finalizing these policies as proposed, with a technical modification that the provisions in 26 CFR 54.9816-8(d) and (e)(2)(vii) and (viii), 29 CFR 2590.716-8(d) and (e)(2)(vii) and (viii), and 45 CFR 149.510(d) and (e)(2)(vii) and (viii) are intended to be severable, rather than 26 CFR 54.9816-8(d) and (e)(2)(vii) through (ix), 29 CFR 2590.716-8(d) and (e)(2)(vii) through (ix), and 45 CFR 149.510(d) and (e)(2)(vii) through (ix). This technical modification is due to the restructuring of the regulatory text in these final rules pertaining to certified IDR entity fees at 26 CFR 54.9816-8(e)(2)(vii) and (viii), 29 CFR 2590.716-8(e)(2)(vii) and (viii), and 45 CFR 149.510(e)(2)(vii) and (viii) compared to what was proposed, as discussed further in section II.B of this preamble.

The Departments further clarify their intent that the methodology being adopted here to set the administrative fee amount and the considerations the Departments used in developing the certified IDR entity fee ranges are also intended to be severable. Should any aspect of the methodology or considerations be determined to be unlawful, the Departments intend for the administrative fee amount or certified IDR entity fee ranges to be adjusted by applying the methodology in accordance with the remaining elements of the methodology or considerations. For instance, if it is determined that certain expenditures should not have been included in calculating the administrative fee amount, then the Departments would implement these rules by eliminating those expenditures from the total expenditures estimated to be made by the Departments in carrying out the Federal IDR process, and dividing the new expenditures amount by the same estimated number of administrative fees paid to calculate the new administrative fee amount. The resulting administrative fee amount would be immediately effective, without requiring additional notice and comment rulemaking.

IV. Economic Impact and Paperwork Burden

A. Summary – Departments of Health and Human Services and Labor

These final rules establish the administrative fee amount and the certified IDR entity fee ranges in notice and comment rulemaking, and the preamble sets forth the methodology for setting the administrative fee amount and the considerations used to develop the certified IDR entity fee. The Departments have examined the effects of these final rules as required by Executive Order 13563 (76 FR 3821, January 21, 2011, Improving Regulation and Regulatory Review); Executive Order 12866 (58 FR 51735, October 4, 1993, Regulatory Planning and Review); Executive Order 14094 (88 FR 21879, April 11, 2023, Modernizing Regulatory Review); the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980); section 1102(b) of the Social Security Act (42 U.S.C. 1102(b)); section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995); and

Executive Order 13132 (64 FR 43255, August 10, 1999, Federalism).

B. Executive Orders 12866, 13563, and 14094 – Departments of Health and Human Services and Labor

Executive Orders 12866, 13563, and 14094 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Under Executive Order 12866, "significant" regulatory actions are subject to review by the Office of Management and Budget (OMB). Executive Order 14094, entitled "Modernizing Regulatory Review" (hereinafter, the Modernizing E.O.), amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for rules deemed significant. OMB's OIRA has deemed this rule significant. The Departments have prepared an RIA that to the best of their ability presents the costs and benefits of these rules. OMB has reviewed these final regulations, and the Departments have provided the following assessment of their impact.

C. Need for Regulatory Action – Departments of Health and Human Services and Labor

The Departments are amending the certified IDR entity and administrative fee provisions of the rules for the Federal IDR process to set the administrative fee amount and the certified IDR entity fee ranges in notice and comment rulemaking, and set forth the methodology for setting the administrative fee amount and the considerations for developing the certified IDR entity fee ranges. These policies will ensure that all interested parties are sufficiently notified and provided an opportunity to comment on the fees associated with the Federal IDR process.

D. Summary of Impacts and Accounting Table – Departments of Health and Human Services and Labor

The expected benefits and costs of these final rules are summarized in Table 1 and discussed in this section of the preamble. In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Departments' assessment of the benefits, costs, and transfers associated with this regulatory action. The Departments are unable to quantify all benefits and costs of these final rules but have sought, where possible, to describe these non-quantified impacts. The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of these final rules.

TABLE 1: Accounting Table

<table>
<tr><th colspan="5">Accounting Statement</th></tr>
<tr><td colspan="5">Benefits:</td></tr>
<tr><td colspan="5">Non-Quantified:
• Increased interested party transparency as a result of the policies to establish the administrative fee amount and certified IDR entity fee ranges in notice and comment rulemaking, as well as setting forth the methodology for calculating the administrative fee amount and the considerations for developing the certified IDR entity fee ranges.</td></tr>
<tr><td>Costs:</td><td>Estimate</td><td>Year Dollar</td><td>Discount Rate</td><td>Period Covered</td></tr>
<tr><td rowspan="2">Annualized Monetized ($/Year)</td><td>$0.14 million</td><td>2023</td><td>7 percent</td><td>2023-2027</td></tr>
<tr><td>$0.13 million</td><td>2023</td><td>3 percent</td><td>2023-2027</td></tr>
<tr><td colspan="5">Quantified:
• Costs to interested parties of $638,631 to review and interpret these rules in 2023.</td></tr>
<tr><td>Transfers:</td><td>Estimate</td><td>Year Dollar</td><td>Discount Rate</td><td>Period Covered</td></tr>
<tr><td rowspan="2">Annualized Monetized ($/year)</td><td>$31.65 million</td><td>2023</td><td>7 percent</td><td>2023-2027</td></tr>
<tr><td>$32.31 million</td><td>2023</td><td>3 percent</td><td>2023-2027</td></tr>
<tr><td colspan="5">Quantified:
• Transfers from the parties to the Federal Government of approximately $32 million annually beginning in 2024 as a result of the policy to set the administrative fee amount at $115 per party per dispute for disputes initiated on or after the effective date of these rules.
• Transfers from the parties to certified IDR entities of approximately $9 million annually beginning in 2024 as a result of the policy to set the certified IDR entity fee ranges at $200-$840 for single determinations, $268-$1,173 for batched determinations, and an additional $75-$250 for every 25 line items in excess of the first 25 line items.</td></tr>
</table>

1. Benefits

The primary benefit of these final rules is to allow the Federal IDR process to function through establishing the administrative fee amount and certified IDR entity fee ranges in rulemaking and establishing the amounts of these fees for disputes initiated on or after the effective date of these rules. In response to the opinion and order in *TMA IV,* these final rules are necessary in order to set the administrative fee amount as close to January 1, 2024 as possible, because the current $50 administrative fee amount is insufficient to satisfy the statutory requirement that the total amount of fees paid for the year be estimated to be equal to the amount of expenditures estimated to be made by the Departments in carrying out the Federal IDR process. The primary non-quantifiable benefit of these final rules is the continuation of a functioning Federal IDR process, which helps to protect consumers from certain surprise medical bills and helps providers to receive compensation for certain out-of-network services. Additional benefits specific to each Federal IDR process fee type appear in the following sections.

a. Administrative Fee Amount and Methodology

The Departments are finalizing the proposal to establish the administrative fee amount in notice and comment rulemaking for disputes initiated on or after the effective date of these rules, and the Departments are setting forth the methodology for determining the administrative fee amount. Utilizing notice and comment rulemaking will increase transparency of the administrative fee-setting process and allow interested parties to provide feedback to the Departments prior to the Departments setting the administrative fee amount.

The Departments sought comment on these benefits. The Departments received comments on these benefits and respond to these comments in section II.A of this preamble. The Departments are finalizing these benefits as proposed.

b. Certified IDR Entity Fee Ranges

The Departments proposed to establish the certified IDR entity fee ranges for single and batched determinations, which include a tiered fee range for batched determinations that exceed 25 line items, in notice and comment rulemaking for disputes initiated on or after the effective date of these rules. Utilizing notice and comment rulemaking to set the appropriate ranges for certified IDR entity fees will increase transparency for parties interested in the certified IDR entity fee ranges and allow these parties to identify in advance the impacts of changing the certified IDR entity fee ranges.

The Departments sought comment on these benefits. The Departments received comments on these benefits and respond to these comments in section II.B of this preamble. The Departments are finalizing these benefits as proposed.

2. Costs

a. Administrative Fee Amount and Methodology

The Departments are finalizing the proposal to establish the administrative fee amount in notice and comment rulemaking for disputes initiated on or after the effective date of these rules, and set forth the methodology for setting the administrative fee amount with modifications described in section II.A of this preamble to ensure that disputing and other parties are sufficiently notified and provided an opportunity to comment on the administrative fee amount. The Departments are also finalizing the administrative fee amount for disputes initiated on or after the effective date of these rules at $115 per party per dispute.

The current administrative fee is $50 per party per dispute.[128] In the IDR Fees proposed rules, the Departments estimated that approximately 225,000 disputes are closed per year.[129] Therefore, if the current administrative fee were to remain applicable, the Departments estimated in the IDR Fees proposed rules that the parties would pay approximately $22.5 million in administrative fees annually (225,000 disputes x 2 parties per dispute x $50 per party). In the IDR Fees proposed rules, the Departments also estimated that if they were to finalize an administrative fee amount of $150 per party per dispute for disputes initiated on or after the effective date of these rules, the parties would pay approximately $67.5 million in administrative fees annually beginning in 2024 (225,000 disputes x 2 parties per dispute x $150 per party), assuming the number of disputes remains stable year over year and the administrative fee amount is not subsequently changed through notice and comment rulemaking. Therefore, in the IDR Fees proposed rules, the Departments estimated that the costs associated with this proposal, if finalized, would be approximately $45 million ($67.5 million if this proposal is finalized minus $22.5 million if the status quo were to continue).

The Departments sought comment on these costs and assumptions. The Departments received comments on these assumptions.

Several commenters suggested that the Departments' estimate of 225,000 closed disputes is too low. A few commenters suggested that the Departments are underestimating utilization of the Federal IDR process and recommended that the Departments analyze the available data from States implementing similar policies before the No Surprises Act. Several commenters disagreed with the assumption used to calculate the 225,000 closed disputes, which assumed that *TMA IV*'s vacatur of batching regulations and guidance would reduce the volume of disputes by 25 percent.

[128] As a result of the opinion and order in *TMA IV*, which vacated the portion of the December 2022 guidance that increased the administrative fee amount to $350 per party per dispute for disputes initiated during calendar year 2023, the administrative fee amount reverted to the amount established in the October 2022 guidance. *See* Centers for Medicare & Medicaid Services (August 11, 2023). Federal Independent Dispute Resolution (IDR) Process Administrative Fee FAQs. *https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/no-surprises-act-independent-dispute-resolution-administrative-fee-frequently-asked-questions.pdf*. *Also see* Centers for Medicare & Medicaid Services (October 31, 2022). Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process *under* the No Surprises Act. *https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf*.

[129] The details of the calculation of the number of disputes are provided at 88 FR 65893.

As discussed in section II.A of this preamble, after consideration of comments, the Departments are finalizing the administrative fee using the estimated total number of administrative fees paid to certified IDR entities, rather than the projected total number of closed disputes, to estimate the number of administrative fees to be paid under the administrative fee methodology. Federal IDR process data show that the monthly average number of administrative fees paid to certified IDR entities between February 2023 and July 2023 was 41,000. The Departments project this monthly average forward by 12 months to estimate 492,000 administrative fees paid in a year.

After consideration of public comments, the Departments are modifying the proposed assumptions and cost estimates as follows. If the current administrative fee were to remain applicable, the parties would pay approximately $24.6 million in administrative fees annually (492,000 administrative fees paid x $50 per party per dispute). As stated in section II.A of this preamble, the estimated $24.6 million in administrative fee collections if the Departments were to retain the current $50 administrative fee would be inadequate for the Departments to carry out the Federal IDR process in 2024, as they estimate the expenditures to be made in 2024 to be approximately $56.6 million. As the Departments are now finalizing an administrative fee amount of $115 per party per dispute for disputes initiated on or after the effective date of these rules, the Departments estimate that the parties will pay approximately $56.6 million in administrative fees annually beginning in 2024 (492,000 administrative fees paid x $115 per party per dispute), which is sufficient to cover the estimated annual expenditures of approximately $56.6 million, assuming the number of administrative fees paid remains stable year over year and the administrative fee amount is not subsequently changed through notice and comment rulemaking. Therefore, the costs associated with this policy are approximately $32.0 million ($56.6 million minus $24.6 million if the status quo were to continue).

b. Certified IDR Entity Fee Ranges

The Departments are finalizing the proposal to set the certified IDR entity fee ranges for single and batched determinations, with a tiered fee range for batched determinations that exceed 25 line items, in notice and comment rulemaking for disputes initiated on or after the effective date of these rules in response to the opinion and order in *TMA IV* to ensure that interested parties are sufficiently notified and provided an opportunity to comment on the certified IDR entity fee ranges. The certified IDR entity fee range for single determinations for disputes initiated on or after the effective date of these rules is $200 to $840. The certified IDR entity fee range for batched disputes initiated on or after the effective date of these rules is $268 to $1,173. Further, the tiered fee range for batched determination for disputes initiated on or after the effective date of these rules is $75 to $250.

While the certified IDR entities are responsible for setting their fees for single and batched determinations, the Departments acknowledge that the changes to the certified IDR entity fee ranges may impact the cost to the parties to participate in the Federal IDR process. The Departments anticipate that the vacatur of batching standards by the District Court's opinion and order in *TMA IV* could result in initiating parties submitting single and batched disputes in proportions similar to those prior to the issuance of the August 2022 guidance, which interpreted the now-vacated standards for batching qualified IDR items or services. Based on internal data relating to disputes initiated prior to the establishment of the now vacated batching criteria that were released in August 2022, approximately 70 percent of disputes at the time were single disputes and approximately 30 percent were batched disputes.[130] The Departments anticipate that, as a result of *TMA IV*, initiating parties will return to the batching practices they engaged in prior to issuance of the August 2022 guidance, such as initiating a higher proportion of batched disputes and including more items or services within those batched disputes.

Based on internal Federal IDR process data, the Departments estimate that certified IDR entities collect a certified IDR entity fee for approximately 135,000 disputes annually.[131] Therefore, for the purposes of this analysis, the Departments estimate that certified IDR entities will collect certified IDR entity fees for approximately 94,500 single disputes and 40,500 batched disputes annually (135,000 x 0.70 and 135,000 x 0.30, respectively). The Departments acknowledge that each party must pay a certified IDR entity fee to the certified IDR entity no later than the time that party submits its offer. However, because the non-prevailing party is ultimately responsible for the full certified IDR entity fee, which is retained by the certified IDR entity for the IDR services it performed, it is the Departments' position that providing a per-dispute calculation reasonably captures the overall cost of the dispute with respect to the certified IDR entity fee without implicating false precision on the amount of certified IDR entity fee costs that initiating and non-initiating parties ultimately may incur.

To develop a reasonable estimate for the certified IDR entity fee amount for both single and batched disputes, the Departments assume that the certified IDR entities will set single determination fixed fees that approximate the median value of the finalized fee range and will set batched determination fixed fees that approximate the 3rd quartile of the finalized fee range.[132] Therefore, for the purposes of this analysis, the Departments estimate that the typical single determination fixed fee (range $200–$840) will be approximately $520, and that the typical batched determina-

[130] The Departments estimate that currently approximately 80 percent of disputes are single disputes and 20 percent of disputes are batched disputes, and the Departments anticipate that this ratio will return to 70 percent of disputes being single disputes and 30 percent of disputes being batched disputes beginning in calendar year 2024.

[131] While the administrative fee must be paid by the disputing party for any dispute for which a certified IDR entity is selected, the certified IDR entity fee is only assessed for disputes that are determined eligible for the Federal IDR process.

[132] The Departments anticipate that, due to the uncertainty around batching practices as a result of the *TMA IV* opinion and order, certified IDR entities will likely choose to increase their batched determination fee. Therefore, using the 75th percentile of the proposed fee range to calculate the cost of batched determinations provides a reasonable approximation of the expected increase.

tion fixed fee (range $268–$1,173) will be approximately $947. At an estimated cost of $520 per single determination for approximately 94,500 single determinations annually, the Departments estimate that single determinations will cost disputing parties approximately $49,140,000 annually ($520 x 94,500). At an estimated cost of $947 per batched determination for approximately 40,500 batched determinations annually, the Departments estimate that batched determinations will cost disputing parties approximately $38,353,500 annually ($947 x 40,500).

Further, the Departments estimate that using the finalized tiered fee range for batched determinations, certified IDR entities will set and apply a fixed fee that approximates the average of the proposed range ($75–$250) for batched determinations based on the number of line items. The Departments estimate that certified IDR entities will typically set their tiered fee at approximately $163. The Departments acknowledge the uncertainty surrounding the number of line items that may be submitted in batched disputes due to the *TMA IV* opinion and order. However, to produce an estimate, and for the purposes of this analysis, the Departments estimate that of the total estimated 40,500 batched disputes, approximately 4,455 batched determinations will potentially be subject to at least 2 applications of the tiered fee ($163 x 2 = $326).[133] The Departments therefore estimate that this subset of approximately 4,455 batched determinations exceeding 25 line items will cost disputing parties approximately $1,452,330 annually ($326 x 4,455). In total, assuming the number of disputes remains stable year over year, the Departments estimate the parties will pay approximately $89 million in certified IDR entity fees annually in accordance with the finalized policies ($49,140,000 for single determinations + $38,353,500 for batched determinations + $1,452,330 for the subset of batched determinations subject to the tiered fee).

The calendar year 2023 certified IDR entity fee ranges for single determinations and batched determinations are $200–$700 and $268–$938, respectively. Certified IDR entities currently charge a median fixed fee of $549 for single determinations and $770 for batched determinations in 2023. Therefore, for approximately 108,000 single determinations and 24,840 batched determinations (not subject to the batched percentage fee amount) annually,[134] if current certified IDR entity fixed fees remained applicable, the Departments estimate that the parties would pay approximately $59,292,000 for single determinations ($549 x 108,000) and $19,126,800 for batched determinations ($770 x 24,840). Current guidance permits certified IDR entities to charge a batching percentage on batched determinations based on the number of line items.[135] For the purposes of this analysis, the Departments assume that a subset of approximately 8 percent of batched determinations, or 2,160 determinations, potentially subject to the batched percentages would receive at least a 120 percent increase from the median batched determination fixed fee ($770 x 1.20 = $924). As such, the Departments estimate that the parties would pay approximately $1,995,840 for this subset of batched determinations potentially subject to a batching percentage (2,160 x $924), resulting in a total cost of approximately $80 million under the current calendar year 2023 certified IDR entity fee structure ($59,292,000 for single determinations + $19,126,800 for batched determinations + $1,995,840 for the subset of batched determinations subject to the tiered fee). Therefore, taking into account the current costs to the parties associated with the current certified IDR entity fee structure, the total cost to the parties associated with this policy is approximately $9 million ($89 million as finalized minus $80 million if the status quo fee ranges were to continue).

The Departments sought comment on these costs and assumptions. The Departments did not receive comments on these costs or assumptions and are finalizing them as proposed.

3. Uncertainties

It is unclear whether the Federal IDR process will experience the same operating conditions when these rules are effective compared to the current state, such as the number of disputes initiated, future policy changes finalized after future notice and comment rulemaking, or increased or decreased costs by the Departments to carry out the Federal IDR process. Due to the need to take point-in-time estimates of volume and expenditures for the purposes of developing the analyses in the preamble to these rules, there is inherent uncertainty in the estimates in these analyses as the data are constantly changing. It is difficult to project the impact on the administrative fee amount charged to the parties if the Federal IDR process landscape changes. Although the Departments have analyzed the Federal IDR process data available to inform their projections, it is uncertain whether the trends in these data will remain applicable in the future. At the same time, the Departments do not know what impact the changes to the Federal IDR process as a result of the District Court's opinions and orders in *TMA IV* and *TMA III* will have on the number of disputes initiated and the time it will take certified IDR entities to close those disputes. The Departments continue to monitor trends in the Federal IDR process and

[133] Based on internal data the Departments estimate that approximately 11 percent of batched disputes submitted prior to the establishment of the batching criteria released in August 2022 exceeded 25 line items. For this reason, we project that a similar number of batched disputes with number of line items exceeding 25 line items will be submitted due to *TMA IV.*

[134] The Departments estimate that 80 percent of disputes are single disputes and 20 percent are batched disputes (135,000 x 0.80 and 135,000 x 0.20, respectively). For the purposes of this analysis, the Departments estimate that a subset of approximately 8 percent, or 2,160 batched disputes would be subject to a batching percentage (27,000 x 0.08).

[135] Without the need to seek further approval, to account for the differential in the workload of batched determinations, a certified IDR entity may charge the following percentages of its approved certified IDR entity batched determination fee ("batching percentage") for batched determinations, which are based on the number of line items initially submitted in the batch:

- 2-20 line items: 100 percent of the approved batched determination fee;
- 21-50 line items: 110 percent of the approved batched determination fee;
- 51-80 line items: 120 percent of the approved batched determination fee; and
- 81 line items or more: 130 percent of the approved batched determination fee.

See Centers for Medicare & Medicaid Services (October 31, 2022). *Calendar Year 2023 Fee Guidance for the Federal Independent Dispute Resolution Process under the No Surprises Act. https://www.cms.gov/cciio/resources/regulations-and-guidance/downloads/cy2023-fee-guidance-federal-independent-dispute-resolution-process-nsa.pdf.*

will make any necessary changes through future notice and comment rulemaking.

4. Regulatory Review Cost Estimation

If regulations impose administrative costs on entities, such as the time needed to read and interpret rules, regulatory agencies should estimate the total cost associated with regulatory review. Based on comments received for the July 2021 interim final rules and October 2021 interim final rules, the Departments estimate that more than 2,100 entities will review these final rules, including 1,500 issuers, 205 third party administrators (TPAs), and at least 395 other interested parties (for example, State insurance departments, State legislatures, industry associations, advocacy organizations, and providers and provider organizations). The Departments acknowledge that this assumption may understate or overstate the number of entities that will review these final rules.

Using the median hourly wage rate from the Bureau of Labor Statistics for a Lawyer (Code 23-1011) to account for average labor costs (including a 100 percent increase for the cost of fringe benefits and other indirect costs), the Departments estimate that the cost of reviewing these final rules will be $130.52 per hour.[136] The Departments estimate, based on an estimated rule length of approximately 35,000 words and an average reading speed of 200 to 250 words per minute, that it will take each reviewing entity approximately 2.33 hours to review these final rules, with an associated cost of approximately $304.11 (2.33 hours x $130.52 per hour). Therefore, the Departments estimate that the total burden to review these final rules will be approximately 4,893 hours (2,100 reviewers x 2.33 hours per reviewer), with an associated cost of approximately $638,631 (2,100 reviewers x $304.11 per reviewer).

The Departments sought comments in the IDR Fees proposed rules on this approach to estimating the total burden and cost for interested parties to read and interpret the IDR Fees proposed rules, which is the same approach used to estimate the total burden and cost for interested parties to read and interpret these final rules. The Departments did not receive comments on this approach and cost. The Departments are finalizing these estimates as proposed.

E. Regulatory Alternatives – Departments of Health and Human Services and Labor

In developing these final rules, the Departments considered various alternative approaches.

1. Administrative Fee Amount and Methodology (26 CFR 54.9816-8(d)(2), 29 CFR 2590.716-8(d)(2), and 45 CFR 149.510(d)(2))

In its *TMA IV* opinion and order, the District Court indicated that notice and comment rulemaking is necessary to set the administrative fee, and the Departments are of the view that alternative approaches would lead to unnecessary uncertainty. In addition, providing a description of the methodology used to calculate the fee amount and proposing the administrative fee amount in the IDR Fees proposed rules would increase transparency for the parties and provide interested parties the opportunity to be included in the fee setting process. The Departments considered that guidance has historically been used to set the administrative fee amount based on concerns that the requirement to collect fees sufficient to fund the Federal IDR process. The lead time required to set the fee amount in notice and comment rulemaking could constrain the Departments' responsiveness to program needs and artificially inflate the administrative fee amount due to the need to ensure adequate funding of the process. However, in light of *TMA IV*, the increased transparency and opportunity for interested parties to provide feedback on the administrative fee methodology and amount outweighed the potential concern that the administrative fee might be artificially inflated by the need to make conservative estimates to set the administrative fee amount further in advance through notice and comment rulemaking.

The Departments considered proposing other administrative fee policies in the IDR Fees proposed rules, such as those proposed in the IDR Operations proposed rules.[137] However, as discussed in section II.A of this preamble, the Departments were unable to propose those policies in the IDR Fees proposed rules because they are much more comprehensive than the fee-related policies proposed in the IDR Fees proposed rules and would require more time to develop and implement if finalized. There is an urgency to publish these final rules to be effective as close to January 1, 2024 as possible due to the need to sufficiently fund the Federal IDR process in 2024. As discussed in sections I.E and II.A of these final rules, the current $50 administrative amount is insufficient to satisfy the statutory requirement that the total amount of fees paid for a year be estimated to be equal to the amount of expenditures estimated to be made by the Departments for the year in carrying out the Federal IDR process. Therefore, the Departments deferred those substantial changes to the Federal IDR process and administrative fee structure and collection procedures to the IDR Operations proposed rules, which are aimed at improving Federal IDR process operations and making the process more accessible.

2. Certified IDR Entity Fee Ranges (26 CFR 54.9816-8(e)(2), 29 CFR 2590.716-8(e)(2), and 45 CFR 149.510(e)(2))

The Departments considered maintaining the current policy that the allowable ranges for certified IDR entity fees would be set in guidance yearly instead of through notice and comment rulemaking. The Departments considered whether continuing to set the certified IDR entity fee ranges in guidance would preserve necessary flexibility for the certified IDR entities to choose their fixed fees within the allowable ranges and submit those fees for approval to the Departments, and would allow the Departments time to review and approve each certified IDR entity's fees

[136] U.S. Bureau of Labor Statistics (May 1, 2022). *May 2022 National Occupational Employment and Wage Estimates*. *https://www.bls.gov/oes/current/oes_nat.htm.*
[137] 88 FR 75744.

and publish them in advance of the year to which the fees apply. The Departments concluded that publishing the fee ranges in guidance could be a more expedient process compared to rulemaking because of the lack of required comment period; however, establishing the fee ranges through notice and comment rulemaking would not prevent the Departments from reviewing and approving each certified IDR entity's fixed fee amounts in a timely manner. The Departments are of the view that there would be no impact to the ability of the certified IDR entities to select their fees from the established ranges if those ranges were published through notice and comment rulemaking. Further, setting the certified IDR entity fee ranges through guidance does not allow interested parties to engage through the submission of public comments, while the notice and comment rulemaking process increases transparency and will afford an opportunity for the Departments to consider feedback from interested parties on the appropriateness of proposed fee ranges.

F. Paperwork Reduction Act

These final rules are not subject to the requirements of the Paperwork Reduction Act of 1995,[138] because the Departments anticipate that fewer than 10 certified IDR entities will submit requests to update their certified IDR entity fees an additional time during the calendar year based on current experience operating the Federal IDR process, and they do not contain any other collection of information as defined in 44 U.S.C. 3502(3). Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq*.) requires agencies to analyze options for regulatory relief of small entities and to prepare a final regulatory flexibility analysis to describe the impact of these final rules on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of "small entity." The Departments use a change in revenues of more than 3 to 5 percent as their measure of significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. The Secretaries of Labor, the Treasury, and Health and Human Services certify that these final rules will not have a significant economic impact on a substantial number of small entities, as presented in the analysis in the following subsections of this preamble.

1. Small Entities Regulated

The provisions in these final rules will affect plans (or their TPAs),[139] health insurance issuers offering group or individual health insurance coverage, and providers, facilities, and providers of air ambulance services.

For purposes of analysis under the RFA,[140] the Departments consider an employee benefit plan with fewer than 100 participants to be a small entity.[141] The basis of this definition is found in section 104(a)(2) of ERISA,[142] which permits the Secretary of Labor to prescribe simplified annual reports for plans that cover fewer than 100 participants. Under section 104(a)(3),[143] the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Under the authority of section 104(a)(3),[144] the Department of Labor has previously issued simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, which cover fewer than 100 participants and satisfy certain requirements.[145] While some large employers have small plans, small plans are generally maintained by small employers. Thus, the Departments are of the view that assessing the impact of these final rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of a small entity considered appropriate for this purpose differs, however, from a definition of a small business based on size standards issued by the SBA[146] in accordance with the Small Business Act.[147]

In 2021, there were 1,500 issuers in the U.S. health insurance market[148] and 205 TPAs.[149] Health insurance issuers are generally classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards,[150] entities with average annual receipts of $47 million or less are considered small entities for this NAICS

[138] 44 U.S.C. 3501 *et seq*.

[139] The Departments expect that most self-insured group health plans will work with a TPA to meet the requirements.

[140] 5 U.S.C. 601, *et seq*.

[141] The Department of Labor consulted with the Small Business Administration Office of Advocacy in making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c) in a memo dated June 4, 2020.

[142] 29 U.S.C. 1024(a)(2).

[143] 29 U.S.C. 1024(a)(3).

[144] *Id.*

[145] 29 CFR 2520.104-20, 2520.104-21, 2520.104-41, 2520.104-46, and 2520.104b-10.

[146] 13 CFR 121.201 (2011).

[147] 15 U.S.C. 631 *et seq*. (2011).

[148] Centers for Medicare & Medicaid Services (2022). *Medical Loss Ratio Data and System Resources. https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[149] Non-issuer TPAs based on data derived from the 2016 benefit year reinsurance program contributions.

[150] United States Small Business Administration (March 17, 2023). *Table of Size Standards. https://www.sba.gov/document/support—table-size-standards.*

code. The Departments expect that few, if any, insurance companies underwriting health insurance policies fall below these size thresholds. Based on data from Medical Loss Ratio (MLR) annual report submissions for the 2021 MLR reporting year, approximately 87 out of 483 issuers of health insurance coverage nationwide had total premium revenue of $47 million or less.[151] However, it should be noted that also based on MLR data, over 77 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies, are likely to have non-health lines of business that would result in their revenues exceeding $47 million. The Departments are of the view that the same assumptions also apply to TPAs that would be affected by these proposed rules.[152] To produce a conservative estimate, for the purposes of this analysis, the Departments assume 4.1 percent, or 62 issuers and 8 TPAs, of the total of 1,500 health insurance issuers and 205 TPAs across the country, are considered small entities.[153]

These final rules also affect health care providers and facilities due to the proposed requirements related to the certified IDR entity and administrative fees. The Departments estimate that 140,270 physicians, on average, bill on an out-of-network basis annually.[154] The number of small physician providers is estimated based on the SBA's size standards. The size standard applied for providers is NAICS 62111 (Offices of Physicians), for which a business with less than $16 million in receipts is considered to be small. By this standard, the Departments estimate that 47.2 percent or 66,207 physicians are considered small under the SBA's size standards.[155] The size standard for facilities is NAICS 62211 (General Medical and Surgical Hospitals), for which a business with less than $47 million in receipts is considered to be small. By this standard, the Departments estimate that 43.5 percent or 1,113 facilities are considered small under the SBA's size standards.[156] These final rules are also expected to affect non-physician providers who bill on an out-of-network basis. The Departments lack data on the number of non-physician providers who will be impacted by these final rules.

The Departments do not have the same level of data for the air ambulance subsector. In 2020, the total revenue of providers of air ambulance services was estimated to be $4.2 billion, with 1,114 air ambulance bases.[157] This results in an industry average of $3.8 million per air ambulance base. Based on a 2020 USC-Brookings Schaeffer report on air ambulance services,[158] by 2017, large private equity firms controlled roughly two-thirds of the air ambulance market.

Although based on the Departments' experience operating the Federal IDR process, significantly fewer than 67,320 small providers and facilities have accessed the process to date,[159] the Departments lack adequate data to better inform the number of small providers impacted by these final rules. Therefore, although the estimate of 67,320 small providers and facilities is likely a significant overestimate of the number of small providers and facilities impacted by these final rules, the Departments use this number of small providers and facilities in this analysis to be conservative.[160]

Additionally, as discussed in the *Partial Report on the Federal Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022*, the top 10 initiating parties (or entities acting on behalf of initiating parties) are large companies that initiate approximately 85 percent of disputes, and the top 10 non-initiating parties are large companies that are initiated against in approximately 95 percent of disputes.[161] Therefore, for purposes of this analysis, the Departments assume that only 15 percent of all disputes involve small providers. The 5 percent of all disputes that do not involve the top 10 non-initiating parties could involve any of the 1,695 issuers and TPAs that are not the top 10 non-initiating parties (1,500 issuers and 205 TPAs total – 10 top non-initiating parties = 1,695 remaining issuers and TPAs). The Departments assume that the proportion of small issuers and TPAs to non-top 10 issuers and TPAs is the same as the proportion of disputes involving small issuers and TPAs to disputes involving non-top 10 issuers and TPAs, as the volume of disputes issuers and TPAs are involved in should be proportional to the size of their enrollment. Taking into consideration these estimates of the small entities, the policies in these rules that result in an increased burden to small entities are described below.

2. Compliance Costs

The Departments are finalizing the policy to establish the administrative fee

[151] Centers for Medicare & Medicaid Services (2022). *Medical Loss Ratio Data and System Resources. https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[152] The Departments are of the view that most TPAs are also issuers.

[153] These numbers are calculated as follows: 77 percent of small companies belong to larger holding groups, so 23 percent do not and would be small entities. 87 issuers x 0.23 = 20. 20 / 483 = 4.1 percent. Applying the 4.1 percent to 1,500 issuers and 205 TPAs total = 62 small issuers and 8 small TPAs.

[154] *See* 86 FR 56051 for more information on this estimate.

[155] Based on data from the NAICS Association for NAICS code 62111, the Departments estimate the percent of businesses within the industry of Offices of Physicians with less than $16 million in annual sales. United States Census Bureau (May 2021). *2017 SUSB Annual Data Tables by Establishment Industry. https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[156] Based on data from the NAICS Association for NAICS code 62211, the Departments estimate the percent of businesses within the industry of General Medical and Surgical Hospitals with less than $47 million in annual sales. United States Census Bureau (May 2021). *2017 SUSB Annual Data Tables by Establishment Industry. https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

[157] ASPE Office of Health Policy (September 10, 2021). *Air Ambulance Use and Surprise Billing. https://aspe.hhs.gov/sites/default/files/2021-09/aspe-air-ambulance-ib-09-10-2021.pdf.*

[158] Adler, L., Hannick, K., and Lee, S. "High Air Ambulance Charges Concentrated in Private Equity-Owned Carriers." USC-Brookings Schaffer Initiative for Health Policy. October 13, 2020. *https://www.brookings.edu/articles/high-air-ambulance-charges-concentrated-in-private-equity-owned-carriers/.*

[159] *See* U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury, *Partial Report on the Federal Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022*. (n.d.). *https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf.*

[160] Based on the Departments' experience operating the Federal IDR process, the estimate of 67,320 small providers and facilities is likely a significant overestimate, and therefore the Departments assume that this estimate accounts for any non-physician providers who may be impacted by these rules for whom the Departments lack data to estimate.

[161] Top initiating parties represent hundreds of individual providers across multiple states. Top non-initiating parties operate across multiple states and market segments. *See* U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury, *Partial Report on the Federal Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022*. (n.d.). *https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf.*

amount in notice and comment rulemaking and are finalizing that the administrative fee amount for disputes initiated on or after the effective date of these rules is $115 per party per dispute. The annual burden per small provider or facility associated with this policy is $115,[162] and the annual burden per small issuer/TPA is $805.[163] For more details, please refer to the Regulatory Impact Analysis in these final rules.

The Departments are finalizing the policy to establish the certified IDR entity fee ranges in notice and comment rulemaking and are finalizing that the ranges are $200–$840 for single determinations and $268–$1,173 for batched determinations, with a $75–$250 tiered fee range for disputes that contain more than 25 line items. The annual burden per small provider or facility associated with this policy is $657,[164] and the annual burden per small issuer/TPA is $1,971.[165] For more details, please refer to the Regulatory Impact Analysis in these final rules.

Thus, the per-entity annual cost for small providers and facilities is $772, and the per-entity annual cost for small issuers and TPAs is $2,776. The total estimated annual cost for small providers and facilities is $51,971,040, and the total estimated annual cost for small issuers and TPA is $194,320. See Tables 2 and 3.

TABLE 2: Detailed Annual Costs for Small Entities

Description of Cost	Annual Cost per Small Provider or Facility	Annual Cost per Small Issuer/TPA
Administrative Fee	$115	$805
Certified IDR Entity Fee	$657	$1,971
Total	$772	$2,776

TABLE 3: Aggregate Annual Costs for Small Entities

Affected Entity	Affected Small Entities	Annual Cost per Entity	Aggregate Annual Cost for Small Entities
Provider or Facility	67,320	$772	$51,971,040
Issuer/TPA	70	$2,776	$194,320

3. Analysis and Certification Statement

The annual cost per small provider or facility of $772 is approximately 0.07 percent of the average annual receipts per small provider and approximately 0.04 percent of the average annual receipts per small facility. The Departments anticipate that small providers and facilities would be unlikely to initiate disputes and thereby incur these costs unless they anticipate prevailing in the dispute and receiving payment from plans or issuers that exceed the costs incurred to initiate the dispute. Additionally, data from the public reports on the Federal IDR process released to date by the Departments show that providers and facilities prevail in approximately 70 percent of disputes.[166] Therefore, small providers and facilities are likely to experience an increase in receipts commensurate or larger than the increase in costs.

The annual cost per small issuer/TPA of $2,776 is approximately 0.15 percent

[162] 492,000 administrative fees paid / 2 types of parties = 246,000 administrative fees paid by providers. 246,000 administrative fees paid by providers – 85 percent (209,100) administrative fees paid for disputes initiated by the top 10 initiating parties = 36,900 administrative fees paid for disputes initiated by other initiating parties. 36,900 disputes / 67,320 small providers and facilities = approximately 0.5 disputes initiated per small provider or facility annually. For simplicity and to be conservative, the Departments assume 1 dispute per provider or facility. 1 dispute x $115 per dispute = $115 per small provider or facility.

[163] 492,000 administrative fees paid / 2 types of parties = 246,000 administrative fees paid by issuers/TPAs. 246,000 administrative fees paid by issuers/TPAs – 95 percent (233,700) administrative fees paid for disputes initiated against the top 10 non-initiating parties = 12,300 administrative fees paid for disputes initiated against other non-initiating parties. 12,300 disputes / 1,695 issuers/TPAs = approximately 7 disputes per small issuer/TPA annually. 7 disputes x $115 per dispute = $805.

[164] Data from the first full year of Federal IDR process operations show that initiating parties prevail in approximately 70 percent of disputes. *See* Centers for Medicare & Medicaid Services (April 27, 2023). *Federal Independent Dispute Resolution Process – Status Update*. Therefore, as the prevailing party's certified IDR entity fee is refunded per 26 CFR 54.9816-8T(d)(1)(ii), 29 CFR 2590.716-8(d)(1)(ii), and 45 CFR 149.510(d)(1)(ii), initiating parties only pay the certified IDR entity fee for 30 percent of disputes, while non-initiating parties pay for the other 70 percent. *https://www.cms.gov/files/document/federal-idr-processstatus-update-april-2023.pdf.* The Departments estimate based on internal data that certified IDR entity fees are paid for approximately 135,000 disputes annually. Of those 135,000 disputes, the Departments estimate that 30 percent (or 40,500) have their certified IDR entity fees paid by providers/facilities, and 70 percent (or 94,500) have their certified IDR entity fees paid by issuers/TPAs. Of the 40,500 disputes for which the certified IDR entity fee is paid by providers or facilities, 85 percent (or 34,425) are paid by the top 10 initiating parties. The remaining 15 percent (or 6,075) are paid by other initiating parties. 6,075 disputes / 67,320 small providers and facilities = less than 1 certified IDR entity fee paid per small provider or facility. For simplicity and to be conservative, the Departments assume 1 certified IDR entity fee paid per small provider or facility. The average certified IDR entity fee across both single and batched disputes, including the tiered batched fee, in 2024 is $657 as calculated in accordance with these final rules.

[165] Of the 94,500 disputes that have their certified IDR entity fees paid by issuers, 95 percent (or 89,775) are paid by the top 10 non-initiating parties. The remaining 5 percent (or 4,725) are paid by other non-initiating parties. 4,725 disputes / 1,695 issuers/TPAs = approximately 3 certified IDR entity fees paid per small issuer/TPA. The average certified IDR entity fee across both single and batched disputes, including the tiered batched fee, in 2024 is $657 as calculated in accordance with these final rules. 3 disputes x $657 per dispute = $1,971 per small issuer/TPA.

[166] *See* U.S. Department of Health and Human Services, U.S. Department of Labor, and U.S. Department of the Treasury, *Partial Report on the Federal Independent Dispute Resolution (IDR) Process, October 1 – December 31, 2022*. (n.d.). *https://www.cms.gov/files/document/partial-report-idr-process-octoberdecember-2022.pdf.*

of the average annual receipts per small issuer/TPA. While small issuers/TPAs could pass on these increased costs to consumers in the form of higher premiums (or for TPAs, higher administration fees), resulting in an increase in receipts commensurate with the increase in costs, the actual increase in costs and subsequent impact on revenue would be *de minimis* as the annual cost per small issuer/TPA is so small. Additionally, the Departments anticipate that by batching qualified IDR items and services, there may be a reduction in the per-service cost of the Federal IDR process to providers of certain services and specialties, and potentially the aggregate administrative costs, because the Federal IDR process is likely to exhibit at least some economies of scale.[167]

As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. The Departments are of the view that this threshold will not be reached by the requirements in these final rules, given that the annual per-entity cost of $2,776 per small issuer/TPA represents 0.15 percent of the average annual receipts for a small issuer/TPA and the annual per-entity cost of $772 per small provider/facility represents 0.07 percent and 0.04 percent of the average annual receipts for a small provider or facility, respectively.[168] Therefore, the Secretaries of Labor, the Treasury, and Health and Human Services hereby certify that these final rules will not have a significant economic impact on a substantial number of small entities.

The Departments sought comment on this analysis and sought information on the number of small plans (or TPAs), issuers, providers, and facilities that may be affected by the provisions in the IDR Fees proposed rules. The Departments did not receive comments on this analysis. The Departments received comments on the impact of the provisions in the IDR Fees proposed rules on small providers and respond to those comments in section II of this preamble.

In addition, section 1102(b) of the Social Security Act requires the Departments to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA.[169] For purposes of section 1102(b) of the Act, the Departments define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. These final rules are not subject to section 1102 of the Act because the IDR Fees proposed rules were not proposed under title XVIII, title XIX, or part B of title XI of the Act, and therefore section 1102(b) of the Act does not apply.

H. Special Analyses – Department of the Treasury

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required. Pursuant to section 7805(f) of the Code,[170] these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)[171] requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule or any final rule for which a general notice of proposed rulemaking was published that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. That threshold is approximately $177 million in 2023. As discussed earlier in the RIA, plans, issuers, TPAs, and providers, facilities, and providers of air ambulance services will incur costs to comply with the provisions of these final rules. The Departments estimate the combined impact on State, local, or tribal governments and the private sector will not be above the threshold.

J. Federalism

Executive Order 13132 outlines the fundamental principles of federalism. It requires adherence to specific criteria by Federal agencies in formulating and implementing policies that have “substantial direct effects” on the States, the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies issuing regulations that have these federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the IDR Fees proposed rules.

The Departments do not anticipate that these final rules will have federalism implications or limit the policy-making discretion of the States in compliance with the requirement of Executive Order 13132.

State and local government health plans may be subject to the Federal IDR process where a specified State law or All-Payer Model Agreement does not apply. The No Surprises Act authorizes States to enforce the new requirements, including those related to balance billing, for issuers, providers, facilities, and providers of air ambulance services, with HHS enforcing only in cases where the State has noti-

[167] Fielder, M., Adler, L., Ippolito, B. (March 16, 2021). *Recommendations for Implementing the No Surprises Act*. U.S.C.-Brookings Schaeffer on Health Policy. *https://www.brookings.edu/blog/ usc-brookings-schaeffer-on-health-policy/ 2021/ 03/ 16/ recommendations-for-implementing-the-no-surprises-act/*.

[168] United States Census Bureau (March 2020). *2017 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Receipt Size*. *https://www.census.gov/data/tables/2020/econ/susb/2020-susb-annual.html*.

[169] 5 U.S.C. 603.

[170] 26 U.S.C. 7805(f).

[171] 2 U.S.C. 1511.

fied HHS that the State does not have the authority to enforce or is otherwise not enforcing, or HHS has made a determination that a State has failed to substantially enforce the requirements. However, in the Departments' view, the federalism implications of these final rules are substantially mitigated because some States have their own process for determining the total amount payable under a plan or coverage for out-of-network emergency services and to out-of-network providers for patient visits to in-network facilities for non-emergency services. Where a State has a specified State law, the State law, rather than the Federal IDR process, will apply.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the States, the Departments have engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners and consulting with State insurance officials on an individual basis.

While developing these rules, the Departments attempted to balance the States' interests in regulating health insurance issuers with the need to ensure market stability. By doing so, the Departments complied with the requirements of Executive Order 13132.

In accordance with Federal law, a summary of these rules may be found at *https://www.regulations.gov/*.

List of Subjects

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 149

Balance billing, Health care, Health insurance, Reporting, and recordkeeping requirements, Surprise billing.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement,
Internal Revenue Service.

Lily L. Batchelder,
Assistant Secretary of the Treasury (Tax Policy), Department of the Treasury.

Lisa M. Gomez
Assistant Secretary,
Employee Benefits Security Administration,
Department of Labor.

Xavier Becerra,
Secretary,
Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

For the reasons stated in the preamble, the Department of the Treasury and the IRS amend 26 CFR part 54 as set forth below:

PART 54—PENSION EXCISE TAXES

1. The authority citation for part 54 is amended by adding an entry for § 54.9816–8 in numerical order to read in part as follows:

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

* * * * *

Section 54.9816–8 also issued under 26 U.S.C. 9816.

* * * * *

2. Section 54.9816–8 is amended by revising paragraphs (a), (b), (c) introductory text, (d), and (e) and adding headings for paragraphs (f) and (g) to read as follows:

§ 54.9816–8 Independent dispute resolution process.

(a) *Scope and definitions*. For further guidance, see § 54.9816–8T(a).

(b) *Determination of payment amount through open negotiation and initiation of the Federal IDR process*. For further guidance, see § 54.9816–8T(b).

(c) *Federal IDR process following initiation*. For further guidance, see § 54.9816–8T(c) introductory text through (c)(3).

* * * * *

(d) *Costs of IDR process*—(1) *Certified IDR entity fee*. For further guidance, see § 54.9816–8T(d)(1).

(2) *Administrative fee*. (i) For further guidance, see § 54.9816–8T(d)(2)(i).

(ii) The administrative fee amount will be established through notice and comment rulemaking no more frequently than once per calendar year in a manner such that the total administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Secretaries of the Treasury, Labor, and Health and Human Services for the year in carrying out the Federal IDR process. The administrative fee amount will remain in effect until changed by notice and comment rulemaking. For disputes initiated on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], the administrative fee amount is $115 per party per dispute.

(3) *Severability*. (i) Any provision of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) and shall not affect the remainder thereof.

(ii) The provisions in this paragraph (d) and paragraphs (e)(2)(vii) and (viii) of this section are intended to be severable from each other.

(e) *Certification of IDR entity*—(1) *In general*. For further guidance see § 54.9816–8T(e)(1).

(2) *Requirement*s. (i) For further guidance, see § 54.8616–8T(e)(2)(i) through (vi).

(ii) through (vi) [Reserved]

(vii) Provide, no more frequently than once per calendar year, a fixed fee for single determinations and a separate fixed fee for batched determinations, as well as additional fixed tiered fees for batched determinations, if applicable, within the upper and lower limits for each, as established by the Secretary in notice and comment rulemaking. The certified IDR entity fee ranges established by the Secretary in rulemaking will remain in effect until changed by notice and comment rulemaking. The certified IDR entity may not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits by following the process described in paragraph (e)(2)(vii)(A) of this section. A certified IDR entity may also seek advance written approval from the Secretary to update its fees one additional time per calendar year by meeting the requirements described in paragraph (e)(2)(vii)(A). The Secretary will approve a request to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking or to update the fixed fee during the calendar year if, in their discretion, they determine the information submitted by a certified IDR entity or IDR entity seeking certification demonstrates that the proposed change to the certified IDR entity fee would ensure the financial viability of the certified IDR entity or IDR entity seeking certification and would not impose on parties an undue barrier to accessing the Federal IDR process.

(A) In order for the certified IDR entity or IDR entity seeking certification to receive the Secretary's written approval to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking or to update the fixed fee during the calendar year, the certified IDR entity or IDR entity seeking certification must submit to the Secretary, in the form and manner specified by the Secretary:

(*1*) The fixed fee the certified IDR entity or IDR entity seeking certification believes is appropriate for the certified IDR entity or IDR entity seeking certification to charge;

(*2*) A description of the circumstances that require the alternative fixed fee, or that require a change to the fixed fee during the calendar year, as applicable; and

(*3*) A detailed description that reasonably explains how the alternative fixed fee or the change to the fixed fee during the calendar year, as applicable, will be used to mitigate the effects of those circumstances.

(B) [Reserved]

(viii) For disputes initiated on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], certified IDR entities are permitted to charge a fixed certified IDR entity fee for single determinations within the range of $200 to $840, and a fixed certified IDR entity fee for batched determinations within the range of $268 to $1,173, unless a fee outside such ranges is approved by the Secretary, pursuant to paragraph (e)(2)(vii)(A) of this section. As part of the batched determination fee, certified IDR entities are permitted to charge an additional fixed tiered fee within the range of $75 to $250 for every additional 25 line items within a batched dispute, beginning with the 26th line item. The ranges for the certified IDR entity fees for single and batched determinations will remain in effect until changed by notice and comment rulemaking.

(ix) For further guidance, see § 54.9816–8T(e)(2)(ix) through (xii).

(x) through (xii) [Reserved]

(f) *Reporting of information relating to the Federal IDR process*. * * *

* * * * *

(g) *Extension of time periods for extenuating circumstances*. * * *

* * * * *

3. Section 54.9816–8T is amended by:

a. Revising paragraph (d)(2)(ii);

b. Adding paragraph (d)(3);

c. Removing the semicolon at the end of paragraphs (e)(2)(iii) and (vi) and adding a period in its place;

d. Revising paragraph (e)(2)(vii);

e. Redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(ix) through (xii);

f. Adding new paragraph (e)(2)(viii);

g. Removing the semicolon at the end of newly redesignated paragraphs (e)(2)(ix) and (x) and adding a period in its place; and

h. Removing "; and" at the end of newly redesignated paragraph (e)(2)(xii) and adding a period in its place.

The revisions and additions read as follows:

§ 54.9816–8T Independent dispute resolution process (temporary).

* * * * *

(d) * * *

(2) * * *

(ii) For further guidance, see § 54.9816–8(d)(2)(ii).

(3) *Severability*. For further guidance, see § 54.9816–8(d)(3).

(e) * * *

(2) * * *

(vii) For further guidance, see § 54.9816–8(e)(2)(vii).

(viii) For further guidance, see § 54.9816-8(e)(2)(viii).

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

4. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161-1168, 1169, 1181-1183, 1181 note, 1185, 1185a-n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104-191, 110 Stat. 1936; sec. 401(b), Pub. L. 105-200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110-343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111-148, 124 Stat. 119, as amended by Pub. L. 111-152, 124 Stat. 1029; Division M, Pub. L. 113-235, 128 Stat. 2130; Pub. L. 116–260 134 Stat. 1182; Secretary of Labor's Order 1-2011, 77 FR 1088 (Jan. 9, 2012).

5. Section 2590.716-8 is amended by:

a. Revising paragraph (d)(2)(ii);

b. Adding paragraph (d)(3);

c. Removing the semicolon at the end of paragraphs (e)(2)(iii) and (vi) and adding a period in its place;

d. Revising paragraph (e)(2)(vii);

e. Redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(ix) through (xii);

f. Adding new paragraph (e)(2)(viii);

g. Removing the semicolon at the end of newly redesignated paragraphs (e)(2)(ix) and (x) and adding a period in its place; and

h. Removing "; and" at the end of newly redesignated paragraph (e)(2)(xii) and adding a period in its place.

The revisions and additions read as follows:

§ 2590.716-8 Independent dispute resolution process.

* * * * *

(d) * * *

(2) * * *

(ii) The administrative fee amount will be established through notice and comment rulemaking no more frequently than once per calendar year in a manner such that the total administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Secretaries of the Treasury, Labor, and Health and Human Services for the year in carrying out the Federal IDR process. The administrative fee amount will remain in effect until changed by notice and comment rulemaking. For disputes initiated on or after [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL **REGISTER**], the administrative fee amount is $115 per party per dispute.

(3) *Severability.* (i) Any provision of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) and shall not affect the remainder thereof.

(ii) The provisions in this paragraph (d) and paragraphs (e)(2)(vii) and (viii) of this section are intended to be severable from each other.

(e) * * *

(2) * * *

(vii) Provide, no more frequently than once per calendar year, a fixed fee for single determinations and a separate fixed fee for batched determinations, as well as an additional fixed tiered fee for batched determinations, if applicable, within the upper and lower limits for each, as established by the Secretary in notice and comment rulemaking. The certified IDR entity fee ranges established by the Secretary in rulemaking will remain in effect until changed by notice and comment rulemaking. The certified IDR entity may not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits by following the process described in paragraph (e)(2)(vii)(A) of this section. A certified IDR entity may also seek advance written approval from the Secretary to update its fees one additional time per calendar year by meeting the requirements described in paragraph (e)(2)(vii)(A). The Secretary will approve a request to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking, or to update the fixed fee during the calendar year if, in their discretion, they determine the information submitted by a certified IDR entity or IDR entity seeking certification demonstrates that the proposed change to the certified IDR entity fee would ensure the financial viability of the certified IDR entity or IDR entity seeking certification and would not impose on parties an undue barrier to accessing the Federal IDR process.

(A) In order for the certified IDR entity or IDR entity seeking certification to receive the Secretary's written approval to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking or to update the fixed fee during the calendar year, the certified IDR entity or IDR entity seeking certification must submit to the Secretary, in the form and manner specified by the Secretary:

(*1*) The fixed fee the certified IDR entity or IDR entity seeking certification believes is appropriate for the certified IDR entity or IDR entity seeking certification to charge;

(*2*) A description of the circumstances that require the alternative fixed fee, or that require a change to the fixed fee during the calendar year, as applicable; and

(*3*) A detailed description that reasonably explains how the alternative fixed fee or the change to the fixed fee during the calendar year, as applicable, will be used to mitigate the effects of those circumstances.

(B) [Reserved]

(viii) For disputes initiated on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], certified IDR entities are permitted to charge a fixed certified IDR entity fee for single determinations within the range of $200 to $840, and a fixed certified IDR entity fee for batched determinations within the range of $268 to $1,173, unless a fee outside such ranges is approved by the Secretary pursuant to paragraph (e)(2)(vii)(A) of this section. As part of the batched determination fee, certified IDR entities are permitted to charge an additional fixed tiered fee within the range of $75 to $250 for every additional 25 line items within a batched dispute, beginning with the 26th line item. The ranges for the certified IDR entity fees for single and batched determinations will remain in effect until changed by notice and comment rulemaking.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

49 CFR Subtitle A

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 149 as set forth below:

PART 149—SURPRISE BILLING AND TRANSPARENCY REQUIREMENTS

6. The authority citation for part 149 continues to read as follows:

Authority: 42 U.S.C. 300gg-92 and 300gg-111 through 300gg-139, as amended.

7. Section 149.510 is amended by:

a. Revising paragraph (d)(2)(ii);

b. Adding paragraph (d)(3);

c. Removing the semicolon at the end of paragraphs (e)(2)(iii) and (vi) and adding a period in its place;

d. Revising paragraph (e)(2)(vii);

e. Redesignating paragraphs (e)(2)(viii) through (xi) as paragraphs (e)(2)(ix) through (xii);

f. Adding new paragraph (e)(2)(viii);

g. Removing the semicolon at the end of newly redesignated paragraphs (e)(2)(ix) and (x) and adding a period in its place; and

h. Removing "; and" at the end of newly redesignated paragraph (e)(2)(xii) and adding a period in its place.

The revisions and additions read as follows:

§ 149.510 Independent dispute resolution process.

* * * * *

(d) * * *

(2) * * *

(ii) The administrative fee amount will be established through notice and comment rulemaking no more frequently than once per calendar year in a manner such that the total administrative fees paid for a year are estimated to be equal to the amount of expenditures estimated to be made by the Secretaries of the Treasury, Labor, and Health and Human Services for the year in carrying out the Federal IDR process. For disputes initiated on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], the administrative fee amount is $115 per party per dispute.

(3) *Severability*. (i) Any provision of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this paragraph (d) or paragraphs (e)(2)(vii) and (viii) and shall not affect the remainder thereof.

(ii) The provisions in this paragraph (d) and paragraphs (e)(2)(vii) and (viii) of this section are intended to be severable from each other.

(e) * * *

(2) * * *

(vii) Provide, no more frequently than once per calendar year, a fixed fee for single determinations and a separate fixed fee for batched determinations, as well as an additional fixed tiered fee for batched determinations, if applicable, within the upper and lower limits for each, as established by the Secretary in notice and comment rulemaking. The certified IDR entity fee ranges established by the Secretary in rulemaking will remain in effect until changed by notice and comment rulemaking. The certified IDR entity may not charge a fee outside the limits set forth in rulemaking unless the certified IDR entity or IDR entity seeking certification receives advance written approval from the Secretary to charge a fixed fee beyond the upper or lower limits by following the process described in paragraph (e)(2)(vii)(A) of this section. A certified IDR entity may also seek advance written approval from the Secretary to update its fees one additional time per calendar year by meeting the requirements described in paragraph (e)(2)(vii)(A). The Secretary will approve a request to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking or to update the fixed fee during the calendar year if, in their discretion, they determine the information submitted by a certified IDR entity or IDR entity seeking certification demonstrates that the proposed change to the certified IDR entity fee would ensure the financial viability of the certified IDR entity or IDR entity seeking certification and would not impose on parties an undue barrier to accessing the Federal IDR process.

(A) In order for the certified IDR entity or IDR entity seeking certification to receive the Secretary's written approval to charge a fixed fee beyond the upper or lower limits for fees as set forth in rulemaking or to update the fixed fee during the calendar year, the certified IDR entity or IDR entity seeking certification must submit to the Secretary, in the form and manner specified by the Secretary:

(*1*) The fixed fee the certified IDR entity or IDR entity seeking certification believes is appropriate for the certified IDR entity or IDR entity seeking certification to charge;

(*2*) A description of the circumstances that require the alternative fixed fee, or that require a change to the fixed fee during the calendar year, as applicable; and

(*3*) A detailed description that reasonably explains how the alternative fixed fee or the change to the fixed fee during the calendar year, as applicable, will be used to mitigate the effects of those circumstances.

(B) [Reserved]

(viii) For disputes initiated on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], certified IDR entities are permitted to charge a fixed certified IDR entity fee for single determinations within the range of $200 to $840, and a fixed certified IDR entity fee for batched determinations within the range of $268 to $1,173, unless a fee outside such ranges is approved by the Secretary, pursuant to paragraph (e)(2)(vii)(A) of this section. As part of the batched determination fee, certified IDR entities are permitted to charge an additional fixed tiered fee within the range of $75 to $250 for every additional 25 line items within a batched dispute, beginning with the 26th line item. The ranges for the certified IDR entity fees for single and batched determinations will remain in effect until changed by notice and comment rulemaking.

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(Filed by the Office of the Federal Register on December 18, 2023, 4:15 p.m., and published in the issue of the Federal Register for December 21, 2023, 88 F.R. 88494)

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26 CFR 1.430(h)(2)-1

T.D. 9986

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Corporate Bond Yield Curve for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations specifying the methodology for constructing the corporate bond yield curve that is used to derive the interest rates used in calculating present value and making other calculations under a defined benefit plan, as well as for discounting unpaid losses and estimated salvage recoverable of insurance companies. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans, as well as insurance companies.

DATES: *Effective date:* These regulations are effective January 12, 2024.

Applicability date: These regulations apply for purposes of determining the corporate bond yield curve under section 430(h)(2)(D) of the Internal Revenue Code for months that begin on or after February 1, 2024.

FOR FURTHER INFORMATION CONTACT: Arslan Malik or Linda S. F. Marshall, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.[1] For a plan subject to section 430, section 430(a) defines the minimum required contribution for a plan year by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(2) provides rules regarding the interest rates to be used under section 430. Section 430(h)(2)(B) provides that a plan's funding target and target normal cost for a plan year are determined using three interest rates: (1) the first segment rate, which applies to benefits reasonably determined to be payable during the 5-year period beginning on the valuation date; (2) the second segment rate, which applies to benefits reasonably determined to be payable during the next 15-year period; and (3) the third segment rate, which applies to benefits reasonably determined to be paid after that 15-year period. Under sections 430(h)(2)(C)(i) through (iii), each of these segment rates is determined for a month on the basis of the corporate bond yield curve for the month, taking into account only that portion of the yield curve that is based on bonds maturing during the period for which the segment rate is used.

Section 430(h)(2)(C)(iv), which was added to the Code in 2012 by section 40211 of the Moving Ahead for Progress in the 21st Century Act, Public Law112-141, 126 Stat. 405, and has been modified several times since then (most recently in 2021 by section 80602 of the Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429), provides interest rate stabilization rules under which the segment rates are constrained by reference to the 25-year average segment rates. Under section 430(h)(2)(C)(iv), if a segment rate for a month is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the corresponding segment rates for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate for that month is equal to the applicable minimum percentage or the applicable maximum percentage of the corresponding 25-year average segment rate, whichever is closest. The last sentence of section 430(h)(2)(C)(iv)(I) provides that any 25-year average segment rate that is less than 5 percent is deemed to be 5 percent.

Under section 430(h)(2)(D)(i), the term "corporate bond yield curve" means, with respect to any month, a yield curve prescribed by the Secretary for the month that reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. Section 430(h)(2)(D)(ii) permits a plan sponsor to elect to use the corporate bond yield curve, rather than the segment rates, to determine the plan's minimum required contribution. The yield curve that applies pursuant to this election is determined without regard to 24-month averaging. This election,

[1] Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829 (1974), as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth minimum funding requirements that apply generally for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

once made, may be revoked only with the consent of the Secretary.

Under section 430(h)(2)(F), the Secretary is instructed to publish for each month the corporate bond yield curve (without regard to the 24-month averaging specification), the segment rates described in section 430(h)(2)(C), and the 25-year averages of segment rates used under section 430(h)(4)(C)(iv). The Secretary is also instructed to publish a description of the methodology used to determine the yield curve and segment rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months based on the plan's projection of future interest rates.

Section 1.430(h)(2)-1 was issued in 2009 to provide rules regarding the interest rates to be used under section 430. T.D. 9467, 74 FR 53004. Section 1.430(h)(2)-1(d) provides that the methodology for determining the yield curve is provided in guidance that is published in the Internal Revenue Bulletin. Notice 2007-81, 2007-2 CB 899, describes the methodology used by the Department of the Treasury (Treasury Department) to develop the corporate bond yield curve. Section 1.430(h)(2)-1(d) also provides that the yield curve for each month will be set forth in guidance published in the Internal Revenue Bulletin. Monthly IRS notices set forth the corporate bond yield curve for the month (without regard to the 24-month averaging specification), the section 430 segment interest rates (before and after adjustment pursuant to section 430(h)(3)(C)(iv)), and the 25-year average segment rates (which are updated annually).

Section 417(e)(3) provides assumptions for determining minimum present value for certain purposes, including the determination of a lump-sum that is the present value of an annuity, and prescribes an applicable interest rate for this purpose. Section 417(e)(3)(C) provides that the term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of a distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

Under section 846(c), the Secretary determines the applicable interest rate to be used by insurance companies to discount unpaid losses on the basis of the corporate bond yield curve (as defined in section 430(h)(2)(D)(i), determined by substituting "60-month period" for "24-month period"). Under § 1.832-4(c), the applicable interest rate determined under section 846(c) is also used by insurance companies to discount estimated salvage recoverable, unless the Commissioner publishes applicable discount factors to be used for that purpose.

A notice of proposed rulemaking and notice of public hearing (REG-124123-22) that would revise the methodology for determining the corporate bond yield curve was published in the *Federal Register* (88 FR 41047) on June 23, 2023. Two commenters submitted comments on the proposed regulations. A public hearing on the proposed regulations was scheduled for August 30, 2023, but was cancelled because no one requested to speak. After consideration of these comments, these final regulations are adopted with minor changes to the language from the proposed regulations to provide more detail on the methodology for determining the corporate bond yield curve.

Summary of Comments and Explanation of Revisions

These regulations specify the methodology used to develop the corporate bond yield curve. This methodology is generally the same as the methodology set forth in Notice 2007-81 but includes two refinements to take into account changes in the bond market since 2007. The regulations also amend the existing regulations under section 430(h)(2) to reflect the addition of the interest rate stabilization rules of section 430(h)(2)(C)(iv) and to eliminate transition rules that applied to plan years beginning before January 1, 2010.

One commenter expressed support for the rules set forth in the proposed regulations. The other commenter raised various concerns regarding the corporate bond yield curve.[2] Those concerns are discussed in this Summary of Comments and Explanation of Revisions.

Under these regulations, as under Notice 2007-81, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years, and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average for each business day of that month of the spot rates at that duration on the daily corporate bond yield curves.

Under these regulations, as under Notice 2007-81, each spot rate on the daily corporate bond yield curve is derived from a forward interest rate function (that is, the projected instantaneous interest rate at each point in time) that is defined by the selection of five coefficients of B-splines determined using the bond data, taking into account certain adjustment factors.

Two of those adjustment factors, which are included in the methodology set forth in Notice 2007-81, take into account the ratings of the bonds used to develop the daily corporate bond yield curve. The third adjustment factor, which was not included in the methodology set forth in that notice, is a hump adjustment variable that peaks

[2] This commenter suggested that multiple yield curves be published for different segments of the corporate bond market, such as by industry, sector, or region. This suggestion is inconsistent with the requirements of section 430(h)(2)(D) and (F), under which the Secretary must publish a single corporate bond yield curve for each month. In addition, this commenter expressed concern about the impact of the proposed regulations on the determination of the applicable federal rate and any resulting impact on the tax-exempt bond market. However, pursuant to section 1274(d), the applicable federal rates are determined with reference to the yields on Treasury securities, not corporate bonds; thus, these regulations have no effect on the determination of the applicable federal rates.

at 20 years maturity[3] and serves to capture the effects of the hump in spot rates that is often seen around 20 years maturity.

Under the methodology used in Notice 2007-81, the spot rate at a duration *t* could be calculated directly as the discount rate at that duration derived from the forward interest rate function. However, the addition of the hump adjustment variable under the proposed regulations means that the calculation of the spot rates from the discount function and the hump adjustment variable requires an intermediate step. This intermediate step, which was implicit in the proposed regulations, involves the determination of a par yield curve (that is, the curve in which the rate at maturity *t* on the curve is equal to the yield for a bond with maturity of *t* for which the price is the same as the principal amount) that is calculated from the discount function and the hump adjustment variable. In response to a commenter's request that the regulations specify clear standards for the determination of the corporate bond yield curve, these regulations describe this intermediate step. Accordingly, these regulations clarify that the spot rates are determined by first setting the spot rate at duration of ½ year on the daily corporate bond yield curve as the yield at maturity of ½ year from the daily par yield curve, and then determining the spot rate for any later duration by applying an iterative process based on the spot rates at earlier durations and the daily par yield curve.

One commenter asked how the IRS handles the situation in which the rating of a bond is upgraded or downgraded during a month, or a bond is rated differently by different rating organizations for a single day. Because the monthly corporate bond yield curve is developed from a set of daily corporate bond yield curves, changes in ratings during the month are automatically taken into account. In the case of a bond that is rated differently by different ratings organizations on a single day, the bond is treated as having the average of the ratings for that day.

These regulations generally adopt the specification for the bond data set for a month under Notice 2007-81 but modify an exclusion from that bond data set. Under Notice 2007-81 and these regulations, subject to certain exclusions, the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with the following characteristics: (1) maturities longer than ½ year,[4] (2) at least two payment dates, (3) designated as corporate, (4) high quality ratings (that is, AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations,[5] (5) at least $250 million in par amount outstanding on at least one day during the month, (6) payment of fixed nominal semiannual coupons and the principal amount at maturity, and (7) maturity not later than 30 years after that day.

Under Notice 2007-81 and these regulations, the following categories of bonds are excluded from the bond data set: (1) bonds not denominated in U.S. dollars, (2) bonds not issued by U.S. corporations, (3) bonds that are capital securities (sometimes referred to as hybrid preferred stock), (4) bonds having variable coupon rates, (5) convertible bonds, (6) bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association), (7) asset-backed bonds, (8) putable bonds, (9) bonds with sinking funds, and (10) bonds with a par amount outstanding below $250 million for the day for which the daily yield curve is constructed.

Notice 2007-81 also excluded callable bonds (unless the call feature is make-whole) from the bond data set used to construct the daily corporate bond yield curve. The regulations generally retain this exclusion but narrow it. Under the proposed regulations, this exclusion does not apply if the call feature is exercisable only during the last year before maturity. This type of call feature has recently become more widely used, and the inclusion of bonds with this feature in the data set will result in a significantly larger pool of bonds that more accurately reflects the market for high quality corporate bonds.

One commenter asked how the calculation of the yield of a corporate bond is affected by any options embedded in that bond. The complexity of the calculations involved in quantifying this effect is the reason that corporate bonds with embedded put and call options have been generally excluded from the set of bonds used to determine the corporate bond yield curve in the past. However, as noted in the preceding paragraph, including bonds with a call feature that is exercisable only during the last year before maturity significantly increases the pool of bonds that are taken into account in developing the corporate bond yield curve, and the Treasury Department and the IRS have determined that this feature does not significantly affect the yields of these bonds. Accordingly, no adjustment will be made to reflect the effect of this feature on bond yields.

Applicability Date

These regulations apply for purposes of determining the corporate bond yield curve under section 430(h)(2)(D) for months that begin on or after February 1, 2024.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at www.irs.gov.

[3] The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction at 20 years maturity.

[4] Under Notice 2007-81 and the regulations, the data for durations equal to or below ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

[5] Although section 939A(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, generally prohibits federal agencies from issuing regulations that apply a standard that is based on credit ratings from statistical rating organizations, this prohibition does not apply to the construction of the daily corporate bond yield curve because the use of those credit ratings is required by section 430(h)(2)(D) of the Code.

Special Analyses

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The vast majority of plan sponsors of defined benefit plans that are subject to section 430 choose to use the segment rates under section 430(h)(2)(C), rather than the corporate bond yield curve under section 430(h)(2)(D), to determine minimum required contributions. Furthermore, most of the plan sponsors who choose to use the corporate bond yield curve for this purpose are not small employers. Therefore, the methodology set forth in these regulations for constructing the corporate bond yield curve will not have a significant effect on minimum required contributions for small employers. In addition, the insurance companies that are required to use a modified version of the corporate bond yield curve to discount unpaid losses are typically not small employers. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the proposed regulations that preceded these regulations 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.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S. F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.430(h)(2)-1 is amended by:

1. Removing the phrase "and transition rules" in the last sentence of paragraph (a)(1);
2. Revising paragraph (b)(2);
3. Removing the last sentence in paragraph (c)(1);
4. In paragraphs (c)(2)(i) through (iii), removing the phrase "under the transition rule of paragraph (h)(4) of this section" and adding the phrase "under the interest rate stabilization rules in section 430(h)(2)(C)(iv)" in its place;
5. Revising paragraph (d);
6. Removing paragraph (e)(3) and redesignating paragraph (e)(4) as paragraph (e)(3);
7. In newly redesignated paragraph (e)(3)(ii), removing the phrase "this paragraph (e)(4)" and adding the phrase "this paragraph (e)(3)" in its place;
8. Redesignating paragraph (e)(5) as paragraph (e)(4); and
9. Revising paragraph (h).

The revisions read as follows:

§ 1.430(h)(2)-1 Interest rates used to determine present value.

* * * * *

(b) * * *

(2) *Benefits payable within 5 years*. In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

* * * * *

(d) *Monthly corporate bond yield curve*—(1) *In general*—(i) *Construction of monthly corporate bond yield curve*. For purposes of this section, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at

6-month intervals ranging from 6 months through 100 years and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. The monthly corporate bond yield curve is constructed as the average of the spot rates from the set of daily corporate bond yield curves as specified in paragraph (d)(1)(ii) of this section. Each daily corporate bond yield curve is constructed using the methodology set forth in paragraph (d)(2) of this section based on the data described in paragraph (d)(3) of this section. The yield curve for each month will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(ii) *Monthly corporate bond yield curve constructed through averaging*. Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average, for each business day of that month, of the spot rates at that duration on the daily corporate bond yield curves.

(2) *Construction of the daily corporate bond yield curve*—(i) *In general*—(A) *Calculation of spot rates*. The spot rate at duration of ½ year on the daily corporate bond yield curve is set equal to the yield at maturity of ½ year from the daily par yield curve described in paragraph (d)(2)(i)(B) of this section. The spot rate for any later duration on the daily corporate bond yield curve is determined by applying an iterative process based on the spot rates at earlier durations and the daily par yield curve.

(B) *Calculation of par yield curve*. The daily par yield curve (that is, the curve in which the rate at maturity *t* on the curve is equal to the yield for a bond with maturity of *t* for which the price is the same as the principal amount) is calculated from the discount function described in paragraph (d)(2)(i)(C) of this section and the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section.

(C) *Derivation of discount function*. The discount function for a day at duration *t* (denoted d(t)) is derived from the forward interest rate function as described in paragraph (d)(2)(ii) of this section (denoted *f(z)*) using the following equation:

Equation 1 to Paragraph (d)(2)(i)(C)

$$d(t) = exp\left(-\int_0^t f(z)dz\right)$$

(ii) *Determination of forward interest rates*—(A) *In general*. The forward interest rate function used to derive the discount function is determined as a series of cubic polynomials (referred to as a cubic spline) that have a smooth junction at specified knot points (maturities of 0, 1.5, 3, 7, 15, and 30 years). The requirement that the polynomials have a smooth junction at a knot point is satisfied if the two polynomials that are meeting at the knot have the same value, the same derivative, and the same second derivative at that knot point.

(B) *Constraints on the forward interest function*. The following three constraints are placed on the forward interest rate function—

(*1*) The second derivative of the function is set to 0 at maturity 0.

(*2*) The value of the forward interest rate function at and after 30 years is constrained to equal its average value from 15 to 30 years.

(*3*) The derivative of the forward interest rate function is set to 0 at maturity 30 years.

(iii) *Parameters for daily bond price model*—(A) *B-spline coefficients*. The assumed cubic spline for the forward interest rate function can be described as a linear combination of B-splines, with five parameters, which are determined taking into account the two coefficients for the bond-quality adjustment variables described in paragraphs (d)(2)(iii)(B) and (C) of this section and the coefficient for the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section. The five parameters and three coefficients are determined using the bond data weighted as described in paragraph (d)(2)(iv) of this section. After this weighting of the bond data, the five parameters and three coefficients are chosen to minimize the sum of the squared differences between the bid price for each of the bonds (or ask price for commercial paper) and the price estimated for each of those bonds determined using the specified parameters and coefficients, and taking into account the bond's coupon rate, number of years until maturity, and rating.

(B) *Adjustment factor for share of bonds that are AA-rated*. The first adjustment variable is based on the proportion of bonds that are rated AA within the universe of bonds in the data set that are rated AA or AAA, weighted by par value. In the case of an AAA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an AA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of (1- that proportion) and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(B) is 0.

(C) *Adjustment factor for share of bonds that are A-rated*. The second adjustment variable is based on the proportion of bonds rated A within the universe of bonds in the data set, weighted by par value. In the case of an AAA-rated bond or an AA-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of (1- that proportion) and the number of years until maturity for the bond.

(D) *Hump adjustment variable*. The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction (as described in paragraph (d)(2)(ii)(A) of this section) at 20 years maturity. The spline rises from 0 at 10 years maturity to 1.0 at 20 years maturity, then falls back down to 0 at 30 years maturity. The hump adjustment variable is 0 for maturities less than 10 years and maturities greater than 30 years.

(iv) *Weighting of bond data*. The bond data are weighted in three steps. In the first step, equal weights are assigned to the commercial paper rates at the short end of the curve, and the par amounts outstanding of all the bonds are rescaled so that their sum equals the sum of the weights for commercial paper. In the second step, the squared price difference for each commercial paper rate is multiplied by the commercial paper weight, and the squared price difference for each bond is multiplied by the bond's rescaled par amount outstanding. In the third step, applicable for bonds with duration greater than 1, the weighted squared price difference for each bond from the second step is divided by the bond's duration.

(3) *Data used*—(i) *In general*. Except as otherwise provided in this paragraph (d)(3), the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with maturities longer than ½ year, with at least two payment dates, and that:

(A) Are designated as corporate;

(B) Have high quality ratings (AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations;

(C) Have at least $250 million in par amount outstanding on at least one day during the month;

(D) Pay fixed nominal semiannual coupons and the principal amount at maturity; and

(E) Mature not later than 30 years after that business day.

(ii) *Excluded bonds*. The following types of bonds are not used to construct the daily corporate bond yield curve for a date:

(A) Bonds not denominated in U.S. dollars;

(B) Bonds not issued by U.S. corporations;

(C) Bonds that are capital securities (sometimes referred to as hybrid preferred stock);

(D) Bonds with variable coupon rates;

(E) Convertible bonds;

(F) Bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association);

(G) Asset-backed bonds;

(H) Callable bonds, unless the call feature is make-whole or the call feature is exercisable only during the last year before maturity;

(I) Putable bonds;

(J) Bonds with sinking funds; and

(K) Bonds with an outstanding par amount below $250 million for the day for which the daily yield curve is constructed.

(iii) *Durations equal to or below ½ year*. The data for durations equal to or below ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

* * * * *

(h) *Applicability date*. This section applies for months that begin on or after February 1, 2024. For rules that apply for earlier periods, see 26 CFR 1.430(h)(2)-1 revised as of April 1, 2023.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

Approved: December 27, 2023.

Lily Batchelder,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on January 11, 2024, 8:45 a.m., and published in the issue of the Federal Register for January 12, 2024, 89 F.R. 2127)

Part III

Clarifications and Modification to Initial Interim Guidance on Amortization of Specified Research or Experimental Expenditures under Section 174

Notice 2024-12

SECTION 1. OVERVIEW

This notice clarifies and modifies Notice 2023-63, 2023-39 I.R.B. 919, which announced that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing (1) the capitalization and amortization of specified research or experimental (SRE) expenditures under § 174 of the Internal Revenue Code (Code),[1] as amended by Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), (2) the treatment of SRE expenditures under § 460, and (3) the application of § 482 to cost sharing arrangements involving SRE expenditures, and provided interim guidance that taxpayers may rely on until the forthcoming proposed regulations are published in the *Federal Register*. Specifically, this notice clarifies and modifies Notice 2023-63 regarding (1) the treatment of costs paid or incurred by a research provider for research performed under contract, (2) the requirement that a taxpayer that chooses to rely on any of the rules described in Notice 2023-63 must rely on all the rules described in sections 3 through 9 of the notice, and (3) the obsoletion of section 5 of Rev. Proc. 2000-50, 2000-2 C.B. 601.

The guidance in this notice does not apply for purposes of determining whether an expenditure paid or incurred for taxable years beginning before January 1, 2022, is a research or experimental expenditure under § 174 as in effect for taxable years beginning before January 1, 2022 (former § 174). Unless otherwise provided, the definitions in Notice 2023-63 apply for purposes of this notice.

SECTION 2. BACKGROUND

.01 *Treatment of research and experimental expenditures under former § 174*.

Former § 174 allowed taxpayers to deduct research or experimental expenditures paid or incurred in connection with a trade or business as current expenses, to capitalize and amortize such expenditures over a period of not less than 60 months, or to charge such expenditures to capital account.

.02 *Treatment of SRE expenditures under § 174*.

Section 13206(a) of the TCJA amended former § 174 for amounts paid or incurred in taxable years beginning after December 31, 2021. Section 174(a)(1) disallows deductions for amounts that meet the definition of SRE expenditures under § 174(b), except as provided in § 174(a)(2). Section 174(a)(2) requires taxpayers to charge SRE expenditures to capital account and allows amortization deductions of such capitalized expenditures ratably over a 5-year period in the case of SRE expenditures attributable to domestic research, or a 15-year period in the case of SRE expenditures attributable to foreign research, beginning with the midpoint of the taxable year in which such expenditures are paid or incurred. Section 13206(a) of the TCJA made other amendments to former § 174, including amendments to treat any amount paid or incurred in connection with the development of any software as an SRE expenditure and to prevent the accelerated recovery of unamortized SRE expenditures on account of the disposition, retirement, or abandonment of property with respect to which such expenditures were paid or incurred. For additional background on former § 174 and the TCJA amendments to former § 174, see section 2 of Notice 2023-63. Section 6001 and the regulations thereunder require taxpayers to maintain such books and records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown in any return, including for research or experimental expenditures that a taxpayer deducts under former § 174, or capitalizes and amortizes under former § 174 or § 174 as in effect for amounts paid or incurred in taxable years beginning after December 31, 2021.

.03 *Interim Guidance under Notice 2023-63*. Notice 2023-63 was issued on September 8, 2023, and announced that the Treasury Department and the IRS intend to issue forthcoming proposed regulations addressing (1) the capitalization and amortization of SRE expenditures under § 174, (2) the treatment of SRE expenditures under § 460, and (3) the application of § 482 to cost sharing arrangements involving SRE expenditures. Notice 2023-63 provided interim guidance under such sections upon which taxpayers may rely until the forthcoming proposed regulations are published in the *Federal Register*, including a rule that would provide that SRE expenditures must be treated consistently for purposes of all provisions under subtitle A of the Code and therefore may not, for example, be treated as ordinary and necessary expenses under § 162. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will provide rules consistent with the rules described in Notice 2023-63 and will consider further clarifications or modifications to the rules described in the interim guidance based on submitted written comments for purposes of the forthcoming proposed regulations. The aspects of Notice 2023-63 that are relevant to this notice are discussed in sections 2.04, 2.05, and 2.06 of this notice.

.04 *Research performed under contract*.

(1) Section 6 of Notice 2023-63 provides interim guidance regarding whether costs paid or incurred for research performed under contract are SRE expendi-

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

tures. Section 6.02 includes definitions of the terms “research provider,” “research recipient,” “financial risk,” and “SRE product.” Section 6.03 explains that the treatment of costs paid or incurred by the research recipient is governed by the principles set forth in § 1.174-2(a)(10) and (b)(3).

(2) Section 6.04 of Notice 2023-63 provides rules for the treatment of costs paid or incurred by a research provider. Section 6.04 provides that if the research provider bears financial risk under the terms of the contract with the research recipient, then costs paid or incurred by the research provider that are incident to the SRE activities (as described in section 4.03 of Notice 2023-63) performed by the research provider under the contract are SRE expenditures. Section 6.04 also provides that even if the research provider does not bear financial risk under the terms of the contract with the research recipient, if the research provider has an “SRE product right” (that is, a right to use any resulting SRE product in a trade or business of the research provider or otherwise exploit any resulting SRE product through sale, lease, or license), then costs paid or incurred by the research provider that are incident to the SRE activities performed by the research provider under the contract are SRE expenditures of the research provider for which no deduction is allowed except as provided in § 174(a)(2). This is the case regardless of whether the research recipient’s costs are required to be treated as SRE expenditures under section 6.03 of Notice 2023-63. Lastly, section 6.04 provides that a research provider will not be treated as having an SRE product right if such right is available to the research provider only upon obtaining approval from another party to the research arrangement that is not related to the research provider within the meaning of § 267 or § 707.

(3) The Treasury Department and the IRS are aware that section 6.04 of Notice 2023-63 could be interpreted to require a research provider that does not bear financial risk under the terms of the contract with the research recipient to improperly treat as SRE expenditures the costs paid or incurred by the research provider to perform SRE activities on behalf of the research recipient under such contract if the research provider obtains an SRE product right that (1) is separately bargained for (that is, an SRE product right that arose from consideration other than the cost paid or incurred by the research provider to perform SRE activities under that contract) or (2) was acquired for the limited purpose of performing SRE activities under that contract or another contract with the research recipient.

(4) Consistent with the intent of section 6.04 of Notice 2023-63, section 3 of this notice clarifies that if a research provider that does not bear financial risk under the terms of the contract with the research recipient obtains an “excluded SRE product right” (that is, an SRE product right described in section 2.04(3) of this notice) but does not obtain any other SRE product right under the terms of such contract, then the costs paid or incurred by the research provider to perform SRE activities on behalf of the research recipient under such contract are not SRE expenditures.

.05 *Applicability date of Notice 2023-63*. Section 10.01 of Notice 2023-63 provides that taxpayers may rely on the rules described in sections 3 through 9 of Notice 2023-63 prior to the publication date of the forthcoming proposed regulations in the *Federal Register* for expenditures paid or incurred in taxable years beginning after December 31, 2021, provided the taxpayer relies on all the rules described in sections 3 through 9 of Notice 2023-63 and applies them in a consistent manner. Section 10.01 also provides that taxpayers may not rely on the rules described in section 7 of Notice 2023-63 regarding the treatment of SRE expenditures paid or incurred with respect to property that is contributed to, distributed from, or transferred from a partnership.

The Treasury Department and the IRS are aware of situations in which a taxpayer that intends to consistently rely on all the rules described in sections 3 through 9 of the notice for expenditures paid or incurred in taxable years beginning after December 31, 2021, may be required to amend a tax return that was filed before or shortly after Notice 2023-63 was issued to do so. This is because the taxpayer may not be able to change, through a change in method of accounting, certain positions taken on such return that were inconsistent with certain sections of Notice 2023-63. To facilitate reliance on the rules described in Notice 2023-63 in a more administrable manner, section 4 of this notice modifies section 10.01 of Notice 2023-63 to remove the requirement that a taxpayer must rely on all the rules described in sections 3 through 9 of the notice if it chooses to rely on any of the rules described in sections 3 through 9 of the notice.

.06 *Obsoletion of Rev. Proc. 2000-50, section 5.01*. Section 12 of Notice 2023-63 provides that as a result of the TCJA amendments to § 174 and the rules described in sections 3 through 5 of Notice 2023-63, section 5 of Rev. Proc. 2000-50 is obsolete. Section 5 of this notice clarifies section 12 of Notice 2023-63 to reflect that section 5 of Rev. Proc. 2000-50 is obsoleted only for expenditures paid or incurred in taxable years beginning after December 31, 2021, and not for expenditures paid or incurred for taxable years beginning on or before December 31, 2021.

.07 *Procedural guidance under Rev. Proc. 2024-9*. On December 22, 2023, the Treasury Department and the IRS released Rev. Proc. 2024-9, this Bulletin, modifying sections 7 and 19 of Rev. Proc. 2023-24, 2023-28 I.R.B. 1207, to provide procedures under § 446 and § 1.446-1(e) for obtaining automatic consent of the Commissioner of Internal Revenue (Commissioner) to change methods of accounting for expenditures paid or incurred in taxable years beginning after December 31, 2021, in reliance on interim guidance under §§ 174 and 460 provided in Notice 2023-63. Rev. Proc. 2024-9 also clarified section 9 of Rev. Proc. 2023-24 to provide that section 5 of Rev. Proc. 2000-50 is obsoleted for costs of developing computer software paid or incurred in any taxable year beginning after December 31, 2021, and continues to apply to costs of developing computer software paid or incurred in any taxable year beginning on or before December 31, 2021.

SECTION 3. CLARIFICATION OF SECTION 6.04 OF NOTICE 2023-63 REGARDING RESEARCH PERFORMED UNDER CONTRACT

For purposes of applying section 6.04 of Notice 2023-63, if a research provider that does not bear financial risk under the terms of the contract with the research recipient obtains an excluded SRE product right (that is, an SRE product right described in section 2.04(3) of this notice) and does not obtain any other SRE product right under the terms of such contract, then the costs paid or incurred by the research provider to perform SRE activities on behalf of the research recipient under such contract are not SRE expenditures.

SECTION 4. MODIFICATION OF SECTION 10.01 OF NOTICE 2023-63 REGARDING RELIANCE REQUIREMENT

Section 10.01 of Notice 2023-63 is modified to read as follows:

.01 *In general*. It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in sections 3 through 9 of this notice would apply for taxable years ending after September 8, 2023. Except as otherwise provided in this section 10.01, prior to the publication date of the forthcoming proposed regulations in the *Federal Register*, a taxpayer may choose to rely on the rules described in sections 3 through 9 of Notice 2023-63 for expenditures paid or incurred in taxable years beginning after December 31, 2021, provided the taxpayer relies on them in a consistent manner. Taxpayers are not required, however, to rely on all the rules described in sections 3 through 9 of Notice 2023-63. Taxpayers may not rely on the rules described in section 7 of Notice 2023-63 for SRE expenditures paid or incurred with respect to property that is contributed to, distributed from, or transferred from a partnership.

SECTION 5. CLARIFICATION OF SECTION 12 OF NOTICE 2023-63 REGARDING OBSOLETION OF SECTION 5 OF REV. PROC. 2000-50

For amounts paid or incurred in taxable years beginning after December 31, 2021, section 5 of Rev. Proc. 2000-50 is removed as obsolete. Section 5 of Rev. Proc. 2000-50 continues to apply to amounts paid or incurred in taxable years beginning on or before December 31, 2021.

SECTION 6. EFFECTIVE DATE

This notice clarifies and modifies Notice 2023-63 and is effective as of September 8, 2023. Until the forthcoming proposed regulations are published in the *Federal Register*, taxpayers may rely on sections 3 and 4 of this notice for expenditures paid or incurred in taxable years beginning after December 31, 2021.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Sections 6.04 and 12 of Notice 2023-63 are clarified. Section 10.01 of Notice 2023-63 is modified.

SECTION 8. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Bruce Chang of the Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, please contact Mr. Chang at (202) 317-7005 (not a toll-free number).

Comments on Product Identification Numbers and the Energy Efficient Home Improvement Credit under Section 25C

Notice 2024-13

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations to implement the product identification number (PIN) requirement with respect to the energy efficient home improvement credit under § 25C of the Internal Revenue Code (Code),[1] as amended by § 13301 of Public Law 117-169, 136. Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). This notice requests comments on the PIN requirement under § 25C(h) (PIN requirement). Section 2 of this notice provides a background description of § 25C, including the PIN requirement. Section 3 of this notice contains general requests for comments. Section 4 of this notice describes a possible PIN assignment system and contains a specific request for comments on the system. Section 5 of this notice requests comments on providing PIN information to consumers and the IRS. Section 6 of this notice provides the method for submitting comments. Comments received in response to this notice will help inform the development of the proposed regulations implementing the PIN requirement.

SECTION 2. BACKGROUND

.01 *Energy Efficient Home Improvement Credit Generally*.

(1) Section 25C was originally enacted by § 1333(a) of the Energy Policy Act of 2005, Public Law 109-58, 119 Stat. 594, 1026 (August 8, 2005), to provide the nonbusiness energy property credit for the purchase and installation of certain energy efficient improvements in taxpayers' principal residences. Section 25C has been amended several times, most recently by § 13301 of the IRA, which renamed this provision the "energy efficient home improvement credit" (§ 25C credit).

(2) Before the enactment of the IRA, § 25C had expired on December 31, 2021. Section 13301(a) of the IRA amended § 25C(g) to make the § 25C credit available from January 1, 2022, through December 31, 2032.

(3) Section 13301(b) of the IRA amended § 25C(a) to allow a credit for 30 percent of amounts paid or incurred by individual taxpayers during the tax-

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code.

able year for qualified energy efficiency improvements and residential energy property expenditures. As amended by § 13301(c) of the IRA, the § 25C credit is generally limited to an annual cap of $1,200. Within this $1,200 limitation, § 25C(b) sets forth further annual caps for certain categories of improvements. As relevant to this notice, the caps and categories of improvements under these limitations are as follows:

(A) $600 for any item of qualified energy property, as defined in § 25C(d)(2);

(B) $600 for exterior windows and skylights;

(C) $250 for any single exterior door; and

(D) $500 in the aggregate for all exterior doors.

(4) Notwithstanding the $1,200 annual limitation (and its internal limitations), amounts paid or incurred for heat pumps, heat pump water heaters, biomass stoves, and biomass boilers are allowed a separate and aggregate annual credit of up to $2,000.

(5) Section 13301(i) of the IRA provides the effective dates for the IRA amendments to § 25C. In general, except as provided in § 13301(i)(2) and (3), the IRA amendments apply to property placed in service after December 31, 2022. Section 13301(i)(2) of the IRA provides that amendments made by § 13301(a) of the IRA relating to the extension of the credit apply to property placed in service after December 31, 2021. Section 13301(i)(3) of the IRA provides that amendments made by § 13301(g) of the IRA relating to the PIN requirement apply to property placed in service after December 31, 2024.

.02 *PIN Requirement for Specified Property*.

(1) Section 13301(g) of the IRA adds new § 25C(h), which imposes the PIN requirement. Section 25C(h)(1) provides that no § 25C credit is allowed for any item of specified property placed in service after December 31, 2024, unless--

(A) such item is produced by a qualified manufacturer, and

(B) the taxpayer includes the qualified PIN of such item on the return of tax for the taxable year.

(2) Section 25C(h)(2) defines "qualified product identification number" as, with respect to any item of specified property, the product identification number assigned to such item by the qualified manufacturer pursuant to the methodology referred to in § 25C(h)(3).

(3) Section 25C(h)(3) defines "qualified manufacturer" as any manufacturer of specified property that enters into an agreement with the Secretary of the Treasury or her delegate (Secretary) that provides that such manufacturer will--

(A) assign a PIN *to each item of specified property* produced by such manufacturer utilizing a methodology that will ensure that such number (including any alphanumeric) is unique to each such item (by utilizing numbers or letters that are unique to such manufacturer or by such other method as the Secretary may provide),

(B) label such item with such number in such manner as the Secretary may provide, and

(C) make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) of the PINs so assigned and including such information as the Secretary may require with respect to the item of specified property to which such number was so assigned.

(4) Section 25C(h)(4) defines "specified property" as any "qualified energy property" and any property described in § 25C(c)(3)(B) or (C) (exterior windows, including skylights, and exterior doors).

(5) Section 25C(d)(2) defines "qualified energy property" as:

(A) Any of the following that meets or exceeds the highest efficiency tier (not including any advanced tier) established by the Consortium for Energy Efficiency that is in effect as of the beginning of the calendar year in which the property is placed in service:

(i) an electric or natural gas heat pump water heater,

(ii) an electric or natural gas heat pump,

(iii) a central air conditioner,

(iv) a natural gas, propane, or oil water heater, or

(v) a natural gas, propane, or oil furnace or hot water boiler;

(B) A biomass stove or boiler that

(i) uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and

(ii) has a thermal efficiency rating of at least 75 percent (measured by the higher heating value of the fuel);

(C) Any oil furnace or hot water boiler that--

(i) is placed in service after December 31, 2022, and before January 1, 2027, meets or exceeds 2021 Energy Star efficiency criteria, and is rated by the manufacturer for use with fuel blends at least 20 percent of the volume of which consists of an eligible fuel, as defined in § 25C(d)(3) (eligible fuel), or

(ii) is placed in service after December 31, 2026, achieves an annual fuel utilization efficiency rate of not less than 90, and is rated by the manufacturer for use with fuel blends at least 50 percent of the volume of which consists of an eligible fuel ; and

(D) Any improvement to, or replacement of, a panelboard, sub-panelboard, branch circuits, or feeders that

(i) is installed in a manner consistent with the National Electric Code,

(ii) has a load capacity of not less than 200 amps,

(iii) is installed in conjunction with

(I) any qualified energy efficiency improvements, or

(II) any qualified energy property described in § 25C(d)(2)(A) through (C) for which a §25C credit is allowed for expenditures with respect to such property, and

(iv) enables the installation and use of any qualified energy efficiency improvements or any qualified energy property described in § 25C(d)(2)(A) through (C)).

(6) Property described in § 25C(c)(3)(B) or (C) includes:

(A) exterior windows, including skylights, and

(B) exterior doors.

.03 *Math Error Authority*

Section 6213(b)(1) authorizes the IRS to make certain assessments of mathematical or clerical errors without first issuing a notice of deficiency under section 6213(a). In lieu of a notice of deficiency giving the taxpayer 90 days to file a petition in the Tax Court, section 6213(b)(1) requires the IRS to provide the taxpayer notice that an assessment has been or will be made based on a mathematical or clerical error. Section 6213(b)(2)(A) provides that the taxpayer has 60 days to request an abatement of such assessment. If the taxpayer timely requests abatement, then the IRS must abate the assessment.

Section 13301(g)(2) of the IRA amended § 6213(g)(2) to expand the definition of a "mathematical or clerical error," over which the IRS has math error authority, to include an "an omission of a correct product identification number required under section 25C(h) (relating to credit for nonbusiness energy property) to be included on a return." Accordingly, the IRS will not issue a claimed credit if it appears that there is a PIN error.

.04 *Notice 2022-48 and Comments Received*

(1) In Notice 2022-48, 2022-43 I.R.B. 305, the Treasury Department and the IRS requested comments on various questions arising from the IRA's energy efficiency provisions, including §§ 25C, 25D, 45L and 179D.

(2) Specific to § 25C(h), Notice 2022-48 requested comments on what the Treasury Department and the IRS should consider (1) in determining the manner of agreements between the IRS and a qualified manufacturer, (2) in developing a methodology to ensure that each PIN is unique *to each item of specified property*, (3) in prescribing the manner by which specified property must be labeled with a unique PIN, and (4) in developing the requirements for qualified manufacturers' periodic written reports.

(3) In response, some commenters suggested the use of existing numbering systems to satisfy the PIN requirement. For example, commenters suggested using product serial numbers or stock-keeping unit numbers (SKUs) to satisfy the PIN requirement. Generally, manufacturers routinely assign serial numbers to specific items, which achieves the specificity suggested by the statutory text. The Treasury Department and the IRS, however, are concerned that the systems that manufacturers employ to assign serial numbers are not uniform by product or manufacturer. For example, a manufacturer of a particular product may use an 8-digit serial number consisting of numbers for each item of product line while a different manufacturer of a similar product may use a 14-digit serial number consisting of both numbers and letters. Additionally, some manufacturers change their serial numbers for products over time. For example, a manufacturer may use a 9-digit serial number consisting partly of letters for certain years and an 8-digit serial number consisting only of numbers for other years. Similarly, SKUs are specific to each merchant or manufacturer. This lack of uniformity in serial numbers and SKUs would create processing challenges for the IRS and could also cause confusion for consumers claiming the § 25C credit. Additionally, certain categories of products, like exterior windows, doors, and skylights, do not currently have unique serial numbers for *each* window, door, or skylight manufactured but instead are assigned numbers that identify multiple windows, doors, or skylights as belonging to a specific product line of such items.

(4) Other commenters suggested using product line numbers or universal product codes (UPCs) to satisfy the PIN requirement. Regarding product line numbers, some commenters pointed to the National Fenestration Rating Council's (NFRC) Certified Product Directory for exterior windows, doors, and skylights. However, because the NFRC system assigns the same product line number to multiple (or all) items in a specific product line, these numbers will not provide the specificity needed to satisfy the requirement of § 25C(h), which ensures that duplicate or fraudulent claims for the § 25C credit are not made for the same item. UPCs are a multi-digit code assigned to products by manufacturers. Manufacturers and others employ UPCs for tracking and selling inventory. Like the NFRC numbers, however, UPCs are generally assigned per product type, and not per specific item. Therefore, while UPCs can vary based on product differences, they also do not satisfy the specificity requirement of § 25C(h).

(5) To permit the IRS to adhere to and to sufficiently enforce the statutory PIN requirement, to use its math error authority in § 6213(g)(2), and to provide certainty to consumers who want to claim the § 25C credit, the Treasury Department and the IRS have determined that it is necessary to develop a system that assigns PINs to each unique item of specified property. The Treasury Department and the IRS seek to balance the administrative benefits and taxpayer clarity provided by a unique PIN system against the burden that this requirement would impose on manufacturers and retailers.

SECTION 3. GENERAL COMMENT REQUEST

The Treasury Department and the IRS request comments on the following questions that will inform the development of a system to assign unique PINs to each item of specified property, as required under § 25C(h):

.01 For manufacturers, how many different products do you manufacture and/or sell that would qualify as specified property under § 25C(h)(4)? Commenters are encouraged to list their different product types, product lines, as well as the approximate annual number of unique items manufactured and/or sold for each product line that could constitute "specified property."

.02 Is there a system by which *all* manufacturers of "specified property" assign unique identification numbers *to each item* of a manufactured product? If so, please identify the system and how each manufacturer assigns a unique identification number to each item of a manufactured product. Please also explain any deviations that exist in each manufacturer's system for assigning numbers (for example, some using all numbers or a combination of numbers and letters).

.03 If there is not a system described in section 3.02 of this notice, but there is a system that applies unique identification numbers to each item within a particular product type industry-wide, please identify the system, describe what products it applies to and products of similar functions that it does not apply to, and explain how each manufacturer assigns a number to each item of manufactured product using the system. Please also explain any deviations that exist in each manufacturer's system for assigning numbers.

SECTION 4. POSSIBLE PIN ASSIGNMENT SYSTEM AND SPECIFIC REQUEST FOR COMMENTS

The Treasury Department and the IRS are considering implementing a PIN assignment system, the process for which is described generally in section 4.01 of this notice. The system would use 17-digit PINs that are assigned to each item of specified property that qualifies for the § 25C credit. The PIN for each item of specified property would be made up of three parts. The first part of the PIN would be a "QM Number" specific to the qualified manufacturer. The second part of the PIN would be a "Product Number" specific to the specified property product line that qualifies for the § 25C credit. The third part of the PIN would reflect the year of manufacture. The fourth part of the PIN would be an "Item number" that is unique to each *item* of specified property. The system would require manufacturers to register to be a qualified manufacturer with the IRS. Only if registration is successful would any PINs be assigned to the manufacturer's items of specified property. The Treasury Department and the IRS request comments on the proposed system.

.01 *Possible PIN Assignment System Process*.

(A) The manufacturer would register with the IRS to be a qualified manufacturer (QM) in accordance with § 25C(h)(3).

(B) If the registration is successful, the manufacturer would become a qualified manufacturer, and the IRS would issue to the qualified manufacturer a QM Number and a list of Product Numbers that correspond to specified products that qualify for the § 25C credit. QM Numbers and Product Numbers would only include alphanumeric characters. For purposes of this notice, "alphanumeric characters" refers only to 24 letters of the English alphabet (A through Z, but not I or O to avoid confusion with 1 and 0) and the numerals 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(C) The qualified manufacturer would then assign Item numbers to each *unique item* of specified property in any fashion it chooses (for example, sequentially, partially incorporating the year and/or month of manufacture, or incorporating a part or all of the serial number that the manufacturer has assigned to the item), provided that the Item numbers only include alphanumeric characters, and provided that the PIN is unique for each item and is 17 alphanumeric characters in overall length (including the QM Number, the Product Number, and the character(s) identifying the year of manufacture).

(D) Throughout the calendar year, the qualified manufacturer would file a list of PINs representing each item of specified property manufactured by the manufacturer to the IRS through an online portal[2] before, or potentially shortly after, the end of the calendar year. The qualified manufacturer would stamp or label its products with their PINs, and would also, potentially through a retailer, distributor, or contractor, furnish the PINs to each consumer for the consumers to report on their tax returns when the § 25C credit is claimed. See section 5 of this notice for comment requests on providing PINs to customers and the IRS.

.02 *Example*. Manufacturer X manufactures exterior windows. On June 1, 2024, Manufacturer X successfully registers with the IRS to be a qualified manufacturer and the IRS assigns a QM Number of 1234 to Manufacturer X. The IRS also provides Manufacturer X a Product Numbers list, in which exterior windows that qualify for the § 25C credit are assigned number 01. Manufacturer X anticipates that, in calendar year 2025, it will manufacture 50,000 exterior windows that will qualify for the § 25C credit and decides to assign numbers to each exterior window sequentially based on the time of manufacture. Accordingly, Manufacturer X assigns PINs of 12340125000000001 through 12340125000050000 to the exterior windows it produces in calendar year 2025. Also in calendar year 2025, Consumer Y purchases and places in service the exterior window bearing the PIN 12340125000000001. Before or potentially shortly after January 1, 2026, Manufacturer X notifies the IRS of this PIN through a report filed through the IRS Energy Credits Online portal. Additionally, Consumer Y has been made aware of the PIN unique to the exterior window purchased by Consumer Y to report on their return.

.03 The Treasury Department and the IRS request comments on the PIN assignment system described in section 4.01 of this notice. Specifically, the Treasury Department and the IRS request comments on the following:

(A) What challenges would manufacturers and/or retailers have in implementing and complying with the PIN assignment system described in section 4.01 of this notice? What would be the costs and timeline for manufacturers and retailers of implementing and complying with the proposed system? Are there cases where manufacturers or other stakeholders would decline to employ the system because compliance would be overly burdensome? Commenters are encouraged to specifically identify types and amounts of costs that manufacturers and retailers would need to incur in implementing and complying with the proposed system, as well as specific aspects of the proposal that would require set amounts of time to develop and implement.

(B) If the Treasury Department and the IRS were to implement the PIN assignment system described in section 4.01 of this notice, what changes or exceptions, if any, should be made? For example, is guidance regarding a transition period needed for specified property that may be placed in service after December 31, 2024, but is no longer in possession of the manufacturer or trackable by the manufacturer on the date they successfully register with the IRS, because the specified property has already been sold to a distributor or retailer? Do some categories of specified property, or components of specified property, have a low retail cost or profit margin such that assigning a PIN to each item would be cost-prohibitive? Please also provide recommendations on any possible demarcation between items or categories of specified property that would need a PIN, or for which a PIN would be impractical, and those that would not need a PIN and the basis for such demarcation consistent with the purposes of the statutory PIN requirement to prevent duplicative or fraudulent credit claims.

(C) If the Treasury Department and the IRS were to implement the PIN assignment system described in section 4.01 of this notice for some items of specified property, but not others, would there be

[2] Similar to the IRS Clean Vehicle Credit portal.

additional costs incurred for manufacturers and/ or retailers? What would those additional costs be?

(D) What challenges, if any, exist due to customizable products? What limitations, if any, does specified property that is sold in one or more parts to form an eligible system (for example, an eligible heat pump system that is comprised of an indoor unit, outdoor unit and air mover) pose in assigning unique PINs?

(E) If the Treasury Department and the IRS were to implement the PIN assignment system described in section 4.01 of this notice, with what frequency (daily, monthly, quarterly, annually) could manufacturers provide information to the IRS, retailers, and/or consumers on available specified property?

(F) What modifications could be made to the PIN assignment system described in section 4.01 of this notice to accommodate limitations while still achieving adherence to the specificity requirement?

SECTION 5. SPECIFIC REQUEST FOR COMMENTS ON PROVIDING PINs TO CONSUMERS AND THE IRS

If a PIN assignment system substantially similar to the one described in section 4 of this notice is developed, the Treasury Department and the IRS request comments on how manufacturers (and/or other parties) would provide each unique PIN to consumers and to the IRS to ensure appropriate matching to avoid duplicate or fraudulent credit claims. Specifically, the Treasury Department and the IRS request comments on:

.01 What processes or systems could manufacturers, retailers, distributors, contractors, and/or trade organizations put in place to ensure that consumers can confirm whether a particular item of specified property qualifies for a § 25C credit? For example, could manufacturers, retailers, distributors, contractors, and/ or trade organizations provide a certification to consumers listing which of the manufacturers' products qualify for the § 25C credit? How could manufacturers, retailers, distributors, contractors, and/or trade organizations make eligible property easily identifiable for consumers? Would manufacturers and/or retailers prefer to provide PIN information to consumers on receipts at the time of sale or after installation of the product (if different in time)? Would a system where the PIN is provided on or inside the product's packaging and not on the product itself suffice in certain situations? Could manufacturers and/or retailers provide information on the credit limitations to customers (for example, that the § 25C credit for any eligible single exterior door cannot exceed $250 for any taxable year under § 25C(b)(4)(A))? How does the use of contractors or subcontractors (such as installers) help or limit the ability of manufacturers and/or retailers to put into place any processes or systems relating to the PIN requirement, and if so, please describe?

.02 What processes or systems could manufacturers and/or retailers put into place that would both comply with the labeling requirement under § 25C(h)(3)(B) and adhere to § 25C(h)'s aim to prevent duplicate or fraudulent claims for the § 25C credit for the same unique item of specified property? Could manufacturers and/or retailers employ their own labeling system(s) to provide both the relevant PIN and other relevant information relating to the § 25C credit? Would a receipt be sufficient to meet the labeling requirement? How burdensome would it be to place a physical label on each unique item of specified property containing the relevant PIN and other relevant information relating to the § 25C credit, and would it be less burdensome for manufacturers to place this type of label on certain categories of property than for other categories of property? Would manufacturers and/or retailers provide an information sheet to consumers with each product purchased by the consumer and listing the PIN that applies to each product? What systems and processes could manufacturers and/ or retailers and contractors employ that would help ensure that the PIN is only made available to the consumer who purchases that item?

.03 What processes or systems could manufacturers put into place to ensure that the IRS has the appropriate list of PINs for each unique item of specified property that have been placed in service beginning in 2025? Are there any limitations to manufacturers uploading PIN information to an online portal, such as IRS Energy Credits Online?

SECTION 6. SUBMISSION OF COMMENTS

.01 Written comments should be submitted by February 27, 2024. Consideration will be given, however, to any written comment received after February 27, 2024, if such consideration will not delay the issuance of guidance. The subject line for the comments should include a reference to Notice 2024-XX. Comments may be submitted in one of two ways:

(1) Electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2024-0003 in the search field on the regulations.gov homepage to find this notice and submit comments).

(2) Alternatively, by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-13), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

.02 All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to the IRS's public docket on regulations.gov.

SECTION 6. CONTACT INFORMATION

The principal author of this notice is Kevin I. Babitz, Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Babitz at (202) 317-6853 (not a toll-free number).

Guidance Related to Section 961 and Certain Inbound Nonrecognition Transactions

Notice 2024-16

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (the "Treasury Department") and the Internal Revenue

Service (the "IRS") intend to issue proposed regulations addressing the treatment of basis provided under section 961(c) in certain transactions in which a domestic corporation acquires stock of a controlled foreign corporation (as defined in section 957(a), a "CFC") in a liquidation described in section 332 or an asset reorganization described in section 368(a)(1).[1] Section 2 of this notice provides background on section 961 and other relevant Code provisions. Section 3 of this notice describes the regulations that the Treasury Department and the IRS intend to issue. Section 4 of this notice permits taxpayers to rely on the rules described in section 3 of this notice. Section 5 of this notice requests comments and provides contact information.

SECTION 2. BACKGROUND

Section 961(a) provides that, under regulations prescribed by the Secretary, the basis that a United States shareholder (as defined in section 951(b)) has in stock of a CFC, and the basis of property of a United States shareholder by reason of which the shareholder is considered under section 958(a)(2) as owning stock of a CFC, is increased by the amount required to be included in its gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. Section 951A(f)(1) and §1.951A-5(b)(1) provide that an amount included in a United States shareholder's gross income as a GILTI inclusion amount is treated in the same manner as an amount included under section 951(a) for purposes of applying section 961.

Section 961(b) provides that, under regulations prescribed by the Secretary, the basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount that is excluded from gross income under section 959(a) is reduced by the amount so excluded. Section 961(b)(1). To the extent that an amount excluded from gross income under section 959(a) exceeds the basis of the stock or other property with respect to which it is received, the amount is treated as gain from the sale or exchange of property. Section 961(b)(2).

Section 961(c) provides that, under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a CFC that is owned by another CFC, then adjustments similar to the adjustments provided by section 961(a) and (b) are made to the basis of such stock, and the basis of stock in any other CFC by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock of the first mentioned CFC, but only for the purpose of determining the amount included under section 951 in the gross income of such United States shareholder. Section 961(c) further provides that the adjustments described in section 961(c) do not apply with respect to any stock to which a basis adjustment applies under section 961(a) or (b).

Sections 1.961-1 and 1.961-2 implement sections 961(a) and (b), respectively. Those regulations were issued in 1965, before section 961(c) was enacted in 1997, and have not been modified since their issuance.[2]

In a transaction in which a domestic corporation ("domestic acquiring corporation") acquires all of the stock of a CFC ("acquired CFC") from another CFC ("transferor CFC") in a liquidation described in section 332 or an asset reorganization described in section 368(a)(1) ("inbound nonrecognition transaction"), the domestic acquiring corporation generally obtains a basis of the stock of the acquired CFC that is determined by reference to the basis of the stock in the hands of the transferor CFC pursuant to section 334(b) or 362(b), as applicable. Before such an inbound nonrecognition transaction, the transferor CFC may have increased the basis of the stock of the acquired CFC under section 961(c) (such basis, "section 961(c) basis"), but the section 961(c) basis in the stock of the acquired CFC would apply only for the purpose of determining an amount included under section 951 in the gross income of a United States shareholder.

A domestic acquiring corporation may recognize gain on a subsequent distribution of previously taxed earnings and profits ("PTEP") from the acquired CFC under section 961(b)(2) or recognize gain attributable to PTEP on a disposition of stock in the acquired CFC if the domestic acquiring corporation's adjusted basis[3] in the stock of the acquired CFC does not reflect the section 961(c) basis that the transferor CFC had in the stock of the acquired CFC before the inbound nonrecognition transaction. The Treasury Department and the IRS are of the view that, in certain cases, this result may prevent taxpayers from engaging in such transactions and would be inconsistent with one of the purposes of section 961, which is to prevent double taxation of the same CFC earnings.[4] Accordingly, pursuant to the grant of regulatory authority under section 961, the Treasury Department and the IRS intend to issue regulations described in section 3 of this notice.

SECTION 3. REGULATIONS TO BE ISSUED

.01 Treatment of section 961(c) basis in covered inbound transactions

As announced in Notice 2019-1 (2019-2 I.R.B. 275), the Treasury Department and the IRS expect to issue proposed regulations providing substantially comprehensive rules under sections 959 and 961. This notice announces that the Treasury Department and the IRS expect to issue additional proposed regulations (the "forthcoming regulations") that will provide that, in the case of a covered

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (the "Code") or the Income Tax Regulations (26 CFR part 1).

[2] *See* TD 6850, 30 Fed. Reg. 11854 (1965). Section 961(c) was added to the Code by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34 § 1112(b), 111 Stat. 788, 969 (1997).

[3] For purposes of this notice, the term "adjusted basis" does not include section 961(c) basis.

[4] *See* H.R. Rep. No. 87-1447 at A106 (1962) ("To prevent doubling up of tax where stock in a controlled foreign corporation is sold at a gain which reflects the retained earnings already taxed to United States persons, the basis of stock would be adjusted.").

inbound transaction, a domestic acquiring corporation's adjusted basis of the stock of an acquired CFC determined under section 334(b) or 362(b) is determined as if the transferor CFC's section 961(c) basis were adjusted basis. The transferor CFC's section 961(c) basis is taken into account for purposes of the preceding sentence, however, only to the extent the section 961(c) basis is with respect to a domestic corporation described in section 3.02(1) or (2) of this notice, as applicable (that is, the section 961(c) basis resulted from inclusions in gross income of the domestic corporation under section 951(a) or section 951A(a), or the section 961(c) basis was inherited by the domestic corporation under section 961(c)'s successor rules in an acquisition by the domestic corporation of stock of the transferor CFC from another person).

.02 General definition of covered inbound transaction

Under the forthcoming regulations, except as provided in section 3.03 or 3.04 of this notice, a covered inbound transaction would be defined, with respect to an acquired CFC, to mean the following transactions in which a domestic acquiring corporation acquires all of the stock of the acquired CFC from a transferor CFC that, immediately before the transaction and any related transactions, owns (directly or indirectly under section 958(a)(2)) all of the stock of the acquired CFC.

(1) *Section 332 liquidation or upstream asset reorganization*. A liquidation described in section 332, a reorganization described in section 368(a)(1)(A) (but not section 368(a)(2)(D) or 368(a)(2)(E)) ("nontriangular A reorganization"), or a reorganization described in section 368(a)(1)(C) (determined without regard to the parenthetical) ("nontriangular C reorganization"), in which all of the stock of the transferor CFC is owned directly by the domestic acquiring corporation immediately before the transaction.

(2) *Other asset reorganization*. A nontriangular A reorganization, a nontriangular C reorganization, a reorganization described in section 368(a)(1)(D) (that satisfies the requirements of section 354(b)(1)(A) and (B)), or a reorganization described in section 368(a)(1)(F), in which all of the stock of the transferor CFC is owned directly by a single domestic corporation (or by members of the same consolidated group) immediately before the transaction, and that same domestic corporation (or members of the same consolidated group) directly owns all of the stock of the domestic acquiring corporation immediately after the transaction and any related transactions.

.03 De minimis rules for stock ownership

A transaction otherwise described in section 3.02(1) or (2) of this notice would not fail to be a covered inbound transaction solely because, immediately before the transaction, one or more persons other than the domestic corporation (or members of a consolidated group, as applicable) described in section 3.02(1) or (2) of this notice own (in the aggregate) one percent or less of the total fair market value of the stock of the transferor CFC. Solely for purposes of determining whether a transaction is a covered inbound transaction, stock of the acquired CFC owned by one or more persons other than the transferor CFC immediately before the transaction and any related transactions that represents (in the aggregate) one percent or less of the total fair market value of the stock of the acquired CFC is disregarded, provided that any such person must continue to own its stock of the acquired CFC after the transaction and any related transactions if the person is not related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation described in section 3.02(1) or (2) of this notice.

.04 Limitations on the scope of covered inbound transactions

(1) *De minimis boot*. In general, a reorganization would not be a covered inbound transaction if money or other property is received as described under section 356(a). However, a reorganization would not fail to be a covered inbound transaction if the amount of money or other property received as described under section 356(a) represents no more than one percent of the total fair market value of the stock of the transferor CFC.

(2) *Loss in stock of acquired CFC*. A transaction would not be a covered inbound transaction if, immediately before the covered inbound transaction, the total amount of the transferor CFC's basis in the stock of the acquired CFC (that is, the aggregate amount of adjusted basis and section 961(c) basis) exceeds the total fair market value of such stock of the acquired CFC.

(3) *Transfers described in section 368(a)(2)(C) or §1.368-2(k)(1)*. A transaction would not be a covered inbound transaction if stock of the acquired CFC is transferred pursuant to section 368(a)(2)(C) or §1.368-2(k)(1), unless the transferee is (i) a member of the same consolidated group that includes the domestic acquiring corporation and wholly owned by one or more members of that same consolidated group, or (ii) the common parent of that consolidated group.

(4) *Other subsequent transfers*. A transaction would not be a covered inbound transaction if, pursuant to a plan (or series of related transactions), stock of the acquired CFC is transferred to a partnership or foreign corporation in connection with a covered inbound transaction. A plan to transfer the stock of the acquired CFC would be deemed to exist if stock of the acquired CFC is subsequently transferred to a partnership or a foreign corporation within the two-year period beginning at the time the covered inbound transaction is completed.

(5) *Certain types of domestic acquiring corporations*. A transaction would not be a covered inbound transaction if the domestic acquiring corporation is a regulated investment company as defined in section 851, a real estate investment trust as defined in section 856, or an S corporation as defined in section 1361.

If the stock of multiple acquired CFCs is transferred by a single transferor CFC in a transaction described in section 3.02 of this notice, the limitations in sections 3.04(2), 3.04(3), and 3.04(4) of this notice apply separately with respect to each acquired CFC.

SECTION 4. RELIANCE ON RULES DESCRIBED IN THIS NOTICE

A taxpayer may rely on the rules described in section 3 of this notice for transactions completed on or before the date proposed regulations governing the basis consequences of covered inbound transactions are published in the Federal Register, provided the taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) follow the rules in their entirety and in a consistent manner.

No inference is intended with regard to the treatment of section 961(c) basis as a result of transactions other than covered inbound transactions. The Treasury Department and the IRS will consider in future guidance the extent to which basis provided under section 961(c) in stock of a CFC may be taken into account as adjusted basis by a domestic corporation that acquires stock of the CFC in a transaction other than a covered inbound transaction.

A taxpayer relying on this notice that has maintained section 961(c) basis in a currency that is not the U.S. dollar must, before applying the rules described in section 3 of this notice, translate section 961(c) basis into U.S. dollars, under a reasonable method consistently applied to all acquired CFCs in any covered inbound transaction undertaken by one or more domestic acquiring corporations. For this purpose, a reasonable method must use an exchange rate that reflects the original U.S. dollar inclusion amounts of the United States shareholder that gave rise to the section 961(c) basis, reduced as appropriate, including to take into account distributions of PTEP on such stock. Moreover, distributions of PTEP are treated as reducing the section 961(c) basis as so translated by the U.S. dollar basis of the PTEP.

SECTION 5. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS request comments on all aspects of this notice, including whether the rules described in section 3 of this notice should apply to transactions other than covered inbound transactions and whether additional limitations should apply in those cases.

Comments should be submitted by February 26, 2024. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2024-16 in the search field on the regulations.gov homepage to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-16), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

The principal authors of this notice are Karen Li and Brady Plastaras of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Li or Mr. Plastaras at (202) 317-6937 (not a toll-free number).

Electronic Filing Administrative Exemptions, Waivers, And Rejections; Obsoleting Notice 2010-13 and Modifying Notice 2023-60

Notice 2024-18

I. PURPOSE

This notice addresses the availability of administrative exemptions from the requirement to file certain returns and other documents in electronic form. This notice also addresses the availability of information about the procedure to request a waiver of the requirement to file electronically Forms 1120, 1120-S, 1120-F, and 1065. In addition, this notice provides information about resources pertaining to failed attempts to electronically file Forms 1120, 1120-S, and 1120-F using Internal Revenue Service (IRS) filing systems. Lastly, this notice obsoletes Notice 2010-13, 2010-4 I.R.B. 327 (January 25, 2010), *Form 1120, Form 1120-F, Form 1120S, Form 990, and Form 990-PF Electronic Filing Waiver Request Procedures*, and modifies Notice 2023-60, as released on August 11, 2023, but not published in the Internal Revenue Bulletin.

II. BACKGROUND

Section 2301 of the Taxpayer First Act (TFA), Public Law 116-25, 133 Stat. 981 (2019), amended § 6011(e) of the Internal Revenue Code (Code)[1] by amending § 6011(e)(2) and adding § 6011(e)(5) to the Code to authorize the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations that decrease, in accordance with the TFA, the number of returns a filer may file without being required to file returns and other documents electronically. Under this authority, the Secretary may require any person who must file at least 10 returns during a calendar year to file the returns electronically (electronic filing requirement). Prior to the TFA, the Secretary was authorized to apply the electronic filing requirement only for persons required to file at least 250 returns during the calendar year. In addition, § 3101 of the TFA amended §§ 6011 and 6033 with respect to certain returns required to be filed by tax-exempt organizations by requiring that all such returns be filed in electronic form.

On February 23, 2023, the Department of the Treasury and the IRS published T.D. 9972, *Electronic-Filing Requirements for Specified Returns and Other Documents*, which contained final regulations providing updated electronic filing requirements generally applicable beginning January 1, 2024 (Updated Electronic Filing Regulations). In addition, as stated in section III of this notice, the Updated Electronic Filing Regulations allow certain waivers of and administrative exemptions from the electronic filing requirement.

Notice 2010-13, which this notice obsoletes, provided the procedure for corporations, S corporations (as defined in section 1361(a)(1)), and tax-exempt organizations that are required to file returns under § 6033, to request a waiver of the requirement to file electronically Form 1120, *U.S. Corporation Income Tax Return*; Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*; Form 1120-S, *U.S. Income Tax Return for an S Corporation*; Form 990, *Return of Organization Exempt From Income Tax*; Form 990-PF, *Return of Private Foundation or Section 4947(a)*

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or to the Procedure and Administration Regulations (26 CFR part 301).

(1) Trust Treated as a Private Foundation; and returns, amended returns, and superseding returns in the Form 1120 series and Form 990 series as required by regulations and IRS publications.

III. ADMINISTRATIVE EXEMPTIONS FROM AND WAIVERS OF THE REQUIREMENTS TO FILE IN ELECTRONIC FORM MAY BE AVAILABLE

The Updated Electronic Filing Regulations provide for certain administrative exemptions from the electronic filing requirement. Sections 301.6011-2 (general electronic filing requirement), 301.6011-3 (for partnership returns), 301.6011-5 (for corporate income tax returns), and 301.6037-2 (for S corporation returns), as amended by the Updated Electronic Filing Regulations, provide for an administrative exemption from the electronic filing requirement for filers of the returns or other documents described in those regulations for whom using the technology required to file electronically conflicts with their religious beliefs (religious exemption).

Most filers claiming the religious exemption who file information returns subject to the general electronic filing requirements prescribed by § 301.6011-2 (for example, Forms 1099 and Forms W-2) have the option to notify the IRS that they qualify for a religious exemption in advance of filing returns and other documents. Filers are encouraged to notify the IRS in advance that they are claiming a religious exemption by filing a Form 8508, *Application for Waiver from Electronic Filing of Information Returns*, in accordance with the form's instructions.

Filers of Forms 1120 and 1120-F under § 301.6011-5 (for corporate income tax returns), Form 1120-S under § 301.6037-2 (for S corporation returns), and Form 1065 under § 301.6011-3 (for partnership returns), claiming the religious exemption must not file Form 8508. Instead, those filers must file returns and other documents in paper form following the paper filing requirements provided by applicable IRS revenue procedures, publications, forms, instructions, or other guidance. Filers of Forms 1120, 1120-S, 1120-F, and 1065, who qualify for a religious exemption must print in bold letters "Religious Exemption" at the top of page 1 of the return they file in paper form. Filers who qualify for the religious exemption for the Forms 1120, 1120-S, 1120-F, and 1065, are not subject to the electronic filing waiver procedure that is available to other filers, which requires advance application and approval from the IRS before filing in paper form.

In addition, certain provisions of currently applicable regulations and the Updated Electronic Filing Regulations authorize the Commissioner of Internal Revenue (Commissioner) to grant certain waivers of the requirement to file electronically certain returns and other documents in cases of undue hardship (hardship waiver). The procedures for seeking a hardship waiver (if applicable) of the electronic filing requirement may be found in applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

Finally, certain provisions of the Updated Electronic Filing Regulations authorize the Commissioner to provide other administrative exemptions from the electronic filing requirement to promote effective and efficient tax administration. If the Commissioner provides other administrative exemptions, a submission claiming the administrative exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

IV. NOTICE 2010-13 IS OBSOLETE

This notice obsoletes Notice 2010-13. The procedure to request a waiver of the requirement to file electronically Forms 1120, 1120-S, and 1120-F described in Notice 2010-13 now is available in applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. Any updates to the procedure to request a waiver will be made available in the same way. Additionally, because § 6033, as amended by § 3101 of the TFA, requires any organization with an obligation to file a return under § 6033 to file the return in electronic form, the procedure to request a waiver of the electronic filing requirement as described in Notice 2010-13 no longer applies to Form 990 and Form 990-PF series returns. Finally, Notice 2010-13 provided instructions regarding timely filing of Forms 1120, 1120-S, 1120-F, 990, and 990-PF on the IRS's Modernized e-File (MeF) system after attempts to file electronically on the MeF system are rejected. In place of Notice 2010-13, instructions regarding timely filing and for correcting returns that are rejected during attempts to file electronically using the IRS electronic filing systems may be found in IRS publications specific to each IRS electronic filing system; for example, Publication 4164, *Modernized e-File (MeF) Guide for Software Developers and Transmitters* (currently available at: *https://www.irs.gov/pub/irs-pdf/p4164.pdf*), and Publication 5717, *Information Returns Intake System (IRIS) Taxpayer Portal User Guide* (currently available at: *https://www.irs.gov/pub/irs-pdf/p5717.pdf*). For the foregoing reasons, Notice 2010-13 is no longer necessary and is obsoleted.

V. EFFECT ON OTHER DOCUMENTS

Notice 2010-13 is obsoleted.

Notice 2023-60, which was released on August 11, 2023, but was not published in the Internal Revenue Bulletin, is modified by this notice to update the correct procedure for filers of Forms 1120, 1120-S, 1120-F, and 1065 to use to notify the IRS that they claim a religious exemption.

VI. CONTACT INFORMATION

The principal author of this notice is Carolyn M. Lee of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, you may call (202) 317-6845 (not a toll-free call). For questions concerning electronically filing returns, contact the IRS e-Help Desk at (866) 255-0654 (toll-free) or (512) 416-7750 (not toll-free).

Additional Time for Partnerships to Provide Complete Forms 8308 for Section 751(a) Exchanges Occurring in Calendar Year 2023

Notice 2024-19

I. PURPOSE

This notice provides relief from penalties under § 6722 of the Internal Revenue Code[1] for failures to furnish correct payee statements solely for failure of a partnership with unrealized receivables or inventory items described in § 751(a) (§ 751 property) to furnish Part IV of Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests*, to the transferor and transferee in a § 751(a) exchange (described in section II of this notice) that occurred in calendar year 2023 by the due date specified in § 1.6050K-1(c)(1). This relief applies only if the partnership furnishes to the transferor and transferee by the due dates specified in section III of this notice (1) a correct copy of Parts I, II, and III of Form 8308, or a statement that includes the same information, and (2) a correct copy of the complete Form 8308, including Part IV, or a statement that includes the same information and any additional information required under § 1.6050K-1(c).

II. BACKGROUND

Generally, § 6050K and § 1.6050K-1 require a partnership with § 751 property to provide information to each transferor and transferee that are parties to a sale or exchange of an interest in the partnership (or portion thereof) in which any money or other property received by a transferor from a transferee in exchange for all or part of the transferor's interest in the partnership is attributable to § 751 property (§ 751(a) exchange). Section 1.6050K-1(a)(2) provides that partnerships are required to report each § 751(a) exchange on Form 8308. Generally, § 1.6050K-1(f)(1) provides that a partnership is required to file Form 8308 as an attachment to its Form 1065, *U.S. Return of Partnership Income*, for the taxable year of the partnership that includes the last day of the calendar year in which the § 751(a) exchange took place. Form 8308 is due at the time for filing the partnership return, including extensions.

In addition, § 1.6050K-1(c)(1) provides that each partnership that is required to file a Form 8308 must furnish a statement to the transferor and transferee by the later of (a) January 31 of the year following the calendar year in which the § 751(a) exchange occurred, or (b) 30 days after the partnership has received notice of the exchange as specified under § 6050K and § 1.6050K-1. A partnership must use a copy of the completed Form 8308 as the required statement unless the Form 8308 contains information for more than one § 751(a) exchange. Section 1.6050K-1(c)(1) provides that if the partnership does not use the Form 8308 as the required statement, the partnership must furnish a statement that includes the information required to be shown on the Form 8308 with respect to the § 751(a) exchange to which the person to whom the statement is furnished is a party.

Section 6722 imposes a penalty for failure to furnish correct payee statements on or before the required date, and for any failure to include all of the information required to be shown on the statement or the inclusion of incorrect information. For these purposes, payee statements include statements required to be furnished to transferors and transferees under § 6050K. *See* § 6724(d)(2)(P). Section 6724 provides an exception to the imposition of a penalty under § 6722 if it is shown that the failure is due to reasonable cause and not to willful neglect.

On November 30, 2020, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published T.D. 9926, 85 FR 76910, which amended § 1.6050K-1(c)(2) to require a partnership to furnish to a transferor partner the information necessary for the transferor to make the transferor partner's required statement in § 1.751-1(a)(3). Among other items, § 1.751-1(a)(3) requires a transferor partner in a § 751(a) exchange to submit with the transferor partner's income tax return a statement setting forth the amount of gain or loss attributable to § 751 property. In October 2023, the IRS released a revised version of Form 8308. Consistent with the requirements in § 1.6050K-1(c)(2), new Part IV of the 2023 Form 8308 requires a partnership to report, among other items, the partnership's and the transferor partner's share of § 751 gain and loss, collectibles gain under § 1(h)(5), and unrecaptured § 1250 gain under § 1(h)(6).

Since the issuance of the revised Form 8308, concerns have been expressed to the Treasury Department and the IRS that many partnerships will be unable to furnish the information required in Part IV of the 2023 Form 8308 to transferors and transferees by the January 31, 2024 due date, because, in many cases, partnerships will not have all of the information required by Part IV of the 2023 Form 8308 by January 31, 2024.

III. GRANT OF RELIEF

With respect to § 751(a) exchanges during calendar year 2023, the IRS will not impose penalties under § 6722 solely for failure to furnish Form 8308 with a completed Part IV by the due date specified in § 1.6050K-1(c)(1) for a partnership that (1) timely and correctly furnishes to the transferor and transferee a copy of Parts I, II, and III of Form 8308, or a statement that includes the same information, by the later of (a) January 31, 2024, or (b) 30 days after the partnership is notified of the § 751(a) exchange, and (2) furnishes to the transferor and transferee a copy of the complete Form 8308, including Part IV, or a statement that includes the same information and any additional information required under § 1.6050K-1(c), by the later of (a) the due date of the partnership's Form 1065 (including extensions), or (b) 30 days after the partnership is notified of the § 751(a) exchange.

The relief provided in this notice applies only with respect to furnishing

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code or to the Income Tax Regulations (26 CFR part 1).

Form 8308 to the transferor and transferee. This notice does not provide relief with respect to filing Form 8308 as an attachment to a partnership's Form 1065; as such, this notice does not provide relief from penalties under § 6721 for failure to file correct information returns.

IV. DRAFTING INFORMATION

The principal authors of this notice are Jeremy M. Brown and Benjamin H. Weaver of the Office of Associate Chief Counsel (Partnerships and Special Industries). Other personnel from the Treasury Department and IRS participated in its development. For further information please call (202) 317- 5279 (not a toll-free number).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also, Part 1, §§ 174, 446, 460, 1.446-1.)

Rev. Proc. 2024-9

SECTION 1. PURPOSE

This revenue procedure modifies sections 7 and 19 of Rev. Proc. 2023-24, 2023-28 I.R.B. 1207, to provide procedures under § 446 of the Internal Revenue Code (Code)[1] and § 1.446-1(e) for obtaining automatic consent of the Commissioner of Internal Revenue (Commissioner) to change methods of accounting for expenditures paid or incurred in taxable years beginning after December 31, 2021, in reliance on interim guidance under §§ 174 and 460 provided in Notice 2023-63, 2023-39 I.R.B. 919, as modified by Notice 2024-12, this Bulletin. This revenue procedure also clarifies section 9 of Rev. Proc. 2023-24 to provide that section 5 of Rev. Proc. 2000-50 is obsoleted for costs of developing computer software paid or incurred in any taxable year beginning after December 31, 2021, and continues to apply to costs of developing computer software paid or incurred in any taxable year beginning on or before December 31, 2021. References in this revenue procedure to "former § 174" refer to that section as in effect for research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022, that is, prior to the effective date of the amendments made to § 174 by § 13206(a) of Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). References to "§ 174" in this revenue procedure refer to § 174 as amended by the TCJA.

SECTION 2. BACKGROUND

.01 *Treatment of research and experimental expenditures under former § 174*.

Former § 174 allowed taxpayers to elect to deduct research or experimental expenditures paid or incurred in connection with a trade or business as current expenses, to capitalize and amortize such expenditures over a period of not less than 60 months, or to charge such expenditures to capital account.

.02 *Treatment of SRE expenditures under § 174*.

(1) Section 13206(a) of the TCJA amended former § 174 for amounts paid or incurred in taxable years beginning after December 31, 2021. For amounts paid or incurred in taxable years beginning after December 31, 2021, that meet the definition of specified research or experimental (SRE) expenditures under § 174(b), § 174(a)(1) disallows deductions for such amounts, except as provided in § 174(a)(2). Section 174(a)(2) requires taxpayers to charge SRE expenditures to capital account and allows amortization deductions of such capitalized expenditures ratably over the applicable § 174 amortization period, beginning with the midpoint of the taxable year in which such expenditures are paid or incurred. As used in this revenue procedure, the term "applicable § 174 amortization period" refers to a 5-year period in the case of SRE expenditures attributable to domestic research, or a 15-year period in the case of SRE expenditures attributable to foreign research. Section 13206(a) of the TCJA also made other amendments to former § 174, including amendments to treat any cost to develop computer software as an SRE expenditure and to prevent the accelerated recovery of unamortized SRE expenditures on account of the disposition, retirement, or abandonment of property with respect to which such expenditures were paid or incurred. For additional background on former § 174 and the TCJA amendments to former § 174, see section 2 of Notice 2023-63.

(2) Section 13206(b) of the TCJA requires taxpayers to treat the amendments made by section 13206(a) of the TCJA as a change in method of accounting for purposes of § 481 that is (i) initiated by the taxpayer, (ii) made with the consent of the Secretary of the Treasury or her delegate, and (iii) applied on a cut-off basis to SRE expenditures paid or incurred in taxable years beginning after December 31, 2021. Thus, no adjustments under § 481(a) are required or permitted with respect to research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022.

.03 *Treatment of SRE expenditures under § 460*. Section 460(a) generally requires use of the percentage-of-completion method (PCM) to account for taxable income from a long-term contract. Section 1.460-4(b)(2)(i) provides that under the PCM, the portion of the contract price a taxpayer must report in a taxable year corresponds to the ratio of incurred allocable contract costs to total estimated allocable contract costs. This ratio represents the portion of a contract considered completed for purposes of the PCM. Under the PCM, a taxpayer generally deducts allocable contract costs as they are incurred. Thus, under § 1.460-4(b)(2)(iv), an increase in the percentage of the contract price to be reported is generally matched by deduction of the incurred costs that cause the increase. Under the current § 460 regulations in § 1.460-5(b)(2)(vi), allocable contract costs include research or experimental expenses, other than independent research and development expenses. Thus, when these expenses are incurred, they increase the portion of a contract considered completed and the percentage of the contract price required to be reported. The current § 460 regulations were drafted

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[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

with respect to taxable years in which a taxpayer could currently deduct research or experimental expenses under former § 174. Section 174(a) requires that SRE expenditures be charged to capital account and deducted over the applicable § 174 amortization period. As a result, under the current § 460 regulations, incurred SRE expenditures increase the percentage of the contract price required to be reported, although § 174(a) prevents a corresponding current deduction of those incurred SRE expenditures.

.04 *Procedural guidance under Rev. Proc. 2023-11*.

(1) On December 29, 2022, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued Rev. Proc. 2023-11, 2023-3 I.R.B. 417, modifying and superseding Rev. Proc. 2023-8, 2023-3 I.R.B. 407, to provide procedures to obtain automatic consent to change methods of accounting for SRE expenditures to comply with § 174. The change in method of accounting provided by Rev. Proc. 2023-11 was subsequently included in section 7.02 of Rev. Proc. 2023-24.

(2) Section 7.02(4)(a) of Rev. Proc. 2023-24 implements the requirement imposed by § 13206(b) of the TCJA that a taxpayer must make a change in method of accounting to comply with § 174 on a cut-off basis if the change is made for the taxpayer's first taxable year beginning after December 31, 2021. Section 7.02(4)(a) of Rev. Proc. 2023-24 also provides that the requirement of § 1.446-1(e)(3)(i) to file a Form 3115, *Application for Change in Accounting Method*, is waived, and a statement in lieu of a Form 3115 is authorized for the change in method of accounting for which the year of change is the first taxable year beginning after December 31, 2021. However, section 7.02(4)(b) of Rev. Proc. 2023-24 provides that a taxpayer making the change for a taxable year subsequent to the taxpayer's first taxable year beginning after December 31, 2021, is required to make that change with a modified § 481(a) adjustment that takes into account only SRE expenditures paid or incurred in taxable years beginning after December 31, 2021, and is required to file a Form 3115.

(3) Section 7.02(6) of Rev. Proc. 2023-24 waives the eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13 (regarding changes made in the previous 5 years for the same item) for changes to comply with § 174 for the taxpayer's first taxable year beginning after December 31, 2021.

(4) Section 7.02(7) of Rev. Proc. 2023-24 provides that a taxpayer that changes its method of accounting for SRE expenditures under Rev. Proc. 2023-24 will receive limited audit protection. Specifically, audit protection will not apply for expenditures paid or incurred in taxable years beginning on or before December 31, 2021. Audit protection also will not apply for expenditures paid or incurred in taxable years beginning after December 31, 2021, if a change in method of accounting is made for the taxable year immediately subsequent to the first taxable year beginning after December 31, 2021.

.05 *Interim guidance under Notice 2023-63*.

(1) Notice 2023-63 was issued on September 8, 2023, to announce that the Treasury Department and the IRS intend to issue proposed regulations addressing (1) the capitalization and amortization of SRE expenditures under § 174, (2) the treatment of SRE expenditures under § 460, and (3) the application of § 482 to cost sharing arrangements involving SRE expenditures. Sections 3 through 9 of Notice 2023-63 provide interim guidance regarding issues intended to be addressed by forthcoming proposed regulations. Section 3 of Notice 2023-63 provides interim guidance regarding the requirement to capitalize and amortize SRE expenditures, SRE expenditures attributable to foreign research, and the determination of the midpoint of a taxable year (including a short taxable year). Section 4 of Notice 2023-63 provides interim guidance regarding the definition of SRE expenditures and SRE activities, the types of expenditures that are SRE expenditures, the allocation of such expenditures to SRE activities, and the consistent treatment of SRE expenditures under other provisions of the Code. Section 5 of Notice 2023-63 provides interim guidance regarding activities that constitute software development, expenditures in connection with which are SRE expenditures. Section 6 of Notice 2023-63 provides interim guidance regarding the treatment of expenditures for research performed under a contract. Section 7 of Notice 2023-63 provides interim guidance regarding the treatment of unamortized SRE expenditures if the property with respect to which such expenditures were paid or incurred is disposed of, retired, or abandoned. Section 8 of Notice 2023-63 provides interim guidance regarding the application of the PCM under § 460 if allocable contract costs include SRE expenditures and allows taxpayers to treat only the amortization of incurred SRE expenditures as increasing the percentage of the contract price required to be reported. Section 9 of Notice 2023-63 provides interim guidance regarding the treatment under §1.482-7 of cost sharing transaction payments in certain cost sharing arrangements that involve SRE activities.

(2) Section 10.01 of Notice 2023-63, as modified by Notice 2024-12, provides that taxpayers may rely on the rules in sections 3 through 9 of Notice 2023-63 prior to the publication date of the forthcoming proposed regulations in the *Federal Register* for expenditures paid or incurred in taxable years beginning after December 31, 2021. However, taxpayers may not rely on the rules in section 7 of the notice regarding the treatment of SRE expenditures paid or incurred with respect to property that is contributed to, distributed from, or transferred from a partnership.

(3) Section 10.02 of Notice 2023-63 provides that the Treasury Department and the IRS intend to issue guidance to provide procedures for taxpayers to obtain automatic consent to change methods of accounting to rely on the notice. Notice 2023-63 provides that taxpayers may rely on section 7.02 of Rev. Proc. 2023-24 to change their methods of accounting under § 174 to rely on Notice 2023-63 until the issuance of such procedural guidance. This revenue procedure provides such procedural guidance.

(4) Section 12 of Notice 2023-63, as clarified by Notice 2024-12, provides that for amounts paid or incurred in taxable years beginning after December 31, 2021, section 5 of Rev. Proc. 2000-50 is removed as obsolete. Section 5 of Rev. Proc. 2000-50 continues to apply to amounts paid or incurred in taxable years beginning on or before December 31, 2021. Section 3 of this revenue procedure clarifies section

9.01 of Rev. Proc. 2023-24 to provide that section 5 of Rev. Proc. 2000-50 is obsolete for costs of developing computer software paid or incurred in any taxable year beginning after December 31, 2021, and continues to apply to costs of developing computer software paid or incurred in any taxable year beginning on or before December 31, 2021.

.06 *Changing methods of accounting under section 446(e)*.

(1) Except as otherwise expressly provided in the Code and the regulations thereunder, § 446(e) and § 1.446-1(e)(2) require a taxpayer to secure the consent of the Commissioner before changing a method of accounting for Federal income tax purposes. Section 1.446-1(e)(3)(i) states, in part, that except as otherwise provided under the authority of § 1.446-1(e)(3)(ii), to secure the Commissioner's consent to a taxpayer's change in method of accounting the taxpayer generally must file a Form 3115, *Application for Change in Accounting Method*, with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures under which taxpayers will be permitted to change their method of accounting. The administrative procedures will prescribe those terms and conditions necessary to obtain the Commissioner's consent to effect the change and to prevent amounts from being duplicated or omitted.

(2) Rev. Proc. 2015-13, 2015-5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-24 I.R.B. 1067, and as modified by Rev. Proc. 2021-34, 2021-35 I.R.B. 337, Rev. Proc. 2021-26, 2021-22 I.R.B. 1163, Rev. Proc. 2017-59, 2017-48 I.R.B. 543, and section 17.02(b) and (c) of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, sets forth the general administrative procedures by which a taxpayer may obtain the automatic consent of the Commissioner to change a method of accounting described in the *List of Automatic Changes*. Rev. Proc. 2023-24 contains the current *List of Automatic Changes*.

(3) A change in a taxpayer's treatment of expenditures paid or incurred in taxable years beginning after December 31, 2021, to rely on the interim guidance in sections 3 through 7 of Notice 2023-63 is generally a change in method of accounting to which §§ 446(e) and 481, and the corresponding regulations, apply. Further, a change to rely on the interim guidance in section 8 of Notice 2023-63 in determining income from a long-term contract under the PCM is generally a change in method of accounting to which §§ 446(e) and 481, and the corresponding regulations, apply. A taxpayer that changes its method of accounting to rely on the interim guidance in sections 3 through 8 of Notice 2023-63 must use the accounting method change procedures in Rev. Proc. 2015-13 or its successor. Section 3 of this revenue procedure modifies Rev. Proc. 2023-24 to, among other things, allow taxpayers to obtain automatic consent to change their method of accounting to rely on the interim guidance provided in sections 3 through 8 of Notice 2023-63 for taxable years beginning after December 31, 2021.

(4) Pursuant to section 2.07 of Rev. Proc. 2015-13, if a change in method of accounting is made without a § 481(a) adjustment (for example, on a cut-off basis), in general, only the items subject to the method change arising on or after the beginning of the year of change, or other operative date, are accounted for under the method of accounting for which consent is granted. Any items arising before the year of change, or other operative date, continue to be accounted for under the taxpayer's former method of accounting. If a change in method of accounting is made on a cut-off basis, no amounts are duplicated or omitted, and therefore, a § 481(a) adjustment is not necessary or permitted.

(5) In accordance with § 13206(b) of the TCJA, a change in a taxpayer's method of accounting to comply with § 174, including a change to rely on the interim guidance in sections 3 through 7 of Notice 2023-63, for the first taxable year that the amendments made by § 13206(a) of the TCJA are effective, must be made on a cut-off basis. The procedures in section 3 of this revenue procedure provide that an automatic change in method of accounting to comply with § 174, including a change in method of accounting to rely on the interim guidance in sections 3 through 7 of Notice 2023-63, may be made by filing a statement with the taxpayer's original Federal income tax return for the first taxable year in which § 174 becomes effective, in lieu of a Form 3115. If a change in method of accounting to comply with § 174, including a change in method of accounting to rely on the interim gudiance in sections 3 through 7 of Notice 2023-63, is made for a taxable year subsequent to the taxable year of the taxpayer in which § 174 becomes effective, the change is made by filing a Form 3115, with a modified § 481(a) adjustment that takes into account only expenditures paid or incurred in taxable years beginning after December 31, 2021.

(6) Under § 1.460-5(g), a change in a taxpayer's method of allocating costs to its long-term contracts must be made on a cut-off basis, with the change applying only to contracts entered into on or after the year of change. The Treasury Department and the IRS, however, intend to amend the regulation to permit changes made to rely on section 8 of Notice 2023-63 to be made on the same cut-off basis or modified cut-off basis, as applicable, as changes made to rely on sections 3 through 7 of the notice (that is, changes applicable to allocable contract costs paid or incurred in taxable years beginning after December 31, 2021).

(7) A taxpayer that changes its method of accounting under section 7.02 of Rev. Proc. 2023-24, as modified by section 3 of this revenue procedure, will receive limited audit protection under section 8.01 of Rev. Proc. 2015-13. Consistent with current section 7.02(7) of Rev. Proc. 2023-24, audit protection will not apply for expenditures paid or incurred in taxable years beginning on or before December 31, 2021. Audit protection also will not apply for expenditures paid or incurred in the taxpayer's first taxable year beginning after December 31, 2021, if a change in method of accounting to comply with § 174, including a change in method of accounting to rely on the interim gudiance in sections 3 through 7 of Notice 2023-63, is made for the taxpayer's taxable year immediately subsequent to such taxable year and the taxpayer did not make a change in method of accounting for such expenditures for its first taxable year beginning after December 31, 2021.

(8) A taxpayer that changes its method of accounting under section 19.02 of

Rev. Proc. 2023-24, as added by section 3 of this revenue procedure, to change its method of accounting under § 460 to rely on the interim guidance provided in section 8 of Notice 2023-63 will receive limited audit protection under section 8.01 of Rev. Proc. 2015-13. Consistent with section 7.02(7) of Rev. Proc. 2023-24, audit protection will not apply for expenditures paid or incurred in taxable years beginning on or before December 31, 2021.

SECTION 3. MODIFICATIONS TO REV. PROC. 2023-24

.01 *Modification of section 7 of Rev. Proc. 2023-24*. Section 7.02 of Rev. Proc. 2023-24, is modified to read as follows:

.02 *Change in Method of Accounting for SRE Expenditures*.

(1) *Description of change*.

(a) *In general*. This change applies to a taxpayer that wants to change its method of accounting for expenditures paid or incurred in taxable years beginning after December 31, 2021, to:

(i) comply with § 174, as amended by § 13206(a) of the TCJA; or

(ii) rely on interim guidance provided in sections 3, 4, 5, 6, or 7 of Notice 2023-63, 2023-39 I.R.B. 919, as modified by Notice 2024-12, 2024-5 I.R.B. 616.

(b) *References to § 174*. Unless otherwise stated, references to "§ 174" in this section 7.02 refer to § 174 as amended by § 13206(a) of the TCJA. Section 13206(e) of the TCJA provides that the amendments made by § 13206 of the TCJA apply to amounts paid or incurred in taxable years beginning after December 31, 2021.

(c) *Changes included in section 7.02(1)(a) of this revenue procedure*. The changes described in section 7.02(1)(a) of this revenue procedure include, among other changes, a change:

(i) from capitalizing specified research or experimental (SRE) expenditures, as defined in § 174(b) and section 4.02(2) of Notice 2023-63, as applicable, to inventoriable property or depreciable property and recovering such expenditures through cost of goods sold or depreciation, respectively, to capitalizing and amortizing such expenditures under § 174(a) or section 3.02 of Notice 2023-63, as applicable; and

(ii) from treating an expenditure that does not meet the definition of an SRE expenditure as an SRE expenditure subject to capitalization and amortization under § 174(a) or section 3.02 of Notice 2023-63, as applicable, to treating that expenditure under the appropriate provision of the Code.

(2) *Inapplicability*. The change described in section 7.02(1)(a) of this revenue procedure does not apply to:

(a) a change in the treatment of acquired, leased, or licensed computer software under Rev. Proc. 2000-50, 2000-2 C.B. 601, as modified by Rev. Proc. 2007-16, 2007-1 C.B. 358 (see section 9.01 of this revenue procedure);

(b) a change in the treatment of research or experimental expenditures under former § 174 (that is, § 174 as in effect prior to the amendments made by § 13206(a) of the TCJA), or software development expenditures, paid or incurred in taxable years beginning before January 1, 2022 (see sections 7.01 and 9.01 of this revenue procedure, respectively); or

(c) a change from treating SRE expenditures paid or incurred by a taxpayer that transfers related property (that is, property with respect to which such SRE expenditures were paid or incurred) in a § 351 exchange as amortizable by the transferee corporation following such exchange to treating such SRE expenditures as amortizable by the transferor following such exchange (as such a change is not a change in method of accounting).

(3) *Manner of making change*.

(a) *Year of change is the first taxable year beginning after December 31, 2021*.

(i) *Cut-off basis*. A change under section 7.02(1)(a) of this revenue procedure for the taxpayer's first taxable year beginning after December 31, 2021, is implemented on a cut-off basis.

(ii) *Statement in lieu of a Form 3115 for first taxable year beginning after December 31, 2021*. The requirement of § 1.446-1(e)(3)(i) to file a Form 3115, *Application for Change in Accounting Method*, is waived, and a statement in lieu of a Form 3115 is authorized for the change in method of accounting under section 7.02(1)(a) of this revenue procedure for which the year of change is the taxpayer's first taxable year beginning after December 31, 2021. Notwithstanding the definition of Form 3115 in section 3.07 of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, the statement in lieu of a Form 3115 that is permitted under this section 7.02(3)(a)(ii) is considered a Form 3115 for purposes of the automatic change procedures of Rev. Proc. 2015-13. The requirement to file the duplicate copy, under section 6.03(1)(a) of Rev. Proc. 2015-13, is waived. The statement must include the following information for each applicant:

(A) the name and employer identification number or social security number, as applicable, of the applicant that has paid or incurred expenditures after December 31, 2021;

(B) the beginning and ending dates of the first taxable year in which the change described in section 7.02(1)(a) takes effect for the applicant (year of change);

(C) the designated automatic accounting method change number for this change (see section 7.02(7) of this revenue procedure);

(D) a general description of the type of expenditures included as SRE expenditures;

(E) the amount of SRE expenditures paid or incurred by the applicant during the year of change; and

(F) a declaration that the applicant is changing its method of accounting to capitalize SRE expenditures to a SRE capital account, and amortize the capitalized amount over either a 5-year period for domestic research or a 15-year period for foreign research (as applicable), beginning with the mid-point of the taxable year in which such expenditures are paid or incurred in accordance with § 174 or sections 3 through 7 of Notice 2023-63, as applicable. Also, the declaration must state that the applicant is making the change on a cut-off basis.

(b) *Year of change later than the first taxable year beginning after December 31, 2021*.

(i) *Modified § 481(a) adjustment and cut-off*.

(A) *In general*. Except as provided in section 7.02(3)(b)(i)(B) of this revenue procedure, the change under section 7.02(1)(a) of this revenue procedure for a year of change later than the first taxable year beginning after December 31, 2021, is made with a modified § 481(a) adjustment that takes into account only expenditures paid or incurred in taxable years beginning after December 31, 2021.

(B) *Exception for negative modified § 481(a) adjustment*. If a change described in section 7.02(3)(b)(i)(A) of this revenue procedure results in a modified § 481(a) adjustment that is negative, the taxpayer may instead choose to implement the change on a cut-off basis.

(ii) *Form 3115 and required statement*. In completing a Form 3115, *Application for Change in Accounting Method*, to make the change in method of accounting under section 7.02(1)(a) of this revenue procedure for a year of change later than the first taxable year beginning after December 31, 2021, a taxpayer must include on an attachment to the Form 3115:

(A) a general description of the type of expenditures included as SRE expenditures;

(B) the taxable year(s) in which the expenditures subject to the change were paid or incurred by the applicant; and

(C) a declaration that provides the reason for which the applicant is changing its method of accounting under section 7.02(1)(a) of this revenue procedure. The declaration must also state whether the applicant is making the change on a cut-off basis under section 7.02(3)(b)(i)(B) of this revenue procedure or with a modified § 481(a) adjustment that takes into account only expenditures paid or incurred in taxable years beginning after December 31, 2021, under section 7.02(3)(b)(i)(A) of this revenue procedure.

(4) *Transition rule*. A taxpayer who filed a Federal tax return on or before January 17, 2023, for a taxable year beginning after December 31, 2021, is deemed to have complied with the § 446 method change procedures and section 7.02 of this revenue procedure to change its method of accounting for expenditures paid or incurred in the first taxable year beginning after December 31, 2021, to comply with § 174 if the taxpayer:

(a) reported the amount of SRE expenditures paid or incurred for such taxable year on Part VI of Form 4562, *Depreciation and Amortization,* filed with the Federal tax return, and

(b) properly capitalized and amortized such SRE expenditures in accordance with § 174 for such taxable year.

(5) *Certain eligibility rule inapplicable*.

(a) *In general*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, does not apply to a change described in section 7.02(1)(a) of this revenue procedure for the taxpayer's first or second taxable year beginning after December 31, 2021.

(b) *Changes made in successive taxable years*. A taxpayer may make a change described in section 7.02(1)(a) of this revenue procedure for its second taxable year beginning after December 31, 2021, regardless of whether the taxpayer made, or purported to make, a change for the same item for its first taxable year beginning after December 31, 2021.

(6) *Limited audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 7.02(1)(a) of this revenue procedure with respect to expenditures paid or incurred in taxable years beginning on or before December 31, 2021. Additionally, a taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 7.02(1)(a) of this revenue procedure in the second taxable year beginning after December 31, 2021, with respect to expenditures paid or incurred in the first taxable year beginning after December 31, 2021, if the taxpayer did not make, or attempt to make, a change described in section 7.02(1)(a) for the first taxable year beginning after December 31, 2021. *See* section 8.02(2) of Rev. Proc. 2015-13.

(7) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 7.02(1)(a)(i) of this revenue procedure is "265." The designated automatic accounting method change number for a change under section 7.02(1)(a)(ii) of this revenue procedure is "270."

(8) *No inference relating to expenditures paid or incurred in taxable years prior to the first taxable year in which § 174 becomes effective*. No inference may be drawn from section 7.02 of this revenue procedure regarding the treatment of expenditures paid or incurred in, and changes in methods of accounting for, taxable years in which former § 174 was in effect, including issues relating to the application of §§ 1.174-1, 1.174-2, 1.174-3, and 1.174-4 for taxable years in which former § 174 was in effect.

(9) *No ruling on method used*. The consent granted under section 9 of Rev. Proc. 2015-13 for a change made under section 7.02(1)(a)(i) of this revenue procedure is not a determination by the Commissioner that the new method of accounting is a permissible method of accounting, nor does it create any presumption that the new method of accounting is a permissible method of accounting. The director will ascertain whether the new method of accounting is a permissible method of accounting.

(10) *Contact information*. For further information regarding a change under this section, contact Bruce Chang at (202) 317-7005 (not a toll-free number).

.02 *Clarification of section 9 of Rev. Proc. 2023-24*. Section 9.01 of Rev. Proc. 2023-24 is clarified to provide that section 5 of Rev. Proc. 2000-50 (costs of developing computer software) applies to costs of developing computer software paid or incurred in any taxable year beginning on or before December 31, 2021.

(1) Section 9.01(1) of Rev. Proc. 2023-24 is clarified to read as follows:

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting for the costs of computer software to a method described in Rev. Proc. 2000-50, 2000-2 C.B. 601, as modified by Rev. Proc. 2007-16, 2007-1 C.B. 358. Section 5 of Rev. Proc. 2000-50 describes the methods applicable to the costs of developing computer software. Section 6 of Rev. Proc. 2000-50 describes the method applicable to the costs of acquired computer software. Section 7 of Rev. Proc. 2000-50 describes the method applicable to leased or licensed computer software. Section 13206 of Public Law 115-97, 131 Stat. 2054 (Dec. 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), amended § 174 to treat the costs of software development as research or experimental expenditures, effective for amounts paid or incurred in taxable years beginning after December 31, 2021. Section 12 of Notice 2023-63, 2023-39 I.R.B.

919, as modified by Notice 2024-12, provides that, as a result of the TCJA amendments to § 174 and the rules in sections 3 through 5 of Notice 2023-63, section 5 of Rev. Proc. 2000-50 is obsolete for costs of developing software paid or incurred in taxable years beginning after December 31, 2021. Accordingly, section 5 of Rev. Proc. 2000-50 (costs of developing computer software) applies only to costs of developing computer software paid or incurred in any taxable year beginning on or before December 31, 2021.

(2) Section 9.01(3) of Rev. Proc. 2023-24 is clarified to read as follows:

(3) *Inapplicability*. This change does not apply to costs of developing computer software that are paid or incurred in taxable years beginning after December 31, 2021.

.03 *Modification of section 19 of Rev. Proc. 2023-24*. Section 19 of Rev. Proc. 2023-24 is modified to add new section 19.02 to read as follows:

.02 *Change to rely on the interim guidance provided in section 8 of Notice 2023-63, 2023-39 I.R.B. 919*.

(1) *Description of change*. This change applies to a taxpayer that wants to change its method of accounting under § 460 to rely on the interim guidance provided in section 8 of Notice 2023-63, 2023-39 I.R.B. 919, so that the costs allocable to a long-term contract accounted for using the PCM include amortization deductions of specified research or experimental (SRE) expenditures, as defined in § 174(b) and section 4.02(2) of Notice 2023-63, as applicable, under § 174(a)(2)(B), rather than the capitalized amount of such expenditures, and the amortization deductions of such expenditures is treated as incurred for purposes of determining the percentage of contract completion in the taxable year the amortization is deducted. For purposes of determining the percentage of contract completion, estimated total allocable contract costs include either (1) all amortization of SRE expenditures that directly benefit or are incurred by reason of the performance of the long-term contract, or (2) only that portion of such amortization expected to be incurred and deducted during the term of the contract. A taxpayer using the first alternative is required to report any portion of the contract price not previously reported by the taxable year following the taxable year in which the contract is completed, notwithstanding that some portion of the SRE expenditures remain unamortized. *See* § 460(b)(1).

(2) *Inapplicability*. This change does not apply to:

(a) A change in method of accounting under § 460 with respect to expenditures capitalized under § 59(e)(2)(B), or under § 174(b) prior to its amendment by § 13206(a) of the TCJA.

(b) A change in method of accounting for independent research and development expenditures, as defined in § 460(c)(5), which are not allocable contract costs.

(c) Any contract not accounted for under the PCM, as described in § 460(b)(1) and § 1.460-4(b)(2), as of the beginning of the year of change.

(3) *Manner of making change*.

(a) *Cut-off basis*. A change under section 19.02(1) of this revenue procedure for the taxpayer's first taxable year beginning after December 31, 2021, applies to the § 460 treatment of SRE expenditures paid or incurred in taxable years beginning after December 31, 2021. Accordingly, such change is made on a cut-off basis, and applies to all long-term contracts for which an SRE expenditure is an allocable contract cost, including long-term contracts entered into before the beginning of the year of change. A taxpayer making this change does not recompute its taxable income under § 1.460-4(b) for any taxable year beginning on or before December 31, 2021.

(b) *Modified § 481(a) adjustment or cut-off basis*.

(i) *In general*. Except as provided in section 19.02(3)(b)(ii) of this revenue procedure, a change under section 19.02(1) of this revenue procedure for a year of change later than the first taxable year beginning after December 31, 2021, is made with a modified § 481(a) adjustment that takes into account the § 460 treatment of SRE expenditures paid or incurred in taxable years beginning after December 31, 2021. Such change applies to all long-term contracts for which an SRE expenditure is an allocable contract cost, including long-term contracts entered into before the beginning of the year of change.

(ii) *Exception for negative modified § 481(a) adjustment*. If a change described in section 19.02(3)(b)(i) of this revenue procedure results in a modified § 481(a) adjustment that is negative, the taxpayer may instead choose to implement the change on a cut-off basis.

(4) *Certain eligibility rule inapplicable*. The eligibility rule in section 5.01(1)(f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, does not apply to a change described in section 19.02(1) of this revenue procedure for the taxpayer's first or second taxable year beginning after December 31, 2021.

(5) *Limited audit protection*. A taxpayer does not receive audit protection under section 8.01 of Rev. Proc. 2015-13 for a change under section 19.02(1) of this revenue procedure with respect to the § 460 treatment of expenditures paid or incurred in taxable years beginning on or before December 31, 2021.

(6) *Designated automatic accounting method change number*. The designated automatic accounting method change number for a change under section 19.02 of this revenue procedure is "271."

(7) *Contact information*. For further information regarding a change under section 19.02 of this revenue procedure, contact John Aramburu at (202) 317-7006 (not a toll-free number).

SECTION 4. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies sections 7 and 19, and clarifies section 9, of Rev. Proc. 2023-24.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for Forms 3115 filed on or after December 22, 2023.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of

Management and Budget under OMB control numbers 1545-0074 for individual filers and 1545-0123 for business filers, in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507(d)). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collection of information in this revenue procedure is in section 3, which adds section 7.02(3)(a)(ii) and (3)(b)(ii) to Rev. Proc. 2023-24. This information is necessary and will be used to determine whether the taxpayer properly changed to a permitted method of accounting. The collections of information are required for a taxpayer to obtain consent to change its method of accounting.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Bruce Chang of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, please contact Mr. Chang at (202) 317-7005 (not a toll-free number).

Part IV

Announcement Regarding the Effective Date of Termination of the United States-Hungary Tax Treaty

Announcement 2024-5

The Government of the United States provided a diplomatic notification, dated July 8, 2022, to the Government of the Republic of Hungary of its termination of the Convention between the Government of the United States of America and the Government of the Hungarian People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, in force since 1979 (Convention). See Press Release, U.S. Department of the Treasury, United States' Notification of Termination of 1979 Tax Convention with Hungary (July 15, 2022), https://home.treasury.gov/news/press-releases/jy0872.

In accordance with Article 26 of the Convention, termination was effective on January 8, 2023 (Termination Date). In respect of tax withheld at source, Article 26 states that the Convention shall cease to have effect with respect to amounts paid or credited on or after the first day of the next January following the Termination Date. In respect of other taxes, Article 26 states that the Convention shall cease to have effect with respect to taxable periods beginning on or after the first day of the next January following the Termination Date. Accordingly, in respect of tax withheld at source, the Convention ceases to have effect with respect to amounts paid or credited on or after January 1, 2024. In respect of other taxes, the Convention ceases to have effect with respect to taxable periods beginning on or after January 1, 2024.

For further information regarding this announcement contact the Office of Associate Chief Counsel (International) at (202) 317-3800 (not a toll-free number).

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

Announcement: 2024-6

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

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on January 11, 2024, and would end on the date the court first determines the organization is not described in section 170(c)(2) as more particularly set for in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Name Of Organization	Effective Date of Revocation	Location
Feeding Our Future	October 1, 2018	Minneapolis, MN
TRUST U/W OF VICTORINE E FOSTER FOR CHR…	January 1, 2020	Wilmington, DE
Eunice Best Wright Charitable Trust	January 20, 2020	Amarillo, TX

Notice of Proposed Rulemaking

Bad Debt Deductions for Regulated Financial Companies and Members of Regulated Financial Groups

REG-121010-17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance regarding whether a debt instrument is worthless for Federal income tax purposes. The proposed regulations are necessary to update the standard for determining when a debt instrument held by a regulated financial company or a member of a regulated financial group will be conclusively presumed to be worthless. The proposed regulations will affect regulated financial companies and members of regulated financial groups that hold debt instruments.

DATES: Written or electronic comments and requests for a public hearing must be received by February 26, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–121010–17) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–121010–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie D. Floyd at (202) 317-7053; concerning submissions of comments and requesting a hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 166 of the Internal Revenue Code (Code). These proposed amendments (proposed regulations) would update the standard in the current regulations under §1.166-2 (existing regulations) for determining when a debt instrument held by a regulated financial company or a member of a regulated financial group will be conclusively presumed to be worthless.

1. *Existing Rules*

Section 166(a)(1) provides that a deduction is allowed for any debt that becomes worthless within the taxable year. Section 166(a)(2) permits the Secretary of the Treasury or her delegate (Secretary) to allow a taxpayer to deduct a portion of a partially worthless debt that does not exceed the amount charged-off within the taxable year. The existing regulations do not define "worthless." In determining whether a debt is worthless in whole or in part, the IRS considers all pertinent evidence, including the value of any collateral securing the debt and the financial condition of the debtor. *See* §1.166-2(a). The existing regulations provide further that, when the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, legal action is not required in order to determine that the debt is worthless. *See* §1.166-2(b).

The existing regulations provide two alternative conclusive presumptions of worthlessness for bad debt. First, §1.166-2(d)(1) generally provides that if a bank or other corporation subject to supervision by Federal authorities, or by State authorities maintaining substantially equivalent standards, charges off a debt in whole or in part, either (1) in obedience to the specific orders of such authorities, or (2) in accordance with the established policies of such authorities, and such authorities at the first audit subsequent to the charge-off confirm in writing that the charge-off would have been subject to specific orders, then the debt is conclusively presumed to have become worthless, in whole or in part, to the extent charged off during the taxable year.

Second, §1.166-2(d)(3) generally provides that a bank (but not other corporations) subject to supervision by Federal authorities, or by State authorities maintaining substantially equivalent standards, may elect to use a method of accounting that establishes a conclusive presumption of worthlessness for debts, provided the bank's supervisory authority has made an express determination that the bank maintains and applies loan loss classification standards that are consistent with the regulatory standards of that supervisory authority. Section 1.166-2(d)(1) and (3) are collectively referred to as the "Conclusive Presumption Regulations."

2. *Generally Accepted Accounting Principles Prior to the Current Expected Credit Loss Revisions*

For financial reporting purposes, financial institutions in the United States follow the U.S. Generally Accepted Accounting Principles (GAAP) issued by the Financial Accounting Standards Board (FASB). The long-standing GAAP model for recognizing credit losses is referred to as the "incurred loss model" because it delays recognition of credit losses until it is probable that a loss has been incurred. Under the incurred loss model, an entity considers only past events and current conditions in measuring the incurred credit loss. This method does not require or allow the incorporation of economic forecasts, or consideration of industry cycles. The incurred loss model permits institutions to use various methods to estimate credit losses, including historical loss methods, roll-rate methods, and discounted cash flow methods. The GAAP accounting for credit losses has been revised with the introduction of the current expected credit loss methodology for estimating allowance for credit losses, as further described in section 3 of this Background.

Under the GAAP incurred loss model, an institution must first assess whether a decline in fair value of a debt security below the amortized cost of the security is a temporary impairment or other than temporary impairment (OTTI). If an entity intends to sell the security or more likely than not will be required to sell the security before recovery of its amortized cost basis less any current-period credit loss, OTTI will be recognized in earnings equal to the difference between the investment's amortized cost basis and its fair value at the balance sheet date. In assessing whether the entity more likely than not will be required to sell the security before recovery of its amortized cost basis less any current period credit losses, an entity considers various factors such as the payment structure of the debt security, adverse conditions related to the security, or the length of time and the extent to which the fair value has been less than the amortized cost basis.

By contrast, if an entity determines OTTI exists but does not intend to sell the debt security or it is more likely than not that the entity will not be required to sell the debt security prior to its anticipated recovery, the impairment is separated into two parts: the portion of OTTI related to credit loss on a debt security (Credit-Only OTTI) and the portion of OTTI related to other factors but not credit (Non-Credit OTTI). Credit-Only OTTI will be recognized in earnings on the income statement, but Non-Credit OTTI will be reported on the balance sheet as Other Comprehensive Income. FASB Staff Positions, FSP FAS 115-2 and 124-2, Recognition and Presentation of Other-Than-Temporary Impairments (later codified as part of ASC 320).

3. *The Current Expected Credit Loss Standard*

On June 16, 2016, FASB introduced a new standard, the Accounting Standards Update (ASU) No. 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* (Update). The Update, which replaces the incurred loss model in GAAP, became effective for many entities for fiscal years beginning after December 15, 2019, and became generally effective for all entities for fiscal years beginning after December 15, 2022.

The Update was in response to concerns by regulators that the incurred loss model under GAAP restricted the ability to record credit losses that are expected but that do not yet meet the probable threshold. The Update is based on a current expected credit loss model (CECL Model), which generally requires the recognition of expected credit loss (ECL) in the allowance for credit losses upon initial recognition of a financial asset, with the addition to the allowance recorded as an offset to current earnings. Subsequently, the ECL must be assessed each reporting period, and both negative and positive changes to the ECL must be recognized through an adjustment to the allowance and to earnings. ASC 326-20-30-1; ASC 326-20-35-1. In estimating the ECL under the CECL Model, institutions must consider information about past events, current conditions, and reasonable and supportable forecasts relevant to assessing the collectability of the cash flow of financial assets. The CECL Model does not prescribe the use of specific estimation methods for measuring the ECL. However, an entity will need to make adjustments to provide an estimate of the ECL over the remaining contractual life of an asset and to incorporate reasonable and supportable forecasts about future economic conditions in the calculations. A charge-off of a financial asset, which may be full or partial, is taken out of the allowance in the period in which a financial asset is deemed uncollectible. ASC 326-20-35-8. At that time the carrying value of the financial asset is also written down. See ASC 326-20-55-52. The ECL recognized under the CECL Model cannot be used to determine bad debt deductions under section 166 because the ECL recognized under the CECL Model would be a current deduction for estimated future losses.

4. *Insurance Company Financial Accounting*

Publicly traded insurance companies report their financial transactions and losses to the Securities and Exchange Commission in accordance with GAAP. Privately held insurance companies may also report their financial transactions and losses in accordance with GAAP. However, in the United States, all insurance companies, whether publicly traded or privately held, are regulated by State governments in the States in which they are licensed to do business and are required by State law to prepare financial statements in accordance with statutory accounting principles (Statements of Statutory Accounting Principles, known as SSAPs or SAPs). SSAPs serve as a basis for preparing financial statements for insurance companies in accordance with statutes or regulations promulgated by various States. SSAPs establish guidelines that must be followed when an asset is impaired. SSAPs are detailed in the National Association of Insurance Commissioner's (NAIC's) Accounting Practices and Procedures Manual. Generally, the NAIC's guidelines require the carrying value of an asset to be written down if the loss of principal is OTTI. The OTTI standard is found in several different statutory accounting provisions, including SSAP 43R (loan-backed and structured securities) and SSAP 26 (bonds, excluding loan-backed and structured securities).

5. *IRS Directives*

In 2012, in response to comments regarding the significant burden on both insurance companies and the IRS's Large Business and International Division (LB&I) in dealing with audits relating to the accounting of loss assets, the IRS issued an insurance industry directive to its LB&I examiners. See *I.R.C. §166: LB&I Directive Related to Partial Worthlessness Deduction for Eligible Securities Reported by Insurance Companies,* LB&I 04-0712-009 (July 30, 2012) (Insurance Directive). The Insurance Directive states that LB&I examiners would not challenge an insurance company's partial worthlessness deduction under section 166(a)(2) for the amount of the SSAP 43R – Revised Loan-Backed and Structured Securities (September 14, 2009) credit-related impairment charge-offs of "eligible securities" as reported according to SSAP 43R on its annual statement if the company follows the procedure set forth in that directive. The definition of "eligible securities" in the Insurance Directive covers investments in loan-backed and structured securities within the scope of SSAP 43R, subject to section 166 and not subject to section 165(g)(2)(C) of the Code, including real estate mortgage investment conduit regular interests. Thus, the Insurance Directive allowed insurance companies to use the financial accounting standard for tax purposes in limited circumstances regardless of whether the regulatory standard is precisely the same as the tax standard for worthlessness under section 166.

In 2014, the IRS issued another industry directive to LB&I examiners regarding bad debt deductions claimed under section 166 by a bank or bank subsidiary. See *LB&I Directive Related to § 166 Deductions for Eligible Debt and Eligible Debt Securities*, LB&I-04-1014-008 (October 24, 2014) (Bank Directive). Unlike insurance companies, banks generally determine loss deductions for partial and wholly worthless debts in the same manner for GAAP and regulatory purposes. The Bank Directive generally allowed for loss deductions for partial and wholly worthless debts to follow those reported for GAAP and regulatory purposes.

6. *Summary of Comments Received in Response to Notice 2013-35*

In 2013, the IRS issued Notice 2013-35, 2013-24 I.R.B. 1240, requesting comments on the Conclusive Presumption Regulations. The Treasury Department and the IRS noted that since the adoption of the Conclusive Presumption Regulations, there have been significant changes made to the regulatory standards relevant for loan charge-offs. In light of those changes, Notice 2013-35 sought comments on whether (1) changes that have occurred in bank regulatory standards and processes since adoption of the Conclusive Presumption Regulations require amendment of those regulations, and (2) application of the Conclusive Presumption Regulations continues to be consistent with the principles of section 166. Comments were also sought on the types of entities that are permitted, or should be permitted, to apply a conclusive presumption of worthlessness.

Commenters responded that the Conclusive Presumption Regulations are outdated and contain requirements for a bad debt deduction that taxpayers can no longer satisfy. For example, one commenter noted that §1.166-2(d)(1) is unusable by community banks because banking regulators will not issue written correspondence confirming that a charge-off is being made for either of the reasons set forth in §1.166-2(d)(1). A commenter similarly noted that regulators generally no longer provide specific orders on a loan-by-loan basis and may never confirm the appropriateness of a charge-off in writing. Another commenter noted that for certain banks the election under §1.166-2(d)(3) was automatically revoked under §1.166-2(d)(3)(iv)(C) during the 2008 financial crisis because bank examiners ordered greater charge-offs than those initially taken by the banks, and then could not provide the required express determination letter stating that the banks maintained and applied loan loss classification standards consistent with the regulatory standards of the supervisory authority.

Commenters noted the advantages of retaining a conclusive presumption of worthlessness. One commenter stated that a conclusive presumption helps to avoid costly factual disputes between the IRS and taxpayers. Another commenter stated that it is in the best interests of all stakeholders to ensure that duplicative efforts by Federal and State bank regulators and the IRS do not occur. A commenter suggested that the IRS follow determinations made by regulators that routinely and thoroughly examine the financial and accounting records and processes of financial institutions such as banks, bank holding companies, and their non-bank subsidiaries. Another commenter noted that for decades virtually all community banks have conformed their losses on loans for income tax purposes to losses recorded for regulatory reporting purposes. Several commenters recommended that §1.166-2(d)(1) and (3) should be replaced with a single conclusive presumption rule.

Commenters requested that the Conclusive Presumption Regulations be revised to apply to any institution that is subject to consolidated supervision by the Board of Governors of the Federal Reserve System (Federal Reserve), including systemically important financial institutions (SIFIs) and subsidiaries and affiliates of SIFIs, because these institutions are required to follow a strict process for determining the amounts of the allowance for credit losses under GAAP for financial reporting purposes and the Federal Reserve's examination will focus on the consistent application and adherence to this process. Another commenter suggested that the election under §1.166-2(d)(3) should be extended to bank holding companies and their nonbank subsidiaries, and potentially to other regulated financial institutions that are examined by the same primary supervisory authority or regulator.

Commenters stated that the GAAP loss standard and the accounting standards used by insurance companies for determining whether a debt is worthless are sufficiently similar to the tax standards for worthlessness under section 166 and, therefore, should be used in formulating a revised conclusive presumption rule. Commenters argued that in most cases, any divergence between the various standards will not be significant enough to result in a material acceleration of loss recognition for Federal income tax purposes. Commenters specifically requested that the Conclusive Presumption Regulations be revised to include all insurance company debts, not just the eligible securities covered in the Insurance Directive. Commenters noted that, in applying the OTTI standard set forth in the SSAPs, insurers consider similar factors to the ones examined under the tax rules such as the adequacy of the collateral or the income stream in determining whether a debt is worthless for purposes of section 166. Commenters stated that a critical condition for coverage under the existing regulations is whether Federal or State regulators have the authority to compel the charge-off on the financial statements of the company. Commenters said that State insurance regulators have this authority since they can mandate a charge-off if an insurance company has not complied with the State law accounting requirement that requires the charge-off.

Commenters varied in their recommendations of what process the IRS should require in revised conclusive presumption regulations to verify that the regulated entity applied appropriate regulatory standards in taking a charge-off. Some commenters recommended that the IRS require an attestation from the taxpayer that the taxpayer has reported worthless debts consistently for tax and regulatory reporting purposes similar to the taxpayer self-certification statement required under the Insurance Directive. Commenters stated that a new self-certification requirement adopted by the IRS could replace the requirement in the existing regulations to obtain written confirmation from regulators. Another commenter suggested that a taxpayer claiming the benefit of the conclusive presumption should file a signed statement with its tax return listing the taxpayer's Federal and State regulators and stating that, for each bad debt deducted under section 166 on the tax return, the taxpayer has charged off the same amount on its financial statements.

Explanation of Provisions

1. *Rationale for the Proposed Amendments to §1.166-2(d)*

Regulated financial companies and members of regulated financial groups are generally subject to capital requirements, leverage requirements, or both. A tension exists between the incentives of regulated entities and the incentives of their regulators. An entity that is subject to regulatory capital requirements has an incentive not to charge-off debt assets prematurely, in order to preserve the amount of its capital. Conversely, a regulator that relies on capital or leverage requirements is concerned with ensuring that capital is not overstated, and therefore has an incentive to ensure that regulated entities do not defer charge-offs of losses on loans and other debt instruments. Regulators have provided guidance to those financial companies to ensure they charge off debt losses appropriately.[1] This tension results in a balance with respect to the timing of charge-offs.

The Treasury Department and the IRS believe that regulated financial companies and members of regulated financial groups described in the proposed regulations are subject to regulatory and accounting standards for charge-offs that are sufficiently similar to the Federal income tax standards for determining worthlessness under section 166. Both GAAP and the SSAPs use a facts and circumstance analysis that takes into account all available information related to the collectability of the debt. The analysis considers the value of any collateral securing the debt and the financial condition of the debtor, which are factors that are also evaluated under the tax rules for determining worthlessness under section 166.

As described in part 5 of the Background, the IRS previously has recognized the significant administrative burden for taxpayers and the IRS to independently determine worthlessness amounts under section 166(a)(2) and has accepted charge-off amounts reported for the incurred loss model previously used by GAAP and for regulatory purposes, as well as in accordance with the SSAPs, as evidence of worthlessness. In the Bank Directive, the IRS accepted charge-off amounts reported by banks and bank subsidiaries for the incurred loss model previously used by GAAP and for regulatory purposes as sufficient evidence of worthlessness. Similarly, in the Insurance Directive, the IRS permitted the use of the insurance company's SSAP 43R credit-related impairment charge-offs for the same securities as reported on its annual statement regardless of whether the regulatory standard is precisely the same as the definition of worthlessness under section 166. Thus, the IRS previously has recognized that the present values of timing differences in taxable income that arise from applying the regulatory standards instead of the tax standards to determine worthlessness are likely to be minor and therefore do not outweigh the costs of having two different standards for book and tax purposes.

Based on the foregoing, the Treasury Department and the IRS believe it is appropriate to provide conclusive presumption rules for regulated financial companies and members of regulated financial groups.

Recently, Congress has directed insurance companies to follow their financial statements prepared in accordance with GAAP in certain circumstances. *See* sections 451(b)(3) and 56A(b) of the Code. Section 451 provides the general rule for the taxable year of inclusion of gross income. Section 451(b) and (c) were amended by section 13221 of Public Law 115–97 (131 Stat. 2054), commonly referred to as the Tax Cuts and Jobs Act. For taxpayers using an accrual method of accounting, section 451(b) requires the recognition of income at the earliest of when the all events test is met or when any item of income is taken into account as revenue in the taxpayer's applicable financial statement (AFS). Section 451(b)(3) defines AFS. Section 451(b)(3) and §1.451-3(a)(5) list in descending priority the financial statements that can be considered an AFS for purposes of income inclusion under section 451(b) and §1.451-1(a). Highest priority is given to a financial statement that is certified as being prepared in accordance with GAAP, and lowest priority is assigned to, among other things, non-GAAP financial statements filed with a State government or State agency or a self-regulatory organization including, for example, a financial statement filed with a State agency that regulates insurance companies or the Financial Industry Regulatory Authority.

Section 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022, amended section 55 of the Code to impose a new corporate alternative minimum tax (CAMT) based on the "adjusted financial statement income" (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. For purposes of sections 55 through 59 of the Code, the term AFSI means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the tax-

[1] *See, for example*, *Interagency Policy Statement on Allowances for Credit Losses*, 85 FR 32991 (June 1, 2020) (providing guidance to financial institutions from the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration on allowances for credit losses in response to changes to GAAP); *Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations*, 84 FR 4222 (2019) (adopting final rule to address changes to credit loss accounting under GAAP, including banking organizations' implementation of the CECL Model).

payer's AFS of such taxable year, adjusted as provided in section 56A. *See* section 56A(a). Section 56A(b) defines "applicable financial statement" by reference to section 451(b)(3) for purposes of determining the adjusted financial statement income on which applicable corporations base their tentative minimum tax under section 55(b). For purposes of section 56A, the term AFS means, with respect to any taxable year, an AFS as defined in section 451(b)(3) or as specified by the Secretary in regulations or other guidance that covers such taxable year. *See* section 56A(b).

The Treasury Department and the IRS believe that, consistent with recent legislation enacted and regulations promulgated in other contexts, for purposes of determining whether a debt instrument is worthless for Federal income tax purposes, insurance companies should first rely on GAAP financial statements that are prioritized in these proposed regulations and then, in the absence of such a GAAP financial statement, should rely on their annual statement.

2. *Description of Proposed Amendments to §1.166-2(d)*

These proposed regulations would revise §1.166-2(d) to permit "regulated financial companies," as defined in proposed §1.166-2(d)(4)(ii), and members of "regulated financial groups," as defined in proposed §1.166-2(d)(4)(iii), to use a method of accounting under which amounts charged off from the allowance for credit losses, or pursuant to SSAP standards, would be conclusively presumed to be worthless for Federal income tax purposes (Allowance Charge-off Method). Proposed §1.166-2(d)(1) would allow these taxpayers to conclusively presume that charge-offs from the allowance for credit losses of debt instruments subject to section 166 or, in the case of insurance companies that do not produce GAAP financial statements for substantive non-tax purposes, charge-offs pursuant to SSAP standards, satisfy the requirements for a bad debt deduction under section 166. The proposed regulations do not address when a debt instrument qualifies as a security within the meaning of section 165(g)(2)(C) and therefore would not change the scope of debt instruments to which section 166 applies.

The definition of a "regulated financial company" in proposed §1.166-2(d)(4)(ii) includes entities that are regulated by insurance regulators and various Federal regulators including the Federal Housing Finance Agency (FHFA) and the Farm Credit Administration (FCA). The Housing and Economic Recovery Act of 2008 established the FHFA as an independent agency responsible for regulating the safety and soundness of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Government-Sponsored Enterprises, or GSEs). The FHFA has a statutory responsibility to ensure that the GSEs operate in a safe and sound manner, which the FHFA accomplishes through supervision and regulation, including the supervision and regulation of accounting and disclosure and capital adequacy. Further, the FHFA may order the GSEs to classify and charge-off loans, with loan classification generally following bank regulatory standards.

The definition of a "regulated financial company" in proposed §1.166-2(d)(4)(ii) also includes Farm Credit System (FCS) institutions subject to the provisions of the Farm Credit Act of 1971. The FCA, an independent Federal agency, is the Federal regulator that examines the safety and soundness of all FCS institutions through regulatory oversight. Including FCS institutions in the definition of regulated financial company is consistent with the existing regulations, which define "banks" to include institutions that are subject to the supervision of the FCA. *See* §1.166-2(d)(4)(i).

The definition of a "regulated financial company" in proposed §1.166-2(d)(4)(ii) does not include credit unions or U.S. branches of foreign banks. The proposed regulations do not address how credit unions or U.S. branches of foreign banks determine charge-offs since the IRS did not receive any comments on this topic in response to Notice 2013-35. Moreover, many credit unions are not subject to Federal income tax. However, the Treasury Department and the IRS request comments regarding whether and, if so, how the proposed regulations should be modified to apply to credit unions or U.S. branches of foreign banks.

The definition of a "regulated financial company" in proposed §1.166-2(d)(4)(ii) also does not include non-bank SIFIs. Treasury and the IRS would need to understand the extent to which prudential or other regulators of non-bank SIFIs apply regulatory standards for worthlessness that are sufficiently close to tax standards before determining whether the rules provided in the proposed regulations should apply to those SIFIs.

The definition of "regulated insurance company" in proposed §1.166-2(d)(4)(vii) does not include corporations that, although licensed, authorized, or regulated by one or more States to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3) of the Code) in such States, are not engaged in regular issuances of (or subject to ongoing liability with respect to) insurance, reinsurance, or annuity contracts with persons that are not related persons (within the meaning of section 954(d)(3)). The Treasury Department and the IRS request comments regarding whether and how the proposed regulations should be modified to include a reinsurance entity that regularly issues reinsurance contracts only to related persons, provided the risks reinsured are regularly those of persons other than related persons.

The term "financial statement" is defined in proposed §1.166-2(d)(4)(ix) broadly to include a financial statement provided to a bank regulator, along with any amendments or supplements to that financial statement. The Treasury Department and the IRS note that many insurance companies prepare GAAP financial statements. Therefore, the term "financial statement" includes a financial statement based on GAAP that is prepared contemporaneously with a financial statement prepared in accordance with the standards set out by the NAIC and given to creditors for purposes of making lending decisions. However, the Treasury Department and the IRS also understand that there are insurance companies that do not prepare GAAP financial statements but, for substantive non-tax purposes, use the SSAP financial statements discussed above, which may not have the functional equivalent of an allowance from which charge-offs are made. In order to extend conformity to insurance company taxpayers that do not prepare GAAP financial statements for substantive non-tax purposes, the Treasury Department and the IRS propose to allow these taxpayers to use their SSAP financial statements for purposes of determining the amount of bad debt deduction under, and in the manner prescribed in, the proposed regulations. Thus, the proposed regulations would direct insurance companies to first rely on a financial statement certified as prepared in accordance with GAAP that is a Form 10-K or an annual statement to shareholders. If no such financial statement exists, the proposed regulations would direct insurance companies to next rely on a financial statement that is based on GAAP that is (1) given to creditors for purposes of making lending decisions, (2) given to equity holders for purposes of evaluating their investments in the regulated financial company or member of a regulated financial group, or (3) provided for other substantial non-tax purposes that also meet certain criteria set forth in these proposed regulations. If an insurance company does not have either of these two types of financial statements based on GAAP, the insurance company would then rely on a financial statement prepared in accordance with the standards set forth by the NAIC and filed with the insurance regulatory authorities of a State that is the principal insurance regulator of the insurance company. Accordingly, the term "financial statement" would be defined in the insurance industry context under proposed §1.166-2(d)(4)(ix)(D) to include a financial statement that is prepared in accordance with standards set out by the NAIC and filed with State insurance regulatory authorities. The Treasury Department and the IRS request comments regarding whether these financial statements should be assigned different levels of priority and on this definition generally.

The term "charge-off" is defined in proposed §1.166-2(d)(4)(i) to mean an accounting entry or set of accounting entries for a taxable year that reduces the basis of the debt when the debt is recorded in whole or in part as a loss asset on the applicable financial statement of the regulated financial company or the member of a regulated financial group for that year. For a regulated financial company that is a regulated insurance company that has as its applicable financial statement a financial statement described in proposed §1.166-2(d)(4)(ix)(D), the term charge-off is defined in the proposed regulations to mean an accounting entry or set of accounting entries that reduces the debt's carrying value and results in a realized loss or a charge to the statement of operations (as opposed to recognition of unrealized loss) that is recorded on the regulated insurance company's annual statement.

Certain of the commenters suggested that the proposed regulations should extend to GAAP post-impairment accounting for recoveries. Extending tax conformity to GAAP post-impairment accounting for recoveries raises, among other issues, questions about whether GAAP recoveries qualify as tax recoveries, both with regard to amount and timing, and whether GAAP's treatment of recoveries is consistent with the tax recovery payment ordering rules. *See, for example*, section 111, §§1.111-1(a)(2), 1.446-2(e), 1.1275-2(a), Rev. Rul. 2007-32, 2007-1 C.B. 1278, and *Hillsboro National Bank v. Commissioner*, 460 U.S. 370 (1983). In view of the foregoing, the Treasury Department and the IRS, while welcoming comments on the topic, do not propose extending tax conformity to GAAP post-impairment recovery accounting at this time.

Under the proposed regulations, the Allowance Charge-off Method would be a method of accounting because it would determine the timing of the bad debt deduction. Accordingly, proposed §1.166-2(d)(2) provides that a change to the Allowance Charge-off Method is a change in method of accounting requiring consent of the Commissioner under section 446(e).

When the proposed regulations are finalized, those regulated financial companies or members of regulated financial groups that do not presently use or change to the Allowance Charge-off Method would not be entitled to a conclusive presumption of worthlessness and would in most cases be required to use the specific charge-off method for deducting bad debts under section 166(a) and §1.166-1(a)(1).

3. Proposed Applicability Dates and Reliance on the Proposed Regulations

A. *Proposed applicability dates of the final regulations*

Under the proposed applicability date in proposed §1.166-2(d)(5), the final regulations would apply to charge-offs made by a regulated financial company or a member of a regulated financial group on its applicable financial statement that occur in taxable years ending on or after the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. However, under proposed §1.166-2(d)(5), a regulated financial company or a member of a regulated financial group may choose to apply the final regulations, once published in the **Federal Register**, to charge-offs made on its applicable financial statement that occur in taxable years ending on or after December 28, 2023, and before the date of publication of a Treasury decision adopting those rules as final regulations in the **Federal Register**. *See* section 7805(b)(7) of the Code.

B. *Reliance on the proposed regulations*

A regulated financial company or a member of a regulated financial group may rely on proposed §1.166-2(d) for charge-offs made on its applicable financial statement that occur in taxable years ending on or after December 28, 2023, and before the date of publication of final regulations in the **Federal Register**.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

These proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. The Allowance Charge-off Method is a method of accounting under the proposed regulations, and therefore taxpayers would be required to request the consent of the Commissioner for a change in method of accounting under section 446(e) to change to that method. The IRS expects that these taxpayers would request this consent by filing Form 3115, *Application for Change in Accounting Method.* Filing of Form 3115 and any statements attached thereto is the sole collection of information requirement imposed by the statute and the proposed regulations.

For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)) (PRA), the reporting burden associated with the collection of information for the Form 3115 will be reflected in the PRA submission associated with the income tax returns under the OMB control number 1545-0123. To the extent there is a change in burden because of these proposed regulations, the change in burden will be reflected in the updated burden estimates for Form 3115. The requirement to maintain records to substantiate information on Form 3115 is already contained in the burden associated with the control number for the form and remains unchanged.

The proposed regulations also would remove the requirement in §1.166-2(d)(3)(iii)(B) for a new bank to attach a statement to its income tax return, and thereby reduce the burden estimates for OMB control number 1545-0123. The overall burden estimates associated with the OMB control number are aggregate amounts related to the entire package of forms associated with the applicable OMB control number and will include, but not isolate, the estimated burden of the tax forms that will be created, revised, or reduced as a result of the information collection in these proposed regulations. These numbers are therefore not specific to the burden imposed by these proposed regulations. No burden estimates specific to the forms affected by the proposed regulations are currently available. For the OMB control number discussed in this section, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type basis rather than a provision-specific basis. Those estimates capture both changes made by the proposed regulations (when final) and other regulations that affect the compliance burden for that form.

The Treasury Department and IRS request comment on all aspects of the information collection burden related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burden described above for the relevant form and ways for the IRS to minimize paperwork burden. In addition, when available, drafts of IRS forms are posted at *https://www.irs.gov/draft-tax-forms*, and comments may be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications*. Final IRS forms are available at *https://www.irs.gov/forms-instructions*. Forms will not be finalized until after they have been approved by OMB under the PRA.

III. *Regulatory Flexibility Act*

It is hereby certified that these regulations would not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

These proposed regulations would affect only those business entities that qualify as regulated financial companies and members of regulated financial groups, as defined in the proposed regulations. These entities are expected to consist of insurance companies and financial institutions with annual receipts in excess of the amounts set forth in 13 CFR §121.201, Sector 52 (finance and insurance). Therefore, these proposed regulations will not affect a substantial number of small entities.

Although the burden falls primarily on larger entities, some small entities with annual receipts not in excess of the amounts set forth in 13 CFR §121.201, Sector 52 (finance and insurance), may be affected. However, these proposed regulations are unlikely to present a significant economic burden on any small entities affected. The costs to comply with these proposed regulations are not significant. Taxpayers needing to make method changes pursuant to the proposed regulations would be required to file a Form 3115. For those entities that would make a method change, the cost to determine or track the information needed is minimal. The insurance companies and financial institutions affected by the proposed regulations prepare financial statements in accordance with SSAPs or GAAP. The Allowance Charge-off Method is a method of accounting under which these entities would be permitted to use these financial statements to obtain a conclusive presumption of worthlessness for purposes of claiming bad debt deductions under section 166. Accordingly, the affected entities already possess the information needed. The cost in time to fill out a Form 3115 would be minimal.

Notwithstanding this certification, the Treasury Department and IRS invite comments from the public about the impact of these proposed regulations on small entities.

Pursuant to section 7805(f), these regulations will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including how best to transition from the existing regulations to the proposed regulations. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Stephanie D. Floyd and Jason D. Kristall of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

The IRS Notices, Revenue Procedures, and Revenue Rulings cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.166-2 is amended by revising paragraph (d) to read as follows:

§ 1.166-2 Evidence of worthlessness.

* * * * *

(d) *Regulated financial companies and members of regulated financial groups*—(1) *Worthlessness presumed in year of charge-off*. Debt held by a regulated financial company (as defined in paragraph (d)(4)(ii) of this section) or a member of a regulated financial group (as defined in paragraph (d)(4)(iii) of this section) that uses the charge-off method described in paragraph (d)(1) of this section (Allowance Charge-off Method) is conclusively presumed to have become worthless, in whole or in part, to the extent that the amount of any charge-off (as defined in paragraph (d)(4)(i) of this section) under paragraph (d)(1)(i) or (ii) of this section is claimed as a deduction under section 166 of the Internal Revenue Code (Code) by the regulated financial company or the member of a regulated financial group on the relevant Federal income tax return for the taxable year in which the charge-off takes place.

(i) *Allowance Charge-off Method generally*. The debt is charged off from the allowance for credit losses in accordance with the United States Generally Accepted Accounting Principles and recorded in the period in which the debt is deemed uncollectible on the applicable financial statement (as defined in paragraph (d)(4)(viii) of this section) of the regulated financial company or the member of a regulated financial group.

(ii) *Certain regulated insurance companies*. In the case of a regulated financial company that is a regulated insurance company (as defined in paragraph (d)(4)(vii) of this section) that prepares an applicable financial statement pursuant to paragraphs (d)(4)(viii) and (d)(4)(ix)(D) of this section, the debt is charged off pursuant to an accounting entry or set of accounting entries that reduce the debt's carrying value and result in a realized loss or a charge to the statement of operations (as opposed to recognition of an unrealized loss) that, in either case, is recorded on the regulated insurance company's annual statement.

(2) *Methods of accounting*—(i) *In general*. A taxpayer may change a method of accounting only with the consent of the Commissioner as required under section 446(e) of the Code and the corresponding regulations. A change to the Allowance Charge-off Method under this paragraph (d) constitutes a change in method of accounting. Accordingly, a regulated financial company or member of a regulated financial group that changes its method of accounting to the Allowance Charge-Off Method is required to secure consent of the Commissioner before using this method for Federal income tax purposes. A change to the Allowance Charge-off Method must be made on an entity-by-entity basis.

(ii) *General rule for changes in method of accounting*. A taxpayer that makes a change in method of accounting to the Allowance Charge-Off Method is treated as making a change in method initiated by the taxpayer for purposes of section 481 of the Code. A taxpayer obtains the consent of the Commissioner to make a change in method of accounting by using the applicable administrative procedures that govern changes in method of accounting under section 446(e). *See* § 1.446-1(e)(3).

(3) *Worthlessness in later taxable year*. If a regulated financial company or member of a regulated financial group does not claim a deduction under section 166 for a totally or partially worthless debt on its Federal income tax return for the taxable year in which the charge-off takes place, but claims the deduction for a later taxable year, then the charge-off in the prior taxable year is deemed to have been involuntary and the deduction under section 166

is allowed for the taxable year for which claimed.

(4) *Definitions*. The following definitions apply for purposes of paragraph (d) of this section:

(i) *Charge-off*. The term *charge-off* means an accounting entry or set of accounting entries for a taxable year that reduces the basis of the debt when the debt is recorded in whole or in part as a loss asset on the applicable financial statement (as defined in paragraph (d)(4)(viii) of this section) of the regulated financial company or the member of a regulated financial group for that year. For a regulated financial company that is a regulated insurance company (as defined in paragraph (d)(4)(vii) of this section) that has as its applicable financial statement a financial statement described in paragraph (d)(4)(ix)(D) of this section, the term *charge-off* means an accounting entry or set of accounting entries that reduce the debt's carrying value and results in a realized loss or a charge to the statement of operations (as opposed to recognition of unrealized loss) that is recorded on the regulated insurance company's annual statement.

(ii) *Regulated financial company*. The term *regulated financial company* means—

(A) A bank holding company, as defined in 12 U.S.C. 1841, that is a domestic corporation;

(B) A covered savings and loan holding company, as defined in 12 C.F.R. 217.2;

(C) A national bank;

(D) A bank that is a member of the Federal Reserve System and is incorporated by special law of any State, or organized under the general laws of any State, or of the United States, or other incorporated banking institution engaged in a similar business;

(E) An insured depository institution, as defined in 12 U.S.C. 1813(c)(2);

(F) A U.S. intermediate holding company formed by a foreign banking organization in compliance with 12 C.F.R. 252.153;

(G) An Edge Act corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611-631);

(H) A corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act (12 U.S.C. 601-604a);

(I) A Federal Home Loan Bank, as defined in 12 U.S.C. 1422(1)(A);

(J) A Farm Credit System Institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

(K) A regulated insurance company, as defined in paragraph (d)(4)(vii) of this section;

(L) The Federal National Mortgage Association;

(M) The Federal Home Loan Mortgage Corporation; and

(N) Any additional entities that may be provided in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(a) of this chapter).

(iii) *Regulated financial group*. The term *regulated financial group* means one or more chains of corporations connected through stock ownership with a common parent corporation that is not described in section 1504(b)(4) of the Code and is a regulated financial company described in paragraphs (d)(4)(ii)(A) through (N) of this section (regulated financial group parent) that is not owned, directly or indirectly (as set out in paragraph (d)(4)(v) of this section), by another regulated financial company, but only if—

(A) The regulated financial group parent owns directly or indirectly stock meeting the requirements of section 1504(a)(2) in at least one of the other corporations; and

(B) Stock meeting the requirements of section 1504(a)(2) in each of the other corporations (except the regulated financial group parent) is owned directly or indirectly by one or more of the other corporations.

(iv) *Stock*. The term *stock* has the same meaning as stock in section 1504 (without regard to § 1.1504-4), and all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(v) *Indirect stock ownership*. Indirect stock ownership is determined by applying the constructive ownership rules of section 318(a) of the Code.

(vi) *Member of a regulated financial group*. A member of a regulated financial group is any corporation in the chain of corporations of a regulated financial group described in paragraph (d)(4)(iii) of this section. A corporation, however, is not a member of a regulated financial group if it is held by a regulated financial company pursuant to 12 U.S.C. 1843(k)(1)(B), 12 U.S.C. 1843(k)(4)(H), or 12 U.S.C. 1843(o), or if it is a Regulated Investment Company under section 851 of the Code, or a Real Estate Investment Trust under section 856 of the Code.

(vii) *Regulated insurance company*. The term *regulated insurance company* means a corporation that is—

(A) Subject to tax under subchapter L of chapter 1 of the Code;

(B) Domiciled or organized under the laws of one of the 50 States or the District of Columbia (State);

(C) Licensed, authorized, or regulated by one or more States to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3) of the Code) in such States, but in no case will a corporation satisfy the requirements of this paragraph (d)(4)(vii)(C) if a principal purpose for obtaining such license, authorization, or regulation was to qualify the issuer as a regulated insurance company; and

(D) Engaged in regular issuances of (or subject to ongoing liability with respect to) insurance, reinsurance, or annuity contracts with persons that are not related persons (within the meaning of section 954(d)(3)).

(viii) *Applicable financial statement*. The term *applicable financial statement* means a financial statement that is described in paragraph (d)(4)(ix) of this section of a regulated financial company or any member of a regulated financial group. The financial statement may be a separate company financial statement of any member of a regulated financial group, if prepared in the ordinary course of business; otherwise, it is the consolidated financial statement that includes the assets, portion of the assets, or annual total revenue of any member of a regulated financial group.

(ix) *Financial statement*. The term *financial statement* means the taxpayer's financial statement listed in paragraphs (d)(4)(ix)(A) through (D) of this section that has the highest priority. A financial statement includes any supplement or amendment to that financial statement. The financial statements are, in order of descending priority:

(A) A financial statement certified as being prepared in accordance with Generally Accepted Accounting Principles that is a Form 10–K (or successor form), or annual statement to shareholders, required to be filed with the United States Securities and Exchange Commission;

(B) A financial statement that is required to be provided to a bank regulator;

(C) In the case of an insurance company, a financial statement based on Generally Accepted Accounting Principles that is given to creditors for purposes of making lending decisions, given to equity holders for purposes of evaluating their investments in the regulated financial company or member of a regulated financial group, or provided for other substantial non-tax purposes, and that the regulated financial company or member of a regulated financial group reasonably anticipates will be directly relied on for the purposes for which it was given or provided and that is prepared contemporaneously with a financial statement prepared in accordance with the standards set out by the National Association of Insurance Commissioners and filed with the insurance regulatory authorities of a State that is the principal insurance regulator of the insurance company; and

(D) In the case of an insurance company, a financial statement that is prepared in accordance with the standards set out by the National Association of Insurance Commissioners and filed with the insurance regulatory authorities of a State that is the principal insurance regulator of the insurance company.

(x) *Bank regulator*. The term *bank regulator* means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and any Federal Reserve Bank, the Federal Deposit Insurance Corporation, the Farm Credit Administration, the Federal Housing Finance Authority, any successor to any of the foregoing entities, or State banking authorities maintaining substantially equivalent standards as these Federal regulatory authorities. Additional entities included in this paragraph (d)(4)(x) may be provided in guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(a) of this chapter).

(5) *Applicability date*. Paragraph (d) of this section applies to charge-offs made by a regulated financial company or a member of a regulated financial group on its applicable financial statement that occur in taxable years ending on or after [DATE OF FINAL RULE]. A regulated financial company or a member of a regulated financial group may choose to apply paragraph (d) of this section to charge-offs on its applicable financial statement that occur in taxable years ending on or after December 28, 2023.

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register December 27, 2023, 8:45 a.m., and published in the issue of the Federal Register for December 28, 2023, 88 FR 89636).

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

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

We Welcome Comments About the Internal Revenue Bulletin

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