will be published if the Department determines that acceptance of the comments is appropriate. Comments with respect to cost limits for a given location should be sent to the address indicated above.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410.

Accordingly, the prototype per unit cost schedules issued under 24 CFR, Part 841, Appendix A, Prototype Cost Limits for Low-Income Public Housing, are amended as follows:

1. At 43 27031, add the prototype per unit cost schedules for detached/semi-detached, row, walk-up and elevator dwellings as shown on the Prototype Per Unit Cost Schedules, Region VII, Sac Fox, within the existing Cedar Rapids prototype area. These schedules are established for a special Indian prototype cost area (pursuant to 24 CFR 805.213), and apply only for the development of Indian Housing under 24 CFR, Part 805.

2. At 43 FR 27053, revise the prototype per unit cost schedules for row dwellings as shown on the per unit cost schedules, Region X, Seattle, Port Angeles, Tahola, Longview and Aberdeen, Washington.

3. At 43 FR 27054, revise the prototype per unit cost schedules for row dwellings as shown on the per unit cost schedules, Region X, Olympia, Yakima and Nespelem, Washington.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Sec. 6(b), U.S. Housing Act of 1937, 42 U.S.C. 1437(d)).

Issued At Washington, D.C. on April 11, 1979.

Lawrence B. Simons,
Assistant Secretary for Housing, Federal Housing Commissioner.

[Docket No. R-79-852]

[FR Doc. 79-12279 Filed 4-19-79; 8:45 am]

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Region VII

	Bedrooms						
	0	1	2	3	4	5	6
Sac Fox:							
Det. & Semi-Det.	18,250	22,000	27,200	32,250	38,850	43,250	45,200
Row Dwellings	15,700	18,850	23,150	27,500	33,150	37,000	38,650
Walk-Up	15,650	15,500	24,750	30,350	35,150	37,200	39,100
Elevator Structure	22,600	26,200	33,250				

Region X

Seattle:							
Det. & Semi-Det.							
Row Dwellings	14,400	17,400	21,500	25,600	30,750	34,200	35,750
Walk-Up							
Elevator Structure							
Port Angeles:							
Det. & Semi-Det.							
Row Dwellings	14,750	17,850	21,900	26,150	31,600	35,100	36,700
Walk-Up							
Elevator Structure							
Tahola:							
Det. & Semi-Det.							
Row Dwellings	15,500	18,800	23,000	27,500	33,100	36,850	38,600
Walk-Up							
Elevator Structure							
Longview:							
Det. & Semi-Det.							
Row Dwellings	14,900	18,100	22,200	26,300	31,850	35,500	37,000
Walk-Up							
Elevator Structure							
Aberdeen:							
Det. & Semi-Det.							
Row Dwellings	14,450	17,500	21,650	25,800	31,050	34,450	36,200
Walk-Up							
Elevator Structure							
Bellingham:							
Det. & Semi-Det.							
Row Dwellings	14,450	17,500	21,650	25,800	31,050	34,450	36,200
Walk-Up							
Elevator Structure							
Olympia:							
Det. & Semi-Det.							
Row Dwellings	14,450	17,500	21,650	25,800	31,050	34,450	36,200
Walk-Up							
Elevator Structure							
Yakima:							
Det. & Semi-Det.							
Row Dwellings	15,400	18,300	22,650	26,900	32,350	36,000	37,500
Walk-Up							
Elevator Structure							
Nespelem:							
Det. & Semi-Det.							
Row Dwellings	15,200	18,300	22,650	26,900	32,500	36,050	37,700
Walk-Up							
Elevator Structure							

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

24 CFR Part 1917

Final Flood Elevation Determination for the Village of Casco, Kewaunee County, Wis.

Correction

In FR Doc. 79-7540, published at page 15697, on Thursday, March 15, 1979, in the third column, the "100-year flood elevation table" should be corrected to read as follows:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Casco Creek	Western corporate limit	706
	Just downstream from Church Avenue	710
	Just upstream from Church Avenue	713
	Just downstream from Ahnapee and Western Railroad	714
	Northern corporate limit	719

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1 TD 7611

Income Tax; Nonbank Trustees of Pension and Profit-Sharing Trusts Benefiting Owner-Employees

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the approval of

nonbank trustees of pension and profit-sharing plans benefiting owner-employees. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974. These regulations provide the public with guidance concerning approval and conduct of trustees other than banks.

DATE: The regulations are generally effective for plan years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: George Baker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T:EE-12-78) (202-566-3938) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1975, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401 of the Internal Revenue Code of 1954 (40 FR 48514). The amendments were proposed to conform the regulations to the provisions of section 1022 (c) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA") (88 Stat. 939, 940). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Approval of Persons Other Than Banks as Trustees of Trusts Benefiting Owner-Employees

Section 1022(c) of ERISA permits a person that is not a bank to be a trustee of a qualified pension or profit-sharing trust benefiting owner-employees if the person demonstrates to the satisfaction of the Commissioner that it will administer the trust in a manner consistent with the law.

The final regulations require that this demonstration be made by written application. The applicant must exhibit attributes such as continuity, permanent location, and financial responsibility. It must demonstrate experience and competence in acting as a fiduciary, in accounting for the interests of a large number of individuals, and in engaging in other activities normally associated with the handling of retirement funds. In addition, the applicant must demonstrate that it is prepared to comply with specified rules of fiduciary conduct.

The final regulations provided by this document differ in part from the proposed regulations. First, certain specified financial institutions that accept trust assets solely for investment in their insured deposits are automatically approved without filing an application. This change conforms to amendments made to the temporary regulations.

The proposed regulations required all trustees to comply with a minimum net worth requirement designed to increase as the value of the assets held in trust increased. The final regulations adopt a less stringent rule for "passive trustees" as defined in the regulations.

The final regulations also provide two additional methods by which the applicant may demonstrate sufficient diversity of ownership. A corporation required to register with the Securities and Exchange Commission under section 12(b) of the Securities Exchange Act of 1934 is deemed diversified, as is an 80%-owned subsidiary of such a corporation.

The final regulations add a requirement that the applicant notify the administrator of a plan that the applicant has been approved by the Commissioner before accepting trust assets. This provision will not be fully effective for six months, but the administrators of accounts accepted before that time must be notified by that time or, if later, within six months after acceptance of the account.

The final regulations contain some new procedural and administrative rules, including rules under which the Internal Revenue Service may revoke the approval of an applicant. The final regulations supersede § 11.401(d)(1)-1 of the Temporary Income Tax Regulations Under the Employee Retirement Income Security Act of 1974.

Drafting Information

The principal author of these regulations was George Baker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly—

1. The proposed amendment of § 1.401, as set forth in paragraph 1 of the notice of proposed rulemaking of October 16, 1975, is withdrawn.

2. The other amendments to 26 CFR Part 1 are hereby adopted subject to the changes indicated below.

Paragraph 1. Paragraph (a) of the § 1.401-12 is amended by deleting the last sentence and inserting two new sentences in lieu thereof to read as follows:

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

(a) *Introduction.* * * * Except as otherwise provided, paragraphs (b) through (m) of this section apply to taxable years beginning after December 31, 1962. Paragraph (n) of this section applies to plan years determined in accordance with paragraph (n)(1) of this section.

Par. 2. Paragraph (c)(1)(i) of § 1.401-12 is amended to read as follows:

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

* * * * *

(c) *Bank trustee.* (1)(i) If a trust created after October 9, 1962, is to form a part of a qualified pension or profit-sharing plan covering an owner-employee, or if a trust created before October 10, 1962, but not exempt from tax on October 9, 1962, is to form part of such a plan, the trustee of such trust must be a bank as defined in paragraph (c)(2) of this section, unless an exception contained in paragraph (c)(4) of this section applies, or paragraph (n) of this section applies.

Par. 3. Paragraph (c)(2)(iii) of § 1.401-12 is amended by substituting a semicolon for the period at the end thereof.

Par. 4. Paragraph (c)(2)(iv) of § 1.401-12 is added to read as follows:

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

* * * * *

(c) * * *

(2) * * *

(iv) Beginning on January 1, 1974, an insured credit union (within the meaning of section 101 (6) of the Federal Credit Union Act, 12 U.S.C. 1752 (6)).

Par. 5. Paragraph (n) of § 1.401-12 is added to read as follows:

§ 1.401-12 Requirements for qualification of trusts and plans benefiting owner-employees.

* * * * *

(n) *Nonbank trustee*—(1) *Effective dates*—(i) *General rule.* For a plan not in existence on January 1, 1974, this paragraph shall apply to the first plan year commencing after September 2, 1974, and all subsequent plan years.

(ii) *Existing plans.* For a plan in existence on January 1, 1974, this

paragraph shall apply to the first plan year commencing after December 31, 1975, and all subsequent plan years.

(2) *In general.* For plan years to which this paragraph applies, the trustee of a trust described in paragraph (c)(1)(i) of this section may be a person other than a bank if the person demonstrates to the satisfaction of the Commissioner that the manner in which the person will administer trusts will be consistent with the requirements of section 401. The person must demonstrate by written application that the requirements of paragraph (n)(3) to (7) of this section will be met. The written application must be sent to the Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224. For procedural and administrative rules, see paragraph (n)(6) of this section.

(3) *Fiduciary ability.* The applicant must demonstrate in detail its ability to act within the accepted rules of fiduciary conduct. Such demonstration must include the following elements of proof:

(i) *Continuity.* (A) The applicant must assure the uninterrupted performance of its fiduciary duties notwithstanding the death or change of its owners. Thus, for example, there must be sufficient diversity in the ownership of the applicant to ensure that the death or change of its owners will not interrupt the conduct of its business. Therefore, the applicant cannot be an individual.

(B) Sufficient diversity in the ownership of an incorporated applicant is demonstrated in the following circumstances:

(1) Individuals each of whom owns more than 20 percent of the voting stock in the applicant own, in the aggregate, no more than 50 percent of such stock;

(2) The applicant has issued securities registered under section 12 (b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l (b)) or required to be registered under section 12(g) (1) of that Act (15 U.S.C. 78l (g)(1)); or

(3) The applicant has a parent corporation within the meaning of section 1563 (a) (1) that has issued securities registered under section 12 (b) of the Securities Exchange Act of 1934 (15 U.S.C. 78l (b)) or required to be registered under Section 12 (g) (1) of that Act (15 U.S.C. 78l (g)(1)).

(C) Sufficient diversity in the ownership of an applicant that is a partnership means that—

(1) Individuals each of whom owns more than 20 percent of the profits interest in the partnership own, in the aggregate, no more than 50 percent of such profits interest, and

(2) Individuals each of whom owns more than 20 percent of the capital interest in the partnership own, in the aggregate, no more than 50 percent of such capital interest.

(D) For purposes of this subdivision, the ownership of stock and of capital and profits interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 1563 (e) and (f) (2). For this purpose, the rules for constructive ownership of stock provided in section 1563(e) and (f) (2) shall apply to a capital or profits interest in a partnership as if it were a stock interest.

(ii) *Established location.* The applicant must have an established place of business in the United States where it is accessible during every business day.

(iii) *Fiduciary experience.* The applicant must have fiduciary experience or expertise sufficient to ensure that it will be able to perform its fiduciary duties. Evidence of fiduciary experience must include proof that a significant part of the business of the applicant consists of exercising fiduciary powers similar to those it will exercise if its application is approved. Evidence of fiduciary expertise must include proof that the applicant employs personnel experienced in the administration of fiduciary powers similar to those the applicant will exercise if its application is approved.

(iv) *Fiduciary responsibility.* The applicant must assure compliance with the rules of fiduciary conduct set out in paragraph (n)(6) of this section.

(v) *Financial responsibility.* The applicant must exhibit a high degree of solvency commensurate with the obligations imposed by this paragraph. Among the factors to be taken into account are the applicant's net worth, its liquidity, and its ability to pay its debts as they come due.

(4) *Capacity to account.* The applicant must demonstrate in detail its experience and competence with respect to accounting for the interests of a large number of individuals (including calculating and allocating income earned and paying out distributions to payees). Examples of accounting for the interests of a large number of individuals include accounting for the interests of a large number of shareholders in a regulated investment company and accounting for the interests of a large number of variable annuity contract holders.

(5) *Fitness to handle funds*—(i) *In general.* The applicant must demonstrate in detail its experience and competence with respect to other activities normally associated with the handling of retirement funds.

(ii) *Examples.* Examples of activities normally associated with the handling of retirement funds include:

(A) To Receive, issue receipts for, and safely keep securities;

(B) To collect income;

(C) To execute such ownership certificates, to keep such records, make such returns, and render such statements as are required for Federal tax purposes;

(D) To give proper notification regarding all collections;

(E) To collect matured or called principal and properly report all such collections;

(F) To exchange temporary for definitive securities;

(G) To give proper notification of calls, subscription rights, defaults in principal or interest, and the formation of protective committees;

(H) To buy, sell, receive, or deliver securities on specific directions.

(6) *Rules of fiduciary conduct.* The applicant must demonstrate that under applicable regulatory requirements, corporate or other governing instruments, or its established operating procedures:

(i) *Administration of fiduciary powers.* (A)(1) The owners or directors of the applicant will be responsible for the proper exercise of fiduciary powers by the applicant. Thus, all matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all employees utilized by the applicant in the exercise of its fiduciary powers, will be the responsibility of the owners or directors. In discharging this responsibility, the owners or directors may assign to designated employees, by action duly recorded, the administration of such of the applicant's fiduciary powers as may be proper to assign.

(2) A written record will be made of the acceptance and of the relinquishment or closing out of all fiduciary accounts, and of the assets held for each account.

(3) If the applicant has the authority or the responsibility to render any investment advice with regard to the assets held in or for each fiduciary account, the advisability of retaining or disposing of the assets will be determined at least once during each period of 12 months.

(B) All employees taking part in the performance of the applicant's fiduciary duties will be adequately bonded.

Nothing in this subdivision (i)(B) shall require any person to be bonded in contravention of section 412(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112(d)).

(C) The applicant will employ or retain legal counsel who will be readily available to pass upon fiduciary matters and to advise the applicant.

(D) In order to segregate the performance of its fiduciary duties from other business activities, the applicant will maintain a separate trust division under the immediate supervision of an individual designated for that purpose. The trust division may utilize the personnel and facilities of other divisions of the applicant, and other divisions of the applicant may utilize the personnel and facilities of the trust division, as long as the separate identity of the trust division is preserved.

(ii) *Adequacy of net worth.* (A) The applicant will determine the value of the assets held by it in trust at least once in each calendar year and no more than 18 months after the preceding valuation. The assets will be valued at their fair market value, except that the assets of an employee pension benefit plan to which section 103(b)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(b)(3)(A)) applies will be considered to have the value stated in the most recent annual report of the plan.

(B) No fiduciary account will be accepted by the applicant unless the applicant's net worth (determined as of the end of the most recent taxable year) exceeds the greater of—

(*1*) $100,000, or

(*2*) Four percent (or, in the case of a passive trustee described in paragraph (n)(7)(i)(A) of this section, two percent) of the value of all of the assets held by the applicant in fiduciary accounts (determined as of the most recent valuation date).

(C) The applicant will take whatever lawful steps are necessary (including the relinquishment of fiduciary accounts) to ensure that its net worth (determined as of the close of each taxable year) exceeds the greater of—

(*1*) $50,000, or

(*2*) Two percent (or, in the case of a passive trustee described in paragraph (n)(7)(i)(A) of this section, one percent) of the value of all of the assets held by the applicant in fiduciary accounts (determined as of the most recent valuation date).

(iii) *Audits.* (A) At least once during each period of 12 months, the applicant will cause detailed audits of the fiduciary books and records to be made by a qualified public accountant. At that time, the applicant will ascertain whether the fiduciary accounts have been administered in accordance with law, this paragraph, and sound fiduciary principles. The audits shall be conducted in accordance with generally accepted auditing standards, and shall involve whatever tests of the fiduciary books and records of the applicant are considered necessary by the qualified public accountant.

(B) In the case of an applicant which is regulated, supervised, and subject to periodic examination by a State or Federal agency, such applicant may adopt an adequate continuous audit system in lieu of the periodic audits required by paragraph (n)(6)(iii)(A) of this section.

(C) A report of the audits and examinations required under this subdivision, together with the action taken thereon, will be noted in the fiduciary records of the applicant.

(iv) *Funds awaiting investment or distribution.* Funds held in a fiduciary capacity by the applicant awaiting investment or distribution will not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(v) *Custody of investments.* (A) Except for investments pooled in a common investment fund in accordance with the provisions of paragraph (n)(6)(vi) of this section, the investments of each account will not be commingled with any other property.

(B) Assets of accounts requiring safekeeping will be deposited in an adequate vault. A permanent record will be kept of assets deposited in or withdrawn from the vault.

(vi) *Common investment funds.* The assets of an account may be pooled in a common investment fund (as defined in paragraph (n)(6)(viii)(C) of this section) if the applicant is authorized under applicable law to administer a common investment fund and if pooling the assets in a common investment fund is not in contravention of the plan documents or applicable law. The common investment fund must be administered as follows:

(A) Each common investment fund must be established and maintained in accordance with a written agreement, containing appropriate provisions as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the applicant with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the funds; the auditing of accounts of the applicant with respect to the fund; the basis and method of valuing assets held by the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances may not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. A copy of the agreement must be available at the principal office of the applicant for inspection during all business hours, and upon request a copy of the agreement must be furnished to the employer, the plan administrator, any participant or beneficiary of an account, or the individual for whose benefit the account is established or that individual's beneficiary.

(B) All participations in the common investment fund must be on the basis of a proportionate interest in all of the investments.

(C) Not less frequently than once during each period of 3 months the applicant must determine the value of the assets in the fund as of the date set for the valuation of assets. No participation may be admitted to or withdrawn from the fund except (*1*) on the basis of such valuation and (*2*) as of such valuation date. No participation may be admitted to or withdrawn from the fund unless a written request for or notice of intention of taking such action has been entered on or before the valuation date in the fiduciary records of the applicant. No request or notice may be canceled or countermanded after the valuation date.

(D) (*1*) The applicant must at least once during each period of 12 months cause an adequate audit to be made of the common investment fund by a qualified public accountant.

(*2*) The applicant must at least once during each period of 12 months prepare a financial report of the fund which, based upon the above audit, must contain a list of investments in the fund showing the cost and current value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss; any other investment changes; income and disbursements; and an appropriate notation as to any investments in default.

(*3*) The applicant must transmit and certify the accuracy of the financial report to the administrator of each plan participating in the common investment

73 583

und within 120 days after the end of the plan year.

(E) When participations are withdrawn from a common investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind: *Provided*, That all distributions as of any one valuation date must be made on the same basis.

(F) If for any reason an investment is withdrawn in kind from a common investment fund for the benefit of all participants in the fund at the time of such withdrawal and such investment is not distributed ratably in kind, it must be segregated and administered or realized upon for the benefit ratably of all participants in the common investment fund at the time of withdrawal.

(vii) *Books and records.* (A) The applicant must keep its fiduciary records separate and distinct from other records. All fiduciary records must be so kept and retained for as long as the contents thereof may become material in the administration of any internal revenue law. The fiduciary records must contain full information relative to each account.

(B) The applicant must keep an adequate record of all pending litigation to which it is a party in connection with the exercise of fiduciary powers.

(viii) *Definitions.* For purposes of this subparagraph, subdivision (n)(3)(v), and subparagraph (n)(8) of this section—

(A) The term "account" or "fiduciary account" means a trust described in section 401(a) (including a custodial account described in section 401(f)), a custodial account described in section 403(b)(7), or an individual retirement account described in section 408(a) (including a custodial account described in section 408(h)).

(B) The term "plan administrator" means an administrator as defined in § 1.414(g)–1.

(C) The term "common investment fund" means a trust that satisfies the following requirements:

(*1*) The trust consists of all or part of the assets of several accounts that have been established with the applicant, and

(*2*) The trust is described in section 401(a) and is exempt from tax under section 501(a), or is a trust that is created for the purpose of providing a satisfactory diversification of investments or a reduction of administrative expenses for the participating accounts and that satisfies the requirements of section 408(c).

(D) The term "fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into the possession of the applicant and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the applicant.

(E) The term "qualified public accountant" means a qualified public accountant, as defined in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1023(a)(3)(D), who is independent of the applicant.

(F) The term "net worth" means the amount of the applicant's assets less the amount of its liabilities, as determined in accordance with generally accepted accounting principles.

(*7*) *Special rules*—(i) *Passive trustee.* (A) An applicant that undertakes to act only as a passive trustee may be relieved of one or more of the requirements of this paragraph upon clear and convincing proof that such requirements are not germane, under all the facts and circumstances, to the manner in which the applicant will administer any trust. A trustee is a passive trustee only if under the written trust instrument the trustee has no discretion to direct the investment of the trust funds or any other aspect of the business administration of the trust, but is merely authorized to acquire and hold particular investments specified by the trust instrument. Thus, for example, in the case of an applicant that undertakes merely to acquire and hold the stock of regulated investment companies, the requirements of paragraph (n)(6)(i)(A)(*3*), (i)(D), and (vi) of this section shall not apply and no negative inference shall be drawn from the applicant's failure to demonstrate its experience of competence with respect to the activities described in paragraph (n)(5)(ii) (E) to (H) of this section.

(B) The notice of approval issued to an applicant that is approved by reason of this subdivision shall state that the applicant is authorized to act only as a passive trustee.

(ii) *Federal or State regulation.* Evidence that an applicant is subject to Federal or State regulation with respect to one or more relevant factors shall be given weight in proportion to the extent that such regulatory standards are consonant with the requirements of section 401. Such evidence may be submitted in addition to, or in lieu of, the specific proofs required by this paragraph.

(iii) *Savings account.* (A) An applicant will be approved to act as trustee under this subdivision if the following requirements are satisfied:

(*1*) The applicant is a credit union, industrial loan company, or other financial institution designated by the Commissioner;

(*2*) The investment of the trust assets will be solely in deposits in the applicant;

(*3*) Deposits in the applicant are insured (up to the dollar limit prescribed by applicable law) by an agency or instrumentality of the United States, or by an organization established under a special statute the business of which is limited to insuring deposits in financial institutions and providing related services.

(B) Any applicant that satisfies the requirements of this subdivision is hereby approved, and (notwithstanding subparagraph (2) of this paragraph) is not required to submit a written application. This approval takes effect on the first day after December 22, 1976, on which the applicant satisfies the requirements of this subdivision, and continues in effect for so long as the applicant continues to satisfy those requirements.

(C) If deposits are insured, but not in the manner provided in paragraph (n)(7)(iii)(A)(*3*) of this section, the applicant must submit an application. The application, notwithstanding subparagraph (2) of this paragraph, will be limited to a complete description of the insurance of applicant's deposits. The applicant will be approved if the Commissioner approves of the applicant's insurance.

(iv) *Notification of Commissioner.* The applicant must notify the Commissioner in writing of any change that affects the continuing accuracy of any representation made in the application required by this paragraph, whether the change occurs before or after the applicant receives a notice of approval. The notification must be addressed to the Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224.

(v) *Substitution of trustee.* No applicant will be approved unless the applicant undertakes to act as trustee only under trust instruments which contain a provision to the effect that the grantor is to substitute another trustee upon notification by the Commissioner that such substitution is required because the applicant has failed to comply with the requirements of this paragraph or is not keeping such records, or making such returns, or rendering such statements as are required by forms or regulations.

(*8*) *Procedure and administration*—(i) *Notice of approval.* If the applicant is approved, a written notice of approval will be issued to the applicant. The notice of approval will state the day on which it becomes effective, and (except as otherwise provided therein) will

remain effective until revoked. This paragraph does not authorize the applicant to accept any fiduciary account before such notice of approval becomes effective.

(ii) *Notice of disapproval.* If the applicant is not approved, a written notice will be furnished to the applicant containing a statement of the reasons why the applicant has not been approved.

(iii) *Copy to be furnished.* The applicant must not accept a fiduciary account until after the plan administrator or the person for whose benefit the account is to be established is furnished with a copy of the written notice of approval issued to the applicant. This provision is effective six months after April 20, 1979 for new accounts accepted thereafter. For accounts accepted before that date, the administrator must be notified before the later of the effective date of this provision or six months after acceptance of the account.

(iv) *Grounds for revocation.* The notice of approval issued to an applicant will be revoked if the Commissioner determines that the applicant is unwilling or unable to administer fiduciary accounts in a manner consistent with the requirements of this paragraph. Generally, the notice will not be revoked unless the Commissioner determines that the applicant has knowingly, willfully, or repeatedly failed to administer fiduciary accounts in a manner consistent with the requirements of this paragraph, or has administered a fiduciary account in a grossly negligent manner.

(v) *Procedures for revocation.* The notice of approval issued to an applicant may be revoked in accordance with the following procedures:

(A) If the Commissioner proposes to revoke the notice of approval issued to an applicant, the Commissioner will advise the applicant in writing of the proposed revocation and of the reasons therefor.

(B) Within 60 days after the receipt of such written advice, the applicant may protest the proposed revocation by submitting a written statement of facts, law, and arguments opposing such revocation to Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224. In addition, the applicant may request a conference in the National Office.

(C) If the applicant consents to the proposed revocation, either before or after a National Office conference, or if the applicant fails to file a timely protest, the Commissioner will revoke the notice of approval that was issued to the applicant.

(D) If, after considering the applicant's protest and any information developed in conference, the Commissioner determines that the applicant is unwilling or unable to administer fiduciary accounts in a manner consistent with the requirements of this paragraph, the Commissioner will revoke the notice of approval that was issued to the applicant and will furnish the applicant with a written statement of findings on which the revocation is based.

(E) If at any time the Commissioner determines that immediate action is necessary to protect the interest of the Internal Revenue Service or of any fiduciary account, the notice of approval issued to the applicant will be suspended at once, pending a final decision to be based on the applicant's protest and any information developed in conference.

(9) *Supersession.* This paragraph supersedes § 11.401(d)(1)—1 of the Temporary Income Tax Regulations Under the Employee Retirement Income Security Act of 1974.

(Secs. 401(d)(1), 7805, Internal Revenue Code of 1954 (88 Stat. 939 and 68A Stat. 917); (26 U.S.C. 401(d)(1) and 7805))

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: March 22, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[T.D. 7611]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

Deductibility by an Estate of Certain Attorneys' Fees Incurred by Beneficiaries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations which would clarify the Estate Tax Regulations relating to the deductibility by an estate of attorneys' fees incurred by beneficiaries. The regulations will affect certain taxpayers filing estate tax returns.

DATE: The regulations are effective April 20, 1979.

FOR FURTHER INFORMATION CONTACT: Robert B. Coplan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978, the Federal Register published a proposed amendment to the Estate Tax Regulations (26 CFR Part 20) under section 2053 of the Internal Revenue Code of 1954 (43 FR 60965). The amendment was proposed to clarify paragraphs (a) and (c)(3) of § 20.2053-3 of the regulations. A public hearing was not held.

In General

The amendment revises paragraph (c)(3) of § 20.2053-3, which prohibits, in all cases, the deduction of attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests.

The revision of paragraph (c)(3) of § 20.2053-3 reflects the decision of the Treasury Department to test the deductibility of attorney's fees incurred by beneficiaries under the general principles of § 20.2053-3(a). That section provides that expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees or devisees, may not be deducted as expenses of administration. Thus, like any other expense, an attorney's fee incurred by a beneficiary that is not essential to the proper settlement of the estate will not be deductible, even if it is approved by a probate court as an expense payable or reimbursable by the estate. In response to a comment the proposed regulations have been revised to explicitly state that approval of attorneys' fees by a probate court as an expense payable or reimbursable by the estate will not in itself qualify such fees as an administration expense under section 2053.

The effectiveness of these regulations after issuance will be evaluated on the basis of comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Drafting Information

The prinicpal author of these regulations is Robert B. Coplan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing