

## HIGHLIGHTS OF THIS ISSUE

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

### INCOME TAX

#### **Rev. Rul. 2015-4, page 743.**

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2015.

#### **Notice 2015-12, page 700.**

Solicits applications for allocations of the remaining available amount of the volume cap for new clean renewable energy bonds ("New CREBs") under §54C(a) of the Internal Revenue Code, and provides guidance on the application requirements and forms for requests for New CREBs volume cap allocations, and the method that the IRS will use to allocate the remaining volume cap.

#### **Notice 2015-13, page 722.**

Notice 2015-13 provides guidance on § 119 of the Tax Increase Prevention Act of 2014, American Taxpayer Relief Act of 2012, Pub. L. No. 113-295, enacted December 19, 2014. The Act amends § 51 of the Internal Revenue Code to extend the Work Opportunity Tax Credit through Dec. 31, 2014. The notice also provides employers additional time beyond the 28-day deadline in § 51(d)(13) for submitting Form 8850, Pre-screening Notice and Certification Request for the Work Opportunity Credit, to Designated Local Agencies.

#### **Notice 2015-14, page 722.**

Round 2 of Section 48A Phase III Program under the Qualifying Advanced Coal Project Program. This notice updates and amplifies the procedures for the allocation of credits under the qualifying advanced coal project program of § 48A of the Internal Revenue Code by announcing the immediate beginning of the 2015 reallocation round ("Round 2") of the § 48A Phase III program.

### EMPLOYEE PLANS

#### **REG-102648-15, page 745.**

This is a request for public comments with regard to future guidance required to implement provisions of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235 (MPRA). MPRA generally permits a sponsor of a multiemployer defined benefit plan that is in critical and declining status to suspend certain benefits following the provision of specified notice, consideration of public comments, approval of an application for suspension, and satisfaction of other specified conditions (including a participant vote).

### EMPLOYMENT TAX

#### **Notice 2015-13, page 722.**

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### EXCISE TAX

#### **Notice 2015-16, page 732.**

This notice provides guidance and requests comments concerning potential approaches to be incorporated into future proposed regulations regarding the excise tax on high cost employer-sponsored health coverage under on section 4980I, applicable to taxable years beginning after December 31, 2017.

Finding Lists begin on page ii.



# 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. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 54A.—Credit to Holders of Qualified Tax Credit Bonds

Guidance on the application requirements and forms for requests for New CREBs volume cap allocations, and the method that the IRS will use to allocate the remaining volume cap is set forth. See Notice 2015–12, page 700.

## Section 6431.—Credit for Qualified Bonds Allowed to Issuer

Guidance on the application requirements and forms for requests for New CREBs volume cap allocations, and the method that the IRS will use to allocate the remaining volume cap is set forth. See Notice 2015–12, page 700.

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 280.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

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

The adjusted applicable federal long-term rate is set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

## Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2015. See Rev. Rul. 2015–4, page 743.

# Part III. Administrative, Procedural, and Miscellaneous

## New Clean Renewable Energy Bonds

### Notice 2015–12

#### SECTION 1. PURPOSE

This Notice solicits applications for allocations of the remaining available amount of the national limitation (volume cap) for new clean renewable energy bonds (“New CREBs”) under § 54C(a) of the Internal Revenue Code (“Code”). The available amounts include forfeited amounts previously allocated under Notice 2009–33, 2009–1 C.B. 865 (April 27, 2009), and Announcement 2010–54, 2010–2 C.B. 386 (September 20, 2010). This Notice also provides related guidance on the following: (1) application requirements and forms for requests for volume cap allocations; and (2) the method that the Department of the Treasury and the Internal Revenue Service (IRS) will use to allocate the remaining volume cap.

#### SECTION 2. BACKGROUND

Section 107(a) of the Energy Improvement and Extension Act of 2008, Division B of Pub. L. No. 110–343, 122 Stat. 3765 (2008) (“2008 Act”), added § 54C to the Code to provide for a volume cap of \$800 million for New CREBs to finance qualified renewable energy facilities. Section 1111 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) (“2009 Act”), amended § 54C to increase the volume cap for New CREBs by \$1.6 billion to a total of \$2.4 billion.

Section 54C(a) provides that a “new clean renewable energy bond” or New CREB means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by qualified owners, including governmental bodies, public power providers, or cooperative electric companies, for one or more qualified renewable energy facilities; (2) the bond is issued by a qualified issuer; and (3) the issuer designates such bond for purposes of § 54C.

Section 54C(c)(2) provides that the Secretary shall allocate not more than one

third of the volume cap to qualified projects to be owned by public power providers, governmental bodies, and cooperative electric companies, respectively. Section 54C(c)(3)(A) provides that with respect to public power providers, after the Secretary identifies the qualified projects of public power providers that are appropriate for receiving an allocation of the New CREBs volume cap, the Secretary shall, to the maximum extent practicable, make allocations among such projects in such manner that the amount allocated to each such project bears the same ratio to the cost of such project as the portion of the New CREBs volume cap that may be allocated to public power providers bears to the cost of all such projects. Section 54C(c)(3)(B) provides that with respect to governmental bodies and cooperative electric companies, the Secretary shall make allocations of the respective New CREBs volume cap among qualified projects of governmental bodies and cooperative electric companies in such manner as the Secretary determines appropriate.

In Notice 2009–33, the Treasury Department and the IRS solicited applications for allocations of New CREBs volume cap and set forth administrative procedures for the initial allocations of the \$2.4 billion volume cap. In October 2009 and January 2010, the IRS allocated the entire volume cap designated for projects to be owned by governmental bodies and public power providers. At that time, \$609,204,555 of the available \$800 million in volume cap designated for projects to be owned by cooperative electric companies was allocated. In Announcement 2010–54, the IRS solicited applications for the remaining \$190,795,445 in volume cap available for allocation to qualified projects to be owned by cooperative electric companies, referring to the application and allocation process and the guidance in Notice 2009–33. In March 2011, the IRS awarded the remaining volume cap under that Announcement.

Section 9(j) of Notice 2009–33 provides that allocations under that Notice must be used or relinquished no later than three years after the date of the letter issuing the allocation. Similarly, unused allocations made under Announcement

2010–54 revert back to the IRS no later than three years after the date of the letter issuing the allocation. Thus, any unused allocations under Notice 2009–33 and Announcement 2010–54 expired and reverted back to the IRS by no later than March 4, 2014.

Section 9(j) of Notice 2009–33 provides that the IRS plans to announce a process to reallocate any unallocated volume cap and any allocated volume cap that has been relinquished and has reverted to the IRS. Additionally, the Notice provides that, consistent with allocation requirements under § 54C(c)(2), any relinquished or reverted volume cap will be reallocated only for a qualified project owned or to be owned by the same category of qualified owner as the owner that originally received the relinquished or reverted allocation.

Public power providers have reported to the IRS the issuance of New CREBs in the amount of \$283,434,308.65; governmental bodies have reported to the IRS the issuance of New CREBs in the amount of \$202,865,036.40; and cooperative electric companies have reported to the IRS the issuance of New CREBs in the amount of \$519,221,531. Based on these reports, the passage of the deadlines described above for issuing New CREBs, and other information provided to the IRS, the IRS has identified \$516,565,691.35 of volume cap available for reallocation for projects to be owned by public power providers, \$597,134,963.60 of volume cap available for reallocation for projects to be owned by governmental bodies, and \$280,778,469 of volume cap available for reallocation for projects to be owned by cooperative electric companies.

#### SECTION 3. SCOPE AND GENERAL APPLICATION REQUIREMENTS

.01 *Scope.* This Notice solicits applications for volume cap allocations for projects to be owned by governmental bodies, cooperative electric companies, and public power providers. Allocations that the IRS makes under this Notice for projects to be owned by governmental bodies and cooperative electric companies and that the issuer forfeits or that otherwise revert



to the IRS will be available for reallocation under this Notice. Allocations under this Notice for projects to be owned by public power providers and that the issuer forfeits or that otherwise revert to the IRS are expected to be reallocated as part of an allocation process to be announced by the IRS in future administrative guidance that generally follows the process set forth in this Notice, subject to such changes or modifications that are announced by the IRS in such future administrative guidance. For a similar supplemental announcement regarding reallocations of volume cap, see Announcement 2010–54, 2010–2 C.B. 386 (September 20, 2010).

*.02 Application Requirements.* Each application for an allocation of the New CREBs volume cap under § 54C submitted pursuant to this Notice (Application) must be prepared and submitted in accordance with this section 3.02. By submitting an Application, the applicant agrees to comply with the requirements of this Notice. For an Application to comply with this Notice, among other things, the Application must be prepared in substantially the same format as the form (including exhibits thereto) attached to this Notice as Appendix A. This Notice, including Appendix A, may be found electronically under the link “TEB Published Guidance” on the IRS web site at <http://www.irs.gov/Tax-Exempt-Bonds>.

a. *Qualified issuer.* The Application must be submitted by a qualified issuer (Applicant) within the meaning of § 54C(d)(6). For this purpose, a “qualified issuer” includes a “public power provider,” a “cooperative electric company,” a “governmental body,” a “clean renewable energy bond lender,” and a “not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act.” For further information on these definitions, see Section 2 of the Application included in Appendix A to this Notice. The Application must identify the Applicant, including the Applicant’s Federal tax identification number, and include a certification that the Applicant is a qualified issuer within the meaning of § 54C(d)(6).

b. *Signatures.* The Application must be signed and dated by an authorized official of the Applicant. For purposes of the Application, the term “authorized official of

the Applicant” means an officer, board member, employee, or other official of the Applicant who is duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt of the Applicant (for example, a mayor, chairperson of a city council, chairperson of a board of directors, county or city administrator or manager, chief executive officer, or chief financial officer) similar to the kind of duly authorized official who would be authorized to execute documents in connection with an issuer’s declaration of official intent to reimburse expenditures from the proceeds of a borrowing under § 1.150–2(e) of the Income Tax Regulations.

c. *Contact person.* The Application must designate one or more persons with knowledge of the project that the Applicant duly authorizes to discuss with the IRS any information relating to the Application. The designation must include the designee’s name, title, telephone number, fax number, and mailing address. If a designee is not an official or officer of the Applicant, the Application must include an executed Form 8821 (Taxpayer Information Authorization) or Form 2848 (Power of Attorney and Declaration of Representative) authorizing the disclosure of taxpayer information specifically relating to the Application to the designee.

d. *Address for submissions.* The Application must be submitted by hard copy accompanied by a copy of the Application in PDF format on a CD and sent (by U.S. Postal Service or designated private delivery services) to the Internal Revenue Service (IRS), SE:T:GE:TEB:CPM, Attention: Kenneth Stengel, 1122 Town & Country Commons, Chesterfield, MO 63017.

e. *Project description.* The Application must contain the information required by this section 3.02.e. Applicants receiving an allocation of volume cap may use proceeds of the New CREBS (proposed bonds) only to finance the costs of the project (as defined in section 3.02.e.(i) of this Notice) described in the Application and related eligible expenditures (as permitted under §§ 54A and 54C) with certain permitted deviations (as provided in section 7 of this Notice).

(i) *Qualified project.* The Application must describe in reasonable detail the qualified renewable energy facility or fa-

cilities constituting the project to be financed with the proceeds of the New CREBs. The Application must include a certification that each facility in the project will constitute a “qualified renewable energy facility” under § 54C(d)(1). The Application must indicate the expected date that the acquisition or construction of each facility in the project will commence and the expected date that each facility in the project will be placed in service. Property owned by a qualified owner that is functionally related and subordinate (as determined under § 1.103–8(a)(3)) to any qualified renewable energy facility described in § 54C(d)(1) may be financed as part of the facility.

(ii) *Certification of engineer.* The Application must contain a certification by an independent, licensed engineer that each facility in the project will meet the requirements for a “qualified facility” under the applicable provisions of § 45(d) (but without regard to § 45(d)(8) and (10) and without regard to any placed in service date or associated construction commencement date), and that each facility, upon being placed in service, is reasonably expected to produce electricity.

(iii) *Qualified owner—(A) In general.* Each Application must identify the expected owner of the project and include a certification with respect to the project stating whether the entity that will own the project is a public power provider, governmental body, or cooperative electric company. For purposes of this Notice, the term “qualified owner” means a public power provider, a governmental body, or a cooperative electric company within the meaning of § 54C(d)(2), (3), and (4), respectively. For purposes of this Notice, a “qualified owner” includes any entities that are members of the same controlled group (within the meaning of § 1.150–1(e)) as the qualified owner. Joint ownership of qualified renewable energy facilities financed with New CREBs will be recognized in a manner similar to the recognition of joint ownership of output projects under the private activity bond restrictions on tax-exempt bonds under § 141. Applications for volume cap for projects to be owned by governmental bodies or cooperative electric companies must include a certification that the expected qualified owner of the project is

not a public power provider under § 54C(d)(2).

(B) *Entities eligible under multiple owner categories.* Except as otherwise provided in section 3.02.e.(iii)(C) of this Notice, if the expected qualified owner of the project is described in more than one category of qualified owners under § 54C(d)(2), (3) or (4), the Application must identify only one such category for which it is seeking volume cap for the project.

(C) *Public power providers ineligible for volume cap designated for governmental bodies or cooperative electric companies.* An entity that is a “public power provider” under § 54C(d)(2) is ineligible to receive volume cap designated for projects to be owned by governmental bodies or cooperative electric companies.

(iv) *Project cost.* The Application must describe the reasonably expected costs of the project. The Applicant must certify that none of the reasonably expected costs of the project to be financed with New CREBs issued pursuant to the allocation were included in a previous application or, if the costs were included in a previous application, that (1) the IRS has been notified that such application has been withdrawn, or (2) that any previous allocation for those costs reverted to the IRS.

(v) *Location of project.* The Application must identify the location of the project.

(vi) *Approvals.* The Application must state that all required Federal, State, and local approvals (regulatory and otherwise) for the project, the proposed bonds, and any other required financing for the project have been obtained or, if any approvals have not yet been obtained, the Application must include a certification that the Applicant reasonably expects to receive all required approvals in time to permit issuance of the proposed bonds before the expiration of the volume cap allocation set forth in section 5.e. of this Notice. The Application must identify any required approvals that have not been obtained and must describe the Applicant’s plan and expected time frame for obtaining such approvals.

f. *Plan of financing.* The Application must contain a reasonably detailed description of the plan of financing for the project, including (1) the amount of New

CREBs expected to be issued together with a description of how proceeds of such bonds will be allocated to the project, (2) any other reasonably expected sources of financing for the project together with a description of how such financing will be allocated to the project, and (3) documentation from an independent third party who is knowledgeable about the marketability of municipal bonds evidencing that the proposed bonds are reasonably expected to be marketed prior to the expiration of the volume cap allocation set forth in section 5.e. of this Notice. Documentation that may be used to meet requirement (3) under this section 3.02.f. includes the following: a bond purchase commitment letter from an investor; a credit enhancement commitment letter from a financial institution; a letter from an underwriter or financial advisor to the effect that the sale of the proposed bonds is likely to be completed in time to permit issuance of the proposed bonds before the expiration of the volume cap allocation for the proposed bonds; documentation similar to the foregoing documentation; or a combination of the foregoing documentation. If the owner expects to use the proceeds of New CREBs to reimburse amounts that the owner paid with respect to a qualified project, the Application must include a certification that the requirements under § 54A(d)(2)(D) will be met before any such reimbursement is made.

g. *Compliance with Federal tax laws.* The Application must include a certification that the Applicant reasonably expects that the proposed bonds will meet the applicable requirements of §§ 54A and 54C and that the Applicant has engaged bond counsel to render an opinion to the effect that the proposed bonds will meet those requirements.

h. *Dollar amount of allocation requested.* The Application must specify the dollar amount of the volume cap requested, not to exceed the amount of the proposed bonds.

i. *Demonstration of readiness to issue.* The Application must include a certification that the Applicant reasonably expects to issue the proposed bonds prior to the expiration of the volume cap allocation described in section 5.e. of this Notice.

j. *Certain forfeitures of volume cap.* The IRS may take into account whether

volume cap previously allocated to the Applicant under this Notice was forfeited or expired. The Application must include either (1) a certification that no previous forfeitures or expirations of volume cap occurred with respect to volume cap allocated under this Notice or (2) identify any allocation of volume cap previously received by the Applicant under this Notice and, if such allocation, or any part thereof, was forfeited or expired, provide an explanation of the reasons for such forfeiture or expiration.

k. *Required declaration in application.* The Application and all subsequent submissions made in connection with the Application must include the following declaration signed and dated by an authorized official of the Applicant (described in section 3.02.b. of this Notice):

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this Application and the project(s) described herein, and (ii) I have examined this Application and the supporting documents, including any supplemental submission, and to the best of my knowledge and belief, all of the facts contained in this Application, any supplemental submission, and the supporting documents are true, correct, and complete.

#### **SECTION 4. SUBMISSION DATES AND DUE DATES; INCOMPLETE APPLICATIONS**

a. *Submission date and incomplete Applications.* Each Application will be treated as submitted on the later of the day the IRS receives the Application, or if the IRS requests any additional information or supporting documents, the day the additional information and supporting documents are received by the IRS (submission date). To be treated as submitted, the Application, additional information, and supporting documents must satisfy all of

the applicable requirements of this Notice, including without limitation, those described in section 3 of this Notice. The IRS may request additional information to support any of the requirements of this Notice, including additional information and certifications to demonstrate that the proposed project will qualify for New CREBs financing under § 54C and to demonstrate the Applicant's readiness to issue the proposed bonds. Except as otherwise stated in this Notice, an Application will not satisfy the requirements of this Notice until the IRS receives information satisfying all of the applicable requirements of this Notice, including any requested additional information.

b. *Due date for Applications for volume cap designated for public power providers.* Applicants for projects to be owned by public power providers must submit complete Applications for an allocation of volume cap under this Notice on or before June 3, 2015. Applications with a submission date after this due date will not be processed.

c. *Timing for Applications for volume cap designated for governmental bodies and cooperative electric companies.* Applicants for projects to be owned by governmental bodies and cooperative electric companies may submit Applications for an allocation of volume cap under this Notice beginning March 5, 2015. Applications submitted before that date will be treated as being submitted on that date.

## **SECTION 5. GENERAL ALLOCATION PROCESS AND METHODOLOGY**

a. *Allocation methods.* New CREBs volume cap under § 54C will be allocated in accordance with this section 5.

(i) *Allocation methodology for public power providers.* Up to one-third of the total volume cap will be allocated to qualified projects owned by public power providers using the pro-rata allocation method. Except as otherwise provided in this section 5, the IRS will allocate an amount of New CREBs volume cap for projects to be owned by public power providers in an amount equal to the amount requested in the Application. If the aggregate amount of volume cap requested for all qualified projects to be owned by public power providers exceeds

the actual amount of volume cap available for allocation to such projects, the amount of volume cap allocated to a project for a public power provider will bear the same proportion to the available volume cap allocated to public power providers as the amount of volume cap requested for that project bears to the total amount of volume cap requested for all projects to be owned by public power providers.

(ii) *Allocation methodology for governmental bodies and cooperative electric companies.* Up to one-third of the total volume cap will be allocated to qualified projects owned by governmental bodies and up to an additional one-third of the total volume cap will be allocated to qualified projects owned by cooperative electric companies. Except as otherwise provided in this section 5, the IRS will allocate an amount of New CREBs volume cap for projects to be owned by governmental bodies and cooperative electric companies in an amount equal to the amount requested in the Application on a first-come, first-served basis by order of submission date (as defined in section 4.a. of this Notice).

b. *Limit on allocation to any one Applicant for projects to be owned by governmental bodies or cooperative electric companies.* No qualified owner (including any entities that are members of the same controlled group within the meaning of § 1.150-1(e)) that is a governmental body or cooperative electric company will receive an aggregate allocation of volume cap under this Notice to exceed the published Volume Cap Limit (taking into account all allocations under this Notice that have not reverted to the IRS) in effect for the period that includes the submission date. The published Volume Cap Limit for any period is the greater of: (1) 20 percent of the amount of available volume cap for projects to be owned by governmental bodies or cooperative electric companies, as applicable, as of the first day of such period (determined based on information available to the IRS, including allocation data and reports of bonds issued); or (2) \$40 million. The IRS will update the Volume Cap Limit and the available amounts approximately every sixty days until the applicable volume cap is fully allocated. The IRS plans to publish these updates on the IRS website at <http://www.irs.gov/>

*Tax-Exempt-Bonds* or at such other location as the IRS may provide in future administrative guidance. An Application will be treated as complete only if the amount of volume cap requested is within the applicable Volume Cap Limit and the Application otherwise meets the requirements of this Notice.

c. *Insufficient available volume cap.* The rules set forth in this section 5.c. apply if an Applicant requests volume cap in an amount that is within the published Volume Cap Limit under section 5.b. above but that exceeds the amount of volume cap that is then available for allocation on the submission date (based on application activity since the most recent publication of the Volume Cap Limit and information then available to the IRS).

(i) *Governmental bodies and cooperative electric companies.* If an Application for volume cap for a project to be owned by a governmental body or cooperative electric company requests more volume cap than is available on the Application submission date for such category of qualified owner, then the Applicant will have the opportunity to receive an allocation of volume cap up to the available volume cap. Further, if two or more Applications for the same category of qualified owner have the same submission date and allocation of the requested amounts would cause the available volume cap to be exceeded, then each such Applicant will have the opportunity to receive a portion of the available volume cap in the proportion that each amount requested has to the sum of the amounts requested. In any circumstance in which available volume cap is in an amount less than the amount requested, the IRS will notify the Applicant and the Applicant will have 30 days from the date the IRS contacts the Applicant to notify the IRS (at the address specified in section 3.02.d. of this Notice) of its decision to either (1) immediately accept the allocation in the lesser amount, or (2) delay the allocation for up to 90 days from the submission date to determine if additional volume cap might become available. If the Applicant decides to accept an allocation in a lesser amount, the Applicant will notify the IRS by submitting a notice to the IRS in substantially the same form as attached to this Notice as Appendix C. If the Applicant decides to delay



receiving its allocation, the Applicant will notify the IRS by submitting notice in substantially the same form as attached to this Notice as Appendix D. If the Applicant decides to delay receiving its allocation and the full amount requested does not become available before the end of the period designated by the Applicant, after such period the IRS will notify the Applicant of the amount it can allocate to the Applicant. The Applicant will have 30 days from the date the IRS notifies the Applicant of such available amount to accept the lesser amount by submitting a notice to the IRS in substantially the same form as attached to this Notice as Appendix C. If the Applicant decides not to accept the lesser amount, the Application will be treated as withdrawn.

(ii) *Public power providers.* If the aggregate amount of volume cap requested for all qualified projects to be owned by public power providers exceeds the actual amount of volume cap available for allocation to such projects, each Applicant will be notified by the IRS of the amount of the pro-rata allocation it would receive pursuant to section 5.a. of this Notice and given 30 days to notify the IRS (at the address specified in section 3.02.d. of this Notice) whether it will accept or decline the reduced amount. If the Applicant decides not to accept the lesser amount, the Application will be treated as withdrawn. See section 5.f. of this Notice for information on effect of withdrawals.

(iii) *Supplemental certifications and information for partial allocations.* If the Applicant accepts an amount that is less than the amount requested in the Application, the Applicant must provide along with its decision (1) a certification in substantially the same format as the form attached to this Notice as Appendix C (A) confirming its decision to accept the allocation in the lesser amount, and (B) either (I) certifying, based on the lesser amount accepted, that the information included in the Application pursuant to section 3.02.e. of this Notice is accurate (subject to provisions of section 7.a. of this Notice relating to insubstantial deviations), or (II) submitting revised information required under section 3.02.e. of this Notice based on the lesser amount accepted and certifying that such revised information meets the requirements of this Notice, and (2) a revised plan of

financing as described in section 3.02.f. of this Notice based on the lesser amount. The IRS may require the Applicant to supplement the Application to demonstrate that the requirements of this Notice are met based on the reduced allocation.

(iv) *Effect of supplemental certifications on submission date.* For purposes of section 4 of this Notice, the submission date for an Application for which insufficient volume cap exists will not change if the Applicant submits within 30 days of the notification from the IRS any supplemental information required under this section 5.c.

(v) *Failure to notify IRS of decision.* If the Applicant does not notify the IRS of its decision within the applicable time frames specified in sections 5.c.(i) and (ii) of this Notice, the Application will be treated as withdrawn.

d. *Confirmation of allocation.* The IRS will send Applicants letters confirming allocations of volume cap (allocation letter). An allocation of New CREB volume cap by the IRS under this Notice is not a determination that any bonds issued pursuant to the allocation are new clean renewable energy bonds under § 54C. The Service may upon examination determine that the applicable requirements of the Code, including §§ 54A, 54C, or 6431, and any applicable administrative or regulatory guidance, such as this Notice, are not met with respect to any bond issued pursuant to the volume cap allocation.

e. *Expiration of allocation.* Applicants have 180 days from the date of the allocation letter to issue the proposed bonds. Allocations with respect to any portion of the proposed bonds not issued during that time will be treated as forfeited and revert to the IRS and will be available for reallocation. The IRS does not expect to grant extensions to this expiration date.

f. *Effect of forfeitures and withdrawals.* A governmental body or a cooperative electric company that has withdrawn or is deemed to have withdrawn its Application, or that received an allocation that expired or was forfeited, may file a new Application for volume cap that meets all the requirements of this Notice, including the information described in section 3.02.j. of this Notice, and that Application will be subject to the submission provisions of section 4 and the applicable limits set forth in section 5 of this Notice in

effect on the submission date of the new Application. A public power provider that has withdrawn or is deemed to have withdrawn its Application, or that received an allocation that expired or was forfeited, may not reapply for an allocation pursuant to this Notice. See section 3.01 of this Notice for information on reallocations.

g. *Notice of voluntary forfeiture.* If an Applicant determines that it does not intend to use any part of its allocation of volume cap (including in circumstances in which the Applicant determines to finance the project with financing other than the proposed bonds), it must notify the IRS in writing at the address set forth in section 3.02.d. of this Notice of its intention to forfeit such part of the allocation and, when the IRS receives this notice from the Applicant, the IRS will treat that allocated amount as forfeited and reverting to the IRS. The forfeited amount will be available for reallocation.

## **SECTION 6. CONSENT TO DISCLOSURE OF ALLOCATION**

To provide the public with information on how the volume cap has been allocated and to facilitate oversight of the New CREBs program, the IRS intends to publish on the IRS web site at <http://www.irs.gov/Tax-Exempt-Bonds> certain data regarding the results of the allocation process. The data will be most useful to the public if it identifies the specific allocations awarded. Pursuant to § 6103, consent is required for the IRS to disclose identifying information with respect to Applicants awarded an allocation. Therefore, the IRS seeks the Applicants' consent for the IRS to disclose the name of the issuer, the name of the qualified renewable energy facility owner (if other than the issuer), the type and location of the facility that is the subject of the Application, and the amount of volume cap allocation awarded to that Applicant. To provide valid consent, the consent must be in the form set forth in Appendix B. This consent to disclosure of an Applicant's information is optional; an Applicant is not required to sign the consent to receive an allocation. The IRS will not publish identifying information on Applications that are not awarded an allocation of volume cap or pending Applications, but may publish the aggregate amount of allocation requests.



## SECTION 7. DEVIATIONS FROM INFORMATION IN APPLICATION

a. *Insubstantial deviations*—(i) *In general*. An allocation of volume cap is valid for § 54C if the proposed bonds are issued and the proceeds of such bonds are allocated to expenditures in a manner that does not substantially deviate from the information submitted in the Application. For this purpose, whether a deviation from the information submitted in the Application constitutes an insubstantial deviation is determined based on all the facts and circumstances using criteria similar to those used under § 5f.103–2(f)(2) of the regulations, as amended, regarding insubstantial deviations in the information required for public approval of tax-exempt private activity bonds under § 147(f) of the Code. IRS approval is not required for insubstantial deviations, and the IRS will not provide advice or rule on whether a deviation is insubstantial.

(ii) *Notice of insubstantial deviation*—(1) *Deviations before the submission of Notice of Issuance*. If the insubstantial deviation occurs before the Applicant submits the Notice of Issuance described in section 8.b. of this Notice, the Notice of Issuance must include a description of the insubstantial deviation.

(2) *Deviations after the submission of the Notice of Issuance*. If the insubstantial deviation occurs after the Applicant submits the Notice of Issuance required under section 8.b. of this Notice, the Applicant must submit a supplement to the Notice of Issuance that describes the insubstantial deviation. The supplement should contain a copy of the Notice of Issuance as well as the details of the deviation and should be sent to the same address as the Notice of Issuance.

b. *Substantial deviations*—(i) *Substantial deviations before issuance*. Other than as provided in section 7.b.(ii) below, an allocation of volume cap under an Application is invalid for purposes of § 54C if there is a change relating to the issuance of the proposed bonds or the allocation of the proceeds of such bonds to expenditures that substantially deviates from the information submitted in the Application. In the event of such a change prior to the issuance of its proposed bonds, the Applicant may notify the IRS that it does not intend to use the original allocation of bond volume cap and

may submit a new Application under this Notice or future administrative guidance, as applicable, reflecting the modified information.

(ii) *Certain post-issuance deviations*. A substantial deviation that occurs after the proposed bonds are issued and prior to the allocation of proceeds of such bonds to expenditures under the general rule set forth in § 1.148–6(d)(1)(iii) will not invalidate the allocation of volume cap under the Application if, and only if, the substantial deviation does not change the category of qualified owner for the project and the Applicant submits a supplement to the Notice of Issuance (as defined in section 8.b. of this Notice) to the IRS. The supplement must (1) include a statement demonstrating that the Applicant, at the time of the issuance of the bonds, reasonably expected that the issuance of the proposed bonds and the allocation of the proceeds of such bonds to expenditures would not substantially deviate from the information provided in the Application; (2) describe in detail the substantial deviation and the surrounding circumstances by reference to the information submitted in the Application and the actual information subsequent to the bond issuance; and (3) include a certification that the Applicant has received an opinion from bond counsel to the effect that the change will not cause the bonds to fail to meet the requirements of §§ 54A and 54C (including any applicable regulatory and administrative guidance published under those Code sections). The Applicant must send this supplement to the address set forth in section 8.b. of this Notice within 90 days of the date that the Applicant reasonably expected that there would be a deviation and the supplement must be accompanied by a declaration, subject to the penalty of perjury, in substantially the same form as the declaration under section 3.02.k. of this Notice.

## SECTION 8. INFORMATION REPORTING

a. *Information reporting*. Section 54A(d)(3) requires issuers of New CREBs to submit information reporting returns to the IRS similar to those required to be submitted under § 149(e) for tax-exempt State or local governmental bonds. These information reporting returns are required to be submitted at the same time and in the same manner as those under § 149(e) on forms prescribed by the IRS. Subject to up-

dated IRS information reporting forms or procedures, an issuer of New CREBs should file Form 8038–TC. For this Notice, the term “issue” has the meaning used for tax-exempt bond purposes in § 1.150–1(c).

b. *Notice of issuance*. Not later than 15 days after the proposed bonds are issued, the Applicant shall send to the IRS a notice of issuance (Notice of Issuance) for the bonds, which shall include the following information: (1) the Applicant’s name and taxpayer identification number; (2) the issue price of the bonds issued; (3) the issue date of the bonds; and (4) a description of the project financed with the bonds. If the IRS has not received a Notice of Issuance within 15 days of the scheduled expiration of an allocation, the IRS may request that the Applicant submit the Notice of Issuance or confirm that the allocation was forfeited. If the Applicant fails to submit the Notice of Issuance within 15 days of this request or fails to confirm that the allocation was forfeited, the IRS, in its discretion, may treat the allocation as forfeited and as having reverted back to the IRS and available for reallocation. The Notice of Issuance or written confirmation that the allocation was forfeited should be sent to: Internal Revenue Service, SE:T:GE:TEB:CPM, Attention: Kenneth Stengel, 1122 Town & Country Commons, Chesterfield, MO 63017. See section 7.b. of this Notice for requirements when there are substantial deviations.

## SECTION 9. RELIANCE ON NOTICE AND INTERIM GUIDANCE

Taxpayers may rely on the interim guidance provided in this Notice, Notice 2009–33, and Notice 2010–35, 2010–19 I.R.B. 660 (May 10, 2010), and, to the extent not inconsistent with §§ 54A and 54C, taxpayers may also rely on Notice 2006–7, 2006–1 C.B. 559 (March 6, 2006), and Notice 2007–26, 2007–14 I.R.B. 870 (April 2, 2007).

## SECTION 10. EFFECT ON OTHER DOCUMENTS

To the extent not amended by the 2008 Act and the 2009 Act, references to § 54 of the Code in Notice 2006–7 and Notice 2007–26 apply as if the references were to corresponding provisions of §§ 54A and 54C.

For the application requirements for Tribal Economic Development Bonds, see Notice 2012-48, 2012-31 I.R.B. 102 (July 30, 2012). Differences in the application requirements between this Notice and Notice 2012-48 are generally based upon the differences between the Tribal Economic Development Bond and the New Clean Renewable Energy Bond programs.

### SECTION 11. EFFECTIVE DATE

This Notice is effective as of February 3, 2015.

### SECTION 12. PAPERWORK REDUCTION ACT

The collections of information contained in this Notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2160.

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

The collections of information in this Notice are in sections 3, 5, 6, 7, and 8.b. of

this Notice. This information is required to implement and administer the New Clean Renewable Energy Bond (New CREBs) program under § 54C of the Code. Information collected under sections 3, 5, 7, and 8.b. of this Notice will be used by the IRS to determine (1) an Applicant's eligibility to receive an allocation of volume cap for New CREBs and (2) the amount of available volume cap that may be allocated to each Applicant. Information collected under section 6 of this Notice will be used by the IRS to provide the public with information on how the volume cap has been allocated and to facilitate oversight of the New CREBs program. The collections of information are voluntary under section 6 of this Notice and required to obtain a benefit under sections 3, 5, 7, and 8.b. The likely respondents are state or local governments, certain public electric utilities, and certain mutual or cooperative electric companies.

The estimated total annual reporting and/or recordkeeping burden is 900 hours.

The estimated burden per collection per respondent/recordkeeper varies from 0.5 hours to 4 hours, depending on the type of collection and individual circumstances, with an estimated average of 2.25

hours. The estimated number of respondents and/or recordkeepers is 400.

The estimated annual frequency of responses (used for reporting requirements only) is 100.

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

### SECTION 13. DRAFTING INFORMATION

The principal authors of this Notice are Debbie Cho of the IRS Office of Tax Exempt Bonds and Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this Notice contact Ms. Cho at 714-347-9431(not a toll-free call) or Mr. Stojanovic at 202-317-4564 (not a toll-free call). For further information about submitted Applications, contact Kenneth Stengel at (636) 255-1286 (not a toll-free number).

## APPENDIX A

### APPLICATION FOR ALLOCATION OF NEW CLEAN RENEWABLE ENERGY BOND VOLUME CAP

Internal Revenue Service  
SE:T:GE:TEB:CPM  
Attention: Kenneth Stengel  
1122 Town & Country Commons  
Chesterfield, MO 63017

Dear Sir or Madam:

The following constitutes the application (Application) of (Name) (Applicant) for allocation of new clean renewable energy bond (New CREB) volume cap under § 54C(a) of the Internal Revenue Code (Code) (unless otherwise noted, section references herein are to the Code) to finance the project described below. *(If a single Application is used to request New CREB volume cap for more than one qualified renewable energy facility, then all of the required information in the Application must be provided separately for each facility.)*

#### 1. Applicant/issuer.

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Taxpayer Identification Number \_\_\_\_\_

**2. Status of issuer.** *(Select as appropriate)*

The Applicant/Issuer is a “qualified issuer” under § 54C(d)(6) because it is —

- (i) a “clean renewable energy bond lender” that is a cooperative owned by, or has outstanding loans to, 100 or more cooperative electrical companies and was in existence on February 1, 2002, or is an affiliate that is owned by such a lender, as demonstrated by the attached documents included as Exhibit C.
- (ii) a “cooperative electric company” that is a mutual or cooperative electric company described in § 501(c)(12) or § 1381(a)(2)(C), as demonstrated by the attached documents included as Exhibit C, including a copy of the determination letter previously obtained from the IRS, if any (or other relevant documents).
- (iii) a “governmental body” that is a State, a possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of the foregoing, as demonstrated by the attached documents included as Exhibit C. (Supporting documents are not required to be attached for governmental bodies that are general purpose governmental entities with substantial taxing, eminent domain, and police powers such as a county, city, municipality, township, or borough.)
- (iv) a “public power provider” that is a State utility with a service obligation, as such terms are defined in § 217 of the Federal Power Act (as in effect on October 3, 2008), as demonstrated by the attached documents included as Exhibit C.
- (v) a “not-for-profit electric utility which has received a loan or loan guarantee under the Rural Electrification Act,” as demonstrated by the attached documents included as Exhibit C. For this purpose, supporting documents should include copies of the articles of incorporation and bylaws of the not-for-profit electric utility, and of the loan or loan guarantee documents.

**3. Name of Qualified Renewable Energy Facility.**

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**4. Detailed Description of the Qualified Renewable Energy Facility.** A reasonably detailed description of the qualified renewable energy facility or facilities (the “Project”) is set forth below or in attached Exhibit A, including reasonably expected costs of components, such as land, site preparation, equipment, installation, other dedicated facilities such as transmission, facility capacity, and projected or expected use of the power produced at the facility.

**5. Project Cost.** Include in the attached Exhibit B a description of the reasonably expected costs of the Project and a certification that none of the reasonably expected costs of the Project to be financed with New CREBs pursuant to the allocation were included in a previous application unless the IRS has been notified that such application has been withdrawn or that any previous allocation for those costs reverted to the IRS.

**6. Qualified Renewable Energy Facility Owner**

Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Taxpayer Identification Number \_\_\_\_\_

**7. Status of Owner** – *(Select as appropriate the category with respect to which the allocation is requested)*

The project is owned by a qualified entity under § 54C(d)(1) because the owner is —

- (i) a qualified owner under § 54C(d)(4) that is a mutual or cooperative electric company under § 501(c)(12) or § 1381(a)(2)(C), as demonstrated by the attached documents included as Exhibit C, including a copy of the determination letter previously obtained from the IRS, if any (or other relevant documents). Also, the project owner is not a public power provider under § 54C(d)(2).
- (ii) a qualified owner under § 54C(d)(3) that is a “governmental body” and is a State, a possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of the foregoing, as demonstrated by the attached documents included as Exhibit C, and not a public power provider under § 54C(d)(2). (Supporting documents are not required to be attached for governmental bodies that are general purpose governmental entities with substantial taxing, eminent domain, and police powers such as generally a county, city, municipality, township, or borough.)
- (iii) a qualified owner under § 54C(d)(2) that is a “public power provider” and is a State utility with a service obligation, as such terms are defined in § 217 of the Federal Power Act (as in effect on October 3, 2008), as demonstrated by the attached documents included as Exhibit C. For this purpose, supporting documents should include copies of the articles of incorporation and bylaws of the electric utility.

If the expected qualified owner of the project is described in more than one category of qualified owners under § 54C(d)(2), (3), or (4), the Applicant must identify only one such category for which it is seeking volume cap for the project.

An Application for a project to be owned by a governmental body or cooperative electric company must include:

- (i) a certification that the expected qualified owner of the project is not a public power provider under section § 54C(d)(2).
- (ii) a statement that the aggregate amount of New CREB volume cap requested along with allocations previously received under Notice 2015-12 by it and members of the same controlled group, as defined in Treasury Regulation § 1.150-1(e), does not exceed the Volume Cap Limit in effect as of the submission date of the Application.

Each Application must state that the Applicant and members of the same controlled group are not seeking separate allocations for the same project costs.

**8. Qualified Renewable Energy Facility.** The Project is one or more qualified renewable energy facilities within the meaning of § 54C(d)(1) of the Code because it is a “qualified facility” (as determined under § 45(d) of the Code without regard to § 45(d)(8) and (10) and without regard to any placed in service date or associated construction commencement date) that is (select as appropriate)—

- (1) a wind facility – a facility using wind to produce electricity;
- (2) a closed-loop biomass facility – a facility using closed-loop biomass (as defined in § 45(c)) to produce electricity or a facility using closed-loop biomass to produce electricity which is modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation;
- (3) an open-loop biomass facility – a facility using open-loop biomass (as defined in § 45(c)) to produce electricity and in the case of a facility using agricultural livestock waste nutrients, the nameplate capacity rating of which is not less than 150 kilowatts;
- (4) a geothermal or solar energy facility – a facility using geothermal energy (as defined in § 45(c)) or solar energy to produce electricity (not including a facility described in § 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under § 48 of the Code);
- (5) a small irrigation power facility – a facility using small irrigation power (as defined in § 45(c)) to produce electricity;
- (6) a landfill gas facility – a facility producing electricity from gas derived from the biodegradation of municipal solid waste (as defined in § 45(c));
- (7) a trash combustion facility – a facility that burns municipal solid waste (as defined in § 45(c)) to produce electricity;
- (8) a qualified hydropower facility – a facility engaged in qualified hydropower production (as defined in § 45(c)); or
- (9) a marine and hydrokinetic renewable energy facility – a facility producing electricity from marine and hydrokinetic renewable energy (as defined in § 45(c)) with a nameplate capacity of at least 150 kilowatts.

**9. Construction Commencement Date and Placed in Service Date.** (If the Application is for more than one facility, a separate statement must be included for each facility.) The construction, installation and equipping of the facility began or is expected to begin on \_\_\_\_\_. The facility is expected to be placed into service on or before \_\_\_\_\_.

**10. Independent Engineer’s Certificate** (If the Application is for more than one facility, a separate certificate must be included for each facility.) Attached as Exhibit D hereto is a certification by an independent, licensed engineer to the effect that each facility in the Project will meet the requirements for a “qualified facility” (as determined under § 45(d) of the Code (without regard to § 45(d)(8) and (10) and without regard to any placed in service date or associated construction commencement date), and that each facility, upon being placed in service, is reasonably expected to produce electricity.

**11. Location of the Project.**

Project address or physical location (do not include postal box numbers or mailing address) \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

County where Project is located \_\_\_\_\_

**12. Individual to contact for more information about the Project.**

Name \_\_\_\_\_

Title \_\_\_\_\_

Company Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_



*(Include as appropriate)* The contact person is not an authorized official or officer of the Applicant and a properly executed Form 8821 (or Form 2848) is included with this Application that authorizes the disclosure by the IRS of information that relates to this Application and the Project(s) described above to the contact person.

**13. Approvals.** Include in the attached Exhibit E a certification that all required Federal, State, and local approvals (regulatory and otherwise) for the Project, the proposed New CREBs, and any other required financing for the Project have been obtained or, if any approvals have not yet been obtained, a certification that the Applicant reasonably expects to receive all required approvals in time to permit issuance of the proposed bonds before the expiration of the volume cap allocation. In addition, include in the attached Exhibit E any required approvals that have not been obtained and describe the Applicant’s plan and expected time frame for obtaining such approvals.

**14. Plan of financing.** Include in the attached Exhibit F a plan of financing for the Project which includes: a reasonably detailed description of the plan of financing which includes (1) the amount of New CREBs expected to be issued together with a description of how proceeds of such bonds will be allocated to the project, (2) any other reasonably expected sources of financing for the project together with a description of how such financing will be allocated to the project, and (3) documentation from an independent third party who is knowledgeable about the marketability of municipal bonds evidencing that the proposed bonds are reasonably expected to be marketed prior to the expiration of the volume cap allocation set forth in section 5.e. of Notice 2015–12. Documentation that may be used to meet this requirement for the proposed bonds includes the following: a bond purchase commitment letter from an investor; a credit enhancement commitment letter from a financial institution; a letter from an underwriter or financial advisor to the effect that the sale of the proposed bonds is likely to be completed in time to permit issuance of the proposed bonds before the expiration of the volume cap allocation for the proposed bonds; documentation similar to the foregoing documentation; or a combination of the foregoing documentation.

**15. Compliance with federal tax laws.** Include in the attached Exhibit G a certification that the Applicant reasonably expects that the proposed bonds will meet the applicable requirements of §§ 54A and 54C and that the Applicant has engaged bond counsel to render an opinion to the effect that the proposed bonds will meet those requirements.

**16. Certification of readiness to issue.** Include in the attached Exhibit H a certification that the Applicant reasonably expects to use the volume cap allocation by issuing New CREBs prior to the expiration of the volume cap allocation.

**17. Certain forfeitures.** The Applicant must either (i) include in the attached Exhibit I a certification that no previous forfeitures or expirations of volume cap occurred with respect to volume cap allocated under Notice 2015–12; or (ii) if the Applicant previously received an allocation of volume cap under Notice 2015–12 that was forfeited or expired and reverted to the IRS (in whole or in part), then the Applicant must include in the attached Exhibit I an identification of such previous allocation and explain the reasons for such prior forfeiture or expiration.

**18. Reimbursements.** *(For reimbursements, include the following statement.)* The owner of the Project intends to use the proceeds of New CREBs to reimburse amounts that the owner paid with respect to the Project in accordance with § 54A(d)(2)(D). The Applicant certifies that the requirements of § 54A(d)(2)(D) will be met with respect to any such reimbursement.

**19. Dollar amount of allocation requested for the Project.** The Applicant hereby requests a New CREBs volume cap allocation in the amount of \$\_\_\_\_\_.

**20. Penalty of perjury statement and signatures.**

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this Application and the Project(s) described herein, and (ii) I have examined this Application and the supporting documents, and to the best of my knowledge and belief, all of the facts contained in this Application, any supplemental submission, and the supporting documents are true, correct, and complete.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF THE PROJECT**  
**(RESPONSE TO QUESTION 4 OF THE APPLICATION)**

**EXHIBIT B**  
**DESCRIPTION OF PROJECT COSTS**  
**(RESPONSE TO QUESTION 5 OF THE APPLICATION)**

**EXHIBIT C**

**DOCUMENTS DESCRIBING QUALIFIED ISSUERS AND QUALIFIED OWNER'S ORGANIZATIONAL STATUS  
(RESPONSE TO QUESTIONS 2 AND 7 OF THE APPLICATION)**



**EXHIBIT D**

**ENGINEER'S CERTIFICATE  
(RESPONSE TO QUESTION 10 OF THE APPLICATION)**

Dated: \_\_\_\_\_

This certificate is being provided to the Internal Revenue Service ("IRS") in connection with an application (the "Application") by [Name of Applicant Issuer \_\_\_\_\_] (the "Issuer") to the IRS requesting an allocation of volume cap authority to issue new clean renewable energy bonds ("New CREBs") under § 54C of the Internal Revenue Code, as amended (the "Code"). The New CREBs are being issued to finance the costs of a [insert type of qualified renewable energy facility described in Code § 45(d), or a portion thereof,] owned by [Name of qualified renewable energy facility owner \_\_\_\_\_] described more particularly in the Application (the "Project"). The undersigned hereby certifies as follows:

1. I am an independent, licensed engineer, duly qualified to practice the profession of engineering under the laws of the State of \_\_\_\_\_, and I am not an officer or employee of the Issuer.
2. I have reviewed the Application for a New CREBs volume cap allocation (including the exhibits thereto) of the Issuer of even date herewith describing the Project. To the best of my knowledge, information, and belief, the facility will meet the requirements to be a "qualified renewable energy facility" under section 54C(d)(1) of the Code and correspondingly a "qualified facility" under § 45(d) of the Code (determined without regard to § 45(d)(8) and (10) and to any placed in service date or associated construction commencement date).
3. To the best of my knowledge, information and belief, the facility, upon being placed in service, is reasonably expected to produce electricity.

IN WITNESS WHEREOF, I have hereunto affixed my official signature on the date of this Engineer's Certificate.

By: \_\_\_\_\_

Seal and/or License number:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

**EXHIBIT E**  
**APPROVALS**  
**(RESPONSE TO QUESTION 13 OF THE APPLICATION)**

**EXHIBIT F**  
**PLAN OF FINANCING**  
**(RESPONSE TO QUESTION 14 OF THE APPLICATION)**

**EXHIBIT G**  
**COMPLIANCE WITH FEDERAL TAX LAWS**  
**(RESPONSE TO QUESTION 15 OF THE APPLICATION)**



**EXHIBIT H**

**STATEMENT OF READINESS TO ISSUE  
(RESPONSE TO QUESTION 16 OF THE APPLICATION)**

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant in making this Application. I certify that the Applicant reasonably expects to issue the New Clean Renewable Energy Bonds pursuant to the allocation of volume cap for those bonds to be received pursuant to the Application prior to the expiration date of the volume cap allocation.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**  
**CERTAIN FORFEITURES**  
**(RESPONSE TO QUESTION 17 OF THE APPLICATION)**

**APPENDIX B**  
**CONSENT TO PUBLIC DISCLOSURE**  
**OF CERTAIN NEW CLEAN RENEWABLE ENERGY BOND**  
**APPLICATION INFORMATION**

In the event that the Application of [Name of Applicant \_\_\_\_\_] (Applicant) for an allocation of authority to issue new clean renewable energy bonds (New CREBs) under § 54C of the Internal Revenue Code (Code) is approved, the undersigned authorized representative of the Applicant hereby consents to the disclosure by the Internal Revenue Service through publication of a public release on the IRS web site at <http://www.irs.gov/Tax-Exempt-Bonds> of the name of Applicant (issuer), the name of the qualified renewable energy facility owner (if other than the issuer), the type and location of the facility that is the subject of the Application, and the amount of the allocation, if any, of volume cap authority to issue New CREBs for such facility. The undersigned understands that this information might be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the execution hereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the § 6103 of the Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Taxpayer's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: Income Tax Regulations require that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

**APPENDIX C**

**CONFIRMATION OF ACCEPTANCE OF LESSER ALLOCATION AMOUNT AND  
CERTIFICATION OF ACCURACY OF APPLICATION INFORMATION BASED ON  
THE LESSER ALLOCATION AMOUNT**

This certificate is being provided to the Internal Revenue Service (“IRS”) in connection with an application (the “Application”) by [Name of Applicant: \_\_\_\_\_] (the “Applicant”) to the IRS requesting an allocation of volume cap authority to issue new clean renewable energy bonds (“New CREBs”) under § 54C of the Internal Revenue Code, as amended (the “Code”). The New CREBs are being issued to finance costs of certain qualified renewable energy facility or facilities described more particularly in the Application (the “Project”). The undersigned hereby certifies as follows:

1. The Applicant requested volume cap pursuant to the Application in the amount of \$\_\_\_\_\_. Because the amount of volume cap requested in applications satisfying the requirements of Notice 2015–12 exceeds the amount of volume cap available for allocation, the Applicant was notified by the IRS that it could receive an allocation of \$\_\_\_\_\_.
2. The Applicant confirms its decision to accept the allocation in the amount of \$\_\_\_\_\_.
3. The Applicant certifies that the certifications and other information included in the Application pursuant to section 3.02.e. of Notice 2015–12, and supplemented as necessary in attachments to this certification, are accurate (subject to provisions of section 7.a. of the Notice relating to insubstantial deviations) based on an amount of allocation requested that is equal to the reduced allocation amount.

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant with respect to this certificate and the underlying Application.

Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this certificate, the underlying Application and the Project(s), and (ii) I have examined this certificate, the underlying Application, and the supporting documents, and, to the best of my knowledge and belief, all of the facts contained in this certificate, and the supporting documents are true, correct, and complete.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX D**

**CONFIRMATION OF DELAYING DECISION ON WHETHER TO ACCEPT LESSER ALLOCATION**

This certificate is being provided to the Internal Revenue Service (“IRS”) in connection with an application (the “Application”) by [Name of Applicant: \_\_\_\_\_] (the “Applicant”) to the IRS requesting an allocation of volume cap authority to issue new clean renewable energy bonds (“New CREBs”) under § 54C of the Internal Revenue Code, as amended (the “Code”). The New CREBs are being issued to finance costs of certain qualified renewable energy facility or facilities described more particularly in the Application (the “Project”). The undersigned hereby certifies as follows:

The Applicant requests to delay its decision on whether to accept the proposed lesser amount until not later than \_\_\_\_\_ *[insert date that is no later than 90 days from the submission date]*. The Applicant understands that an allocation in the full amount of its request may be made if sufficient volume cap for its request becomes available prior to such date.

I hereby certify that I am an authorized officer or official of the Applicant, that I am duly authorized to execute legal documents on behalf of the Applicant in connection with incurring debt, and that I am duly authorized to execute legal documents on behalf of the Applicant with respect to this certificate and the underlying Application. Under penalties of perjury, I declare that (i) I have knowledge of the relevant facts and circumstances relating to this certificate, the underlying Application and the Project(s), and (ii) I have examined this certificate, the underlying Application, and the supporting documents, and, to the best of my knowledge and belief, all of the facts contained in this certificate, and the supporting documents are true, correct, and complete.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

# Work Opportunity Tax Credit (WOTC) Extension for 2014

## Notice 2015-13

### I. PURPOSE

This notice provides guidance on § 119 of the Tax Increase Prevention Act of 2014 (the Act), Pub. L. No. 113-295, enacted on December 19, 2014, and transition relief for employers claiming the Work Opportunity Tax Credit (WOTC) under §§ 51 and 3111(e) of the Internal Revenue Code, as extended by the Act. Section 119 of the Act amends § 51 to extend the WOTC, including the reduced credit under § 3111(e) for qualified tax-exempt organizations, through December 31, 2014. Specifically, this notice provides employers that hire members of targeted groups additional time beyond the 28-day deadline in § 51(d)(13) for submitting Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit, to Designated Local Agencies (DLAs).

### II. BACKGROUND

Section 51 provides the WOTC for employers that hire individuals who are members of targeted groups. Before an employer may claim the WOTC, the employer must obtain certification that the hired individual is a targeted group member. Certification of an individual's targeted group status is obtained from a DLA. A DLA is a State employment security agency established in accordance with 29 U.S.C. §§ 49-49n. An employer must submit Form 8850 to the DLA not later than the 28th day after the individual begins work for the employer.

The Returning Heroes and Wounded Warriors Work Opportunity Tax Credits, contained in § 261 of the VOW to Hire Heroes Act of 2011, Pub. L. No. 112-056 (the VOW Act), amended § 51 to extend and expand the WOTC to employers hiring certain qualified veterans (as defined in § 51(d)(3)). The VOW Act also amended §§ 52 and 3111 to make a reduced WOTC available to organizations described in § 501(c) and exempt from taxation under § 501(a) (qualified tax-exempt organizations) as a credit against

the employer share of social security tax imposed under § 3111(a) for qualified tax-exempt organizations hiring qualified veterans. The American Taxpayer Relief Act of 2012, Pub. L. No. 112-240 (ATRA), enacted on January 3, 2013, extended the WOTC for certain taxpayers through December 31, 2013. For guidance on changes made to the WOTC by the VOW Act and ATRA, see Notice 2012-13, 2012-9 I.R.B. 421, and Notice 2013-14, 2013-13 I.R.B. 712, respectively.

### III. TRANSITION RELIEF

Section 51(d)(13)(A) provides that an individual is not treated as a member of a targeted group unless (1) on or before the day the individual begins work, the employer obtains certification from the DLA that the individual is a member of a targeted group; or (2) the employer completes a pre-screening notice (Form 8850) on or before the day the individual is offered employment and submits such notice to the DLA to request certification not later than 28 days after the individual begins work. Because the Act extended the WOTC retroactively for 2014 for members of targeted groups, employers need additional time to comply with the requirements of § 51(d)(13)(A). Accordingly, a taxable employer that hired a member of a targeted group (as defined in §§ 51(d)(2) through (10)), or a qualified tax-exempt organization that hired a qualified veteran described in § 51(d)(3), on or after January 1, 2014, and before January 1, 2015, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) if it submits the completed Form 8850 to the appropriate DLA to request certification not later than April 30, 2015. A timely request for certification does not eliminate the need for the employer to receive a certification before claiming the credit.

### DRAFTING INFORMATION

The principal author of this notice is Shoshanna Tanner of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding the WOTC, contact Ms. Tanner at (202) 317-5500 (not a toll-free number).

# Round 2 of Section 48A Phase III Program under the Qualifying Advanced Coal Project Program

## Notice 2015-14

### SECTION 1. PURPOSE

This notice updates and amplifies the procedures for the allocation of credits under the qualifying advanced coal project program of § 48A of the Internal Revenue Code by announcing the immediate beginning of the 2015 reallocation round ("Round 2") of the § 48A Phase III program. Except as specifically provided in this notice, this allocation round will be conducted in the same manner and under the same procedures as provided under Notice 2012-51, 2012-2 C.B. 150, which established the § 48A Phase III program. To be considered in Round 2 of the § 48A Phase III program, applications must be submitted to the Department of Energy ("DOE") ("application for DOE certification") and to the Internal Revenue Service ("Service") ("application for § 48A certification") on or before April 1, 2015. See Section 3 of this notice for additional rules regarding these applications.

### SECTION 2. BACKGROUND

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the qualifying advanced coal project credit under § 48A.

.02 Section 48A(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. The Treasury Department and the Service established the § 48A Phase I program in Notice 2006-24, 2006-1 C.B. 595, as modified and updated by Notice 2007-52, 2007-1 C.B. 1456.

.03 Pursuant to § 48A(d)(3)(B)(i) and (ii), the § 48A Phase I program provided for (i) \$800 million of credits to be allocated to integrated gasification combined cycle projects and (ii) \$500 million of credits to other advanced coal projects. The Service allocated credits through an



nual allocation rounds in 2006, 2007–08, and 2008–09, and a special allocation round in 2008.

.04 Pursuant to § 48A(d)(3)(B)(iii), the Treasury Department and the Service established the § 48A Phase II program by issuing Notice 2009–24, 2009–1 C.B. 817, to allocate an additional \$1.25 billion of credits for advanced coal-based generation technology projects. The Service allocated credits through two allocation rounds in 2009–10 and 2011–12.

.05 Pursuant to § 48A(d)(4), the Treasury Department and the Service issued Notice 2012–51, 2012–2 C.B. 150, to establish the § 48A Phase III program to reallocate \$658.5 million of Phase I credits. In Announcement 2013–43, 2013–2 C.B. 524, the Service announced that the total amount of \$658.5 million of credits had been allocated, and accordingly, the 2012–13 allocation round would be the only allocation round in Phase III.

.06 The Service has since determined that \$1,104,000,000 of § 48A credits are available for reallocation due to forfeitures of previously allocated Phase I and Phase II credits and unallocated Phase II credits. Accordingly, the Treasury Department and the Service have determined that an additional allocation round is appropriate, and this notice therefore begins Round 2 of the § 48A Phase III program.

### SECTION 3. SECTION 48A PHASE III PROGRAM

.01 Except as otherwise specifically provided in this notice, Round 2 of the § 48A Phase III program will be conducted in the same manner and under the same procedures as provided under Notice 2012–51. This notice restates or references certain provisions in Notice 2012–51 as a convenience to taxpayers. The restatement or referencing of these provisions does not diminish the effect of provisions that are not restated or referenced.

.02 For Round 2 of the § 48A Phase III program, § 48A Phase III credits in the amount of \$1,104,000,000 are available for reallocation. The credits will not be separated into pools based on the type of projects or the type of primary feedstock.

.03 The § 48A Phase III credit for a taxable year is an amount equal to 30

percent of the qualified investment (as defined in § 48A(b)) for that taxable year in a qualifying advanced coal project (as defined in § 48A(c)(1) and § 48A(e)). This rule applies to both facilities that use an integrated gasification combined cycle (as defined in § 48A(c)(7)) and facilities that use other advanced coal-based generation technologies (as defined in § 48A(f)).

.04 For Round 2 of the § 48A Phase III program, the application period for § 48A certification begins on February 18, 2015, and ends on April 1, 2015. See section 3.07 for the date by which the application for DOE certification must be submitted to DOE. For purposes of determining the timeliness of submission of an application for § 48A certification by the Service, the rules of § 7502 shall apply.

.05 The Service will consider a project under Round 2 of the § 48A Phase III program only if the application for § 48A certification for the project is submitted during the application period and DOE provides the DOE certification and ranking (if any) for the project on or before April 22, 2015.

.06 If an application for DOE certification does not include all of the information required by section 5.02 of Notice 2012–51, DOE may decline to accept the application. If an application for § 48A certification does not include all of the information listed in section 5.03 of Notice 2012–51, the application will not be accepted by the Service.

.07 For Round 2 of the § 48A Phase III program, DOE will consider an application for DOE certification only if the application is postmarked on or before April 1, 2015. See section 5.02 of Notice 2012–51 and Appendix B to this notice for the information to be submitted to DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. DOE will determine the technical and economic feasibility of the project and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If DOE certifies two or more projects, DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects and credits will be allocated to projects based on DOE rank-

ing. DOE will provide DOE certification for projects determined to be feasible and DOE ranking (if any) to the Service by April 22, 2015.

.08 By April 30, 2015, the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

.09 If the taxpayer's application for § 48A certification is accepted, the acceptance letter will state the amount of the credit allocated to the project. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute an agreement in the form set forth in Appendix A to this notice. By May 29, 2015, the taxpayer must execute and return the agreement to the Service at the appropriate address listed in section 5.04 of Notice 2012–51. The Service will execute and return the agreement to the taxpayer by June 30, 2015. The executed agreement applies only to the accepted taxpayer.

### SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2012–51, 2012–2 C.B. 150, is updated and amplified.

### SECTION 5. EFFECTIVE DATE

This notice is effective on February 18, 2015.

### SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2003.

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

The collections of information in this notice are in section 3 and Appendix B. This information is required to obtain an allocation of qualifying advanced coal project credits. This information will be used by the Service to verify that the

taxpayer is eligible for an allocation of the qualifying advanced coal project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 550 hours.

The estimated annual burden per respondent varies from 70 to 150 hours, depending on individual circumstances,

with an estimated average of 110 hours. The estimated number of respondents is 5.

The estimated annual frequency of responses is on occasion.

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

## SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Bernardini on (202) 317-6853 (not toll-free numbers).

## APPENDIX A

### AGREEMENT

[Insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following Agreement:

#### WHEREAS:

1. On or before April 1, 2015, Taxpayer submitted to the Internal Revenue Service ("Service"), an application for certification under Round 2 of the § 48A Phase III program described in Notice 2015-14 ("Application for § 48A Certification").

2. Taxpayer's Application for § 48A Certification in Round 2 is for the project described below (the "Project"):

(a) The Project will use an advanced coal-based generation technology (as defined in § 48A(c)(2) and (f)).

(b) The Project will be located at [insert address or other identifying designation].

(c) The Project site in subsection (b) above may be changed only if the change is consistent with the objectives of the qualifying advanced coal project program, is requested by the taxpayer that received the credit allocation, and involves moving the Project site to improve the potential to capture and sequester CO<sub>2</sub> emissions, reduce costs of transporting feedstock, and serve a broader customer base. The Service will not agree to a project site change if the dollar amount of tax credits allocated to the taxpayer under § 48A would increase as a result of the site change or if the Project would not have been originally certified had such modification been included in the taxpayer's application.

(d) The Project is [insert either: "a new electric generation unit (as defined in § 48A(c)(6))"; "a retrofit of an existing electric generation unit (as defined in § 48A(c)(6))"; or "a repower of an existing electric generation unit (as defined in § 48A(c)(6))."]

(e) The Project will have a total nameplate generating capacity (as defined in section 3.02 of Notice 2012-51) of at least [insert number] megawatts.

(f) At all times at least 75 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2012-51) used during normal plant operations (as defined in section 3.03(2) of Notice 2012-51) for the Project will be coal (as defined in section 3.01 of Notice 2012-51).

3. On [insert date of acceptance letter issued under Notice 2015-14], the Service accepted Taxpayer's Application for § 48A Certification for the Project and allocated qualifying advanced coal project credit under § 48A in the amount of \$[insert number] to the Project.

4. Taxpayer understands that if Taxpayer fails to satisfy any of the certification requirements in § 48A(e)(2) within the time specified in § 48A(d)(2)(D) (2 years from the date specified in WHEREAS clause #3), or if the Service does not issue a certification for the Project under Notice 2015-14, the § 48A Phase III credit in the amount specified in WHEREAS clause #3 allocated to the Project in Round 2 is fully forfeited.

5. Taxpayer understands that if the Project fails to attain or maintain the separation and sequestration of CO<sub>2</sub> emissions required by § 48A(e)(1)(G), the § 48A Phase III credit in the amount specified in WHEREAS clause #3 allocated to the Project in Round 2 will be recaptured pursuant to § 50.

6. Taxpayer understands that if the Project is not placed in service by Taxpayer within 5 years of the date of issuance of the certification as determined under section 6.03 of Notice 2012-51, the § 48A Phase III credit in the amount specified in WHEREAS clause #3 allocated to the Project in Round 2 is fully forfeited. Taxpayer must provide evidence to the Service that the Project has been timely placed in service.

7. Taxpayer understands that if the plans for the Project change in any significant respect from the plans set forth in the application for DOE certification (as defined in section 5.02 of Notice 2012-51) and the Application for § 48A Certification (as defined in section 5.03 of Notice 2012-51) and, under section 7.01 of Notice 2012-51, the acceptance of Taxpayer's Application for § 48A Certification on the date specified in WHEREAS clause #3 is void, the § 48A Phase III credit in the amount specified in WHEREAS clause #3 allocated to the Project in Round 2 is fully forfeited.

8. Taxpayer understands that if the Project fails to satisfy any of the requirements in § 48A(e)(1)(A), (C), (D), (E), and (F) for a qualifying advanced coal project or, during normal plant operations (as defined in section 3.03(2) of Notice 2012–51), fails to satisfy the requirement in § 48A(e)(1)(B) for a qualifying advanced coal project—

(a) at the time the Project is placed in service, § 48A Phase III credit in the amount specified in WHEREAS clause #3 allocated to the Project in Round 2 is fully forfeited; and

(b) after the Project is placed in service (and after satisfying all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

9. Taxpayer understands that if at any time more than 25 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2012–51) used during normal plant operations (as defined in section 3.03(2) of Notice 2012–51) is not coal (as defined in section 3.01 of Notice 2012–51), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

10. Taxpayer cannot claim the qualifying gasification project credit under § 48B for any qualified investment for which the qualifying advanced coal project credit is allowed under §48A.

11. Taxpayer understands that if Taxpayer elects to claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year(s) during which the Project is under construction and the Project ceases to be a qualifying advanced coal project (whether before, at the time, or after the Project is placed in service), rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

12. This Agreement applies only to Taxpayer. Taxpayer must notify the Service within 90 days of the acquisition of the Project by any other person (a successor in interest). A successor in interest that plans to claim the § 48A credit allocated to the Project must request permission to execute a new agreement with the Service.

If the request is granted, the new agreement must be executed no later than the due date (including extensions) of the successor in interest’s Federal income tax return for the taxable year in which the transfer occurs. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new agreement, the § 48A Phase III credit in the amount specified in WHEREAS clause #3 allocated to the Project in Round 2 is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new agreement, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

**NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:**

1. The total amount of the § 48A Phase III credit that Taxpayer will claim for the Project under this Agreement on account of the acceptance of Taxpayer’s Application for § 48A Certification in Round 2 cannot exceed the amount specified in WHEREAS clause #3.

2. This Agreement does not express whether the Taxpayer has met the certification requirements under § 48A(e)(2) or other future requirements to receive tax credits under § 48A.

3. This Agreement is limited and applies only to Taxpayer. A successor in interest that plans to claim the § 48A credit allocated to the Project must request permission to execute a new agreement with the Service.

**THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:**

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and
3. If it relates to a tax period ending after the date of this Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Agreement.

**Taxpayer: [insert name and identifying number]**

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
[insert name]

**Title:** [insert title]

[insert taxpayer’s name]

**Commissioner of Internal Revenue**

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
Kathy J. Robbins

**Title:** Industry Director, Natural Resources & Construction

## APPENDIX B

### APPLICATION FOR DOE CERTIFICATION

#### REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE

The Internal Revenue Service (“Service”) and the Department of Energy (“DOE”) seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be technically and economically feasible and use the appropriate clean coal technology.

This request for submission of supplemental application information:

- Describes the information to be provided by the applicant seeking a certification of feasibility from DOE, and
- Lists the evaluation criteria and Program Policy Factors to be used by DOE in the evaluation of applications.

If after review by DOE a project is determined to be feasible, DOE will provide a DOE certification of feasibility to the Service. The Service will then accept or reject the taxpayer’s application for certification of tax credit.

In conducting this evaluation DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a certification to the Service at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

#### A. General

This request, together with the information in relevant sections of Notice 2012–51 includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant’s capability, knowledge, and experience regarding the requirements described herein.

Applicants should fully address the requirements of Notice 2012–51 and this request and *not* rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

#### B. Unnecessarily Elaborate Applications

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

#### C. Application Submission for DOE Certification

The application submission to DOE must include the information and documentation required by relevant sections of Notice 2012–51.

An application to DOE will not be considered in Round 2 of the § 48A Phase III program unless it is postmarked by April 1, 2015. One electronic version on a USB flash drive or a CD of the application must be submitted to:

Gina Mick  
National Energy Technology Laboratory  
3610 Collins Ferry Road  
Morgantown, WV 26507

Note that under section 5.03(4) of Notice 2012–51, one electronic version of the application for DOE certification must be sent to the Service as part of the application for § 48A certification. The application for § 48A certification will not be considered in Round 2 under this notice unless it is submitted to the Service before April 1, 2015.

#### **THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE “PROJECT INFORMATION MEMORANDUM” AS DESCRIBED BELOW.**

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.



The application, including the Project Information Memorandum, MUST be formatted in one of the following software applications:

- Microsoft Word™ 2010 or later edition
- Microsoft Excel™ 2010 or later edition
- Adobe Acrobat™ PDF 7.0 or later edition

Financial models should be submitted using the Excel™ spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. DOE will not be responsible for reformatting, restructuring or converting any files submitted in response to this request.

The Project Information Memorandum, *excluding Appendices*, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages. Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

## **D. Project Information Memorandum**

### **1. Summary and Introduction**

- a. Description of the Project
- b. Financing and Ownership Structure
- c. Description of the main parties to the project, including background, ownership and related experience
- d. Current Project Status and Schedule to Beginning of Construction

### **2. Technology and Technical Information**

Provide a description of the proposed technology, including sufficient supporting information (such as vendor guarantees, process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of § 48A are met. Specifically the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology meets the definition of “Advanced Coal-Based Generation Technology,” either as integrated gasification combined cycle (“IGCC”) technology, or other advanced coal-based electric generation technology meeting the heat rate requirement of 8530 Btu/kWh.
- For advanced coal-based electric generation:
  - The applicant must provide evidence sufficient to justify the actual heat rate and heat rate corrected to conditions specified in § 48A(f)(2).
  - For projects including existing units, the applicant must provide evidence sufficient to justify that the proposed technology meets heat rate requirements specified in § 48A(f)(3).
- Provide evidence sufficient to justify that the proposed project is designed to meet the following performance requirements:
  - SO<sub>2</sub> (subbituminous coal is 80 percent or more of fuel input). . . . . .99 percent removal or emissions not more than 0.04 lbs/MMBTU
  - SO<sub>2</sub> (subbituminous coal is not more than 80 percent of fuel input). . . . . .99 percent removal
  - SO<sub>2</sub> (for all projects other than subbituminous coal projects). . . . . .99 percent removal
  - NO<sub>x</sub> emissions. . . . . .0.07 lbs / MMBTU
  - PM emissions. . . . . .0.015 lbs / MMBTU
  - Hg percent removal. . . . . .90 percent
- Provide evidence sufficient to demonstrate that the project meets the requirements for qualifying advanced coal projects as specified under § 48A(e)(1) including:
  - The project will power a new electric generation unit or retrofit/repower an existing electric generation unit. At least 50% of the useful output of the project is electrical power.
  - The fuel for the project is at least 75% coal (as defined in § 48A(c)(4) and section 3.01 of Notice 2012–51), on an energy input basis.
  - The project is located at one site and has a total nameplate electric power generating capacity (as defined in section 3.02 of Notice 2012–51) of at least 400 MW.
  - The project includes equipment that separates and sequesters at least 70 percent of such project’s total carbon dioxide (“CO<sub>2</sub>”) emissions. The CO<sub>2</sub> separation, capture, sequestration, and emission values shall be reported on metric tons per hour and metric tons per year basis under normal plant operating conditions. The CO<sub>2</sub> separation and sequestration percentages shall be calculated based on the total CO<sub>2</sub> that would otherwise be released into the atmosphere as industrial emission of greenhouse gas (“CO<sub>2</sub> emissions”).

### **3. Applicant's Capability to Accomplish the Technical Objectives**

Provide a narrative supporting the Applicant's capability to accomplish the technical objectives of the proposed project, including supporting documentation demonstrating that the applicant has assembled a team that is formally committed to participate in the proposed project.

Provide information to support that the applicant has assembled a team with the skills and resources needed to implement the project as proposed. Provide signed agreements or letters from team members demonstrating that the proposed team members are fully committed to the project.

Provide information, including examples of prior similar projects completed by applicant, engineering-procurement-construction ("EPC") contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant and its team members to design, construct, permit, and operate the facility. The applicant should demonstrate that the team members have a corporate history of successful completion of similar projects.

Provide information to support that key personnel of the applicant and its team members have knowledge, experience, and adequate degree of involvement to successfully implement the project.

Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance. Include copies of any signed agreements to support project status claims regarding preliminary design studies, front-end engineering design ("FEED"), and EPC-type agreements.

### **4. Priority for Qualifying Advanced Coal Projects**

The applicant must submit information sufficient for categorization and prioritization of projects for certification, including documentation pertaining to the following:

- High priority project factors:
  - Increased by-product utilization, if applicable.
  - Research partnership with an eligible educational institution as defined in §48A(e)(3)(B)(iii), if applicable.
- Highest priority factor: Separation and sequestration percentage of total CO<sub>2</sub> emissions.

### **5. Site Control and Ownership**

Provide evidence that demonstrates the overall feasibility of implementing the project at the proposed site.

Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis. Documentation such as a deed demonstrating the applicant owns the project site, a signed option to purchase the site from the site owner, or a letter of intent signed by the site owner and stating the site owner's intent to sell the site to the applicant should be provided.

Describe the current infrastructure at the site available to meet the needs of the project.

Provide documentation supporting applicant's conclusion that the proposed site can fully meet all environmental, coal supply, water supply, transmission interconnect, and public policy requirements. Such documentation may include signed agreements, letters of intent, or term sheets relating to coal supply, water supply, and product (*e.g.* CO<sub>2</sub>) transportation etc., and regulatory approvals supporting the key claims.

Provide detailed plans, schedules and status updates, particularly for sites with pre-existing conditions that could impact the proposed project. Pre-existing conditions may include, but are not limited to, sites with mandated environmental remediation efforts; brown-field sites that will require building demolition; or sites requiring substantial rerouting of existing roads, railroads, transmission lines or pipelines prior to the start of the project.

Applicants must select one "proposed site." However, projects with key physical or logistical elements that require close integration with another system for the project to succeed should provide information on all integrated systems regardless of where they are located. Example 1: a power plant designed to operate exclusively on coal from a to-be-opened mine should provide supporting documentation for the new mine. Example 2: an oxygen-blown IGCC plant planning to purchase oxygen from a third party who will construct a plant exclusively for this project should provide documentation for the oxygen supplier. Example 3: an IGCC plant planning to sell CO<sub>2</sub> for enhanced oil recovery ("EOR") should provide an agreement for such a transaction indicating the annual CO<sub>2</sub> purchase quantity, expected project lifetime sales, CO<sub>2</sub> capacity of the site for EOR, and EOR site ownership.

### **6. Utilization of Project Output**

Provide a projection of the anticipated costs of electricity and other marketable by-products produced by the plant.

Provide documentation establishing that a majority of the output of the plant is reasonably expected to be acquired or utilized. Such documentation should be signed by authorizing officials of both the buyer and seller, and may include: Sales Agreements, Letters of Intent, Memoranda of Understanding, Option Agreements, and Power Purchase Agreements.

Describe any energy sales arrangements that exist or that may be contemplated (*e.g.*, a Power Purchase Agreement or Energy Sales Agreement) and summarize their key terms and conditions.

Include as an appendix any independent Energy Price Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.



Identify and describe any firm arrangements to sell non-power output, such as CO<sub>2</sub>, and provide any evidence of such arrangements. If the project produces a product in addition to power, include as an appendix any related market study of price and volume of sales expected for that product.

### **7. Project Economics**

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions. The project economic and financial assumptions should be clearly stated and explained.

Show calculation of the amount of tax credit applied for based on allowable cost.

### **8. Project Development and Financial Plan**

Provide the total project budget and major plant costs (*e.g.*, development, operating, capital, construction, and financing costs). Provide the estimated annual budget for and source of project development costs from the time of the application until the beginning of construction, including legal, engineering, financial, environmental, overhead, and other development costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the most recently ended three fiscal years and quarterly interim financial statements for the current fiscal year (a) for the applicant, (b) for any of the project parties providing funding, and (c) for any third party funding source. If the applicant or another party does not have audited financial statements, the applicant or the party should provide equivalent financial statements prepared by the applicant or the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, describe the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

Include as an appendix copies of any existing funding commitments or expressions of interest from funding sources for the project.

For projects employing nonrecourse or limited recourse debt financing, provide a complete discussion of the approach to, and status of, such financing. In an appendix: (1) provide an Excel<sup>™</sup>-based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; and (2) provide pro-forma project financial, economic, capital cost, and operating assumptions, including detail of all project capital costs, development costs, interest during construction, transmission interconnection costs, other operating expenses, and all other costs and expenses.

### **9. Project Contract Structure**

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- Power Purchase Agreement (if not fully explained in section 6 above).
- Coal Supply: describe the source and price of coal supply for the project. Include as an appendix any studies of coal supply price and amount that have been prepared. Include a summary of the coal supply contract and a signed copy of the contract.
- Coal Transportation: explain the arrangements for transporting coal, including costs.
- Operations & Maintenance Agreement: include a summary of the terms and conditions of the contract and a copy of the contract.
- Shareholders Agreement: summarize key terms and include the agreement as an appendix.
- Engineering, Procurement and Construction Agreement: describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- Water Supply Agreement: confirm the amount, source, and cost of water supply.
- Transmission Interconnection Agreement: explain the requirements to connect to the system and the current status of negotiations in this respect.
- If CO<sub>2</sub> is to be sold to a third party for sequestration, provide a Sales Agreement and provide specifics, such as CO<sub>2</sub> sales (metric tons per year), expected project lifetime sales (metric tons), potential CO<sub>2</sub> capacity of the site for sequestration (metric tons), technology and site suitability for sequestration, and sequestration site ownership and operation.

## **10. Permits Including Environmental Authorizations**

Provide a complete list of all Federal, State, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.

Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.

Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.

## **11. Steam Turbine Purchase**

If applicant plans to purchase a steam turbine or turbines for the project, indicate the prospective vendors for the turbine and explain the current status of purchase negotiations, and provide a timeline for negotiation and purchase with expected purchase date.

## **12. Project Schedule**

Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 2-year project certification and 5-year placed-in-service requirement.

The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the certification and placed-in-service requirements. The schedule should demonstrate that the applicant understands the required tasks, and has allowed realistic times for accomplishing the technical and financial tasks. The schedule should include the milestone accomplishments needed to obtain the financing for the project.

Applicants should document their progress toward meeting any completion of permitting deadline. Existing permits and permit applications must be specific to the project proposed. If existing permits are not specific for the proposed coal-based project (e.g. the permits are for oil-fired or natural-gas-based units), specific plans, procedures and schedules for reapplying, modifying and/or renegotiating permits should be provided. Any local, State or Federal permitting schedules that may impact the overall project schedule should be included.

Applicant should document their progress toward obtaining engineering design information (i.e., FEED) to initiate permitting activities and to finalize the turbine generator purchase specification within the 2-year window. Most often, this requires final site, technology, and process selection. Signed FEED and/or EPC-type agreements, if available, should be provided.

## **13. Appendices**

- a. Copy of internal or external engineering reports.
- b. Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.
- c. Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, coal supply, water supply, transmission interconnect, and public policy reasons.
- d. Power Purchase or Energy Sales Agreement.
- e. Energy Market Study.
- f. Market Study for non-power output.
- g. Financial Model of project.
- h. Financial statements for the applicant and other project funding sources for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- i. Expressions of interest or commitment letters from funding sources.
- j. For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.
- k. List of all Federal, State, and local permits, including environmental authorizations or reviews, necessary to commence construction.

## **E. Evaluation Criteria**

Advanced coal projects will be evaluated on whether they meet all the requirements of § 48A.

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 2-year project certification and the 5-year placed-in-service requirement.

## **F. Program Policy Factors to Be Used by DOE in the Evaluation of Applications**

Section 48A identifies minimum requirements for consideration for the qualifying advanced coal project credit, including the project's technical feasibility, cost, and applicant's ability. In the event that there are more qualified (certifiable) applications than there are available amount of tax credit, DOE will apply additional factors to rank eligible Advanced Coal Projects based on their ability to advance coal technology beyond its current state.

If there are more certified applications than available amount of § 48A Phase III credits in Round 2, DOE will rank the certified projects based on evaluation of the following Program Policy Factors. In ranking certified projects, highest priority will be given to the Primary Ranking Factor. Secondary and Tertiary Ranking Factors will be taken into account to rank projects that are not clearly differentiated on the basis of the Primary Ranking Factor, with higher priority given to Secondary Ranking Factors than to Tertiary Ranking Factors.

Primary Ranking Factor:

- Capture and sequestration of more than 70 percent CO<sub>2</sub> emissions. Only projects that capture and sequester 70 percent or more of the plant's CO<sub>2</sub> emissions will be considered for DOE certification. Among the certified projects, highest rankings will be given to projects with the greatest separation and sequestration percentages of total CO<sub>2</sub> emissions.

Secondary Ranking Factors:

- Increased by-product utilization.
- Research partnership with an eligible educational institution as defined in §48A(e)(3)(B)(iii).

Tertiary Ranking Factors:

- Presentation of other environmental, economic, or performance benefits
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total nameplate generating capacity (as defined in section 3.02 of Notice 2012–51) to requested tax credit.
- Diversity of technology approaches and methods.

## **G. Supplemental Technical and Financial Guidance for Project Information Memorandum**

### **Technology and Technical Information**

It is important that the applicant select a specific advanced coal system for the project. Without that decision, it is difficult to provide the necessary specific design information needed for DOE to evaluate the project feasibility with respect to performance, emissions, outputs of major streams as well as capital and operating costs.

The Applicant's capability to meet the legislated heat rate and/or environmental targets should be supported with design information, and/or vendor guarantees that are project, site and coal specific.

### **Project Economics**

Applicants should demonstrate the project's economic feasibility and financial viability by providing a clear statement and explanation of the economic and financial assumptions made by the applicant, and a financial forecast for the project. The financial forecast should flow logically from the applicant's assumptions and be consistent with them. Applicants should include assumptions regarding financial and economic issues that may not be included in the project costs but have a direct impact on the project. The examples given in the "Site Control and Ownership" section are relevant here and their impact on the project economics should be discussed here.

### **Project Development and Financial Plan**

The information provided by the applicant in this section should demonstrate that the applicant's financial plan for developing the project is feasible and that the applicant will have access to necessary financing. The applicant should explain the source and timing for obtaining all financing, including the project development costs. It is important that the applicant explain and provide evidence that it has the capacity to fund the pre-construction project development costs, together with a budget for and description of those costs. Note that financial information is required for the applicant and for any other funding source.

### **Project Contract Structure**

This section requires that the applicant demonstrate an understanding of the commercial contracting process and show progress in establishing the framework of contracts and agreements that a project typically requires. Applicants should show that their intended contract structure is reasonable and that their assumptions relative to price, terms, and conditions are consistent with current market conditions. Evidence of final agreements, agreements in principle, or summaries of terms and conditions between the applicant and contract counterparties should be provided, if available.

# Excise Tax on High Cost Employer-Sponsored Health Coverage

## Notice 2015–16

### I. PURPOSE AND OVERVIEW

This notice is intended to initiate and inform the process of developing regulatory guidance regarding the excise tax on high cost employer-sponsored health coverage under § 4980I of the Internal Revenue Code (Code). Section 4980I, which was added to the Code by the Affordable Care Act,<sup>1</sup> applies to taxable years beginning after December 31, 2017. Under this provision, if the aggregate cost of “applicable employer-sponsored coverage” (referred to in this notice as applicable coverage) provided to an employee exceeds a statutory dollar limit, which is revised annually, the excess is subject to a 40% excise tax.

This notice describes potential approaches with regard to a number of issues under § 4980I, which could be incorporated in future proposed regulations, and invites comments on these potential approaches. The issues addressed in this notice primarily relate to (1) the definition of applicable coverage, (2) the determination of the cost of applicable coverage, and (3) the application of the annual statutory dollar limit to the cost of applicable coverage. The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) invite comments on the issues addressed in this notice and on any other issues under § 4980I.

Treasury and IRS anticipate issuing another notice, before the publication of proposed regulations under § 4980I, describing and inviting comments on potential approaches to a number of issues not addressed in this notice, including procedural issues relating to the calculation and assessment of the excise tax. After considering the comments on both notices, Treasury and IRS anticipate publishing proposed regulations under § 4980I. The proposed regulations will provide further

opportunity for comment, including an opportunity to comment on the issues addressed in the preceding notices.

This notice includes the following sections:

Section I: Purpose and Overview

Section II: Background

Section III: Definition of Applicable Coverage

Section IV: Determination of Cost of Applicable Coverage

Section V: Applicable Dollar Limit

Section VI: Possibility of Other Methods of Determining Cost of Applicable Coverage

Section VII: Request for Comments

Section VIII: Reliance

Section IX: No Inference

Section X: Drafting Information

### II. BACKGROUND

#### A. Section 4980I

Section 4980I was added to the Code by § 9001 of PPACA, as amended by § 10901 of PPACA, and as further amended by § 1401 of HCERA. Section 4980I is effective for taxable years beginning after December 31, 2017.

Section 4980I(a) imposes a 40% excise tax on any “excess benefit” provided to an employee, and § 4980I(b) provides that an excess benefit is the excess, if any, of the aggregate cost of the applicable coverage of the employee for the month over the applicable dollar limit for the employee for the month. Section 4980I(d)(3) provides that for this purpose the term “employee” includes “a former employee, surviving spouse, or other primary insured individual.”

Section 4980I(d)(1)(A) provides that applicable coverage means “with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee’s gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).”

Section 4980I(d)(2)(A) provides in relevant part that the cost of applicable cov-

erage is determined under rules “similar to the rules of section 4980B(f)(4).” Section 4980B(f)(4) defines the term “applicable premium” for purposes of COBRA<sup>2</sup> continuation coverage (referred to in this notice as the COBRA applicable premium). Section 4980I(d)(2)(A) also provides that, in determining the cost of applicable coverage for purposes of § 4980I, any amount that is attributable to the tax imposed under § 4980I is not taken into account for purposes of determining the cost of applicable coverage and that the amount of the cost of applicable coverage is to be calculated separately for self-only coverage and other-than-self-only coverage. Section 4980I(d)(2)(B) and (C) prescribe special rules for determining the cost of applicable coverage for retirees, health flexible spending arrangements (health FSAs), Archer medical savings accounts (Archer MSAs), and health savings accounts (HSAs).

Section 4980I(b)(3)(C) provides for two annual applicable dollar limits — one for an employee with self-only coverage and one for an employee with other-than-self-only coverage. Section 4980I(b)(3)(C) specifies per-employee baseline dollar limits for 2018 (\$10,200 per employee for self-only coverage and \$27,500 per employee for other-than-self-only coverage) but further provides for various adjustments to increase the applicable dollar limits in certain circumstances. Section 4980I(b)(3)(C)(ii) provides that a “health cost adjustment percentage” will be applied to the baseline dollar limits for 2018 to determine the applicable dollar limits for that year. Section 4980I(b)(3)(C)(v) provides that a cost-of-living adjustment will be applied to determine the applicable dollar limits for taxable years after 2018. In addition, § 4980I(b)(3)(C)(iii) provides that the dollar limits are increased by an age and gender adjustment, if applicable for an employer. Section 4980I(b)(3)(C)(iv) provides that an additional amount is added to the dollar limits for an individual who is a “qualified retiree” or “who participates in a plan sponsored by an employer the majority of whose employees covered by the plan are

<sup>1</sup>The “Affordable Care Act” refers to the Patient Protection and Affordable Care Act (enacted March 23, 2010, Pub. L. No. 111–148) (PPACA), as amended by the Health Care and Education Reconciliation Act of 2010 (enacted March 30, 2010, Pub. L. No. 111–152) (HCERA), and as further amended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112–10).

<sup>2</sup>COBRA refers to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272 (April 7, 1986).



engaged in a high-risk profession or employed to repair or install electrical or telecommunication lines.”

In general, § 4980I(b)(3)(B)(i) provides that the applicable dollar limit, which applies on a monthly basis, is determined based on the type of coverage (self-only or other-than-self-only) provided to an employee as of the beginning of a month. Section 4980I(f)(1) provides that an employee is treated as having self-only coverage with respect to any applicable coverage of an employer, except that an employee is treated as having other-than-self-only coverage if the employee is enrolled in coverage that provides minimum essential coverage (MEC), as defined in § 5000A(f), to the employee and at least one other beneficiary, and the benefits provided under that MEC do not vary based on whether any individual covered under the coverage is the employee or another beneficiary. In addition, any coverage provided under a multiemployer plan (as defined in § 414(f)) is treated as other-than-self-only coverage. § 4980I(b)(3)(B)(ii).

Section 4980I(c)(1) and (2) specify that the entity that “shall pay” the excise tax under § 4980I is (1) the “health insurance issuer” in the case of applicable coverage provided under an insured plan, (2) “the employer” if the applicable coverage “consists of coverage under which the employer makes contributions to” an HSA or Archer MSA, and (3) “the person that administers the plan” in the case of any other applicable coverage. In each case, the employer must calculate the tax and notify the entity liable for the excise tax (and the IRS) of the amount of the excise tax “at such time and in such manner as the Secretary may prescribe.” § 4980I(c)(4). Section 4980I(f)(10) provides that any excise tax paid pursuant to § 4980I is not deductible for federal tax purposes.

Section 4980I(g) provides that “[t]he Secretary may prescribe such regulations as may be necessary to carry out this section.”

## **B. COBRA Continuation Coverage**

Generally, the cost of applicable coverage under § 4980I is “determined under rules similar to the rules” under COBRA for determining the COBRA applicable premium. § 4980I(d)(2)(A). Under COBRA, the amount that a plan may charge for continuation coverage generally is limited to 102% of “the applicable premium.” § 4980B(f)(2)(C). The “applicable premium” means, “with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).” § 4980B(f)(4)(A). In general, the COBRA applicable premium must be determined for a period of 12 months (the determination period), and must be determined before the beginning of the determination period. § 4980B(f)(4)(C).

Section 4980B(f)(4)(B) specifies two methods for self-insured plans to determine the COBRA applicable premium:

(1) the actuarial basis method, under which the cost is equal to a reasonable estimate of the cost of providing coverage for similarly situated beneficiaries determined on an actuarial basis, taking into account “such factors as the Secretary may prescribe in regulations”; and

(2) the past cost method, which may be used at the election of the plan administrator except in cases in which there has been a significant change in coverage under the plan or in employees covered by the plan.

The current COBRA regulations provide that plans and employers must calculate the COBRA applicable premium in good faith compliance with a reasonable interpretation of the statutory requirements in § 4980B. Treas. Reg. § 54.4980B-1, Q&A-2.

## **C. Form W-2 Reporting of Applicable Coverage**

Separately from § 4980I, the Affordable Care Act added § 6051(a)(14) to the

Code, which requires employers to report on Form W-2, Wage and Tax Statement, the aggregate cost (determined under rules similar to the rules of § 4980B(f)(4)) of applicable coverage (as defined in § 4980I(d)(1)).<sup>3</sup> As currently implemented, this amount is reported in Box 12 of the Form W-2, Wage and Tax Statement, using Code DD. See General Instructions for Forms W-2 and W-3.

Notice 2012-9, 2012-4 I.R.B. 315, provides interim guidance applicable to the 2012 Forms W-2 and will continue to be applicable until further guidance is issued.<sup>4</sup> Notice 2012-9 provides guidance on which employers are subject to the § 6051(a)(14) reporting requirement, methods for reporting, and methods for determining the cost of coverage. Notice 2012-9 also provides transition relief for certain employers (for example, those filing fewer than 250 Forms W-2 in the prior year) and with respect to certain types of employer-sponsored coverage (for example, health reimbursement arrangements (HRAs)).

The interim guidance provided under Notice 2012-9 is intended solely for purposes of § 6051(a)(14). Treasury and IRS do not anticipate that the same guidance or rules will apply for purposes of § 4980I. However, Treasury and IRS anticipate that to the extent guidance under § 4980I provides improved methods for determining the cost of applicable coverage, consistent rules may be issued for purposes of § 6051(a)(14).

## **III. DEFINITION OF APPLICABLE COVERAGE**

### **A. In General**

Section 4980I(d)(1)(A) provides that applicable coverage means “with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee’s gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).”

<sup>3</sup>Section 6051(a)(14) was added to the Code by § 9002 of PPACA.

<sup>4</sup>Notice 2012-9 restated and amended the interim guidance on informational reporting to employees of the cost of their employer-sponsored group health plan coverage that was initially provided in Notice 2011-28, 2011-16 I.R.B. 656. Notice 2010-69, 2010-44 I.R.B. 576, provided that reporting under § 6051(a)(14) was not mandatory for 2011 Forms W-2.

Section 4980I(f)(4) provides that the term “group health plan” for purposes of § 4980I has the meaning given such term by § 5000(b)(1). Under § 5000(b)(1), “[t]he term ‘group health plan’ means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.”

Section 4980I(d)(1)(C) provides that coverage that meets the basic definition of applicable coverage is applicable coverage “without regard to whether the employer or employee pays for the coverage.” In addition, coverage that otherwise meets the definition of applicable coverage is applicable coverage without regard to whether the employer provides the coverage (and thus the coverage is excludable from the employee’s gross income) or the employee pays for the coverage with after-tax dollars. See § 4980I(d)(1)(A); see also Technical Explanation of the Revenue Provisions of the “Reconciliation Act of 2010,” as Amended, In Combination with the “Patient Protection and Affordable Care Act”, prepared by the Joint Committee on Taxation (March 21, 2010, JCX-18-10) (JCT Report). Also, the general definition of applicable coverage includes both insured and self-insured coverage. See § 4980I(f)(4), § 5000(b)(1); see also JCT Report, at 62.

Section 4980I(d)(1)(D) provides that applicable coverage includes coverage under a group health plan for self-employed individuals, within the meaning of § 401(c), “if a deduction is allowable under § 162(l) with respect to all or any portion of the cost of coverage.”<sup>5</sup>

Section 4980I(d)(3) provides that “the term employee includes any former employee, surviving spouse, or other primary insured individual.” Accordingly, applicable coverage includes retiree coverage to

the extent it otherwise constitutes applicable coverage.

## **B. Types of Coverage Included in Applicable Coverage**

While § 4980I(d)(1)(A) provides a general definition of applicable coverage, other subsections of § 4980I explicitly address the following types of coverage and indicate that they constitute applicable coverage:

(1) Health FSAs (§ 4980I(d)(2)(B));  
(2) Archer MSAs (but see section III.D of this notice for certain contributions by individuals that are not included) (§§ 4980I(c)(2)(B), 4980I(d)(2)(C));

(3) HSAs (but see section III.D of this notice for certain contributions by individuals that are not included) (§§ 4980I(c)(2)(B), 4980I(d)(2)(C));

(4) Governmental plans, defined as “coverage under any group health plan established and maintained primarily for its civilian employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government” (but see section III.C of this notice for the exclusion of military coverage) (§ 4980I(d)(1)(E));

(5) Coverage for on-site medical clinics (but see section III.E of this notice for a potential approach that would exclude on-site medical clinics that provide only de minimis medical care) (§ 4980I(d)(1)(B)(i));

(6) Retiree coverage (§§ 4980I(d)(3), 4980I(b)(3)(C)(iv));

(7) Multiemployer plans (as defined in § 414(f)) (§§ 4980I(b)(3)(B)(ii), 4980I(c)(4)(B)); and

(8) Coverage described in § 9832(c)(3) (which includes coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance), if the payment for the coverage or insurance is excluded from gross income or a deduction under § 162(l) is allowed with respect to it (§ 4980I(d)(1)(B)(iii)).

Other types of coverage, such as executive physical programs and HRAs, meet

the general definition of applicable coverage under § 4980I(d)(1)(A) and are not specifically excluded by another provision of § 4980I. Future guidance is expected to provide that executive physical programs and HRAs are applicable coverage. See also JCT Report, at 62.

## **C. Types of Coverage Excluded from Applicable Coverage**

Section 4980I(d)(1) also lists certain types of coverage that are excluded from applicable coverage. Under § 4980I(d)(1)(B), the following are excluded from applicable coverage:

(1) Coverage described in § 9832(c)(1) (other than sub-paragraph (G) thereof), whether through insurance or otherwise.<sup>6</sup> Section 9832(c)(1) (other than § 9832(c)(1)(G)) includes:

(a) coverage only for accident, or disability income insurance, or any combination thereof (§ 9832(c)(1)(A));

(b) coverage issued as a supplement to liability insurance (§ 9832(c)(1)(B));

(c) liability insurance, including general liability insurance and automobile liability insurance (§ 9832(c)(1)(C));

(d) workers’ compensation or similar insurance (§ 9832(c)(1)(D));

(e) automobile medical payment insurance (§ 9832(c)(1)(E));

(f) credit-only insurance (§ 9832(c)(1)(F)); and

(g) other insurance coverage, as specified in regulations, similar to the coverage listed in § 9832(c)(1) and under which benefits for medical care are secondary or incidental to other insurance benefits (§ 9832(c)(1)(H)).<sup>7</sup>

(2) Coverage, whether through insurance or otherwise, for long-term care;

(3) Any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ structure within the mouth) or for treatment of the eye (but see section III.F of this notice for a potential approach to exclude all limited scope den-

<sup>5</sup>In general, § 162(l) allows a self-employed individual a deduction for amounts paid for medical insurance for the individual and his or her family. The deduction is limited by the individual’s income from the trade or business and is not allowed if the individual is eligible to participate in any subsidized health plan maintained by an employer of the taxpayer or of certain other individuals related to the taxpayer. § 162(l)(2)(A), (B).

<sup>6</sup>Section 9832 describes certain excepted benefits, which are generally not subject to the provisions of chapter 100 of the Code pursuant to section 9831. See also Treas. Reg. § 54.9831-1. Chapter 100 was added to the Code by the Health Insurance Portability and Accountability Act of 1996, and imposes certain portability and nondiscrimination requirements with respect to group health plan coverage. Chapter 100 was later augmented by other consumer protection laws and by the Affordable Care Act.

<sup>7</sup>No excepted benefits have been added by regulation under § 9832(c)(1)(H).



tal and vision benefits that qualify as excepted benefits (insured and self-insured)); and

(4) Coverage described in § 9832(c)(3) (which includes coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance), if the payment for the coverage or insurance is not excluded from gross income or a deduction under § 162(l) is not allowed with respect to it.

In addition, § 4980I(d)(1)(E) implies that coverage provided under a plan maintained primarily for members of the military or for members of the military and their families by the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any such government is not applicable coverage. See § 4980I(d)(1)(E) (providing that governmental plans are included in applicable coverage and defining governmental plans as “coverage under any group health plan established and maintained primarily for its *civilian* employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.”) (Emphasis added.)

#### **D. HSAs/Archer MSAs**

Treasury and IRS anticipate that future proposed regulations will provide that (1) employer contributions to HSAs and Archer MSAs, including salary reduction contributions to HSAs, are included in applicable coverage, and (2) employee after-tax contributions to HSAs and Archer MSAs are excluded from applicable coverage.

Section 4980I(d)(2)(C) includes a special rule for determining the cost of coverage under HSAs and Archer MSAs. This rule provides that “in the case of applicable employer-sponsored coverage consisting of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the cost of the coverage shall be equal to the amount of the employer contributions under the arrangement.” Employer contributions to an HSA or Archer MSA are excludable under subsection (d) or (b), respectively, of § 106, and therefore are applicable coverage. This includes employee pre-tax salary re-

duction contributions to an HSA, which are treated as employer contributions for purposes of § 106 and are excludable under § 106(d).

In contrast, employee after-tax contributions to an HSA or Archer MSA are not excludable under § 106 but rather are deductible by an employee under § 223 (HSAs) or § 220 (Archer MSAs). Therefore, employee after-tax contributions to HSAs and Archer MSAs are not employer contributions under §§ 106(b) or (d). Accordingly, employee after-tax contributions to HSAs and Archer MSAs are not applicable coverage.

#### **E. On-site Medical Clinics**

Section 4980I(d)(1)(B)(i) excludes from the definition of applicable coverage each of the excepted benefits listed in § 9832(c)(1), other than the § 9832(c)(1)(G) exception for on-site medical clinics. Accordingly, coverage provided through an on-site medical clinic generally is applicable coverage. Treasury and IRS, however, anticipate that the forthcoming proposed regulations will provide that applicable coverage does not include on-site medical clinics that offer only *de minimis* medical care to employees. This exception would be consistent with the JCT Report, and it also avoids the burden of calculating the incremental additional cost of coverage that would be provided under such an arrangement, which most employees likely would not consider part of their health coverage. See JCT Report, at 62 (“Employer-sponsored health insurance coverage includes . . . on-site medical clinics that offer more than a *de minimis* amount of medical care to employees . . .”).

Treasury and IRS note that COBRA regulations provide that “[t]he provision of health care at a facility that is located on the premises of an employer or employee organization does not constitute a group health plan if—(1) [t]he health care consist primarily of first aid that is provided during the employer’ working hours for treatment of a health condition, illness, or injury that occurs during those working hours; (2) [t]he health care is available only to current employees; and (3) [e]mployees are not charged for the use of the facility.” Treas. Reg. § 54.4980B-2, Q&A-1(d).

In addition, Treasury and IRS seek comment on the treatment of clinics that meet the criteria described in the COBRA regulations and provide certain services in addition to (or in lieu of) first aid, for example: (1) immunizations; (2) injections of antigens (for example, for allergy injections) provided by employees; (3) provision of a variety of aspirin and other nonprescription pain relievers; and (4) treatment of injuries caused by accidents at work (beyond first aid).

Comments are requested on how Treasury and IRS should treat medical care in the case of on-site medical clinics, including whether the standard should be based on the nature and scope of the benefits or denominated as a specific dollar limit on the cost of services provided, or some combination of these two standards. In addition, comments are requested on how to determine the cost of coverage provided by an on-site medical clinic that is applicable coverage.

#### **F. Limited Scope Dental and Vision Benefits**

Section 4980I(d)(1)(B)(ii) excludes from applicable coverage “any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye.” Because this section refers only to dental and vision benefits that are provided under a “separate policy, certificate or contract of insurance,” stakeholders have asked whether this means that stand-alone dental and vision benefits will be treated differently for purposes of § 4980I depending on whether they are insured or self-insured.

As previously noted, generally whether coverage is insured or self-insured is not relevant for purposes of § 4980I, including for purposes of identifying whether any particular coverage is applicable coverage. §§ 4980I(d)(1)(A), (f)(4); JCT Report, at 62. Treasury and IRS, the Department of Labor and the Department of Health and Human Services (the Departments) recently amended the excepted benefit regulations under § 9831 on limited scope dental and vision benefits “to achieve greater consistency between in-

sured and self-insured coverage.” 79 FR 59130, 59132 (Oct. 1, 2014).

Treasury and IRS are considering whether to exercise their regulatory authority under § 4980I(g) to propose an approach under which self-insured limited scope dental and vision coverage that qualifies as an excepted benefit pursuant to the recently issued regulations under § 9831 would be excluded from applicable coverage for purposes of § 4980I. See Treas. Reg. § 54.9831-1(c)(3). Comments are requested on any reasons why Treasury and IRS should not implement this approach.

### G. Employee Assistance Programs (EAPs)

Under recently issued regulations, the Departments added employee assistance programs (EAPs) that meet certain criteria to the list of excepted benefits to ensure that employers are able to continue to offer certain EAPs as benefits that are supplemental to other coverage. Treas. Reg. § 54.9831-1(c)(3)(vi) (79 FR 59130, 59133).]

Treasury and IRS are considering whether to exercise authority under § 4980I(g) to propose that EAPs that qualify as an excepted benefit pursuant to the recently issued regulations under § 9831 would be excluded from applicable coverage for purposes of § 4980I. Comments are requested on any reasons why Treasury and IRS should not implement this approach.

## IV. DETERMINATION OF COST OF APPLICABLE COVERAGE

### A. In General

Section 4980I imposes a 40% excise tax on the excess, if any, of the aggregate cost of the applicable coverage of an employee for a month over the applicable dollar limit for the month. Section 4980I(d)(2)(A) provides that the cost of applicable coverage generally is determined under rules similar to the rules of § 4980B(f)(4), which apply for purposes of determining the COBRA applicable premium. Section 4980I also prescribes

specific calculation rules that apply to certain types of arrangements.

### 1. Determination of Applicable Premium under COBRA

Under § 4980B(f)(4), the COBRA applicable premium generally is based on the average cost of providing coverage for those covered under the plan who are similarly situated, instead of the cost of providing coverage based on the characteristics of each individual.

As noted earlier, Section 4980B(f)(4)(A) defines COBRA applicable premium to mean, “with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).” Section 4980B(f)(4)(B) prescribes two methods for self-insured plans to determine the COBRA applicable premium: (i) the actuarial basis method; and (ii) the past cost method. Section 4980B(f)(4)(C) provides that the COBRA applicable premium must be determined for a 12-month determination period, and must be determined before the beginning of such period.

The COBRA regulations provide that, with respect to the determination of the COBRA applicable premium, plans and employers must operate in good faith compliance with a reasonable interpretation of the statutory requirements in § 4980B. Treas. Reg. § 54.4980B-1, Q&A-2.

### 2. Specific Rules under § 4980I

Section 4980I also includes additional calculation rules for determining the cost of applicable coverage.

(1) *§ 4980I Tax Not Included in Cost.* Section 4980I(d)(2)(A) provides that the cost of applicable coverage under § 4980I does not take into account “any portion of the cost of such coverage which is attributable to the tax imposed under this section.”

(2) *Separate Costs for Self-Only and Other-than-Self-Only Coverage.* Section

4980I(d)(2)(A) provides that the cost of applicable coverage must be calculated separately for self-only coverage and other-than-self-only coverage. Section 4980I(b)(3)(B)(iii) provides that any coverage under a multiemployer plan (as defined in § 414(f)) is treated as other-than-self-only coverage for purposes of § 4980I.

(3) *Retirees.* Section 4980I(d)(2)(A) provides that, in the case of applicable coverage provided to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.<sup>8</sup>

(4) *Health FSAs.* Section 4980I(d)(2)(B) provides for health FSAs that the cost of applicable coverage is equal to the sum of salary reduction contributions plus the amount determined under the general calculation rule with respect to any reimbursement under the arrangement in excess of the salary reduction contributions. Thus, the cost of applicable coverage under a health FSA includes employer flex contributions used for the health FSA.

(5) *HSA and Archer MSAs.* Section 4980I(d)(2)(C) provides for HSAs and Archer MSAs that the cost of applicable coverage “shall be equal to the amount of employer contributions under the arrangement.” For this purpose, employer contributions include salary reduction contributions.

(6) *Monthly Costs.* Section 4980I(d)(2)(D) provides that for applicable coverage for which the cost is determined “on other than a monthly basis, the cost shall be allocated to months in a taxable period on such basis as the Secretary may prescribe.”

### B. Aggregate Cost of Applicable Coverage Based on Applicable Coverage in Which Employee is Enrolled

Section 4980I(a) provides that if “an employee is *covered* under any applicable employer-sponsored coverage of an employer” during a taxable period and “there is an excess benefit with respect to *the coverage*,” an excise tax applies. (Emphasis added.) Section 4980I(b) provides that the “excess benefit” is the excess of “(A)

<sup>8</sup>For a description of the additional amount added to the § 4980I dollar limit for “qualified retirees,” see section V.C of this notice.

the aggregate cost of *the applicable employer-sponsored coverage of the employee* for the month, over (B) an amount equal to 1/12 of the annual limitation” for the employee for the applicable calendar year. (Emphasis added.)

Although other subsections of the statute refer to the coverage “made available” to the employee, §§ 4980I(a) and (b) explicitly provide that the applicable coverage that is compared to the dollar limit for purposes of determining the excise tax is the applicable coverage in which the employee is enrolled, rather than coverage offered to the employee but in which the employee does not enroll (the cost of which could be above or below the dollar limit). See also JCT Report, at 65.

### C. Potential Approaches for Determining Cost of Applicable Coverage

As noted earlier, § 4980I(d)(2)(A) provides that the cost of applicable coverage is determined “under rules similar to the rules of section 4980B(f)(4)” regarding the determination of the COBRA applicable premium.

A number of issues arise in computing the COBRA applicable premium on which specific guidance has not been provided, including how to determine which nonCOBRA beneficiaries are similarly situated, the specific methods self-insured plans may use to determine the COBRA applicable premium, and how to determine the COBRA applicable premium for HRAs. This section IV.C describes potential approaches with respect to each of these issues for purposes of § 4980I.

Treasury and IRS also continue to consider whether the potential approaches described below should apply for purposes of determining the COBRA applicable premium.

#### 1. Similarly Situated Individuals

The COBRA applicable premium for a qualified beneficiary entitled to COBRA continuation coverage is based on the cost of coverage for similarly situated nonCOBRA beneficiaries. § 4980B(f)(4)(A). The COBRA regulations define similarly situated nonCOBRA beneficiaries as the cov-

ered employees, spouses of covered employees, or dependent children of covered employees receiving coverage under the group health plan maintained by the employer or employee organization who are receiving that coverage for a reason other than COBRA, and who are most similarly situated to the situation of the qualified beneficiary immediately before the qualifying event. Treas. Reg. § 54.4980B-3, Q&A-3.

Treasury and IRS anticipate that a somewhat similar standard will apply for § 4980I and that, for any specific type of applicable coverage, the cost of that applicable coverage for an employee will be based on the average cost of that type of applicable coverage for that employee and all similarly situated employees. Under the potential approach that Treasury and IRS are considering, each group of similarly situated employees would be determined by starting with all employees covered by a particular benefit package provided by the employer, then subdividing that group based on mandatory disaggregation rules, and allowing further subdivision of the group based on permissive disaggregation rules.

*Aggregation by Benefit Package.* Under the potential approach that Treasury and IRS are considering for purposes of determining the groups of similarly situated employees, the initial groups of similarly situated employees would be determined by aggregating all employees (as defined in § 4980I(d)(3)) covered by a particular benefit package provided by the employer.<sup>9</sup> The employees enrolled in each different benefit package would be grouped separately. Benefit packages would be considered different based upon differences in health plan coverage; there may be more than one benefit package provided under a group health plan. Employees would be grouped by the benefit packages in which they are enrolled, rather than the benefit packages they are offered. Thus, for example, if employees are provided a choice between a standard and a high option (such as an option with lower deductibles and copays), employees covered under the high option would be grouped separately from those covered under the standard option. The result

would be the same if the choice instead was, for example, between an HMO option and a PPO option, between several different HMO options, or between several different HMO and PPO options.

*Mandatory Disaggregation (Self-Only Coverage and Other-Than-Self-Only Coverage).* After aggregating all employees covered by a particular benefit package, under this potential approach, the employer would then be required to disaggregate the employees within the group covered by the benefit package based on whether an employee had enrolled in self-only coverage or other-than-self-only coverage. For example, in a benefit package allowing employees to choose between self-only and family coverage, employees receiving self-only coverage would be grouped separately from those receiving family coverage. This potential approach is consistent with § 4980I(d)(2)(A), which provides that the cost of applicable coverage “shall be calculated separately for self-only coverage and other coverage.”

*Permissive Aggregation within Other-Than-Self-Only Coverage.* However, within a group of employees who are receiving other-than-self-only coverage, § 4980I(d)(2)(A) does not require that the cost of applicable coverage be determined separately based on the number of individuals who are receiving coverage in addition to the employee (for example, employee plus one, employee plus two, or family coverage). As a result, Treasury and IRS are considering an approach under which an employer would not be required to determine the cost of applicable coverage for employees receiving other-than-self-only coverage based on the number of individuals covered in addition to the employee (even if the actual cost of such coverage varied on this basis). Under this potential approach, an employer could treat all employees who are enrolled in the same benefit package and who receive coverage for one or more individuals in addition to the employee as similarly situated for purposes of determining the cost of applicable coverage for that group.

*Permissive Disaggregation.* For the purposes of COBRA, Treasury and IRS are considering permitting (but not requir-

<sup>9</sup>All employers treated as a single employer under § 414(b), (c), (m), or (o) are treated as a single employer for purposes of § 4980I. § 4980I(f)(9).



ing) further disaggregation based on distinctions that have traditionally been made in the group insurance market. Because the cost of applicable coverage under § 4980I is generally determined under rules similar to the rules applicable to COBRA, Treasury and IRS are also considering permissive disaggregation for purposes of § 4980I. In particular, Treasury and IRS are considering whether to provide rules for permissive disaggregation that would allow, but not require, an employer to subdivide further the group of employees that would be treated as similarly situated. Specifically, Treasury and IRS are considering whether disaggregation should be permitted based on (a) a broad standard (such as limiting permissive disaggregation to bona fide employment-related criteria, including, for example, nature of compensation, specified job categories, collective bargaining status, etc.) while prohibiting the use of any criterion related to an individual's health), or (b) a more specific standard (such as a specified list of limited specific categories for which permissive disaggregation is allowed). A more specific standard, for example, could permit groups of similarly situated employees enrolled in a single benefit package to be disaggregated only into current and former employees and/or to be disaggregated based on bona fide geographic distinctions, such as an employee's residence in or a business's location in different states or metropolitan areas and/or, for an employee receiving other-than-self-only coverage, based on the number of individuals covered in addition to the employee (that is, different rating units).

Treasury and IRS invite comments on the potential approach described in this section with respect to determining groups of similarly situated employees, including areas in which additional guidance would be beneficial. With respect to the potential approach to mandatory aggregation of employees who are enrolled in the same benefit package, comments are requested on the extent to which benefit packages must be identical to be considered the same for this purpose and, if differences are permitted, the nature and extent of those permitted differences. With respect to the two potential approaches for permissive disaggregation set out in the pre-

vious paragraph, comments are requested on which approach is preferable. If the second approach (under which specific criteria for permissive disaggregation are enumerated) is preferable, comments are requested on what specific criteria should be permitted. Comments are also requested on whether additional guidance would be beneficial under § 4980I(d)(2)(A), which states that, for applicable coverage provided to employees, "the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries."

When developing comments on these approaches, stakeholders are requested to be mindful of § 4980I(d)(2)(A), which provides that the cost of applicable coverage under § 4980I is generally determined under rules similar to the rules applicable to COBRA. Accordingly, future guidance on determining the COBRA applicable premium is likely to attempt to harmonize the COBRA rules with the rules under § 4980I to the extent practicable. With respect to COBRA, allowing some employers to make distinctions that they have not previously made when offering coverage to participants and beneficiaries could result in a standard that is susceptible to abuse. A list of exclusive criteria is likely less susceptible to such abuse. However, Treasury and IRS are also concerned that, for purposes of COBRA, prohibiting any further disaggregation after mandatory disaggregation would be too restrictive because it would not allow distinctions that have traditionally been made in the group market. Although the rules for determining the cost of applicable coverage under § 4980I generally can be expected to be similar to the rules for determining the COBRA applicable premium, some differences may be appropriate. Treasury and IRS invite comments on these issues.

## 2. Self-Insured Methods

Section 4980B(f)(4)(B) prescribes two methods for self-insured plans to compute the COBRA applicable premium — the actuarial basis method and the past cost method. A plan must use the actuarial basis method unless the plan administrator

elects to use the past cost method and the plan is eligible to use that method.

*Actuarial Basis Method.* As set forth in § 4980B(f)(4)(B)(i), the actuarial basis method provides that, to the extent that a plan is a self-insured plan, the COBRA applicable premium is equal to a reasonable estimate of the cost of providing coverage for similarly situated beneficiaries that (i) is determined on an actuarial basis, and (ii) takes into account such factors as the Secretary may prescribe in regulations. Treasury and IRS have not issued regulations prescribing factors to take into account.

*Past Cost Method.* As set forth in § 4980B(f)(4)(B)(ii), the past cost method provides that the COBRA applicable premium is equal to "(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period. . . adjusted by (II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period." Section 4980B(f)(4)(iii) provides that a plan administrator may not elect to use the past cost method "in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. . . ." Section 4980B(f)(4)(C) provides that the determination of any COBRA applicable premium must be made for a period of 12 months and must be made before the beginning of that period. See section IV.D of this notice for a discussion of a possible approach using actual costs incurred during the plan year to calculate the cost of coverage under the past cost method for purposes of § 4980I (but not COBRA).

Treasury and IRS anticipate that, in general, these two methods will apply for purposes of determining the cost of applicable coverage for self-insured plans for purposes of § 4980I, and seek comment on this approach. See § 4980I(d)(2)(A).

### a. Changing Between Methods

In the COBRA context, Treasury and IRS are concerned about the possibility of

abuse if a plan switches between the actuarial basis method and the past cost method frequently. Consequently, Treasury and IRS are considering proposing a rule under § 4980B that generally would require a plan to use the valuation method that it chooses for a period of at least five years. The only exception would be based on the prohibition under § 4980B(f)(4)(B)(iii) on using the past cost method if there is a significant difference between periods in coverage under, or in employees covered by, the plan. In that case, the plan might be required to use the actuarial basis method for the two years following the significant change.

Treasury and IRS are considering whether to adopt a similar standard for purposes of § 4980I. Comments are requested on this possibility, on whether there should be concerns about allowing an employer to use the past cost method only for years in which claims are unusually low, and on whether allowing the use of different methods from year to year would cause administrative concerns or raise other issues.

#### **b. Actuarial Basis Method**

Under § 4980B(f)(4)(B)(ii)(I), a self-insured plan making an actuarial estimate of the cost of providing coverage must take into account factors prescribed in regulations. For purposes of § 4980I, Treasury and IRS are considering whether to propose a broad standard under which the cost of applicable coverage for a group of similarly situated individuals would be equal to a reasonable estimate of the cost of providing coverage under the plan for individuals in that group for the determination period, using reasonable actuarial principles and practices. Under this standard, an estimate of cost would be an estimate of the actual cost the plan is expected to incur for a determination period, not the minimum (or maximum) exposure that the plan could have for that period.

Treasury and IRS invite comments on all aspects of this potential approach, including whether proposed regulations should require some accreditation of individuals making actuarial estimates, whether it would be preferable to specify

a list of factors that must be satisfied to make an actuarial determination of the cost of applicable coverage, and whether a similar standard should apply for purposes of determining the COBRA applicable premium.

#### **c. Past Cost Method**

##### **i. Measurement Period under Past Cost Method**

Under § 4980B(f)(4)(B)(ii), a plan electing to use the past cost method determines the COBRA applicable premium based on the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding 12-month determination period, as adjusted under § 4980B(f)(4)(B)(ii)(II). For COBRA purposes, Treasury and IRS are considering whether to issue guidance providing that plans choosing the past cost method may use as the 12-month measurement period for a current determination period any 12-month period ending not more than 13 months before the beginning of the current determination period. Thus, for example, under this potential approach, a plan could use the determination period ending one year before the current determination period as the measurement period for computing costs for the current determination period, or it could use a measurement period beginning 18 months before and ending six months before the beginning of the current determination period. The measurement period would have to be applied consistently. For example, if a plan used a 12-month measurement period ending three months before the beginning of the current determination period, the plan would be required to consistently use the same measurement period for future years, absent bona fide business reasons for a change.

The rule provided under § 4980B(f)(4)(B)(ii)(II), which applies an adjustment factor to the costs determined over the 12-month measurement period under the past cost method, would continue to apply under this potential approach.

Treasury and IRS are considering whether to adopt a similar standard for purposes of § 4980I. Comments are requested on this approach, including any administrative issues that may need to be addressed, as well as whether this ap-

proach should also be made applicable for § 4980I purposes.

##### **ii. Costs Taken into Account under Past Cost Method**

Treasury and IRS anticipate that proposed regulations would describe the costs that must be taken into account in computing costs under the past cost method. The costs could include (1) claims, (2) premiums for stop-loss or reinsurance policies, (3) administrative expenses, and (4) reasonable overhead expenses (such as salary, rent, supplies, and utilities) of the employer, with those reasonable overhead expenses being ratably allocated to the cost of administering the employer's health plans.

With respect to the cost of claims, those costs could include either claims incurred during the measurement period (whether paid or unpaid) or claims submitted during the measurement period (regardless of when incurred). Treasury and IRS invite comments on which of these two approaches is preferable, the type of data employers and insurers traditionally track (that is, data based on claims incurred or on claims submitted), and, if relevant, the maximum length of time after the end of the plan year that should be permitted to account for claims submitted after, but incurred during, the plan year (often referred to as a run-out period).

With respect to reasonable overhead expenses, Treasury and IRS invite comments as to whether additional guidance on what constitutes reasonable overhead expenses would be beneficial, including (1) whether a presumption should be adopted that, for self-insured plans with a third party administrator, reasonable overhead expenses are reflected in the third party administrator fee, and (2) whether a safe harbor should be adopted that would allow a self-administered, self-insured plan to assume that the amount of reasonable overhead expenses is equal to a defined percentage of claims.

Treasury and IRS anticipate that the costs taken into account under the past cost method under the proposed regulations would not take into account reserves for potential future costs, claims incurred to the extent subject to reimbursement under a stop-loss or reinsurance policy, or any portion of the cost of coverage which

is attributable to the excise tax.<sup>10</sup> Treasury and IRS invite comments on all aspects of this potential approach, including whether a similar standard should apply for purposes of determination of the COBRA applicable premium.

### 3. HRAs

Treasury and IRS anticipate that future guidance will provide that an HRA is applicable coverage under § 4980I. Section 4980I does not include special rules for determining the cost of coverage under an HRA. Therefore, the cost of coverage under an HRA is determined under the general § 4980I valuation rules.

Notice 2002–45, 2002–28 I.R.B. 93, contains guidance on a number of issues relating to HRAs, provides that HRAs are subject to COBRA, and states that the COBRA applicable premium under an HRA may not be based on a qualified beneficiary's reimbursement amounts available from the HRA. Treasury and IRS have not provided further guidance on the calculation of the COBRA applicable premium for an HRA.

Treasury and IRS are considering various methods that future guidance might permit for use in determining the cost of applicable coverage under an HRA, including determining the cost of applicable coverage under an HRA based on the amounts made newly available to a participant each year. This potential approach would not take into account carry-over amounts or amounts made newly available before 2018 (except potentially amounts made available for non-calendar plan years beginning in 2017 and ending in 2018). This approach might provide employers with greater certainty as to the cost of applicable coverage under an HRA from year to year.

In certain circumstances, however, such an approach could overvalue an HRA because the total contributions might not be spent in the current period (for example, because the employer provides large HRA contributions that go unused in a given year). Accordingly, Treasury and IRS are also considering a rule, either instead of or in addition to the po-

tential approach described above, that would permit employers to determine the cost of coverage by adding together all claims and administrative expenses attributable to HRAs for a particular period (separately for each level of coverage if the employer allocation differs by employee election, such as allocating \$1,000 to the accounts of employees electing self-only coverage and allocating \$2,000 to the accounts of employees electing family coverage) and dividing that sum by the number of employees covered for that period (at that level of coverage). Under this potential approach, reasonable overhead expenses would be determined in a manner similar to that described in section IV.C.2.c.ii of this notice (Costs Taken into Account under Past Cost Method). Treasury and IRS are also considering whether to permit or require employers to use the actuarial basis method to determine the cost of coverage under an HRA.

Some stakeholders have suggested that the cost of applicable coverage should not include an HRA that can be used only to fund the employee contribution toward coverage. This suggestion is based on the position that the other coverage purchased with HRA proceeds would be applicable coverage and that including the value of both the HRA and the other coverage would constitute double counting. Comments are requested on the frequency with which HRAs allow reimbursement only for employee contributions toward coverage, on how the cost of an HRA should be determined if the HRA can be used by employees to fund employee contributions toward coverage and can be used for other medical expenses, and, specifically in that circumstance, on whether the standard should depend on how employees choose to use the HRA (that is, for employee contributions toward coverage or for other expenses), and on the administrability of such an approach.

Similarly, some stakeholders have suggested that the cost of applicable coverage should not include an HRA that can be used to cover a range of benefits, some of which would not be applicable coverage. Comments are requested on the frequency with which HRAs allow reimbursement

only for types of coverage that are not applicable coverage, on how the cost of an HRA should be determined if employees can use it both for coverage that is and for coverage that is not applicable coverage, and, in that circumstance, on whether the standard should depend on how employees choose to use the HRA (that is, for applicable coverage or for a benefit that is not applicable coverage), and on the administrability of such an approach.

Treasury and IRS are concerned that making available multiple methods for determining the cost of applicable coverage under an HRA could increase administrative complexity materially. Providing only one method to determine the cost of applicable coverage would minimize these concerns. Treasury and IRS ask stakeholders to take this issue into account in commenting on methods to determine the cost of applicable coverage for HRAs. Treasury and IRS also invite comments on each of the potential approaches described above, in addition to suggestions for other approaches that could be used in determining the cost of applicable coverage under an HRA. Comments are invited also on whether specific rules are needed for HRAs with no carry-over feature and on whether the potential approaches described in this section for purposes of determining the cost of applicable coverage under § 4980I should apply for purposes of determining the COBRA applicable premium.

### D. Determination Period

Section 4980B(f)(4)(C) provides that the determination of any COBRA applicable premium is to be made in advance for a 12-month period. Thus, for COBRA continuation coverage the method for calculating the applicable premium must be elected prior to the determination period for which the applicable premium applies. As applied for purposes of § 4980I, it is contemplated that under similar rules the method for calculating the cost of applicable coverage would be elected prior to the determination period for which the cost is determined. For example, a self-insured plan using the calendar year as the 12-month determination period would

<sup>10</sup>Section 4980I(d)(2)(A) provides that, for purposes of determining the cost of applicable coverage "any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account[.]"



elect the method (actuarial or past cost) before the beginning of the calendar year. If the plan elected the past cost method, it would also have elected its measurement period as well. Under these rules, the amount of any liability under § 4980I would generally be known at the beginning of the taxable year generating the liability.

Treasury and IRS invite comments on whether these COBRA rules should apply for purposes of § 4980I and on whether additional guidance would be beneficial with respect to the determination period for purposes of COBRA and for purposes of § 4980I. In addition, Treasury and IRS request comments on the feasibility of a method for determining the cost of applicable coverage using actual costs: that is, for a self-insured plan, basing the cost of applicable coverage for a year on the actual costs paid by the plan to provide health coverage for that year. This method would not be available for determining COBRA applicable premiums because COBRA requires the applicable premium to be determined prior to the period of coverage. The feasibility of this method may depend upon the timing for the filing of a return and payment of the tax because under this proposed approach the plan will need to collect information after the end of the plan year about claims incurred but paid after the end of the calendar year. Treasury and IRS anticipate addressing these procedural timing issues and requesting comments on possible approaches as part of a subsequent notice devoted largely to procedural issues under § 4980I.

## V. APPLICABLE DOLLAR LIMIT

### A. In General

Section 4980I(b)(3) provides two annual dollar limits — one for an employee with self-only coverage and one for an employee with other-than-self-only coverage. In general, the prorated annual limitation that applies for any month is determined based on whether self-only or other-than-self-only coverage is provided to the employee by the employer as of the beginning of the month. See § 4980I(b)(3)(B)(i).

Section 4980I(f)(1) provides that an employee is treated as having self-only

coverage with respect to any applicable coverage of an employer, except that an employee “shall be treated as having coverage other than self-only coverage only if the employee is enrolled in coverage other than self-only coverage in a group health plan which provides minimum essential coverage (as defined in section 5000A(f)) to the employee and at least one other beneficiary, and the benefits provided under such minimum essential coverage do not vary based on whether any individual covered under such coverage is the employee or another beneficiary.”

Various types of applicable coverage are not MEC. Examples include (to the extent they are excepted benefits) the following: (1) health FSAs; (2) coverage for on-site medical clinics; (3) coverage only for a specified disease or illness, offered as independent non-coordinated benefits (if payment for coverage is excluded from gross income or for which a deduction under § 162(l) is allowed); and (4) hospital indemnity or other fixed indemnity insurance, offered as independent non-coordinated benefits (if payment for coverage is excluded from gross income or for which a deduction under § 162(l) is allowed). See § 5000A(f)(3); Treas. Reg. § 1.5000A-2(g). HSAs are also applicable coverage that do not constitute MEC. See 78 FR 54986, 54990 (Sept. 9, 2013).

### B. Potential Approach for Application of Dollar Limit to Employees with both Self-Only and Other-Than-Self-Only Applicable Coverage

An employee may simultaneously have coverage to which the self-only dollar limit applies and coverage to which the other-than-self-only dollar limit applies. For example, an employee may have self-only major medical coverage and supplemental coverage (such as an HRA) that covers the employee and the employee’s family.

Treasury and IRS are considering an approach to clarify the application of the dollar limit when an employee simultaneously has one type of coverage that is self-only coverage and another type of coverage that is other-than-self-only coverage. Under this potential approach, the applicable dollar limit for an employee would depend on whether the employee’s primary coverage/major medical coverage

is self-only coverage or other-than-self-only coverage. For this purpose, an employee’s primary coverage/major medical coverage would be the type of coverage (self-only or other-than-self-only) that accounts for the majority of the aggregate cost of applicable coverage. For example, if an employee has applicable coverage with an aggregate cost of \$12,000, \$3,000 of which is self-only coverage and \$9,000 of which is other-than-self-only coverage, the other-than-self-only coverage dollar limit would apply to the full \$12,000. If self-only coverage and other-than-self-only coverage make up equal amounts of the aggregate cost of applicable coverage, the other-than-self-only dollar limit would apply to the employee.

Treasury and IRS are also considering an alternative approach that would apply a composite dollar limit determined by prorating the dollar limits for each employee according to the ratio of the cost of the self-only coverage and the cost of the other-than-self-only coverage provided to the employee. For example, if an employee has applicable coverage with an aggregate cost of \$12,000 of which \$3,000 is self-only major medical coverage and \$9,000 is other-than-self-only coverage, the composite dollar limit for the employee to determine excess benefits would be the sum of (1) 25% ( $\$3,000 / (\$3,000 + \$9,000)$ ) of the self-only coverage dollar limit and (2) 75% ( $\$9,000 / (\$3,000 + \$9,000)$ ) of the other-than-self-only coverage dollar limit.

Other categorization rules under § 4980 I would continue to apply (so, for example, self-only coverage under a multi-employer plan would be treated as other-than-self-only coverage). Treasury and IRS invite comments on these potential approaches, including any potential administrative difficulties in applying them, as well as any other approaches that might address this issue.

### C. Dollar Limit Adjustments

Section 4980I(b)(3) provides two baseline per-employee dollar limits for 2018 (\$10,200 for self-only coverage and \$27,500 for other-than-self-only coverage) but also provides that various adjustments, noted earlier in section II.A, will apply to increase these amounts. Treasury and IRS intend to include rules regarding

these adjustments in proposed regulations and invite comments on the application and adjustment of the dollar limits.

Specifically, as described earlier in section II.A, § 4980I(b)(3)(C)(ii) provides that a “health cost adjustment percentage” will be applied to the baseline per-employee dollar limits for 2018 to determine the actual applicable dollar limits for that year, and § 4980I(b)(3)(C)(v) provides that, for taxable years after 2018, a cost-of-living adjustment will be applied to determine the applicable dollar limits.

### **1. Adjustments for Qualified Retirees**

Section 4980I(b)(3)(C)(iv) provides that an additional amount is added to the dollar limits for an individual who is a “qualified retiree.” For this purpose, § 4980I(f)(2) defines a “qualified retiree” as “any individual who (A) is receiving coverage by reason of being a retiree, (B) has attained age 55, and (C) is not entitled to benefits or eligible for enrollment under the Medicare program under title XVIII of the Social Security Act.” Treasury and IRS request comments on how an employer determines that an employee is not eligible for enrollment under the Medicare program.

### **2. Adjustments for High-Risk Professions**

Section 4980I(b)(3)(C)(iv) provides that an additional amount is added to the dollar limits for an individual “who participates in a plan sponsored by an employer the majority of whose employees covered by the plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunication lines.” Section 4980I(f)(3) provides that “employees engaged in a high-risk profession” means “law enforcement officers (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), employees in fire protection activities (as such term is defined in section 3(y) of the Fair Labor Standards Act of 1938), individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders), individuals whose primary work is long-

shore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof), and individuals engaged in the construction, mining, agriculture (not including food processing), forestry, and fishing industries. Such term includes an employee who is retired from a high-risk profession described in the preceding sentence, if such employee satisfied the requirements of such sentence for a period of not less than 20 years during the employee’s employment.”

Treasury and IRS request comments on how an employer determines whether the majority of employees covered by a plan are engaged in a high-risk profession and what the term “plan” means in that context and how an employer determines that an employee was engaged in a high-risk profession for at least 20 years. Comments are also requested on whether further guidance on the definition of “employees engaged in a high risk profession” would be beneficial, taking into consideration that various categories set forth in § 4980I(f)(3) are determined by laws not under the jurisdiction of Treasury or IRS.

### **3. Age and Gender Adjustments**

Section 4980I(b)(3)(C)(iii) provides that the amounts of the dollar limits for an employer may be increased by an age and gender adjustment if the age and gender characteristics of an employer’s workforce are different from those of the national workforce. Comments are requested on whether it would be desirable and possible to develop safe harbors that appropriately adjust dollar limit thresholds for employee populations with age and gender characteristics that are different from those of the national workforce.

## **VI. POSSIBILITY OF OTHER METHODS OF DETERMINING COST OF APPLICABLE COVERAGE**

As noted previously, § 4980I provides that the cost of applicable coverage is determined under rules that are similar to the rules for determining the COBRA applicable premium, which is based on the cost of applicable coverage provided to

similarly situated employees of the employer. Some stakeholders have suggested that the cost of applicable coverage for an employee could be determined by reference to the cost of similar coverage available elsewhere (for example, through an Affordable Insurance Exchange, also known as a Health Insurance Marketplace). Some have also raised the question whether the cost of applicable coverage for an employee could be determined by reference to coverage available elsewhere based on actuarial values, metal levels (bronze, silver, etc.), or other metrics. However, such metrics might be based only on essential health benefits (defined in 45 CFR § 156.110) and may not fully account for other features and benefits. In addition, in the case of self-insured or large group plans, two such plans that have different costs of applicable coverage might nonetheless have equal actuarial values. Treasury and IRS invite comments on whether any alternative approaches to determining the cost of applicable coverage would be consistent with the statutory requirements of § 4980I and, if so, would be useful.

## **VII. REQUEST FOR COMMENTS**

Treasury and IRS invite comments on the issues addressed in this notice and on any other issues under § 4980I. As noted earlier, Treasury and IRS intend to issue another notice inviting comments on certain additional issues not addressed in this notice. It is expected that the comments responding to the notices will be used to inform proposed regulations that will be issued in the future for further public notice and comment.

Public comments should be submitted no later than May 15, 2015. Comments should include a reference to Notice 2015–16. Send submissions to CC:PA:LPD:PR (Notice 2015–16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2015–16), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov).

Please include "Notice 2015-16" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

### VIII. RELIANCE

This notice does not provide guidance under § 4980I upon which taxpayers may rely.

### IX. NO INFERENCE

No inference should be drawn from any provision of this notice concerning any provision of § 4980I other than those addressed in this notice or concerning any other section of the Affordable Care Act or COBRA.

### X. DRAFTING INFORMATION

The principal author of this notice is Karen Levin of the Office of Associate

Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Ms. Levin at (202) 317-5500 (not toll-free numbers).

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

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

### Rev. Rul. 2015-4

This revenue ruling provides various prescribed rates for federal income tax purposes for March 2015 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for

purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015 shall not be less than 9%.

Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2015-4 TABLE 1				
Applicable Federal Rates (AFR) for March 2015				
	<i>Annual</i>	<i>Period for Compounding</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Semiannual</i>		
		<i>Short-term</i>		
AFR	.40%	.40%	.40%	.40%
110% AFR	.44%	.44%	.44%	.44%
120% AFR	.48%	.48%	.48%	.48%
130% AFR	.52%	.52%	.52%	.52%
		<i>Mid-term</i>		
AFR	1.47%	1.46%	1.46%	1.46%
110% AFR	1.62%	1.61%	1.61%	1.60%
120% AFR	1.76%	1.75%	1.75%	1.74%
130% AFR	1.91%	1.90%	1.90%	1.89%
150% AFR	2.20%	2.19%	2.18%	2.18%
175% AFR	2.58%	2.56%	2.55%	2.55%
		<i>Long-term</i>		
AFR	2.19%	2.18%	2.17%	2.17%
110% AFR	2.41%	2.40%	2.39%	2.39%
120% AFR	2.64%	2.62%	2.61%	2.61%
130% AFR	2.85%	2.83%	2.82%	2.81%

REV. RUL. 2015-4 TABLE 2

Adjusted AFR for March 2015

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.36%	.36%	.36%	.36%
Mid-term adjusted AFR	1.14%	1.14%	1.14%	1.14%
Long-term adjusted AFR	2.19%	2.18%	2.17%	2.17%

REV. RUL. 2015-4 TABLE 3

Rates Under Section 382 for March 2015

Adjusted federal long-term rate for the current month	2.19%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.67%

REV. RUL. 2015-4 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for March 2015

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.42%
Appropriate percentage for the 30% present value low-income housing credit	3.18%

REV. RUL. 2015-4 TABLE 5

Rate Under Section 7520 for March 2015

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.8%
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## Part IV. Items of General Interest

### Request for Information

**REG-102648-15**

#### Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Request for information.

SUMMARY: The Department of the Treasury invites public comments with regard to future guidance required to implement provisions of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235 (MPRA). MPRA generally permits a sponsor of a multiemployer defined benefit plan that is in critical and declining status to suspend certain benefits following the provision of specified notice, consideration of public comments, approval of an application for suspension, and satisfaction of other specified conditions (including a participant vote).

DATES: Comments must be received by April 6, 2015.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG-102648-15), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-102648-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102648-15). All materials submitted will be shared with the Department of Labor and the Pension Benefit Guaranty Corporation, and will be available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Concerning the request for information, Jamie Dvoretzky at (202) 317-4102; concerning submission of comments, Regina Johnson at (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 212 of the Pension Protection Act of 2006, Public Law No. 109-280 (120 Stat. 780 (2006)) (PPA '06) added section 432 of the Internal Revenue Code (Code), which prescribes funding rules for certain multiemployer defined benefit plans in endangered and critical status and permits plans in critical status to be amended to reduce certain otherwise protected benefits (referred to as "adjustable benefits"). Section 202 of PPA '06 amended section 305 of the Employee Retirement Income Security Act of 1974, Public Law No. 93-406 (88 Stat. 829 (1974)), as amended (ERISA), to prescribe parallel rules. PPA '06 provided that section 432 and ERISA section 305 would sunset for plan years beginning after December 31, 2014. However, section 101 of MPRA made them permanent, with certain modifications.

Section 201 of MPRA amended Code section 432 to add a new status, called "critical and declining status," for multiemployer defined benefit plans. Section 432(b)(6) provides that a plan in critical status is treated as being in critical and declining status if the plan satisfies the criteria for critical status, and in addition is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80 percent).<sup>11</sup>

Section 201 of MPRA also amended section 432(e)(9) to prescribe benefit suspension rules for multiemployer defined benefit plans in critical and declining status. Section 432(e)(9)(A) provides that

notwithstanding section 411(d)(6) and subject to the requirements of section 432(e)(9)(B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits that the sponsor deems appropriate. Section 432(e)(9)(B) defines "suspension of benefits" as the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits, and sets forth other rules relating to suspensions. In the case of plans with 10,000 or more participants, section 432(e)(9)(B) requires the plan sponsor to select a plan participant in pay status (who may also be a plan trustee) to act as a retiree representative throughout the suspension approval process.

Section 432(e)(9)(C) prescribes the conditions that must be satisfied before a plan sponsor may suspend benefits. For example, section 432(e)(9)(C)(i) provides that the plan actuary must certify, taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233 of ERISA), that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or, if no such expiration is set, indefinitely. Section 432(e)(9)(D) contains limitations on the benefits that may be suspended. For example, section 432(e)(9)(D)(ii) limits the applicability of a suspension in the case of a participant or beneficiary who has attained age 75 as of the effective date of the suspension and section 432(e)(9)(D)(iii) provides that no benefits based on disability (as defined under the plan) may be suspended.

Section 432(e)(9)(E) prescribes rules relating to possible benefit improvements while a suspension of benefits is in effect. Section 432(e)(9)(F) contains notice requirements associated with a suspension of benefits. These include the requirement under section 432(e)(9)(F)(i) that no suspension of benefits may be made unless

<sup>11</sup>Section 201(a) of MPRA makes parallel amendments to section 305 of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Department of the Treasury has interpretive jurisdiction over the subject matter of this document for purposes of ERISA as well as the Code.



notice to specified parties of the proposed suspension has been given by the plan sponsor (in the form and manner to be prescribed in guidance) concurrently with an application for approval of the suspension. Section 432(e)(9)(G) describes the process for approval or rejection of a plan sponsor's application for a suspension of benefits, including that the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor, shall approve an application upon finding that the plan is eligible for the suspension and has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F). As part of this process, section 432(e)(9)(G)(ii) requires the publication of a request for comments within 30 days after receipt of an application for suspension of benefits, and section 432(e)(9)(G)(iii), (iv) and (v) prescribes rules for agency action and review of the application.

Section 432(e)(9)(H) contains rules relating to the participant vote that is required before any suspension of benefits may take effect, with special rules for systemically important plans. The special rules include an opportunity for the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA to submit recommendations with respect to a suspension in certain circumstances. Section 432(e)(9)(I) contains provisions relating to judicial review.

An application for approval of a plan amendment to suspend benefits may be made in combination with an application to the PBGC for a partition of the plan, and a plan sponsor also may ask the PBGC for technical or financial assistance with a merger. The PBGC is issuing its own request for information to seek comment on the processes associated with applying for partition or merger assistance, including how such processes should be coordinated with the benefit suspension process. The agencies will coordinate on the development of processes that will apply to applications falling within their respective jurisdictions.

### Request for Information

Comments are requested on matters that may be addressed in future guidance implementing section 432(e)(9), and in particular on the following:

1. How should future guidance address actuarial and other issues, including duration, related to the following certifications and determinations:
  - a. The actuary's certification under section 432(b)(3) that a multiemployer plan is in critical and declining status;
  - b. The actuary's section 432(e)(9)(C)(i) projection of continued solvency (taking into account the proposed suspension and, if applicable, a proposed partition under section 4233 of ERISA); and
  - c. The plan sponsor's section 432(e)(9)(C)(ii) determination that the plan is projected to become insolvent unless benefits are suspended?
2. For purposes of the section 432(e)(9)(D)(iii) limitation that a suspension is not permitted to apply to benefits based on disability (as defined under the plan), how can a plan sponsor identify which benefits are based on disability?
3. For participants who have not yet retired:
  - a. What practical issues should be considered as a result of the fact that their benefits are not yet fixed (for example, their benefits could vary as a result of future accruals, when they decide to retire and which optional form of benefit they select)?
  - b. What practical issues should be considered in the case of a suspension of benefits that is combined with a reduction of future accruals or a reduction of section 432(e)(8) adjustable benefits (such as subsidized early retirement factors) under a rehabilitation plan?
4. For participants who have retired, what practical issues should be considered regarding the section 432(e)(9)(D)(ii) age limitations on suspensions, the application of the section 432(e)(9)(E) rules on benefit improvements, or other provisions?
5. With respect to the section 432(e)(9)(F) requirement to provide notice of the proposed suspension to plan participants and beneficiaries concurrently with the submission of the application for approval:
  - a. What suggestions do commenters have for the steps that are needed to satisfy the requirement to provide notice to the plan participants and beneficiaries "who may be contacted by reasonable efforts," including the application of that requirement to terminated vested participants?
  - b. What practical issues do plan sponsors anticipate in providing individual estimates of the effect of the proposed suspensions on each participant and beneficiary?
  - c. If the suspension is combined with other reductions as described in request number 3.b, how will the notice of proposed suspension interact with the notices required for those other reductions?
  - d. What issues arise in coordinating benefit protections that are measured as of the date of suspension (such as the restriction on suspensions that apply to a participant or beneficiary who has attained age 75 as of the effective date of the suspension) with the timing of the application, notice, and voting process?
6. With respect to item 5, please provide any examples of notices of proposed suspension that commenters would like to be considered in the development of a model notice.
7. What issues arise in connection with the section 432(e)(9)(G)(ii) requirement to solicit comments on an application for suspension of benefits?
  - a. Should the comments received from contributing employers, employee organizations, participants and beneficiaries, and other interested parties be made available to the public?
  - b. How long should the comment period last?
8. With respect to the section 432(e)(9)(H) participant vote, what issues arise in connection with:
  - a. Preparing the ballot, including developing a statement in opposition to the suspension compiled

from comments and obtaining approval of the ballot within the statutory time constraints for conducting a vote; and

- b. Conducting the vote and obtaining certification of the results of the vote?
9. What other practical issues do commenters anticipate will arise in the course of implementing these provisions?

#### **Timing of Applications and Notices**

Section 201(b)(7) of MPRA provides that, not later than 180 days after the date of the enactment of this Act, the Treasury Secretary, in consultation with the Pen-

sion Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 432(e)(9). In addition, section 432(e)(9)(F)(i) provides that no suspension of benefits may be made unless notice of the proposed suspension has been given by the plan sponsor concurrently with an application for approval of the suspension, and section 432(e)(9)(F)(iii)(I) provides that notice must be “provided in a form and manner prescribed in guidance.” Section 432(e)(9)(G)(i) provides that the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve an application for suspension upon finding that

the plan has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F). Because appropriate guidance is required to implement section 432(e)(9), including the procedures for the plan sponsor to submit an application for approval of a suspension of benefits and provide concurrent notice, a plan sponsor should not submit an application for a suspension of benefits until a date specified in that future guidance.

Dated: February 11, 2015.

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David G. Clunie,  
Executive Secretary,  
Department of the Treasury.

# 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 sub-

stance 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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## **INTERNAL REVENUE BULLETIN**

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/](http://www.irs.gov/irb/).

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