DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9999]

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Statutory Disallowance of Deductions for Certain Qualified Conservation Contributions Made by Partnerships and S Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a Federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis. These final regulations provide guidance regarding this statutory disallowance rule, including definitions, appropriate methods to calculate the relevant basis of a partner or an S corporation shareholder, the three statutory exceptions to the statutory disallowance rule, and related reporting requirements. In addition, these final regulations provide reporting requirements for partners and S corporation shareholders that receive a distributive share or pro rata share of any noncash charitable contribution made by a partnership or S corporation, regardless of whether the contribution is a qualified conservation contribution (and regardless of whether the contribution is of real property or other noncash property). These final regulations affect partnerships and S corporations that claim qualified conservation contributions, and partners and S corporation shareholders that receive a distributive share or pro rata share, as applicable, of a noncash charitable contribution.

DATES:

Effective date: These regulations are effective on June 28, 2024.

Applicability date: For dates of applicability, *see* §§ 1.170A–14(o)(1), 1.170A–16(g)(2), 1.706–3(e), and 1.706–4(e)(2)(xiii) and (e)(3)(ii).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations under §§ 1.170A–14, 1.706–3, and 1.706–4, contact John Hanebuth or Benjamin Weaver at (202) 317–6850 (not a toll-free number); concerning the final regulations under § 1.170A–16 and issues regarding section 170 other than section 170(h)(7), contact Elizabeth Boone at (202) 317–5100 or Hannah Kim at (202) 317–7003 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under sections 170 and 706 of the Internal Revenue Code (Code) to implement the provisions of section 605(a) and (b) of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459, 5393 (December 29, 2022), which apply to contributions of property made after December 29, 2022.

I. Overview of Qualified Conservation Contributions

Section 170(a) provides, subject to certain limitations and requirements, a deduction for any charitable contribution, as defined in section 170(c), of cash or other property the payment of which is made within the taxable year. Section 170(f) disallows charitable contribution deductions in certain cases and provides special rules. Section 170(f)(3)(A) provides that, in the case of a contribution (not made by a transfer in trust) of an interest in property that consists of less than the taxpayer's entire interest in such property, a deduction will be allowed only to the extent that the value of the interest contributed would be allowable as a deduction under section 170 if such interest had been transferred in trust. Section 170(f)(3)(B)(iii) provides that section 170(f)(3)(A) does not apply to a qualified conservation contribution.

II. Enactment of Section 170(f)(19) and (h)(7)

Section 170(h)(7) was added to the Code by section 605(a)(1) of the SECURE 2.0 Act. Section 170(h)(7)(A) states that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership (Disallowance Rule). Thus, a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes is not a qualified conservation contribution if the Disallowance Rule applies.

Section 170(h)(7)(B)(i) provides that, for purposes of section 170(h)(7), the term ''relevant basis'' means, with respect to any partner, the portion of such partner's modified basis in the partnership that is allocable (under rules similar to the rules of section 755 of the Code) to the portion of the real property with respect to which the contribution described in section 170(h)(7)(A) is made. Section 170(h)(7)(B)(ii) provides that, for purposes of section 170(h)(7), the term ''modified basis'' means, with respect to any partner, such partner's adjusted basis in the partnership as determined: (1) immediately before the contribution described in section 170(h)(7)(A), (2) without regard to section 752 of the Code, and (3) by the partnership after taking into account these first two adjustments and such other adjustments as the Secretary of the Treasury or her delegate (Secretary) may provide.

Section 170(h)(7)(F) provides that the rules of section 170(h)(7) ''apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships,'' except as the Secretary otherwise provides.

Section 170(h)(7)(C) provides an exception to the Disallowance Rule for contributions that satisfy a three-year holding period. Section 170(h)(7)(D) provides an exception to the Disallowance Rule for contributions from family pass-through entities. Section 170(h)(7)(E) provides an exception to the Disallowance Rule for qualified conservation contributions the conservation purpose of which is the preservation of a certified historic structure.

Section 170(h)(7)(G) provides a specific grant of regulatory authority to the Secretary to issue regulations or other guidance as the Secretary determines are necessary or appropriate to carry out the purposes of the Disallowance Rule, including reporting requirements and rules to prevent the avoidance of the Disallowance Rule.

Section 605(b) of the SECURE 2.0 Act added section 170(f)(19) to the Code, which provides that, in the case of a partnership or S corporation claiming a qualified conservation contribution for the preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C)) in an amount that exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis (as defined in section 170(h)(7)), no deduction under section 170 is allowed unless, as provided in section 170(f)(19)(A)(i) and (ii), the partnership or S corporation includes on its return for the taxable year a statement that such contribution was

made and any other information as the Secretary may require. A contribution to preserve a certified historic structure is one of the three exceptions to the Disallowance Rule.

Section 605(c) of the SECURE 2.0 Act provides that the amendments made by section 605 of the SECURE 2.0 Act apply to contributions made after December 29, 2022, and that no inference is intended as to the appropriate treatment of contributions made in taxable years ending on or before that date, or as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7).

III. The Proposed Regulations

On November 20, 2023, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–112916–23) (the proposed regulations) in the **Federal Register** (88 FR 80910) to provide guidance under section 170(f)(19) and (h)(7). The proposed regulations would make changes to existing § 1.170A–14, including modifying paragraph (a) to reference the Disallowance Rule and adding new paragraphs (j) through (n) to § 1.170A–14 to provide guidance on the application of the Disallowance Rule (and its exceptions) to partnerships and S corporations. In addition, the proposed regulations would make changes to the reporting requirements in § 1.170A–16. Finally, the proposed regulations would make changes to §§ 1.706–3 and 1.706–4 to facilitate the operation of the Disallowance Rule in the case of a qualified conservation contribution made by a partnership. The provisions of the proposed regulations are explained in greater detail in the preamble to the proposed regulations.

Pursuant to section 7805(b)(2) of the Code, regulations issued under section 170(f)(19) and (h)(7) within 18 months of the December 29, 2022, date of enactment of section 605 of the SECURE 2.0 Act are permitted to apply to periods ending before the dates provided under section 7805(b)(1) (generally, the dates of the issuance of proposed or final regulations or a notice describing the regulations). Accordingly, the proposed regulations under §§ 1.170A–14(j) through (n), 1.706–3, and 1.706–4 were proposed to apply to contributions made after December 29, 2022. To align the reporting requirements under § 1.170A–16 with the publication of the revised Form 8283, *Noncash Charitable Contributions,* and its instructions, the proposed regulations under § 1.170A–16 were proposed to apply to contributions made in taxable years ending on or after November 20, 2023 (the date the proposed regulations were published in the **Federal Register**).

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes the proposed regulations and all the substantive comments submitted in response to the proposed regulations. The Treasury Department and the IRS received eight written comments in response to the proposed regulations. The comments are available for public inspection at *https://www.regulations.gov* or upon request. There were no requests to speak at the scheduled public hearing. Consequently, the public hearing was cancelled (89 FR 39). After full consideration of the comments received, these final regulations adopt the proposed regulations with modifications as described in this Summary of Comments and Explanation of Revisions.

The comments can be grouped into the following categories: (1) definitions, (2) the computation of relevant basis, (3) requests for guidance under the partnership allocation rules, (4) the exceptions to the Disallowance Rule, (5) reporting requirements, and (6) other comments. Each category is discussed in turn in the remainder of this Summary of Comments and Explanation of Revisions.

I. Definitions

Proposed § 1.170A–14(j)(3) contained definitions of terms, including ''allocated portion,'' ''amount of qualified conservation contribution,'' ''contributing partnership,'' ''contributing S corporation,'' ''direct interest,'' ''directly,'' ''disallowed qualified conservation contribution,'' ''indirect interest,'' ''indirectly,'' ''ultimate member,'' ''upper-tier partnership,'' and ''upper-tier S corporation.'' Commenters generally provided no comments on these definitions, except with respect to the definition of the amount of qualified conservation contribution. Thus, the final regulations adopt the definitions as proposed, except with respect to the definition of the amount of qualified conservation contribution.

Proposed § 1.170A–14(j)(3)(ii) defined ''amount of qualified conservation contribution'' as the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. No comments addressed the first sentence of proposed § 1.170A–14(j)(3)(ii), so the final regulations adopt that sentence as proposed.

Proposed § 1.170A–14(j)(3)(ii) further provided, ''[i]f the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of [§ 1.170A–14] must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and [§ 1.170A–14.]'' One commenter stated that this sentence would seem to inappropriately allow partnerships or S corporations to file administrative adjustment requests or amended returns after they had been notified of an IRS examination. The commenter recommended that the regulations be changed to refer only to an amended return or administrative adjustment request that is a ''qualified amended return'' for purposes of the substantial underpayment rules.

The Treasury Department and the IRS understand the commenter's reference to ''qualified amended return'' to be a reference to § 1.6664–2(c)(3). Under § 1.6664–2(c)(3), a qualified amended return is an amended return or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year and before the earliest of several dates, including the date the taxpayer is first contacted by the IRS concerning any examination with respect to the return. Under section 6227(a), a partnership may file an administrative adjustment request for the amount of a partnership-related item for any partnership taxable year. However, under section 6227(c), a partnership may not file an administrative adjustment request after a notice of an administrative proceeding with respect to the taxable year is mailed under section 6231 of the Code.

The Treasury Department and the IRS did not intend the proposed regulations to allow for the filing of an amended return or administrative adjustment request in situations in which the partnership or S corporation would not otherwise be allowed to file an amended return or administrative adjustment request. Moreover, the Treasury Department and the IRS agree that the re-application provision in § 1.170A–14(j)(3)(ii) should not be understood to allow a partnership or S corporation to avoid the Disallowance Rule by filing an amended return or administrative adjustment request claiming a lower amount with respect to a qualified conservation contribution after being contacted by the IRS concerning an

examination regarding the return. For example, under an inappropriate interpretation of the language in the proposed regulations, a contributing S corporation could violate the Disallowance Rule by claiming an amount of a qualified conservation contribution on its original return that exceeds 2.5 times the sum of the relevant bases. Then, after its return has been selected for examination by the IRS, the contributing S corporation could attempt to file an amended return on which it reduces the amount of its claimed qualified conservation contribution to an amount not exceeding 2.5 times the sum of the relevant bases. The contributing S corporation could then argue that the re-application provision in § 1.170A–14(j)(3)(ii) allows the Disallowance Rule to be re-tested, and that, therefore, its qualified conservation contribution is not disallowed, but instead is allowed to the extent of the amount claimed on the amended return. In order to balance the need for a mechanism to timely fix errors made in good-faith with the risk of circumvention of the Disallowance Rule, these final regulations limit the re-application provision by providing that, if the contributing partnership or contributing S corporation files an amended return or timely administrative adjustment request under section 6227 of the Code claiming a lower amount with respect to the qualified conservation contribution, the rules of § 1.170A–14 will be re-applied with respect to such lower amount to determine the application of section 170(h)(7) and § 1.170A–14 if and only if the amended return or timely administrative adjustment request is filed before the contributing partnership or contributing S corporation is put on notice of an IRS examination relating to the qualified conservation contribution. The final regulations provide that a contributing partnership or contributing S corporation is considered to be on notice after the earlier of: (1) the date the contributing partnership or contributing S corporation is first contacted by the IRS in connection with any examination of a return that relates to the qualified conservation contribution, or (2) the date any person is first contacted by the IRS concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity that relates to the qualified conservation contribution. These regulations do not incorporate the full definition of qualified amended returns within the meaning of § 1.6664–2(c)(3) as requested by the commenter, because a definition tailored to the context of this regulation is sufficient to prevent abusive circumventions of the Disallowance Rule without being overbroad and preventing a contributing partnership or contributing S corporation from being able to use the re-application provision in non-abusive situations.

In addition, the Treasury Department and the IRS remain concerned about situations in which a contributing partnership or contributing S corporation files an amended return or administrative adjustment request that claims a higher amount with respect to a qualified conservation contribution. In that situation, the Treasury Department and the IRS have concluded that the rules of § 1.170A–14 should be re-applied with respect to such higher amount to determine the application of section 170(h)(7) and § 1.170A–14 regardless of whether the amended return or administrative adjustment request constitutes a qualified amended return. This rule is necessary to ensure that the Disallowance Rule is not avoided simply by filing an original return claiming an amount with respect to a qualified conservation contribution that does not exceed 2.5 times the sum of the relevant bases, followed by an amended return or administrative adjustment request claiming an amount with respect to the qualified conservation contribution that does exceed 2.5 times the sum of the relevant bases. Accordingly, these final regulations modify the second sentence of § 1.170A–14(j)(3)(ii) to clarify that, if the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a higher amount with respect to the qualified conservation contribution, the rules of § 1.170A–14 must be re-applied with respect to such higher amount to determine the application of section 170(h)(7) and § 1.170A–14; for example, if a contributing S corporation's original return claims a qualified conservation contribution that does not exceed 2.5 times the sum of the relevant bases, and the S corporation subsequently files an amended return claiming a higher amount with respect to the qualified conservation contribution that does exceed 2.5 times the sum of the relevant bases, then the entire amount of the qualified conservation contribution is a disallowed qualified conservation contribution (unless one of the exceptions in § 1.170A–14(n) applies).

II. Computation of Relevant Basis

As noted earlier, section 170(h)(7)(B)(i) provides that, for purposes of section 170(h)(7), the term ''relevant basis'' means, with respect to any partner, the portion of such partner's modified basis in the partnership that is allocable (under rules similar to the rules of section 755 of the Code) to the portion of the real property with respect to which the contribution described in section 170(h)(7)(A) is made. Proposed § 1.170A–14(l) provided guidance on the determination of modified basis. Proposed § 1.170A–14(m) provided guidance on the allocation of modified basis, which results in the determination of relevant basis.

The Treasury Department and the IRS received several comments on the computation of modified basis and relevant basis, which can be divided into the following two topics: (1) the determination of modified basis, and (2) the allocation of modified basis to determine relevant basis.

A. Determination of Modified Basis

As noted earlier, section 170(h)(7)(B)(ii) provides that, for purposes of section 170(h)(7), the term ''modified basis'' means, with respect to any partner, such partner's adjusted basis in the partnership as determined: (1) immediately before the contribution described in section 170(h)(7)(A), (2) without regard to section 752, and (3) by the partnership after taking into account those adjustments and such other adjustments as the Secretary may provide. Section 170(h)(7)(F) provides that the rules of section 170(h)(7) ''apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships'' except as the Secretary may otherwise provide. This section of the preamble discusses: (1) the proposed regulations, comments, and final regulations for the determination of a partner's modified basis, and (2) the proposed regulations, comments, and final regulations for the determination of an S corporation shareholder's modified basis.

1. Determination of a Partner's Modified Basis

a. Proposed Rules for the Determination of a Partner's Modified Basis

Proposed § 1.170A–14(l)(2)(i) defined the term ''modified basis'' to mean, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate

member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, with adjustments as determined under proposed § 1.170A–14(l)(2)(ii) through (v). However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, then the term ''modified basis'' means such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner, with adjustments as determined under proposed § 1.170A–14(l)(2)(ii) through (v).

The proposed regulations provided that the following four adjustments must be made in the order in which they are listed. First, proposed § 1.170A–14(l)(2)(ii) required an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 722 of the Code.

Second, proposed § 1.170A–14(l)(2)(iii) required an adjustment, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. In making this determination, the partnership would be required to apply the rules of § 1.706–4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. The proposed regulations provided that the partnership cannot apply any convention in § 1.706–4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. The proposed regulations clarified that this hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. Proposed § 1.170A–14(l)(2)(iii) did not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares of partnership items of income, gain, loss, deduction, and credit for the taxable year in which the qualified conservation contribution is made or otherwise.

Third, proposed § 1.170A–14(l)(2)(iv) required a reduction (but not below zero) for any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

Fourth, proposed § 1.170A–14(l)(2)(v) required a reduction for the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership). The remaining amount would be such ultimate member's modified basis.

The proposed regulations contained two examples illustrating these rules.

b. Comments Concerning a Partner's Modified Basis

The comments on the determination of modified basis can be grouped into the following three categories: (1) inclusion of section 752 liabilities in modified basis, (2) determining modified basis immediately prior to the qualified conservation contribution, and (3) the complexity of the computations.

i. Inclusion of Section 752 Liabilities in Modified Basis

Section 170(h)(7)(B)(ii)(II) provides that modified basis is determined without regard to section 752. Section 752(a) provides that any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, is considered as a contribution of money by such partner to the partnership. Section 752(b) provides that any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, is considered as a distribution of money to the partner by the partnership. Existing § 1.752–1 provides guidance under section 752, including a definition of liabilities. Generally, under the rules of subchapter K of chapter 1 of the Code (subchapter K), if a partnership borrows money, the aggregate bases of its partners' interests in the partnership will increase by the amount of the borrowing. Consistent with section 170(h)(7)(B)(ii)(II), proposed § 1.170A–14(l)(2)(v) required subtracting the full amount of the partner's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership) for purposes of calculating modified basis.

One commenter expressed concern that the relevant basis calculation ignores section 752 liabilities generally. The commenter offered an example of a partnership with $200,000 in cash that borrows an additional $800,000 and purchases a building for $1,000,000. The commenter stated that the proposed regulations would ignore the $800,000 as a section 752 liability and that any conservation contribution for historic preservation of the building would be capped at $500,000.

Section 170(h)(7)(B)(ii)(II) provides that a partner's modified basis (and thus, relevant basis) is determined without regard to section 752. The approach in the proposed regulations appropriately effectuates this statutory directive. Thus, in the commenter's example, although the partnership's $800,000 liability will increase the partners' aggregate bases in their partnership interests by $800,000, none of that $800,000 will be reflected in any partner's modified basis or relevant basis.

The commenter's assumption that the Disallowance Rule would cap the amount of the partnership's qualified conservation contribution at $500,000 misunderstands the rule. Several other considerations must be taken into account to determine the extent of any allowable qualified conservation contribution. First, the Disallowance Rule is not a cap—as explained in the preamble to the proposed regulations and as provided in proposed § 1.170A–14(j)(1), if the amount of a qualified conservation contribution claimed by a partnership or an S corporation exceeds 2.5 times the sum of the relevant bases, no deduction is allowed at all for the contribution unless one of the three statutory exceptions applies. Second, application of the Disallowance Rule is not based on the difference between the amount of the contribution and the partnership's basis in the donated property; it is based on whether the contribution exceeds 2.5 times the sum of the ultimate members' relevant bases. The facts presented in the commenter's example are insufficient to determine whether 2.5 times the sum of the relevant bases is $500,000.[1]

[1] Moreover, the commenter's example seems to involve a qualified conservation contribution the conservation purpose of which is the preservation

Continued

The same commenter also expressed concerns that the proposed regulations appear to treat the ultimate member's share of liabilities under § 1.752–1(b) as ''flowing only in one direction'' because the proposed regulations provided that modified basis must be reduced by the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership. The commenter stated that this language ignores that a partner's share of liabilities may increase the partner's basis.

It is true that a partner's share of the partnership's liabilities increases the partner's basis in its interest in the partnership. However, this basis is not included for purposes of the Disallowance Rule pursuant to section 170(h)(7)(B)(ii)(II), which requires modified basis to be determined without regard to a partner's share of the partnership's liabilities. Thus, these regulations finalize § 1.170A–14(l)(2)(v) without change.

ii. Determining Modified Basis Immediately Prior to the Qualified Conservation Contribution

One commenter stated that the proposed regulations appear to time the calculation of modified basis as of the time of the qualified conservation contribution. The commenter stated that this ''artificial cutoff'' ignores any basis allocable to the ultimate members following the contribution, such as from capital contributions or increases in the ultimate members' share of section 752 liabilities.

The Treasury Department and the IRS confirm that the rules in the proposed regulations require the calculation of modified basis (and thus, relevant basis) as of the time of the qualified conservation contribution. As explained earlier, the proposed regulations were intended to effectuate section 170(h)(7)(B)(ii)(I), which provides that modified basis is the partner's adjusted basis in the partnership as determined ''immediately before'' the qualified conservation contribution. The Treasury Department and the IRS do not agree with the commenter's suggestion that modified basis include amounts that were reflected in the ultimate member's adjusted basis in its interest in the partnership only after the contribution because inclusion of such amounts would contradict the statute. Thus, the proposed regulations are adopted without change as to this issue.

As a clarification to the statutory rule that modified basis is determined immediately before a qualified conservation contribution is made, the final regulations add a new step to the list of steps in proposed § 1.170A–14(l)(2). As described in the preamble to the proposed regulations, the proposed regulations were designed to facilitate the computation of a partner's ''adjusted basis'' in its partnership interest immediately prior to the qualified conservation contribution. As also described in the preamble to the proposed regulations, adjusted basis is typically computed as of the beginning or end of a taxable year, and generally, not as of the time of a particular event, such as the making of a qualified conservation contribution. Accordingly, the approach in the proposed regulations started with a calculation of adjusted basis that partners are familiar with computing, and then made adjustments designed to arrive at an amount that reflects the partner's adjusted basis immediately before the qualified conservation contribution. The proposed regulations did not, however, take into account acquisitions of additional partnership interests or partial dispositions of partnership interests that occurred after the beginning of the taxable year and prior to the qualified conservation contribution. In those situations, an additional step is necessary to effectuate the rule in section 170(h)(7)(B)(ii) that modified basis is adjusted basis immediately before the qualified conservation contribution without regard to section 752. The new step, in § 1.170A–14(l)(2)(iii), provides that if, between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made, the ultimate member acquired additional interests in the partnership, modified basis must be increased by the ultimate member's initial basis in those additional interests. Similarly, § 1.170A–14(l)(2)(iii) provides that if, between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made, the ultimate member partially disposed of its interest in the partnership, modified basis must be decreased by the ultimate member's basis in the interests disposed of. The final regulations add § 1.170A–14(l)(4)(iv) (*Example 4)* to illustrate this step.

iii. Complexity of the Determination of Modified Basis

Multiple commenters stated that the proposed regulations' calculations, including the calculation of modified basis, were too complex.[2] One commenter stated that the proposed regulations are well drafted and that the mechanical rules work, but that the computations are too complex. Another commenter stated that the calculations were complex and would be difficult for taxpayers, land trusts, and even the IRS to administer. Another commenter stated that the proposed rules are unnecessarily complex and will likely discourage many partnerships from making conservation contributions even if, after performing the calculations, the contribution would not be disallowed by the Disallowance Rule. Finally, another commenter found the regulations to be a ''complex labyrinth'' in which one misstep leads to the disallowance of the charitable deduction and imposition of the gross overvaluation penalty under section 6662(h) and also places a significant burden on the IRS and the Independent Office of Appeals. This commenter suggested that, under Executive Order 12866, 58 FR 190 (October 4, 1993), and Internal Revenue Manual provision 32.1.4.1.1(1)(a), the Treasury Department and the IRS are required to draft regulations to minimize litigation, but that the proposed regulations likely will increase litigation as the regulations are overly complex and burdensome for the average taxpayer.

As an alternative to the complexity in the proposed regulations, one commenter suggested that the IRS develop simplified safe harbor calculations. Another commenter suggested applying pure aggregate rules to the contributing partnership and any upper-tier partnerships to determine modified basis and relevant basis and adding an anti-abuse rule that the transaction does not work if a principal purpose is to avoid the limitations of section 170(h)(7). This commenter noted, however, that this suggestion was less precise and subject to potential abuse, but stated that it is a rule that even small practitioners could apply.

These suggested approaches are not specific or accurate enough to comply with the statutory directive of section

of a historic structure. If so, the Disallowance Rule would not apply under section 170(h)(7)(E) and proposed § 1.170A–14(n)(4), provided that, if the amount of the contribution exceeds 2.5 times the sum of the relevant bases, the partnership or S corporation complies with the reporting requirements of section 170(f)(19) and proposed § 1.170A–16(f)(6).

[2] It is unclear from the comments whether some commenters were objecting to the complexity of the determination of modified basis, the determination of relevant basis (once modified basis is determined), or both. Comments addressing the complexity of determining relative basis once modified basis is determined are discussed in Parts II.B.1.a, II.B.2, II.B.3.a, and II.B.4.a of this Summary of Comments and Explanation of Revisions.

170(h)(7). Section 170(h)(7)(B)(ii)(I) through (III) provides that modified basis is the partner's adjusted basis in the partnership immediately before the qualified conservation contribution, without regard to section 752. Partners generally do not track their bases in their partnership interests on a daily basis. Instead, such determinations are typically made at year end. Thus, a partnership generally will not know each partner's basis in its partnership interest as of a particular point during the year, such as the moment at which the partnership makes a qualified conservation contribution. A partnership required by section 170(h)(7)(B)(ii)(III) to compute modified basis would generally have to start with each partner's adjusted basis in its partnership interest as of the beginning of the year [3] and make certain adjustments for items or events occurring in the portion of the year ending with the qualified conservation contribution that affect basis. These are the very steps that were prescribed by the proposed regulations. Each of the steps from the proposed regulations is necessary to carry out the statutory directive that a partner's modified basis is the partner's adjusted basis in its partnership interest immediately before the time of the qualified conservation contribution, as computed by the partnership, and without regard to section 752 liabilities. Instead of simply repeating the statutory mandate, the proposed regulations provided a clear, administrable, step-by-step approach for taxpayers to reach the result required by the statute. To assist with performing the computations required by this step-by-step approach, the proposed regulations included several illustrative examples. Accordingly, proposed § 1.170A–14(l)(2) is finalized with the changes described in this Part II.A.1 of this Summary of Comments and Explanation of Revisions.

2. Determination of an S Corporation Shareholder's Modified Basis

a. Proposed Rules for the Determination of an S Corporation Shareholder's Modified Basis

Proposed § 1.170A–14(l)(3)(i) provided that the term ''modified basis'' means, with respect to any ultimate member that is a shareholder in an S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed § 1.170A–14(l)(3)(ii) and (iii). However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term ''modified basis'' was defined to mean such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation, with adjustments as determined under proposed § 1.170A–14(l)(3)(ii) and (iii). Consistent with the exclusion of section 752 liabilities under section 170(h)(7)(B)(ii)(II), proposed § 1.170A–14(l)(3)(i) clarified that modified basis does not include the ultimate member's adjusted basis in any indebtedness of the S corporation to the ultimate member.

Because the calculation of modified basis for an S corporation begins at the end of the year, proposed § 1.170A–14(l)(3)(ii) required the computation of modified basis to be increased by the amount of any decrease to the adjusted basis as a result of the qualified conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution would not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution.

Proposed § 1.170A–14(l)(3)(iii) provided that the amount determined under § 1.170A–14(l)(3)(ii) must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount would be such ultimate member's modified basis.

The proposed regulations contained an example illustrating these rules.

b. Comments Concerning Modified Basis for S Corporation Shareholders

Commenters did not provide specific comments concerning the rules for S corporation shareholders; however, as described in Part II.A.1.b of this Summary of Comments and Explanation of Revisions, certain commenters discussed complexity concerns with respect to modified basis without specifically identifying partnerships, so those comments may also apply to S corporations. The Treasury Department and the IRS have determined that the rules for determining modified basis for S corporation shareholders are not unduly complex. In particular, any of the information required to determine modified basis should be readily known by a contributing S corporation and its ultimate members. The regulations provide clear, administrable rules that are illustrated with computational examples. This clarity will help decrease disputes about the computation of modified basis. Accordingly, these final regulations do not make changes to the rules for the determination of modified basis in response to the commenters' concerns about complexity and proposed § 1.170A–14(l)(3) is finalized without change.

B. Allocation of Modified Basis To Determine Relevant Basis

Proposed § 1.170A–14(m) provided rules for determining relevant basis, which is the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. In general, the proposed regulations provided that relevant basis is modified basis multiplied by a fraction, the numerator of which is the ultimate member's portion of the basis in the real property with respect to which the qualified conservation contribution is made, and the denominator of which is the ultimate member's portion of the basis in all properties held by the partnership or S corporation. For example, if an ultimate member's share of the basis in the real property is half of the ultimate member's share of the basis in the other properties of the partnership or S corporation, the ultimate member's relevant basis would be half of the ultimate member's modified basis. The proposed regulations contained rules for these computations, including rules for the computation of relevant basis in tiered entities. The proposed regulations also contained additional details and several examples of the computation of relevant basis.

The proposed regulations provided separate rules for the determination of relevant basis for ultimate members who are: (1) partners in contributing partnerships, (2) shareholders in contributing S corporations, (3) partners in upper-tier partnerships, and (4) shareholders in upper-tier S corporations. The following portion of this Summary of Comments and Explanation of Revisions will discuss each set of rules in turn.

[3] In the case of a partner who was not a partner at the beginning of the year, but acquired an interest sometime later, the partnership would generally have to start with the partner's adjusted basis in its partnership interest as of the time of the acquisition of that interest. This is the process that these regulations provide.

1. Determination of Relevant Basis for Partners in Contributing Partnerships

Proposed § 1.170A–14(m)(2)(i) through (iii) provided that the relevant basis of an ultimate member holding a direct interest in a contributing partnership is equal to the ultimate member's modified basis as determined under proposed § 1.170A–14(l)(2) multiplied by a fraction: (1) the numerator of which is the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under proposed § 1.170A–14(m)(2)(ii); and (2) the denominator of which is the ultimate member's portion of the adjusted basis in all the contributing partnership's properties as determined under proposed § 1.170A–14(m)(2)(iii).

For purposes of this computation, proposed § 1.170A–14(m)(2)(ii) provided that an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made (determined as of the time of day of the contribution) multiplied by a fraction: (1) the numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and (2) the denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

Proposed § 1.170A–14(m)(2)(iii) provided that an ultimate member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of: (1) the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under proposed § 1.170A–14(m)(2)(ii), and (2) the ultimate member's portion of the adjusted basis in all the contributing partnership's properties other than the portion of the real property with respect to which the qualified conservation contribution is made. To determine an ultimate member's share of the adjusted basis in all the contributing partnership's properties, the proposed regulations provided that a contributing partnership must apportion among each of its partners in accordance with their interests in the partnership under section 704(b) of the Code the partnership's adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

Proposed § 1.170A–14(m)(2)(iv) provided the following formula incorporating these rules:

$$R = M \times (T \div (D + T))$$

Where:

R = Relevant basis.

M = Modified basis as determined under proposed § 1.170A–14(l).

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

B = Ultimate member's distributive share of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

The comments received on the allocation of modified basis can be grouped into the following two categories: (a) complexity, and (b) the effect of section 704(c) property. Each category is discussed in turn.

a. Complexity of the Proposed Rules for the Allocation of Modified Basis

As noted in Part II.A.1.b.iii. of this Summary of Comments and Explanation of Revisions, multiple commenters stated that the calculations in the proposed regulations were too complex. One commenter stated that the Treasury Department and the IRS should reconsider the computational proposals and develop ''simplified safe harbor calculations'' to give taxpayers the assurance that they have done the math correctly and will not unintentionally incur additional tax and significant penalties. As mentioned previously, one commenter who objected to the complexity of the calculations proposed an alternative method of applying pure aggregate rules to the contributing partnership and any upper-tier partnerships to determine modified basis and relevant basis. The commenter described this alternative as ''simple'' and suggested adding an anti-abuse rule if a principal purpose is to avoid the limitations of section 170(h)(7), but also acknowledged that this approach was ''[l]ess precise and subject to potential abuse.'' Other commenters, while stating that the proposed regulations were complex, did not express any alternative suggestions.

The rules in the proposed regulations for the allocation of modified basis to determine relevant basis are not inappropriately complex in light of the statute which they administer. Section 170(h)(7)(B)(i) directs that modified basis be allocated to the portion of the real property with respect to which the qualified conservation contribution is made under rules similar to the rules of section 755. As mentioned in the preamble to the proposed regulations, the section 755 regulations involve several different methods for allocating basis adjustments among the partnership's properties, including allocating in proportion to the partner's share of the adjusted bases in the partnership's properties. *See* § 1.755–1(b)(5)(iii)(B). The section 755 regulations contain mathematical examples illustrating these rules, formulas, and computations and also additional rules and exceptions.

As explained in the preamble to the proposed regulations, the Treasury Department and the IRS considered simply cross-referencing the rules under section 755. However, allocations under section 755 are sometimes made in a way to reduce or eliminate built-in gain or built-in loss in partnership property. The relevant basis rule of section 170(h)(7)(B)(i) is designed to determine the portion of a partner's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is a broader and, generally, different concept than determining the partner's share of built-in gain or built-in loss in that property. Thus, applying an approach based solely on the existing section 755 regulations would not be consistent with the purpose of the Disallowance Rule. Moreover, these regulations for the allocation of modified basis are similar

to, and not more complex than, the rules of section 755.

Section 170(h)(7) is computational in nature. Although the statute is relatively short and does not list any formulas, complying with section 170(h)(7)(B)(i) necessarily involves computations involving every asset owned by the partnership or S corporation and any lower-tier partnerships. The proposed regulations acknowledged this complexity and, if possible, sought to simplify the requirements and provide clear guidance. Thus, the proposed regulations are not more complex than the statutory language already requires.

Furthermore, partnerships and S corporations making qualified conservation contributions are required by existing rules to track each partner's and shareholder's share of the entity's basis in the contributed property. *See* sections 704(d)(3), 705(a)(2), 1366(d)(4), and 1367(a)(2) of the Code; Rev. Rul. 96–11, 1996–1 C.B. 140; Rev. Rul. 2008–16, 2008–1 C.B. 585. Additionally, in certain circumstances the rules under section 755 require a partnership to calculate a partner's share of the partnership's basis in its properties. Thus, the approach taken by the proposed regulations is consistent with existing rules and principles.

The Treasury Department and the IRS have considered the commenter's recommendation of determining relevant basis based on a ''pure aggregate'' approach, subject to an anti-abuse rule or some type of safe harbor. The Treasury Department and the IRS agree with the commenter's assessment that such an approach would be less clear and more subject to abuse. As explained in the preamble to the proposed regulations, Congress enacted the Disallowance Rule because of abusive syndicated conservation easement transactions. It would not be appropriate to deviate from the computational requirements of the statute. Congress intended that partnerships and S corporations that make qualified conservation contributions perform several calculations to substantiate that the contribution is not disallowed by the Disallowance Rule. Allowing for shortcuts to such calculations that lead to less accurate results would be inconsistent with Congress's purpose in enacting the Disallowance Rule. Moreover, the computational step-by-step approach in the proposed regulations will minimize litigation by providing clear, administrable guidance. A shorter, more conceptually-based rule such as ''safe harbor'' calculations or ''pure aggregate treatment'' would be less clear and would lead to additional disputes over the proper computation of relevant basis.

In sum, the Treasury Department and the IRS have determined that the approach in the proposed regulations is similar to the rules of section 755, consistent with the rule of section 170(h)(7)(B)(i), and consistent with the purposes of the Disallowance Rule. Accordingly, the Treasury Department and the IRS do not adopt the approaches suggested by commenters.

b. Effect of Section 704(c) on the Allocation of Modified Basis

As noted earlier, the proposed regulations allocate modified basis by reference, in part, to the partners' interests in the partnership, which is a concept under section 704(b). Specifically, under proposed § 1.170A–14(m)(2)(iii)(B), to determine a partner's portion of the adjusted basis in all the contributing partnership's properties, the contributing partnership would apportion among its partners in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

The proposed regulations did not explicitly address the impact of section 704(c) amounts. One commenter stated that, to promote transparency, the final regulations should discuss what impact, if any, section 704(c) may have with respect to conservation easement transactions in the context of section 170(h)(7).

In part, section 704(c) provides rules for partnership allocations with respect to property that has built-in gain (that is, fair market value in excess of adjusted basis) or built-in loss (that is, adjusted basis in excess of fair market value) at the time the property is contributed by a partner to the partnership (section 704(c) property). Section 704(c)(1)(A) provides that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner is shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. If a partner contributes property with built-in gain or built-in loss to a partnership, and the partnership subsequently sells the property and recognizes that gain or loss, the regulations under section 704(c)(1)(A) generally require the partnership to allocate that gain or loss to the contributing partner.

The Treasury Department and the IRS agree that it may be unclear how the presence of section 704(c) property affects the partnership's apportionment of its basis in its properties among its partners for purposes of the computation of relevant basis, and that the final regulations should provide additional guidance on how section 704(c) property affects the computation of relevant basis. Thus, § 1.170A–14(m)(2)(iii)(B) as finalized in this Treasury Decision provides that to determine a partner's portion of the adjusted basis in all of a contributing partnership's properties, the contributing partnership must apportion among its partners its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted basis immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero. Consistent with the proposed regulations, these final regulations provide that this apportionment must be done under principles similar to the determination of the partners' interests in the partnership under section 704(b), but add a cross reference to § 1.704–1(b)(3)(ii), which provides factors to consider in determining a partner's interest in a partnership. These factors include: the partners' relative contributions to the partnership, the interests of the partners in economic profits and losses (if different than that in taxable income or loss), the interests of the partners in cash flow and other non-liquidating distributions, and the rights of the partners to distributions of capital upon liquidation. In addition, § 1.170A–14(m)(2)(iii)(B) as finalized provides that the apportionment must reflect section 704(c) principles. For example, if a partnership property has built-in loss (the adjusted basis of the property exceeds its fair market value), and section 704(c) would require that built-in loss to be allocated to a certain partner if that property were sold, all of the basis in the property that exceeds the property's fair market value must be apportioned to the partner to whom the loss would be allocated if the property was sold.

The final regulations contain two examples illustrating the effect of section 704(c) property upon the computation of relevant basis. In the

first example (§ 1.170A–14(m)(7)(iv) (*Example 4*)), one partner contributes property with built-in gain to the partnership. The partnership later makes a qualified conservation contribution with respect to other property. The example shows how the partnership's basis in the built-in gain property is apportioned among the partners for the purposes of determining relevant basis.

The second example (§ 1.170A–14(m)(7)(v) *(Example 5)*) involves the same facts, except that the property contributed to the partnership has built-in loss instead of built-in gain. The example shows how the basis in the built-in-loss property is apportioned among the partners for the purposes of determining relevant basis.

The change to § 1.170A–14(m)(2)(iii)(B) is also reflected in the formulaic version of the rule in § 1.170A–14(m)(2)(iv) in these final regulations. Specifically, item D is modified to read:

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under § 1.170A–14(m)(2)(iii)(B).

2. Determination of Relevant Basis for Ultimate Members That Are Shareholders in a Contributing S Corporation

Proposed § 1.170A–14(m)(3)(i) provided that relevant basis for an ultimate member holding a direct interest in a contributing S corporation would equal the ultimate member's modified basis multiplied by a fraction: (1) the numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made; and (2) the denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made). Proposed § 1.170A–14(m)(3)(ii) provided the following formulaic version of this rule:

$$R = M \times (E \div F)$$

Where:

R = Relevant basis.
M = Modified basis as determined under § 1.170A–14(l).
E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

Commenters did not raise issues specifically concerning the formula for S corporations but did express concerns regarding the complexity of proposed § 1.170A–14(m) in general. In the view of the Treasury Department and the IRS, this formula accurately accounts for modified basis as a portion of the real property by simply taking the pro rata allocation of adjusted basis in the contributed property over the pro rata allocation of adjusted basis in all the S corporation's properties and is not more complex than necessary to carry out the purposes of the Disallowance Rule.

The Treasury Department and the IRS considered several alternatives to this rule. One method would be to require a determination of a portion of relevant basis for every day during the S corporation's taxable year, because S corporations generally allocate the contribution on a pro rata basis among the shareholders on each day of the taxable year. These final regulations do not take that approach because such an approach, although technically accurate and consistent with the purposes of the Disallowance Rule, would be too burdensome for taxpayers and difficult for the IRS to administer.

Accordingly, these final regulations finalize proposed § 1.170A–14(m)(3) without change.

3. Determination of Relevant Basis for Partners in Upper-Tier Partnerships

Proposed § 1.170A–14(m)(4) provided rules for determining the relevant basis of an ultimate member holding a direct interest in an upper-tier partnership. Proposed § 1.170A–14(m)(4)(i) provided that each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis.

Proposed § 1.170A–14(m)(4)(ii)(A) provided that the upper-tier partnership must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that will be the contributing partnership). This determination must be done in accordance with the principles of proposed § 1.170A–14(m)(2) and the formula provided in proposed § 1.170A–14(m)(4)(ii)(B). In other words, the formula provided in proposed § 1.170A–14(m)(4)(ii)(B) is similar to the formula provided in proposed § 1.170A–14(m)(2)(iv), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed § 1.170A–14(m)(4)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in proposed § 1.170A–14(m)(4)(iii), the contributing partnership will then use the amount determined under the formula in proposed § 1.170A–14(m)(4)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed § 1.170A–14(m)(4)(ii)(B) provided the following formula:

$$G = M \times (U \div (J + U))$$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.
M = Modified basis as determined under § 1.170A–14(l).
J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership), determined by apportioning among the partners of the upper-tier partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the upper-tier partnership's interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.
U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: $H \times (B \div K)$.
H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.
B = Ultimate member's distributive share of the qualified conservation contribution.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

Proposed § 1.170A–14(m)(4)(iii) provided that, after completion of these computations, the contributing partnership must determine the portion of the amount determined under item G with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of § 1.170A–14(m)(2), and the following formula:

$R = G \times (V \div (L + V))$

Where:

R = Relevant basis.

G = Amount determined with respect to item G as described under § 1.170A–14(m)(4)(ii)(B).

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (except the interest in the contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (K \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

a. Complexity of the Determination of Relevant Basis for Ultimate Members That are Partners in an Upper-Tier Partnership

Several commenters criticized the complexity of the proposed regulations' method for determining relevant basis in tiered entity arrangements. For example, one commenter stated that the proposed regulations use ''difficult multivariable mathematical formulae'' like $G = M \times (U \div (J + U))$ and $R = G \times (V \div (L + V))$. The commenter stated that these calculations ''are appropriate for launching rockets or building bridges, but not for claiming Congressionally-encouraged tax incentives for land conservation.'' Another commenter stated that the complexity of the proposed regulations places a significant burden on the IRS and the Independent Office of Appeals to determine compliance at the level of an ''indeterminable number'' of upper-tier partnerships. The commenter stated that the proposed regulations provide an ''unclear legal standard with respect to the application of the Disallowance Rule to tiered partnership structures and thus do not promote simplification and taxpayer burden reduction.''

Another commenter stated that, of the conservation easement contributions made by partnerships, very few are made by tiered partnerships. The commenter stated that, after enactment of the Disallowance Rule, there will be even fewer, noting that many of those structures were created to facilitate transactions that are now banned.

The Treasury Department and the IRS have determined that the proposed computations are not more complex than necessary to effectuate the Disallowance Rule. In the context of tiered entities, section 170(h)(7)(A) requires the Disallowance Rule to be tested at each tier and requires relevant basis to be determined by looking through all tiers of pass-through entities to determine the portion of modified basis that is attributable to the portion of the real property with respect to which the qualified conservation contribution is made. For example, if an individual is a partner in an upper-tier partnership, and a lower-tier partnership makes a qualified conservation contribution, section 170(h)(7)(A) requires each partnership to determine if the amount of the contribution exceeds 2.5 times the sum of the relevant bases. Section 170(h)(7)(B)(i) provides that the individual's relevant basis is the portion of the individual's modified basis in the upper-tier partnership that is allocable (under rules similar to the rules of section 755) to the portion of the real property held by the lower-tier partnership with respect to which the qualified conservation contribution is made.

Applying the rules of section 755 to tiered entities involves computations at each tier, which can be complex. Revenue Ruling 87–115, 1987–2 C.B. 163, Situation 1, describes the sale of an interest in an upper-tier partnership that holds an interest in a lower-tier partnership. The upper-tier partnership and the lower-tier partnership both have elections in effect under section 754 of the Code. Rev. Rul. 87–115 concludes that, in addition to the upper-tier partnership computing section 743(b) adjustments and allocating them among its properties under section 755, an interest in the lower-tier partnership will be deemed to have been transferred for purposes of the lower-tier partnership computing section 743(b) adjustments and allocating them among the lower-tier partnership's properties under section 755. Thus, the rules of section 755 will have to be applied at each tier. Similarly, Revenue Ruling 92–15, 1992–1 C.B. 215, Situation 1, provides that if an upper-tier partnership makes an adjustment under section 734(b) that is allocated under the rules of section 755 to the basis of an interest it holds in a lower-tier partnership that has an election under section 754 in effect, the lower-tier partnership must make section 734(b) adjustments to the upper-tier partnership's share of the lower-tier partnership's assets and allocate those adjustments among the lower-tier partnership's property under the rules of section 755. Thus, the rules of section 755 will have to be applied at each tier to determine the allocation of the section 734(b) adjustments.

As explained earlier, the proposed regulations are similar to, and not more complex than, the rules of section 755. In addition, the proposed regulations are more consistent with the purposes of the Disallowance Rule than a rule that simply cross-references section 755. Both of these statements are also true with respect to tiered partnership arrangements. The computational step-by-step approach in the proposed regulations provides a clear, administrable standard, and protects the purposes of the Disallowance Rule in situations involving tiered partnerships.

The Treasury Department and the IRS disagree with the commenter who stated that the proposed regulations apply to an ''indeterminate'' number of tiers. The number of tiers is determinable, and within the control of the taxpayers creating those tiers. The proposed regulations provide a flexible approach to accommodate any number of tiers created by taxpayers. This flexibility is necessary to prevent the avoidance of the purposes of the Disallowance Rule. If the regulations stopped at two tiers, taxpayers could create structures with additional tiers and assert that they are not required to properly trace relevant basis through all the tiers. In addition, one commenter reported that many tiered partnership arrangements were created to engage in the very types of abusive transactions which led Congress to enact the Disallowance Rule.

Accordingly, these final regulations do not make changes in response to the comments regarding the complexity of the relevant basis computations in tiered partnership situations.

b. Effect of Section 704(c) on the Allocation of Modified Basis

As discussed in Part II.B.1.b of this Summary of Comments and Explanation of Revisions, these final regulations amend § 1.170A–14(m)(2)(iii)(B) and item D in the formula in § 1.170A–14(m)(2)(iv), which address the apportionment of a contributing partnership's adjusted bases in its properties. To provide a parallel rule for an upper-tier partnership's apportionment of its adjusted bases in its properties, § 1.170A–14(m)(4)(ii)(A)(*2*) in these final regulations provides that to determine a partner's portion of the adjusted basis in all of an upper-tier partnership's properties, the upper-tier partnership must apportion among its partners its adjusted basis in each of its properties (except its interest in the lower-tier partnership), using the adjusted basis immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero. This apportionment must be done under principles similar to the determination of the partners' interests in the partnership under section 704(b), including the factors in § 1.704–1(b)(3)(ii). In addition, the apportionment must reflect section 704(c) principles. For example, if a partnership property has built-in loss (the adjusted basis of the property exceeds its fair market value), and section 704(c) would require all of that built-in loss to be allocated to a certain partner if that property was sold, all of the basis in the property that exceeds the property's fair market value must be apportioned to the partner to whom the loss would be allocated if the property was sold.

To effectuate this change, these final regulations modify the definition of item J in § 1.170A–14(m)(4)(ii)(B) to be:

J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership) as determined under § 1.170A–14(m)(4)(ii)(A)(*2*).

To be consistent with the changes to § 1.170A–14(m)(2)(iii)(B), these final regulations modify the definition of item L in § 1.170A–14(m)(4)(ii)(B) to be:

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under § 1.170A–14(m)(2)(iii)(B).

4. Determination of Relevant Basis for Shareholders in Upper-Tier S Corporations

Proposed § 1.170A–14(m)(5) provided rules for determining relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation. Proposed § 1.170A–14(m)(5)(i) provided that the ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier partnerships would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis.

Proposed § 1.170A–14(m)(5)(ii)(A) provided a narrative rule for the upper-tier S corporation. Under proposed § 1.170A–14(m)(5)(ii)(A), the upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that will be the contributing partnership). This determination must be done in accordance with the principles of § 1.170A–14(m)(3) and the formula provided in § 1.170A–14(m)(5)(ii)(B). In other words, the formula provided in § 1.170A–14(m)(5)(ii)(B) is similar to the formula provided in § 1.170A–14(m)(3), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in § 1.170A–14(m)(5)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in § 1.170A–14(m)(5)(iii), the contributing partnership will then use the amount determined under the formula in § 1.170A–14(m)(5)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed § 1.170A–14(m)(5)(ii)(B) provided the following formula:

$N = M \times (P \div Q)$

Where:

N = Portion of the ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the contributing partnership.

M = Modified basis as determined under § 1.170A–14(l).

P = Ultimate member's pro rata portion of the upper-tier S corporation's adjusted basis in its interest in the contributing partnership.

Q = Ultimate member's pro rata portion of the adjusted basis in all the upper-tier S corporation's properties (including the upper-tier S corporation's adjusted basis in its interest in the contributing partnership).

Proposed § 1.170A–14(m)(5)(iii) provided that, after completion of these computations, the contributing partnership must determine the portion of the amount determined under item N with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of § 1.170A–14(m)(2), and the following formula:

$R = N \times (W \div (S + W))$

Where:

R = Relevant basis.

N = Amount determined with respect to item N as described under § 1.170A–14(m)(5)(ii)(B).

S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by apportioning among the partners of the contributing partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

W = Upper-tier S corporation's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (Y \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

Y = Upper-tier S corporation's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

a. Complexity of the Determination of Relevant Basis for Ultimate Members That are Shareholders in an Upper-Tier S Corporation

Commenters did not provide comments specific to S corporations, but an upper-tier S corporation would necessarily hold an interest in a partnership, so the rules applicable to partnerships would apply to any partnership owned by the S corporation. For the reasons described in Part II.B.3.a of this Summary of Comments and Explanation of Revisions (relating to the complexity of the determination of relevant basis for ultimate members that are partners in an upper-tier partnership), the Treasury Department and the IRS have determined that these computations should be retained. Accordingly, these final regulations do not make changes in response to the comments regarding the complexity of the relevant basis computations in situations involving an S corporation owning an interest in a lower-tier partnership.

b. Effect of Section 704(c) on the Allocation of Modified Basis

As discussed in Part II.B.1.b of this Summary of Comments and Explanation of Revisions, these final regulations amend § 1.170A–14(m)(2)(iii)(B) and item D in the formula in § 1.170A–14(m)(2)(iv). To be consistent with those revisions, these final regulations modify the definition of item S in § 1.170A–14(m)(5)(iii)(B) to be:

S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under § 1.170A–14(m)(2)(iii)(B).

III. Requests for Guidance on Partnership Allocations

Subchapter K and the regulations thereunder provide rules on how a partnership may allocate its items among its partners. Several commenters requested that the final regulations provide guidance on partnership allocations of qualified conservation contributions. These comments are grouped into the following categories: (A) requests for guidance under section 704(b), (B) requests for guidance under section 704(c), and (C) requests for additional guidance on the application of the proposed regulations under § 1.706–3.

A. *Requests for Guidance Under Section 704(b)*

Section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit is determined in accordance with the partner's interest in the partnership if the partnership agreement does not provide as to the partner's distributive share of these items or the allocation to a partner of these items under the agreement does not have substantial economic effect. The existing regulations under section 704(b) provide guidance, including definitions of substantial economic effect, capital account provisions, and guidance on the determination of a partner's interest in the partnership.

The proposed regulations did not address section 704(b) allocation issues. The examples in the proposed regulations tell the reader to assume that the partnership allocations comply with the rules of subchapter K. Commenters requested guidance on the following issues involving section 704(b): (1) allocations of qualified conservation contributions under section 704(b), and (2) section 704(b) capital accounting for qualified conservation contributions.

1. Allocations of Qualified Conservation Contributions Under Section 704(b)

One commenter stated that the proposed regulations suggest that a partnership can allocate qualified conservation contributions in any manner it chooses irrespective of the rules under subchapter K. The commenter stated that a partnership's allocation of a qualified conservation contribution must reflect either the partners' interests in the partnership or qualify as a special allocation that satisfies the substantial economic effect rules. The commenter recommended that the final regulations qualify any suggestion that special allocations may be used in allocating qualified conservation contributions. Without that, the commenter stated that the examples in the proposed regulations may be taken as permission from the IRS to create a new situation in which an investor receives more than 2.5 times its basis in tax deductions.

The proposed regulations do not suggest that a partnership's allocation of a qualified conservation contribution is not subject to the rules of subchapter K. As noted, the examples in the proposed regulations tell the reader to assume that the partnership allocations comply with the rules of subchapter K. The focus of these regulations is the implementation of section 170(f)(19) and (h)(7), which generally do not change the rules for how a partnership may allocate a qualified conservation contribution among its partners under section 704(b). Accordingly, guidance on the application of section 704(b) to a partnership's allocations of qualified conservation contributions is outside the scope of these regulations.

The Treasury Department and the IRS note that the Disallowance Rule does not prevent all situations in which an investor receives more than 2.5 times its basis in tax-deductible qualified conservation contributions. *See* § 1.170A–14(j)(6)(ii) (*Example 2*) for a situation in which the amount of a partnership's qualified conservation contribution does not exceed 2.5 times the sum of the partners' relevant bases, even though one partner's share of the contribution exceeds 2.5 times that partner's relevant basis. Such transactions may, however, constitute a listed transaction.

2. Section 704(b) Capital Accounting for Qualified Conservation Contributions

Regulations under section 704(b) provide rules for maintenance of a partner's capital account. In general terms, a partner's capital account is increased by the amount of money the partner contributes to the partnership, the fair market value of property the partner contributes to the partnership, and allocations to the partner of partnership income and gain. In general terms, a partner's capital account is decreased by the amount of money distributed to the partner by the partnership, the fair market value of any property distributed to the partner, allocations of section 705(a)(2)(B) expenditures of the partnership, and allocations of partnership loss and deduction. *See* § 1.704–1(b)(2)(iv). Section 705(a)(2)(B) expenditures are expenditures of a partnership that are not deductible in computing its taxable income and not properly chargeable to its capital accounts. Revenue Ruling 96–11, 1996–1 C.B. 140, provides that a noncash charitable contribution by a partnership is a section 705(a)(2)(B) expenditure.

Two commenters requested guidance on how a disallowed qualified conservation contribution would affect capital accounts. They stated that the proposed regulations provide rules for determining whether a qualified conservation contribution runs afoul of section 170(h)(7) but fail to provide capital accounting guidance under section 704(b) to the extent that a contribution is disallowed. One commenter stated that, under the current section 704(b) regulations, it is unclear what impact a disallowed

qualified conservation contribution would have on book capital accounts. Another commenter stated that, in the event that a contributing partnership continues to conduct business following a disallowed qualified conservation contribution, the lack of section 704(b) guidance will create confusion among tax practitioners, increase the reporting burden on taxpayers, and require further guidance from the Treasury Department and the IRS. These two commenters recommend that the final regulations include book capital account guidance under section 704(b) with respect to the Disallowance Rule.

The Treasury Department and the IRS have concluded that guidance on capital account maintenance under section 704(b) is outside the scope of these regulations. There are several situations in which the Code limits or disallows a deduction for a partnership's charitable contribution, including other provisions of section 170. As a result of these long-standing rules, a partnership's allowed charitable contribution may be less than the fair market value of the donated property. The Disallowance Rule simply adds another situation in which a deduction for a partnership's charitable contribution will be disallowed. Thus, this issue is broader than contributions subject to the Disallowance Rule. Accordingly, these final regulations do not address partnership capital accounting.

B. Requests for Guidance Under Section 704(c)

In part, section 704(c) provides rules for partnership allocations with respect to property that had built-in gain or built-in loss at the time the property was contributed by a partner to the partnership. Two commenters sought guidance on whether: (1) section 704(c)(1)(A) applies to qualified conservation contributions, and (2) section 704(c)(1)(B) applies to qualified conservation contributions.

1. Application of Section 704(c)(1)(A) to Charitable Contributions

Two commenters requested guidance on whether section 704(c)(1)(A) applies to the definition of distributive share in the context of proposed § 1.170A–14. The commenters stated that the proposed regulations do not define the term ''distributive share.'' The commenters stated that, as a result, it is unclear whether section 704(c) may apply to determine each partner's distributive share of a qualified conservation contribution. One commenter stated that, to promote transparency, the final regulations should define the term ''distributive share'' and further discuss what impact, if any, section 704(c) may have with respect to conservation easement transactions in the context of section 170(h).

Another commenter stated that none of the examples in the proposed regulations involve a qualified conservation contribution with respect to property that had been contributed to the partnership by a partner, and that the application of section 704(c) to allocations of charitable contributions should be addressed. The commenter hypothesized that the proposed regulations will create an inference that the rules of section 704(c) do not apply in the context of a contributed property that is later the subject of a charitable contribution because it is unclear under the existing section 704(c) regulations whether charitable contributions of contributed property are subject to section 704(c). The commenter also attached or referenced several articles addressing whether Congress intended for section 704(c) to apply to charitable contributions.

The focus of these regulations is implementation of section 170(f)(19) and (h)(7). Thus, the application of section 704(c)(1)(A) to charitable contributions by a partnership is outside the scope of these regulations. However, the Treasury Department and the IRS will continue to study the issue.

2. Application of Section 704(c)(1)(B) to Charitable Contributions

Section 704(c)(1)(B) provides in part that, if a partner contributes property with built-in gain or built-in loss to a partnership, and the partnership distributes the property (directly or indirectly) to someone other than the contributing partner within seven years of the partner's contribution, the contributing partner is treated as recognizing gain or loss (as the case may be) from the sale of such property in an amount equal to the gain or loss which would have been allocated to such partner under section 704(c)(1)(A) if the property had been sold at its fair market value at the time of the distribution.

One commenter requested guidance on whether section 704(c)(1)(B) would apply if a partner contributes real property to a partnership and within seven years the partnership makes a qualified conservation contribution with respect to that property. The commenter stated that a partnership's charitable contribution is substantively equivalent to a partnership distribution followed by a charitable contribution by the partners.

The focus of these regulations is implementation of section 170(f)(19) and (h)(7). Thus, the application of section 704(c)(1)(B) to charitable contributions by a partnership is outside the scope of these regulations. However, the Treasury Department and the IRS will continue to study the issue.

C. Proposed Regulations Under § 1.706–3

Section 706(d)(3) of the Code provides rules for an upper-tier partnership's allocation of items to its partners attributable to an interest in a lower-tier partnership. It provides that if, during any taxable year of the upper-tier partnership, there is a change in any partner's interest in the upper-tier partnership, then (except to the extent provided in regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership must be determined by assigning the appropriate portion (determined by applying principles similar to the principles of section 706(d)(2)(C) and (D)) of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day.

To facilitate the computation of a partner's relevant basis immediately before the contribution, proposed § 1.706–3(a) provided that, for purposes of section 706(d)(3), in the case of a qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of proposed § 1.170A–14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under § 1.706–4.

The following sections of this Summary of Comments and Explanation of Revisions address two issues under proposed § 1.706–3(a): (1) whether proposed § 1.706–3(a) requires pro rata allocations, and (2) whether proposed § 1.706–3(a) withdraws the 2015 proposed regulations under § 1.706–3.

1. Whether Proposed § 1.706–3(a) Requires Pro Rata Allocations

The Treasury Department and the IRS understand that there are questions

whether the language in proposed § 1.706–3(a) stating that the upper-tier partnership must allocate the qualified conservation contribution among its partners ''in proportion to their interests in the upper-tier partnership'' requires the upper-tier partnership to allocate the contribution among its partners pro rata, with no special allocations.

The Treasury Department and the IRS did not intend for proposed § 1.706–3(a) to require an upper-tier partnership to allocate a qualified conservation contribution pro rata among its partners. Accordingly, the final regulations modify § 1.706–3(a) to provide that the upper-tier partnership must allocate the contribution among its partners in accordance with their interests in the qualified conservation contribution at the time of day at which the qualified conservation contribution was made, rather than providing that the upper-tier partnership must allocate the contribution among its partners ''in proportion to their interests in the upper-tier partnership'' at the time of day at which the contribution was made.

2. Whether Proposed § 1.706–3(a) and (b) Withdraw the 2015 Proposed Regulations Under § 1.706–3

One commenter asked about the effect of the proposed regulations on proposed regulations under § 1.706–3 published August 3, 2015, REG–109370–10 (80 FR 45905) (the 2015 proposed regulations). The 2015 proposed regulations proposed guidance under the general rule of section 706(d)(3).

The proposed regulations did not withdraw, nor did they intend to withdraw, the 2015 proposed regulations. Instead, the proposed regulations under § 1.706–3 are a regulatory exception to the general rule in section 706(d)(3), to which the 2015 proposed regulations relate. To avoid confusion, these regulations renumber the guidance under § 1.706–3 to follow the numbering in the 2015 proposed regulations. Thus, proposed § 1.706–3(a) and (b) are finalized as § 1.706–3(d) and (e), incorporating the changes described in this section of the preamble. Section 1.706–3(a) through (c) are reserved for the 2015 proposed regulations.

In addition, the Treasury Department and the IRS have determined that the language in proposed § 1.706–3 might cause confusion because it states that the upper-tier partnership must allocate the qualified conservation contribution as described in § 1.706–3 regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under § 1.706–4. This reference to § 1.706–4 might cause confusion because § 1.706–4(a)(2) provides in part that items subject to allocation under section 706(d)(3) are not subject to the rules of § 1.706–4. Thus, although proposed § 1.706–3 is correct to state that the upper-tier partnership's allocation of the qualified conservation contribution must be done without regard to the rules of § 1.706–4, the reference to § 1.706–4 may be read to imply that the rules of § 1.706–4 would otherwise apply to an upper-tier partnership's allocation of items attributable to a lower-tier partnership.

To avoid confusion, these final regulations modify proposed § 1.706–3(a) to provide that, for purposes of section 706(d)(3), in the case of a qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in accordance with their interests in the qualified conservation contribution at the time of day at which the qualified conservation contribution was made, regardless of the general rule of section 706(d)(3). The final regulations provide that, pursuant to § 1.706–4(a)(2), the rules of § 1.706–4 do not apply to allocations subject to § 1.706–3.

IV. Exceptions to the Disallowance Rule

Section 170(h)(7) contains three exceptions to the Disallowance Rule: the three-year holding period exception, the family pass-through entity exception, and the certified historic structure exception. The proposed regulations included each exception and provided additional guidance. Commenters addressed each of these exceptions, requested an exception for *de minimis* overages, and requested a more explicit statement of the taxpayers to whom the Disallowance Rule does not apply. Each category of comments is discussed in turn in the following sections of this preamble.

A. Exception for Contributions Outside Three-Year Holding Period

Section 170(h)(7)(C) provides that the Disallowance Rule does not apply to any contribution made at least three years after the latest of: (1) the last date on which the pass-through entity that made such contribution acquired any portion of the real property with respect to which such contribution is made, (2) the last date on which any owner of the pass-through entity that made such contribution acquired any interest in such pass-through entity, and (3) if the interest in the pass-through entity that made such contribution is held through one or more pass-through entities, the last date on which any such pass-through entity acquired any interest in any other such pass-through entity, and the last date on which any owner in any such pass-through entity acquired any interest in such pass-through entity.[4] Neither section 605 of the SECURE 2.0 Act nor section 170 defines the phrase ''acquired any interest.''

Proposed § 1.170A–14(n)(2)(ii) and (iii) defined the phrase ''acquired any interest'' for partnerships and S corporations, respectively. Proposed § 1.170A–14(n)(2)(iv) also clarified that, if the contributing partnership or contributing S corporation does not satisfy the requirements of proposed § 1.170A–14(n)(2), then proposed § 1.170A–14(n)(2) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed § 1.170A–14(n)(2) if the person had been the one to make the qualified conservation contribution. The proposed regulations contained two examples illustrating these rules. The preamble to the proposed regulations requested comments on whether any additional rules or examples should be provided for the three-year holding period exception.

The only comment received on proposed § 1.170A–14(n)(2) supported the three-year holding period exception and stated that no further guidance is needed on the topic. Accordingly, these regulations finalize the proposed regulations under § 1.170A–14(n)(2) without change.

B. Exception for Family Pass-Through Entities

Section 170(h)(7)(D)(i) provides that the Disallowance Rule does not apply to any contribution made by any pass-through entity if substantially all of the interests in such pass-through entity are

[4] The Treasury Department and the IRS note that section 170(h)(7)(C) and § 1.170A–14(n)(2) are based upon dates of acquisition, not ''holding periods,'' and therefore, although this exception is colloquially referred to as the ''three-year holding period exception,'' the tacked holding period rules of section 1223 of the Code do not apply in determining the application of section 170(h)(7)(C) and § 1.170A–14(n)(2).

held, directly or indirectly, by an individual and members of the family of such individual. Section 170(h)(7)(D)(ii) provides that, for purposes of section 170(h)(7)(D), the term ''members of the family'' means, with respect to any individual: (1) the spouse of such individual, and (2) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code for purposes of determining whether an individual is a qualifying relative.

Proposed § 1.170A–14(n)(3) provided guidance under the family pass-through entity exception for partnerships and S corporations, including: (1) defining ''substantially all of the interests,'' (2) providing that ''members of the family'' are limited to individuals, and (3) imposing two anti-abuse rules for the family pass-through entity exception.

In addition, proposed § 1.170A–14(n)(3)(v) provided that, if the contributing partnership or contributing S corporation does not satisfy the requirements of proposed § 1.170A–14(n)(3), then the exception in proposed § 1.170A–14(n)(3) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed § 1.170A–14(n)(3) if the person had been the one to make the contribution. No comments were received on the rule in proposed § 1.170A–14(n)(3)(v). Accordingly, the rule in proposed § 1.170A–14(n)(3)(v) is finalized without change.

One commenter expressed support for the family pass-through entity exception and stated that further guidance was not needed. Other commenters requested modifications on: (1) the definition of ''substantially all of the interests,'' (2) the limitation of ''members of the family'' to individuals, and (3) the two anti-abuse rules for the family pass-through entity exception.

1. Defining ''Substantially All of the Interests''

Section 170(h)(7) does not contain a definition of ''substantially all.'' The preamble to the proposed regulations mentioned that, for purposes of applying different provisions of the Code that also use that term, various Income Tax Regulations define the term ''substantially all'' as comprising different percentages, including: 70 percent (§ 1.1400Z2(d)–2(d)(4)); 80 percent (§§ 1.41–2(d)(2), 1.41–4(a)(6)); 85 percent (§§ 1.45D–1(c)(5), 1.72(e)–1T, Q&A 3, 1.528–4(b) and (c)); 90 percent (§§ 1.103–8(a)(1)(i), 1.103–16(c), 1.731–2(c)(3)(i), 1.1400Z2(d)–2(d)(3)); and 95 percent (§§ 1.448–1T(e)(4)(i) and (e)(5)(i), 1.460–6(d)(4)(i)(D)(*1*)).

The preamble to the proposed regulations stated that it is appropriate to select a percentage at the higher end of this range to carry out the purpose of the Disallowance Rule, which is to prevent abusive syndications of qualified conservation contributions. Thus, proposed § 1.170A–14(n)(3)(i) provided that the family pass-through entity exception applied if at least ninety percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual and the contributing partnership or contributing S corporation meets the requirements of proposed § 1.170A–14(n)(3).

Proposed § 1.170A–14(n)(3)(ii)(A) provided that, in the case of a contributing partnership, at least ninety percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least ninety percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual. Proposed § 1.170A–14(n)(3)(ii)(B) provided that, in the case of a contributing S corporation, at least ninety percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least ninety percent of the total value and at least ninety percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

One commenter agreed that ninety percent was a reasonable number to define substantially all, noting that interests held by persons who are not members of the family should be ''extremely limited.'' Another commenter stated that ninety percent was too high and would unnecessarily restrict the application of the family pass-through entity exception; however, that commenter did not provide any examples of unnecessary restrictions or recommend a different percentage. A third commenter recommended lowering the percentage to eighty-five percent, citing the eighty-five percent standard in Rev. Rul. 73–248, 1973–1 C.B. 295, and the fact that this Revenue Ruling relates to the percentage of ownership in a legal entity, as opposed to the percentage of cash, percentage of assets, or percentage of time. This commenter also noted that eighty-five percent was closest to the average of the various percentages used to define ''substantially all'' discussed in the preamble to the proposed regulations.

The Treasury Department and the IRS agree with the commenter stating that interests held by persons who are not members of the family should be extremely limited and that that ninety percent is a reasonable number to define ''substantially all.'' In the view of the Treasury Department and the IRS, the intent of not requiring one-hundred percent of a contributing entity to be owned by family members was to allow non-family members to make small, non-material investments in contributing entities, such as when a family partnership issues profits interests to service providers. The two commenters who stated that ninety percent is too high did not elaborate or give examples in which a family partnership or family S corporation needed to provide more than ten percent of its interests to persons who are not members of the family but still should meet the family pass-through entity exception to the Disallowance Rule. Further, the average of percentages used to define ''substantially all'' in guidance is not relevant to the definition that makes sense in the context of section 170(h)(7). Thus, these final regulations adopt the definition of ''substantially all'' as proposed.

2. Defining ''Members of the Family''

Consistent with section 170(h)(7)(D)(ii), proposed § 1.170A–14(n)(3)(iii) provided that, for purposes of § 1.170A–14(n)(3), the term ''members of the family'' means, with respect to any individual: (1) the spouse of such individual, and (2) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G). The preamble to the proposed regulations stated that, under this rule, members of the family would be limited to individuals and requested comments on whether certain estates or trusts should be treated as members of the family for purposes of the family pass-through entity exception. The preamble also noted that, under existing § 1.1361–1(e)(3)(ii), certain estates and trusts of deceased members of the family are treated as members of the family for purposes of the limitation on the number of shareholders in an S corporation.

One commenter requested that estates and trusts of deceased individuals be included in the definition of ''members of the family'' to address the fact that

the interests of deceased individuals may be included in conservation contributions.

In the view of the Treasury Department and the IRS, if a family member dies and the member's interest in the pass-through entity has been transferred to the decedent's estate, the interest still should be considered to be held by a member of the family. Otherwise, the pass-through entity might have to wait until final disposition of the estate (which may take years) to make a deductible qualified conservation contribution, even if the beneficiaries of the estate are all themselves individual members of the family. In addition, allowing a decedent's estate to be treated as a member of the family if the decedent was a member of the family at the time of death is administrable because determining whether the estate qualified as a member of the family involves the same determination as whether the decedent qualified as a member of the family before death. Accordingly, these final regulations modify § 1.170A–14(n)(3)(iii) to provide that a decedent's estate is treated as a member of the family for purposes of § 1.170A–14(n)(3) if the decedent was a member of the family at the time of death.

In addition, as noted by the commenter, certain trusts may raise similar issues. Trusts may be partners or S corporation shareholders, or may become partners or shareholders as a result of the death of an individual member of the family. For example, if a family member holds a partnership interest through a grantor trust, that individual would meet the requirements under these regulations of holding a direct interest in the partnership under § 1.170A–14(j)(3)(v). If that family member dies and the trust is no longer a grantor trust, the trust should not automatically cause the partnership to no longer be a family partnership. If only family members are potential beneficiaries of a trust, then the trust should be treated as being a member of the family. Including such a trust would serve the purpose of the statute to maintain an exception for partnerships and S corporations owned and controlled by a family. A contributing partnership or contributing S corporation that would otherwise satisfy the requirements of the family pass-through entity exception should not be excluded from the exception merely because interests are held through a family trust. Accordingly, these final regulations modify § 1.170A–14(n)(3)(iii) to provide that a trust, all of the beneficiaries of which are individuals described in § 1.170A–14(n)(3)(iii)(A) or (B), is treated as a member of the family. For this purpose, the term ''beneficiaries'' refers to those persons who currently must or may receive income or principal from the trust and those persons who would succeed to the property of the trust if the trust were to terminate immediately before the qualified conservation contribution.

3. Anti-Abuse Rules for the Family Pass-Through Entity Exception

The Disallowance Rule and its exceptions in section 170(h)(7) are generally mechanical. However, Congress recognized that additional guidance may be needed to prevent situations in which those mechanical rules are used to avoid the purposes of the Disallowance Rule. Section 170(h)(7)(G)(ii) provides the Secretary with authority to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7). Accordingly, to ensure that the family pass-through entity exception in proposed § 1.170A–14(n)(3) would not be used inappropriately to circumvent the Disallowance Rule, the proposed regulations contained two anti-abuse rules: (1) a one-year holding period, and (2) a ninety-percent allocation rule.

a. One-Year Holding Period

Proposed § 1.170A–14(n)(3)(iv)(A) provided that the family pass-through entity exception does not apply unless at least ninety percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution.

The preamble to the proposed regulations explained that the need for such a rule is the concern that, in the absence of a requirement that the members of the family hold the contributed property for a certain period before the contribution, promoters could structure transactions to inappropriately take advantage of certain tacked-holding-period transactions together with the family pass-through entity exception. The proposed regulations provided an example of such a situation, in which a lower-tier partnership that is not a family pass-through entity distributes its real property to an S corporation and an upper-tier partnership. The S corporation and the upper-tier partnership each separately qualify as a family pass-through entity, but the shareholders of the S corporation are not related to the partners of the upper-tier partnership. Within one year of the distribution, the S corporation makes a qualified conservation contribution. The example concludes that, even though at the time of the qualified conservation contribution the S corporation is completely owned by an individual and members of the family, the family pass-through entity exception does not apply because the one-year holding period requirement was not met.

Two commenters disagreed with the one-year holding period. These commenters claimed that the inclusion of a three-year holding period under section 170(h)(7)(C) and the absence of a one-year holding period under the family pass-through entity exception evidenced a congressional intent not to include a one-year holding period for the family pass-through entity exception under section 170(h)(7)(D). One of these commenters opined that the proposed one-year holding period requirement violated due process by retroactively binding taxpayers who had already made contributions that did not satisfy the one-year holding period. The other commenter stated that the Treasury Department and the IRS had offered no evidence in support of the statement in the preamble to the proposed regulations that reliance on a tacked holding period raises serious concerns that the family pass-through entity exception is being used inappropriately to circumvent the Disallowance Rule.

The Treasury Department and the IRS disagree that the Treasury Department and the IRS lack authority to promulgate an anti-abuse rule. Section 170(h)(7)(G) is a specific grant of authority to the Secretary to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 170(h)(7), including regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7). In addition, section 7805(a) authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of title 26, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue. As noted above, section 7805(b)(2) permits regulations issued within 18 months of December 29, 2022 (the date SECURE 2.0 Act was enacted), to apply to contributions after December 29, 2022. Section 7805(b)(3) provides that the Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse. Section 170(h)(7)(G) and section 7805(a), (b)(2), and (b)(3) provide ample authority for an anti-abuse rule applicable to contributions after December 29, 2022.

The holding period anti-abuse rule is necessary to address the potential for taxpayers to inappropriately take advantage of certain tacked-holding-period transactions to utilize the family pass-through entity exception. In particular, the example in the proposed regulations illustrates inappropriate avoidance of the purposes of the Disallowance Rule. As described, the example shows a distribution from a partnership that is not a family pass-through entity to two separate upper-tier entities, each of which is a family pass-through entity, followed by a qualified conservation contribution within one year of the distribution. This situation should not qualify for the family pass-through entity exception because the distributing partnership was not a family pass-through entity. If such a situation qualified for the family pass-through entity exception, then partnerships that fail to qualify as family pass-through entities could simply distribute land to upper-tier entities, each of which would be a family pass-through entity (such as single-member S corporations or partnerships wholly-owned by spouses) and thus each upper-tier entity could inappropriately avail itself of the family pass-through entity exception. Without an anti-abuse rule, similar inappropriate results could be obtained through other tacked-holding-period transactions, including contributions to family pass-through entities by persons who are not members of the family.

However, after consideration of the comments, the Treasury Department and the IRS have decided to finalize the one-year holding period rule with two changes. First, the final regulations clarify that, solely for purposes of § 1.170A–14(n)(3)(iv)(A), section 1223(1) and (2) of the Code do not apply in determining whether at least ninety percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. This clarification is only for purposes of the anti-abuse rule in § 1.170A–14(n)(3)(iv)(A) and does not affect the holding period of the property for any other purpose, including section 170(e). The Treasury Department and the IRS note that this rule was already implicit in the proposed regulations; in fact, proposed § 1.170A–14(n)(3)(vi)(B) (*Example 2)* described a situation in which an S corporation failed the one-year holding period requirement even though it would have had a tacked holding period under section 1223 that exceeded one year.

Second, the final regulations provide that the one-year holding period rule does not apply if the entire amount of the qualified conservation contribution is limited by section 170(e) to the contributing partnership's or contributing S corporation's adjusted basis in the qualified conservation contribution. For example, if section 170(e) limits a qualified conservation contribution to the contributing partnership's adjusted basis because the property with respect to which the qualified conservation contribution is made was purchased within one year of the qualified conservation contribution, the anti-abuse rule in § 1.170A–14(n)(3)(iv)(A) does not apply. This change limits the one-year holding requirement to transactions that inappropriately take advantage of tacked holding periods to utilize the family pass-through entity exception.

b. Ninety Percent Allocation Rule

Proposed § 1.170A–14(n)(3)(iv)(B) provided that the exception in proposed § 1.170A–14(n)(3) does not apply unless at least ninety percent of the qualified conservation contribution is allocated to the individual and all members of the individual's family who own at least ninety percent of all the interests in the contributing partnership or contributing S corporation. Commenters did not comment on this anti-abuse rule. Therefore, these regulations maintain the ninety percent allocation rule.

C. *Certified Historic Structure Exception*

Section 170(h)(7)(E) provides that the Disallowance Rule does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). Proposed § 1.170A–14(n)(4) simply repeated this statutory language and did not provide further guidance regarding the cases to which this exception would apply. No comments were received on proposed § 1.170A–14(n)(4), which these regulations finalize without change.

Proposed § 1.170A–14(n)(4) also contained a cross-reference to the special reporting requirements in proposed § 1.170A–16(f)(6) for a contribution that meets the certified historic structure exception. Several commenters addressed these special reporting requirements. Those comments are discussed in Part V.D of this Summary of Comments and Explanation of Revisions,

D. The Request for a De Minimis Overage Exception

Section 170(h)(7)(A) states that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) ''shall not be treated as'' a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership. One commenter stated that there is a ''cliff effect'' to the statute and the proposed regulations in that a contribution of one dollar more than 2.5 times the sum of the relevant bases results in disallowance of any deduction for any of the contribution. The commenter stated that there should be some regulatory leniency if the taxpayer was acting in good faith and there is *de minimis* overage.

The Treasury Department and the IRS agree with the commenter that the statutory language imposes a ''cliff effect,'' but do not agree that a *de minimis* exception is necessary or desirable. As explained in Part I of this Summary of Comments and Explanation of Revisions, the first sentence of proposed § 1.170A–14(j)(3)(ii), which these regulations finalize without change, provides that the amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. By focusing on the amount claimed by the contributing partnership or contributing S corporation, rather than the fair market value of the contribution, this rule provides greater certainty to both taxpayers and the IRS. The regulations do not require the contributing partnership or contributing S corporation to claim the full amount of the contribution that it might otherwise claim in the absence of the Disallowance Rule. Therefore, a contributing partnership or contributing S corporation making a contribution that would otherwise be disallowed by the Disallowance Rule could avoid the Disallowance Rule by claiming an amount of qualified conservation contribution that is less than or equal to 2.5 times the sum of the relevant bases, assuming that the claimed amount is not more than the fair market value of the contribution. Thus, taxpayers may be able to mitigate the ''cliff effect'' noted by the commenter.

In accordance with section 170(h)(7)(G), which provides authority

for the Secretary to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 170(h)(7), including to prevent the avoidance of the purposes of section 170(h)(7), these final regulations also provide that, if a partner or S corporation shareholder claims an amount of qualified conservation contribution that is inconsistent with and greater than the amount of the partner's distributive share or S corporation shareholder's pro rata share of qualified conservation contribution reported to the partner or S corporation shareholder by the partnership or S corporation, predicated on a position that the partnership's or S corporation's qualified conservation contribution was a greater amount than the amount claimed by the partnership or S corporation, and the qualified conservation contribution would have been a disallowed qualified conservation contribution if the partnership or S corporation had actually claimed that greater amount, then the partner's or S corporation shareholder's claimed qualified conservation contribution is a disallowed qualified conservation contribution. This rule is necessary to avoid situations in which a partner or an S corporation shareholder seeks to avoid the application of section 170(h)(7) by claiming an amount with respect to a qualified conservation contribution that is more than the amount allocated to the partner or shareholder and reported by the partnership or S corporation.

E. Statement Regarding Taxpayers to Whom the Disallowance Rule Does Not Apply

One commenter stated that the proposed regulations lacked clarity as to which provisions apply to every contributing partnership or contributing S corporation and requested that the final regulations include a preliminary explanation of scope. The commenter recommended that, if different provisions have different scopes, then that should be made clear. The commenter recommended that the final regulations explicitly state that § 1.170A–14(j) through (n) does not apply to qualified conservation contributions made by individuals, joint tenancies, tenancies in common, or C corporations. The commenter also recommended that the final regulations explicitly state that § 1.170A–14(j) through (n) does not apply to partnerships and entities taxed as partnerships: (1) which have held the real property subject to the qualified conservation contribution for more than one year immediately before the date and hour of the qualified conservation contribution, disregarding any tacked holding period; and (2) all of whose members, on the date and time of the qualified conservation contribution, have held the same percentage interest in the partnership, directly or indirectly, disregarding any tacked holding period, for more than one year immediately before the date and hour of the qualified conservation contribution.

With respect to the request to clarify that § 1.170A–14(j) through (n) does not apply to qualified conservation contributions made by individuals, joint tenancies, tenancies in common, or by C corporations, the Treasury Department and the IRS agree in part. Section 170(h)(7)(A) and (F) provide that the Disallowance Rule applies only to certain qualified conservation contributions made by partnerships, S corporations, and other pass-through entities; thus, it does not apply to qualified conservation contributions made by individuals or C corporations. However, in certain cases an arrangement that is a joint tenancy or tenancy in common under State law may be considered a partnership for Federal tax purposes. *See* § 301.7701–1(a)(2). If so, a qualified conservation contribution by such an arrangement would be subject to the Disallowance Rule. Accordingly, § 1.170A–14(j)(1) of these final regulations includes a statement that the Disallowance Rule does not apply to qualified conservation contributions made directly by landowners that are not pass-through entities, such as individuals or C corporations.

With respect to the request to clarify that § 1.170A–14(j) through (n) does not apply to partnerships and entities taxed as partnerships: (1) which have held the real property subject to the qualified conservation contribution for more than one year immediately before the date and hour of the qualified conservation contribution, disregarding any tacked-on holding period and (2) all of whose members, on the date and time of the qualified conservation contribution, have held the same percentage interest in the partnership, directly or indirectly, disregarding any tacked holding period, for more than one year immediately before the date and hour of the qualified conservation contribution, the Treasury Department and the IRS have concluded that such a rule would be inconsistent with section 170(h)(7). As explained in Part IV.A of this Summary of Comments and Explanation of Revisions, section 170(h)(7)(C) provides an exception to the Disallowance Rule for pass-through entities that satisfy a three-year holding period. Accordingly, the final regulations do not adopt this recommendation.

V. Reporting Requirements

Section 170(f)(11)(H) grants the Treasury Department and the IRS authority to promulgate regulations to provide for substantiation of a charitable contribution. Section 170(h)(7)(G) grants the Treasury Department and the IRS authority to promulgate regulations to carry out the purposes of section 170(h)(7), including to require reporting (including reporting related to tiered partnerships and the modified basis of partners and S corporation shareholders).

As noted in the preamble to the proposed regulations, existing § 1.170A–16 imposes substantiation and reporting requirements for noncash charitable contributions, including but not limited to qualified conservation contributions by pass-through entities. Subject to certain exceptions, § 1.170A–16 requires the donor to file Form 8283 in the case of a noncash charitable contribution exceeding $500. Specifically, existing § 1.170A–16(c) generally requires the donor to complete Form 8283 (Section A) in the case of a noncash charitable contribution of more than $500 but not more than $5,000. Existing § 1.170A–16(d) generally requires the donor to complete Form 8283 (Section A or Section B, as applicable) in the case of a noncash charitable contribution of more than $5,000. Existing § 1.170A–16(e) applies to noncash charitable contributions of more than $500,000 and generally requires the donor to complete Form 8283 (Section A or Section B, as applicable). Section 170(f)(11)(D) and existing § 1.170A–16(e) require a donor of a noncash contribution of more than $500,000 to attach a qualified appraisal to the return on which the deduction is claimed. Existing § 1.170A–16(f) provides additional substantiation rules, including rules for donors that are partnerships or S corporations.

The proposed regulations provided guidance in the following four categories: (1) requirements for all noncash charitable contributions of more than $500, (2) requirements for noncash charitable contributions by partnerships and S corporations, (3) requirements for qualified conservation contributions made by partnerships and S corporations, and (4) requirements for qualified conservation contributions made by partnerships and S corporations the conservation purpose of which is the preservation of a certified historic structure.

A. Requirements for All Noncash Charitable Contributions of More Than $500

The proposed regulations made one clarifying change applicable to all noncash charitable contributions of more than $500—a requirement that taxpayers input numerical entries into Form 8283.

Section 1.170A–16(c)(3) provides the elements of a completed Form 8283 (Section A), and § 1.170A–16(d)(3) provides the elements of a completed Form 8283 (Section B). To further clarify reporting requirements for donated property, proposed § 1.170A–16(c)(3)(v) and (d)(3)(ix) each added a requirement, respectively, that, if a number can be inserted into any box on Form 8283, the number must be inserted in the box on Form 8283; alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. The proposed regulations also clarified that, while nothing precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 and including an attached statement explaining any additional information regarding the number, taxpayers may not respond to a request for information on Form 8283 with nonresponsive responses, for example, by indicating that the requested information is *available upon request* or will be *provided upon request.* The proposed regulations provided that inclusion of such nonresponsive language in response to a request for information on Form 8283 may be treated by the IRS as being an incomplete filing of Form 8283.

The preamble to the proposed regulations explained the IRS had observed a pronounced increase in taxpayers filing a Form 8283 that did not contain any numbers and instead referred the IRS to an attachment. Often, the attachment included nonresponsive information, such as ''available upon request,'' was entirely blank, or otherwise did not provide the information required by Form 8283. Other times, the attachment included multiple numbers for different boxes, leaving the IRS to figure out which of the included numbers was appropriate for a particular box. The proposed regulations stated that these actions are to the detriment of fair and effective tax administration, and stated,

> While many taxpayers understandably want to attach a statement to the Form 8283 to verify their calculations and provide appropriate supplemental information, having the numerical information in the appropriate box on Sections A and B of Form 8283 is critical to the IRS's ability to ensure the integrity of each filing, as IRS systems are programmed to match a partner's or shareholder's information to the appropriate contributing partnership's or contributing S corporation's information. Moreover, information requested on Sections A and B of Form 8283 is information that the partnership or S corporation should already have and is already required to provide to the partner or shareholder, as appropriate.

A commenter suggested that confusion could be avoided if the regulation stated that an attached statement will only be acceptable if it clearly explains why the taxpayer cannot provide the basis of their donation or is simply explanatory of the basis the taxpayer provided. The commenter also suggested that the box requiring the taxpayer to report its basis in the donated property could be left blank if the taxpayer provided an explanatory statement attached to the Form 8283. The same commenter suggested that the regulations add a box for the taxpayer to check if the entire explanation and number are contained in an attached statement. These comments are largely already addressed by the proposed regulations, which provided that taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted and also clarified that nothing precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 and including an attached statement explaining any additional information regarding the number. The request to add a box to check if the entire explanation and number are contained in the attached statement is outside the scope of these final regulations but will be considered in connection with updates to the Form 8283.

One commenter agreed with the Treasury Department and the IRS's ''general attitude toward Form 8283 and taxpayers who leave information blank,'' but requested that the Form 8283 include a box to disclose tacked holding periods. This commenter noted that the Form 8283 currently only contains a box for ''date acquired by donor'' and stated that accountants had expressed confusion over whether acquisition date or holding period date ought to be inserted into that box, because the holding period date is the relevant date for all other accounting and tax purposes. The commenter suggested that adding a box for the holding period would account for potential disparities between the date entered in the ''date acquired by donor'' box and the actual date when a donor's holding period began to run.

The request to add a box for the holding period is outside the scope of these final regulations but will be considered in connection with updates to the Form 8283. The Treasury Department and IRS emphasize that current instructions to Form 8283 direct taxpayers to enter the date the property is acquired by the donor and that taxpayers may submit an attachment disclosing the tacked holding period to explain potential disparities between the date acquired by the donor and the date the donor's holding period began to run.

This commenter also suggested that any increase in the number of taxpayers filing Forms 8283 that do not contain numbers and instead refer the IRS to an attachment is evidence of taxpayer confusion on how to fill out the Form 8283, ''particularly when the IRS has taken a litigating position that attempts to disqualify deductions in numerous easement cases based on alleged failures in the taxpayers' Forms 8283.'' The commenter suggested that the final regulations should not discourage taxpayers from providing additional information on an attachment, particularly if the taxpayer is doing so to supplement information on the Form 8283. This comment is consistent with the proposed regulations, which provided that taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted and also clarified that nothing precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 and including an attached statement explaining any additional information regarding the number.

This commenter also proposed that the regulations include a ''substantial compliance'' standard for Form 8283 for taxpayers who make a good faith effort to complete the form. The commenter stated that substantial compliance relief should not apply if a taxpayer omits information from Form 8283 altogether or otherwise manipulates the form, but that if a taxpayer makes a good-faith mistake, such as miscalculating basis in a way that does not affect the calculation of whether a qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, the taxpayer should not be punished by having its deduction denied altogether.

While the IRS may work with a taxpayer to fix a good-faith mistake, the Treasury Department and the IRS decline to adopt a ''substantial compliance'' standard for Form 8283. First, there are certain reporting requirements that are statutorily imposed and cannot be satisfied through substantial compliance, including the requirement to obtain a qualified appraisal and attach an appraisal summary to the return. *See Hewitt* v.

Commissioner, 109 T.C. 258, *aff'd without published opinion,* 166 F.3d 332 (4th Cir. 1998); Deficit Reduction Act of 1984 (DEFRA), Public Law 98–369, section 155(a)(3), 98 Stat. 494 (1984). Second, even for those reporting requirements that may implicate the substantial compliance doctrine, the determination of whether substantial compliance should apply is made under common law and should be applied only in cases in which the taxpayer acted in good faith and exercised due diligence but nevertheless failed to meet regulatory requirements. *See Prussner* v. *U.S.,* 896 F.2d 218, 224 (7th Cir. 1990). *See also McAlpine* v. *Commissioner,* 968 F.2d 459, 462 (5th Cir. 1992). Substantial compliance is not applicable if the requirement is essential but may be applied if the requirements are procedural or directory. *See Estate of Strickland* v. *Commissioner,* 92 T.C. 16, 27 (1989). The determination of whether substantial compliance is satisfied is a facts-and-circumstances analysis that is ordinarily resolved through the examination, Appeals, or judicial process.

One commenter noted that the requirement to report cost basis has been in existence since 1988 and stated that some practitioners have failed to scrupulously report either the cost basis, fair market value, or both, maintaining that an earlier iteration of the Form 8283 instructions were vague as to this requirement. The commenter asked that the final regulations ''remove all doubt and reaffirm that the reporting requirement was never vague or ambiguous.''

The Treasury Department and the IRS agree that the requirements for an accurate Form 8283 have always required the reporting of cost or other basis in the donated property. Section 155(a)(1) of DEFRA specifically instructs the Secretary to promulgate regulations that require a taxpayer claiming a deduction for a noncash charitable contribution to: (1) obtain a qualified appraisal for the property, (2) attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and (3) *include on such return such additional information (including the cost basis and acquisition date of the contributed property)* as the Secretary may prescribe in such regulations. (Emphasis added). In fulfillment of this mandate, the Secretary promulgated § 1.170A–13, Recordkeeping and Return Requirements for Deductions for Charitable Contributions. TD 8002, 49 FR 50663, December 31, 1984. Section 1.170A–13(b)(3)(i)(B) requires reporting cost or other basis for charitable contribution deductions in excess of $500 if required by the return form or its instructions. Section 1.170A–13(b)(3)(ii) provides that, if a taxpayer has reasonable cause for being unable to provide such information, the taxpayer must attach an explanatory statement to the return. Existing § 1.170A–16(c)(3)(iv)(F) and (d)(3)(vi) require the reporting of cost or other basis on Form 8283. Additionally, section 170(f)(11)(B) and (C) provide the Secretary the authority to require information other than property descriptions for contributions of more than $500 and requires qualified appraisals for contributions of more than $5,000. These final regulations clarify requirements for completing certain fields on Form 8283, but the requirement to include cost basis is clear under existing regulations and does not require reiterating in other parts of the regulations, including in these final regulations.

Accordingly, proposed § 1.170A–16(c)(3)(v) and (d)(3)(ix) are finalized with only minor, non-substantive changes (such as using the term ''non-responsive language'' instead of the term ''non-responsive responses'').

B. Requirements for Noncash Charitable Contributions Over $500 by Partnerships and S Corporations

Existing § 1.170A–16(f)(4)(i) provides that, if a partnership or S corporation makes a noncash charitable contribution, the partnership or S corporation is required to provide a copy of its completed Form 8283 (Section A or Section B) to every partner or shareholder who receives an allocation of a charitable contribution deduction under section 170. Similarly, a recipient partner or shareholder that is a partnership or S corporation must provide a copy of the completed Form 8283 to each of its partners or shareholders who receives an allocation of a charitable contribution deduction under section 170 for the property described in Form 8283. Proposed § 1.170A–16(f)(4)(i) retained these rules and clarified that any additional tiers of pass-through entities must also provide a copy of the donor's Form 8283 to its partners or shareholders who receive an allocation of the charitable contribution.

Existing § 1.170A–16(f)(4)(ii) requires a partner or S corporation shareholder that receives an allocation of a charitable contribution to which § 1.170A–16(c), (d), or (e) applies to attach a copy of the partnership's or S corporation's completed Form 8283 (Section A or Section B) to the return on which the deduction is claimed. Proposed § 1.170A–16(f)(4)(ii) retained these rules and clarified that the partner or shareholder must also attach a copy of any additional Forms 8283 that must be provided to them under proposed § 1.170A–16(f)(4)(iii)(A).

Proposed § 1.170A–16(f)(4)(iii)(A) provided that a partner of a partnership or shareholder of an S corporation that receives an allocation of a charitable contribution to which § 1.170A–16(c), (d), or (e) applies must complete its own Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In addition, proposed § 1.170A–16(f)(4)(iii)(A) provided that a partner that is itself a partnership or S corporation must complete its own Form 8283 and provide a copy of that Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. Proposed § 1.170A–16(f)(4)(iii)(A) required each partner or shareholder to attach its separate Form 8283 to the return on which the contribution is claimed, in addition to the copy of the donor's Form 8283 as well as other Forms 8283 that the partner or shareholder received. This proposed requirement applied to all noncash charitable contributions over $500 made by a partnership or S corporation, not just those for conservation easements.

The comments received on these provisions addressed: (1) the requirement that partners and S corporation shareholders complete and file separate Forms 8283, and (2) donee responsibilities pertaining to the partners' and shareholders' Forms 8283.

1. The Form 8283 Filing Requirement for Partners and Shareholders

One commenter addressed proposed § 1.170A–16(f)(4)(iii)(A). This commenter suggested that, rather than requiring partners and S corporation shareholders to complete and file separate Forms 8283, the donating partnership or S corporation should be required to include on its Form 8283 information about the partners' and shareholders' bases and holding periods. The commenter suggested retaining the ''current approach'' of having one Form 8283 for the contributing partnership (that is distributed to the partners) and then requiring the specific information the IRS is seeking on the attachment (which is required for all qualified conservation contributions) submitted by the partners.

Section 170(f)(11) disallows a charitable contribution deduction unless certain substantiation requirements are met. Providing a Form

8283 is a reasonable, basic step for substantiating charitable contributions for taxpayers who ultimately claim the deduction. Congress provided, as part of DEFRA, the authority to require taxpayers to submit Forms 8283. The legislative history shows that Congress was concerned that ''opportunities to offset income through inflated valuations of donated property have been increasingly exploited by tax shelter promoters.'' Staff of Senate Comm. on Finance, 98th Cong., 2d Sess., Explanation of Provisions of the Deficit Reduction Act of 1984, at 503 (Comm. Print 1984). This has long been an area of abuse for which taxpayers have creatively sought to avoid transparent reporting and instead have attempted to disguise overvalued charitable contributions.

Proposed § 1.170A–16(f)(4)(iii)(A) provides the IRS with important information and the burden imposed on taxpayers is reasonable in light of the potential for abuse. As the preamble to the proposed regulations stated, in pass-through and tiered-entity structures, the IRS regularly observes partners and shareholders providing incomplete information to substantiate their charitable contribution deductions. A partner's or S corporation shareholder's Form 8283 that contains the necessary information from the Form K–1 received from the donating partnership, donating S corporation, or an upper-tier partnership or upper-tier S corporation streamlines processing and efficiency. Thus, these final regulations finalize § 1.170A–16(f)(4)(iii)(A) as proposed.

2. Donee Responsibilities Pertaining to Partners' and Shareholders' Forms 8283

A commenter stated that the requirement that partners and S corporation shareholders provide their own Form 8283 represents substantial additional work for donees that likely would make them less willing (and able) to assess the accuracy and completeness of Form 8283. This commenter stated that, if there is an expectation that the donee would sign an individual's Form 8283, then it would require more due diligence for the donee, creating on-the-ground problems and complexities. The commenter also stated that retaining so many copies of Forms 8283 as part of their permanent record would significantly increase their record-keeping burden (although this commenter also stated that the great majority of conservation easement donations are not made by partnerships and, of those, very few are made by tiered partnerships).

The proposed regulations did not impose a requirement for the donee to sign and/or retain a copy of each partner's and shareholder's Forms 8283. The requirement in § 1.170A–16(d)(3)(ii) that a completed Form 8283 (Section B) include the donee's signature only applies to the Form 8283 filed by the donor, in these instances the contributing pass-through entity. To clarify this issue, the Instructions to Form 8283 have been updated to provide: ''A member's Form 8283 is not required to have signatures.'' *See* the Form 8283 Instructions released on January 17, 2024, which state ''(Rev. December 2023)'' after ''Instructions for Form 8283'' at the top of the first page.

C. Requirements for Qualified Conservation Contributions Made by Partnerships and S Corporations

As explained in the preamble to the proposed regulations, to ensure that taxpayers claiming qualified conservation contributions properly comply with section 170(f)(19) and (h)(7), the IRS must have relevant basis reporting from both the contributing partnership or contributing S corporation and each partner or shareholder receiving an allocation of the contribution (which will be ultimate members, upper-tier partnerships, or upper-tier S corporations). Accordingly, the proposed regulations inserted a new paragraph, proposed § 1.170A–16(d)(3)(viii),[5] which provided that, for qualified conservation contributions made by a partnership or S corporation, the contributing partnership or contributing S corporation must report the sum of each ultimate member's relevant basis, computed in accordance with § 1.170A–14(j) through (m), on the Form 8283 (Section B). Under proposed § 1.170A–16(d)(3)(viii), this new requirement did not apply to contributions described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), in which case the reporting requirement did apply.

Proposed § 1.170A–16(f)(4)(iii)(B) provided an additional substantiation rule for partners and S corporation shareholders receiving an allocation of a qualified conservation contribution. That paragraph required that an ultimate member's separate Form 8283 must include the ultimate member's own relevant basis and that an upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant bases. Proposed § 1.170A–16(f)(4)(iii)(B) did not apply to contributions described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), in which case proposed paragraph § 1.170A–16(f)(4)(iii)(B) did apply.

The comments received on these provisions addressed: (1) the requirement that ultimate shareholders report relevant basis, (2) whether the contributing entity should report the basis in the property underlying the qualified conservation contribution or the basis in the qualified conservation contribution itself, and (3) requiring reporting of relevant basis with respect to a qualified conservation contribution that satisfies one of the exceptions to the Disallowance Rule.

1. The Requirement That Ultimate Members Report Relevant Basis

One commenter interpreted the requirement in the proposed regulations that ultimate members report their relevant basis on their separate Forms 8283 to mean that the proposed regulations ''require individual members and shareholders to determine their relevant basis and holding period.'' The commenter stated that a particular problem with this new requirement is the complexity of the calculations needed for an ultimate member to determine their relevant basis.

The Treasury Department and the IRS disagree that the proposed regulations require each ultimate member to determine its relevant basis. As explained in the proposed regulations, relevant basis must be determined by the partnership or S corporation. The ultimate member may need to share information, such as its basis in its interest in the partnership or S corporation, with the partnership or S corporation to facilitate this computation. The partnership or S corporation must also determine its holding period in the property with respect to which the qualified conservation contribution is made.

Another commenter stated that the requirement that partners and

[5] The proposed regulations would redesignate existing § 1.170A–16(d)(3)(viii) as § 1.170A–16(d)(3)(x).

shareholders file a separate Form 8283 with respect to certified historic structure contributions was a trap for the unwary that was confusing, duplicative, and contrary to the statute. In support of this premise, the commenter stated that: (1) the requirement that each partner and shareholder file a separate Form 8283 reporting its own relevant basis does nothing to further the purposes of section 170(f)(19) and (h)(7); (2) section 170(f)(19) and (h)(7) apply at the entity level based on the sum of all the relevant bases, and the partners' and shareholders' separate Forms 8283 do not convey the sum of all the relevant bases; (3) the Treasury Department and the IRS could require the contributing partnership to add an attachment to the Form 8283 explaining the partnership's allocations of the qualified conservation contribution, such as any contractual limitations affecting the partnership's allocations; (4) requiring partners and shareholders to report their relevant bases may cause confusion by leading the partners and shareholders to believe that application of the Disallowance Rule depends on whether the amount of a partner's or shareholder's deduction exceeds 2.5 times the partner's or shareholder's personal relevant basis; (5) because section 170(f)(19) and (h)(7) applies only to pass-through entities and ''almost all'' pass-through entities are subject to audit at the entity level pursuant to the Bipartisan Budget Act of 2015 (BBA), the IRS does not need separate Forms 8283 at any intermediary partner levels; and (6) the separate Forms 8283 from partners and shareholders would not achieve the intended result of reporting requirements enacted in DEFRA—triggering an audit of overvalued property. The Treasury Department and IRS have considered these comments but conclude that they are not persuasive. First, in a structure involving tiered partnerships or S corporations, the Disallowance Rule must be tested at each tier. *See* § 1.170A–14(j)(2)(ii). Therefore, each upper-tier partnership and upper-tier S corporation must compute 2.5 times the sum of its ultimate members' relevant bases. It may be the case that the amount of the contributing partnership's contribution does not exceed 2.5 times the sum of its ultimate members' relevant bases, but an upper-tier partnership's allocated portion does exceed 2.5 times the sum of the upper-tier partnership's ultimate members' relevant bases and would be subject to the Disallowance Rule. Therefore, it is essential that each upper-tier partnership and upper-tier S corporation provide a separate Form 8283 so that the IRS can apply the Disallowance Rule to upper-tier partnerships and upper-tier S corporations. Second, section 170(h)(7)(G)(i) provides an explicit grant of authority for the promulgation of regulations and other guidance requiring reporting related to tiered partnerships and S corporations. Requiring upper-tier partnerships and upper-tier S corporations to report the sum of their ultimate members' relevant bases is necessary to administer the Disallowance Rule and is consistent with the authority granted in section 170(h)(7)(G).

Similarly, the requirement that an ultimate member must report their own relevant basis on their separate Form 8283 ensures that the relevant basis reported at the ultimate member level is consistent with the sum of relevant bases reported by the partnership or S corporation. The commenter's suggestion that the partnership's or S corporation's Form 8283 could separately list each ultimate member's relevant basis would not be as administrable. It is impractical for Form 8283 itself to contain sufficient space for each ultimate member's relevant basis to be separately listed. Accordingly, the partnership or S corporation would need to provide such information on an attachment or additional statement. The way in which such an attachment is formatted, how easily the information can be found, and whether or not the information is actually provided may vary. The Treasury Department and the IRS have determined that requiring ultimate members to report their personal relevant bases in the appropriate box on the Form 8283 (rather than on an attachment to the form) ensures that the information can be easily found by the IRS and is in a uniform format for processing by the IRS. Thus, even if a contributing partnership or upper-tier partnership is subject to entity-level audit under the BBA, the partners' separate Forms 8283 provide valuable information in ascertaining the partnership's compliance with section 170(f)(19) and (h)(7).

In addition, the Treasury Department and the IRS note that no S corporations and not all partnerships are subject to the BBA audit procedures. Accordingly, the Treasury Department and the IRS decline to remove the requirement that partners and S corporation shareholders report their relevant bases on their separate Forms 8283.

2. Whether the Contributing Entity Should Report the Basis in the Property Underlying the Qualified Conservation Contribution or the Basis in the Qualified Conservation Contribution Itself

As noted earlier, the regulations and Form 8283 have long required a donor to report its basis in the contributed property. At the time of the publication of the proposed regulations in November 2023, the then-current version of the Form 8283 instructions allowed a donor of a qualified conservation contribution to either report its basis in the underlying property or its basis in the qualified conservation contribution itself. For example, assume a partnership owned 600 acres of real property. The partnership donates a conservation easement on 400 of those acres. Assume the partnership's adjusted basis in those 400 acres was $2,000,000, and that the partnership's adjusted basis in the conservation easement itself was $500,000. Under the then-current version of the Form 8283 instructions, the partnership could list either $2,000,000 or $500,000 as its basis on the Form 8283; the partnership would also be required to indicate whether it was reporting its basis in the property underlying the qualified conservation contribution or its basis in the qualified conservation contribution itself.

A commenter noted this option in the (then-current) Form 8283 instructions. The commenter stated that the proposed regulations require a contributing partnership or contributing S corporation to provide its basis in the property underlying the qualified conservation contribution rather than its basis in the qualified conservation contribution itself. This commenter believed it would simplify the process for the donor, donee, and the IRS if Form 8283 required all taxpayers making a qualified conservation contribution to report their basis in the property underlying the qualified conservation contribution, rather than giving taxpayers a choice.

The Treasury Department and the IRS note that the proposed regulations do not amend the requirement in § 1.170A–16(d)(3)(vi) that taxpayers report their basis in contributed property on their Forms 8283. Section 170(h)(7)(B)(i) provides that, for purposes of the Disallowance Rule, relevant basis is determined with reference to ''the portion of the real property with respect to which'' the qualified conservation contribution is made. Accordingly, the computations in the proposed regulations are generally based on the

contributing partnership's or contributing S corporation's basis in the property underlying the qualified conservation contribution, rather than its basis in the qualified conservation contribution itself.

Although the proposed regulations do not modify the requirement that a donor must report its basis in contributed property, the Treasury Department and the IRS note that the current version of the Form 8283 instructions, released January 17, 2024, which states ''(Rev. December 2023)'' after ''Instructions for Form 8283'' at the top of the first page, requires a donor of a qualified conservation contribution to both report its basis in the underlying real property on Form 8283 and include information about the cost or adjusted basis of the qualified conservation contribution itself in a statement attached to Form 8283.

3. Requiring Reporting of Relevant Basis With Respect to a Qualified Conservation Contribution That Satisfies One of the Exceptions to the Disallowance Rule

One commenter requested clarification on whether the rule requiring Forms 8283 with relevant basis applied to every qualified conservation contribution made by a partnership or S corporation, regardless of whether the contribution satisfies one of the exceptions to the Disallowance Rule. As noted above, proposed § 1.170A–16(d)(3)(viii) and (f)(4)(iii)(B) required contributing partnerships, contributing S corporations, upper-tier partnerships, upper-tier S corporations, and ultimate members to report relevant basis (or the sum of the relevant bases) on Form 8283 with respect to a qualified conservation contribution. However, these reporting requirements did not apply to contributions made outside of the three-year holding period or to contributions made by certain family partnerships or S corporations, unless the contribution is to preserve a certified historic structure (in which case the reporting requirements did apply).

Because the regulations are already clear on this point, the commenter's suggestion is not adopted. Accordingly, these final regulations adopt § 1.170A–16(d)(3)(viii) and (f)(4)(iii)(B) with only minor non-substantive changes.

D. Requirements for Certified Historic Structure Contributions Made by Partnerships and S Corporations

Although contributions by partnerships or S corporations to preserve certified historic structures that exceed 2.5 times the sum of the relevant bases are excepted from the Disallowance Rule, they are subject to section 170(f)(19). Section 170(f)(19) provides that no deduction is allowed under section 170(a) for such a contribution unless the pass-through entity making such contribution includes on its return for the taxable year in which the contribution is made a statement that the pass-through entity made such a contribution and provides such information about the contribution as the Secretary may require. Section 170(f)(19)(B) provides that section 170(f)(19) applies to qualified conservation contributions by pass-through entities (whether directly or as a distributive share of a contribution of another pass-through entity) the conservation purpose of which is the preservation of any building which is a certified historic structure, and the amount of which exceeds 2.5 times the sum of each partner's relevant basis (as defined in section 170(h)(7)).

Proposed § 1.170A–16(f)(6)(i) provided that, for any qualified conservation contribution described in proposed § 1.170A–16(f)(6)(ii), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless each partnership or S corporation: (1) includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion and (2) provides such information about the contribution as the Secretary may require in guidance, forms, or instructions.

Proposed § 1.170A–16(f)(6)(ii) provided that proposed § 1.170A–16(f)(6) applies to any qualified conservation contribution, the conservation purpose of which is preservation of a building that is a certified historic structure, that is either made by a contributing partnership or contributing S corporation or that is an allocated portion of an upper-tier partnership or upper-tier S corporation, and the amount of such contribution or such allocated portion exceeds 2.5 times the sum of each ultimate member's relevant basis.

Proposed § 1.170A–16(f)(6)(iii) provided that a partnership or S corporation satisfies the requirements of section 170(f)(19)(A) and § 1.170A–16(f)(6)(i) by filing a completed Form 8283, including information about relevant basis, in accordance with section 170, the regulations under section 170, and the instructions to Form 8283.

As noted above, proposed § 1.170A–16(d)(3)(viii) and (f)(4)(iii)(B) required contributing partnerships, contributing S corporations, upper-tier partnerships, upper-tier S corporations, and ultimate members to report relevant basis (or the sum of the relevant bases) on Form 8283 with respect to any qualified conservation contribution for the preservation of a certified historic structure, regardless of whether the contribution also satisfied the three-year holding period exception or the certain family pass-through entity exception.

Two commenters addressed these rules, discussing whether: (1) relevant basis accounts for fundamental differences between certified historic structure contributions and other types of qualified conservation contributions, (2) relevant basis accurately reflects abusive certified historic structure contributions, and (3) these reporting requirements should apply to certified historic structure contributions that also satisfy either the three-year holding period exception or the family-pass through entity exception.

1. Differences Between Certified Historic Structure Contributions and Other Types of Qualified Conservation Contributions

Two commenters expressed concern that qualified conservation contributions that satisfy the certified historic structure exception are fundamentally different than other types of qualified conservation contributions (such as a conservation easement to protect greenspace) and, as such, the data used for computation of relevant basis should be different. One of these commenters stated that protection of certified historic structures under section 170(h)(4)(A)(iv) differs fundamentally from other conservation purposes in section 170(h)(4)(A)(i) through (iii) because ''[u]nlike natural lands, which typically do not need upkeep, historic properties require a continuous influx of capital for rehabilitation and ongoing maintenance expenditures to preserve the historic character of the building protected by the easement.'' This commenter added that ''open space'' qualified conservation contributions allow nature to thrive undisturbed while certified historic structure contributions need additional human intervention to further the conservation purpose and to preserve the historic structure in perpetuity. The commenter stated that money flowing into the property-owning partnership that is ''put toward the preservation, rehabilitation, or upkeep of the certified historic structure'' should be allocated to the

ultimate member's modified basis, but that the proposed regulations ''ignore these funds entirely.''

The commenter offered an example of a taxpayer that acquires a building and then invests $2,000,000 into the building after acquisition. The commenter stated that the proposed regulations ignore both debt financing and capital contributions made after the date of contribution, which the commenter stated ''produces odd and unworkable results for investors in historic structures,'' and recommended that the regulations be amended to ''include these other sources of financing in historic properties.'' The commenter also stated that, ''at the time an easement is donated, cash from investors may be earmarked for preservation and rehabilitation of a dilapidated structure.'' The commenter remarked that cash raised and debt secured is essential for furthering the historic preservation purpose. Thus, the commenter asserted that, with respect to certified historic structure contributions, the definition of relevant or modified basis should include debt and cash necessary for maintaining the conservation purpose.

The Treasury Department and the IRS have concluded that certified historic structure contributions should have the same relevant basis computation as any other qualified conservation contribution. Although the Treasury Department and the IRS recognize that there are differences between the conservation purposes for different types of qualified conservation contributions, section 170(h)(7) does not contemplate different calculations of relevant basis depending on the particular conservation purpose. Moreover, section 170(f)(19)(B)(iii) specifically refers to relevant basis ''as defined in [section 170(h)(7)].''

It is appropriate that the rules for the determination of modified basis and relevant basis maintain their focus on the amounts invested in the property generating the deduction as of the time of the qualified conservation contribution. Including debt and cash earmarked for the ongoing maintenance of the conservation purpose would contradict the statutory definition of relevant basis and modified basis. Section 170(h)(7)(B)(i) provides that relevant basis means the portion of a partner's modified basis in the partnership which is *allocable to the portion of the real property* with respect to which a qualified charitable contribution is made. This narrow definition of relevant basis does not include amounts allocable to other assets. Also, section 170(h)(7)(B)(ii)(I) provides that modified basis is calculated *immediately before* the qualified conservation contribution. Including future events and costs incurred or paid after the donation would defeat the purpose of including a timeline in the definition of modified basis.

Therefore, the final regulations do not provide for different calculations for relevant basis depending on different conservation purposes. In addition, the computations for relevant basis would not treat ''earmarked'' amounts as part of the property with respect to which the qualified conservation contribution is made. Thus, for example, such amounts would not be included in items A [6] or E [7] in the relevant basis computations.

2. The Use of Relevant Basis in Identifying Abusive Certified Historic Structure Contributions

One of the commenters stated that relevant basis is not an accurate measure to determine whether a certified historic structure contribution is abusive, giving the example of three buildings. The first building is dilapidated, was purchased for $100,000, and requires $900,000 of improvements to reach a $1,000,000 investment value. The second building is fully operational with a $1,000,000 acquisition cost. It is possible for the owner to enlarge either building under the applicable zoning laws. The third building is acquired for $5,000,000, but it is fully developed and cannot be enlarged under the applicable zoning laws. The owner of each building makes a certified historic structure contribution and claims a $1,000,000 contribution.

The commenter stated that the $100,000 dilapidated building would be most in danger of demolition, yet the ratio of the amount of the contribution to the building's basis would be 10:1, suggesting an abusive transaction. The commenter stated that, with respect to the second building, the ratio of the amount of the contribution to the building's basis would be 1:1, and the ratio for the third building would be 0.2:1. The commenter concluded that, because the third building cannot be enlarged under applicable zoning laws, the claimed contribution of $1,000,000 would be the most abusive of the three donations, yet would appear, under the reporting requirements, as the least abusive (because it would have the lowest ratio). The commenter concluded that this example illustrates that computing whether a certified historic structure contribution exceeds 2.5 times the sum of the relevant bases does not appropriately provide relevant information for the IRS to determine whether the claimed amount of the contribution is abusive. The commenter stated that requiring reporting of the sum of the relevant bases could actually lead the IRS away from identifying abusive transactions.

The Treasury Department and the IRS conclude that this comment is not persuasive and decline to make the changes that it advocates. The purpose of these regulations is to implement section 170(f)(19) and (h)(7). Section 170(f)(19) explicitly requires reporting for certified historic structure contributions by partnerships and S corporations that exceed 2.5 times the sum of the relevant bases (as defined in section 170(h)(7)). The fact that the commenter believes that a different reporting regime would have been more helpful to the IRS does not change the statutory framework with which taxpayers must comply. Moreover, the fact pattern described by the commenter raises concerns about overvaluation and compliance with section 170. In addition, the buildings most in need of preservation are those with the greatest significance to American history, not those in the poorest condition with an ability to be enlarged. See 36 CFR 60.4 (criteria for National Register listing) and 36 CFR 67.4 (criteria for certification of historic significance).

This commenter also stated that relevant basis for certified historic structure contributions is particularly difficult to compute. The commenter noted the ''sheer number and subjectivity of variables that can affect the basis of a commercial building'' and cited as examples the segregation of furniture and fixtures from real property and the determination of whether particular acquisition expenses should be capitalized or expensed. This commenter posited a scenario in which the IRS disallowed a deduction because of a disagreement over whether carpeting should be capitalized as part of furniture and fixtures or as part of the basis in the building, because the determination about how to capitalize that item impacts the relevant basis calculation.

The Treasury Department and the IRS note that the certified historic structure exception in section 170(h)(7)(E) and

[6] Item A is a contributing partnership's adjusted basis in the portion of the real property with respect to which a qualified conservation contribution is made.

[7] Item E is an ultimate member's pro rata portion of a contributing S corporation's adjusted basis in the portion of the real property with respect to which a qualified conservation contribution is made.

§ 1.170A–14(n)(4) provides that those qualified conservation contributions are not subject to the Disallowance Rule. Under section 170(f)(19) and proposed § 1.170A–16(f)(6), however, any deduction will be disallowed if the amount of the contribution exceeds 2.5 times the sum of the relevant bases and the reporting requirements are not followed. The commenter's hypothetical is unrealistic because the only way the capitalization dispute would result in disallowance under section 170(h)(7) or section 170(f)(19) would be if the capitalization disagreement resulted in the contribution exceeding 2.5 times the sum of the relevant bases and the taxpayer failed to comply with the section 170(f)(19) reporting requirements.

The commenter stated that, rather than using relevant basis, the IRS should implement an alternative reporting regime that would include ''Valuation Assumptions'' and ''Qualified Appraisal Information.'' To address valuation assumptions, the commenter suggested a ''Critical Information Summary for Historic Preservation Easement Appraisals.'' The commenter hoped that this proposal would make it much more efficient to determine compliance with the existing requirements and to find the aspects of the appraisal that need additional review.

The second part of the commenter's reporting regime included a Qualified Appraisal Checklist, which the commenter suggested would serve as a central checklist for taxpayers to report adherence to section 170(f)(11)(E)(ii)(II)[8] and several requirements in the section 170 regulations. The commenter stated that adopting such a checklist would be permissible because the commenter interprets section 170(f)(19)(A)(ii) as ''giving the Secretary wide discretion in what information to require.''

The Treasury Department and the IRS note that section 170(f)(19)(B) requires that the taxpayer compute relevant basis, *as defined in section 170(h)(7),* to determine if the taxpayer is required to report under section 170(f)(19)(A). In other words, although the statute grants authority for the Treasury Department and the IRS to require reporting of additional information, the disallowance rule in section 170(f)(19) for failure to report required information depends on whether the amount of the certified historic structure contribution exceeds 2.5 times the sum of the relevant bases, as defined in section 170(h)(7). Accordingly, the Treasury Department and the IRS decline to adopt the commenter's suggestion to replace the relevant basis calculation required under section 170(f)(19)(B)(iii) with this checklist. As noted in the preamble to the proposed regulations, the Treasury Department and the IRS intend to issue future guidance addressing section 170(f)(19)(A)(ii).

3. Reporting Requirements for Certified Historic Structure Contributions That Also Satisfy Another Exception to the Disallowance Rule

As described above, the proposed regulations required the computing and reporting of relevant basis with respect to all contributions that satisfy the certified historic structure exception. The proposed regulations generally did not require the computation or reporting of relevant basis with respect to contributions that satisfied either the three-year holding period exception or the family pass-through entity exception. However, in a situation in which a contribution satisfies both the certified historic structure exception and one of the other exceptions, the proposed regulations did require the computing and reporting of relevant basis. In addition, under proposed § 1.170A–16(f), if the amount of the certified historic structure contribution or allocated portion exceeded 2.5 times the sum of the relevant bases, then section 170(f)(19) would disallow any deduction unless the reporting requirements of proposed § 1.170A–16(f) were satisfied.

One commenter stated that computation and reporting of relevant basis should not be required with respect to a contribution that satisfies both the certified historic structure exception and one of the other exceptions. The commenter opined that the rationale for the certified historic structure exception relates to the capital needs of operating buildings and not its form of ownership. The commenter opined that a qualified conservation contribution does not present opportunities for abusive arrangements if the form of ownership qualifies for the three-year holding period exception or the family pass-through entity exception. The commenter further argued that, had Congress been concerned about reporting for the three-year holding period exception or the family pass-through entity exception, Congress would have imposed a standalone reporting requirement for those exceptions. The commenter suggested that requiring participants in the other two exceptions to follow the reporting requirements for certified historic structures may serve as a deterrent to investment in certified historic structures or as a deterrent to protecting certified historic structures through a qualified conservation contribution.

The Treasury Department and the IRS do not adopt this comment. Congress drafted section 170(h)(7) so that a contribution meeting any of the three statutory exceptions in section 170(h)(7)(C), (D), or (E) is not subject to the Disallowance Rule. In contrast, Congress drafted the reporting requirements in section 170(f)(19) to apply to all certified historic structure contributions in excess of 2.5 times the sum of the relevant bases, without regard to whether the contribution satisfies the three-year holding period exception or the family pass-through exception. Similarly, although section 170(h)(7)(C) and (D) provide exceptions to the Disallowance Rule, they do not provide an exception to the reporting requirements of section 170(f)(19). Accordingly, it would not be consistent with the language or purposes of section 170(f)(19) and (h)(7) to exempt any certified historic structure contributions from section 170(f)(19). In addition, to ensure compliance with section 170(f)(19), it is necessary that relevant basis be reported for all certified historic structure contributions. Thus, these final regulations adopt § 1.170A–16(d)(3)(viii), (f)(4)(iii)(B), and (f)(6) as proposed with minor non-substantive changes.

For clarity, these final regulations modify the recordkeeping requirements for allocation of modified basis found in proposed § 1.170A–14(m)(6). As proposed, contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must maintain dated, written statements in their books and records by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis, but these statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in § 1.170A–14(n)(2) or (3). These final regulations clarify that these statements must be maintained (and modified basis and relevant basis must be computed) with respect to all contributions that meet the certified historic structure exception in § 1.170A–14(n)(4), regardless of whether such contributions also meet an

[8] Section 170(f)(11)(E)(ii)(ll) requires the appraiser to regularly perform appraisals for which the individual receives compensation. The commenter seems to imply that the Qualified Appraisal Checklist more broadly satisfies the requirements of section 170(f)(11)(E) and corresponding regulations.

exception in § 1.170A–14(n)(2) or (3). Accordingly, these regulations finalize § 1.170A–14(m)(6) with a clarification to the second sentence, which now provides that these statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in § 1.170A–14(n)(2) or (3), unless the contribution also meets the exception in § 1.170A–14(n) (in which case these statements need to be maintained and modified basis and relevant basis need to be computed).

VI. Other Comments

Commenters also addressed: (1) the proposed regulations' consistency with the Federal government's position on climate action, (2) the ''no inference'' paragraph in the proposed regulations, (3) valuation of qualified conservation contributions, and (4) interaction of the Disallowance Rule with the rules of section 1011(b) of the Code.

A. Consistency With the Federal Government's Position on Climate Action

One commenter stated that the proposed regulations evidenced an approach to land conservation that is inconsistent with the Federal government's position regarding climate action as outlined at the 2023 United Nations Climate Change Conference (COP28).

The Treasury Department and the IRS acknowledge the important role of climate action, land conservation, and qualified conservation contributions. Nevertheless, Congress enacted section 170(f)(19) and (h)(7) because of concerns regarding abusive transactions and inflated claims. *See, e.g.,* S. Committee on Finance, Comm. Print 116–44, *Syndicated Conservation-Easement Transactions,* 116th Cong., 2nd Sess. (2020). The regulations under § 1.170A–14 implement the Disallowance Rule.

B. No Inference

Section 605(c)(2) of the SECURE 2.0 Act states that no inference is intended as to the appropriate treatment of any contribution for which a deduction is not disallowed by reason of section 170(h)(7). As explained in the preamble to the proposed regulations, some practitioners have taken the position that section 170(h)(7) operates as a ''safe harbor.'' According to these practitioners, a qualified conservation contribution that is not disallowed by the Disallowance Rule is somehow immune to a challenge on other grounds, including failure to comply with other rules under section 170 and overvaluation of the contribution. The preamble to the proposed regulations stated that such a position is baseless and contradicted by the statutory language. To clarify this issue, proposed § 1.170A–14(j)(5) provided that there is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation contribution is compliant with section 170, any other section of the Code, the regulations, or any other guidance thereunder. It also provided that compliance with section 170(h)(7) and proposed § 1.170A–14(j) through (n) is not a safe harbor for purposes of any other provision of law, including the other requirements of section 170 and the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the requirements of section 170 or the overvaluation of the contribution; for example, failure to properly execute Form 8283, violation of the partnership anti-abuse rule of § 1.701–2, lack of economic substance, or other rules or judicial doctrines. In addition, compliance with proposed § 1.170A–14(j) through (n) would not preclude the application of any penalty, including penalties for valuation misstatement, negligence, and fraud. Proposed § 1.170A–14(j)(5) also provided that taxpayers who engage in such transactions may be required to disclose, under § 1.6011–4, the transactions as listed transactions.

One commenter requested that the IRS delete proposed § 1.170A–14(j)(5). The commenter stated that paragraph does not add any value to the substance of the proposed regulations and is ''inappropriately hostile toward donors of qualified conservation contributions.''

The Treasury Department and the IRS do not agree with this comment. Proposed § 1.170A–14(j)(5) implements section 605(c)(2) of the SECURE 2.0 Act and provides further detail and clarification about the interaction between section 605(c)(2) of the SECURE 2.0 Act and the other rules governing qualified conservation contributions. Moreover, as explained in the preamble to the proposed regulations, the rule in proposed § 1.170A–14(j)(5) addresses positions that some practitioners have actually taken. Accordingly, these final regulations retain § 1.170A–14(j)(5) with minor non-substantive changes.

C. Valuation of Qualified Conservation Contributions

One commenter expressed concern that the proposed regulations do not address the valuation of donated property, especially real property, nor do they address fraudulent appraisal practices.

The Treasury Department and the IRS agree that overvaluation is an important facet of abusive charitable contributions of interests in real property. However, any guidance on valuation would be outside the scope of these final regulations, which are focused on the Disallowance Rule, section 170(f)(19), and reporting requirements for noncash charitable contributions. The Treasury Department and the IRS have challenged and will continue to challenge fraudulent appraisal practices and overvaluation.

D. Interaction With the Rules of Section 1011(b)

Section 1011(b) provides that, if a deduction is allowable under section 170 by reason of a sale, then the adjusted basis for determining the gain from such sale is that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property. The proposed regulations do not address section 1011(b). One commenter asked about the interaction of section 1011(b) with the Disallowance Rule. Specifically, the commenter asked whether the actual fair market value of the qualified conservation contribution or the ''capped amount'' under section 170(h)(7) should be used in applying section 1011(b).

First, the Treasury Department and the IRS disagree that section 170(h)(7) is a ''capped amount;'' it is a Disallowance Rule for certain qualified conservation contributions by pass-through entities.

Second, by its terms, section 1011(b) applies only if a deduction is allowable under section 170 by reason of a sale. Therefore, if a contribution is disallowed, section 1011(b) would not apply.

Third, even in situations in which section 1011(b) could apply, the application of section 1011(b) is outside the scope of these final regulations, and these final regulations do not address section 1011(b). The Treasury Department and the IRS note, however, that the computation of adjusted basis for determining gain from a sale described in section 1011(b) refers to the fair market value of the property, not the amount of the allowable deduction under section 170.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury

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

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information contained in these final regulations is reflected in the collection of information for Form 8283, *Noncash Charitable Contributions,* and Schedule K–1 for Forms 1065, *U.S. Return of Partnership Income,* and 1120–S, *U.S. Income Tax Return for an S corporation,* that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–0074 and 1545–0123. The preamble to the proposed regulations stated that the estimated burden for taxpayers filing Form 8283 under OMB control number 1545–0074 is nineteen minutes for recordkeeping, twenty-nine minutes for learning about the law or the form, one hour and four minutes for preparing the form, and thirty-four minutes for copying, assembling, and sending the form to the IRS.

Two commenters raised concerns with the taxpayer burden. One commenter stated that the burden to learn these rules was unreasonable. Another commenter stated that the proposed estimated time burdens for Form 8283 drastically underestimated the time necessary for a taxpayer to understand and apply the regulations. As explained in this preamble, these regulations are promulgated under the authority of section 170(h)(7) and other provisions in the Code, are consistent with the language and purposes of section 170(f)(19) and (h)(7), and the Treasury Department and the IRS have determined that they are not more burdensome than necessary. Accordingly, the burden imposed by these final regulations is reasonable. However, the Treasury Department and the IRS will evaluate the estimated time for a taxpayer to understand and apply the regulations and will reflect any revisions in the Form 8283 burden estimates. To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Form 8283 and Schedule K–1 for Forms 1065 and 1120–S. The requirement to maintain records to substantiate information on Form 8283 and Schedule K–1 for Forms 1065 and 1120–S is already contained in the burden estimates associated with the control number for the forms and remains unchanged.

III. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). These final regulations affect partnerships and S corporations that claim qualified conservation contributions as well as partners and S corporation shareholders that receive a distributive share or pro rata share of a noncash charitable contribution. Although data is not readily available about the number of small entities that are potentially affected by this rule, it is possible that a substantial number of small entities may be affected.

The impact of these final regulations can be described in the following five categories.

First, § 1.170A–14(j) through (n) provides guidance in applying section 170(h)(7), including providing definitions, formulas for the required calculations, and examples to help ensure the effective application of section 170(h)(7), and §§ 1.706–3 and 1.706–4(e)(2)(xiii) provide special rules for allocating qualified conservation contributions. Even assuming that these provisions affect a substantial number of small entities, they will not have a significant economic impact. Section 170(h)(7) is self-executing and the statute imposes the burden of calculating relevant basis and applying the Disallowance Rule. Because these final regulations are focused on providing definitional and computational guidance related to section 170(h)(7), their economic impact is expected to be minimal.

Second, § 1.170A–14(m)(6) generally requires contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations to maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because partnerships and S corporations generally need to create these statements by the due date of their Federal income tax returns to ensure that they have complied with the requirements of section 170(h)(7) and (f)(19), which are self-executing. Therefore, this provision simply requires partnerships and S corporations to maintain something that they generally have already created.

Third, § 1.170A–16(d)(3)(viii) requires the Form 8283 filed by contributing partnerships and contributing S corporations to include the sum of each ultimate member's relevant basis. The existing regulations under § 1.170A–16 already require these entities to file Form 8283. Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because it simply requires contributing partnerships and contributing S corporations to put a small amount of additional information, which section 170(h)(7) and (f)(19) requires them to determine, on a form they are already required to file.

Fourth, § 1.170A–16(f)(6) requires a partnership or S corporation to file a completed Form 8283 to be considered to satisfy the requirements of section 170(f)(19)(A). Even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact because it simply requires contributing partnerships and contributing S corporations to complete a form they are already required to file.

Fifth, § 1.170A–16(f)(4)(iii) requires all partners and shareholders of S corporations who receive an allocation of a noncash charitable contribution to file a separate Form 8283. Many of these partners and shareholders will be individuals, not small entities. However, even assuming that this provision affects a substantial number of small entities, it will not have a significant economic impact. The partnership or S corporation will provide the partner or shareholder with all, or substantially all, of the information to be reported on the separate Form 8283; this information will be contained either on the partnership's or S corporation's Form 8283 or the Schedule K–1 issued to the partner or shareholder. Accordingly, in most cases, partners and shareholders will simply be transcribing information

provided to them onto the separate Form 8283.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, the proposed rule preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for Advocacy of the Small Business Administration.

IV. Unfunded Mandates Reform Act

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

V. Executive Order 13132: Federalism

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

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These final regulations do not have substantial direct effects on one or more federally recognized Indian tribes and does not impose substantial direct compliance costs on Indian Tribal governments within the meaning of the Executive order.

VII. Congressional Review Act

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

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal authors of these final regulations are Elizabeth Boone and Hannah Kim, Office of the Associate Chief Counsel (Income Tax & Accounting), IRS, and John Hanebuth and Benjamin Weaver, Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.170A–14 in numerical order, revising the entry for § 1.170A–16, adding an entry for § 1.706–3 in numerical order, and revising the entry for § 1.706–4 to read as follows:

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

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Section 1.170A–14 also issued under 26 U.S.C. 170(f)(11) and 170(h)(7).

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Section 1.170A–16 also issued under 26 U.S.C. 170(f)(11), 170(f)(19), 170(h)(7)(G), 6001, and 6011.

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Section 1.706–3 also issued under 26 U.S.C. 170(h)(7)(G).

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Section 1.706–4 also issued under 26 U.S.C. 170(h)(7)(G).

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■ **Par. 2.** Section 1.170A–14 is amended by revising paragraphs (a) and (j) and adding paragraphs (k) through (o) to read as follows:

§ 1.170A–14 Qualified conservation contributions.

(a) *Qualified conservation contributions.* A deduction under section 170 of the Internal Revenue Code (Code) is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (*see* § 1.170A–6 relating to charitable contributions in trust and § 1.170A–7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met and the contribution is not a disallowed qualified conservation contribution within the meaning of paragraph (j) of this section. A *qualified conservation contribution* is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under section 170(h) and this section, the conservation purpose must be protected in perpetuity.

* * * * *

(j) *Disallowance of certain deductions for contributions by partnerships and S corporations that exceed 2.5 times the sum of the relevant bases*—(1) *In general.* This paragraph (j) applies the rules of section 170(h)(7), which disallow a deduction for certain qualified conservation contributions, as defined in section 170(h)(1) and this section, made by, or allocated to, partnerships or S corporations (as defined in section 1361(a)(1) of the Code) if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases as determined by this paragraph (j) and paragraphs (k) through (m) of this section (Disallowance Rule). The Disallowance Rule does not apply to qualified conservation contributions made directly by landowners that are not pass-through entities, such as individuals or C corporations. *See* paragraph (n) of this section for certain exceptions. *See* paragraph (j)(3) of this section for definitions of terms used in this paragraph (j) and paragraphs (k) through (n) of this section.

(2) *Application*—(i) *Contributing partnerships and contributing S corporations.* Except as provided in paragraph (n) of this section, a qualified conservation contribution by a contributing partnership or a contributing S corporation is a disallowed qualified conservation

contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership's or contributing S corporation's ultimate member's relevant basis as determined under this paragraph (j) and paragraphs (k) through (m) of this section.

(ii) *Upper-tier partnerships and upper-tier S corporations.* Except as provided in paragraph (n) of this section, an allocated portion received by an upper-tier partnership or upper-tier S corporation is a disallowed qualified conservation contribution if either the contribution is a disallowed qualified conservation contribution with respect to the partnership that allocated the allocated portion to the upper-tier partnership or upper-tier S corporation, or such allocated portion exceeds 2.5 times the sum of each of that upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis as determined under this paragraph (j) and paragraphs (k) through (m) of this section.

(iii) *Partner or S corporation shareholder claiming an inconsistent amount.* If a partner or S corporation shareholder claims an amount of qualified conservation contribution that is inconsistent with and greater than the partner's distributive share or S corporation shareholder's pro rata share of qualified conservation contribution reported to the partner or S corporation shareholder by the partnership or S corporation, predicated on a position that the partnership's or S corporation's qualified conservation contribution was a greater amount than the amount claimed by the partnership or S corporation, and the qualified conservation contribution would have been a disallowed qualified conservation contribution if the partnership or S corporation had actually claimed that greater amount, then the partner's or S corporation shareholder's claimed qualified conservation contribution is a disallowed qualified conservation contribution.

(3) *Definitions.* The following definitions apply for purposes of this paragraph (j) and paragraphs (k) through (n) of this section:

(i) *Allocated portion.* In the case of an upper-tier partnership or upper-tier S corporation that receives, directly or indirectly, a distributive share of a qualified conservation contribution, the phrase *allocated portion* means the amount of such distributive share.

(ii) *Amount of qualified conservation contribution.* The amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. If the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a higher amount with respect to the qualified conservation contribution, the rules of this section must be re-applied with respect to such higher amount to determine the application of section 170(h)(7) and this section; for example, if a contributing S corporation's original return claims a qualified conservation contribution that does not exceed 2.5 times the sum of the relevant bases, and the S corporation subsequently files an amended return claiming a higher amount with respect to the qualified conservation contribution that does exceed 2.5 times the sum of the relevant bases, then the entire amount of the qualified conservation contribution is a disallowed qualified conservation contribution (unless one of the exceptions in paragraph (n) of this section applies). If the contributing partnership or contributing S corporation files an amended return or timely administrative adjustment request under section 6227 claiming a lower amount with respect to the qualified conservation contribution, the rules of this section will be re-applied with respect to such lower amount to determine the application of section 170(h)(7) and this section if and only if the amended return or timely administrative adjustment request is filed before the contributing partnership or contributing S corporation is put on notice of an IRS examination with respect to the qualified conservation contribution. A contributing partnership or contributing S corporation is considered to be on notice after the earlier of—

(A) The date the contributing partnership or contributing S corporation is first contacted by the Internal Revenue Service in connection with any examination of a return that relates to the qualified conservation contribution; or

(B) The date any person is first contacted by the Internal Revenue Service concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) for an activity that relates to the qualified conservation contribution.

(iii) *Contributing partnership.* The term *contributing partnership* means a partnership that makes a qualified conservation contribution.

(iv) *Contributing S corporation.* The term *contributing S corporation* means an S corporation that makes a qualified conservation contribution.

(v) *Direct interest.* The term *direct interest* refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as defined in section 1361(b)(3), or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation (as defined in section 1361(a)(2)), non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the *direct interest* in the partnership or S corporation, as applicable, is held by the C corporation, non-grantor trust, or estate; the C corporation's shareholders, trust beneficiaries, and estate beneficiaries are not considered to hold any interest in the partnership or S corporation, as applicable, for purposes of this paragraph (j) and paragraphs (k) through (n) of this section.

(vi) *Directly.* An ownership interest is held *directly* if it is not held through one or more upper-tier partnerships or upper-tier S corporations. A distributive share or pro rata share of a qualified conservation contribution is received *directly* if it does not pass through one or more upper-tier partnerships or upper-tier S corporations.

(vii) *Disallowed qualified conservation contribution.* The term *disallowed qualified conservation contribution* means a qualified conservation contribution or allocated portion for which no deduction is allowed pursuant to section 170(h)(7) and this paragraph (j).

(viii) *Indirect interest.* The term *indirect interest* refers to an ownership interest in a contributing partnership, contributing S corporation, upper-tier partnership, or upper-tier S corporation held through an upper-tier S corporation or one or more upper-tier partnerships.

(ix) *Indirectly.* An ownership interest is held *indirectly* if it is held through one or more upper-tier partnerships or upper-tier S corporations. A distributive share or pro rata share of a qualified conservation contribution is received *indirectly* if it passes through one or more upper-tier partnerships or upper-tier S corporations.

(x) *Ultimate member.* The term *ultimate member* means, with respect to any partnership or S corporation, any partner (that is not itself a partnership

or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members will either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Upper-tier S corporations and upper-tier partnerships themselves are not considered ultimate members.

(xi) *Upper-tier partnership.* The term *upper-tier partnership* means a partnership that receives an allocated portion.

(xii) *Upper-tier S corporation.* The term *upper-tier S corporation* means an S corporation that receives an allocated portion.

(4) *Effect of Disallowance Rule*—(i) *If the Disallowance Rule applies to a contributing partnership or contributing S corporation.* If a contributing partnership's or contributing S corporation's qualified conservation contribution is a disallowed qualified conservation contribution under this paragraph (j), then:

(A) Any upper-tier partnership's or upper-tier S corporation's allocated portion of such contribution is a disallowed qualified conservation contribution, regardless of whether such allocated portion exceeds 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and

(B) No person (whether holding a direct or indirect interest in such contributing partnership or contributing S corporation) may claim a deduction under any provision of the Code with respect to any amount of such disallowed qualified conservation contribution, regardless of whether that person's distributive share or pro rata share of the disallowed qualified conservation contribution exceeds 2.5 times its relevant basis.

(ii) *If the Disallowance Rule does not apply to a contributing partnership or contributing S corporation.* If a contributing partnership's or contributing S corporation's qualified conservation contribution is not a disallowed qualified conservation contribution under this paragraph (j), then:

(A) The distributive share or pro rata share of any ultimate member holding a direct interest in the contributing partnership or contributing S corporation is not a disallowed qualified conservation contribution; and

(B) Any upper-tier partnership or upper-tier S corporation that receives an allocated portion of such qualified conservation contribution must separately apply the rules of section 170(h)(7) and this paragraph (j) and paragraphs (k) through (m) of this section to determine whether that upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution.

(iii) *If the Disallowance Rule applies to an upper-tier partnership or an upper-tier S corporation.* If an upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution under this paragraph (j), then:

(A) Any subsequent upper-tier partnership's or upper-tier S corporation's allocated portion of such allocated portion is a disallowed qualified conservation contribution, regardless of whether the subsequent upper-tier partnership's or upper-tier S corporation's allocated portion exceeds 2.5 times the sum of each of the subsequent upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and

(B) No person holding a direct or indirect interest in that upper-tier partnership or upper-tier S corporation may claim a deduction under any provision of the Code with respect to any amount of that upper-tier partnership's or upper-tier S corporation's allocated portion, regardless of whether that person's distributive share or pro rata share of the allocated portion exceeds 2.5 times its relevant basis. However, this does not affect the application of this paragraph (j) and paragraphs (k) through (m) of this section to another partner of the contributing partnership; for example, if the qualified conservation contribution is not a disallowed qualified conservation contribution with respect to the contributing partnership, then the distributive share of such contribution of an ultimate member holding a direct interest in the contributing partnership is not a disallowed qualified conservation contribution, notwithstanding that the qualified conservation contribution is a disallowed qualified conservation contribution with respect to one or more upper-tier partnerships or upper-tier S corporations.

(iv) *If the Disallowance Rule does not apply to an upper-tier partnership or upper-tier S corporation.* If an upper-tier partnership's or upper-tier S corporation's allocated portion is not a disallowed qualified conservation contribution under this paragraph (j), then:

(A) The distributive share or pro rata share of such allocated portion of any ultimate member holding a direct interest in the upper-tier partnership or upper-tier S corporation is not a disallowed qualified conservation contribution; and

(B) Any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of such allocated portion must separately apply the rules of section 170(h)(7) and this paragraph (j) and paragraphs (k) through (m) of this section to determine whether that subsequent upper-tier partnership's or upper-tier S corporation's allocated portion is treated as a disallowed qualified conservation contribution.

(5) *No inference.* There is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation contribution as defined in paragraph (j)(3)(vii) of this section is compliant with section 170, any other section of the Code, the regulations, or any other guidance. Compliance with section 170(h)(7) and this paragraph (j) and paragraphs (k) through (n) of this section is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the other requirements of section 170 or overvaluation of the contribution. In addition, taxpayers who engage in such transactions may be required to disclose under § 1.6011–4 the transactions as listed transactions.

(6) *Examples.* The following examples illustrate the rules of this paragraph (j). For these three examples in this paragraph (j)(6), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code, and that the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1: Disallowed qualified conservation contribution*—(A) *Facts.* A, an individual, and B, a C corporation, form AB Partnership, a partnership for Federal income tax purposes. AB Partnership acquires real property. Two years later, AB Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. AB Partnership allocates the contribution equally to A and B. A's relevant basis is $30X, and B's relevant basis is $8X.

(B) *Analysis.* A and B are the ultimate members of AB Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. The claimed amount of AB Partnership's qualified conservation contribution is $100X, which exceeds 2.5 times the sum of A's and B's relevant bases, which is $95X ($95X = 2.5 × (A's $30X relevant basis + B's $8X relevant basis)). Therefore, AB Partnership's contribution is a disallowed qualified conservation contribution. No person may claim any deduction with respect to this contribution, even though A's $50X distributive share of the contribution does not exceed 2.5 times A's $30X relevant basis.

(ii) *Example 2: Not a disallowed qualified conservation contribution*—(A) *Facts.* Individuals C and D form CD Partnership, a partnership for Federal income tax purposes. CD Partnership acquires real property. Two years later, CD Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. CD Partnership allocates the contribution $5X to C and $95X to D. C's relevant basis is $6X, and D's relevant basis is $34X.

(B) *Analysis.* C and D are the ultimate members of CD Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. The claimed amount of CD Partnership's qualified conservation contribution is $100X, which does not exceed 2.5 times the sum of C's and D's relevant bases, which is also $100X ($100X = 2.5 × (C's $6X relevant basis + D's $34X relevant basis)). Therefore, CD Partnership's contribution is not a disallowed qualified conservation contribution (that is, not disallowed by section 170(h)(7) and this paragraph (j)) with respect to CD Partnership, C, or D, even though D's $95X distributive share of the contribution exceeds 2.5 times D's $34X relevant basis.

(iii) *Example 3: Tiered partnerships*—(A) *Facts.* Individuals E and F form UTP Partnership, a partnership for Federal income tax purposes. UTP Partnership and G, a C corporation, form LTP Partnership, a partnership for Federal income tax purposes. LTP Partnership acquires real property. Two years later, LTP Partnership makes a qualified conservation contribution with respect to the property and claims a contribution of $100X on its return. LTP Partnership allocates the contribution $5X to G and $95X to UTP Partnership. UTP Partnership allocates its $95X portion of the contribution $45X to E and $50X to F. G's relevant basis is $10X, E's relevant basis is $11X, and F's relevant basis is $21X.

(B) *Analysis for LTP Partnership.* The ultimate members of LTP Partnership are G, E, and F because they each receive a distributive share of the qualified conservation contribution and are not a partnership or S corporation. Because UTP Partnership is a partnership, it is not an ultimate member of LTP Partnership, even though it receives a distributive share of the qualified conservation contribution. The amount of LTP Partnership's qualified conservation contribution is $100X, which does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which is $105X ($105X = 2.5 × (G's $10X relevant basis + E's $11X relevant basis + F's $21X relevant basis)). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and this paragraph (j)) with respect to LTP Partnership and G.

(C) *Analysis for UTP Partnership.* Because UTP Partnership receives an allocated portion, UTP Partnership must apply this paragraph (j) and paragraphs (k) through (m) of this section to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are E and F because they each receive a distributive share of UTP Partnership's allocated portion and are not partnerships or S corporations. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is $95X, which exceeds 2.5 times the sum of E's and F's relevant bases, which is $80X ($80X = 2.5 × (E's $11X relevant basis + F's $21X relevant basis)). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is a disallowed qualified conservation contribution with respect to UTP Partnership, E, and F. No partner of UTP Partnership may claim any deduction with respect to this contribution, even though F's $50X distributive share of the contribution does not exceed 2.5 times F's $21X relevant basis. This does not affect the determination that G's distributive share of the contribution is not a disallowed qualified conservation contribution.

(k) *Determination of relevant basis.* For purposes of this section, the term *relevant basis* means, with respect to any ultimate member, the portion of such ultimate member's modified basis (as determined under paragraph (l) of this section) that is allocable (under the rules of paragraph (m) of this section) to the portion of the real property with respect to which the qualified conservation contribution is made.

(l) *Determination of modified basis*—(1) *In general.* In the case of an ultimate member holding a direct interest in a partnership, the ultimate member's modified basis is determined by such partnership immediately before the qualified conservation contribution is made in the manner described in paragraph (l)(2) of this section. In the case of an ultimate member holding a direct interest in an S corporation, the ultimate member's modified basis is determined by such S corporation in the manner described in paragraph (l)(3) of this section.

(2) *Partners in partnerships*—(i) *Computation.* For purposes of this section, the term *modified basis* means, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, with adjustments as determined under paragraphs (l)(2)(ii) through (vi) of this section. However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made, then the term *modified basis* means such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner, with adjustments as determined under paragraphs (l)(2)(ii) through (vi) of this section. The adjustments under paragraphs (l)(2)(ii) through (vi) must be made in the order in which they are listed.

(ii) *Step 1.* First, the computation of modified basis must start with the ultimate member's adjusted basis under paragraph (l)(2)(i) of this section and then reflect an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 722 of the Code.

(iii) *Step 2.* Second, if between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made, the ultimate member acquired

additional interests in the partnership, the amount determined under paragraph (l)(2)(ii) of this section must be increased by the ultimate member's initial basis in those additional interests. If, between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made, the ultimate member partially disposed of its interest in the partnership, the amount determined under paragraph (l)(2)(ii) of this section must be decreased by the ultimate member's basis in the interests disposed of.

(iv) *Step 3.* Third, the amount determined under paragraph (l)(2)(iii) of this section must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. In making this determination, the partnership must apply the rules of § 1.706–4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. The partnership cannot apply any convention in § 1.706–4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. This hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. This paragraph (l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares of partnership items of income, gain, loss, deduction, and credit for the taxable year in which the qualified conservation contribution is made or otherwise. *See* § 1.706–4 for applicable rules for the determination of a partner's distributive share when a partner's interest varies during a partnership taxable year.

(v) *Step 4.* Fourth, the amount determined under paragraph (l)(2)(iv) of this section must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

(vi) *Step 5.* Fifth, the amount determined under paragraph (l)(2)(v) of this section must be reduced by the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership). The remaining amount is such ultimate member's modified basis. Thus, an ultimate member's modified basis may be less than zero.

(3) *S corporation shareholder*—(i) *Computation.* For purposes of this section, the term *modified basis* means, with respect to any ultimate member that is a shareholder of either a contributing S corporation or an upper-tier S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term *modified basis* means such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. Modified basis does not include the ultimate member's adjusted basis in any indebtedness of the S corporation to the ultimate member. The adjustments under paragraphs (l)(3)(ii) and (iii) of this section must be made in the order in which they are listed.

(ii) *Step 1.* First, the computation of modified basis must start with the ultimate member's adjusted basis under paragraph (l)(3)(i) of this section, and then reflect an increase for the extent to which the ultimate member's adjusted basis reflects a reduction as a result of the qualified conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution does not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution.

(iii) *Step 2.* Second, the amount determined under paragraph (l)(3)(ii) of this section must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount is such ultimate member's modified basis.

(4) *Examples.* The following examples illustrate the provisions of this paragraph (l). For the four examples in this paragraph (l)(4), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code and the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*—(A) *Facts.* AB Partnership is a calendar-year partnership for Federal income tax purposes whose partners are A and B, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. Several years ago, B contributed property to AB Partnership subject to a § 1.752–1 liability. At the beginning of AB Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), A's adjusted basis in its interest in AB Partnership is $19X, and B's adjusted basis in its interest in AB Partnership is $17X. At 10:01 a.m. on August 29, 2024, AB Partnership makes a qualified conservation contribution. On August 29, 2024, the amount of the § 1.752–1 liability is $10X and is allocated under the rules of section 752 to A. During 2024, there were no variations in any partner's interests in AB Partnership within the meaning of section 706. During 2024, AB Partnership earned $8X of ordinary income and sustained ($4X) of capital loss in the ordinary course of its business, both of which are allocated equally to A and B. Within 2024, AB Partnership earned $6X of ordinary income, and sustained ($4X) of capital loss between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and AB Partnership earned $2X of ordinary income, and sustained $0X of capital loss between 10:01 a.m. on August 29, 2024, and the end of the day on December 31, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of § 1.706–4(e)(2). In April 2024, AB Partnership distributed $1X cash to A. In November 2024, B contributed $2X cash to AB Partnership.

(B) *Analysis.* The ultimate members of AB Partnership are A and B because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine A's and B's modified bases, AB Partnership must start with A's and B's adjusted bases in AB Partnership as of the beginning of the first day of the taxable year of AB Partnership and then make the

adjustments required under paragraphs (l)(2)(ii) through (vi) of this section. Accordingly, the computation of A's beginning modified basis begins with $19X, and the computation of B's modified basis begins with $17X. First, those amounts must be increased by any contributions between the beginning of the day on January 1, 2024, and 10 a.m. on August 29, 2024. Because there were none, after this step, the computation of A's modified basis remains at $19X and the computation of B's modified basis remains at $17X. Next, these amounts must be adjusted for any additional acquisitions of partnership interests by an existing partner or partial dispositions of partnership interests by a continuing partner between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made. Because there were none, after this step, the computation of A's modified basis remains at $19X and the computation of B's modified basis remains at $17X. Then these amounts must be adjusted as provided in section 705 by A's and B's hypothetical distributive shares of AB Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computations of A's and B's modified bases will each reflect an increase for their hypothetical $3X distributive share of the $6X ordinary income that AB Partnership earned between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and a decrease for their hypothetical ($2X) distributive share of the ($4X) capital loss that AB Partnership incurred between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Therefore, after this step, the computation of A's modified basis reflects an increase from $19X to $20X, and the computation of B's modified basis reflects an increase from $17X to $18X. Next, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computation of A's modified basis reflects a reduction from $20X to $19X. B did not receive any distribution, so the computation of B's modified basis remains at $18X. Finally, the full amount of A's and B's shares of § 1.752–1 liabilities must be subtracted. Thus, the computation of A's modified basis reflects a reduction from $19X to $9X, which is A's modified basis. B's modified basis is $18X.

(ii) *Example 2*—(A) *Facts.* CD Partnership, a partnership for Federal income tax purposes, is a calendar-year partnership using the calendar day convention under § 1.706–4 whose partners on January 1, 2024, are C and D, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. On March 15, 2024, C sells its interest to E, a C corporation. At 1:15 p.m. on September 15, 2024, CD Partnership makes a qualified conservation contribution. On September 21, 2024, D sells its interest to F, an individual. During 2024, CD Partnership earned $8X of ordinary income and sustained ($14X) of ordinary loss. Within 2024, CD Partnership earned all $8X of ordinary income in November and December, and sustained all ($14X) of ordinary loss in April through August. In May 2024, D contributed $6X cash to CD Partnership, and E contributed property with a fair market value of $6X and basis of $3X. D and E are equal partners during the period in which they are both partners. CD Partnership made no distributions during 2024. CD Partnership had no § 1.752–1 liabilities during 2024. In accordance with § 1.706–4(e)(2)(xiii), CD Partnership treats its qualified conservation contribution as an extraordinary item allocable only to D and E, its partners at 1:15 p.m. on September 15, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of § 1.706–4(e)(2). CD Partnership uses the proration method under § 1.706–4 to allocate its items among C, D, E, and F. Under the proration method, CD Partnership allocates each C, D, E, and F a distributive share of a portion of both the $8X ordinary income and the ($14X) ordinary loss. D's adjusted basis in its interest in CD Partnership at the beginning of CD Partnership's 2024 taxable year (the beginning of the day on January 1, 2024) is $8X. E's adjusted basis in its interest in CD Partnership immediately after E acquires C's interest in CD Partnership is $6X.

(B) *Analysis.* The ultimate members of CD Partnership are D and E because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine D's and E's modified bases, CD Partnership must start with D's and E's adjusted bases in CD Partnership as of the beginning of the day on January 1, 2024, and then make the adjustments required under paragraphs (l)(2)(ii) through (vi) of this section. However, because E was not a partner as of the beginning of the day on January 1, 2024, CD Partnership must start with E's adjusted basis immediately after E's purchase of C's interest in CD Partnership. Accordingly, the computation of D's modified basis begins with $8X, and the computation of E's modified basis begins with $6X. Then, these amounts must be increased by any contributions made by D or E, respectively, to CD Partnership between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Therefore, the computation of D's modified basis reflects an increase from $8X to $14X (for D's $6X contribution of cash to CD Partnership in May 2024), and the computation of E's modified basis reflects an increase from $6X to $9X (for E's contribution of property to CD Partnership with a basis of $3X in May 2024). Next, these amounts must be adjusted for any additional acquisitions of partnership interests by an existing partner or partial dispositions of partnership interests by a continuing partner between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made. Because there were none, after this step, the computation of D's modified basis remains at $14X and the computation of E's modified basis remains at $9X. Next, these amounts must be adjusted as provided in section 705 by D's and E's hypothetical distributive shares of CD Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. CD Partnership must perform the analysis using an interim closing method to a hypothetical variation at 1:14 p.m. on September 15, 2024, immediately prior to the qualified conservation contribution. The computation of D's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the beginning of the day on January 1, 2024, through 1:14 p.m. on September 15, 2024. The computation of E's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the end of the day on March 15, 2024, through 1:14 p.m. on September 15, 2024. For purposes of this paragraph (l)(4)(ii)(B) (*Example 2*), it does not matter that CD Partnership actually used the proration method to allocate its 2024 income. Instead, under this hypothetical calculation of the distributive shares, the computation of D's and E's modified bases will each reflect a reduction for their 50 percent share of the ($14X) ordinary loss. Because none of CD Partnership's $8X of ordinary income was earned between

the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024, neither D's nor E's modified basis will reflect an increase for any amount of that income. Thus, after this step, the computation of D's modified basis reflects a reduction from $14X to $7X, and the computation of E's modified basis reflects a reduction from $9X to $2X. Then, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Because there were none, after this step, the computation of D's modified basis remains at $7X, and the computation of E's modified basis remains at $2X. Finally, the full amount of D's and E's shares of § 1.752–1 liabilities must be subtracted. Because there were none, D's modified basis is $7X, and E's modified basis is $2X.

(iii) *Example 3*—(A) *Facts.* HI Inc. is a calendar-year S corporation whose shareholders on January 1, 2024, are H and I, each of whom owns 50 percent of the shares. On May 1, 2024, H sells all of its stock to J. In June 2024, HI Inc. contributes a conservation easement that is a qualified conservation contribution on 400 acres of real property. HI Inc.'s adjusted basis in the conservation easement is $12X (which is different from HI Inc.'s adjusted basis in the 400 acres and also may be different from the value of the conservation easement). On July 1, 2024, I sells all of its stock to K. Under § 1.1377–1, HI Inc. allocates its qualified conservation contribution ⅙ to H, ¼ to I, ⅓ to J, and ¼ to K. Pursuant to the second sentence of section 1367(a)(2)(B), as a result of the qualified conservation contribution, H's adjusted basis in its shares is reduced by $2X, I's adjusted basis in its shares is reduced by $3X, J's adjusted basis in its shares is reduced by $4X, and K's adjusted basis in its shares is reduced by $3X. At the end of HI Inc.'s 2024 taxable year (the end of the day on December 31, 2024), J's adjusted basis in its shares is $15X and K's adjusted basis in its shares is $11X. Immediately prior to H's sale to J, H's adjusted basis in its shares was $8X. Immediately prior to I's sale to K, I's adjusted basis in its shares was $7X. Whether H, I, J, or K have adjusted basis in indebtedness of HI Inc., has no effect on the computation of their modified bases. H is an estate of a deceased shareholder, and I, J, and K are individuals that are not nonresident aliens.

(B) *Analysis.* The ultimate members of HI Inc. are H, I, J, and K, because they each receive a pro rata share of the qualified conservation contribution and are not partnerships or S corporations. To determine H's, I's, J's, and K's modified bases, HI Inc. must begin with each shareholder's adjusted basis in its shares as of the end of the day on December 31, 2024 (the end of the S corporation's taxable year in which it made the qualified conservation contribution). However, because H and I were not shareholders as of the end of the day on December 31, 2024, HI Inc. must begin with H's adjusted basis immediately before H's sale to J, and I's adjusted basis immediately before I's sale to K. Accordingly, the computation of H's modified basis begins with $8X, the computation of I's modified basis begins with $7X, the computation of J's modified basis begins with $15X, and the computation of K's modified basis begins with $11X. Next, HI Inc. must increase these amounts by the extent the adjusted bases were reduced as a result of the qualified conservation contribution. Accordingly, the computation of H's modified basis reflects an increase from $8X to $10X, the computation of I's modified basis reflects an increase from $7X to $10X, the computation of J's modified basis reflects an increase from $15X to $19X, and the computation of K's modified basis reflects an increase from $11X to $14X. Finally, HI Inc. must multiply each of these amounts by the number of days during 2024 in which each ultimate member was a shareholder, and divide by 366 (the total number of days in HI Inc.'s 2024 taxable year). H was a shareholder for 122 days. Thus, H's modified basis is $3.33X ($10X × 122/366). I was a shareholder for 183 days. Thus, I's modified basis is $5X ($10X × 183/366). J was a shareholder for 244 days. Thus, J's modified basis is $12.67X ($19X × 244/366). K was a shareholder for 183 days. Thus, K's modified basis is $7X ($14X × 183/366).

(iv) *Example 4*—(A) *Facts.* PQ Partnership is a calendar-year partnership for Federal income tax purposes whose partners are individuals P and Q. At the beginning of PQ Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), P has a sixty percent interest in all of PQ Partnership's items, including items of income, gain, loss, deduction, credit, and charitable contributions, and P's adjusted basis in its interest in PQ Partnership is $60X. At the beginning of PQ Partnership's 2024 taxable year, Q has a forty percent interest in all of PQ Partnership's items, including items of income, gain, loss, deduction, credit, and charitable contributions, and Q's adjusted basis in its interest in PQ Partnership is $30X. On March 15, 2024, P sells two-thirds of P's interest in PQ Partnership to individual Z, who was not previously a partner in PQ Partnership, for $55X. At the time of the sale, P's adjusted basis in the partnership interests P sold to Z was $40X. At noon on August 29, 2024, PQ Partnership makes a qualified conservation contribution. PQ Partnership allocates twenty percent of the qualified conservation contribution to P, forty percent to Q, and forty percent to Z. Between January 1 and August 29, 2024, PQ Partnership had no items of income, gain, loss, or deduction, and did not make any distributions. No partner made any contributions during 2024. PQ Partnership did not have any § 1.752–1 liabilities during 2024.

(B) *Analysis.* P, Q, and Z are the ultimate members of PQ Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine P's, Q's, and Z's modified bases, PQ Partnership must start with P's, Q's, and Z's adjusted bases in PQ Partnership as of the beginning of the first day of the taxable year of PQ Partnership and then make the adjustments required under paragraphs (l)(2)(ii) through (vi) of this section. However, because Z was not a partner as of the beginning of the day on January 1, 2024, PQ Partnership must start with Z's adjusted basis immediately after Z's purchase of two-thirds of P's interest in PQ Partnership. Accordingly, the computation of P's modified basis begins with $60X, the computation of Q's modified basis begins with $30X, and the computation of Z's modified basis begins with $55X. First, those amounts must be increased by any contributions between the beginning of the day on January 1, 2024, and noon on August 29, 2024. Because there were none, after this step, the computation of P's modified basis remains at $60X, the computation of Q's modified basis remains at $30X, and the computation of Z's modified basis remains at $55X. Next, these amounts must be adjusted for any additional acquisitions of partnership interests by an existing partner or partial dispositions of partnership interests by a continuing partner between the beginning of the partnership's taxable year and the time of day at which the qualified conservation contribution is made. P sold two-thirds of its interest to Z prior to PQ Partnership's qualified conservation contribution; P's basis in the interests it sold was $40X. As a result, the computation of P's modified basis reflects a reduction from $60X to $20X. Then these amounts must be

adjusted as provided in section 705 by P's, Q's, and Z's hypothetical distributive shares of PQ Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and noon on August 29, 2024. Because there were none, after this step, the computation of P's modified basis remains at $20X, the computation of Q's modified basis remains at $30X, and the computation of Z's modified basis remains at $55X. Next, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and noon on August 29, 2024. Because there were none, after this step, the computation of P's modified basis remains at $20X, the computation of Q's modified basis remains at $30X, and the computation of Z's modified basis remains at $55X. Finally, the full amount of P's, Q's, and Z's shares of § 1.752–1 liabilities must be subtracted. Because there were none, P's modified basis is $20X, Q's modified basis is $30X, and Z's modified basis is $55X.

(m) *Allocation of modified basis*—(1) *In general.* An allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made must be made in accordance with this paragraph (m). Rules for allocating an ultimate member's modified basis in a contributing partnership are provided in paragraph (m)(2) of this section. Rules for allocating an ultimate member's modified basis in a contributing S corporation are provided in paragraph (m)(3) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier partnership are provided in paragraph (m)(4) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier S corporation are provided in paragraph (m)(5) of this section. Records must be kept in accordance with paragraph (m)(6) of this section.

(2) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing partnership*—(i) *Narrative rule.* This paragraph (m)(2) applies in the case of an ultimate member holding a direct interest in a contributing partnership and provides that a contributing partnership must determine each such ultimate member's relevant basis as provided in this paragraph (m)(2). Relevant basis equals each ultimate member's modified basis as determined under paragraph (l)(2) of this section multiplied by a fraction—

(A) The numerator of which is the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(ii) of this section; and

(B) The denominator of which is the ultimate member's portion of the adjusted basis in all the contributing partnership's properties as determined under paragraph (m)(2)(iii) of this section.

(ii) *Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.* For purposes of this paragraph (m)(2), an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made (determined as of the time of day of the contribution) multiplied by a fraction—

(A) The numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and

(B) The denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

(iii) *Ultimate member's portion of the adjusted basis in all the contributing partnership's properties*—(A) For purposes of this paragraph (m)(2), an ultimate member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of:

(*1*) The ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(ii) of this section; plus

(*2*) The ultimate member's portion of the adjusted basis in all the contributing partnership's properties other than the portion of the real property with respect to which the qualified conservation contribution is made as determined under paragraph (m)(2)(iii)(B) of this section.

(B) To determine a partner's portion of the adjusted basis in all of a contributing partnership's properties, the contributing partnership must apportion among its partners its adjusted basis in each of its properties (except the portion of the real property with respect to which the qualified conservation contribution is made), using the adjusted basis immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero. This apportionment must be done under principles similar to the determination of the partners' interests in the partnership under section 704(b), including the factors in § 1.704–1(b)(3)(ii). In addition, the apportionment must reflect section 704(c) principles. For example, if a partnership property has built-in loss (the adjusted basis of the property exceeds its fair market value), and section 704(c) would require all of that built-in loss to be allocated to a certain partner if that property was sold, all of the basis in the property that exceeds the property's fair market value must be apportioned to the partner to whom the loss would be allocated if the property was sold.

(iv) *Formulaic rule.* The rule of this paragraph (m)(2) is also expressed in the following formula:

Equation 1 to Paragraph (m)(2)(iv)

$$R = M \times (T \div (D + T))$$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(3) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation*—(i) *Narrative rule.* This paragraph (m)(3) applies in the case of an ultimate member holding a direct interest in a contributing S corporation and provides that a contributing S corporation must determine each such ultimate member's relevant basis as provided in this paragraph (m)(3). Relevant basis equals each ultimate

member's modified basis as determined under paragraph (l)(3) of this section multiplied by a fraction—

(A) The numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made; and

(B) The denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(ii) *Formulaic rule.* The rule of this paragraph (m)(3) is also expressed in the following formula:

Equation 2 to Paragraph (m)(3)(ii)

$R = M \times (E \div F)$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(4) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier partnership*—(i) *In general.* This paragraph (m)(4) applies in the case of an ultimate member holding a direct interest in an upper-tier partnership. Each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(4) describes a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. In a situation involving more tiers, each partnership must apply the rules and principles of this paragraph (m)(4) iteratively to determine relevant basis.

(ii) *Upper-tier partnership*—(A) *Narrative rule*—(*1*) *In general.* The upper-tier partnership must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that will be the contributing partnership). This determination must be done in accordance with the principles of paragraph (m)(2) of this section, the rule in paragraph (m)(4)(ii)(A)(*2*) of this section, and the formula provided in paragraph (m)(4)(ii)(B) of this section. In other words, the formula provided in paragraph (m)(4)(ii)(B) of this section is similar to the formula provided in paragraph (m)(2)(iv) of this section, except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in paragraph (m)(4)(ii)(B) of this section determines the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in paragraph (m)(4)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(4)(ii)(B) of this section to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

(*2*) *Apportionment of upper-tier partnership's adjusted bases in its properties.* To determine a partner's portion of the adjusted basis in all of an upper-tier partnership's properties, the upper-tier partnership must apportion among its partners its adjusted basis in each of its properties (except its interest in the lower-tier partnership), using the adjusted basis immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero. This apportionment must be done under principles similar to the determination of the partners' interests in the partnership under section 704(b), including the factors in § 1.704–1(b)(3)(ii). In addition, the apportionment must reflect section 704(c) principles. For example, if a partnership property has built-in loss (the adjusted basis of the property exceeds its fair market value), and section 704(c) would require all of that built-in loss to be allocated to a certain partner if that property was sold, all of the basis in the property that exceeds the property's fair market value must be apportioned to the partner to whom the loss would be allocated if the property was sold.

(B) *Formulaic rule.* The rule of this paragraph (m)(4)(ii) is also expressed in the following formula:

Equation 3 to Paragraph (m)(4)(ii)(B)

$G = M \times (U \div (J + U))$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.
M = Modified basis as determined under paragraph (l) of this section.
J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership) as determined under paragraph (m)(4)(ii)(A)(*2*) of this section.
U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: $H \times (B \div K)$.
H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.
B = Ultimate member's distributive share of the qualified conservation contribution.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

(iii) *Contributing partnership*—(A) *Narrative rule.* After completion of the computations under paragraph (m)(4)(ii) of this section, the contributing partnership must determine the portion of the amount determined under item G (*see* paragraph (m)(4)(ii)(B) of this section) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of paragraph (m)(2) of this section and the formula provided in paragraph (m)(4)(iii)(B) of this section.

(B) *Formulaic rule.* The rule of this paragraph (m)(4)(iii) is also expressed in the following formula:

Equation 4 to Paragraph (m)(4)(iii)(B)

$R = G \times (V \div (L + V))$

Where:

R = Relevant basis.
G = Amount determined with respect to item G as described under paragraph (m)(4)(ii)(B) of this section.
L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
V = Upper-tier partnership's share of the contributing partnership's adjusted basis

in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (K \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(5) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation*—(i) *In general.* This paragraph (m)(5) applies in the case of an ultimate member holding a direct interest in an upper-tier S corporation. Each such ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier partnerships must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(5) describes a situation in which there are two tiers—a contributing partnership and an upper-tier S corporation. In a situation involving more tiers, each partnership and the upper-tier S corporation must apply the rules and principles of this paragraph (m) iteratively to determine relevant basis.

(ii) *Upper-tier S corporation*—(A) *Narrative rule.* The upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that will be the contributing partnership). This determination must be done in accordance with the principles of paragraph (m)(3) of this section and the formula provided in paragraph (m)(5)(ii)(B) of this section. In other words, the formula provided in paragraph (m)(5)(ii)(B) of this section is similar to the formula provided in paragraph (m)(3)(ii) of this section, except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in paragraph (m)(5)(ii)(B) of this section determines the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in paragraph (m)(5)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(5)(ii)(B) of this section to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

(B) *Formulaic rule.* The rule of this paragraph (m)(5)(ii) is also expressed in the following formula:

Equation 5 to Paragraph (m)(5)(ii)(B)

$$N = M \times (P \div Q)$$

Where:

N = Portion of the ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the contributing partnership.

M = Modified basis as determined under paragraph (l) of this section.

P = Ultimate member's pro rata portion of the upper-tier S corporation's adjusted basis in its interest in the contributing partnership.

Q = Ultimate member's pro rata portion of the adjusted basis in all the upper-tier S corporation's properties (including the upper-tier S corporation's interest in the contributing partnership).

(iii) *Contributing partnership*—(A) *Narrative rule.* After completion of the computations under paragraph (m)(5)(ii) of this section, the contributing partnership must determine the portion of the amount determined under item N (*see* paragraph (m)(5)(ii)(B) of this section) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. This determination must be done in accordance with the principles of paragraph (m)(2) of this section and the formula provided in paragraph (m)(5)(iii)(B) of this section.

(B) *Formulaic rule.* The rule of this paragraph (m)(5)(iii) is also expressed in the following formula:

Equation 6 to Paragraph (m)(5)(iii)(B)

$$R = N \times (W \div (S + W))$$

Where:

R = Relevant basis.

N = Amount determined with respect to item N as described under paragraph (m)(5)(ii)(B) of this section.

S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.

W = Upper-tier S corporation's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (Y \div C)$.

A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

Y = Upper-tier S corporation's allocated portion of the qualified conservation contribution.

C = Total amount of the contributing partnership's qualified conservation contribution.

(6) *Recordkeeping requirements.* Contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. *See* § 1.6001–1. These statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in paragraph (n)(2) or (3) of this section, unless the contribution also meets the exception in paragraph (n)(4) of this section (in which case these statements need to be maintained and modified basis and relevant basis need to be computed).

(7) *Examples.* The following examples illustrate the provisions of this paragraph (m). For the examples in this paragraph (m)(7), assume that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code and the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1*—(A) *Facts.* YZ Partnership is a partnership for Federal income tax purposes whose partners are individuals Y and Z. YZ Partnership owns 100 acres of real property with an adjusted basis of $10X. YZ Partnership makes a qualified conservation contribution on 60 acres of the property. YZ Partnership claims a contribution of $18X, which it allocates $12X to Y and $6X to Z. YZ Partnership's adjusted basis in the 60 acres is $6X, and its adjusted basis in all of its other properties (including its $4X basis in the 40 acres on which a qualified conservation contribution was not made) is $18X. Y's modified basis is $8X. Y's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined under paragraph (m)(2)(iii)(B) of this section is $4X. Z's modified basis is $12X. Z's portion of

YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined under paragraph (m)(2)(iii)(B) of this section is $14X.

(B) *General analysis.* Y and Z are the ultimate members of YZ Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Equation 7 to Paragraph (m)(7)(i)(B)

$$R = M \times (T \div (D + T))$$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
D = Ultimate member's portion of the adjusted basis in all of the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (B ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(C) *Y's relevant basis.* With respect to Y:

(*1*) M = $8X.
(*2*) D = $4X.
(*3*) A = $6X.
(*4*) B = $12X.
(*5*) C = $18X.
(*6*) Thus, T is $4X = $6X × ($12X ÷ $18X).
(*7*) Accordingly, Y's relevant basis is $4X = $8X × ($4X ÷ ($4X + $4X)).

(D) *Z's relevant basis.* With respect to Z:

(*1*) M = $12X.
(*2*) D = $14X.
(*3*) A = $6X.
(*4*) B = $6X.
(*5*) C = $18X.
(*6*) Thus, T is $2X = $6X × ($6X ÷ $18X).
(*7*) Accordingly, Z's relevant basis is $1.5X = $12X × ($2X ÷ ($14X + $2X)).

(E) *Sum of the relevant bases.* The amount of YZ Partnership's claimed contribution is $18X, which exceeds 2.5 times the sum of Y's and Z's relevant bases, which is $13.75X ($13.75X = 2.5 × (Y's relevant basis of $4X + Z's relevant basis of $1.5X)). Accordingly, YZ Partnership's contribution is a disallowed qualified conservation contribution. No person may claim any deduction with respect to this contribution.

(ii) *Example 2*—(A) *Facts.* CD Inc. is an S corporation with shareholders C and D, each of whom is an individual that is not a nonresident alien. C owns one third of the outstanding stock in CD Inc., and D owns the remaining two thirds. CD Inc. owns 100 acres of real property with an adjusted basis of $10X. CD Inc. makes a qualified conservation contribution on 60 acres of the property. CD Inc. claims a contribution of $9X, which it allocates $3X to C and $6X to D. CD Inc.'s adjusted basis in the 60 acres is $6X, and its adjusted basis in all its properties (including its $6X basis in the 60 acres) is $24X. C's modified basis in CD Inc. is $8X. D's modified basis in CD Inc. is $12X.

(B) *General analysis.* C and D are the ultimate members of CD Inc. because they each receive a pro rata share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Equation 8 to Paragraph (m)(7)(ii)(B)

$$R = M \times (E \div F)$$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
F = Ultimate member's pro rata portion of the adjusted basis in all the contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made).

(C) *C's relevant basis.* With respect to C:

(*1*) M = $8X.
(*2*) E = $2X (⅓ of $6X).
(*3*) F = $8X (⅓ of $24X).
(*4*) Thus, C's relevant basis is $2X = $8X × ($2X ÷ $8X).

(D) *D's relevant basis.* With respect to D:

(*1*) M = $12X.
(*2*) E = $4X (⅔ of $6X).
(*3*) F = $16X (⅔ of $24X).
(*4*) Thus, D's relevant basis is $3X = $12X × ($4X ÷ $16X).

(E) *Sum of the relevant bases.* The amount of CD Inc.'s claimed qualified conservation contribution is $9X, which does not exceed 2.5 times the sum of C's and D's relevant bases, which is $12.50 ($12.50X = 2.5 × (C's relevant basis of $2X + D's relevant basis of $3X)). Accordingly, CD Inc.'s contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(iii) *Example 3*—(A) *Facts.* LTP Partnership is a partnership for Federal income tax purposes whose partners are individual E and UTP Partnership, a partnership for Federal income tax purposes. UTP Partnership's partners are C corporations P and Q. LTP Partnership owns 300 acres of real property. LTP Partnership makes a qualified conservation contribution on all 300 acres. LTP Partnership claims a qualified conservation contribution of $22X, which it allocates $2X to E and $20X to UTP Partnership. UTP Partnership allocates its $20X share of the qualified conservation contribution $6X to P and $14X to Q. LTP Partnership's basis in the 300 acres is $18X, and its adjusted basis in all of its other properties is $12X. E's modified basis in LTP Partnership is $4X. E's portion of LTP Partnership's adjusted basis in all partnership property (other than the 300 acres) as determined under paragraph (m)(2)(iii)(B) of this section is $4.36X. UTP Partnership's portion of LTP Partnership's adjusted basis in all partnership property (other than the 300 acres) as determined under paragraph (m)(2)(iii)(B) of this section is $7.64X. UTP Partnership's adjusted basis in its interest in LTP Partnership is $19, and its adjusted basis in all other properties is $6X. P's modified basis in UTP Partnership is $12X. P's portion of UTP Partnership's adjusted basis in all partnership property (other than the interest in LTP Partnership) as determined under paragraph (m)(4)(ii)(A)(*2*) of this section is $3.6X. Q's modified basis in UTP Partnership is $8X. Q's portion of UTP Partnership's adjusted basis of all partnership property (other than the interest in LTP Partnership) as determined under paragraph (m)(4)(ii)(A)(*2*) of this section is $2.4X.

(B) *Analysis: partner E.* (*1*) The ultimate members of LTP Partnership are E, P, and Q because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Because E holds a direct interest in LTP Partnership, E's relevant basis must be determined in accordance with the following formula:

Equation 9 to Paragraph (m)(7)(iii)(B)(1)

$$R = M \times (T \div (D + T))$$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (B ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(*2*) With respect to E:
(*i*) M = $4X.
(*ii*) D = $4.36X.
(*iii*) A = $18X.
(*iv*) B = $2X.
(*v*) C = $22X.
(*vi*) Thus, T is $1.64X = $18X × ($2X ÷ $22X).
(*vii*) Accordingly, E's relevant basis is $1.09X = $4X × ($1.64X ÷ ($4.36X + $1.64X)).

(C) *Analysis: General rule for UTP Partnership.* Because P and Q hold interests in an upper-tier partnership, UTP Partnership must first determine the portions of P's and Q's modified bases that are allocable to UTP Partnership's interest in LTP Partnership. This is to be done according to the following formula:

Equation 10 to Paragraph (m)(7)(iii)(C)

G = M × (U ÷ (J + U))

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.
M = Modified basis as determined under paragraph (l) of this section.
J = Ultimate member's portion of adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership) as determined under paragraph (m)(4)(ii)(A)(*2*) of this section.
U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula: H × (B ÷ K).
H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.
B = Ultimate member's distributive share of the qualified conservation contribution.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.

(D) *Analysis: Step 1 for P.* With respect to P:
(*1*) M = $12X.
(*2*) J = $3.6X.
(*3*) H = $19X.
(*4*) B = $6X.
(*5*) K = $20X.
(*6*) Thus, U is $5.70X = $19X × ($6X ÷ $20X).
(*7*) Accordingly, the portion of P's modified basis that is allocable to UTP Partnership's interest in LTP Partnership is $7.35X = $12X × ($5.70X ÷ ($3.60X + $5.70X)).

(E) *Analysis: Step 1 for Q.* With respect to Q:
(*1*) M = $8X.
(*2*) J = $2.4X.
(*3*) H = $19X.
(*4*) B = $14X.
(*5*) K = $20X.
(*6*) Thus, U is $13.30X = $19X × ($14X ÷ $20X).
(*7*) Accordingly, the portion of Q's modified basis that is allocable to UTP Partnership's interest in LTP Partnership is $6.78X = $8X × ($13.30X ÷ ($2.40X + $13.30X)).

(F) *Analysis: General rule for LTP Partnership.* Next, LTP Partnership must determine P's and Q's relevant bases, which equal the portions of the amounts determined under paragraphs (m)(7)(iii)(D) and (E) of this section (*Example 3*) that are allocable to the portion of the real property with respect to which the qualified conservation contribution was made. This must be done according to the following formula:

Equation 11 to Paragraph (m)(7)(iii)(F)

R = G × (V ÷ (L + V))

Where:

R = Relevant basis.
G = Amount determined with respect to item G under paragraph (m)(4)(ii)(B) of this section.
L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
V = Upper-tier partnership's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: A × (K ÷ C).
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
K = Upper-tier partnership's allocated portion of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(G) *Analysis: Step 2 for P.* With respect to P:
(*1*) G = $7.35X.
(*2*) L = $7.64X.
(*3*) A = $18X.
(*4*) K = $20X.
(*5*) C = $22X.
(*6*) Thus, V is $16.36X = $18X × ($20X ÷ $22X).
(*7*) Accordingly, P's relevant basis is $5.01X = $7.35X × ($16.36X ÷ ($7.64X + $16.36X)).

(H) *Analysis: Step 2 for Q.* With respect to Q:
(*1*) G = $6.78X.
(*2*) L = $7.64X.
(*3*) A = $18X.
(*4*) K = $20X.
(*5*) C = $22X.
(*6*) Thus, V is $16.36X = $18X × ($20X ÷ $22X).
(*7*) Accordingly, Q's relevant basis is $4.62X = $6.78X × ($16.36X ÷ ($7.64X + $16.36X)).

(I) *Analysis: Computation of 2.5 times sum of the relevant bases.* The ultimate members of LTP Partnership are E, P, and Q. The amount of LTP Partnership's qualified conservation contribution is $22X. This does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which totals $26.80 ($26.80 = 2.5 x (E's relevant basis of 1.09X + P's relevant basis of $5.01X + Q's relevant basis of $4.62X)). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section). Because UTP Partnership receives an allocated portion, it must apply paragraphs (j) through (l) of this section and this paragraph (m) to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are P and Q. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is $20X. This does not exceed 2.5 times the sum of P's and Q's relevant bases, which is $24.08X ($24.08X = 2.5 × (P's relevant basis of $5.01X + Q's relevant basis of $4.62X)). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(iv) *Example 4*—(A) *Facts.* Individuals V and W form VW Partnership, a partnership for Federal income tax purposes. V and W each hold a fifty percent interest in all of VW Partnership's items of income, gain, loss, deduction, credits, and charitable contributions. On formation of VW

Partnership, V contributes $1,000X cash to VW Partnership and W contributes GainProp, which is non-depreciable property with a value of $1,000X and basis of $500X. VW Partnership buys real property (RealProp), with its $1,000X cash. Later, at a time when VW Partnership's basis in RealProp is still $1,000X, and its basis in GainProp is still $500X, VW Partnership makes a qualified conservation contribution with respect to all of RealProp, which it allocates equally to V and W. VW Partnership continues to hold GainProp. V's modified basis is $1,000X and W's modified basis is $500X.

(B) *General analysis.* V and W are the ultimate members of VW Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Equation 12 to Paragraph (m)(7)(iv)(B)

$R = M \times (T \div (D + T))$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
D = Ultimate member's portion of the adjusted basis in all of the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(C) *V's relevant basis.* With respect to V:

(*1*) M = $1,000X.

(*2*) D = $250X (half of VW Partnership's adjusted basis in GainProp).

(*3*) T = $500X (half of VW Partnership's adjusted basis in RealProp).

(*4*) Accordingly, V's relevant basis is $666.67X = $1,000X × ($500X ÷ ($250X + $500X)).

(D) *W's relevant basis.* With respect to W:

(*1*) M = $500X.

(*2*) D = $250X (half of VW Partnership's basis in GainProp).

(*3*) T = $500X (half of VW Partnership's adjusted basis in RealProp).

(*4*) Accordingly, W's relevant basis is $333.33X = $500X × ($500X ÷ ($250X + $500X)).

(v) *Example 5*—(A) *Facts.* Assume the same facts as in paragraph (m)(7)(iv) of this section (*Example 4*), except that W does not contribute GainProp; instead, W contributes LossProp, which is non-depreciable property with a value of $1,000X and basis of $2,000X. At the time that VW Partnership makes the qualified conservation contribution on RealProp, the value of LossProp is still $1,000 and the basis of LossProp is still $2,000X. V's modified basis is $1,000X and W's modified basis is $2,000X.

(B) *General analysis.* V and W are the ultimate members of VW Partnership because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. Their relevant bases must be determined according to the following formula:

Equation 13 to Paragraph (m)(7)(v)(B)

$R = M \times (T \div (D + T))$

Where:

R = Relevant basis.
M = Modified basis as determined under paragraph (l) of this section.
D = Ultimate member's portion of the adjusted basis in all of the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made) as determined under paragraph (m)(2)(iii)(B) of this section.
T = Ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, determined according to the following formula: $A \times (B \div C)$.
A = Contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.
B = Ultimate member's distributive share of the qualified conservation contribution.
C = Total amount of the contributing partnership's qualified conservation contribution.

(C) *V's relevant basis.* With respect to V:

(*1*) M = $1,000X.

(*2*) D = $500X (half of the $1,000 portion of LossProp's adjusted basis that does not exceed LossProp's $1,000X value)

(*3*) T = $500X (half of VW Partnership's adjusted basis in RealProp)

(*4*) Accordingly, V's relevant basis is $500X = $1,000X × ($500X ÷ ($500X + $500X)).

(D) *W's relevant basis.* With respect to W:

(*1*) M = $2,000X.

(*2*) D = $1,500X (half of the $1,000 portion LossProp's adjusted basis that does not exceed LossProp's $1,000X value, plus all of the $1,000 portion of LossProp's adjusted basis in excess of LossProp's $1,000X value).

(*3*) T = $500X (half of VW Partnership's adjusted basis in RealProp).

(*4*) Accordingly, W's relevant basis is $500X = $2,000X × ($500X ÷ ($1,500X + $500X)).

(n) *Exceptions*—(1) *In general.* Paragraph (j) of this section does not apply to any qualified conservation contribution that satisfies one or more of the three exceptions in this paragraph (n). However, as provided in paragraph (j)(5) of this section, there is no presumption that a contribution that satisfies one or more of the three exceptions in this paragraph (n) is compliant with section 170, any other section of the Code, the regulations in this part, or any other guidance. Being described in this paragraph (n) is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy other requirements of section 170 or overvaluation of the contribution. In addition, taxpayers who engage in transactions that satisfy one or more of the three exceptions in this paragraph (n) may nonetheless be required to disclose, under § 1.6011–4, the transactions as listed transactions.

(2) *Exception for contributions outside three-year holding period*—(i) *In general.* Paragraph (j) of this section does not apply to any qualified conservation contribution by a contributing partnership or contributing S corporation made at least three years after the latest of—

(A) The last date on which the contributing partnership or contributing S corporation acquired any portion of the real property with respect to which such qualified conservation contribution is made;

(B) The last date on which any partner in the contributing partnership or shareholder in the contributing S corporation acquired any interest in such partnership or S corporation; and

(C) If the interest in the contributing partnership is held through one or more upper-tier partnerships or upper-tier S corporations—

(*1*) The last date on which any such upper-tier partnership or upper-tier S corporation acquired any interest in the

contributing partnership or any other upper-tier partnership; and

(*2*) The last date on which any partner or shareholder in any such upper-tier partnership or upper-tier S corporation acquired any interest in such upper-tier partnership or upper-tier S corporation.

(ii) *Acquisition of partnership interest.* For purposes of this paragraph (n)(2), an acquisition of any interest in a partnership is any *variation* within the meaning of that term in § 1.706–4(a)(1); however, a variation does not include a change in allocations that satisfies the requirements of § 1.706–4(b)(1).

(iii) *Acquisition of interest in an S corporation.* For purposes of this paragraph (n)(2), an acquisition of any interest in an S corporation is any transfer, issuance, redemption, or other disposition of stock in the S corporation; however, an acquisition does not include any issuance or redemption involving all shareholders that does not affect the proportionate ownership of any shareholder.

(iv) *Exception is determined at the level of the contributing partnership or contributing S corporation.* If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(2), then this paragraph (n)(2) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(2) if the person had been the one to make the qualified conservation contribution.

(v) *Examples.* The following examples illustrate the provisions of this paragraph (n)(2). For the two examples in this paragraph (n)(2)(v), assume that the exceptions in paragraphs (n)(3) and (4) of this section do not apply.

(A) *Example 1*—(*1*) *Facts.* ABC Partnership is a partnership for Federal income tax purposes. Since 2015, ABC Partnership's partners have been A, an individual, and BC Inc., an S corporation. Since 2015, BC Inc.'s shareholders have been B and C, each of whom is an individual that is not a nonresident alien. On December 27, 2024, ABC Partnership acquires real property. On August 29, 2025, BC Inc. redeems half of B's shares in BC Inc. On December 28, 2027, ABC Partnership makes a qualified conservation contribution.

(*2*) *Analysis.* Pursuant to paragraph (n)(2)(iii) of this section, BC Inc.'s redemption of some of B's shares is treated as an acquisition of an interest in BC Inc. for purposes of this paragraph (n)(2). Accordingly, ABC Partnership's contribution occurred less than three years after the latest acquisition of an interest in a partnership or S corporation that held an interest in ABC Partnership, the contributing partnership. Therefore, ABC Partnership's contribution fails to satisfy the requirements of this paragraph (n)(2) and ABC Partnership must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution.

(B) *Example 2*—(*1*) *Facts.* LTP Partnership is a partnership for Federal income tax purposes. Since 2017, LTP Partnership's partners have been UTP Partnership, a partnership for Federal income tax purposes, and FG Inc., an S corporation. Since 2018, UTP Partnership's partners have been individuals D and E, and there has been no variation in their ownership. Since 2019, FG Inc.'s shareholders have been F and G, each of whom is an individual that is not a nonresident alien. On March 15, 2024, LTP Partnership acquires real property. On September 15, 2026, D dies and D's interest in UTP Partnership passes to D's estate. On March 18, 2027, LTP Partnership makes a qualified conservation contribution. LTP Partnership allocates all of the qualified conservation contribution to FG Inc.

(*2*) *Analysis.* Pursuant to paragraph (n)(2)(ii) of this section, the transfer of D's interest in UTP Partnership to D's estate is treated as an acquisition of an interest in UTP Partnership for purposes of this paragraph (n)(2). Accordingly, LTP Partnership's contribution occurred less than three years after the latest acquisition of an interest in a partnership or S corporation that held an interest in LTP Partnership, the contributing partnership. Therefore, LTP Partnership's contribution fails to satisfy the requirement of this paragraph (n)(2). Pursuant to paragraph (n)(2)(iv) of this section, FG Inc. cannot avail itself of this paragraph (n)(2) with respect to its allocated portion of LTP Partnership's contribution. Accordingly, FG Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether its allocated portion is a disallowed qualified conservation contribution.

(3) *Exception for family partnerships and S corporations*—(i) *General rule.* Paragraph (j) of this section does not apply with respect to any qualified conservation contribution made by a contributing partnership or contributing S corporation if at least 90 percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual and the contributing partnership or contributing S corporation meets the requirements of this paragraph (n)(3).

(ii) *Ninety percent of the interests*—(A) *Family partnerships.* In the case of a contributing partnership, at least 90 percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual.

(B) *Family S corporations.* In the case of a contributing S corporation, at least 90 percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the total value and at least 90 percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

(iii) *Members of the family.* For purposes of this paragraph (n)(3), the term *members of the family* means, with respect to any individual—

(A) The spouse of such individual;

(B) Any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code;

(C) The estate of a deceased individual who was described in paragraph (n)(3)(iii)(A) or (B) of this section at the time of death; and

(D) A trust all of the beneficiaries of which are individuals described in paragraph (n)(3)(iii)(A) or (B) of this section, treating as *beneficiaries* for this purpose those persons who currently must or may receive income or principal from the trust and those persons who would succeed to the property of the trust if the trust were to terminate immediately before the qualified conservation contribution.

(iv) *Anti-abuse rules*—(A) *Holding period.* This paragraph (n)(3) does not apply unless at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by an individual and members of the family of that individual for at least one year prior to the date of the contribution. The members of the family during that year need not be the same members of the family that own an interest at the time

of the qualified conservation contribution; however, at least one individual must own an interest for the entire year, and at least 90 percent of the interests in the property must be owned, directly or indirectly, during that year by that individual and members of that individual's family. Solely for purposes of this paragraph (n)(3)(iv)(A), section 1223(1) and (2) of the Code do not apply in determining whether at least ninety percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. This paragraph (n)(3)(iv)(A) does not apply if the entire amount of the qualified conservation contribution is limited by section 170(e) to the contributing partnership's or contributing S corporation's adjusted basis in the qualified conservation contribution.

(B) *Allocations.* This paragraph (n)(3) does not apply unless at least 90 percent of the qualified conservation contribution is allocated to the individual and all members of the family who own at least 90 percent of the interests in the contributing partnership or contributing S corporation under paragraph (n)(3)(ii) of this section.

(v) *Exception is determined at the level of the contributing partnership or contributing S corporation.* If the contributing partnership or contributing S corporation satisfies the requirements of this paragraph (n)(3), then any upper-tier partnership or upper-tier S corporation need not apply paragraphs (j) through (m) of this section and this paragraph (n) to its allocated portions of such contribution. If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(3), then the exception in this paragraph (n)(3) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(3) if the person had been the one to make the contribution.

(vi) *Examples.* The following examples illustrate the provisions of this paragraph (n)(3). For the two examples in this paragraph (n)(3)(vi), assume that the exceptions in paragraphs (n)(2) and (4) of this section do not apply.

(A) *Example 1*—(*1*) *Facts.* Individual A and A's sibling B acquire real property by purchase on July 5, 2024. On September 14, 2024, B transfers its interest in the real property to B's child C. On February 21, 2025, A and C transfer their interests in the real property to AC Partnership, a partnership for Federal income tax purposes whose only partners are A and C. On March 18, 2025, A's stepfather D becomes a partner in AC Partnership in exchange for a capital contribution. On September 15, 2025, AC Partnership makes a qualified conservation contribution on the real property. AC Partnership never had any partners other than A, C, and D.

(*2*) *Analysis.* B, C, and D qualify as members of the family with respect to A. Accordingly, as of the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits of AC Partnership were owned by an individual and members of that individual's family. In addition, at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly and indirectly, by A and members of A's family for at least one year prior to the date of the contribution. Moreover, at least 90 percent of the contribution is allocated to A and members of A's family. Accordingly, the requirements of this paragraph (n)(3) are satisfied, and the Disallowance Rule in section 170(h)(7)(A) and paragraph (j) of this section does not apply.

(B) *Example 2*—(*1*) *Facts.* LTP Partnership is a partnership for Federal income tax purposes whose partners are EF Inc., an S corporation, and UTP Partnership, a partnership for Federal income tax purposes. EF Inc. and UTP Partnership each hold a 50 percent interest in the profits and capital of LTP Partnership. The shareholders of EF Inc. are E and E's sibling F. The partners of UTP Partnership are G and G's child H. E and F are not related to G and H. LTP Partnership has held real property since 2019. On July 5, 2024, LTP Partnership distributes half of the acres of its real property to EF Inc., and the remaining acres to UTP Partnership. On October 21, 2024, EF Inc., makes a qualified conservation contribution on the real property it received from LTP Partnership. The amount of EF Inc.'s qualified conservation contribution is not limited by section 170(e).

(*2*) *Analysis.* F qualifies as a member of the family with respect to E. Accordingly, as of the time of EF Inc.'s qualified conservation contribution, EF Inc. was owned at least 90 percent by an individual and members of that individual's family. In addition, at least 90 percent of EF Inc's qualified conservation contribution is allocated to E and members of E's family. However, E and members of E's family failed to own at least 90 percent of the property with respect to which the qualified conservation contribution was made for at least one year prior to the date of the contribution. In particular, G and H (who are not members of the family with respect to E or F) indirectly owned a 50 percent interest in the property until July 5, 2024. Accordingly, the requirements of this paragraph (n)(3) are not satisfied. EF Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution. If the entire amount of EF Inc.'s qualified conservation contribution had been limited by section 170(e) to EF Inc.'s adjusted basis in the qualified conservation contribution, then paragraph (n)(3)(iv)(A) of this section would not have applied; accordingly, the requirements of this paragraph (n)(3) would have been satisfied, and the Disallowance Rule in section 170(h)(7)(A) and paragraph (j) of this section would not have applied.

(4) *Exception for contributions to preserve certified historic structures.* Paragraph (j) of this section does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). *See* § 1.170A–16(f)(6) for special reporting requirements for a contribution that meets the exception in this paragraph (n)(4).

(o) *Applicability dates*—(1) *In general.* Except as provided in paragraphs (g)(4)(ii), (i), and (o)(2) of this section, paragraphs (a) through (i) of this section apply only to contributions made on or after December 18, 1980. Paragraphs (j) through (n) of this section apply to contributions made after December 29, 2022.

(2) *Exception.* Paragraph (h)(4)(ii) of this section applies on and after June 1, 2023.

■ **Par. 3.** Section 1.170A–16 is amended by:

■ 1. In paragraph (c)(3)(iv)(F), adding the word ''and'' at the end of the paragraph, and in paragraph (c)(3)(iv)(G), removing the word ''and'' at the end of the paragraph;

■ 2. Redesignating paragraph (c)(3)(v) as paragraph (c)(3)(vi) and adding new paragraph (c)(3)(v);

■ 3. In paragraph (d)(3)(vii), removing the word ''and'' at the end of the paragraph;
■ 4. Redesignating paragraph (d)(3)(viii) as paragraph (d)(3)(x) and adding new paragraph (d)(3)(viii);
■ 5. Adding paragraph (d)(3)(ix);
■ 6. Revising paragraph (f)(4);
■ 7. Adding paragraph (f)(6); and
■ 8. Revising paragraph (g).

The additions and revisions read as follows:

§ 1.170A–16 Substantiation and reporting requirements for noncash charitable contributions.

* * * * *

(c) * * *

(3) * * *

(v) If a number can be inserted into any box on Form 8283 (Section A), the number inserted in the box on Form 8283 (Section A). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (c)(3)(v) precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 (Section A) and including an attached statement explaining any additional information regarding the number. Taxpayers may not respond to a request for information on Form 8283 (Section A) with nonresponsive language; for example, by indicating that the requested information is *available upon request* or will be *provided upon request.* The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section A) may be treated by the IRS as being an incomplete filing of Form 8283; and

* * * * *

(d) * * *

(3) * * *

(viii) In the case of a partnership or S corporation that makes a qualified conservation contribution, the sum of each ultimate member's relevant basis, computed in accordance with § 1.170A–14(j) through (m), but only:

(A) For contributions described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), regardless of whether they are also described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations); and

(B) For all contributions not described in section 170(h)(7)(E) and § 1.170A–14(n)(4), provided they are not described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations);

(ix) If a number can be inserted into any box on Form 8283 (Section B), the number inserted in the box on Form 8283 (Section B). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (d)(3)(ix) precludes a taxpayer from both inserting the number in the appropriate box on Form 8283 (Section B) and including an attached statement explaining any additional information regarding the number. Taxpayers may not respond to a request for information on Form 8283 (Section B) with nonresponsive language; for example, by indicating that the requested information is *available upon request* or will be *provided upon request.* The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section B) may be treated by the IRS as being an incomplete filing of Form 8283; and

* * * * *

(f) * * *

(4) *Partners and S corporation shareholders*—(i) *Form 8283 (Section A or Section B) must be provided to partners and S corporation shareholders.* If the donor is a partnership or an S corporation, the donor must provide a copy of its completed Form 8283 (Section A or Section B) to every partner or shareholder who receives an allocation of a charitable contribution under section 170 for the property described in Form 8283 (Section A or Section B). Similarly, a recipient partner that is a partnership or S corporation must provide a copy of the donor's completed Form 8283 (Section A or Section B) to each of its partners or shareholders who receives an allocation of the charitable contribution, and so on through any additional tiers.

(ii) *Partners and S corporation shareholders must attach Forms 8283 (Section A or Section B) to return.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution under section 170 for property to which paragraph (c), (d), or (e) of this section applies must attach to the return on which the contribution is claimed a copy of each Form 8283 that must be provided to them under paragraph (f)(4)(i) or (iii) of this section.

(iii) *Partners and S corporation shareholders must file separate Forms 8283 and provide copies to any partners*—(A) *In general.* Subject to paragraph (f)(4)(iii)(B) of this section, every partner of a partnership (including a partner that is itself a partnership or S corporation) or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for which paragraph (c), (d), or (e) of this section applies must complete a separate Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In the case of a partner that is itself a partnership or S corporation, that partnership or S corporation must provide a copy of its completed separate Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed, in addition to the copy of each Form 8283 that the partner or shareholder is required to attach pursuant to paragraph (f)(4)(ii) of this section.

(B) *Conservation contributions.* The terms defined in § 1.170A–14(j)(3) apply for purposes of this paragraph (f)(4)(iii)(B). In the case of a qualified conservation contribution that is made by a partnership or S corporation, an ultimate member's separate Form 8283 must include their own relevant basis. An upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant basis (as computed in accordance with § 1.170A–14(j) through (m)). This paragraph (f)(4)(iii)(B) does not apply to contributions described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), in which case this paragraph (f)(4)(iii)(B) does apply.

* * * * *

(6) *Conservation contributions by pass-through entities preserving certified historic structures*—(i) *In general.* The terms defined in § 1.170A–14(j)(3) apply for purposes of this paragraph (f)(6). For any contribution described in paragraph (f)(6)(ii) of this section, pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code

under which deductions are allowable to pass-through entities with respect to such contribution unless the contributing partnership, the contributing S corporation, the upper-tier partnership, or the upper-tier S corporation, respectively—

(A) Includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion, as described in paragraph (f)(6)(iii) of this section; and

(B) Provides such information about the contribution as the Secretary of the Treasury or her delegate may require in guidance, forms, or instructions.

(ii) *Contributions to which this paragraph (f)(6) applies.* This paragraph (f)(6) applies to any qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14):

(A) The conservation purpose of which is preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C));

(B) That is either:

(*1*) Made by a contributing partnership or contributing S corporation (as defined in § 1.170A–14(j)(3)(iv)); or

(*2*) Is an allocated portion (as defined in § 1.170A–14(j)(3)(i)) of an upper-tier partnership (as defined in § 1.170A–14(j)(3)(xi)) or upper-tier S corporation (as defined in § 1.170A–14(j)(3)(xii)); and

(C) The amount of such contribution (as defined in § 1.170A–14(j)(3)(ii)) or such allocated portion (as defined in § 1.170A–14(j)(3)(i)) exceeds 2.5 times the sum of each ultimate member's relevant basis (as defined in § 1.170A–14(j) through (m)).

(iii) *Required information.* A partnership or S corporation satisfies the requirements of section 170(f)(19)(A) and paragraph (f)(6)(i) of this section by filing a completed Form 8283, including information about relevant basis, in accordance with section 170, the regulations under section 170, and the instructions to Form 8283.

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to contributions made after July 30, 2018.

(2) *Certain paragraphs.* Paragraphs (c)(3)(v), (d)(3)(viii) and (ix), and (f)(4) and (6) of this section apply to taxable years ending on or after November 20, 2023.

■ **Par. 4.** Section 1.706–0 is amended by revising the entry for § 1.706–3 to read as follows:

§ 1.706–0 Table of contents.

* * * * *

§ 1.706–3 Items attributable to interest in lower-tier partnership.

(a) through (c) [Reserved]

(d) Conservation contributions.

(e) Applicability date.

* * * * *

■ **Par. 5.** Section 1.706–3 is revised to read as follows:

§ 1.706–3 Items attributable to interest in lower-tier partnrship.

(a) through (c) [Reserved]

(d) *Conservation contributions.* For purposes of section 706(d)(3), in the case of a qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in accordance with their interests in the qualified conservation contribution at the time of day at which the qualified conservation contribution was made, regardless of the general rule of section 706(d)(3). Pursuant to § 1.706–4(a)(2), the rules of § 1.706–4 do not apply to allocations subject to this section.

(e) *Applicability date.* Paragraph (d) of this section applies to qualified conservation contributions made after December 29, 2022, and in partnership taxable years ending after December 29, 2022.

■ **Par. 6.** Section 1.706–4 is amended by:

■ 1. Adding a reserved paragraph (e)(2)(xii);

■ 2. Adding paragraph (e)(2)(xiii); and

■ 3. Revising paragraph (e)(3).

The additions and revision read as follows:

§ 1.706–4 Determination of distributive share when a partner's interest varies.

* * * * *

(e) * * *

(2) * * *

(xii) [Reserved]

(xiii) Applicable for partnership taxable years ending after December 29, 2022, any qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A–14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)) made after December 29, 2022.

(3) *Small item exception*—(i) *In general.* A partnership may treat an item described in paragraph (e)(2) of this section (except for an item described in paragraph (e)(2)(xiii) of this section) as other than an extraordinary item for purposes of this paragraph (e) if, for the partnership's taxable year the total of all items in the particular class of extraordinary items (as enumerated in paragraphs (e)(2)(i) through (xii) of this section, for example, all tort or similar liabilities, but in no event counting an extraordinary item more than once) is less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and the total amount of the extraordinary items from all classes of extraordinary items amounting to less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed $10 million in the taxable year, determined by treating all such extraordinary items as positive amounts.

(ii) *Applicability date.* This paragraph (e)(3) applies to partnership taxable years ending after December 29, 2022. For partnership taxable years ending before December 30, 2022, see paragraph (e)(3) of this section contained in 26 CFR part 1, as revised April 1, 2024.

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Douglas W. O'Donnell,

Deputy Commissioner.

Approved: June 15, 2024.

Aviva R. Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

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