

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11], Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

**Paragraph 2004 Jet Routes.**

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**J–35 [Amended]**

From Leeville, LA; Mc Comb, MS; Sidon, MS; Memphis, TN; to Farmington, MO.

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**J–101 [Amended]**

From Humble, TX; Lufkin, TX; Little Rock, AR; St. Louis, MO; to Spinner, IL. From Northbrook, IL; Badger, WI; Green Bay, WI; to Sault Ste Marie, MI.

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*Paragraph 6010(a) Domestic VOR Federal Airways.*

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**V–9 [Amended]**

From Leeville, LA; Mc Comb, MS; INT Mc Comb 004° and Magnolia, MS, 194° radials; Magnolia; Sidon, MS; Marvell, AR; INT Marvell 326° and Walnut Ridge, AR, 187° radials; Walnut Ridge; Farmington, MO; St. Louis, MO; to Spinner, IL. From Janesville, WI; Madison, WI; Oshkosh, WI; Green Bay, WI; Iron Mountain, MI; to Houghton, MI.

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**V–48 [Amended]**

From Burlington, IA; to Peoria, IL.

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**V–69 [Amended]**

From El Dorado, AR; Pine Bluff, AR; INT Pine Bluff 038° and Walnut Ridge, AR, 187° radials; Walnut Ridge; Farmington, MO; Troy, IL; to Spinner, IL.

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**V–227 [Amended]**

From Boiler, IN; to Roberts, IL.

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**V–313 [Amended]**

From Centralia, IL; to Adders, IL.

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**V–586 [Removed]**

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Issued in Washington, DC, on October 2, 2024.

**Frank Lias,**

*Manager, Rules and Regulations Group.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 10007]

**RIN 1545–BQ39**

**Syndicated Conservation Easement Transactions as Listed Transactions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The regulations affect participants in these transactions as well as material advisors.

**DATES:**

*Effective date:* These regulations are effective on October 8, 2024.

*Applicability date:* For applicability dates, see § 1.6011–9(h).

**FOR FURTHER INFORMATION CONTACT:**

Concerning any provisions in the final regulations within the jurisdiction of the Associate Chief Counsel (Income Tax & Accounting), Joshua S. Klaber, (202) 317–4624, and Eugene Kirman, (202) 317–5149, and concerning any provisions in the final regulations within the jurisdiction of the Associate Chief Counsel (Passthroughs & Special Industries), Charles Wien, (202) 317–5279 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Authority**

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 6011 of the Internal Revenue Code (Code) to identify certain syndicated conservation easement transactions and substantially similar transactions as listed transactions, a type of reportable transaction (final regulations).

Section 6001 of the Code provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary), requiring every taxpayer to keep the records, render the statements, make the returns, and comply with the rules and regulations that the Secretary deems necessary to demonstrate tax liability and prescribes, either by notice served or by regulations.

Section 6011 of the Code provides an express delegation of authority to the Secretary, requiring every taxpayer to “make a return or statement according to the forms and regulations prescribed by the Secretary” and “include therein the information required by such forms or regulations.”

In addition, section 6707A(c)(1) of the Code, in defining the term “reportable transaction” relating to the imposition of penalties under section 6707A(a) on “[a]ny person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement,” provides an express delegation of authority to the Secretary, stating that, “[t]he term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.” Section 6707A(c)(2), in defining the term “listed transaction” provides an express delegation of authority to the Secretary, stating that, “[t]he term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.”

The final regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

**Background***I. The Proposed Regulations*

On December 8, 2022, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–106134–22) in the **Federal Register** (87 FR 75185) proposing regulations that would identify certain syndicated conservation easement transactions and substantially similar transactions as “listed transactions” for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112 of the Code (proposed regulations). The provisions of the proposed regulations

are explained in greater detail in the preamble to the proposed regulations. The Treasury Department and the IRS received 26 comments in response to the proposed regulations and notice of public hearing that are the subject of this final rulemaking. The comments are available for public inspection at <https://www.regulations.gov> or upon request. A public hearing on the proposed regulations was held by teleconference on March 1, 2023, at 10 a.m. Eastern Time, at which five speakers provided testimony.

After full consideration of the comments received and the testimony provided, these final regulations adopt the proposed regulations with certain revisions described in the Summary of Comments and Explanation of Revisions.

## II. Section 605 of the SECURE 2.0 Act

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 (December 29, 2022), was enacted just 15 days after publication of the proposed regulations. Section 605(a) of the SECURE 2.0 Act added section 170(h)(7)(A) to the Code, which provides 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, as defined in section 170(h)(7)(B). Section 170(h)(7)(F) states that the rules of section 170(h)(7) apply equally to S corporations and other pass-through entities.

Section 605(a) of the SECURE 2.0 Act also added section 170(h)(7)(C) through (E) to the Code, which provide three exceptions to the general disallowance rule in section 170(h)(7)(A). Section 170(h)(7)(C) creates an exception for contributions by a pass-through entity that satisfy a three-year holding period; section 170(h)(7)(D) creates an exception for contributions made by family pass-through entities; and section 170(h)(7)(E) creates an exception for contributions made to preserve a building that is a certified historic structure (as defined in section 170(h)(4)(C)).

Section 605(b) of the SECURE 2.0 Act added section 170(f)(19) to the Code, creating additional reporting requirements for any qualified conservation contribution (1) the conservation purpose of which is the preservation of any building which is a certified historic structure (as defined in

section 170(h)(4)(C)), (2) which is made by a partnership (whether directly or as a distributive share of a contribution of another partnership), and (3) the amount of which exceeds 2.5 times the sum of each partner's relevant basis (as defined in section 170(h)(7)) in the partnership making the contribution. Section 170(f)(19)(C) states that, except as may be otherwise provided by the Secretary, the rules of section 170(f)(19) apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships.

Section 170(f)(19)(A) provides that no deduction is allowed for such a contribution unless the entity making the contribution (1) includes on its return for the taxable year in which the contribution is made a statement that the entity made such a contribution and (2) provides such information about the contribution as the Secretary may require.

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

On November 20, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–112916–23) in the **Federal Register** (88 FR 80910) proposing regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act, including the calculation of relevant basis. On June 28, 2024, the Treasury Department and the IRS finalized these regulations in TD 9999 (89 FR 54284).

### Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions summarizes all significant comments addressing the proposed regulations, and describes and responds to comments concerning: (1) the listed transaction system generally; (2) conservation easements generally; (3) the continued necessity of finalizing these regulations following passage of section 605 of the SECURE 2.0 Act; (4) the elements of the listed transaction identified in these final regulations; and (5) the role of donee organizations under these final regulations.

Comments outside the scope of this rulemaking are not adopted.

#### I. Comments Addressing the General Rules of the Listed Transaction System

Many comments addressed rules that apply generally to any listed transaction. While these comments are

outside the scope of this rulemaking, the Treasury Department and the IRS have nonetheless considered these comments in finalizing these regulations.

#### A. Requirement To Report for Currently “Open” Periods Upon Identification of a Listed Transaction

Several commenters argued that the proposed regulations' listed transaction designation is impermissibly retroactive because taxpayers who previously filed tax returns (or amended tax returns) reflecting their participation in syndicated conservation easement transactions but that did not disclose their participation pursuant to Notice 2017–10 will be required to disclose those transactions once these final regulations are published in the **Federal Register**. The commenters opined that this so-called retroactive reach of the proposed listed transaction designation is unfair and likely a violation of law under various theories, including that it may be a taking under the Fifth Amendment or constitute involuntary servitude under the Thirteenth Amendment, and that it undermines the purpose of the Administrative Procedure Act's (APA) notice and comment process. Several commenters noted that the Tax Court has not determined whether a listed transaction designation can be applied retroactively; thus, their theory has not been resolved judicially.

The reporting rules for listed transactions are outside the scope of these final regulations, which merely identify a listed transaction. The reporting rules for listed transactions are found in § 1.6011–4, which was issued pursuant to notice and comment and finalized most recently in TD 9350 (72 FR 43146), published in 2007 and which is not amended by these final regulations. Section 1.6011–4(e)(2)(i) requires reporting of transactions entered into prior to the publication of guidance identifying a transaction as a listed transaction if the statute of limitations for assessment of tax is still open when the transaction becomes a listed transaction. While the reporting mandated by § 1.6011–4 may be with respect to prior periods, the disclosure obligation is itself not retroactive—it is a current reporting obligation. Thus, the comments regarding an impermissible retroactive burden required by § 1.6011–4 are without merit.

#### B. Determining an “Open Year”

Several commenters requested additional guidance on what constitutes an “open year” for purposes of reporting the listed transaction. These commenters opined that the final

regulations should not be able to hold open (or re-open) a statute of limitations for a return that was filed before the relevant transaction became a listed transaction. One commenter stated that such a rule would result in taxpayers currently under audit and disputing penalties based on an expired statute of limitations finding one legal basis of their case evaporated, undoing months or years of analysis and evaluation.

Guidance on open years for purposes of applying § 1.6011-4 is outside the scope of these final regulations, which merely identify a listed transaction. However, if a taxpayer who is required to disclose a listed transaction for a taxable year for which the statute of limitations has not expired prior to the identification of the listed transaction fails to do so, then the taxpayer's statute of limitations will continue to stay open for that taxable year as provided in section 6501(c)(10) of the Code. Section 6501(c)(10) provides that, if a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2) of the Code) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by the Code with respect to such transaction does not expire before the date that is one year after the earlier of (1) the date the taxpayer provides the required information or (2) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer. Section 301.6501(c)-1(g)(3)(iii) of the Procedure and Administration Regulations (26 CFR part 301), which was issued pursuant to notice and comment and finalized most recently in TD 9718 (80 FR 16973), published in 2015, and which is not amended by these final regulations, provides (1) that the taxable years to which the failure to disclose relates include each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and for which the taxpayer failed to disclose the listed transaction as required under section 6011, and (2) if the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable years to which the failure to disclose relates include each taxable

year for which the taxpayer participated in the transaction.

Several commenters asked for guidance as to what constitutes an "open" tax year for taxpayers that took the position they were not required to file a Form 8886, *Reportable Transaction Disclosure Statement*, because Notice 2017-10 was invalidated. This requested guidance is also outside the scope of these final regulations for the reasons discussed in the prior paragraph.

#### C. Abating Section 6707A Penalties

One commenter expressed concern that there are no adequate procedures or policies for abating section 6707A penalties with respect to listed transactions. This comment is outside the scope of these final regulations as the regulations merely identify a listed transaction. The rules concerning section 6707A penalties are found in § 301.6707A-1, which was issued pursuant to notice and comment and finalized most recently in TD 9853 (84 FR 11217), published in 2019 and which is not amended by these final regulations.

#### D. Material Advisors

The proposed regulations provided no special rules for material advisors. However, the effect of identifying a listed transaction is, in part, to require certain disclosures from material advisors.

One commenter asked that the final regulations provide guidance to appraisers on the application of any material advisor requirements, and suggested that, if an appraiser is engaged after an easement is put in place, the appraiser should not be considered a material advisor.

The requested guidance is outside the scope of these final regulations; however, the Treasury Department and the IRS note that the definition of material advisor is found in § 301.6111-3(b), which was issued pursuant to notice and comment and finalized in TD 9351 (72 FR 43157), published in 2007 and which is not amended by these final regulations. A material advisor is a person who makes a "tax statement," as defined in § 301.6111-3(b)(2)(ii), and derives gross income in excess of the "threshold amount," as defined in § 301.6111-3(b)(3) (generally, \$10,000 for listed transactions). Section 301.6111-3 contains no exception for providing advice "after" the transaction is entered into. Section 301.6111-3(b)(4)(i) provides that a person will be treated as becoming a material advisor when all of the following events have occurred (in no particular order): (1) the

person provides material aid, assistance, or advice as described in § 301.6111-3(b)(2); (2) the person directly or indirectly derives gross income in excess of the threshold amount as described in § 301.6111-3(b)(3); and (3) the transaction is entered into by the taxpayer to whom or for whose benefit the person provided the tax statement, or in the case of a tax statement provided to another material advisor, when the transaction is entered into by a taxpayer to whom or for whose benefit that material advisor provided a tax statement. Thus, an appraiser that is engaged after an easement is put in place can be a material advisor based on statements or actions after an easement is put in place.

A few commenters argued that the "retroactivity component" to material advisors (due to required disclosures) is impermissible or burdensome. This comment is without merit and outside the scope of these final regulations; however, the Treasury Department and the IRS note that § 301.6111-3(b)(4)(iii) provides that, if a transaction that was not a reportable transaction is identified as a listed transaction in published guidance after the occurrence of the events described in § 301.6111-3(b)(4)(i), the person will be treated as becoming a material advisor on the date the transaction is identified as a listed transaction. As the resulting obligations imposed are limited to actions the person must take thereafter, the requirement is not retroactive.

## II. Comments Concerning Conservation Easements Generally

Several commenters addressed aspects of conservation easements that are outside the scope of these final regulations but have nonetheless been considered in adopting these final regulations. This part II of this Summary of Comments and Explanation of Revisions describes and responds to comments relating to: (1) the consistency of these final regulations with the congressional intent to conserve land; (2) overvaluation abuse in abusive syndicated conservation easement transactions; (3) whether disclosure of the listed transactions is needed since taxpayers must file Form 8283, *Noncash Charitable Contributions*; and (4) requests for enforcement data on syndicated conservation easement transactions.

#### A. Supporting Conservation While Combatting Abuse

One commenter noted that abusive syndicated conservation easement transactions are antithetical to the concept of charity that section 170(h)

was designed to enable. The Treasury Department and the IRS agree.

However, several commenters opined that identification of syndicated conservation easement transactions as listed transactions is inconsistent with congressional intent to promote conservation. These commenters argued that the proposed regulations disincentivize conservation by increasing the audit risk of taxpayers involved in syndicated conservation easement transactions and that the uncertainty relating to what is considered a “substantially similar” transaction has a chilling effect. These commenters further argued that the proposed regulations go beyond the scope of section 170(h)(7), violate the separation of powers, and are contrary to the priorities of the Administration.

The Treasury Department and the IRS do not agree with the comments criticizing the identification of syndicated conservation easement transactions as listed transactions. Contrary to the commenters’ assertions, Congress has made it clear that it is concerned with abusive syndicated conservation easement transactions. *See, e.g., Syndicated Conservation-Easement Transactions*, S. Prt. 116–44 (August 2020). The minimal impact on taxpayers who claim legitimate charitable contribution deductions for qualified conservation contributions and who may decide to file a protective disclosure is far outweighed by the benefit of requiring disclosure for the identified transactions. In addition, combatting abusive tax shelters is a priority for the Federal government.

#### B. Valuation Abuse

Several commenters noted that the central problem with abusive syndicated conservation easements is inaccurate, inflated, and flawed appraisals and the associated overvaluation of conservation easements. A few commenters asked that these final regulations be replaced with “meaningful guidance” on valuation or appraisal methodology, including modifications to the rules for qualified appraisals under § 1.170A–17 and guidance on how to determine the highest and best use of properties for purposes of easement valuation. One commenter suggested that the IRS litigate fraudulent appraisal practices as an alternative to “questioning the long-standing conservation practices of donee organizations.” One commenter suggested establishing an enhanced appraisal process similar to the process the IRS has established for the art community.

Any guidance on valuation is outside the scope of these final regulations, which are limited to identifying a listed transaction. The purpose of these final regulations is to require taxpayers and material advisors to report transactions for which the claimed value of a syndicated conservation easement contribution strongly indicates overvaluation and thus tax avoidance. The Treasury Department and the IRS have challenged and will continue to challenge abusive appraisal practices and overvaluation.

#### C. Disclosures

Some commenters questioned why the IRS needs to identify certain syndicated conservation easements as a listed transaction when contributions of conservation easements are already disclosed on the Form 8283, which contains, among other information, the easement’s appraised value, when and how the property was acquired, the donor’s cost or adjusted basis, the amount deducted, and the date of the contribution. The commenters noted that the Form 8283 must be prepared completely and accurately because a deduction will be disallowed if any information is missing.

The Form 8283, which is filed as a part of a taxpayer’s tax return, does not include all the information contained on Form 8886. It also does not alert the Office of Tax Shelter Analysis to the taxpayer’s participation in an abusive transaction, nor does it trigger disclosure and other obligations of material advisors to the transaction. Accordingly, these comments are not adopted.

#### D. Requests for Enforcement Data

Some commenters, citing to an issue in the remand of *CIC Services, LLC v. IRS*, 592 F. Supp. 3d 677 (E.D. Tenn. 2022), asserted that the proposed regulations are arbitrary and capricious because, in their opinion, the APA requires numerical data on syndicated conservation easement transactions as part of the rationale for identifying a listed transaction. The commenters requested the number of past syndicated conservation easement transactions, the number of syndicated conservation easement transactions challenged, the status and/or outcome of every current syndicated conservation easement challenge, the number of syndicated conservation easement transactions deemed abusive by courts, the dollar amounts involved in syndicated conservation easement transactions, the number of taxpayers affected by syndicated conservation easement transactions, the nature and amount of

the contributions involved, the value and acreage of the property conserved by syndicated conservation easement transactions, and the effect of syndicated conservation easement transactions on nature and wildlife.

*CIC Services* and other authorities do not require the public release of enforcement data, or the other analysis commenters requested, as a part of rulemaking. Section 6011 and the regulations thereunder require that the IRS (1) determine that a transaction is a tax avoidance transaction and (2) identify the transaction as a listed transaction by notice, regulation, or other form of published guidance. The Treasury Department and the IRS have consistently maintained, since the issuance of Notice 2017–10, that certain syndicated conservation easement transactions are tax avoidance transactions and have identified them as such by notice or regulation. An offer to potentially be allocated a charitable contribution deduction that is at least 2.5 times one’s investment, likely resulting in a positive after-tax financial benefit from what is supposed to be a charitable contribution, is strongly indicative of a tax avoidance transaction and has been identified by Congress as such. *See, e.g., section 170(h)(7)*. Further, the data requested by commenters is unrelated to whether the identified transactions are tax avoidance transactions.

#### III. Comments Regarding the Necessity of These Final Regulations in Light of Section 605 of the SECURE 2.0 Act

Several commenters questioned the need for the proposed regulations to be adopted as final regulations, given the enactment in December of 2022 of section 605 of the SECURE 2.0 Act, which added section 170(h)(7) to the Code to disallow a deduction for “the vast majority” of the abusive syndicated conservation easement transactions identified in the proposed regulations. Commenters asked that, in light of the legislation, the proposed regulations either be withdrawn or be revised to take a “more surgical approach” that is in accordance with the new statute (and addresses other concerns).

Some of these commenters opined that the proposed regulations were overbroad and inconsistent with congressional intent, in part because the proposed regulations did not include the three exceptions to section 170(h)(7)(A) that Congress included in section 170(h)(7)(C) through (E). These commenters argued that syndicated conservation easement transactions that meet an exception to section 170(h)(7)(A) should also be excepted

from the definition of the listed transaction identified in the proposed regulations.

Other commenters supported adopting final regulations to help the IRS identify promoters, material advisors, and donee organizations involved in abusive syndicated conservation easement transactions. The commenters noted that section 605 of the SECURE 2.0 Act is prospective only. These commenters, however, suggested a few modifications to the proposed rules, which are discussed later in this part III and in part IV of this Summary of Comments and Explanation of Revisions.

The Treasury Department and the IRS have concluded that it is in the interest of sound tax administration to continue to identify abusive syndicated conservation easement transactions as listed transactions, notwithstanding passage of section 605 of the SECURE 2.0 Act. However, in adopting the proposed regulations as final regulations, the Treasury Department and the IRS have made several modifications to the proposed rules, as described in this Summary of Comments and Explanation of Revisions. Thus, these final regulations are consistent with the commenters' recommendation that the final regulations take "a more surgical approach" to the definition of the syndicated conservation easement listed transaction following the enactment of section 170(h)(7).

Specifically, these final regulations cover three major classes of abusive syndicated conservation easement transactions (and substantially similar transactions): (1) those that involve contributions occurring before December 30, 2022; (2) those for which a charitable contribution deduction is not automatically disallowed by section 170(h)(7); and (3) those that substitute the contribution of a fee simple interest in real property for the contribution of a conservation easement.

#### A. Transactions Occurring Before December 30, 2022

Section 170(h)(7)(A) does not apply to contributions made on or before December 29, 2022. As a result, these final regulations are necessary to obtain reporting of transactions that are the same as, or substantially similar to, syndicated conservation easement transactions in cases in which the conservation easements were contributed before December 30, 2022, and the taxpayers did not disclose the transaction pursuant to Notice 2017–10. Thus, these final regulations impose reporting requirements on taxpayers

who had not previously disclosed their participation in transactions that are the same as, or substantially similar to, syndicated conservation easement transactions to the extent that a taxpayer's participation in the transaction occurred in one or more taxable years as to which the statute of limitations had not run as of the date these final regulations identify the transaction as a listed transaction.

Some commenters contended that, since many taxpayers have already reported their transactions under Notice 2017–10, the IRS already has the information reporting targeted by the proposed regulations. The Treasury Department and the IRS agree that, in such cases, duplicative reporting under these final regulations is unnecessary. Accordingly, these final regulations explicitly provide that taxpayers who fully disclosed their participation in syndicated conservation easement transactions pursuant to Notice 2017–10 do not need to disclose again under these final regulations for any taxable years covered by the prior disclosure.

#### B. Transactions Not Automatically Disallowed by Section 170(h)(7)

The final regulations do not include an exception for transactions that are excluded from the automatic disallowance rule in section 170(h)(7). Of note, the SECURE 2.0 Act, which was enacted after the proposed regulations were issued, does not provide that the exceptions to section 170(h)(7)(A) contained in section 170(h)(7)(C) through (E) are also exceptions for purposes of the listed transaction rules. To the contrary, section 605(c)(2) of the SECURE 2.0 Act explicitly states: "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) of the Internal Revenue Code of 1986, as added by this section." Thus, Congress has indicated that the fact that such transactions are not automatically disallowed does not mean that such transactions could not be abusive.

There are at least two types of conservation easement transactions for which a charitable contribution deduction is not automatically disallowed by section 170(h)(7) that are appropriately considered listed transactions. First, transactions satisfying any of the three exceptions found in section 170(h)(7)(C) through (E) that also contain all the elements of a transaction identified as a listed transaction under these final regulations continue to be transactions that the Treasury Department and the IRS view as likely to be abusive. Thus, the final

regulations do not include any exceptions for transactions described in section 170(h)(7)(C) through (E).

Second, any syndicated conservation easement transaction for which a charitable contribution deduction is not automatically disallowed by section 170(h)(7) because the amount of the partnership's contribution does not exceed 2.5 times the sum of each partner's relevant basis in the partnership is nevertheless a listed transaction with respect to any partner who received promotional materials offering the possibility of being allocated a share of the contribution that equals or exceeds 2.5 times that partner's investment.

#### C. Transactions That Involve Other Contributions of Real Property

The preamble to the proposed regulations stated that transactions in which the contributed property is described in section 170(h)(2)(A) or (B), or is a fee interest in real property, are transactions substantially similar to the listed transaction identified in proposed § 1.6011–9(b). Several commenters noted that this language appears to imply that any transaction that meets the elements of the listed transaction identified in the proposed regulations, but that consists of the contribution of real property, is substantially similar to the listed transaction identified in the proposed regulations.

One commenter supported the inclusion of fee simple contributions in the preamble to the proposed regulations and asked that fee simple transactions be expressly identified in the regulatory text of the final regulations. Another commenter asked that the final regulations "clarify" whether fee simple contributions are considered substantially similar to syndicated conservation easement transactions, stating that "the preamble language is not law." However, several other commenters questioned why contributions of fee simple interests in property would be considered transactions that are substantially similar to the syndicated conservation easement transaction identified in the proposed regulations. One commenter contended that the tax consequences, specifically taxpayer contribution base limitations and carryover periods, are different for fee simple contributions and conservation easement contributions.

The Treasury Department and IRS continue to believe that a transaction that meets the elements of the listed transaction identified in these final regulations, but consists of the contribution of a fee simple interest

rather than of a conservation easement, is substantially similar to the listed transaction identified in these final regulations. The commenters questioning the treatment of contributions of fee simple interests as substantially similar transactions failed to address the broad definition of substantially similar found in § 1.6011-4(c)(4), which was issued after notice and comment; that Congress specifically adopted the term “substantially similar” in its subsequent enactment of section 6707A(c)(2); and that Congress specifically referenced the definition in § 1.6011-4(c)(4) when explaining that provision. See Footnote 232 of House Report 108-548(I), 108th Cong., 2nd Sess. 2004, at 261 (June 16, 2004) (House Report) (emphasis added):

The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. *For this purpose, it is expected that the definition of “substantially similar” will be the definition used in Treas. Reg. sec. 1.6011-4(c)(4).* However, the Secretary may modify this definition (as well as the definitions of “listed transaction” and “reportable transactions”) as appropriate.

In particular, despite the differing taxpayer contribution base limitations and carryover periods between a fee simple donation and a conservation easement donation, the transactions can result in similar types of tax consequences and be either factually similar or based on the same or a similar tax strategy.

In sum, the Treasury Department and the IRS agree that any contribution of real property (including contributions of fee simple interests and contributions described in section 170(h)(2)(A) or (B)) that meets the elements of the listed transaction identified in the proposed regulations is a transaction that is substantially similar to the listed transaction identified in the proposed regulations. Accordingly, § 1.6011-9(c)(7) of these final regulations explicitly states that a transaction that meets all the elements described in § 1.6011-9(b), except that the transaction involves the contribution of a fee simple interest or the contribution of a real property interest described in section 170(h)(2)(A) or (B) instead of a conservation easement, is substantially similar (within the meaning of § 1.6011-4(c)(4)) to the transaction described in § 1.6011-9(b). The final regulations contain an example showing a transaction involving the contribution of a fee simple interest that is substantially

similar to the transaction described in § 1.6011-9(b).

#### D. Other Substantially Similar Transactions

Multiple commenters raised general concerns about the potential scope of transactions that are “substantially similar” to the listed transaction identified in the proposed regulations. Several of those commenters opined that the substantially similar rule is void for vagueness or overbroad, and some commenters requested that the term be made more specific. Several commenters asked whether the 2.5 times rule in proposed § 1.6011-9(b)(1) is a bright-line rule; in other words, whether transactions for which the highest estimate of charitable contribution deduction in the promotional materials is less than 2.5 times a taxpayer’s investment could be substantially similar to the listed transaction identified in these regulations.

As previously discussed, the term “substantially similar” is part of the statutory definition of a listed transaction in section 6707A(c)(2); furthermore, the regulatory definition found in § 1.6011-4(c)(4) was adopted after notice and comment and has been viewed favorably by Congress. Under § 1.6011-4(c)(4), whether a transaction is “substantially similar” to a syndicated conservation easement transaction depends on the tax consequences, the tax strategy, and other facts and circumstances related to the transaction. Section 1.6011-4(c)(4) further provides that the term substantially similar must be broadly construed in favor of disclosure.

The “substantially similar” rule provides an important backstop against advisors’ and promoters’ attempts to avoid the reporting requirements. Consistent with that objective, these final regulations generally do not circumscribe the types of transactions that may be substantially similar to the listed transaction identified in these final regulations. Nonetheless, as discussed in part IV.A.3. of this Summary of Comments and Explanation of Revisions, these final regulations do provide that the 2.5 times rule is a bright-line rule. Thus, transactions in which the promotional materials offer investors the possibility of being allocated a charitable contribution deduction of anything less than 2.5 times a taxpayer’s investment generally are not substantially similar to the listed transaction identified in these final regulations. However, if the taxpayer is nonetheless allocated a charitable contribution deduction that equals or

exceeds 2.5 times the taxpayer’s investment, the rebuttable presumption in § 1.6011-9(d)(3) would apply.

Several commenters asked whether transactions that involve contributions other than real property, such as those that involve contributions of artwork or other non-cash items, are listed transactions. The Treasury Department and the IRS have determined that such transactions are not “substantially similar” for purposes of these final regulations because this listed transaction relates to contributions of real property, not of personal property. The Treasury Department and the IRS will continue to evaluate whether the transactions raised by commenters are tax avoidance transactions and may propose to identify such transactions as listed transactions in future guidance.

A few commenters asked whether transactions that do not involve a contribution by a pass-through entity (such as a transaction involving a contribution by an individual or a corporation) are “substantially similar” transactions. The Treasury Department and the IRS have determined that transactions that do not involve a contribution by a pass-through entity are not considered substantially similar transactions; however, these transactions likewise could be proposed to be identified as tax avoidance transactions in future guidance.

One commenter asked whether transactions that involve deductions other than under section 170 (that is, transactions involving the “use of different Code provisions”), are considered “substantially similar” to the syndicated conservation easement transaction identified in the proposed regulations. It is possible that a pass-through entity could use a deduction other than allowed under section 170 to obtain the same or a similar type of tax consequences, and that such transaction would either be factually similar or based on the same or similar tax strategy to the listed transaction identified in these final regulations. Therefore, the Treasury Department and IRS conclude it is possible that a transaction that abuses the application of a section of the Code other than section 170, for example, section 642(c), could be a substantially similar transaction. Under § 1.6011-4(f)(1), taxpayers who are uncertain whether a particular transaction is substantially similar to a syndicated conservation easement transaction may request a private letter ruling from the IRS.

Several commenters expressed concern that, given the uncertainty about whether a particular transaction would be substantially similar to a

listed transaction, the regulations could have a chilling effect on the willingness of qualified organizations to accept contributions of conservation easements if the section 4965 carveout were eliminated in the final regulations. As described in part V of this Summary of Comments and Explanation of Revisions, these final regulations maintain the section 4965 carveout for qualified organizations, which addresses those concerns.

#### *IV. Comments Regarding Elements of the Listed Transaction Identified in the Proposed Regulations*

Several comments focused on the elements of the listed transaction identified in the proposed regulations. This part IV describes and responds to these comments, specifically comments regarding (1) the 2.5 times rule; (2) application of the 2.5 times rule; (3) timing rules; and (4) definitions.

##### A. The 2.5 Times Rule

Commenters addressed the rationale for the 2.5 times multiple, interaction with the 2.5 times rule in section 170(h)(7), and whether 2.5 times is a bright line.

##### 1. Rationale for the 2.5 Times Multiple

Several commenters questioned the rationale for the 2.5 times multiple in the proposed regulations. Some commenters argued that, depending on the top marginal tax rate, a 2.5 times multiple would result in minimal, if any, tax benefit to the investor. One commenter opined that, because there is no explanation for how the multiple was determined, there is no way to determine whether this criterion is reasonable.

The Treasury Department and the IRS have concluded, consistent with Notice 2017–10, that once a transaction offers the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the amount of the taxpayer's investment, the transaction is a tax avoidance transaction that justifies a reporting obligation. At this 2.5 times threshold, a taxpayer in the highest current marginal tax bracket claiming a charitable contribution deduction for a qualified conservation contribution will approximately break even before considering State tax benefits, and, for any amounts above 2.5 times, will have an economic gain directly from making the charitable contribution deduction. This multiple is also aligned with the 2.5 times threshold established by Congress in section 605 of the SECURE 2.0 Act, which disallows certain deductions at the partnership level for

contributions exceeding 2.5 times the sum of each partner's relevant basis. Thus, the Treasury Department and the IRS conclude that it is reasonable and in the sound interest of tax administration to adopt the 2.5 times threshold as proposed.

##### 2. Interaction With the 2.5 Times Rule in Section 170(h)(7)

Several commenters addressed the interaction of the 2.5 times rule with section 170(h)(7) and asked whether only transactions in which the charitable contribution deduction promised in the promotional materials is exactly 2.5 times the investment need to be disclosed (because transactions in which the deduction amount exceeds 2.5 times the investment are generally disallowed by section 170(h)(7)). Under these final regulations, both transactions in which the charitable contribution deduction promised in the promotional materials is exactly 2.5 times the investment and transactions in which the charitable contribution deduction promised in the promotional materials exceeds 2.5 times the investment must be disclosed.

As discussed in part III of this Summary of Comments and Explanation of Revisions, certain transactions for which a deduction is not disallowed by section 170(h)(7) are nevertheless considered listed transactions.

##### 3. Whether 2.5 Times Is a Bright Line

As noted in part III.D. of this Summary of Comments and Explanation of Revisions, several commenters asked whether 2.5 times is a bright line; in other words, whether transactions for which the highest estimate of charitable contribution deduction in the promotional materials is less than 2.5 times a taxpayer's investment could be considered substantially similar transactions. One of these commenters encouraged the IRS to clarify that the 2.5 times rule is not intended to create or imply a safe harbor for excessive valuations below the 2.5 times threshold and that the 2.5 times rule does not implicitly approve charitable contribution deduction amounts less than 2.5 times a taxpayer's investment. This commenter noted that, regardless of whether a contribution is a listed transaction pursuant to § 1.6011–4(b)(2), it remains subject to all the relevant requirements of law, including those regarding valuation and substantiation of that valuation by means of a qualified appraisal by a qualified appraiser pursuant to § 1.170A–17 that is subject to review by the IRS for its accuracy. A few commenters asked the IRS to pick an actual number (for example, 2.0,

2.25, 2.45, or 2.49 times) at which a transaction will incur greater IRS scrutiny.

The Treasury Department and the IRS agree that taxpayers need some certainty on which transactions need to be disclosed to the IRS. The Treasury Department and the IRS have determined that a transaction in which the promotional materials offer the taxpayer the possibility of being allocated a charitable contribution deduction of only an amount less than 2.5 times the taxpayer's investment and for which the taxpayer is actually allocated a charitable contribution deduction of an amount less than 2.5 times the taxpayer's investment (so that the rebuttable presumption in § 1.6011–9(d)(3) does not apply) generally is not “substantially similar” to the listed transaction identified in these final regulations. This determination takes into account both the need for taxpayer certainty on reporting obligations and the possibility of being allocated a charitable contribution deduction the amount of which is less than 2.5 times the amount of the taxpayer's investment presents less risk of the type of net-positive financial benefit to investors that exists at and above the 2.5 times threshold. This bright-line rule does not imply that valuations giving rise to an amount less than 2.5 times a taxpayer's investment are properly valued. The Treasury Department and the IRS agree with the commenter that, regardless of whether a contribution is a reportable transaction pursuant to § 1.6011–4, it remains subject to all the relevant requirements of law. For example, a claimed charitable contribution deduction amount that is 2.0 times the partner's investment may still be overvalued or unsubstantiated, and the valuation remains subject to review by the IRS for accuracy.

In view of the foregoing, these final regulations add new § 1.6011–9(d)(1) to state that the 2.5 times threshold is a bright line. However, this new rule also provides that, if a pass-through entity engages in a series of transactions (for example, contribution of an easement followed by contribution of a fee simple interest) with a principal purpose of avoiding the application of this bright-line rule, the series of transactions may be disregarded, or the arrangement may be recharacterized in accordance with its substance. Whether a series of transactions has a principal purpose of avoiding the application of this bright-line rule is determined based on all the facts and circumstances.



## B. Application of the 2.5 Times Rule

The proposed regulations contained three rules to address potential avoidance of the 2.5 times rule. Taxpayers commented on each of these rules.

### 1. Multiple Suggested Deduction Amounts

The proposed regulations contained a rule that, if the promotional materials suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied deduction amount will determine whether the 2.5 times rule is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) suggests or implies a higher charitable contribution deduction amount than suggested or implied by other promotional materials, then the highest suggested charitable contribution deduction amount determines whether the 2.5 times rule is met. As the preamble to the proposed regulations explained, this rule is intended to prevent promoters from circumventing the 2.5 times rule by having promotional materials contain language that is inconsistent as to the amount of the potential charitable contribution deduction.

One commenter stated that the proposed rule “does not apply to ambiguities in the taxpayer’s materials, it allows the Treasury to create ambiguities in the taxpayer’s materials.” However, another commenter asked whether a transaction that meets the elements of the listed transaction identified in the proposed regulations, except that the partnership merely promises that the investment will “grow by” 2.5 times without mentioning a charitable contribution deduction, is considered a “substantially similar” transaction. The intent of the rule is to prevent promoters from circumventing the 2.5 times rule by creating ambiguous promotional materials, and the transaction described in the preceding sentence would be a substantially similar transaction. Thus, these final regulations adopt the rule as proposed.

### 2. Rebuttable Presumption

The proposed regulations included a rebuttable presumption deeming the 2.5 times rule to be met if (1) the pass-through entity donates a conservation easement within three years following a taxpayer’s investment in the pass-through entity, (2) the pass-through entity allocates a charitable contribution deduction to the taxpayer the amount of which equals or exceeds two and one-

half times the amount of the taxpayer’s investment, and (3) the taxpayer claims a deduction the amount of which equals or exceeds two and one-half times the amount of the taxpayer’s investment. The proposed regulations provided that this presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through entity.

Several commenters objected to the rebuttable presumption rule, stating that it is “arbitrary and capricious;” that taxpayers cannot prove a negative (particularly with respect to oral representations); that any attempt to prove in court that oral representations were not made is hearsay; that the regulations do not speak to how a taxpayer is able to rebut the presumption; that it seems to be attempting to switch the penalty burden from the IRS to taxpayers; and that the IRS has demonstrated to taxpayers that it will neither be fair nor listen to reasonable evidence in syndicated conservation easement tax disputes. Commenters asked for guidance on how taxpayers may be able to rebut the rebuttable presumption.

The Treasury Department and the IRS conclude that the rebuttable presumption is reasonable because it is unlikely that a taxpayer would claim a deduction for 250 percent of their investment in a pass-through entity within three years of making that investment and not have received promotional materials offering the possibility to do so. This presumption is needed to address transactions with respect to which taxpayers and promoters are not forthcoming about the content or receipt of the promotional materials. While the Treasury Department and the IRS decline to provide a specific method to rebut the presumption in these final regulations because such rebuttal would necessarily be dependent on the taxpayer’s specific facts and circumstances, the Treasury Department and the IRS expect that, in appropriate cases, taxpayers will be able to establish to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is two and one-half times the amount of their investment in the pass-through

entity. For example, a taxpayer may be able to rebut the presumption by establishing that the partnership was not open to other investors (and thus the only promotional materials were documents needed to execute the transaction) or that similar properties in the same area had increased significantly in value in the period between the time the taxpayer invested in the partnership and the date the conservation easement was contributed.

Contrary to commenters’ assertions, nothing in the proposed regulations suggested that the Commissioner will disregard evidence rebutting the presumption. Section 7803(a)(3)(D) and (J) of the Code require the Commissioner to ensure that employees of the IRS are familiar, and act in accordance, with taxpayer rights, including the right to challenge the position of the IRS, the right to be heard, and the right to a fair and just tax system. Furthermore, the phrase “to the satisfaction of the Commissioner” does not preclude future judicial review, and the Commissioner bears the burden of demonstrating that each of the other elements of the listed transaction has been fulfilled and may have the burden of production under section 7491(c) of the Code in a court proceeding regarding the imposition of a penalty, depending on the party against whom it is asserted. In the view of the Treasury Department and the IRS, evidence regarding oral promotional materials generally would not constitute inadmissible hearsay because the oral promotional materials would not be offered for the truth of the matters asserted therein, but rather as evidence of what was stated. *See Fed. R. Evid. 801(c)(2)*.

Some commenters asked whether the rebuttable presumption implies that taxpayers do not need to report if (1) at least three years have passed between the taxpayer’s investment in the pass-through entity and the pass-through’s contribution of a conservation easement or (2) if the deduction amount is less than 2.5 times the amount of an investor’s investment. The rebuttable presumption does not carry either of these implications.

The Treasury Department and the IRS have decided to retain the rebuttable presumption in the final regulations because the administrative need for a rebuttable presumption outweighs the concerns raised by the commenters. Taxpayers and promoters are the persons with access to and knowledge of the promotional materials involved in their transactions. Taxpayers should not be able to escape the requirements of these final regulations because their



syndicators were effective in masking their promises. Accordingly, the final regulations retain the rebuttable presumption rule.

### 3. Determining the Amount of a Taxpayer's Investment in the Pass-Through Entity

The proposed regulations contained an anti-stuffing rule providing that, for purposes of determining whether a transaction is a listed transaction, the amount of a taxpayer's investment in the pass-through entity is limited to the portion of the taxpayer's investment that is attributable to the portion of the real property on which a conservation easement is placed and that produces the charitable contribution deduction.

A few commenters noted that the term "investment" in proposed § 1.6011-9(b)(1) is not defined, while one commenter stated that the anti-stuffing rule found in proposed § 1.6011-9(d)(3) provides the taxpayer's investment for purposes of the 2.5 times rule. Several commenters stated that the anti-stuffing rule in the proposed regulations is inconsistent with the relevant basis rule in section 170(h)(7)(B), and others suggested that the anti-stuffing rule in the proposed regulations should be replaced with the relevant basis rule in section 170(h)(7)(B).

The Treasury Department and the IRS note that the term "investment" is not generally defined within the Code. However, the Treasury Department and the IRS agree with the commenter stating that the anti-stuffing rule found in proposed § 1.6011-9(d)(3) provides the taxpayer's investment for purposes of the 2.5 times rule. Further, in response to comments that relevant basis should also be permitted to be used to determine investment, these final regulations provide that a taxpayer may determine the amount of their investment in the pass-through entity using one of the methods provided in § 1.6011-9(d)(4), which identifies the anti-stuffing method and, for contributions occurring on or after December 30, 2022, adds the relevant basis method in section 170(h)(7)(B) as another method to determine the amount of the taxpayer's investment in the pass-through entity. No other methods may be used.

In response to commenters asserting that relevant basis should replace the anti-stuffing rule, the relevant basis computations under section 170(h)(7) do not apply to all transactions for which disclosure is required under these final regulations (such as to contributions before the effective date of section 170(h)(7) in taxable years for which the statute of limitations is still

open); thus, these final regulations retain the anti-stuffing method as one method to determine investment for purposes of the 2.5 times rule.

#### i. Anti-Stuffing Method

As mentioned before in part IV.B.3 of this Summary of Comments and Explanation of Revisions, several commenters addressed the anti-stuffing rule found in the proposed regulations, which these final regulations rename the "anti-stuffing method" to determine investment for purposes of the 2.5 times rule. For example, one commenter requested clarification on how to determine the portion of the investment that is "attributable" to the real property on which the conservation easement is placed. Another commenter stated that the proposed anti-stuffing rule may give rise to constitutional challenges because it requires the separation of investment assets, creating more cost for investment managers and for investors, which they contended is a limitation on interstate commerce, a power reserved only for the legislative branch. One commenter opined that the anti-stuffing rule will be impossible to apply in practice; the commenter noted that the example of the anti-stuffing rule in the proposed regulations involved marketable securities with an identifiable fair market value and questioned how to apply the anti-stuffing rule if the pass-through entity holds multiple pieces of property. Another commenter stated that the example in the proposed regulations illustrating the anti-stuffing rule was merely an example of the basis allocation rules under section 755 of the Code and that allocation rules under section 755 do not require additional explanation.

The Treasury Department and the IRS conclude that the anti-stuffing rule provides a reasonable method to determine the taxpayer's investment in the pass-through entity by looking only to amounts attributable to the property generating the charitable contribution deduction. In response to comments requesting additional guidance on the determination of the amount of a taxpayer's investment, these final regulations provide that, under the anti-stuffing method, if an investor uses non-cash assets to acquire its interest in the pass-through entity, then the fair market value of such assets, rather than their basis, is the relevant measure. In particular, under § 1.6011-9(d)(4)(ii) of these final regulations, the amount of a taxpayer's investment in the pass-through entity is the portion of the cash and fair market value of the assets the taxpayer uses to acquire its interest in the pass-through entity that is

attributable to the real property on which a conservation easement is placed (or the portion thereof, if an easement is placed on a portion of the real property) and that produces the charitable contribution deduction described in § 1.6011-9(b)(3).

The Treasury Department and the IRS disagree that the anti-stuffing rule is impossible to apply in practice. Syndicated conservation easement transactions often involve scenarios similar to the example provided in the proposed regulations, in which the pass-through entity owns only cash and marketable securities in addition to its real property. Moreover, these regulations apply to transactions in which the promotional materials offer the possibility of charitable contribution deductions, and thus the parties involved will have necessarily considered the possible allocation of charitable contribution deductions based on the taxpayer's cost of acquiring the interest in the pass-through entity. Accordingly, in the view of the Treasury Department and the IRS, it is not unduly burdensome to require the parties to determine the amount of the taxpayer's acquisition cost that is allocable to the property giving rise to the charitable contribution deduction that is being offered.

#### ii. Relevant Basis Method

The Treasury Department and the IRS recognize that partnerships and S corporations that engage in syndicated conservation easement transactions occurring on or after December 30, 2022, will need to calculate relevant basis for purposes of section 170(f)(19), and, in addition, each investor will need to calculate the amount of the investor's investment for purposes of these listed transaction regulations. To mitigate the burden of potentially duplicative calculations, these final regulations add an alternative method to determine the amount of a taxpayer's investment. These final regulations provide that, for contributions occurring on or after December 30, 2022, taxpayers may use their relevant basis, as determined under section 170(h)(7)(B) and the regulations thereunder, as the amount of their investment for purposes of § 1.6011-9(b)(1).

### 4. Modification of the Determination of Investment for Qualified Conservation Contributions Protecting Historic Structures

One commenter stated that the proposed anti-stuffing rule did not adequately consider the difference between qualified conservation contributions protecting historic

structures and those protecting natural open space or settings. This commenter stated that, because historic preservation projects protect the historic character of a building, they often require additional investment for rehabilitation; however, the proposed rule did not consider cash raised for, and invested into, the preservation, rehabilitation and maintenance of certified historic structures in the calculation of the investment. The commenter further stated that the proposed regulations did not account for additional monies that need to be invested in a project after an easement is placed to ensure that the conservation purpose is protected in perpetuity. The commenter stated that cash, if invested in the real property, should be considered part of the taxpayer's investment in the real property when applying the 2.5 times rule.

The Treasury Department and the IRS conclude that the commenter's proposed changes to the anti-stuffing method are not warranted. In general, one key element in determining whether a transaction constitutes a syndicated conservation easement listed transaction is the ratio of the amount of the charitable contribution deduction allocation that an investor is offered to the amount the investor pays to obtain that charitable contribution deduction allocation. To that end, the anti-stuffing method measures the amount of the taxpayer's cost of acquiring the interest in the pass-through entity that is attributable to the real property on which a conservation easement is placed (or the portion thereof, if an easement is placed on a portion of the real property) and that gives rise to the charitable contribution deduction. Charitable contribution deductions are based on either the fair market value or adjusted basis of the property that is contributed as of the time of the contribution. *See, e.g.*, section 170(e). Therefore, in the view of the Treasury Department and the IRS, it is inappropriate, in determining the amount of a taxpayer's investment, to look to the amounts expended on the property after the time of the charitable contribution.

In general, every taxpayer that contributes a conservation easement will be required to expend some amounts on the property after the contribution, such as for property taxes. However, amounts of cash that are held for expenditures after the date the conservation easement is contributed, whether for property taxes, repairs, or anything else related to the property, are not as directly related to the resultant charitable contribution deduction that a

taxpayer claims as the expenditures related to the property that precede the conservation easement contribution. The Treasury Department and the IRS have concluded that it is appropriate for the anti-stuffing method to maintain its focus on the amounts invested in the property giving rise to the deduction as of the time of the charitable contribution. In addition, the Treasury Department and the IRS have concluded that a rule that treats certain cash holdings as attributable to the real property if they are "earmarked" for future expenditures related to the property would be difficult to administer. Such a rule would require factually intensive estimations and projections about the amount of future expenditures that would be necessary to fulfill the purposes of the conservation easement (as opposed to merely enhancing the value of the building). For these reasons, the Treasury Department and the IRS have concluded that the final regulations should not adopt this comment. Therefore, the final regulations add a clarification to § 1.6011-9(d)(4)(ii), which states that assets retained to pay for costs related to the operation and maintenance of the real property on which the conservation easement is placed, including costs that may be incurred in future years, are not attributable to the contributed real property.

The Treasury Department and the IRS will continue to consider whether any additional clarifications or modifications to the anti-stuffing method or the alternative relevant basis method of determining the amount of the taxpayer's investment in the pass-through entity would be beneficial in the context of qualified conservation contributions protecting historic structures.

### C. Timing Rules

Comments addressed both the timing of the pass-through entity's acquisition of the real property and whether holding the real property for a period of time before the contribution of the conservation easement is made should result in the transaction being excluded from the listed transaction identified in these regulations.

#### 1. Timing of the Pass-Through Entity's Acquisition of the Real Property

Proposed § 1.6011-9(b)(2) provided that one of the steps of a syndicated conservation easement is that the taxpayer acquires an interest directly, or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns real property (that is, becomes an investor in the

entity). A few commenters asked whether this step is met with respect to investors who acquire an interest in an entity that does not hold real estate at the time the interest in the pass-through entity is acquired. One of these commenters requested that the IRS clearly state if it intends proposed § 1.6011-9(b)(2) to be met in the case of an investor who acquires an interest in a pass-through entity that subsequently acquires real estate or an interest in a pass-through entity holding real estate. The commenter also stated that, if the real property is purchased after the investor invests in the pass-through entity, the transaction would fall outside of the anti-stuffing rule and therefore would be less likely to trigger the 2.5 times rule (because the amount of the taxpayer's investment would never be reduced by the anti-stuffing rule).

The Treasury Department and the IRS note that the proposed regulations clearly stated that the transaction falls within the definition of a syndicated conservation easement transaction "regardless of the order" in which the steps occur; therefore, the proposed regulations already encompassed the scenario in which a taxpayer acquires an interest in the pass-through entity before the pass-through entity acquires the real property. However, for additional clarity, these final regulations make that point explicit in § 1.6011-9(b)(2).

The Treasury Department and the IRS do not agree with the commenter that, if the real property is purchased after the investor invests in the pass-through entity, the transaction falls outside of the reach of the anti-stuffing method. The proposed and final regulations specifically provide that the order in which the four steps of a syndicated conservation easement transaction occur is not relevant. In response to this comment, an example in these final regulations illustrates the application of the anti-stuffing method if the pass-through entity acquires the real property after a taxpayer invests in the pass-through entity.

#### 2. Holding Periods

The proposed regulations did not contain any exceptions from the disclosure requirements for property held on a long-term basis. Several commenters asked that the final regulations include an exception for such transactions. One commenter questioned why investors who have held interests in a pass-through entity for over one year would be required to report the syndicated conservation easement transaction because such

investors would not need to rely on a tacked holding period to avoid the limitations of section 170(e). One commenter contended that contributions of land held for less than three years will generally not be made. Several commenters observed that contributions with a long-term holding period are excepted from the disallowance rule of section 170(h)(7)(A) pursuant to section 170(h)(7)(C). One commenter opined that a hypothetical transaction in which the promotional materials state that the property will be worth more than 2.5 times the taxpayer's investment in ten years should not give rise to a listed transaction. This commenter asked that the final regulations specify the amount of time that must elapse between the purchase of the property interest and the contribution of the easement for a transaction to be listed. Another commenter asked about a taxpayer that inherited land that is then in his possession for over twenty years and decides to donate the land for the benefit and protection of the environment.

The Treasury Department and the IRS conclude that it is not necessary to modify the proposed rules to provide an exception for property that has been held for a period of time. First, tax abuse in syndicated conservation easement transactions is not limited to mismatches between an investor's holding period in its interest in the pass-through entity and the pass-through entity's holding period in the real property on which the conservation easement is placed. For example, even for transactions in which investors may otherwise be eligible to claim a deduction of the fair market value of the conservation easement, the deduction is nonetheless abusive if the easement is improperly overvalued.

Second, as discussed in part III.B. of this Summary of Comments and Explanation of Revisions, the exception to the disallowance rule in section 170(h)(7) for contributions outside of a three-year holding period does not necessitate a similar exception in these final regulations, and these final regulations do not provide an exception for syndicated conservation easements that are described in section 170(h)(7)(C).

Third, notwithstanding the commonly anticipated appreciation of real property values over time, it is not the case that property values always increase. The period a property is held is one element of a fact-intensive inquiry into whether the property has been overvalued. Attempting to craft an exception based on a holding period would result in a

rule that is over-inclusive and/or under-inclusive, depending on the specific facts. The proposed hypotheticals for property held for ten or twenty years seems unlikely to meet all elements of the listed transaction identified in these regulations (for example, it might not be held in a pass-through entity or involve promotional materials). Therefore, the final regulations do not include an exception for long-term holding periods.

#### D. Definitions

Commenters addressed the definitions of (1) charitable contribution deduction, (2) conservation easement, (3) participant, (4) promotional materials, and (5) syndicated conservation easement transaction.

##### 1. Charitable Contribution Deduction

The proposed regulations defined "charitable contribution deduction" as "a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1)."

One commenter stated that this definition is inconsistent with the listed transaction identified in the proposed regulations, which is limited to contributions of conservation easements. This commenter suggested that the definition should be limited to "the deduction arising from a qualified conservation contribution as defined in section 170(h)(1)."

The Treasury Department and the IRS decline to adopt this suggestion, because some substantially similar transactions will involve real property contributions other than qualified conservation contributions.

##### 2. Conservation Easement

The proposed regulations defined a "conservation easement" as "a restriction, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and section 170(h)(4), granted in perpetuity, on the use that may be made of the specified property." One commenter stated that, in all cases that the commenter defended, the IRS had taken the position that the conservation easement did not meet one or more of the requirements in this definition. The commenter opined that, if an investor fails to disclose a syndicated conservation easement transaction, the pass-through's return is selected for audit, and the IRS determines that the donated conservation easement fails to meet one or more elements of the definition in the proposed regulations, then the investor would not have had

any reporting obligation because the investor had not claimed a deduction for a "conservation easement" as that term was defined in the proposed regulations. The commenter added that if this was not the intent of the proposed regulation, then the final regulation should clearly so state.

The Treasury Department and the IRS note that the third element of the listed transaction identified in these regulations is that "the pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer" (emphasis added), and that the fourth element of the listed transaction is that "the taxpayer claims a charitable contribution deduction with respect to the contribution of the real property interest on the taxpayer's Federal income tax return." In the commenter's hypothetical, the taxpayer's treatment of the contribution as a conservation easement and claim of a charitable contribution deduction with respect to the conservation easement makes the transaction a listed transaction. Whether the IRS asserts that the conservation easement is invalid and whether the charitable contribution deduction claimed on the taxpayer's Federal income tax return is ultimately allowed do not affect this outcome.

To more clearly track the language in section 170(h), the final regulations modify the definition of conservation easement to provide that it is a restriction (granted in perpetuity) on the use that may be made of the real property, within the meaning of section 170(h)(2)(C), exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and (h)(4).

##### 3. Participant

The proposed regulations stated that a taxpayer participating, within the meaning of § 1.6011-4(c)(3)(i)(A), in a syndicated conservation easement transaction described in proposed § 1.6011-9(b) includes (1) an owner of a pass-through entity, (2) a pass-through entity (any tier, if multiple tiers are involved in the transaction), and (3) any other taxpayer whose tax return reflects tax consequences or a tax strategy arising from the syndicated conservation easement transaction described in the proposed regulations. The proposed regulations provided, consistent with Notice 2017-10, that a qualified organization to which a

syndicated conservation easement described in proposed § 1.6011–9(b) is donated is not treated as a participant under § 1.6011–4(c)(3)(i)(A) with respect to the listed transaction.

One commenter stated that it is unclear whether a participant who reports the tax consequences of a transaction that is substantially similar to a syndicated conservation easement transaction is a member of the class of participants described under proposed § 1.6011–9(e)(2). The commenter opined that the plain language of the proposed regulation referred only to taxpayers who have the tax consequences of a syndicated conservation easement transaction. To address this comment, the final regulations clarify that the class of participants includes participants in transactions that are the same as, or substantially similar to, syndicated conservation easement transactions.

One commenter requested additional guidance on the meaning of the term “arising from” in proposed § 1.6011–9(e)(2)(iii), stating that it is ambiguous whether an IRS attorney that was hired to enforce syndicated conservation easement transactions would be required to report the transaction because his or her income “arose from” the conservation easement transaction. The Treasury Department and the IRS conclude that further clarification is not needed.

#### 4. Promotional Materials

The proposed regulations stated that “promotional materials” include materials described in § 301.6112–1(b)(3)(iii)(B) and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer’s return), websites, transactional documents such as the deed of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

One commenter supported this definition, but several commenters thought it was overbroad, stating that it would be effectively impossible for a taxpayer to prove that he or she did not receive promotional materials. Some commenters objected to particular types of communication being included within the scope of promotional materials. Specifically, commenters expressed concern regarding oral

communications, websites, and documents required by law. For example, one commenter stated that, since promotional materials are described to include “websites” and “oral communication,” every taxpayer would theoretically have received “promotional materials” relating to conservation easement donations because every taxpayer has access to the internet. In addition, one commenter stated that, under the proposed regulations, promotional materials would include an oral communication made to any other investor. The commenter also stated that any one oral communication, regardless of accuracy, would “render the deduction unavailable” to all investors. The commenter recommended that the final regulations remove all references to oral communications.

In response, the Treasury Department and the IRS note that receipt of promotional materials by one investor does not automatically trigger receipt of such materials by other investors (although it is circumstantial evidence that may be relevant to showing receipt of promotional materials by other investors). In addition, the broad definition of promotional materials does not mean that the 2.5 times rule will always be met; the quantity of promotional materials is not directly relevant to whether the promotional materials offer the investor the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer’s investment in the pass-through entity. Moreover, even if the 2.5 times rule is met, the effect is not to render the deduction unavailable to all investors but to meet one element of this listed transaction. The Treasury Department and the IRS conclude that a broad definition of promotional materials is warranted; otherwise, taxpayers may contend that they do not meet the elements of the listed transaction identified in these final regulations because promoters made offers via oral communications, websites, or other documents.

Some commenters noted that Congress did not mention promotional materials in section 170(h)(7) and asked that the final regulations explain the requirement’s significance in the listed transaction. The Treasury Department and the IRS conclude that the lack of reference to promotional materials in section 170(h)(7) is of no significance to this listed transaction, given that the purpose and scope of section 170(h)(7), which is to disallow a deduction, are different from those of these regulations,

which is for the IRS to identify tax avoidance transactions.

One commenter noted that a taxpayer can claim a greatly inflated deduction regardless of whether the taxpayer receives promotional materials and stated that the promotional material requirement appears to be unnecessary and could be removed altogether. The Treasury Department and the IRS have determined that promotional materials are an important attribute of the listed transaction identified in these final regulations because the existence of promotional materials offering investors the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the amount of the taxpayer’s investment, on its own, is an element that illustrates tax avoidance. Thus, the final regulations adopt the proposed definition of promotional materials without changes.

One commenter stated that the broad definition of promotional materials does not promote compliance with the law if an attorney that created promotional materials, such as the deed of conveyance, is considered a material advisor to the transaction. This commenter asked for clarity on how the definition of promotional materials in the proposed regulations relates to the definition of a material advisor.

As discussed in part I.D. of this Summary of Comments and Explanation of Revisions, these final regulations do not change the description of a material advisor provided in § 301.6111–3(b). A material advisor is a person who makes a tax statement, as defined in § 1.6111–3(b)(2)(ii), and derives gross income in excess of the threshold amount, as defined in § 301.6111–3(b)(3) (generally, \$10,000 for listed transactions). In general, a deed of conveyance would not be a “tax statement” under § 301.6111–3(b)(2)(ii) because it is not a statement “that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction.” In addition, in general, the deed does not contain any statements related to a tax aspect of the transaction that causes the transaction to be reportable, such as stating that an investor may be eligible to claim a deduction amount of 2.5 times the investor’s investment.<sup>1</sup> As a result, the final regulations make no

<sup>1</sup> As noted above, a transactional document such as a deed of conveyance is considered to be a promotional material. Although the deed by itself, typically, would not offer the investor the possibility of being allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-half times the amount of the taxpayer’s investment in the pass-through entity, whether all of the promotional materials, taken as a whole, make such an offer is a factual determination.

modifications to the definition of promotional materials in response to the comment.

#### 5. Syndicated Conservation Easement Transaction

One commenter stated that “syndication itself is not bad and is often encouraged by the government” (such as in the context of historic tax credits, low-income housing tax credits, and new market tax credits). The commenter opined that the proposed regulations sow confusion because the focus should be on abuse, not on syndication.

The Treasury Department and the IRS agree with the commenter that syndication in itself is not necessarily abusive. However, the Treasury Department and the IRS do not agree with the commenter that the definition of syndicated conservation easement transaction in § 1.6011–9(b) needs to explicitly use the word “abusive.” The identification of a listed transaction occurs only after the Treasury Department and the IRS have determined that the transaction is a tax avoidance transaction. If a syndicated conservation easement transaction does not meet the elements of the transaction defined in § 1.6011–9(b), such as that the partnership’s promotional materials do not offer investors the possibility of being allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is 2.5 times the amount of the taxpayer’s investment in the partnership (and the partnership does not in fact allocate a charitable contribution deduction the amount of which equals or exceeds an amount that is 2.5 times the amount of the taxpayer’s investment in the partnership), then the transaction is not a listed transaction.

#### V. Comments Addressing the Role of Qualified Organizations in the Listed Transaction

Commenters addressed both the section 4965 carveout found in the proposed regulations and the lack of a carveout to the definition of material advisor in the proposed regulations for qualified organizations.

##### A. Section 4965 Carveout

The proposed regulations included, consistent with Notice 2017–10, the section 4965 carveout to exclude a qualified organization<sup>2</sup> from treatment

<sup>2</sup> A donation of a qualified conservation contribution must be made to a “qualified organization,” generally defined in section 170(h)(3), which includes donations to governmental units, certain public charities, and Type I supporting organizations thereto. Under section 4965(c), the term “tax-exempt entity”

as a party to a syndicated conservation easement transaction under section 4965 but requested comments on whether the final regulations should eliminate or limit the section 4965 carveout.

Several commenters advocated for maintaining the section 4965 carveout for various reasons, including that section 170(h)(7)(A) will disallow deductions for most transactions that these regulations seek to deter, that receipt of a donated conservation easement generally would not constitute “net income” or “proceeds” within the meaning of section 4965, and that limiting or eliminating the section 4965 carveout could discourage qualified organizations from accepting contributions of conservation easements (particularly due to uncertainty as to what constitutes a “substantially similar” transaction). With respect to the Treasury Department and the IRS’s request for comments on limiting the carveout to qualified organizations that conduct an adequate amount of due diligence (and on what would constitute adequate due diligence for this purpose), several commenters argued that qualified organizations are not equipped to exercise the due diligence that could be required to qualify for a more limited carveout. Several commenters also claimed that because only a “small number” of qualified organizations continue to facilitate syndicated conservation easement transactions, it would be unfairly burdensome to all other qualified organizations if the section 4965 carveout were limited or eliminated.

Given the addition of section 170(h)(7) to the Code, which disallows charitable contribution deductions for some of the most overvalued syndicated conservation easements, as well as other considerations raised by the commenters, the Treasury Department and the IRS have concluded that it is appropriate to maintain the section 4965 carveout in these final regulations. However, the Treasury Department and the IRS will consider proposing to eliminate or limit the section 4965 carveout in future regulations if qualified organizations continue to facilitate the syndicated conservation easement transactions (or substantially

includes, among others, entities and governmental units described in sections 501(c) and 170(c) (other than the United States). Thus, absent the section 4965 carveout, tax-exempt entities that would be affected are donees that are qualified organizations described in section 170(h)(3), other than the United States, that accept a conservation easement as part of the syndicated conservation easement transaction described in these regulations.

similar transactions) described in these regulations.

##### B. Donee Material Advisors

As discussed in part I.D. of this Summary of Comments and Explanation of Revisions, the proposed regulations provided no special rules for material advisors and noted that this differed from the approach taken in Notice 2017–29 (modifying Notice 2017–10), which provided that a donee described in section 170(c) is not treated as a material advisor under section 6111. The proposed regulations requested comments on whether qualified organizations are receiving fees for providing material aid, assistance, or advice with respect to the syndicated conservation easement transactions described in the proposed regulations, the nature of the services being provided, and why a carveout from the definition of material advisor for qualified organizations is needed.

Several commenters requested that the carveout for qualified organizations found in Notice 2017–29 be reinstated, claiming that the six-year look back period would be burdensome, that the IRS is already privy to information necessary to identify potentially abusive syndicated conservation easement transactions via reporting by other material advisors, and that eliminating the carveout for qualified organizations will discourage qualified organizations from accepting legitimate syndicated conservation easements due to confusion and fear of audits, potential penalties, and litigation. On the other hand, no commenter explained how a qualified organization, acting solely in its capacity as a qualified organization, could be considered a material advisor. To the contrary, several commenters asserted that donee organizations do not fit the definition of “material advisor.”

A person is a material advisor with respect to a transaction if the person: (1) provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction; and (2) directly or indirectly derives gross income in excess of the threshold amount defined in § 301.6011–3(b)(3) for the material aid, assistance, or advice. See § 301.6111–3(b)(1). “Gross income” includes all fees for a tax strategy, for services for advice (whether or not tax advice), and for the implementation of a reportable transaction, but a “fee” does not include amounts paid to a person, including an advisor, in that person’s capacity as a party to the transaction. See § 301.6111–3(b)(3)(ii). A person provides material

aid, assistance, or advice if the person makes or provides a tax statement to or for the benefit of certain taxpayers who are required to make a disclosure under section 6011 (including for participation in a listed transaction) or other material advisors. See § 301.6111-3(b)(2)(i). “Tax statement,” for these purposes, is any statement (including another person’s statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction. See § 301.6111-3(b)(2)(ii)(A).

In a typical conservation easement transaction, the qualified organization signs the Form 8283 (Section B) and provides a contemporaneous written acknowledgement of the contribution. See section 170(f)(8). The qualified organization may also receive separate cash contributions from the donor to monitor and enforce the easement in perpetuity. The qualified organization might also make representations to the donor that it is a qualified organization. Signing the Form 8283 and the contemporaneous written acknowledgement and making representations regarding the donee’s status as a qualified organization are not considered to be making a tax statement under § 301.6111-3(b)(2)(ii)(A). Therefore, a donee does not provide material, aid, assistance, or advice under § 301.6111-3 merely by signing the Form 8283 (Section B) and the contemporaneous written acknowledgement.

The Treasury Department and the IRS conclude that a qualified organization acting solely in its capacity as a qualified organization by, for example, accepting a conservation easement and separate payments or contributions to monitor and enforce that easement, provided such payments or contributions are in fact used for such purpose, would not be considered a material advisor. The Treasury Department and the IRS further conclude that if a qualified organization engages in activities that would result in the organization meeting the requirements to be considered a material advisor, then such organization should be subject to the material advisor rules, including the penalties for failure to disclose. Thus, the final regulations include no special carveout to material advisor status for qualified organizations.

**Effect on Other Documents**

Notice 2017-10 is obsoleted for transactions occurring after October 8, 2024.

**Special Analyses**

*I. Paperwork Reduction Act*

The collection of information contained in these final regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these final regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control number for the forms and remains unchanged.

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

*II. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the rule on small entities.” 5 U.S.C. 603(a). Section 605(b) of the RFA allows an agency to certify a rule if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

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 RFA. As previously explained, the basis for these final regulations is Notice 2017-10, 2017-4 I.R.B. 544 (modified by Notice 2017-29, 2017-20 I.R.B. 1243, and Notice 2017-58, 2017-42 I.R.B. 326). The following chart sets forth the gross receipts of respondents to Notice 2017-10 that report Federal tax information using Form 1065, *U.S. Return of Partnership Income*, and Form 1120-S, *U.S. Income Tax Return for an S corporation*:

**NOTICE 2017-10 ALL FILINGS 2017 TO 2021 RESPONDENTS BY SIZE**

Receipts	Respondents (%)	Filings (%)
Under 5M .....	93.3	88.3
5M to 10M .....	3.1	5.2
10M to 15M .....	1.2	2.9
15M to 20M .....	0.6	0.4
20M to 25M .....	0.6	0.7

**NOTICE 2017-10 ALL FILINGS 2017 TO 2021 RESPONDENTS BY SIZE—Continued**

Receipts	Respondents (%)	Filings (%)
Over 25M .....	1.2	2.5

This chart shows that the majority of respondents to Notice 2017-10 reported gross receipts under \$5 million. Even assuming that these respondents constitute a substantial number of small entities, the final regulations will not have a significant economic impact on these entities because the final regulations implement sections 6111 and 6112 and § 1.6011-4 by specifying the manner in which and time at which an identified transaction must be reported. Accordingly, because the final regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the final regulations is expected to be minimal. Further, the Treasury Department and the IRS expect the reporting burden to be low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS’s Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is \$102.08 (2022 dollars) per hour. Thus, it is estimated that a respondent will incur costs of approximately \$2,127.00 per filing. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2017-10 indicate that this small amount will not pose any significant economic impact for those taxpayers now required to disclose under the final regulations.

Some commenters asserted that the hourly rate estimate of \$98.87 (2021) in the proposed regulations is much lower than what professionals charge to prepare Form 8886. Given the availability of more recent data, the hourly rate estimate is revised in the final regulations to \$102.08 (2022). The new number still does not address the substantial differences from the commenters’ estimates. The differences are likely attributable to the different methodologies used. The commenters likely used the hourly rate that an independent professional would charge

a retail customer to prepare a Form 8886. The Treasury Department and the IRS used the hourly cost that a business owner would pay to employ such a professional. This method was determined based on the comments received from stakeholders objecting to reporting of the retail hourly rate at earlier points.

One commenter asked for the data source for the hourly rate estimate. The source data used by our data unit comes from the Bureau of Labor Statistics.

Some commenters asserted that the estimate of the time to prepare Form 8886 is too low as provided because (1) the estimate ignores the time necessary to comply with the reporting requirement for the years to which the requirement applies retroactively and (2) the estimate does not properly account for some of the time spent, such as learning new topics. At this time, the Treasury Department and the IRS did not find a practical way to adjust the time estimate in response to these comments due to (1) the uncertainties involved and (2) with respect to the prior years, the effect of revealing our underreporting estimates on enforcement.

For the reasons stated, a regulatory flexibility analysis under the RFA is not required. Pursuant to section 7805(f) of the Code, the proposed rule preceding this rulemaking was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates 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). One commenter argued that it is at least possible that the UMRA trigger of \$100 million could be triggered because of the potential burdens of updating State or local regulations concerning the acceptance of land donations, harmonizing information reporting with the requirements of the regulations, and cooperation with examination proceedings. The Treasury Department and the IRS have considered this comment and conclude that it is not persuasive, particularly in light of the continuing carve-out for donees in these final regulations. This final rule does

not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

### IV. 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. One commenter suggested that, if the Treasury Department and the IRS decide to eliminate the carveout for donees described in section 170(c) from being treated as a party to the transaction under section 4965, then the final regulations will have federalism implications under Executive Order 13132. The final regulations maintain the section 4965 carveout. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

### V. 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(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

### VI. 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

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is 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 Joshua S. Klaber and Eugene Kirman, Office of Associate Chief Counsel (Income Tax & Accounting). 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 § 1.6011–9 in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
\* \* \* \* \*  
Section 1.6011–9 also issued under 26 U.S.C. 6001 and 6011.  
\* \* \* \* \*

■ **Par. 2.** Section 1.6011–9 is added to read as follows:

### § 1.6011–9 Syndicated conservation easement listed transactions.

(a) *Identification as listed transaction.* Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of list § 1.6011–4(b)(2).

(b) *Syndicated conservation easement transaction.* The term *syndicated conservation easement transaction* means a transaction in which the following steps occur (regardless of the order in which they occur)—

(1) A taxpayer receives promotional materials that offer investors in a pass-through entity the possibility of being allocated a charitable contribution deduction the amount of which equals or exceeds an amount that is two and one-half times the amount of the taxpayer's investment, as determined in paragraph (d)(4) of this section, in the pass-through entity, as determined under paragraph (d) of this section (2.5 times rule);

(2) The taxpayer acquires an interest, directly or indirectly through one or more tiers of pass-through entities, in the pass-through entity that owns or acquires real property (that is, becomes an investor in the entity);

(3) The pass-through entity that owns the real property contributes an easement on such real property, which it treats as a conservation easement, to a qualified organization and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution deduction to the taxpayer; and

(4) The taxpayer claims a charitable contribution deduction with respect to



the contribution of the real property interest on the taxpayer's Federal income tax return.

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Charitable contribution deduction.* The term *charitable contribution deduction* means a deduction under section 170 of the Internal Revenue Code (Code), which includes a deduction arising from a qualified conservation contribution as defined in section 170(h)(1) of the Code.

(2) *Conservation easement.* The term *conservation easement* means a restriction (granted in perpetuity) on the use which may be made of the real property, within the meaning of section 170(h)(2)(C) of the Code, exclusively for conservation purposes, within the meaning of section 170(h)(1)(C) and (h)(4) of the Code.

(3) *Pass-through entity.* The term *pass-through entity* means a partnership, S corporation, or trust (other than a grantor trust within the meaning of subchapter J of chapter 1 of the Code).

(4) *Promotional materials.* The term *promotional materials* includes materials described in § 301.6112-1(b)(3)(iii)(B) of this chapter and any other written or oral communication regarding the transaction provided to investors, such as marketing materials, appraisals (including preliminary appraisals, draft appraisals, and the appraisal that is attached to the taxpayer's return), websites, transactional documents such as deeds of conveyance, private placement memoranda, tax opinions, operating agreements, subscription agreements, statements of the anticipated value of the conservation easement, and statements of the anticipated amount of the charitable contribution deduction.

(5) *Qualified organization.* The term *qualified organization* means an organization described in section 170(h)(3) of the Code.

(6) *Real property.* The term *real property* includes all land, structures, and buildings, including a certified historic structure defined in section 170(h)(4)(C) of the Code.

(7) *Substantially similar.* The term *substantially similar* is defined in § 1.6011-4(c)(4). For example, transactions that meet the elements of paragraph (b) of this section, except that the pass-through entity contributes a fee simple interest in real property or a real property interest described in section 170(h)(2)(A) or (B) of the Code rather than a conservation easement, are substantially similar to the listed transaction identified in this section.

(d) *Application of the 2.5 times rule—*  
 (1) *Bright-line rule.* Transactions for which the promotional materials offer the taxpayer the possibility of being allocated a charitable contribution deduction of only an amount less than 2.5 times the taxpayer's investment and for which the taxpayer is actually allocated a charitable contribution deduction of an amount less than 2.5 times the taxpayer's investment (so that the rebuttable presumption in paragraph (d)(3) of this section does not apply) are generally not considered *substantially similar* to the listed transaction identified in this section. However, if a pass-through entity engages in a series of transactions with a principal purpose of avoiding the application of the bright-line rule in this paragraph (d)(1), the series of transactions may be disregarded or the arrangement may be recharacterized in accordance with its substance. Whether a series of transactions has a principal purpose of avoiding the application of this bright-line rule is determined based on all the facts and circumstances.

(2) *Multiple suggested contribution amounts.* If the promotional materials suggest or imply a range of possible charitable contribution deduction amounts that may be allocated to the taxpayer, the highest suggested or implied contribution amount determines whether the 2.5 times rule in this paragraph (d) is met. In addition, if one piece of promotional materials (for example, an appraisal or oral statement) states a higher charitable contribution deduction amount than stated by other promotional materials, then the highest stated charitable contribution deduction amount determines whether the 2.5 times rule is met.

(3) *Rebuttable presumption.* The 2.5 times rule in this paragraph (d) is deemed to be met if the pass-through entity donates a real property interest within three years following the taxpayer's investment in the pass-through entity, the pass-through entity allocates a charitable contribution deduction to the taxpayer the amount of which equals or exceeds two and one-half times the amount of the taxpayer's investment. This presumption may be rebutted if the taxpayer establishes to the satisfaction of the Commissioner that none of the promotional materials contained a suggestion or implication that investors might be allocated a charitable contribution deduction that equals or exceeds an amount that is two and one-

half times the amount of their investment in the pass-through entity.

(4) *Determining the amount of the taxpayer's investment in the pass-through entity—*(i) *In general.* A taxpayer may determine the amount of the taxpayer's investment in the pass-through entity for purposes of paragraph (b) of this section using either the anti-stuffing method in paragraph (d)(4)(ii) of this section or, for contributions made after December 29, 2022, the relevant basis method in paragraph (d)(4)(iii) of this section. No other methods may be used.

(ii) *Anti-stuffing method.* Under the anti-stuffing method, the amount of a taxpayer's investment in the pass-through entity is the portion of the cash or fair market value of the assets the taxpayer uses to acquire its interest in the pass-through entity that is attributable to the real property on which a conservation easement is placed (or the portion thereof, if an easement is placed on a portion of the real property) that gives rise to the charitable contribution described in paragraph (b)(3) of this section. For example, if a portion of the taxpayer's cost of acquiring the taxpayer's interest in the pass-through entity is attributable to property held directly or indirectly by the pass-through entity other than the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section (such other property may include other real property, cash, cash equivalents, digital assets, marketable securities, or other tangible or intangible assets), that portion of the taxpayer's acquisition cost is not considered part of the taxpayer's investment for purposes of this section because it is not attributable to the portion of the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section. For purposes of this paragraph (d)(4)(ii), assets retained to pay for costs related to the operation and maintenance of the real property on which the conservation easement is placed, including costs that may be incurred in future years, are not attributable to the real property on which a conservation easement is placed as described in paragraph (b)(3) of this section. In the case of a substantially similar transaction described in paragraph (c)(7) of this section, the rules in this paragraph (d)(4)(ii) apply except that the relevant real property that gives rise to the charitable contribution deduction described in paragraph (b)(3) of this section is the real property donated.

(iii) *Relevant basis method.* For contributions made after December 29,

2022, taxpayers may use their relevant basis, as determined in accordance with section 170(h)(7)(B) of the Code and § 1.170A-14(k), as the amount of their investment for purposes of paragraph (b) of this section.

(5) *Examples.* For the examples in this paragraph (d)(5), assume that the partnerships are respected for Federal tax purposes, and that the partnership allocations comply with the rules of subchapter K of chapter 1 of the Code.

(i) *Example 1—(A) Facts.* Individual A purchased an interest in P, a partnership that owns real property with a fair market value of \$500,000 and marketable securities with a fair market value of \$500,000. A is one of four equal investors in P, each of whom purchased its interest in P for \$250,000 of cash. With respect to an investor's \$250,000 payment for its interest in P, the promotional materials stated that P expected to allocate a \$500,000 charitable contribution deduction to the investor (that is, a charitable contribution deduction that is two times the amount an investor paid for its interest in P). After all four investors have purchased their interests in P, P donates a conservation easement on all of its real property to a qualified organization as defined in section 170(h)(3) of the Code and reports a \$2,000,000 charitable contribution on its Form 1065, *U.S. Return of Partnership Income*, based on P obtaining an appraisal indicating that the value of the conservation easement is \$2,000,000. The Schedule K-1 (Form 1065) that P furnishes to A indicates that P allocated a charitable contribution deduction to A for the taxable year. A claims a charitable contribution deduction with respect to the charitable contribution on A's Federal income tax return.

(B) *Analysis.* A's cost of acquiring its interest in P is \$250,000. The real property on which a conservation easement was placed and that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section was P's property valued at \$500,000. P's only other asset was marketable securities worth \$500,000. Accordingly, half of A's share of the value of the assets held by P was attributable to the real property on which P placed a conservation easement and that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section. Therefore, under paragraph (d)(4)(i) of this section, for purposes of paragraph (b) of this section, the amount of A's investment in P is \$125,000 (that is, half of A's \$250,000 acquisition cost, which is the portion of A's acquisition cost that is attributable to the real property on

which P placed a conservation easement and that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section). Because A's investment for purposes of the 2.5 times rule is \$125,000 and A's expected charitable contribution deduction, based on the promotional materials, is \$500,000 (that is, an expected deduction that is four times A's investment), the 2.5 times rule of paragraph (b)(1) of this section is met. The transaction also meets the other elements of a syndicated conservation easement within the meaning of paragraph (b) of this section and therefore is a listed transaction for purposes of § 1.6011-4(b)(2).

(ii) *Example 2—(A) Facts.* Individual B acquires a ten percent interest in InvestCo, a partnership, by making a \$250,000 cash contribution. Immediately after B's acquisition, InvestCo's only asset is \$2,500,000 of cash. The promotional materials state that InvestCo expects to allocate a \$500,000 charitable contribution deduction to B with respect to B's partnership interest. InvestCo pays \$600,000 to purchase marketable securities. InvestCo also purchases an interest in another partnership, PropCo, for \$1,900,000 from one of PropCo's partners. At the same time as the purchase, InvestCo also contributes \$100,000 of its marketable securities to PropCo. Immediately after InvestCo's purchase and contribution, PropCo's only assets are real property worth \$2,400,000 and the marketable securities worth \$100,000. PropCo donates its entire interest in the real property (a fee simple interest) to a qualified organization as defined in section 170(h)(3) of the Code and reports a \$6,250,000 charitable contribution on its Form 1065, *U.S. Return of Partnership Income*, based on PropCo obtaining an appraisal indicating that the value of the real property is \$6,250,000. PropCo allocates a portion of the charitable contribution deduction to InvestCo. The Schedule K-1 (Form 1065) that InvestCo furnishes to B indicates that InvestCo allocated a charitable contribution deduction to B for the taxable year. B claims a charitable contribution deduction with respect to the contribution on B's Federal income tax return.

(B) *Analysis.* Immediately after InvestCo's acquisition of its interest in PropCo, InvestCo's only assets were its interest in PropCo and \$500,000 in marketable securities. Accordingly, eighty percent of InvestCo's funds (\$2,000,000/\$2,500,000) were used to acquire its interest in PropCo. B's investment in InvestCo is \$250,000; therefore, eighty percent of that amount,

\$200,000, is attributable to InvestCo's interest in PropCo. Immediately after InvestCo's acquisition of its interest in PropCo, PropCo had real property worth \$2,400,000 and marketable securities worth \$100,000. As such, ninety-six percent (\$2,400,000/\$2,500,000) of PropCo's assets were the real property that was subsequently donated. Therefore, under paragraph (d)(4)(i) of this section, for purposes of paragraph (b) of this section, the amount of B's investment in InvestCo that is attributable to the donated real property that gave rise to the charitable contribution deduction described in paragraph (b)(3) of this section is \$200,000 multiplied by ninety-six percent, or \$192,000. Because B's investment for purposes of the 2.5 times rule is \$192,000 and B's expected charitable contribution deduction, based on the promotional materials, is \$500,000 (that is, an expected deduction that is at least 2.5 times B's investment), the 2.5 times rule of paragraph (b)(1) of this section is met. The transaction also meets the other elements of a syndicated conservation easement within the meaning of paragraph (b) of this section, except that PropCo contributed a fee simple interest in real property rather than a conservation easement. Under paragraph (c)(7) of this section, the transaction is substantially similar to the listed transaction described in paragraph (b) of this section and, therefore, under paragraph (a) of this section, the transaction in this example is a listed transaction for purposes of § 1.6011-4(b)(2).

(e) *Participation in a syndicated conservation easement transaction—(1) In general.* Whether a taxpayer has participated in a syndicated conservation easement transaction described in paragraph (b) of this section is determined under § 1.6011-4(c)(3)(i)(A).

(2) *Class of participants.* For purposes of § 1.6011-4(c)(3)(i)(A), participants in a transaction that is the same as, or substantially similar to, a syndicated conservation easement transaction described in paragraph (b) of this section include—

(i) An owner of a pass-through entity;  
(ii) A pass-through entity; and  
(iii) Any other taxpayer whose Federal income tax return reflects tax consequences or a tax strategy arising from a transaction that is the same as, or substantially similar to, the transaction described in paragraph (b) of this section.

(3) *Exclusion.* A qualified organization to which the conservation easement is donated is not treated as a participant under § 1.6011-4(c)(3)(i)(A)

in a syndicated conservation easement transaction described in paragraph (b) of this section.

(f) *Application of section 4965.* A qualified organization to which the real property interest is donated is not treated under section 4965 of the Code as a party to the transaction described in paragraph (b) of this section.

(g) *Disclosures under Notice 2017–10.* A taxpayer who disclosed their participation in a transaction pursuant to Notice 2017–10 and in accordance with § 1.6011–4 before October 8, 2024, is treated as having made the disclosure required under this section and § 1.6011–4, for the years covered by that disclosure, as of the date of the disclosure under Notice 2017–10.

(h) *Applicability date—(1) In general.* This section’s identification of transactions that are the same as, or substantially similar to, the transactions described in paragraph (b) of this section as listed transactions for purposes of § 1.6011–4(b)(2) and sections 6111 and 6112 of the Code is effective October 8, 2024.

(2) *Applicability date for material advisors.* Notwithstanding § 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after October 8, 2018.

**Douglas W. O’Donnell,**

*Deputy Commissioner.*

Approved: September 16, 2024

**Aviva R. Aron-Dine,**

*Deputy Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 501

#### Reporting, Procedures and Penalties Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is issuing this final rule to amend the Reporting, Procedures and Penalties Regulations (the “Regulations”). OFAC published an interim final rule with a request for comments on May 10, 2024 (“May 2024 Interim Final Rule”). In this final rule, OFAC responds to public comments submitted in response to the May 2024

Interim Final Rule and amends the Regulations to add three exceptions to the reporting requirement for any blocked property that is unblocked or transferred.

**DATES:** This final rule is effective November 7, 2024.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; Assistant Director for Compliance, 202–622–2490.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Regulations (31 CFR part 501), originally issued August 25, 1997 (62 FR 45098), set forth standard reporting and recordkeeping requirements, license application procedures, and other procedures relevant to the economic sanctions programs administered by OFAC. On May 10, 2024 (89 FR 40372), OFAC published an interim final rule, effective on August 8, 2024, amending the Regulations with a request for comment. Public comments on the interim final rule were due by June 10, 2024.

In the May 2024 Interim Final Rule, OFAC amended the Regulations to require electronic filing of certain submissions to OFAC and to describe and modify certain reporting requirements related to blocked property and rejected transactions. In particular, the rule required the use of the electronic OFAC Reporting System (ORS) for submission of reports related to blocked property and rejected transactions, removed the mail option for certain other types of OFAC submissions, described reports OFAC may require from financial institutions for transactions that meet specified criteria, and added a reporting requirement for any blocked property that is unblocked or transferred. Additionally, OFAC clarified the scope of the reporting requirement for rejected transactions, in part to respond to comments received on an interim final rule OFAC published on June 21, 2019 (84 FR 29055), to amend the Regulations.

Among other changes, the May 2024 Interim Final Rule modified the procedures for requests relating to property that is blocked in error, updated the Regulations with respect to the availability of information under the Freedom of Information Act (FOIA) for certain categories of records, and clarified that persons may submit a petition for administrative reconsideration to seek removal of a person or property from the List of

Specially Designated Nationals and Blocked Persons (“SDN List”) or any other list of sanctioned persons maintained by OFAC. OFAC also added a description of reports OFAC may require financial institutions to provide about transactions that meet specified criteria to aid in the identification of blocked property. Finally, OFAC made several technical and conforming edits.

As described further below, OFAC is responding to comments received on five sections of the Regulations: §§ 501.601, 501.602, 501.603, 501.604, and 501.806.

#### Overview of Comments on the Interim Final Rule

During the public comment period, OFAC received written submissions on the interim final rule. All comments received by the end of the comment period are available on the public rulemaking docket at <https://www.regulations.gov>.

OFAC considered each relevant comment submitted on the May 2024 Interim Final Rule and made certain revisions in this rule in response to the comments. Some of the comments were general in nature, for example, supporting OFAC’s efforts and approach with respect to aspects of the May 2024 Interim Final Rule. In contrast, another commentator suggested that OFAC retract the interim final rule altogether either to give time to incorporate the comments received or to give financial institutions more time to incorporate the changes into their sanctions-related programs, systems, and policies and procedures. Some comments requested clarification of specific provisions, deadlines for certain OFAC determinations, modifications to reporting requirements, and a delay for the general requirements to use the ORS. One commenter questioned whether OFAC has the authority to require persons that submitted an erroneous blocking report to request OFAC’s permission to release funds that never should have been blocked (*e.g.*, if a financial institution mistakenly blocked the funds of a U.S. person based on a “false hit” name match with a name that appears on the SDN List).

#### Summary of Comments and Changes From the Interim Final Rule

##### *Reports of Unblocked or Transferred Blocked Property*

In the May 2024 Interim Final Rule, OFAC revised § 501.603(b)(3)(i) to require reports within 10 business days of when blocked property is unblocked or transferred, including pursuant to a valid order issued by a U.S. Government