States because this amount is attributable to tangible property located within the United States. Based on Corp A's relative gross income from Program Y and software platform Z transactions in the taxable year, Corp A reasonably allocates $90x to software platform Z, of which $60x is from sources within the United States and $90x to Program Y, of which $60x is from sources within the United States.

(F) The sum of the intangible property factor ($250x), the personnel factor ($140x), and the tangible property factor ($90x) is equal to $480x. The sum of these factors from sources within the United States is $450x ($250x with respect to the intangible property factor, $140x with respect to the personnel factor, and $60x with respect to the tangible property factor). Accordingly, Corp A's $800x of gross income from providing software platform Z to customers for the taxable year is multiplied by the quotient of $450x/$480x pursuant to paragraph (d)(1) of this section to determine that $750x is from sources within the United States. Pursuant to paragraph (d)(1) of this section, the remaining $50x ($800x − $750x) is from sources without the United States.

(f) *Applicability date*—(1) *In general.* Except as otherwise provided in this paragraph (f), this section applies to taxable years beginning on or after January 14, 2025. Paragraphs (d) and (e)(12) and (13) of this section apply to taxable years beginning on or after the date of publication of the Treasury decision adopting those paragraphs as final regulations in the **Federal Register**.

(2) *Early application.* Except for paragraphs (d) and (e)(12) and (13) of this section, a taxpayer can apply this section to taxable years beginning on or after August 14, 2019 and all subsequent taxable years not described in paragraph (f)(1) (early application years) if—

(i) The taxpayer also applies § 1.861–18 to the early application years;

(ii) This section and § 1.861–18 are applied to the early application years by all persons related to the taxpayer (within the meaning of sections 267(b) and 707(b));

(iii) The period of limitations on assessment for each early application year of the taxpayer and all related parties (within the meaning of sections 267(b) and 707(b)) is open under section 6501; and

(iv) The taxpayer would not be required under this section to change its method of accounting as a result of such election.

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2024–31373 Filed 1–10–25; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107895–24]

RIN 1545–BR20

Base Erosion and Anti-Abuse Tax Rules for Qualified Derivative Payments on Securities Lending Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the base erosion and anti-abuse tax imposed on certain large corporate taxpayers with respect to certain payments made to foreign related parties. The proposed regulations relate to how qualified derivative payments with respect to securities lending transactions are determined and reported. The proposed regulations would affect corporations with substantial gross receipts that make payments to foreign related parties.

DATES: Written or electronic comments and requests for a public hearing must be received by April 14, 2025.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–107895–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–107895–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sheila Ramaswamy at (202) 317–6938; concerning submissions of comments, requests for a public hearing, and access to a public hearing, Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed additions and amendments to 26 CFR part 1 (Income Tax Regulations) under sections 59A and 6038A of the Internal Revenue Code (Code). The proposed additions and amendments are issued pursuant to the express delegations of authority to the Secretary of the Treasury (or her delegate) provided under sections 59A(i) and 6038A(b)(2). The proposed regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

Background

I. Statutory Framework

The base erosion and anti-abuse tax (''BEAT'') of section 59A imposes on each applicable taxpayer a tax equal to the base erosion minimum tax amount for the taxable year. For taxable years after 2018 and before 2026, the base erosion minimum tax amount for the taxable year is the excess of ten percent of the modified taxable income of the applicable taxpayer minus the applicable taxpayer's regular tax liability under section 26(b) reduced (but not below zero) by certain credits. *See* section 59A(b)(1) and (2). To be an applicable taxpayer, generally the taxpayer must meet the following three requirements: (1) the taxpayer must be a corporation which is not a regulated investment company, a real estate investment trust, or an S corporation; (2) the taxpayer must have average annual gross receipts for the three-taxable-year period ending with the preceding taxable year that are at least $500 million; and (3) the taxpayer generally must have a base erosion percentage for the taxable year of at least three percent (or two percent for banks and registered securities dealers). *See* section 59A(e).

The applicable taxpayer determines its modified taxable income by computing its taxable income without regard to any base erosion tax benefit with respect to any base erosion payment or the base erosion percentage of any net operating loss deduction allowed under section 172 for the taxable year. *See* section 59A(c)(1). Generally, a base erosion payment is any deductible amount paid or accrued by an applicable taxpayer to a foreign person as defined in section 6038A(c)(3) that is a related party of the applicable taxpayer. *See* section 59A(d)(1) and (f). The base erosion tax benefit is the deduction allowed under Chapter 1 for the taxable year for the base erosion payment. *See* section 59A(c)(2). Qualified derivative payments (''QDPs'') are not treated as base erosion payments if they are properly reported to the IRS. *See* section 59A(h)(1) and (h)(2)(B).

II. Guidance Addressing the BEAT

On December 6, 2019, the Treasury Department and the IRS published final regulations (TD 9885) under sections 59A, 383, 1502, 6038A, and 6655 (the ''2019 final regulations'') in the **Federal Register** (84 FR 66968). On October 9, 2020, the Treasury Department and the IRS also published final regulations (TD 9910) under sections 59A and 6031 in the **Federal Register** (85 FR 64346). In a series of notices, the Treasury Department and the IRS announced the intention to defer the applicability date of § 1.6038A–2(b)(7)(ix) (regarding the reporting requirements for QDPs) until taxable years beginning on or after January 1, 2027. *See, e.g.,* Notice 2024–43, 2024–25 IRB 1737.

Explanation of Provisions

These proposed regulations provide guidance under section 59A that would modify the rules set forth in the final regulations relating to how to determine QDPs in connection with securities lending transactions. Part A of this Explanation of Provisions summarizes the QDP exception. Part B of this Explanation of Provisions explains the reporting requirements for QDPs, particularly with respect to securities lending and borrowing transactions. Part C of this Explanation of Provisions describes the proposed amendment to the reporting requirements for QDPs.

A. Overview of Qualified Derivative Payments

Section 59A and the final regulations thereunder provide a number of exceptions to base erosion payments. One exception relevant to these proposed regulations is in section 59A(h), which provides that QDPs are not base erosion payments. Section 59A(h)(2)(A) defines a QDP as any payment made by a taxpayer pursuant to a derivative with respect to which the taxpayer—

(i) Recognizes gain or loss as if such derivative were sold for its fair market value on the last business day of the taxable year (and additional times as required under a statute or the taxpayer's method of accounting),

(ii) Treats any gain or loss recognized as ordinary, and

(iii) Treats the character of all items of income, deduction, gain, or loss with respect to a payment pursuant to the derivative as ordinary.

Section 59A(h)(2)(B) provides that a payment is not a QDP unless the taxpayer satisfies certain reporting requirements. Section 1.59A–6(b)(2)(i) provides that a payment is not a QDP unless the taxpayer reports the information required by § 1.6038A–2(b)(7)(ix), which includes: (a) the aggregate amount of QDPs for the taxable year and (b) a representation that all payments satisfy the requirements of § 1.59A–6(b)(2). The aggregate amount of QDPs is reported on the Form 8991, *Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.* Under § 1.59A–6(b)(2)(ii), if a taxpayer fails to satisfy the reporting requirement with respect to a payment, that payment is ineligible for the QDP exception to base erosion payment status, unless another exception applies. However, until § 1.59A–6(b)(2)(i) is applicable, § 1.59A–6(b)(2)(ii) will not apply to a taxpayer who reports the aggregate amount of QDPs in good faith. § 1.59A–6(b)(2)(iv). Section 1.6038A–2(b)(7)(ix) initially applied to taxable years beginning on or after June *7,* 2021, as a result of which § 1.59A–6(b)(2)(i) did not apply until taxable years beginning on or after June 7, 2021. § 1.6038A–2(g). Therefore, for taxable years beginning before June 7, 2021, taxpayers could satisfy the reporting requirements for QDPs by reporting the aggregate amount of QDPs in good faith. §§ 1.59A–6(b)(2)(iv) and 1.6038A–2(g). As described in more detail below, the Treasury Department and the IRS have announced the intention to defer the applicability date of § 1.6038A–2(b)(7)(ix) to taxable years beginning on or after January 1, 2027. *See, e.g.,* Notice 2024–43, 2024–25 IRB 1737. This means that § 1.59A–6(b)(2)(i) will not apply until taxable years beginning on or after January 1, 2027.

Once § 1.6038A–2(b)(7)(ix) becomes applicable, the reporting requirements for QDPs will no longer be satisfied by reporting the aggregate amount of QDPs in good faith. Instead, taxpayers must correctly report the aggregate amount of QDPs on Form 8991 to satisfy the reporting requirements and only those payments for which the reporting requirements have been satisfied will qualify for the QDP exception. The Treasury Department and the IRS are considering requiring taxpayers to report additional information on the Form 8991 or a schedule thereto to assist the IRS in verifying that taxpayers have accurately reported the payments that qualify for the QDP exception. Before modifications are made to the information required to reported on Form 8991 or a schedule thereto, the IRS expects to make a draft available with the proposed changes so that taxpayers may submit comments.

The aggregate amount of QDPs is defined under § 1.59A–6(b)(2)(iii) and (b)(3) to incorporate § 1.59A–2(e)(3)(vi) (the ''BEAT Netting Rule''). The BEAT Netting Rule provides that for any position with respect to which the taxpayer applies a mark-to-market method of accounting, the taxpayer must determine its gain or loss with respect to that position for any taxable year by combining all items of income, gain, loss, or deduction arising with respect to the position during the taxable year, such as from a payment, accrual, or mark. The BEAT Netting Rule was adopted to ensure that only a single deduction is claimed with respect to each transaction that is marked to market and to prevent distortions in deductions from being included in the denominator of the base erosion percentage, including as a result of the use of an accounting method that values a position more frequently than annually. *See* Preamble to the 2019 final regulations, 84 FR 66971. For example, when a taxpayer is a party to an interest rate swap with a foreign related party, the BEAT Netting Rule ensures that the periodic payments made by the taxpayer to the foreign related party give rise to only a single deduction in a taxable year regardless of whether the taxpayer marks to market the swap more frequently than annually.

B. Reporting and Determining QDPs

A comment recommended modifying the 2019 final regulation to provide that mark-to-market gains and losses with respect to the securities leg of a cross-border securities lending or borrowing transaction with a related party (an ''intercompany securities lending transaction'') are not subject to the QDP reporting requirements. The Treasury Department and the IRS agree that mark-to-market gains and losses with respect to intercompany securities lending transactions should not be subject to the QDP reporting requirements; however, the Treasury Department and the IRS do not agree with the rationale suggested by the comment. Part B.1 of this Explanation of Provisions describes intercompany securities lending transactions and the QDP rules applicable to those transactions as provided by the 2019 final regulations. Part B.2 of this Explanation of Provisions summarizes the comment requesting changes to the QDP reporting requirements with respect to mark-to-market gains and losses on intercompany securities lending transactions. Part B.3 of this Explanation of Provisions describes the proposed modifications to the QDP reporting requirements and explains why the Treasury Department and the IRS disagree with the rationale generally offered in the comment.

1. Application of QDP Reporting to Securities Lending or Borrowing Transactions

After the publication of the 2019 final regulations, comments requested clarification as to how the QDP reporting requirements apply to mark-to-market gains and losses with respect to the securities leg of an intercompany securities lending transaction. The Treasury Department and the IRS subsequently issued three notices announcing the intent to defer the applicability date of the reporting rules of § 1.6038A–2(b)(7)(ix) while the Treasury Department and the IRS studied whether further guidance was appropriate regarding the interaction of the QDP exception, the BEAT Netting Rule, and the QDP reporting requirements with respect to intercompany securities lending transactions. *See* Notice 2021–36, 2021–26 IRB 1227; Notice 2022–30, 2022–28 IRB 70. The most recent notice, Notice 2024–43, announced the intent to defer the applicability date to taxable years beginning on or after January 1, 2027. Notice 2024–43, 2024–25 IRB 1737.

In a typical intercompany securities borrowing transaction, a taxpayer may borrow securities, such as stock, from a foreign related party. The terms of the securities loan agreement will require the taxpayer to return identical securities to the foreign related party and to pay amounts equivalent to all interest, dividends, and other distributions that the foreign related party would be entitled to receive during the term of the lending transaction if it had not loaned the securities (substitute payments). The securities borrower may also be required to pay a separately stated borrow fee. Additionally, under normal market terms in the United States, the securities borrower will provide cash collateral and receive interest (the cash amount of which may be reduced by an embedded borrow fee) on that collateral. A taxpayer may also lend securities to a foreign related party under similar terms. For ease of discussion, both such transactions generally are referred to in this Explanation of Provisions as a securities lending transaction. Under a taxpayer's method of accounting, intercompany securities lending transactions may be marked to market on the last business day of its taxable year.

Section 1.59A–6(d) defines a derivative, for purposes of the QDP rules, as any contract the value of which, or any payment or transfer with respect to which, is determined by reference to, among other items, any share of stock of a corporation or any evidence of indebtedness. Special rules apply to securities lending transactions, pursuant to which a derivative does not include the cash collateral component of the transaction. § 1.59A–6(d)(2)(iii)(B). Accordingly, only the securities leg of a securities lending transaction—that is, the part of the contract providing for the borrowing and return of the securities, without regard to any obligation to provide cash collateral—may be treated as a derivative for purposes of the QDP rules.

Like other derivatives, the amount of any QDP arising from a securities lending transaction is excluded from the numerator and the denominator of the base erosion percentage. Section 59A(h)(1); § 1.59A–6(b)(3)(i). The aggregate amount of QDPs is determined as provided by the BEAT Netting Rule. § 1.59A–6(b)(2)(iii). For intercompany securities lending transactions, however, the cash collateral component of a securities lending transaction, and the payment of interest thereon, are not taken into account for purposes of the BEAT Netting Rule. § 1.59A–6(b)(3)(ii) and (d)(2)(iii)(B).

2. Comments Requesting Modifications to the QDP Reporting Requirements

A comment on the QDP reporting requirements of the regulations discussed the treatment of gains and losses on the securities leg of intercompany securities lending transactions. When the taxpayer is the securities borrower, the securities leg can result in deductions with respect to substitute payments or other payments made to the securities lender and, if the taxpayer marks to market the securities lending transaction, deductions for mark-to-market losses on the obligation to return the borrowed securities if the value of the borrowed securities increases. A transaction in which a U.S. taxpayer lends securities to a foreign related party also can give rise to a deduction for mark-to-market losses on the right to the return of the loaned securities if the value of the loaned securities decreases.

The comment agreed that substitute payments should be reported under the QDP reporting requirements but asserted that mark-to-market gains and losses on intercompany securities lending transactions should not be required to be reported. The comment noted that the language in the preamble to the 2019 final regulations stated that "a mark-to-market loss arising from a deemed sale or disposition of a third-party security held by a taxpayer is not within the general definition of a base erosion payment because the loss is not attributable to any payment made to a foreign related party. Rather, the mark-to-market loss is attributable to a decline in the market value of the security." *See* Preamble to the 2019 final regulations, 84 FR 66972 (noting "that the BEAT Netting Rule will apply primarily for purposes of determining the amount of deductions that are taken into account in the denominator of the base erosion percentage"). The comment viewed this statement as applicable not only to mark-to-market losses on third-party securities held by the taxpayer but also to mark-to-market losses on intercompany securities lending transactions. The comment asserted that that treatment would be correct as a legal matter, arguing that mark-to-market losses on derivatives with a related party are not payments to a related party. The comment supported this conclusion on the basis of legislative history to section 475 stating that mark-to-market gains or losses on a security that is a contract with a related party are treated as arising from a sale to an unrelated party.

The comment stated that mark-to-market losses should not be captured by the QDP reporting requirement because these losses should not be considered base erosion payments, and the QDP exception is predicated on an amount being a base erosion payment. The comment noted that including mark-to-market gains and losses on intercompany securities lending transactions in the amount of QDPs reported on Form 8991 could result in a QDP number that is either over- or under-inclusive of what the comment considered to be the correct aggregate QDP amount, depending upon the facts. For example, a taxpayer that has a mark-to-market gain for the year on an intercompany securities borrowing that exceeds the amount of substitute payments it makes would report no QDPs on the transaction by operation of the BEAT Netting Rule even though, in the view of the comment, the actual amount of QDPs should equal the amount of the substitute payments. The comment requested that the regulations under section 59A be revised to provide that mark-to-market gains and losses for the securities leg of an intercompany securities transaction are not payments to foreign related parties and should not be included in QDP reporting.

The same stakeholder also submitted a comment requesting that the applicability date of the reporting rules of § 1.6038A–2(b)(7)(ix) be deferred for another two years because financial institutions (a) do not have systems that maintain records of intercompany securities transactions from which mark-to-market gains or losses can be determined, including whether a particular securities lending transaction is cross-border; and (b) need certainty regarding the QDP reporting rules before building compliance systems. The stakeholder also commented that, while it believes mark-to-market amounts on other derivatives also are not base erosion payments, it is appropriate to apply the BEAT Netting Rule to the reporting of QDPs relating to those derivatives for practical reasons, including that taxpayers have the necessary information on their books and records to apply the BEAT Netting Rule to the QDP determination.

3. Changes to the Rule for Determining QDPs

While the Treasury Department and the IRS agree with the recommendation suggested by the comment, the Treasury Department and the IRS do not agree with the commenter's more general assertion that mark-to-market payments on derivatives with a foreign related party are not, or should not be, treated as base erosion payments. Payments on derivatives made to a foreign related party are base erosion payments, unless they qualify as QDPs. Sections 59A(d)(1) and 59A(h). They must be taken into account for BEAT purposes either when paid or when otherwise taken into account for U.S. Federal income tax purposes. If the commenter's position were correct, payments on derivatives to a foreign related party would be required to be taken into account for BEAT purposes when paid or accrued, which would deviate from when such payments are taken into account for other Federal income tax purposes for taxpayers that mark those payments to market.

For derivatives, the effect of the BEAT Netting Rule generally is to aggregate all items of income, gain, loss, or deduction to ensure that a single deduction is claimed with respect to each transaction that is marked to market. Because a derivative must be marked-to-market for tax purposes in order for a payment on the derivative to qualify as a QDP, it is appropriate to determine the aggregate amount of QDPs by reference to the BEAT Netting Rule. Section 59A(h)(2)(A)(i).

The QDP exception eliminates most mark-to-market gain or loss from derivative transactions from being characterized as base erosion payments. In those situations for which the QDP exception does not apply, mark-to-market losses on derivative contracts with foreign related parties generally are properly treated as base erosion payments. However, the Treasury Department and the IRS agree that it is appropriate to propose a special rule for mark-to-market losses (and gains) on intercompany securities lending transactions. Securities lending transactions have different characteristics from other derivative transactions such that it is appropriate to provide for a different treatment under the QDP rules. Unlike other derivative contracts such as forward contracts, options or notional principal contracts, securities lending transactions require the lender to transfer the securities to the borrower at the inception of the transaction and the borrower is required to return those securities (or identical securities) to the lender when the securities lending transaction is terminated. While other derivative transactions may provide either for physical delivery of a security or for cash settlement, those transactions typically function as a risk-shifting mechanism, whereas securities lending transactions are generally entered into to temporarily acquire or lend the securities. Additionally, a loss recognized on the sale or transfer of property, including securities, that results in a deduction is generally not a base erosion payment. § 1.59A–3(b)(2)(ix). As stated in the preamble to the 2019 final regulations, a mark-to-market loss from a deemed disposition of a third-party security is not a base erosion payment because the loss is not attributable to any payment made to a foreign related party; that loss is instead attributable to a decline in the market value of the security. 84 FR 66968, 66972. If the taxpayer sold the stock or debt to a foreign related party, loss on sale of the stock or debt generally would not be a deduction that would cause the payment to be treated as a base erosion payment under § 1.59A–3(b)(2)(ix).

If a taxpayer borrows securities from a foreign related party, and the security rises in value during the term of the intercompany securities lending transaction, the taxpayer has an economic loss on its contractual obligation to return the securities. In some cases (for example, if the intercompany securities lending transaction is part of a short sale transaction), the taxpayer also might have a tax loss when it returns the security to the foreign related party. Similarly, if a taxpayer lends securities to a foreign related party and the security falls in value, the taxpayer would have an economic loss on its contractual right to the return of the security. If the taxpayer sold the returned security, the taxpayer would recognize that loss for tax purposes. Marking to market the securities lending transaction in these circumstances accelerates the recognition of the tax loss attributable to the transaction.

For example, assume that a taxpayer that applies mark-to-market accounting for U.S. Federal income tax purposes borrows stock from a foreign related party pursuant to an intercompany securities lending transaction on September 1, when the value of the stock is $100x. The taxpayer sells the stock for $100x on September 1. The intercompany securities lending transaction is outstanding on December 31, when the value of the stock is $106x, and a $1x dividend is paid on the stock by the issuer after September 1 and prior to December 31. The taxpayer will make a $1x substitute dividend payment to the foreign related party. Under the BEAT Netting Rule, the taxpayer will have a $7x loss on this transaction ($7x) = (($100x − $106x) − $1x). The substitute dividend payment is a $1x base erosion payment on a stand-alone basis that is eligible for the QDP exception assuming all the requirements of section 59A and the regulations are met. The $6x mark-to-market loss on the securities leg of intercompany securities lending transaction is a loss on a derivative that requires the delivery of the stock at the termination of the transaction, and arises because the increase in value of the stock makes it more expensive for the taxpayer to satisfy its obligation to deliver the stock to the foreign related party. If, hypothetically, the intercompany securities lending transaction were not marked to market, and the taxpayer realized a $6x loss on the delivery of the stock to the foreign related party at the termination of the transaction, that $6x loss would not be a base erosion payment.

Alternatively, if the value of the stock were $94x on December 31, the taxpayer would have a gain of $5x on the transaction $5x = (($100x − $94x) − $1x)) under the BEAT Netting Rule. The taxpayer would have a $6x mark-to-market gain on the securities leg of the intercompany securities lending transaction, which would arise because the decrease in value of the stock makes it less expensive for the taxpayer to satisfy its obligation to deliver the stock to the foreign related party. If, hypothetically, the intercompany securities lending transactions were not marked to market, and the taxpayer realized a $6x gain on the delivery of the stock to the foreign related party at the termination of the transaction, that $6x gain would not be a base erosion payment. The substitute dividend payment is a $1x base erosion payment that is eligible for the QDP exception assuming all the requirements of section 59A and the regulations are met.

Accordingly, the Treasury Department and the IRS are of the view that the BEAT regulations should be revised to provide that mark-to-market gains and losses on the securities leg of a securities lending transactions with a foreign related party are not treated as a QDP. Consequently, only substitute payments and other payments made to a foreign related party under an intercompany securities lending transaction that are not payments of cash collateral or interest thereon would be QDPs.

The proposed regulations would provide that mark-to-market gains and losses on the securities leg of an intercompany securities lending transaction are not treated as QDPs and therefore are not netted with QDPs nor required to be included in QDP reporting. Proposed § 1.59A–6(b)(3)(iii)(A). Mark-to-market gains and losses on other derivative transactions (including other derivative transactions that provide for physical delivery) must be included in QDP reporting. The proposed regulations would not alter the rule that substitute payments and other payments to foreign related parties must be reported under §§ 1.59A–6(b)(2)(i) and 1.6038A–2(b)(7)(ix). Those amounts must be taken into account on a consistent basis when determining the amount of the taxpayer's base erosion payment, for example on a cash, accrual or mark-to-market basis, in a manner that does not omit or duplicate any payment. Proposed § 1.59A–3(b)(2)(iv)(B). Furthermore, the proposed rule achieves the compliance objectives of the QDP reporting requirement without imposing additional burden on taxpayers to create new systems to track mark-to-market gains and loss with respect to intercompany securities lending transactions.

Proposed § 1.59A–3(b)(2)(iv) would provide a conforming amendment to the definition of a base erosion payment in the context of the securities leg of a securities lending transaction to provide that the BEAT Netting Rule under § 1.59A–2(e)(3)(vi) does not apply to net QDPs with mark-to-market gains and losses on securities lending transactions. Consequently, only amounts paid to a foreign related party under a securities lending transaction that do not qualify as a QDP will be taken into account for purposes of the numerator of the base erosion perentage, such as in the case where a taxpayer lends securities and pays or accrues interest to a foreign related party with respect to the cash leg of a securities lending transaction. The BEAT Netting Rule continues to apply to determine the deductions attributable to securities lending transactions for purposes of the denominator of the base erosion percentage. § 1.59A–2(e)(3)(vi).

C. Rule for Determining the Recipient of a Substitute Payment

Comments suggested that it may be challenging for a financial institution to determine whether it has borrowed a security from a foreign related party or an unrelated third-party customer. According to the comments, when a U.S. broker-dealer enters into securities lending transactions with third-party customers, the broker-dealer may borrow the securities required to execute the trade from a pool of available securities owned by other customers, some of which are U.S. customers, and some of which are foreign customers who have accounts with a foreign affiliate of the U.S. broker-dealer. If the borrowed security is owned by a foreign customer, the comments indicated that the U.S. broker-dealer may be treated as having entered into a securities borrowing transaction with its foreign affiliate who has the relationship with the foreign customer, who in turn borrowed the security from its foreign customer. However, the U.S. broker-dealer may not determine from which specific customer it has borrowed a security or whether it has entered into an intercompany securities borrowing transaction with its foreign affiliate. The U.S. broker-dealer may determine its counterparty only when a substitute dividend is required to be paid (for example, on the dividend record date), and only for purposes of determining the recipient of the substitute payment for U.S. Federal income or withholding tax purposes.

To address this concern, the proposed regulations would provide that a taxpayer may report the amount actually paid to foreign related parties for QDP reporting purposes if the taxpayer can associate the substitute payment on securities borrowed and other payments made pursuant to a securities loan (such as borrow fees) with a specific recipient. The ''lottery'' method of § 1.6045–2(f)(2)(ii) is not applicable for this purpose. In response to the challenges that may exist in determining whether the recipient of a substitute payment and other payments is a foreign related party of the taxpayer, proposed § 1.59A–6(b)(3)(iv) would provide an alternative rule that treats the substitute payments that a taxpayer pays with respect to borrowed securities as having been paid first to foreign related parties (but not in excess of the amount of the payments received by the foreign related parties).

Proposed Applicability Date

Proposed §§ 1.59A–3(b)(2)(iv) (application of BEAT netting rule to securities lending transactions) and 1.59A–6(b)(3)(iii) and (iv) (QDP rules relating to securities lending transactions) would apply to taxable years beginning on or after the date that final regulations are filed with the **Federal Register**. Proposed § 1.6038A–2(b)(7)(ix) (rules relating to QDP reporting) would apply to payments made in taxable years beginning on or after January 1, 2027.

Special Analysis

I. Regulatory Planning and Review—Economic Analysis

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

II. Paperwork Reduction Act

These proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. However, a taxpayer will continue to be required to report on Form 8991, *Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts,* the aggregate amount of QDPs.

For purposes of the Paperwork Reduction Act, the reporting burden associated with the collections of information with respect to section 59A will be reflected in the Paperwork Reduction Act Submission associated with Form 8991 (OMB control number 1545–0123). The overall burden estimates associated with the OMB control number 1545–0123 is an aggregate number related to the entire package of forms associated with the applicable OMB control number and will include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of these proposed regulations. These numbers are therefore not specific to any burden imposed by these proposed regulations. The burdens have been reported for other income tax regulations that rely on the same information collections and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burdens imposed by tax provisions before Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''). No burden estimates specific to the forms affected by the proposed regulations are currently available. For the OMB control number discussed in this paragraph, the Treasury Department and the IRS estimate PRA burdens on a taxpayer-type-basis rather than a provision-specific basis. Those estimates capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed regulations (when final) and other regulations that affect the compliance burden for that form.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize paperwork burden. In addition, when available, drafts of IRS forms are posted at *https://www.irs.govdraft-tax-forms,* and comments may be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications*. Final IRS forms are available at *https://www.irs.gov/forms-instructions*. Forms will not be finalized until after they have been approved by OMB under the PRA.

III. Regulatory Flexibility Act

Generally, the proposed regulations affect only aggregate groups of corporations with average annual gross receipts of at least $500 million and that make payments to foreign related parties. Generally, only large businesses have both substantial gross receipts and make payments to foreign related parties. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Secretary hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

V. Unfunded Mandates Reform Act

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

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''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. The proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Request for Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. Any comments submitted will be made available at *https://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are D. Peter Merkel and Sheila Ramaswamy of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

* * * * *

■ **Par. 2.** Section 1.59A–2 is amended by removing the language ''§ 1.59A–3(b)(2)(iii)'' from the last sentence of paragraph (e)(3)(vi) and adding the language ''§ 1.59A–3(b)(2)(iv)'' in its place.

■ **Par. 3.** Section 1.59A–3 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1.59A–3 Base erosion payments and base erosion tax benefits.

* * * * *

(b) * * *

(2) * * *

(iv) *Amounts paid or accrued with respect to mark-to-market position*—(A) *In general.* For any transaction with respect to which the taxpayer applies the mark-to-market method of accounting for U.S. Federal income tax purposes, the rules set forth in § 1.59A–2(e)(3)(vi) apply to determine the amount of the base erosion payment.

(B) *Application of BEAT netting rule to securities lending transactions.* Notwithstanding paragraph (b)(2)(iv)(A) of this section, mark-to-market gains and losses from a securities lending transaction described in §§ 1.861–2(a)(7) and 1.861–3(a)(6) are not taken into account when applying § 1.59A–2(e)(3)(vi) for purposes of determining the amount of a taxpayer's base erosion payment. When determining the amount of the taxpayer's base erosion payment, substitute payments and other amounts that relate to the securities lending transaction must be taken into account on a consistent basis that does not result in the duplication or omission of these amounts. For purposes of the immediately preceding sentence, the term ''other amounts that relate to the securities lending transaction'' does not include delivery of the securities to, or receipt of securities from, the lender. This paragraph (b)(2)(iv)(B) applies to a taxpayer that is either the borrower or lender with respect to the securities lending transaction.

* * * * *

■ **Par. 4.** Section 1.59A–6 is amended by adding paragraphs (b)(3)(iii) and (iv) to read as follows:

§ 1.59A–6 Qualified derivative payment.

* * * * *

(b) * * *

(3) * * *

(iii) *Special rule for mark-to-market gains and losses on the securities leg of a securities lending transaction*—(A) *In general.* The amount of any qualified derivative payment with respect to the securities leg component of a securities lending transaction as defined in §§ 1.861–2(a)(7) and 1.861–3(a)(6) that is excluded from the denominator of the base erosion percentage is determined under § 1.59A–3(b)(2)(iv)(B). Gains and losses on a security leg of a securities lending transaction are not included in determining the amount of the qualified derivative payment with respect to that security. The gain or loss with respect to the security leg for purposes of determining the amount of the qualified derivative payment is determined by combining only other items of income, gain, loss, or deduction during the taxable year, such as substitute payments and borrow fees, that arise from a payment or accrual to a foreign related party.

(B) The following examples illustrate the application of this paragraph (b)(3)(iii).

(*1*) *Example 1: Securities loan—(i) Facts.* Foreign Parent (FP) is a foreign corporation that owns all of the stock of domestic corporation (DC). FP is a foreign related party of DC under § 1.59A–1(b)(12). DC is a registered securities dealer. On September 1 of year 1, DC enters into a securities lending transaction with FP in which it borrows stock from FP. DC provides cash collateral for the loan and receives interest on that collateral from FP. On September 1, year 1, the stock has a value of $100x. On November 1, year 1, a dividend of $1x is paid by the issuer on the stock. DC pays a substitute dividend of $1x to FP on November 1, year 1 under the terms of the security loan. There are no other payments made or received in year 1. On December 31, year 1, the stock has a value of $106x. DC is required to mark-to-market the securities leg of securities lending transaction for U.S. Federal income tax purposes. DC is a calendar year taxpayer.

(*ii*) *Analysis.* DC has a deduction of $1x as a result of the substitute dividend it pays to FP. Assuming that the securities lending transaction otherwise meets the requirements of this section (including reporting the information required by § 1.6038A–2(b)(7)(ix)), the amount of DC's qualified derivative payment with respect to the securities lending transaction is $1x. Payments with respect to the cash collateral are not treated as part of the securities lending transaction. *See* paragraph (d)(2)(iii)(B) of this section. With respect to the securities leg of the securities lending transaction, DC has a mark-to-market loss of ($6x). Under paragraph (b)(3)(iii)(A) of this section, the amount of this mark-to-market loss is not included when determining the amount of the qualified derivative payment. Under § 1.59A–3(b)(2)(iv)(B), DC's ($6x) mark-to-market loss on the securities leg of the securities lending transaction also is not taken into account in determining the base erosion tax benefit amount for purposes of the numerator of the base erosion percentage. The ($6x) loss is taken into account in the denominator of the base erosion percentage, while the $1x substitute dividend payment is not taken into account for that purpose because it is a qualified derivative payment. See § 1.59A–2(e)(3)(vi) and (e)(3)(ii)(C).

(*2*) *Example 2: Securities loan.* The facts are the same as in paragraph (b)(3)(iii)(B)(*1*) of this section (*Example 1)* except that on December 31, year 1, the stock has a value of $94x. With respect to the securities leg of the securities lending transaction, DC has a mark-to-market gain of $6x. Under paragraph (b)(3)(iii)(A) of this section, the amount of this mark-to-market gain is not included when determining the amount of the qualified derivative payment. DC has a deduction of $1x as a result of the substitute dividend payment it makes to FP. Assuming that the securities lending transaction otherwise meets the requirements of this section (including reporting the information required by § 1.6038A–2(b)(7)(ix)), the amount of DC's qualified derivative payment with respect to the securities lending transaction is $1x. Neither the $6x gain nor the $1x substitute dividend payment, which is a qualified derivative payment, are taken into account in the denominator of the base erosion percentage.

(iv) *Rule for determining the amount of substitute payments and other payments paid to foreign related parties with respect to a securities lending transaction*—(A) *In general.* When a taxpayer makes a substitute payment or other payment with respect to a securities lending transaction, the taxpayer must determine whether the substitute payment or other payment paid with respect to the securities lending transaction is paid to a foreign related party. The amount of substitute payments or other payments paid by the taxpayer to a foreign related party is determined under paragraph (b)(3)(iv)(B) or (C) of this section.

(B) *Specific identification method.* The taxpayer may determine the amount of substitute payments or other payments that it has paid to a foreign related party by using the amount actually paid by the taxpayer to the foreign related party if the taxpayer can specifically identify each recipient of the substitute payment or other payment.

(C) *Alternative method.* If the taxpayer has paid substitute payments or other payments but cannot determine the recipients of those payments, the taxpayer must use the methodology provided in this paragraph (b)(3)(iv)(C) to determine whether the recipient is a foreign related party.

(*1*) *Step 1: Determining the total amount of substitute payments and other payments received by foreign related parties.* The taxpayer must determine the total amount of substitute payments and other payments described in paragraph (b)(3)(iii) of this section received by all foreign related parties of the taxpayer during the taxable year.

(*2*) *Step 2: Determining the total amount of substitute payments and other payments paid by taxpayer.* The taxpayer must determine the total amount of substitute payments and other payments described in paragraph (b)(3)(iii) of this section paid by the taxpayer during the taxable year.

(*3*) *Step 3: Determining the amount of substitute payments and other payments paid by taxpayer to foreign related parties.* The amount of substitute payments and other payments described in paragraph (b)(3)(iii) of this section paid by the taxpayer is treated as being paid first to foreign related parties of the taxpayer up to the total amount of substitute payments and other payments received by foreign related parties. Any amount of substitute payments and other payments paid by the taxpayer that exceeds the amount of substitute payments and other payments received by foreign related parties is treated as paid to unrelated parties for purposes of this paragraph (b)(3)(iv)(C)(*3*).

* * * * *

■ **Par. 5.** Section 1.59A–10 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 1.59A–10 Applicability date.

(a) *General applicability date.* Sections 1.59A–1 through 1.59A–9, other than the provisions described in the first sentence of paragraph (b) of this section or in paragraph (c) of this section, apply to taxable years ending on or after December 17, 2018. However, taxpayers may apply these regulations in their entirety for taxable years beginning after December 31, 2017, and ending before December 17, 2018. In lieu of applying the regulations referred to in the first sentence of this paragraph (a), taxpayers may apply the provisions matching §§ 1.59A–1 through 1.59A–9 from the Internal Revenue Bulletin (IRB) 2019–02 (*https://www.irs.gov/irb/2019-02_IRB*) in their entirety for all taxable years beginning after December 31, 2017, and ending on or before December 6, 2019.

* * * * *

(c) *Additional applicability dates.* Sections 1.59A–3(b)(2)(iv) and 1.59A–6(b)(3) (iii) through (iv) apply to taxable years beginning on or after January 10, 2025.

■ **Par. 6.** Section 1.6038A–2 is amended by revising the third sentence of paragraph (g) to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(g) * * * Paragraph (b)(7)(ix) of this section applies to payments made in taxable years beginning on or after January 1, 2027. * * *

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2025–00186 Filed 1–10–25; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100669–24]

RIN 1545–BR08

Automatic Enrollment Requirements Under Section 414A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth proposed regulations that would provide guidance with respect to the automatic enrollment requirements that apply to certain retirement plans. The proposed regulations reflect statutory changes made by the SECURE 2.0 Act of 2022 requiring that certain cash or deferred arrangements and salary reduction agreements be eligible automatic contribution arrangements that satisfy additional specified requirements. The proposed regulations would affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans that include cash or deferred arrangements or annuity contracts purchased under salary reduction agreements and other retirement plans that include eligible automatic contribution arrangements. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by March 17, 2025. A public hearing on this proposed regulation has been scheduled for April 8, 2025, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 17, 2025. If no outlines are received by March 17, 2025, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100669–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *www.regulations.gov.* Send paper submissions to: CC:PA:01:PR (REG–100669–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Christina M. Cerasale at (202) 317–4102 or Kara M. Soderstrom at (202) 317–6799; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, call the Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or email *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

These proposed regulations are promulgated under section 7805(a) of the Internal Revenue Code (Code), which provides that ''the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.'' In addition, section 341 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022), instructs the Secretaries of the Treasury and Labor (or their delegates) to adopt regulations related to the consolidation of notices required for defined contribution plans under the Code and the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829, as amended (ERISA).

Background

This notice of proposed rulemaking sets forth a proposed regulation under section 414A of the Code that would be added to the Income Tax Regulations (26 CFR part 1). Section 414A, which was added to the Code by section 101 of the SECURE 2.0 Act, provides that certain retirement plans must automatically enroll employees.

In addition to adding a new regulation under section 414A of the Code, this notice of proposed rulemaking sets forth proposed amendments to the regulations under section 414(w). These amendments to § 1.414(w)–1 would reflect the application of section 414A and the exception to the notice requirements for unenrolled participants set forth in section 414(bb), as added to the Code by section 320 of the SECURE 2.0 Act. The proposed amendments to § 1.414(w)–1 also would address section 402A(e)(5)(C) of the Code, which was added to the Code by section 127 of the SECURE 2.0 Act, as well as section 341 of the SECURE 2.0 Act. Section 402A(e)(5)(C) of the Code and section 341 of the SECURE 2.0 Act permit the consolidation of certain notices required under the Code and ERISA.

I. In General

A. Cash or Deferred Arrangements and Salary Reduction Agreements

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it includes a cash or deferred arrangement (CODA) [1] that is a qualified CODA. Under section 401(k)(2), a CODA is a qualified CODA only if it satisfies certain requirements. These requirements include that elective contributions under the CODA are subject to the section 401(k)(2)(B)

[1] Under § 1.401(k)–1(a)(2)(i), a CODA generally is an arrangement providing for an election by an employee to have the employer provide either contributions to a plan described in section 401(a) or payments directly in cash.