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Issued on October 11, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[TD 9981]

RIN 1545-BJ53

Requirements for Type I and Type III Supporting Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on the prohibition on certain gifts or contributions to Type I and Type III supporting organizations from persons who control a supported organization and on certain other requirements for Type III supporting organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations affect certain Type I and Type III supporting organizations and their supported organizations.

DATES:

Effective date: These regulations are effective on October 16, 2023.

Applicability date: For dates of applicability, see § 1.509(a)-4(I).

FOR FURTHER INFORMATION CONTACT: Michael Gruccio at (202) 317-4541 or Don Spellmann at (202) 317-4086.

SUPPLEMENTARY INFORMATION:

Background

I. Overview

This document amends the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 509(a) of the Internal Revenue Code (Code). These final regulations amend § 1.509(a)-4 to provide guidance on amendments to the Code enacted by section 1241 of the Pension Protection Act of 2006 (PPA), Public Law 109-280, 120 Stat. 780 (August 17, 2006).

An organization described in section 501(c)(3) of the Code is classified as either a private foundation or a public charity. To be classified as a public charity, an organization must be described in section 509(a)(1), (2), or (3). Organizations described in section 509(a)(3) are known as “supporting organizations.” Supporting organizations achieve their public charity status by providing support to one or more organizations described in section 509(a)(1) or (2), which, in this context, are referred to as “supported organizations.”

To be described in section 509(a)(3), an organization must satisfy (1) an organizational test, (2) an operational test, (3) a relationship test, and (4) a disqualified person control test. The organizational and operational tests require that a supporting organization be organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more supported organizations. The relationship test requires a supporting organization to establish one of three types of relationships with one or more supported organizations. A supporting organization that is operated, supervised, or controlled by one or more supported organizations is known as a “Type I” supporting organization. The relationship of a Type I supporting organization with its supported organization(s) is comparable to that of a corporate parent-subsidiary relationship. A supporting organization that is supervised or controlled in connection with one or more supported organizations is known as a “Type II” supporting organization. The relationship of a Type II supporting organization with its supported organization(s) involves common supervision or control by the persons supervising or controlling both the

supporting organization and the supported organization(s). A supporting organization that is operated in connection with one or more supported organizations is known as a “Type III” supporting organization and is discussed further in the remainder of this preamble. Finally, the disqualified person control test requires that a supporting organization not be controlled directly or indirectly by certain disqualified persons.

Sections 1241 through 1243 of the PPA revised the requirements for supporting organizations. These final regulations under § 1.509(a)-4 address section 1241’s five changes to the requirements an organization must satisfy to qualify as a Type III supporting organization.

II. PPA Changes to Type III Supporting Organizations

The PPA made the following five changes to the requirements an organization must satisfy to qualify as a Type III supporting organization:

(1) Section 1241(c) of the PPA removed the ability of a charitable trust to rely on the special rule under § 1.509(a)-4(i)(2)(iii) as then in effect, which allowed a trust to satisfy the attentiveness requirement of the integral part test for non-functionally integrated Type III supporting organizations if the supported organization was a beneficiary of the trust and state law allowed the beneficiary to enforce the trust and compel an accounting of the trust;

(2) Section 1241(d) of the PPA directed the Secretary of the Treasury or her delegate (Secretary) to promulgate regulations under section 509 that establish a new distribution requirement for Type III supporting organizations that are not “functionally integrated” (a non-functionally integrated (NFI) Type III supporting organization) to ensure that a “significant amount” is paid to supported organizations; for this purpose, the term “functionally integrated” means a Type III supporting organization that is not required under regulations to make payments to supported organizations, because the supporting organization engages in activities that relate to performing the functions of, or carrying out the purposes of, its supported organization(s);

(3) Section 1241(b) of the PPA required a Type III supporting organization to provide annually to each of its supported organizations the information required by the Department of the Treasury (Treasury Department) and the IRS (referred to in § 1.509(a)-4(i)(2) as the notification requirement)

to ensure that the supporting organization is responsive to the needs or demands of its supported organization(s);

(4) Section 1241(b) of the PPA also prohibited a Type III supporting organization from supporting any supported organization not organized in the United States; and

(5) Section 1241(b) of the PPA additionally prohibited a Type I or Type III supporting organization from accepting any gift or contribution from a person who, alone or together with certain related persons, directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization.

III. Prior Rulemaking

On August 2, 2007, the Treasury Department and the IRS published in the **Federal Register** (72 FR 42335) an advanced notice of proposed rulemaking (ANPRM) (REG-155929-06) in response to the PPA. The ANPRM described proposed rules to implement the changes made by the PPA to the Type III supporting organization requirements and solicited comments regarding those proposed rules.

On September 24, 2009, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-155929-06) in the **Federal Register** (74 FR 48672) proposing regulations regarding certain requirements to qualify as a Type III supporting organization under the PPA (2009 proposed regulations). The 2009 proposed regulations set forth those proposed requirements in § 1.509(a)-4(i).

On December 28, 2012, the Treasury Department and the IRS published a Treasury Decision (TD 9605) in the **Federal Register** (77 FR 76382) containing final and temporary regulations under § 1.509(a)-4 regarding the requirements to qualify as a Type III supporting organization (2012 TD). Also on December 28, 2012, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-155929-06) in the **Federal Register** (77 FR 76426) containing proposed regulations that incorporated the text of the temporary regulations in the 2012 TD by cross-reference. The temporary regulations in the 2012 TD made significant changes to the distribution requirement for NFI Type III supporting organizations. The 2012 TD adopted other aspects of the 2009 proposed regulations with some changes in response to comments and provided transition relief for Type III supporting organizations in existence on December 28, 2012, that met and continued to

meet the test under former § 1.509(a)-4(i)(3)(ii), known as the “but for” test, as in effect prior to December 28, 2012, treating them as functionally integrated until the first day of their second taxable year beginning after December 28, 2012. Upon expiration of this relief period, the 2012 TD requires these organizations to meet the same rules as all other supporting organizations to be considered functionally integrated. The preamble to the 2012 TD also identified issues for possible future rulemaking and requested comments.

On January 6, 2014, the Treasury Department and the IRS published Notice 2014-4, 2014-2 I.R.B. 274, to provide additional transition relief for any Type III supporting organization (1) supporting at least one supported organization that is a governmental entity to which the supporting organization is responsive (within the meaning of § 1.509(a)-4(i)(3)) and (2) engaging in activities for or on behalf of the governmental supported organization that perform the functions of, or carry out the purposes of, the governmental supported organization and that, but for the involvement of the supporting organization, would normally be engaged in by the governmental supported organization itself. Notice 2014-4 stated that such an organization will be treated as a functionally integrated Type III supporting organization until the earlier of the date final regulations under § 1.509(a)-4(i)(4)(iv) are published in the **Federal Register** or the first day of the organization’s third taxable year beginning after December 31, 2013.

On December 23, 2015, the Treasury Department and the IRS published a Treasury Decision (TD 9746) in the **Federal Register** (80 FR 79684) containing final regulations under § 1.509(a)-4(i) regarding the distribution requirement for NFI Type III supporting organizations, finalizing the rule in the 2012 proposed and temporary regulations with very minor changes (2015 final regulations). The preamble to the 2015 final regulations indicated that additional proposed regulations would be forthcoming to provide additional guidance for Type III supporting organizations, including specific rules under § 1.509(a)-4(i)(4)(iv) for Type III supporting organizations that support governmental supported organizations; the 2012 TD had reserved § 1.509(a)-4(i)(4)(iv). In addition, the preamble to the 2015 final regulations indicated that supporting organizations that support a governmental supported organization could continue to rely on Notice 2014-4 until the date of

publication of the new proposed regulations.

On February 19, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-118867-10) in the **Federal Register** (81 FR 8446) containing proposed regulations under § 1.509(a)-4(f) and (i) regarding the prohibition on certain contributions to Type I and Type III supporting organizations and the requirements for Type III supporting organizations (2016 proposed regulations). The 2016 proposed regulations addressed issues identified in the preamble to the 2012 TD as well as the comments (six in total) on the 2012 TD and Notice 2014-4.

The Treasury Department and the IRS received six comments in response to the 2016 proposed regulations. The comments are available for public inspection at <https://www.regulations.gov> or upon request. No public hearing was requested. After considering the comments received, the Treasury Department and the IRS adopt the 2016 proposed regulations in these final regulations with certain revisions described in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

I. Overview

This Summary of Comments and Explanation of Revisions addresses the comments that the Treasury Department and the IRS received in response to the 2016 proposed regulations and describes the revisions adopted in these final regulations. As described in this Summary of Comments and Explanation of Revisions, these final regulations define the term “control” for purposes of section 509(f)(2), which prohibits a Type I or Type III supporting organization from accepting any gift or contribution from any person who controls the governing body of the supported organization(s). These final regulations also set forth additional rules and requirements for Type III supporting organizations, including (1) additional requirements to meet the responsiveness test for all Type III supporting organizations; (2) additional rules regarding the qualification of an organization as a functionally integrated Type III supporting organization under § 1.509(a)-4(i)(4), including specific rules for supporting organizations that support governmental supported organizations; and (3) additional rules regarding the required annual distributions under § 1.509(a)-4(i)(5) by an NFI Type III supporting organization.

II. Contributions From Controlling Donors—Meaning of Control

Section 509(f)(2) and § 1.509(a)–4(f)(5) prohibit Type I and Type III supporting organizations from accepting any gift or contribution from any person (other than an organization described in section 509(a)(1), (2), or (4)) who, alone or together with certain related persons (as described in § 1.509(a)–4(f)(5)(i)(B) or (C)), directly or indirectly controls the governing body of a supported organization of the Type I or Type III supporting organization, or from persons related to a person possessing such control. Section 509(f)(2) does not define “directly or indirectly controls.” The 2012 TD reserved § 1.509(a)–4(f)(5)(ii), titled “Meaning of control,” for future proposed regulations.

The 2016 proposed regulations proposed defining “control” consistently with the definition of control in § 1.509(a)–4(j), which relates to control by disqualified persons for purposes of the disqualified person control test in section 509(a)(3)(C) and § 1.509(a)–4(a)(4). In general, under the 2016 proposed regulations, the governing body of a supported organization is considered “controlled” by a person if that person, alone or by aggregating his or her votes or positions of authority with certain related persons described in § 1.509(a)–4(f)(5)(i)(B) or (C), may require the governing body of the supported organization to perform any act that significantly affects its operations or may prevent the governing body of the supported organization from performing any such act.

These final regulations adopt the definition of “control” proposed in the 2016 proposed regulations with minor changes to add clarity. These final regulations make clear that control exists if one or more persons described in § 1.509(a)–4(f)(5)(i)(A), (B), or (C) hold 50 percent or more of the total voting power of the governing body or have the right to exercise veto power over the actions of the governing body. These final regulations also incorporate language from § 1.509(a)–4(j)(1) to make clear that even if persons do not have control by virtue of having 50 percent or more of the voting power or a veto power, all pertinent facts and circumstances will be taken into consideration in determining whether such persons do in fact directly or indirectly control the governing body of a supported organization.

One commenter stated that if a parent supporting organization controls a supported organization, section 509(f)(2) would prohibit Type I and Type III supporting organizations of that

controlled supported organization from accepting any gift or contribution from the parent supporting organization. To allow these contributions, the commenter recommended excluding from the definition of control the control a parent supporting organization exercises over its supported organizations.

Section 509(f)(2) only excepts gifts or contributions from organizations described in section 509(a)(1), (2), and (4). Congress did not provide an exception for section 509(a)(3) organizations. For this reason, the commenter’s recommendation is not consistent with section 509(f)(2), and these final regulations do not adopt it.

III. Type III Supporting Organization Relationship Test

Section 1.509(a)–4(i)(1) provides that, for each taxable year, a Type III supporting organization must satisfy (i) a notification requirement, (ii) a responsiveness test, and (iii) an integral part test provided in the regulations. The 2016 proposed regulations proposed additional rules regarding each of these requirements. These final regulations adopt the 2016 proposed rules with the modifications described in this part III.

A. Notification Requirement

Section 509(f)(1)(A) provides that an organization will not be considered a Type III supporting organization unless the organization provides to each supported organization, for each taxable year, such information as the Secretary may require to ensure that the organization is responsive to the needs or demands of the supported organizations. To satisfy this notification requirement, § 1.509(a)–4(i)(2) requires a Type III supporting organization to provide to each of its supported organizations for each taxable year: (1) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support it provided to the supported organization during the supporting organization’s preceding taxable year; (2) a copy of the supporting organization’s most recently filed Form 990, *Return of Organization Exempt from Income Tax*, or other annual information return required to be filed under section 6033; and (3) a copy of the supporting organization’s governing documents, including any amendments (unless previously provided and not subsequently amended). The 2016 proposed regulations proposed clarifying that for NFI Type III supporting organizations the description of support in the written

notice must include all of the distributions described in § 1.509(a)–4(i)(6) to the supported organization. These final regulations adopt this clarification.

Section 1.509(a)–4(i)(2)(iii) requires that the notification be transmitted by the last day of the fifth calendar month following the close of “that taxable year.” Due to the lack of clarity regarding the reference to “that taxable year,” the 2016 proposed regulations proposed amending § 1.509(a)–4(i)(2) to clarify that a supporting organization must deliver the required documents to each of its supported organizations by the last day of the fifth month of the supporting organization’s taxable year after the taxable year in which it provided the support it is reporting. The preamble to the 2016 proposed regulations stated that the proposed change is intended to reduce confusion but does not substantively change the due date or the content of the required notification. The preamble also stated that the date of delivery is determined by applying the general principles of section 7502. The final regulations adopt this proposed amendment without change.

One commenter requested clarification that the annual written notice may summarize all the programs and services a supporting organization performs for its supported organization. The Treasury Department and the IRS agree that a supporting organization may summarize its activities directly furthering the exempt purpose of the supported organization as long as that summary provides sufficient notice to the supported organization on the character of the activity and its related costs. The report must include a brief narrative description of the support provided and sufficient financial detail for the recipient to identify the types and amounts of support being reported.

B. Responsiveness Test

Section 1.509(a)–4(i)(3)(i) provides that a supporting organization meets the responsiveness test if it is “responsive to the needs or demands of a supported organization.” To meet this responsiveness test, an organization must satisfy two elements—the “relationship requirement” and the “significant voice requirement.” Under the relationship requirement, described in § 1.509(a)–4(i)(3)(ii), the officers, directors, or trustees of the organization must have one of three specified relationships with the officers, directors, or trustees (and in some cases the members) of the supported organization. Under the significant voice requirement, described in § 1.509(a)–4(i)(3)(iii), the

officers, directors, or trustees of the supported organization, by reason of their relationships described in § 1.509(a)–4(i)(3)(ii), must have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by the supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

The preamble to the 2012 TD stated that, in determining the appropriate distribution amount for NFI Type III supporting organizations, the Treasury Department and the IRS considered the required relationship between a supporting organization and its supported organizations, and that the Treasury Department and the IRS intended to issue proposed regulations in the future that would amend the responsiveness test by requiring a Type III supporting organization to be responsive to all of its supported organizations.

In response to this proposal in the preamble to the 2012 TD, one commenter stated that a supporting organization should not be required to be responsive to all of its supported organizations because the resulting administrative burden would effectively limit the total number of organizations a supporting organization could support. The commenter suggested alternatives under which a supporting organization would be responsive to only a subset of its supported organizations that would vary from year to year.

As stated in the preamble to the 2016 proposed regulations, the distinguishing characteristic of Type III supporting organizations, and the basis for their public charity classification, is that they are responsive to and significantly involved in the operations of their publicly supported organizations. See § 1.509(a)–4(f)(4). Unless a Type III supporting organization is responsive to each of its supported organizations, the supported organizations cannot exercise the requisite level of oversight of and engagement with the supporting organization. Limiting the responsiveness requirement to fewer than all of the supported organizations may result in the necessary oversight and accountability being present for less than all of a supporting organization's operations. Consistent with this view, the 2016 proposed regulations proposed revising § 1.509(a)–4(i)(3)(i) to require a supporting organization to be responsive to the needs and demands of each of its supported organizations to meet the responsiveness test.

In addition, to illustrate how concerns about potential administrative burdens may be addressed consistent with the revised responsiveness test, the 2016 proposed regulations proposed a new Example 3 in § 1.509(a)–4(i)(3)(iv) to demonstrate one way in which a Type III supporting organization that supports multiple organizations may satisfy the responsiveness test in a manner that can be cost-effective. The Example shows that a supporting organization can meet the relationship requirement in § 1.509(a)–4(i)(3)(ii) in different ways with respect to each of its supported organizations. The Example also shows how a supporting organization can organize and hold regular meetings, provide information, and encourage communication to help ensure that its supported organizations have a significant voice in the operations of the supporting organization.

As noted in the preamble to the 2016 proposed regulations, another commenter in response to the preamble of the 2012 TD requested additional guidance regarding the ability of trusts to satisfy the significant voice requirement of the responsiveness test. The new Example 3 in the 2016 proposed regulations provides further illustration of how Type III supporting organizations, including charitable trusts, might satisfy the significant voice requirement of the responsiveness test. The Treasury Department and the IRS note that although the examples in the regulations relating to the responsiveness test may involve a Type III supporting organization that is organized as either a corporation or a trust, the applicable law and relevant regulatory provisions, as modified by the final regulations, are applicable to all Type III supporting organizations in the same manner, whether they are organized as corporations or trusts.

As the preamble to the 2016 proposed regulations stated, the Treasury Department and the IRS anticipate that Type III supporting organizations may be able to demonstrate that they satisfy the responsiveness test in a variety of ways, and that the determination will be based on all the facts and circumstances.

As a result of the proposed changes to the responsiveness test, the 2016 proposed regulations also include conforming changes to examples and other regulatory provisions, specifically, removing references to “supported organizations to which the supporting organization is responsive” since the supporting organization is to be responsive to each supported organization.

Two commenters to the 2016 proposed regulations address the responsiveness test, agreeing with the proposed amendments to § 1.509(a)–4(i)(3)(i) and the new example in § 1.509(a)–4(i)(3)(iv). Thus, these final regulations adopt these proposed amendments without change.

C. Integral Part Test—Functionally Integrated Type III Supporting Organizations

Section 1.509(a)–4(i)(1)(iii) provides that, for each taxable year, a Type III supporting organization must satisfy the integral part test. The integral part test under § 1.509(a)–4(i)(1)(iii) is satisfied by maintaining significant involvement in the operations of one or more supported organizations and providing support on which the supported organizations are dependent. To satisfy this test, a Type III supporting organization must meet the requirements either for a functionally integrated Type III supporting organization or for an NFI Type III supporting organization, as set forth in § 1.509(a)–4(i)(4) or (5), respectively.

One commenter to the 2016 proposed regulations stated that the cross reference in § 1.509(a)–4(d)(4)(i)(C) to the integral part test should be corrected to conform to the amendments made by the 2012 TD. The final regulations adopt this recommendation and revise § 1.509(a)–4(d)(4)(i)(C) to reference the requirements of the integral part test set forth in § 1.509(a)–4(i)(1)(iii).

A Type III supporting organization is functionally integrated under § 1.509(a)–4(i)(4) if it (1) engages in activities substantially all of which directly further the exempt purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of that section, (2) is the parent of each of its supported organizations as described in paragraph (i)(4)(iii) of that section, or (3) supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of that section.

1. “Substantially All” Test

Section 1.509(a)–4(i)(4)(ii)(B) provides that all pertinent facts and circumstances will be taken into consideration in determining whether substantially all of a supporting organization's activities directly further the exempt purposes of its supported organization(s). One commenter to the 2016 proposed regulations requested that supporting organizations be given the option of meeting the “substantially all” test on average over a three- or five-year period. The commenter also

recommended that transition relief be provided if an organization does not meet the test over the most recent three or five years before the promulgation of final regulations.

The 2012 TD adopted the substantially all test in § 1.509(a)–4(i)(4)(ii). The 2012 TD also provided transition relief in § 1.509(a)–4(i)(11)(ii) for existing organizations to adjust to the new rules. The 2016 proposed regulations did not include any substantive changes to § 1.509(a)–4(i)(4)(ii). Furthermore, the substantially all test in § 1.509(a)–4(i)(4)(ii)(B) takes into consideration all pertinent facts and circumstances, which allows for some consideration of year-to-year changes in activities. Finally, the Treasury Department and the IRS note that the commenter’s proposed multi-year averaging test would be complex, create uncertainty about a supporting organization’s functionally integrated status at the close of each taxable year, and would be difficult to administer. For these reasons, the final regulations do not adopt this recommendation.

2. Parent of Each Supported Organization

Under § 1.509(a)–4(i)(4)(iii), a supporting organization is the parent of a supported organization, and thus is deemed to be functionally integrated, if the supporting organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization and a majority of the officers, directors, or trustees of the supported organization is appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacities) of the supporting organization.

As the 2009 proposed regulations noted, the classification of a parent organization as functionally integrated was intended to “apply to supporting organizations that oversee or facilitate the operation of an integrated system, such as hospital systems.” To more fully accomplish this objective, the 2016 proposed regulations proposed a revision to § 1.509(a)–4(i)(4)(iii) clarifying that for a supporting organization to qualify as the parent of each of its supported organizations, the supporting organization and its supported organizations must be part of an integrated system (such as a hospital system), and the supporting organization must engage in activities typical of the parent of an integrated system. The 2016 proposed regulations stated that examples of these activities include (but are not limited to) coordinating the activities of the

supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation for the supported organizations.

One commenter requested that the final regulations provide additional examples of integrated systems, such as private schools and universities, continuing care retirement communities, and residential rehabilitation facilities. The parenthetical in the 2016 proposed regulations—such as a hospital system—is stated as only one example and is not exclusive. This section of the regulations applies to any type of integrated system of which the parent organization and its supported organizations are a part. The test is whether the structure is that of an integrated system and whether the requirements of § 1.509(a)–4(i)(4)(iii) are satisfied, not whether the system is in a particular industry. The Treasury Department and the IRS conclude that it is unnecessary to add other examples of industries that may have integrated systems; doing so at this time may indicate that any industries not specifically mentioned in the final regulations are excluded. Accordingly, the final regulations do not adopt the commenter’s request to provide additional examples. Nevertheless, in response to the comment and to make clear that a hospital system is just one example of an integrated system, the final regulations revise the parenthetical in the 2016 proposed regulations to read as follows: (such as, for example, a hospital system).

The commenter also recommended including additional examples of activities that are typical of a parent of an integrated system and suggested that the examples might include financial planning and forecasting, legal services, human resources, information management, billing and collection services, marketing, and community outreach and education. The Treasury Department and the IRS note that the list of activities in the 2016 proposed regulations was only illustrative of how a parent directs the overall policies, programs, and activities of the supported organizations within the integrated system and was not exclusive. Thus, the absence of any particular activity, such as financial planning, from this list is not determinative. The final regulations clarify that a parent of an integrated system of supported organizations must direct the overall policies, programs, and activities of the supported organizations (such as, for example, coordinating the activities of the supported organizations and engaging in

overall planning, policy development, budgeting, and resource allocation). The Treasury Department and the IRS note that a parent of an integrated system may also perform system-wide administrative services, such as the examples provided by the commenter, in conjunction with directing the overall policies, programs, and activities of the supported organizations. For clarity, these final regulations omit the defined term “activities typical of a parent” in proposed § 1.509(a)–4(i)(4)(iii). The 2016 proposed regulations proposed to retain the requirement in § 1.509(a)–4(i)(4)(iii) that the governing body, members of the governing body, or officers of a parent supporting organization must appoint or elect a majority of the officers, directors, or trustees of the supported organization. The preamble to the 2016 proposed regulations stated that the use of the phrase “appointed or elected, directly or indirectly” means the supporting organization could qualify as a parent of a second-tier (or lower) subsidiary. Thus, for example, if the directors of supporting organization A appoint a majority of the directors of supported organization B, which in turn appoints a majority of the directors of supported organization C, the directors of supporting organization A will be treated as appointing the majority of the directors of both supported organization B and supported organization C. One commenter agreed with this interpretation and requested that it be addressed in the final regulations. These final regulations adopt this recommendation.

As stated in the preamble to the 2016 proposed regulations, the Treasury Department and the IRS interpret the existing requirement under § 1.509(a)–4(i)(4)(iii) that the parent organization have the power to appoint or elect a majority of the officers, directors, or trustees of each supported organization to include the requirement that the parent organization also have the power to remove and replace such officers, directors, or trustees, or otherwise have an ongoing power to appoint or elect with reasonable frequency. One commenter requested that language reflecting this interpretation be specifically added to § 1.509(a)–4(i)(4)(iii). The final regulations adopt this commenter’s recommendation.

3. Supporting a Governmental Supported Organization

The 2012 TD reserved § 1.509(a)–4(i)(4)(iv) for future guidance on how a Type III supporting organization can qualify as functionally integrated by supporting a governmental entity. As

interim guidance, Notice 2014–4 provided that a Type III supporting organization will be treated as functionally integrated if it (i) supports a supported organization that is a governmental entity to which the supporting organization is responsive; and (ii) engages in activities for or on behalf of that governmental supported organization that perform the functions of, or carry out the purposes of, that governmental supported organization and that, but for the involvement of the supporting organization, would normally be engaged in by the governmental supported organization itself. This interim guidance was subsequently extended by the 2015 final regulations. The 2016 proposed regulations proposed new rules under which a Type III supporting organization would qualify as functionally integrated by supporting governmental supported organizations. These final regulations adopt the proposed § 1.509(a)–4(i)(4)(iv), with the modifications discussed in the following paragraphs.

The 2016 proposed regulations proposed that a supporting organization that only supports governmental supported organizations would be considered functionally integrated if a substantial part of its total activities directly further the exempt purposes of its governmental supported organizations and, if the supporting organization supports more than one governmental supported organization, all of its governmental supported organizations either: (1) Operate within the same geographic region (defined as a city, county, or metropolitan area); or (2) work in close coordination or collaboration with each other to conduct a service, program, or activity that the supporting organization supports. The 2016 proposed regulations proposed defining a governmental supported organization as a governmental unit described in section 170(c)(1), or an organization described in section 170(c)(2) and (b)(1)(A) (other than in clauses (vii) and (viii)) that is an instrumentality of one or more governmental units described in section 170(c)(1). To satisfy the close coordination or collaboration requirement, the proposed regulations proposed requiring a supporting organization to maintain on file a letter from each of the governmental supported organizations (or a joint letter from all of them) describing their coordination or collaboration efforts with respect to the particular service, program, or activity. The 2016 proposed regulations proposed an exception to

this rule for certain pre-existing organizations that support no more than one non-governmental supported organization along with one or more governmental supported organizations, as well as a transition rule for pre-existing organizations that continue to meet the requirements of Notice 2014–4.

Two commenters recommended that Type III functionally integrated supporting organizations should not be limited to only supporting governmental supported organizations. One commenter proposed that a supporting organization which supports both governmental and non-governmental supported organizations should qualify as functionally integrated if the supporting organization (i) conducts activities that perform the functions of or carry out the purposes of its governmental supported organization(s), (ii) its non-governmental supported organizations operate in the same geographic region or work in close coordination or collaboration with the governmental supported organization(s), and (iii) substantially all of the supporting organization's activities directly further the exempt purposes of its governmental supported organization(s).

The other commenter recommended replacing the requirement that all supported organizations be governmental supported organizations with a new requirement that substantially all the activities of the supporting organization either (i) directly further the purposes of the governmental supported organizations, or (ii) consist of grantmaking, fundraising, or investing for governmental supported organizations that meet either the same geographic region or close coordination and collaboration requirements in the 2016 proposed regulations.

A third commenter requested that, when a supporting organization supports more than one governmental supported organization, the governmental supported organizations should only be required to work in close coordination or collaboration. The commenter requested deleting the requirement that the governmental supported organizations conduct a service, program, or activity that the supporting organization supports.

The 2016 proposed regulations proposed allowing certain Type III supporting organizations that support governmental supported organizations to be classified as functionally integrated on the basis that the involvement of the governmental supported organizations in the

supporting organization's activities would minimize the potential for abuse. As stated in the preamble to the 2016 proposed regulations, requiring close cooperation and collaboration on a common service, program, or activity that the supporting organization supports helps ensure that the governmental supported organizations will provide sufficient input to and oversight of the supporting organization. Moreover, the coordination and collaboration between the governmental supported organizations would be greatly diminished if they engaged in different services, programs, or activities. Furthermore, governmental input and oversight would be diluted if the definition of functionally integrated were expanded to permit these supporting organizations to support and be responsive to non-governmental supported organizations as well. Additionally, for the reasons discussed later in this preamble, the Treasury Department and the IRS utilize the substantial part test for supporting governmental supported organizations (instead of the substantially all test) but specifically exclude grant making and other financial activities from the definition of activities that directly further the exempt purposes of the governmental supported organizations. Accordingly, these final regulations do not adopt these recommendations. For clarity, these final regulations omit the defined term "geographic region" contained in proposed § 1.509(a)–4(i)(4)(iv)(C).

As noted previously in this preamble, the 2016 proposed regulations proposed that, for simplicity and administrability, the term "governmental supported organization" be defined using an existing Code definition of governmental unit. Three commenters stated their support for this definition. Thus, the final regulations adopt the definition in the 2016 proposed regulations with the clarification described in the following paragraph.

The preamble to the 2016 proposed regulations noted that, because a governmental unit described in section 170(c)(1) includes all of the agencies, departments, and divisions of that governmental unit, all such agencies, departments, and divisions will be treated as one governmental supported organization for purposes of § 1.509(a)–4(i)(4)(iv). One commenter stated its support for this position and requested that it be specifically written into the regulations. These final regulations adopt this commenter's recommendation. The final regulations specifically state that a governmental unit includes all of its agencies,

departments, and divisions, and that they will be treated as one governmental supported organization for these purposes.

One commenter on the 2016 proposed regulations requested that an instrumentality of a governmental supported organization and the governmental supported organization with respect to which it is an instrumentality should be treated as one governmental supported organization. The final regulations do not adopt this recommendation because, unlike an agency, department, or division of a governmental unit, an instrumentality described in § 1.509(a)–4(i)(4)(iv)(B)(2) is a separate legal entity.

The 2016 proposed regulations also proposed that supporting organizations that support only governmental supported organizations may qualify as functionally integrated only if a “substantial part” of their activities directly furthers the exempt purposes of their governmental supported organization(s). The 2016 proposed regulations proposed using the same definition of “directly further” contained in § 1.509(a)–4(i)(4)(ii)(C), the integral part test for functionally integrated Type III supporting organizations, as promulgated in the 2012 TD. This definition provides that fundraising, making grants, and investing and managing non-exempt-use assets are not activities that directly further the exempt purposes of the supported organization.

One commenter recommended that fundraising, making grants, and investing and managing non-exempt-use assets should be considered activities that directly further the exempt purposes of a governmental supported organization. The Treasury Department and the IRS determined that a Type III supporting organization should qualify as functionally integrated only if the supporting organization itself conducts activities that perform the functions of or carry out the purposes of its supported organization (as distinguished from providing financial support for the activities carried out by the supported organization). As the 2012 TD stated, fundraising, making grants, and investing and managing non-exempt-use assets relate to producing and distributing income to finance the charitable activities directly carried out by the supported organization. The 2016 proposed regulations did not adopt comments seeking to apply a different definition of “directly further” to supporting organizations that support governmental supported organizations. These final regulations do not adopt the commenter’s proposal because using a

different definition of “directly further” for governmental supported organizations would undermine a fundamental distinction that § 1.509(a)–4(i)(4) makes between functionally integrated and NFI Type III supporting organizations, *i.e.*, directly conducting charitable activities versus financing charitable activities. The Treasury Department and the IRS also note the complexity and administrative difficulty of applying different definitions of “directly further” under the integral part test.

These final regulations adopt the requirement in the 2016 proposed regulations that a substantial part of the supporting organization’s total activities must directly further the exempt purposes of its governmental supported organizations. These final regulations also add a new example to clarify that a supporting organization can meet this requirement and still make grants to one of its governmental supported organizations as a substantial part of its activities. As the preamble to the 2016 proposed regulations stated, the “substantial part” test in § 1.509(a)–4(i)(4)(iv) allows these supporting organizations to conduct more fundraising and other financial activities, if certain requirements are met, than is permitted under the “substantially all” test of § 1.509(a)–4(i)(4)(ii) that applies generally to be a functionally integrated Type III supporting organization. One commenter requested confirmation concerning the identity of these certain requirements that must be met. Under § 1.509(a)–4(i)(4) as promulgated by the 2012 TD and amplified by these final regulations in providing the rules for supporting governmental supported organizations, the organization must meet the annual notification requirement in § 1.509(a)–4(i)(2) and the responsiveness test in § 1.509(a)–4(i)(3), in addition to the specific requirements in § 1.509(a)–4(i)(4)(iv), in order to be a functionally integrated Type III supporting organization by virtue of supporting governmental supported organizations.

One commenter recommended providing a clear definition of what constitutes a substantial part of a supporting organization’s total activities for purposes of meeting § 1.509(a)–4(i)(4)(iv). Another commenter recommended not adopting a bright line rule to measure the quantity of activities that equal a substantial part, but requested a statement in the final regulations that all pertinent facts and circumstances will be taken into account. This commenter also requested more examples of activities that directly

further the exempt purpose of the governmental supported organization and clarification in the regulations to require that a substantial part of a supporting organization’s activities directly further the exempt purposes of “at least one” (as opposed to all) of its governmental supported organizations when the governmental supported organizations share a common geographic region.

In response to these comments, the final regulations revise proposed § 1.509(a)–4(i)(4)(iv) to provide that, in determining whether a substantial part of a supporting organization’s total activities directly further the exempt purposes of its governmental supported organization(s), all pertinent facts and circumstances will be taken into consideration. This approach is consistent with the approach in § 1.509(a)–4(i)(4)(ii)(B), which determines “substantially all” for the general test of being functionally integrated by considering all pertinent facts and circumstances. The final regulations also revise proposed § 1.509(a)–4(i)(4)(iv)(A) and add a new example in § 1.509(a)–4(i)(4)(v) to make clear that a supporting organization that supports more than one governmental supported organization as described in § 1.509(a)–4(i)(4)(iv)(A) satisfies the substantial part test if a substantial part of its activities directly furthers the exempt purpose of at least one of its governmental supported organizations.

One commenter stated that proposed § 1.509(a)–4(i)(4)(iv)(A)(1)(ii), which uses the phrase “close coordination or collaboration,” should be made consistent with proposed § 1.509(a)–4(i)(4)(iv)(D), which uses the phrase “close cooperation or coordination.” The final regulations adopt this recommendation and make the provisions consistent by changing the phrasing in § 1.509(a)–4(i)(4)(iv)(C) of the final regulations to “close coordination or collaboration.” No substantive change is intended by this revision.

The 2016 proposed regulations proposed an exception to the general rule for supporting organizations that support governmental supported organizations. The exception would treat a Type III supporting organization in existence on or before February 19, 2016 (the date of the issuance of the 2016 proposed regulations), as functionally integrated if: (1) It supports one or more governmental supported organizations and no more than one supported organization that is not a governmental supported organization; (2) it designated each of its supported organizations as provided in § 1.509(a)–

4(d)(4) on or before February 19, 2016; and (3) a substantial part of its total activities directly furthers the exempt purposes of its governmental supported organization(s). One commenter stated that the proposed exception would allow it and similar organizations currently to qualify as functionally integrated. The final regulations adopt the proposed exception without change.

The 2016 proposed regulations also proposed further extending the transition relief provided in Notice 2014–4 and extended in the preamble to the 2015 final regulations. Under the 2016 proposed regulations, a Type III supporting organization in existence on or before February 19, 2016, that met and continues to meet the requirements of Notice 2014–4 would be treated as functionally integrated until the earlier of the first day of the organization's first taxable year beginning after the date final regulations are published under § 1.509(a)–4(i)(4)(iv) or the first day of the organization's second taxable year beginning after February 19, 2016. The Treasury Department and the IRS did not receive any comments about the transition rule or any requests to extend the transition period in the 2016 proposed regulations, which now has expired. The Treasury Department and the IRS therefore conclude supporting organizations have had sufficient time to adjust to the new rules and further transition relief is not necessary. Accordingly, these final regulations do not provide a further extension of the transition relief proposed in the 2016 proposed regulations.

D. Integral Part Test—Non-Functionally Integrated Type III Supporting Organizations

Section 1.509(a)–4(i)(5) provides that a supporting organization meets the integral part test to be an NFI Type III supporting organization if it satisfies the distribution requirement of § 1.509(a)–4(i)(5)(ii) and the attentiveness requirement of § 1.509(a)–4(i)(5)(iii), or the pre-November 2, 1970, trust requirements of § 1.509(a)–4(i)(9). Section 1.509(a)–4(i)(5)(ii) provides that, with respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding its “distributable amount.” Section 1.509(a)–4(i)(6) provides the amount of a distribution made to a supported organization is the amount of cash or the fair market value of the property distributed.

The 2016 proposed regulations proposed revising § 1.509(a)–4(i)(5)(ii) to state that a supporting organization must make distributions as described in

§ 1.509(a)–4(i)(6) in a total amount equaling or exceeding the supporting organization's distributable amount to satisfy the distribution requirement, and proposed revising § 1.509(a)–4(i)(6) to describe in detail what distributions count toward satisfying the distribution requirement. These final regulations adopt these proposed revisions, explained as follows, without change.

1. No Reduction of Distributable Amount for Taxes Subtitle A Imposes

Section 1.509(a)–4(i)(5)(ii)(B) provides that the distributable amount is equal to the greater of 85 percent of an organization's adjusted net income for the immediately preceding taxable year (as determined by applying the principles of section 4942(f) of the Code and § 53.4942(a)–2(d)) or its minimum asset amount for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Code (subtitle A) during the immediately preceding taxable year.

Because the taxes under subtitle A are imposed on a supporting organization's unrelated business taxable income (pursuant to section 511 of the Code) and the activity that produces the unrelated business taxable income does not further the supported organization's exempt purposes, the preamble to the 2016 proposed regulations stated that these taxes should not be treated as the functional equivalent of an amount distributed to a supported organization. The 2016 proposed regulations, therefore, proposed removing the provision in § 1.509(a)–4(i)(5)(ii)(B) that reduces the distributable amount by the amount of taxes subtitle A imposed on a supporting organization during the immediately preceding taxable year.

One commenter stated that the distributable amount should be reduced by the amount of taxes imposed on the supporting organization's unrelated business income, as section 4942(d) provides for private foundations. In advocating to retain the reduction in the distributable amount, the commenter suggested that only the supporting organization's after-tax income from unrelated business activities should be considered available for distribution to its supported organizations.

A supporting organization's adjusted net income under § 1.509(a)–4(i)(5)(ii)(B) includes gross income from all sources, including investment income that is not subject to tax under section 511. The 2012 TD and the 2015 final regulations, therefore, stated it was necessary to revise the distribution requirement to ensure that NFI Type III supporting organizations distribute

significant amounts to their supported organizations, as Congress directed in the PPA. As stated in the 2015 final regulations, the 85 percent of adjusted net income test makes it more likely that supported organizations will timely benefit from higher returns received by their supported organizations. Reducing the distributable amount by any taxes on the income would be counter to this objective.

The Treasury Department and the IRS further note that section 4942(d) only applies to private non-operating foundations. As the preamble to the 2012 TD recounted, a number of commenters to the 2009 proposed regulations stated that NFI Type III supporting organizations should not be subject to the higher payout for private non-operating foundations because they are distinguishable from them. These commenters stated that NFI Type III supporting organizations are more similar to private operating foundations and medical research organizations and therefore should be subject to their lower payout requirements. The 2012 TD and the 2015 final regulations adopted this recommendation, providing lower payout requirements for NFI Type III supporting organizations than for private non-operating foundations. Private operating foundations and medical research organizations are not able to reduce their payout requirements by the taxes imposed by subtitle A. See § 1.170A–9(d)(2)(v)(B); § 53.4942(b)–1(a)(1)(ii). The Treasury Department and the IRS conclude for the foregoing reasons that it would be inconsistent to apply a different rule to NFI Type III supporting organizations. Therefore, these final regulations adopt the 2016 proposed revision to § 1.509(a)–4(i)(5)(ii)(B) without change.

2. Distributions That Count Toward Distribution Requirement

Section 1.509(a)–4(i)(6) provides details on the distributions by a supporting organization that count toward satisfying the distribution requirement imposed in § 1.509(a)–4(i)(5)(ii). The regulations provide that distributions include but are not limited to: (1) Any amount paid to a supported organization to accomplish the supported organization's exempt purposes; (2) any amount paid by the supporting organization to perform an activity that directly furthers the exempt purposes of the supported organization within the meaning of § 1.509(a)–4(i)(4)(ii), but only to the extent such amount exceeds any income derived by the supporting organization from the activity; (3) any reasonable and

necessary administrative expenses paid to accomplish the exempt purposes of the supported organization(s), which do not include expenses incurred in the production of investment income; (4) any amount paid to acquire an exempt-use asset described in § 1.509(a)-4(i)(8)(ii); and (5) any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization to which the supporting organization is responsive.

The list in § 1.509(a)-4(i)(6) is not exhaustive and other distributions may count towards the distribution requirement. As stated in the preamble to the 2016 proposed regulations, the use of a non-exclusive list creates uncertainty for supporting organizations and the IRS about what counts toward the distribution requirement. Therefore, the 2016 proposed regulations proposed revising and clarifying the list in § 1.509(a)-4(i)(6) of what counts toward the distribution requirement and making it an exclusive list.

a. Reasonable and Necessary Administrative Expenses

Under § 1.509(a)-4(i)(6), reasonable and necessary administrative expenses paid to accomplish the exempt purposes of supported organizations, but not expenses incurred in the production of investment income, count toward the distribution requirement. For example, if a supporting organization conducts exempt activities that are for the benefit of, perform the functions of, or carry out the purposes of its supported organization(s) and also conducts nonexempt activities (such as investment activities or unrelated business activities), then the supporting organization's administrative expenses (such as salaries, rent, utilities and other overhead expenses) must be allocated between the exempt and nonexempt activities on a reasonable and consistently-applied basis. The supporting organization's administrative expenses attributable to the exempt activities are treated as distributions to its supported organization(s) if such expenses are reasonable and necessary. Conversely, the administrative expenses and operating costs attributable to the nonexempt activities are not treated as distributions to the supported organization(s). The 2016 proposed regulations proposed retaining this provision, with additional guidance regarding fundraising expenses.

b. Fundraising Expenses

Section 1.509(a)-4(i)(6) does not specifically address whether fundraising expenses count toward the distribution requirement. The 2016 proposed

regulations addressed the issue, specifying that reasonable and necessary administrative expenses paid to accomplish the exempt purposes of a supported organization generally do not include fundraising expenses the supporting organization incurs. For example, when a supporting organization conducts a fundraising event for its supported organization(s) and distributes the proceeds of the event, net of its fundraising expenses, to its supported organization(s), only the amount that the supporting organization actually distributes to its supported organization(s) counts towards the distribution requirement. Thus, under the 2016 proposed regulations, the supporting organization's fundraising expenses do not count towards the distribution requirement.

If a supporting organization conducts a fundraising event at which the supporting organization instructs donors to make contributions directly to the supported organization, the 2016 proposed regulations proposed that those contributions would not count as a distribution from the supporting organization to its supported organization. However, in this situation the supporting organization could count towards the distribution requirement the reasonable and necessary expenses it incurs to solicit the contributions the donors pay directly to its supported organization: (1) to the extent that the amount of these solicitation expenses does not exceed the amount of contributions the supported organization actually receives; and (2) if the supporting organization can substantiate (as discussed later in this preamble) that those contributions were received as a result of the supporting organization's solicitation activities. The 2016 proposed regulations proposed this rule to provide consistency with the treatment of contributions that supporting organizations receive directly and then distribute to their supported organizations (net of the supporting organization's solicitation expenses).

While commenters were generally supportive of the proposal to count as distributions the fundraising expenses incurred to solicit contributions directly to the supported organization, one commenter recommended deleting the requirement that contributions be received directly by the supported organization for the fundraising expenses to count. Alternatively, the commenter requested this special rule for fundraising expenses also apply if the contributions were received directly by an agent of the supported organization.

Another commenter proposed that contributions the supporting organization received directly from the fundraising solicitation as a matter of convenience should be treated as contributions the supported organization received directly if the supporting organization is contractually obligated to remit the contributions to the supported organization and the supporting organization actually distributes the contributions to the supported organization within a reasonable time period. The commenter also proposed that the supporting organization be allowed to count its fundraising solicitation expenses in the year it incurred them so long as the supported organization received the corresponding contributions within a reasonable time period following the end of that year.

In response to these comments, these final regulations adopt the proposed rules with certain modifications and clarifications. These final regulations provide that expenses the supporting organization incurs to solicit contributions count towards the distribution requirement when the resulting contributions are received directly by a supported organization, but only to the extent that the supporting organization's expenses for each solicitation do not exceed the amount of contributions a supported organization actually receives, and only if the supporting organization substantiates that those contributions were received as a result of the supporting organization's solicitation activities. This limitation is applied on a solicitation-by-solicitation basis; the supporting organization may not aggregate its expenses, or the contributions a supported organization receives, from more than one solicitation to determine the amount of solicitation expenses that count towards its distribution requirement. The Treasury Department and the IRS intend that contributions are received directly by the supported organization when donors make their checks, credit card or other payments payable to the supported organization. The Treasury Department and the IRS also intend that when a supporting organization receives checks or processes credit card or other transactions that are payable to its supported organization, the supporting organization may count as distributions the expenses it incurs for soliciting those checks or credit card or other payments, but only up to the amount of contributions received directly by or paid directly to the supported organization and substantiated by the

supported organization. Thus, for purposes of meeting its distribution requirement, the supporting organization may not count as distributions from the supporting organization to the supported organization the amount of the check and credit card or other contributions the donors make payable to the supported organization. Contributions made payable to the supporting organization that are transferred to the supported organization, however, may be counted as distributions from the supporting organization to the supported organization at the time that the funds are given by the supporting organization to the supported organization. These final regulations do not adopt a rule permitting payments that are first deposited with the supporting organization to count as contributions received directly by the supported organization (for purposes of permitting additional solicitation expenses related to those contributions to count as distributions). Preventing the supporting organization from counting those amounts twice toward satisfying the supporting organization's annual distribution requirements and accounting for those funds in the supporting organization's account would be administratively difficult.

c. Joint Fundraising Expenses

One commenter also requested guidance on how to allocate contributions when the supporting organization and the supported organization share the costs of a solicitation event. The Treasury Department and the IRS do not intend for the rule for fundraising expenses to apply with respect to a solicitation event if the supported organization incurs more than de minimis costs related to the same solicitation event. Section 1.509(a)-4(i)(6)(i) permits supporting organizations to count any amount they pay to their supported organization as a distribution for purposes of satisfying the annual distribution requirement described in § 1.509(a)-4(i)(5)(ii). A supporting organization can, therefore, share the costs of a fundraiser by distributing to the supported organization an amount equal to the supporting organization's share of the joint fundraising expenses. Section 1.509(a)-4(i)(6)(i) would permit the supporting organization to count this payment as a distribution for purposes of § 1.509(a)-4(i)(5)(ii), negating the need for a special rule in proposed § 1.509(a)-4(i)(6)(iii)(B). The Treasury Department and the IRS note that it would be very difficult to determine and substantiate what portion

of the contributions a supported organization receives are attributable to the supporting organization's expenditures. Thus, expanding the rule to cover joint solicitation efforts as the commenter suggests would increase the compliance burden on supporting organizations and supported organizations and would be difficult for the IRS to administer. These final regulations, therefore, do not adopt this recommendation.

d. Taxable Year to Which Fundraising Expenses Are Attributable

One commenter requested a clarification that contributions made to a supported organization in response to a supporting organization's end-of-the-year fundraiser that the supported organization does not receive until the following year may be used to determine the portion of reasonable and necessary fundraising expenses the supporting organization may treat as a distribution for the year in which the fundraiser occurred. This commenter recommended a 90-day window in the second year for counting such contributions. These final regulations clarify that, for purposes of applying the limitation on the supporting organization's solicitation expenses for each taxable year that count toward its distribution requirement, any contributions the supported organization receives directly from donors that are attributable to a solicitation the supporting organization conducted in a particular taxable year includes any contributions the supported organization receives and substantiates in writing on or before the due date (without regard to extensions) of the supporting organization's Form 990 for the year in which it conducted the solicitation.

For example, assume a supporting organization makes a solicitation on December 15, 2024. The supported organization receives contributions from donors of \$1x on December 26, 2024, and \$2x on March 15, 2025, that are attributable to the solicitation made on December 15, 2024. The supported organization substantiates the total contributions of \$3x in writing prior to May 15, 2025 (the due date without extensions of the supporting organization's Form 990 for 2024). The written substantiation indicates that these contributions were attributable to the December 15, 2024 solicitation. Under § 1.509(a)-4(i)(6)(iii)(B), the supporting organization may treat up to \$3x of any reasonable and necessary expenses it incurred for the December 15, 2024 solicitation toward its distribution requirement.

A supporting organization may not take into account the same contributions in computing the fundraising expense limitation in more than one year or with respect to more than one solicitation. Thus, in the preceding example, the \$2x contribution the supported organization received on March 15, 2025, may only be used by the supporting organization to determine its fundraising expense limitation for the December 15, 2024, solicitation. The supporting organization may not use the \$2x again to determine its 2025 fundraising expense limitation.

e. Written Substantiation From Supported Organization

The 2016 proposed regulations proposed requiring a supporting organization to obtain written substantiation from the supported organization of the amount of contributions the supported organization actually receives as a result of each of the supporting organization's solicitations. One commenter requested that the permitted written substantiation include an email from the supported organization that the supporting organization maintains in its electronic records. These final regulations adopt this recommendation, stating that the written substantiation may be provided by electronic media.

Another commenter requested that a supported organization be allowed to aggregate into a single annual written report the substantiation of all the contributions it received from the supporting organization's fundraising activities. The commenter also requested that the supported organization should only be responsible for reporting the amount of the contributions it received and not be responsible for calculating the supporting organization's fundraising activities.

These final regulations clarify that the supporting organization may substantiate the contributions provided to the supported organization by a single annual statement in writing from the supported organization, provided that the amount of contributions, if any, received by the supported organization as a result of each solicitation is separately identified. To satisfy § 1.509(a)-4(i)(6)(iii)(B), the written substantiation must be postmarked or electronically transmitted to the supporting organization no later than the due date (without regard to extensions) of the supporting organization's Form 990 for the year of the solicitation. In addition, written substantiation relied on by the supporting organization (whether

provided in one or multiple reports) must separately state the amount of contributions, if any, received directly by the supported organization allocable to each solicitation made by the supporting organization that is covered in the report. The supporting organization is responsible for determining its solicitation expenses. The written substantiation the supporting organization is required to receive from the supported organization need only provide information relevant to the amount of contributions the supported organization received; it does not need to address the supporting organization's expenses.

f. Program-Related Investments Not Taken Into Account

Finally, one commenter requested that program-related investments (PRIs) count toward the distribution requirement. The preamble to the 2016 proposed regulations stated that, for purposes of meeting the integral part test, PRIs are not treated as distributions to the supported organizations. As the preamble to the 2016 proposed regulations stated, the Treasury Department and the IRS recognize that private foundations may use PRIs in a variety of ways to accomplish their exempt purposes and that PRIs thus are treated as qualifying distributions under section 4942. However, because supporting organizations must be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of their supported organizations, they differ from private foundations. Furthermore, other provisions relating to the distribution requirement, such as the availability of set-asides and the potential for carry-forwards of excess distributions, provide significant flexibility for supporting organizations to meet the current and future needs of their supported organizations. For these reasons, these final regulations do not adopt this recommendation.

IV. Technical Corrections

This Treasury Decision conforms the paragraphs throughout § 1.509(a)-4 to the Code of Federal Regulations by making non-substantive changes, including capitalizing letters of fourth level paragraphs. This Treasury Decision also modifies § 53.4947-1 to correct certain cross-references to § 1.509(a)-4.

V. Applicability Date

These final regulations are applicable to taxable years beginning on or after October 16, 2023. Taxpayers may choose to apply these final regulations

to taxable years beginning on or after February 19, 2016, and before October 16, 2023, so long as the taxpayer applies the provisions of these final regulations in their entirety and in a consistent manner.

Special Analyses

I. Regulatory Planning and Review

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

II. Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2271.

The collection of information in these regulations is in § 1.509(a)-4(i)(4)(iv)(C) (written record of close coordination or collaboration by certain governmental supported organizations) and § 1.509(a)-4(i)(6)(iii)(B) (written record of contributions received by certain supported organizations). Requiring a supporting organization to collect (1) written records of its governmental supported organizations' close coordination or collaboration with each other and (2) written records of the contributions its supported organizations directly received from donors in response to solicitations by the supporting organization helps the IRS determine whether the supporting organization is a functionally integrated or non-functionally integrated Type III supporting organization. The record keepers are certain Type III supporting organizations.

Estimated number of recordkeepers: 6,089.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated total annual recordkeeping burden: 12,178 hours.

Estimated frequency of collection of such information: Annual.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

In connection with the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations will not impact a substantial number of small entities.

Based on IRS Statistics of Income data for 2019, there are 1,365,744 active nonprofit charitable organizations recognized by the IRS under section 501(c)(3), of which only 6,089 organizations self-identified as Type III supporting organizations. The universe of organizations that would be affected by § 1.509(a)-4(i)(4)(iv)(C) and § 1.509(a)-4(i)(6)(iii)(B) is a subset of all Type III supporting organizations, because those provisions apply either to organizations seeking to qualify as functionally integrated based on support of two or more governmental supported organizations or to non-functionally integrated organizations that solicit contributions that are received directly by a supported organization (rather than by the supporting organization). Thus, the number of organizations that will be affected by the collection of information under § 1.509(a)-4(i)(4)(iv)(C) and (i)(6)(iii)(B) will not be substantial. Moreover, the time to complete the recordkeeping requirements is expected to be no more than 2 hours for each organization, thus the regulations will not have a significant economic impact. The requirements under § 1.509(a)-4(i)(4)(iv)(C) and (i)(6)(iii)(B), therefore, will not have a significant economic impact.

Pursuant to section 7805(f) of the Code, this regulation 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.

IV. 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 in 1995 dollars, updated annually for inflation. The regulations

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

V. Executive Order 13132: Federalism

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

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's 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

Notice 2014-4 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at: https://www.irs.gov/irb/20142_IRB/ar14.html?ga=1.74171665.204111657.1425931511.

Drafting Information

The principal authors of these regulations are Jonathan Carter and Don Spellmann, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 53 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 1.509(a)-4 is amended by:

■ 1. In paragraph (d)(2)(i) introductory text, removing "subdivision (iv) of this subparagraph" and "subparagraph (1) of this paragraph" and adding "paragraph (d)(2)(iv) of this section" and "paragraph (d)(1) of this section" in their places, respectively.

■ 2. Redesignating paragraphs (d)(2)(i)(a) and (b) as paragraphs (d)(2)(i)(A) and (B), respectively.

■ 3. In newly redesignated paragraph (d)(2)(i)(B)(1), removing "(a) of this subdivision" and adding "paragraph (d)(2)(i)(A) of this section" in its place.

■ 4. In newly redesignated paragraph (d)(2)(i)(B)(2), removing "subdivision (i)(a) or this subparagraph" and adding "paragraph (d)(2)(i)(A) of this section or this paragraph (d)(2)(i)(B)(2)" in its place.

■ 5. In paragraph (d)(2)(ii), removing "subdivision (i)(a) or this subparagraph", "subparagraph (1) of this paragraph" and "subparagraphs (3)(i), (ii), and (iii) and (4)(i) (a) and (b) of this paragraph" and adding "paragraph (d)(2)(i)(A) of this section", "paragraph (d)(1) of this section", and "paragraphs (d)(3)(i) through (iii) and (d)(4)(i)(A) and (B) of this section" in their places, respectively.

■ 6. In paragraph (d)(2)(iii) introductory text, removing "subparagraph" and adding "paragraph (d)(2)" in its place.

■ 7. Designating *Examples 1* and *2* of paragraph (d)(2)(iii) as paragraphs (d)(2)(iii)(A) and (B), respectively.

■ 8. In paragraph (d)(2)(iv) introductory text, removing "subparagraph (1) of this paragraph" and adding "paragraph (d)(1) of this section" in its place.

■ 9. Redesignating paragraphs (d)(2)(iv)(a) and (b) as paragraphs (d)(2)(iv)(A) and (B), respectively.

■ 10. In newly redesignated paragraph (d)(2)(iv)(A), removing "and" and adding "and" in its place.

■ 11. In paragraph (d)(3) introductory text, removing "subparagraph (2)(i) (a) of this paragraph" and adding "paragraph (d)(2)(i)(A) of this section" in its place.

■ 12. In paragraph (d)(4)(i) introductory text, removing "subparagraph (2)(iv) of this paragraph" and "this subparagraph" and adding "paragraph (d)(2)(iv) of this section" and "this paragraph (d)(4)" in their places, respectively.

■ 13. Redesignating paragraphs (d)(4)(i)(a) through (c) as paragraphs (d)(4)(i)(A) through (C), respectively.

■ 14. Revising newly redesignated paragraph (d)(4)(i)(C).

■ 15. In paragraph (d)(4)(ii), removing "subdivision (i)(b) of this subparagraph" and "subdivision (i)(b)" and adding "paragraph (d)(4)(i)(B) of this section" and "paragraph (d)(4)(i)(B)" in their places, respectively.

■ 16. In paragraph (d)(4)(iii) introductory text, removing "subparagraph" and adding "paragraph (d)(4)" in its place.

■ 17. Designating the *Example* in paragraph (d)(4)(iii) as paragraph (d)(4)(iii)(A) and adding reserved paragraph (d)(4)(iii)(B).

■ 18. In paragraph (e)(3) introductory text, removing "paragraph" and adding "paragraph (e)" in its place.

■ 19. Designating *Examples 1* through *5* of paragraph (e)(3) as paragraphs (e)(3)(i) through (v), respectively.

■ 20. Revising paragraph (f)(5)(ii).

■ 21. In paragraph (g)(2) introductory text, removing "paragraph" and adding "paragraph (g)" in its place.

■ 22. Designating *Examples 1* through *3* of paragraph (g)(2) as paragraphs (g)(2)(i) through (iii), respectively.

■ 23. In newly redesignated paragraph (g)(2)(iii), removing "subparagraph (1)(ii) of this paragraph" and adding "paragraph (g)(1)(ii) of this section" in its place.

■ 24. In paragraph (h)(3) introductory text, removing "paragraph" and adding "paragraph (h)" in its place.

■ 25. Designating *Examples 1* through *3* of paragraph (h)(3) as paragraphs (h)(3)(i) through (iii), respectively.

■ 26. Revising paragraphs (i)(2)(i) introductory text, (i)(2)(i)(A), (i)(2)(iii), and (i)(3)(i).

■ 27. Designating *Examples 1* and *2* of paragraph (i)(3)(iv) as paragraphs (i)(3)(iv)(A) and (B), respectively.

■ 28. Adding paragraph (i)(3)(iv)(C).

■ 29. Revising paragraphs (i)(4)(ii)(A)(1), (i)(4)(ii)(B), and (i)(4)(iii) and (iv).

■ 30. Designating *Examples 1* through *5* of paragraph (i)(4)(v) as paragraphs (i)(4)(v)(A) through (E), respectively.

■ 31. Adding paragraph (i)(4)(v)(F).

■ 32. Revising paragraphs (i)(5)(ii)(A) and (B) and (i)(5)(iii)(A).

■ 33. Designating *Examples 1* through *4* of paragraph (i)(5)(iii)(D) as paragraphs (i)(5)(iii)(D)(1) through (4), respectively.

■ 34. Revising newly designated paragraph (i)(5)(iii)(D)(4), the third sentence of paragraph (i)(6) introductory text, and paragraphs (i)(6)(iii) and (v) introductory text.

■ 35. In paragraph (k)(2) introductory text, removing "paragraph" and adding "paragraph (k)" in its place.

- 36. Designating the *Example* in paragraph (k)(2) as paragraph (k)(2)(i) and adding reserved paragraph (k)(2)(ii).
- 37. Revising paragraph (l).

The revisions and additions read as follows:

§ 1.509(a)–4 Supporting organizations.

* * * * *

- (d) * * *
- (4) * * *
- (i) * * *

(C) Permit the supporting organization to vary the amount of its support between different designated organizations, so long as it meets the requirements of the integral part test set forth in paragraph (i)(1)(iii) of this section with respect to at least one beneficiary organization.

* * * * *

- (f) * * *
- (5) * * *

(ii) *Meaning of control.* For purposes of paragraph (f)(5)(i) of this section, the governing body of a supported organization will be considered *controlled* by a person described in paragraph (f)(5)(i)(A) of this section if that person, alone or by aggregating the person’s votes or positions of authority with persons described in paragraph (f)(5)(i)(B) or (C) of this section, may require the governing body of the supported organization to perform any act that significantly affects its operations or may prevent the governing body of the supported organization from performing any such act. The governing body of a supported organization will be considered to be controlled directly or indirectly by one or more persons described in paragraph (f)(5)(i)(A), (B), or (C) of this section if the voting power of such persons is 50 percent or more of the total voting power of such governing body or if one or more of such persons have the right to exercise veto power over the actions of the governing body of the supported organization. Thus, if the governing body of a supported organization is composed of five members, none of whom has a veto power over the actions of the supported organization, and no more than two members are at any time described in paragraph (f)(5)(i)(A), (B), or (C) of this section, such supported organization will not be considered to be controlled directly or indirectly by such persons by reason of this fact alone. However, all pertinent facts and circumstances will be taken into consideration in determining whether one or more persons do in fact directly or indirectly control the governing body of a supported organization.

* * * * *

- (i) * * *
- (2) * * *

(i) *Annual notification.* For each taxable year (Reporting Year), a Type III supporting organization must provide the following documents to each of its supported organizations:

(A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support (including all of the distributions described in paragraph (i)(6) of this section, if applicable) the supporting organization provided to the supported organization during the supporting organization’s taxable year immediately preceding the Reporting Year (and during any other taxable year of the supporting organization ending after December 28, 2012, for which such support information has not previously been provided), including a brief narrative description of the support provided and sufficient financial detail for the recipient to identify the types and amounts of support being reported;

* * * * *

(iii) *Due date.* The notification documents required by this paragraph (i)(2) must be delivered or electronically transmitted by the last day of the fifth calendar month of the Reporting Year.

* * * * *

- (3) * * *

(i) *General rule.* A supporting organization meets the responsiveness test only if it is responsive to the needs or demands of each of its supported organizations. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (iii) of this section with respect to each of its supported organizations.

* * * * *

- (iv) * * *

(C) *Example 3.* Z is described in section 501(c)(3). Z’s organizational documents provide that it supports ten different organizations, each of which is described in section 509(a)(1). One of the directors of S (one of the supported organizations) is a voting member of Z’s board of directors and participates in Z’s regular board meetings. Officers of Z hold regularly scheduled face-to-face or telephonic meetings during the year, to which officers of all the supported organizations are invited. Z’s meetings with the supported organizations may be held jointly or separately. Prior to the meetings, Z makes available to the supported organizations (including by email) up-to-date information about its activities, including its assets and liabilities, receipts and distributions,

and investment policies and returns. In the meetings, officers of each of the supported organizations have an opportunity to ask questions and discuss with officers of Z the projected needs of their organizations, as well as Z’s investment and grant making policies and practices. In addition to holding these meetings with the supported organizations, Z provides the contact information of one of its officers to each of the supported organizations and encourages them to contact that officer if they have questions, or if they wish to schedule additional meetings to discuss the projected needs of their organization and how Z should distribute its income and invest its assets. Z provides the information required under paragraph (i)(2) of this section and a copy of its annual audited financial statements to the principal officers of the supported organizations. Z meets the relationship requirement of paragraph (i)(3)(ii)(B) or (C) of this section with respect to each of its supported organizations. Based on these facts, Z also satisfies the significant voice requirement of paragraph (i)(3)(iii) of this section, and therefore meets the responsiveness test of this paragraph (i)(3) with respect to each of its ten supported organizations.

* * * * *

- (4) * * *
- (ii) * * *
- (A) * * *

(1) Directly further the exempt purposes of one or more supported organizations by performing the functions of, or carrying out the purposes of, such supported organization(s); and

* * * * *

(B) *Meaning of substantially all.* For purposes of paragraph (i)(4)(ii)(A) of this section, in determining whether substantially all of a supporting organization’s activities directly further the exempt purposes of one or more supported organization(s), all pertinent facts and circumstances will be taken into consideration.

* * * * *

(iii) *Parent of supported organization(s)*—(A) *In general.* For purposes of paragraph (i)(4)(i)(B) of this section, in order for a supporting organization to qualify as the parent of each of its supported organizations—

(1) The supporting organization and its supported organizations must be part of an integrated system (such as, for example, a hospital system);

(2) The supporting organization must direct the overall policies, programs, and activities of the supported organizations (such as, for example,

coordinating the activities of the supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation); and

(3) The supporting organization's governing body, members of the governing body, or officers (acting in their official capacities) must appoint or elect, directly or indirectly, a majority of the officers, directors, or trustees of each supported organization and have the power to remove and replace such directors, officers, or trustees, or otherwise have an ongoing power to appoint or elect such directors, officers or trustees with reasonable frequency.

(B) *Subsidiary organizations.* A supporting organization may meet the requirements of paragraph (i)(4)(iii)(A)(3) of this section with respect to a second-tier (or lower) subsidiary provided that the supporting organization, by control of its first-tier subsidiary, has the power to appoint or elect (as described in paragraph (i)(4)(iii)(A)(3) of this section) a majority of the officers, directors, or trustees of the lower-tier subsidiary. For example, if the board of directors of supporting organization A elects a majority of the directors of supported organization B, and the board of directors of B, in turn elect, by a simple majority vote, a majority of the directors of supported organization C, the directors of supporting organization A will be treated as electing a majority of the directors of both supported organization B and supported organization C.

(iv) *Supporting a governmental supported organization—*(A) *In general.* A supporting organization satisfies the requirements of this paragraph (i)(4)(iv) if—

(1) The supporting organization only supports one or more governmental supported organizations;

(2) In any case in which the supporting organization supports more than one governmental supported organization, all of the governmental supported organizations either—

(i) Operate within the same city, county, or metropolitan area; or

(ii) Work in close coordination or collaboration with one another to conduct a service, program, or activity that the supporting organization supports; and

(3) A substantial part of the supporting organization's total activities are activities that directly further, as defined by paragraph (i)(4)(ii)(C) of this section, the exempt purposes of at least one governmental supported organization.

(B) *Governmental supported organization defined.* For purposes of paragraph (i)(4)(iv)(A) of this section,

the term *governmental supported organization* means a supported organization that is:

(1) A governmental unit described in section 170(c)(1), including all of its agencies, departments, and divisions (all of which will be treated as one governmental supported organization for purposes of this paragraph (i)(4)(iv)); or

(2) An organization described in section 170(c)(2) and (b)(1)(A) (other than in clauses (vii) and (viii)) that is an instrumentality of one or more governmental units described in section 170(c)(1).

(C) *Close coordination or collaboration.* To satisfy the close coordination or collaboration requirement of paragraph (i)(4)(iv)(A)(2) of this section, the supporting organization must maintain on file a letter from each of the governmental supported organizations (or a joint letter from all of them) describing their coordination or collaboration efforts with respect to the particular service, program, or activity.

(D) *Substantial part.* For purposes of paragraph (i)(4)(iv)(A)(3) of this section, in determining whether a substantial part of a supporting organization's activities directly further the exempt purposes of one or more governmental supported organization(s), all pertinent facts and circumstances will be taken into consideration.

(E) *Exception for organizations supporting a governmental supported organization on or before February 19, 2016.* A Type III supporting organization in existence on or before February 19, 2016, will be treated as meeting the requirements of this paragraph (i)(4)(iv) if it met and continues to meet the following requirements:

(1) It supports one or more governmental supported organizations described in paragraph (i)(4)(iv)(B) of this section and does not support more than one supported organization that is not a governmental supported organization;

(2) Each of the supported organizations is designated by the supporting organization as provided in paragraph (d)(4) of this section on or before February 19, 2016; and

(3) A substantial part (as defined in paragraph (i)(4)(iv)(D) of this section) of the supporting organization's total activities are activities that directly further (as defined by paragraph (i)(4)(ii)(C) of this section) the exempt purposes of its governmental supported organization(s).

(F) *Transition rule for supporting organizations in existence on or before*

February 19, 2016. Until the first day of the organization's second taxable year beginning after February 19, 2016, a Type III supporting organization in existence on or before February 19, 2016, will be treated as meeting the requirements of this paragraph (i)(4)(iv) if it continuously met the following requirements prior to the first day of the organization's second taxable year beginning after February 19, 2016—

(1) It supported at least one supported organization that was a governmental entity to which the supporting organization was responsive within the meaning of paragraph (i)(3) of this section; and

(2) It engaged in activities for or on behalf of the governmental supported organization described in paragraph (i)(4)(iv)(E)(1) of this section that performed the functions of, or carried out the purposes of, that governmental supported organization and that, but for the involvement of the supporting organization, would normally have been engaged in by the governmental supported organization itself.

* * * * *

(v) * * *

(F) *Example 6.* X, an organization described in section 501(c)(3), is organized and operated as a supporting organization to two organizations, City and Park. X meets the responsiveness test described in paragraph (i)(3) of this section with respect to both City and Park. City and Park are both governmental units described in section 170(c)(1). Park maintains a state park located within the same county as City. X does not support any other organizations. X supports Park by operating an information center for visitors to Park. The information center provides educational material and informational sessions to visitors to Park. X's activities related to operating the Park information center constitute a substantial part of X's activities. X also makes grants directly to City to fund City's other programs. X's grant making activities constitute a substantial part of X's activities. X meets the requirements of paragraph (i)(4)(iv)(A)(1) of this section because X only supports City and Park, both of which are governmental supported organizations described in paragraph (i)(4)(iv)(B) of this section. X meets the requirements of paragraph (i)(4)(iv)(A)(2) of this section because City and Park operate within the same county in accordance with paragraph (i)(4)(iv)(A)(2)(i) of this section. Finally, X meets the requirements of paragraph (i)(4)(iv)(A)(3) of this section because a substantial part of X's activities directly

further (within the meaning of paragraph (i)(4)(ii)(C) of this section) Park's exempt purposes, even though X's grants to City are also a substantial part of X's activities. Based on these facts, X qualifies as functionally integrated under paragraph (i)(4)(iv) of this section.

(5) * * *

(ii) * * *

(A) *Annual distribution.* With respect to each taxable year, a supporting organization must make distributions described in paragraph (i)(6) of this section in a total amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in paragraph (i)(5)(ii)(B) of this section, on or before the last day of the taxable year.

(B) *Distributable amount.* Except as provided in paragraphs (i)(5)(ii)(D) and (E) of this section, the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)-2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution (immediately preceding taxable year) or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year.

* * * * *

(iii) * * *

(A) *General rule.* With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section).

* * * * *

(D) * * *

(4) *Example 4.* O is an organization described in section 501(c)(3). O is organized to support five private universities, V, W, X, Y, and Z, each of which is described in section 509(a)(1). O meets the responsiveness test described in paragraph (i)(3) of this section with respect to each of its supported organizations. Each year, O distributes an aggregate amount that equals its distributable amount described in paragraph (i)(5)(ii)(B) of this section and distributes an equal amount to each of the five universities. O distributes annually to each of V and

W an amount that equals more than 10 percent of each university's total annual support received in its most recently completed taxable year. Based on these facts, O meets the requirements of paragraph (i)(5)(iii) of this section because it distributes two-fifths (more than the required one-third) of its distributable amount to supported organizations that are attentive to O.

* * * * *

(6) * * * Distributions by the supporting organization that count toward the distribution requirement imposed in paragraph (i)(5)(ii) of this section are limited to—

* * * * *

(iii) Any reasonable and necessary—
(A) Administrative expenses paid to accomplish the exempt purposes of the supported organization, which do not include expenses incurred in the production of investment income or expenses incurred in the conduct of fundraising activities (except solicitation expenses described in paragraph (i)(6)(iii)(B) of this section); and

(B) Expenses incurred to solicit contributions that are received directly by a supported organization (rather than by the supporting organization), but only to the extent the amount of the reasonable and necessary expenses the supporting organization incurs for each solicitation does not exceed the amount of contributions that are actually received by the supported organization directly from donors as a result of each such solicitation, as substantiated in a written report by the supported organization to the supporting organization that is postmarked or electronically transmitted by the due date of the supporting organization's Form 990 (or successor form) for the year of the solicitation(s) (without regard to extensions);

* * * * *

(v) Any amount set aside for a specific project that accomplishes the exempt purposes of a supported organization, with such set-aside counting toward the distribution requirement for the taxable year in which the amount is set aside but not in the year in which it is actually paid, if at the time of the set-aside, the supporting organization—

* * * * *

(l) *Applicability dates.* (1) Paragraphs (a)(6), (f)(5), and (i) of this section are applicable on December 28, 2012, except—

(i) Paragraphs (i)(4)(ii)(C), (i)(5)(ii)(C) and (D), (i)(6)(iv), (i)(7)(ii), and (i)(8) of

this section are applicable on December 21, 2015; and

(ii) Paragraphs (d)(4)(i)(C), (f)(5)(ii), (i)(2)(i) and (iii), (i)(3)(i), (i)(3)(iv)(C) (*Example 3*), (i)(4)(ii)(A)(1), (i)(4)(ii)(B), (i)(4)(iii) and (iv), (i)(4)(v)(F) (*Example 6*), (i)(5)(ii)(A) and (B), (i)(5)(iii)(A), (i)(5)(iii)(D)(4) (*Example 4*), (i)(6) introductory text, and (i)(6)(iii) and (v) of this section are applicable to taxable years beginning on or after October 16, 2023.

(2) Taxpayers may choose to apply the paragraphs listed in paragraph (l)(1)(ii) of this section to taxable years beginning on or after February 19, 2016, and before October 16, 2023, provided the taxpayer applies the provisions listed in paragraph (l)(1)(ii) of this section in their entirety and in a consistent manner.

(3) See paragraphs (i)(5)(ii)(B) and (C) and (i)(8) of § 1.509(a)-4T contained in 26 CFR part 1, revised as of April 1, 2015, for certain rules regarding non-functionally integrated Type III supporting organizations effective before December 21, 2015. See paragraphs (i)(5)(ii)(A) and (B) and (i)(5)(iii)(D) of § 1.509(a)-4 contained in 26 CFR part 1, revised as of April 1, 2023, for certain rules regarding non-functionally integrated Type III supporting organizations effective before October 16, 2023.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 3.** The authority citation for part 53 continues to read in part as follows:

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

§ 53.4947-1 [Amended]

■ **Par. 4.** Section 53.4947-1 is amended in paragraph (b)(3) by removing the language “§§ 1.509(a)-4(d)(2)(iv)(a), and 1.509(a)-4(i)(1) (ii) and (iii)(c)” and “the regulations under section 507(b)(1)” and adding in their places “§ 1.509(a)-4(d)(2)(iv)(A) and (i)(1)(ii) of this chapter” and “the regulations in this part under section 507(b)(1)”, respectively.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: August 20, 2023.

Lily L. Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2023-22286 Filed 10-13-23; 8:45 am]

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