

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

[REG–112916–23]

RIN 1545–BQ90

**Statutory Disallowance of Deductions for Certain Qualified Conservation Contributions Made by Partnerships and S Corporations****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice of proposed rulemaking and notice of public hearing.

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

**DATES:** Written or electronic comments must be received by December 20, 2023. The public hearing on these proposed regulations is scheduled to be held on January 3, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 20, 2023. If no outlines are received by December 20, 2023, the public hearing will be

cancelled. Requests to attend the public hearing must be received by 5 p.m. on December 29, 2023. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5 p.m. on December 28, 2023.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–112916–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted, whether electronically or on paper, to the IRS's public docket. Requests for a public hearing must be submitted as prescribed in the "Comments and Public Hearing" section.

*Send paper submissions to:* CC:PA:01:PR (REG–112916–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under §§ 1.170A–14, 1.706–3, and 1.706–4, contact Benjamin Weaver at (202) 317–6850 (not a toll-free number); concerning the proposed regulations under § 1.170A–16 and issues regarding section 170 other than section 170(h)(7), contact Elizabeth Boone at (202) 317–5100 and Hannah Kim at (202) 317–7003 (not toll-free numbers); and concerning submissions of comments and requests for a public hearing, contact Vivian Hayes at (202) 317–6901 (not a toll-free number) or by email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

**SUPPLEMENTARY INFORMATION:****Background***I. Overview*

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

*II. Charitable Contribution Deductions*

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

Section 170(f)(11) requires a qualified appraisal and other documentation for a charitable contribution deduction to be allowed with respect to certain contributions of property. Section 170(f)(11) also includes special rules for contributions of property other than cash (noncash charitable contributions) of more than \$5,000 and for noncash charitable contributions of more than \$500,000. In addition, section 170(f)(11)(H) provides that the Secretary of the Treasury or her delegate (Secretary) may prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 170(f)(11). Section 6001 provides that every person liable for any tax imposed by title 26, United States Code (title 26) must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. In addition, section 6011 provides, in part, that, whenever required by regulations prescribed by the Secretary, any person made liable for any tax imposed by title 26 must make a return or statement according to the forms and regulations prescribed by the Secretary and include therein the information required by such forms or regulations. Under the authority of sections 170(f)(11)(H), 6001, and 6011, existing regulations under § 1.170A–16 provide substantiation and reporting requirements that must be satisfied for a deduction to be allowed under section 170 with respect to noncash charitable contributions.

### III. Qualified Conservation Contributions

Section 170(h)(1) provides that, in general, for purposes of section 170(f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution (1) of a qualified real property interest, (2) to a qualified organization, (3) exclusively for conservation purposes. Section 170(h)(2) defines the term “qualified real property interest,” section 170(h)(3) defines the term “qualified organization,” section 170(h)(4) defines the term “conservation purpose,” and section 170(h)(5) defines the term “exclusively for conservation purposes.” In general, a qualified conservation contribution may include a contribution of a conservation easement.

The existing regulations under § 1.170A–14 provide rules for qualified conservation contributions described in section 170(h). Consistent with section 170(f)(3), § 1.170A–14(a) provides that a deduction under section 170 generally is not allowed for a charitable contribution of any interest in property that consists of less than the donor’s entire interest in the property other than certain transfers in trust. However, by reason of section 170(f)(3)(B)(iii), a deduction may be allowed for the value of a qualified conservation contribution if the requirements of § 1.170A–14 are met. To be eligible for a deduction under § 1.170A–14, the conservation purpose of the contribution must be protected in perpetuity. See § 1.170A–14(a) and (g).

### IV. Syndicated Conservation Easement Transactions

On December 23, 2016, the Treasury Department and the IRS released Notice 2017–10, 2017–4 I.R.B. 544, which identified transactions that are the same as or substantially similar to certain syndicated conservation easement transactions as “listed transactions” under § 1.6011–4 subject to certain disclosure and list maintenance requirements. Notice 2017–10 explains that the Treasury Department and the IRS are aware that some promoters are syndicating conservation easement transactions that purport to give investors the opportunity to obtain charitable contribution deductions in amounts that significantly exceed the amounts invested. In addition, Notice 2017–10 provides that a transaction is a listed transaction if (1) an investor receives promotional materials that offer a prospective investor in a pass-through entity the possibility of a charitable contribution deduction that equals or exceeds an amount that is 2.5 times the

amount of the investor’s investment, (2) the investor purchases an interest directly or indirectly (through one or more tiers of pass-through entities) in the pass-through entity that holds real property, (3) the pass-through entity contributes a conservation easement and allocates, directly or through one or more tiers of pass-through entities, a charitable contribution to the investor, and (4) the investor reports on the investor’s Federal income tax return a charitable contribution deduction with respect to the conservation easement.

Congress continued to be concerned about abusive syndicated conservation easement transactions even after Notice 2017–10 was issued, and the transactions were the subject of an investigation by the U.S. Senate Committee on Finance, which issued a report on August 25, 2020. S. Committee on Finance, Comm. Print 116–44, *Syndicated Conservation-Easement Transactions*, 116th Cong., 2nd Sess. (2020) (Committee Report). The Committee Report found that the syndicated conservation easement transactions examined were nothing more than retail tax shelters allowing taxpayers to buy tax deductions at the end of any given tax year. *Id.* at 3. The Committee Report further stated that these tax deductions could be purchased with no economic risk. *Id.* As such, the Finance Committee concluded that further action was necessary to preserve the integrity of the conservation easement tax deduction despite ongoing efforts to combat this abuse such as the issuance of Notice 2017–10 and IRS enforcement action. *Id.* at 4.

In a separate report accompanying an earlier proposal for amending section 170(h), in legislation proposed as the “Enhancing American Retirement Now Act,” the Committee on Finance recognized charitable deductions for the donation of conservation easements as an important tool and incentive to protect the environment and historic structures. S. Rep. No. 117–142 on S. 4808, at 218, 117th Cong., 2nd Sess. (2022). Citing its findings from the 2020 Committee Report, the Committee noted, however, that abusive tax shelter transactions put the conservation easement tax deduction at risk. The Committee ultimately found it appropriate to take legislative action to protect the integrity of the conservation easement tax deduction for easement donations with a legitimate conservation purpose. *Id.*

On December 8, 2022, the Treasury Department and the IRS published in the **Federal Register** (87 FR 75185) a notice of proposed rulemaking (REG–

106134–22) identifying syndicated conservation easement transactions and substantially similar transactions as listed transactions (listing NPRM). The definition of a syndicated conservation easement transaction in proposed § 1.6011–9 of the listing NPRM is similar to the definition in Notice 2017–10. The purpose of the listing NPRM was to eliminate any confusion and ensure consistent enforcement of Federal tax laws throughout the nation in light of certain judicial decisions holding that, under the Administrative Procedure Act, 5 U.S.C. chapter 5, subchapter II, listed transactions may be identified only after following notice and comment procedures. See, e.g., *Mann Construction, Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022), and *Green Valley Investors, LLC, et al. v. Commissioner*, 159 T.C. No. 5 (2022). The Treasury Department and the IRS are in the process of considering the comments received and finalizing the listing NPRM.

### V. Section 605 of the SECURE 2.0 Act

Section 170(h)(7) was added to the Code by section 605(a)(1) of the SECURE 2.0 Act. Section 170(h)(7)(A) states that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner’s relevant basis in such partnership (Disallowance Rule). Thus, a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes is not a qualified conservation contribution if the Disallowance Rule applies. Section 170(h)(7)(F) provides that the rules of section 170(h)(7) “apply to S corporations and other pass-through entities in the same manner as such rules apply to partnerships” except as the Secretary may otherwise provide.

Section 170(h)(7)(B) defines the terms “relevant basis” and “modified basis,” section 170(h)(7)(C), (D), and (E) provide three exceptions to the Disallowance Rule, and section 170(h)(7)(G) provides a specific grant of regulatory authority to the Secretary to issue regulations or other guidance as the Secretary determines are necessary or appropriate to carry out the purposes of the Disallowance Rule, including reporting requirements and rules to prevent the avoidance of the Disallowance Rule.

Section 605(a)(2) of the SECURE 2.0 Act modifies certain penalty provisions in sections 6662, 6664, and 6751 of the Code to provide special rules for

charitable contribution deductions disallowed by section 170(h)(7). Section 605(a)(3) of the SECURE 2.0 Act provides that any charitable contribution for which a deduction was disallowed under section 170(h)(7) is treated, for purposes of the period of limitations on assessment and collection of tax in section 6501 of the Code and the period of limitations on making adjustments in section 6235 of the Code, as a transaction specifically identified by the Secretary as a tax-avoidance transaction.

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

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

#### *VI. Overview of the Disallowance Rule*

The Disallowance Rule provides that a contribution by a partnership (whether directly or as a distributive share of a contribution of another partnership) is not treated as a qualified conservation contribution for purposes of section 170 if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership. If such a contribution is not treated as a qualified conservation contribution, then the general rule under section 170(f)(3)(A) disallowing a charitable contribution deduction under section 170 for a contribution of a partial interest in property applies. Thus, if the Disallowance Rule applies, any amount of deduction under section

170 for a qualified conservation contribution is disallowed.

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

Section 170(h)(7) contains three exceptions to the Disallowance Rule. First, section 170(h)(7)(C) provides that the Disallowance Rule does not apply to any contribution made at least three years after the latest of (1) the last date on which the partnership that made such contribution acquired any portion of the real property with respect to which such contribution is made, (2) the last date on which any partner in the partnership that made such contribution acquired any interest in such partnership, and (3) if the interest in the partnership that made such contribution is held through one or more partnerships, the last date on which any such partnership acquired any interest in any other such partnership, and the last date on which any partner in any such partnership acquired any interest in such partnership.

Second, section 170(h)(7)(D)(i) provides that the Disallowance Rule does not apply to any contribution made by any partnership if substantially all of the partnership interests in such partnership are held, directly or indirectly, by an individual and members of the family of such individual. Section 170(h)(7)(D)(ii) provides that, for purposes of section 170(h)(7)(D), the term "members of the family" means, with respect to any individual (I) the spouse of such individual, and (II) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G) of the Code for purposes of determining whether an individual is a qualifying relative.

Third, section 170(h)(7)(E) provides that the Disallowance Rule does not apply to any qualified conservation contribution the conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)).

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

Section 170(h)(7)(G) authorizes the Secretary to prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of section 170(h)(7), including regulations or other guidance (1) to require reporting, including reporting related to tiered partnerships and the modified basis of partners, and (2) to prevent the avoidance of the purposes of section 170(h)(7).

#### **Explanation of Provisions**

##### *I. Overview*

These proposed regulations would address several requirements added by section 605 of the SECURE 2.0 Act and make several related clarifying changes to the existing regulations applicable to qualified charitable contributions. First, these proposed regulations would make changes to existing § 1.170A-14, including modifying paragraph (a) to reference the Disallowance Rule and adding new paragraphs (j) through (n) to § 1.170A-14 to provide guidance on the application of the Disallowance Rule to partnerships and S corporations, the computation of relevant basis and modified basis, including in tiered structures, and the three statutory exceptions to the Disallowance Rule.

These proposed regulations would provide specific rules for partnerships and S corporations, but do not specifically address other types of pass-through entities. The Treasury Department and the IRS continue to study whether specific rules are needed for other types of pass-through entities and request comments on the application of section 170(f)(19) and (h)(7) to pass-through entities other than partnerships and S corporations. The Treasury Department and the IRS intend to issue future guidance on other issues relating to section 605 of SECURE 2.0 Act, including additional guidance relating to the three statutory exceptions to the Disallowance Rule.

Second, these proposed regulations would make changes to the reporting requirements in § 1.170A-16 to address

substantiation of charitable contribution deductions as well as to implement section 170(f)(19)(A)(i). The Treasury Department and the IRS intend to issue future guidance addressing section 170(f)(19)(A)(ii).

Finally, these proposed regulations propose new language in §§ 1.706–3 and 1.706–4 to facilitate the operation of the Disallowance Rule in the case of a qualified conservation contribution made by a partnership.

## II. Clarifying Change to § 1.170A–14(a)

The second sentence of existing § 1.170A–14(a) provides that a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of § 1.170A–14 are met. Because the Disallowance Rule provided in section 170(h)(7) is proposed to be contained in § 1.170A–14(j) through (n), proposed § 1.170A–14(a) would amend this sentence to provide that a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of § 1.170A–14 are met and the contribution is not a disallowed qualified conservation contribution within the meaning of proposed § 1.170A–14(j).

## III. Disallowance Rule and Its Exceptions

Proposed § 1.170A–14(j) would provide guidance on the general applicability of the Disallowance Rule to partnerships and S corporations. Proposed § 1.170A–14(j)(3) would provide definitions. Consistent with section 170(h)(7)(B), proposed § 1.170A–14(k) would provide that the term “relevant basis” means, with respect to any ultimate member (as defined in proposed § 1.170A–14(j)(3)(x)), the portion of such ultimate member’s modified basis (as determined under proposed § 1.170A–14(l)) that is allocable (under the rules of proposed § 1.170A–14(m)) to the portion of the real property with respect to which the qualified conservation contribution is made. Proposed § 1.170A–14(l) would provide guidance on the determination of modified basis. Proposed § 1.170A–14(m) would provide guidance on the allocation of modified basis to the portion of the real property with respect to which the qualified conservation contribution was made. Proposed § 1.170A–14(m)(6) would impose recordkeeping requirements for substantiating the computation of each ultimate member’s adjusted basis, modified basis, and relevant basis by the due date, including extensions, of the

partnership’s or S corporation’s Federal income tax return. Proposed § 1.170A–14(n) would provide guidance on the three statutory exceptions to the Disallowance Rule.

### A. General Disallowance Rule for Partnerships and S Corporations

Consistent with section 170(h)(7)(A), proposed § 1.170A–14(j)(1) would provide that proposed § 1.170A–14(j) applies the rules of section 170(h)(7), which disallow a deduction under the Code and § 1.170A–14 for certain qualified conservation contributions, as defined in section 170(h)(1) and § 1.170A–14, made by, or allocated to, partnerships or S corporations if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, as determined by proposed § 1.170A–14(j) through (m). Proposed § 1.170A–14(j)(3)(vii) would define a contribution for which a deduction is disallowed by § 1.170A–14(j) as a “disallowed qualified conservation contribution.” Proposed § 1.170A–14(j)(2)(i) would provide that, except as provided in proposed § 1.170A–14(n), a qualified conservation contribution by a contributing partnership or a contributing S corporation is a disallowed qualified conservation contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership’s or contributing S corporation’s ultimate member’s relevant basis as determined under proposed § 1.170A–14(j) through (m).

Proposed § 1.170A–14(j)(2)(ii) would provide that, except as provided in proposed § 1.170A–14(n), an allocated portion of a contribution received by an upper-tier partnership or upper-tier S corporation is a disallowed qualified conservation contribution if either the contribution is a disallowed qualified conservation contribution with respect to the partnership that allocated the allocated portion to the upper-tier partnership or upper-tier S corporation, or such allocated portion exceeds 2.5 times the sum of each of that upper-tier partnership’s or upper-tier S corporation’s ultimate member’s relevant basis as determined under proposed § 1.170A–14(j) through (m). Thus, if a contribution is a disallowed qualified conservation contribution with respect to a partnership, then the contribution is a disallowed qualified conservation contribution with respect to any upper-tier partnership or upper-tier S corporation owning a direct or indirect interest in that partnership. On the other hand, if a contribution is not a disallowed qualified conservation

contribution with respect to a partnership, then the rules of proposed § 1.170A–14(j) through (m) must be applied to the next tier of upper-tier partnerships and upper-tier S corporations (which own a direct interest in the partnership) to determine if the Disallowance Rule applies to those upper-tier partnerships and upper-tier S corporations. In other words, the test of § 1.170A–14(j) through (m) must be applied at each tier unless and until the test is failed at one tier, in which case that portion of the contribution will be a disallowed qualified conservation contribution to that tier and any subsequent tiers.

### B. Definitions

Proposed § 1.170A–14(j)(3) would contain definitions, including definitions of terms, including “contributing partnership,” “contributing S corporation,” “ultimate member,” “allocated portion,” “upper-tier partnership,” and “upper-tier S corporation.”

#### 1. Allocated Portion

Proposed § 1.170A–14(j)(3)(i) would provide that, in the case of an upper-tier partnership or upper-tier S corporation that receives, directly or indirectly, a distributive share of a qualified conservation contribution, the phrase “allocated portion” means the amount of such distributive share.

#### 2. Amount of Qualified Conservation Contribution

Proposed § 1.170A–14(j)(3)(ii) would provide that the amount of a contributing partnership’s or contributing S corporation’s qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. It would also provide that, if the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of § 1.170A–14 must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and § 1.170A–14.

#### 3. Contributing Partnership

The Disallowance Rule applies to a partnership or S corporation that makes a qualified conservation contribution, as well as a partnership or S corporation that is allocated a distributive share of a qualified conservation contribution of

another partnership. For clarity, proposed § 1.170A–14(j)(3)(iii) would provide that the term “contributing partnership” means a partnership that makes a qualified conservation contribution.

#### 4. Contributing S Corporation

Proposed § 1.170A–14(j)(3)(iv) would provide that the term “contributing S corporation” means an S corporation that makes a qualified conservation contribution.

#### 5. Direct Interest

Proposed § 1.170A–14(j)(3)(v) would provide that the term “direct interest” refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as defined in section 1361(b)(3) of the Code, or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation, non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the direct interest in the partnership or S corporation, as applicable, would be considered to be held by the C corporation, non-grantor trust, or estate; the C corporation’s shareholders, trust beneficiaries, and estate beneficiaries would not be considered to hold any interest in the partnership or S corporation, as applicable, for purposes of proposed § 1.170A–14(j) through (n).

#### 6. Directly

Proposed § 1.170A–14(j)(3)(vi) would provide that an ownership interest is held “directly” if it is not held through one or more upper-tier partnerships or upper-tier S corporations. Similarly, a distributive share or pro rata share of a qualified conservation contribution would be received “directly” if it does not pass through one or more upper-tier partnerships or upper-tier S corporations.

#### 7. Disallowed Qualified Conservation Contribution

Proposed § 1.170A–14(j)(3)(vii) would provide that the term “disallowed qualified conservation contribution” means a qualified conservation contribution or allocated portion for which no deduction is allowed pursuant to section 170(h)(7) and proposed § 1.170A–14(j).

#### 8. Indirect Interest

Proposed § 1.170A–14(j)(3)(viii) would provide that the term “indirect interest” refers to an ownership interest in a contributing partnership, contributing S corporation, upper-tier partnership, or upper-tier S corporation held through an upper-tier S corporation or one or more upper-tier partnerships.

#### 9. Indirectly

Proposed § 1.170A–14(j)(3)(ix) would provide that an ownership interest is held “indirectly” if it is held through one or more upper-tier partnerships or upper-tier S corporations. Similarly, a distributive share or pro rata share of a qualified conservation contribution would be received “indirectly” if it passes through one or more upper-tier partnerships or upper-tier S corporations.

#### 10. Ultimate Member

Proposed § 1.170A–14(j)(3)(x) would provide that the term “ultimate member” means, with respect to any partnership or S corporation, any partner (that is not itself a partnership or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members would either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Proposed § 1.170A–14(j)(3)(x) would provide that upper-tier S corporations and upper-tier partnerships themselves are not considered ultimate members.

Several considerations played a role in the decision of the Treasury Department and the IRS to propose this rule that looks to the relevant basis of the ultimate members for determining whether a qualified conservation contribution will be disallowed. Although section 170(h)(7)(A) provides that the Disallowance Rule applies in tiered structures, the statutory language does not explicitly explain whether the determination of relevant basis is made with respect to partners (who may themselves be pass-through entities) and S corporation shareholders holding a direct interest in the contributing partnership or contributing S corporation, or whether the determination of relevant basis is made with respect to the ultimate members. The Disallowance Rule is meant to

compare the amount of a claimed qualified conservation contribution with the equity investment made by those persons expected to claim a deduction with respect to such contribution. Because it is the ultimate members, such as individuals, estates, and C corporations (that is, non-pass-through entities), who ultimately claim a deduction for a qualified conservation contribution, the proposed regulations would require that the determination of relevant basis be made with respect to those ultimate partners and S corporation shareholders. For example, assume a contributing partnership has two partners: (1) an upper-tier S corporation, which has two individual shareholders, and (2) an upper-tier partnership, which has three partners—a C corporation, an estate, and an individual. Under these proposed regulations, relevant basis would be computed with respect to the three individuals, C corporation, and estate, and not with respect to the upper-tier S corporation or upper-tier partnership. The proposed regulations would refer to these persons as the “ultimate members.” In the case of a tiered arrangement, the use of the term “partner” to refer to such ultimate members might be confusing or inaccurate because such persons may not be partners of the contributing partnership, and in fact, may not be partners at all, if they are shareholders of an upper-tier S corporation that is itself a partner in the contributing partnership. As such, the proposed regulations use the term “member.”

The Treasury Department and the IRS considered alternatives to the ultimate member rule. One possible approach would be to determine the application of the Disallowance Rule with respect to the contributing partnership by looking only to the relevant bases of the contributing partnership’s direct partners. In the example in which a contributing partnership has two partners, an upper-tier S corporation and an upper-tier partnership, the direct partners would be the upper-tier S corporation and the upper-tier partnership. The modified basis (and thus, relevant basis) of the upper-tier S corporation or upper-tier partnership could include basis attributable to shareholders or partners of the upper-tier entity that will not be expected to claim the deduction. For example, this might be the case because the contributing partnership allocates all of the qualified conservation contribution to the upper-tier S corporation. Because the Disallowance Rule is meant to compare the amount of a claimed

qualified conservation contribution with the equity investment made by those persons expected to claim a deduction with respect to such contribution, it is more consistent with the purposes of the Disallowance Rule to compute relevant basis only using the basis of those persons who are expected to claim a deduction with respect to the contribution.

Additionally, in the example earlier, if the contributing partnership's qualified conservation contribution was not disallowed by the Disallowance Rule, the upper-tier S corporation and the upper-tier partnership would each be required to determine the application of the Disallowance Rule by looking to their direct owners. Because section 170(h)(7)(B)(i) requires that relevant basis be traced to the portion of the real property with respect to which the contribution is made, the upper-tier S corporation's and upper-tier partnership's determinations would necessarily involve computations by both the upper-tier entity and the contributing partnership. Thus, in many cases, computing relevant basis only with respect to direct partners would not simplify the computations required to apply the Disallowance Rule, because it would still be necessary to carry the computations through each tier.

These proposed regulations would provide numerous examples to determine who is an ultimate member. Comments are requested on the definition of ultimate member, and whether additional examples for specific situations would be helpful.

#### 11. Upper-Tier Partnership

Proposed § 1.170A-14(j)(3)(xi) would provide that the term "upper-tier partnership" means a partnership that receives an allocated portion.

Where appropriate, the proposed regulations would provide separate rules for contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations. The Treasury Department and the IRS are aware that sometimes different naming conventions are used to refer to tiered partnership arrangements. For example, some may refer to the contributing partnership as the "property partnership" or "top-tier partnership," and in fact the IRS has used that naming convention in some correspondence. That naming convention is not inherently wrong, as different practitioners refer to the "bottom" and "top" of a tiered structure differently. However, the regulations under subchapter K of chapter 1 of the Code generally would refer to the contributing partnership as the lower-

tier partnership, and to a partnership that owns an interest in the contributing partnership (either directly or indirectly) as an upper-tier partnership. Accordingly, in a tiered partnership ownership structure, these proposed regulations reflect a naming convention under which the contributing partnership would be the "lower-tier partnership," and a partnership receiving a distributive share of a qualified conservation contribution from the contributing partnership would be an "upper-tier partnership."

#### 12. Upper-Tier S Corporation

Proposed § 1.170A-14(j)(3)(xii) would provide that the term "upper-tier S corporation" means an S corporation that receives an allocated portion.

#### C. Effect of the Disallowance Rule

As noted previously, section 170(h)(7)(A) applies the Disallowance Rule to both contributing partnerships and upper-tier partnerships. Section 170(h)(7) does not explicitly address what effect the application of the Disallowance Rule to one partnership or S corporation in a tiered structure has on the other partnerships or S corporations in the tiered structure. These proposed regulations would provide that if the Disallowance Rule applies to a partnership or S corporation, then the qualified conservation contribution is a disallowed qualified conservation contribution to that entity as well as to any person receiving a distributive share or pro rata share, directly or indirectly, of that entity's disallowed qualified conservation contribution; however, the disallowance would not affect the qualified conservation contribution with respect to any lower-tier entities. In other words, if the application of the Disallowance Rule with respect to an upper-tier partnership or upper-tier S corporation results in a disallowed qualified conservation contribution, that would affect Federal income tax consequences up the chain of tiers, but not down the chain of tiers, so, for example, the contributing partnership would not be affected.

The Treasury Department and the IRS considered other approaches, such as always re-testing the application of the Disallowance Rule to an upper-tier partnership's or upper-tier S corporation's allocated portion, even when the contribution is a disallowed qualified conservation contribution with respect to the lower-tier partnership. Under this approach, if the allocated portion does not exceed 2.5 times the sum of each of the upper-tier partnership's or upper-tier S

corporation's ultimate member's relevant basis, the allocated portion would be a qualified conservation contribution and not disallowed to the upper-tier partnership's non-pass-through partners or the upper-tier S corporation's shareholders, even though the contribution was a disallowed qualified conservation contribution to the non-pass-through partners of the lower-tier partnership. Allowing re-testing of contributions that have already failed the Disallowance Rule would be inconsistent with the purposes of the Disallowance Rule because it would inappropriately encourage the creation of tiered structures to allow some ultimate members to avoid the Disallowance Rule. These proposed regulations are intended to prevent avoidance of the purposes of section 170(h)(7) and ensure disallowance of deductions attributable to disallowed qualified conservation contributions. The Treasury Department and the IRS request comments on the application of the Disallowance Rule in tiered structures.

Under the authority of section 170(h)(7)(G)(ii) to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7), proposed § 1.170A-14(j)(4)(i) would provide that, if a contributing partnership's or contributing S corporation's qualified conservation contribution is a disallowed qualified conservation contribution, then: (1) any upper-tier partnership's or upper-tier S corporation's allocated portion of such contribution is a disallowed qualified conservation contribution, regardless of whether such allocated portion exceeds 2.5 times the sum of each of the upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and (2) no person (whether holding a direct or indirect interest in such contributing partnership or contributing S corporation) may claim a deduction under any provision of the Code with respect to any amount of such disallowed qualified conservation contribution, regardless of whether that person's distributive share or pro rata share of the disallowed qualified conservation contribution exceeds 2.5 times its relevant basis. The reference to "any provision of the Code" is necessary to prevent taxpayer attempts to avoid the Disallowance Rule by claiming a deduction with respect to any amount of a qualified conservation contribution under a provision of the Code other than section 170 in cases in which no deduction is allowable under section 170 by reason of section 170(h)(7). For example, this proposed

rule would disallow a deduction under section 642(c) of the Code for a trust that is a partner in a partnership with respect to a distributive share of a disallowed qualified conservation contribution from the partnership.

Proposed § 1.170A-14(j)(4)(ii) would provide that if a contributing partnership's or contributing S corporation's qualified conservation contribution is not a disallowed qualified conservation contribution, then: (1) the distributive share or pro rata share of any ultimate member holding a direct interest in the contributing partnership or contributing S corporation is not a disallowed qualified conservation contribution; and (2) any upper-tier partnership or upper-tier S corporation that receives an allocated portion of such qualified conservation contribution must separately apply the rules of section 170(h)(7) and proposed § 1.170A-14(j) through (m) to determine whether that upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution.

Proposed § 1.170A-14(j)(4)(iii) would provide that, if an upper-tier partnership's or upper-tier S corporation's allocated portion is a disallowed qualified conservation contribution, then: (1) any subsequent upper-tier partnership's or upper-tier S corporation's allocated portion of such allocated portion would be a disallowed qualified conservation contribution, regardless of whether the subsequent upper-tier partnership's or upper-tier S corporation's allocated portion exceeds 2.5 times the sum of each of the subsequent upper-tier partnership's or upper-tier S corporation's ultimate member's relevant basis; and (2) no person (whether holding a direct or indirect interest in that upper-tier partnership or upper-tier S corporation) would be able to claim a deduction under any provision of the Code with respect to any amount of that upper-tier partnership's or upper-tier S corporation's allocated portion, regardless of whether that person's distributive share or pro rata share of the allocated portion exceeds 2.5 times its relevant basis. Similar to proposed § 1.170A-14(j)(4)(i), proposed § 1.170A-14(j)(4)(iii) would be issued under the authority of section 170(h)(7)(G)(ii) to issue regulations or other guidance to prevent the avoidance of the purposes of section 170(h)(7). However, this proposed rule would not affect the application of proposed § 1.170A-14(j) through (m) to another partner of the contributing partnership; for example, if the qualified conservation contribution

is not a disallowed qualified conservation contribution with respect to the contributing partnership, then the distributive share of such contribution of an ultimate member holding a direct interest in the contributing partnership is not a disallowed qualified conservation contribution, notwithstanding that the qualified conservation contribution is a disallowed qualified conservation contribution with respect to one or more upper-tier partnerships or upper-tier S corporations.

Proposed § 1.170A-14(j)(4)(iv) would provide that, if an upper-tier partnership's or upper-tier S corporation's allocated portion is not a disallowed qualified conservation contribution, then: (1) the distributive share or pro rata share of such allocated portion of any ultimate member holding a direct interest in the upper-tier partnership or upper-tier S corporation is not a disallowed qualified conservation contribution; and (2) any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of such allocated portion must separately apply the rules of section 170(h)(7) and proposed § 1.170A-14(j) through (m) to determine whether that subsequent upper-tier partnership's or upper-tier S corporation's allocated portion is treated as a disallowed qualified conservation contribution.

The proposed regulations contain examples illustrating the rules with respect to tiers of entities. The Treasury Department and the IRS request comments on whether additional examples would be helpful.

#### D. No Inference

The Treasury Department and the IRS are aware that, even though section 605(c)(2) of the SECURE 2.0 Act plainly states that no inference is intended as to any contribution for which a deduction is not disallowed by reason of section 170(h)(7), some practitioners have taken the position that section 170(h)(7) operates as a "safe harbor." According to these practitioners, a qualified conservation contribution that is not disallowed by the Disallowance Rule is somehow immune to a challenge on other grounds, including failure to comply with other rules under section 170 and overvaluation of the contribution. Such a position is baseless and contradicted by the statutory language.

To clarify this issue, proposed § 1.170A-14(j)(5) would provide that there is no presumption that a qualified conservation contribution that is not a disallowed qualified conservation

contribution is compliant with section 170, any other section of the Code, the regulations, or any other guidance thereunder. It would also provide that compliance with section 170(h)(7) and proposed § 1.170A-14(j) through (n) is not a safe harbor for purposes of any other provision of law, including the other requirements of section 170 and the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the requirements of section 170 and the overvaluation of the contribution; for example, failure to properly execute Form 8283, *Noncash Charitable Contributions*, violation of the partnership anti-abuse rule of § 1.701-2, lack of economic substance, or other rules or judicial doctrines. In addition, compliance with proposed § 1.170A-14(j) through (n) would not preclude the application of any penalty, including penalties for valuation misstatement, negligence, and fraud. Proposed § 1.170A-14(j)(5) would also provide that taxpayers who engage in such transactions may be required to disclose under § 1.6011-4 the transactions as listed transactions.

#### E. Determination of Relevant Basis

Consistent with section 170(h)(7)(B)(i), proposed § 1.170A-14(k) would provide that, for purposes of § 1.170A-14, the term "relevant basis" means, with respect to any ultimate member, the portion of such ultimate member's modified basis (as defined in proposed § 1.170A-14(l)) that is allocable (under the rules of proposed § 1.170A-14(m)) to the portion of the real property with respect to which the qualified conservation contribution is made.

##### 1. Modified Basis

Proposed § 1.170A-14(l)(1) would provide that, in the case of an ultimate member holding a direct interest in a partnership, the ultimate member's modified basis is determined by such partnership immediately before the qualified conservation contribution is made in the manner described in § 1.170A-14(l)(2). In the case of an ultimate member holding a direct interest in an S corporation, the ultimate member's modified basis would be determined by such S corporation in the manner described in § 1.170A-14(l)(3).

##### a. Modified Basis of Ultimate Members That Are Partners

Consistent with section 170(h)(7)(B)(ii), the proposed regulations would provide rules that are designed to determine a partner's



modified basis immediately prior to the qualified conservation contribution. Without additional guidance under section 706, there may be situations in which the contribution is allocated to partners that did not hold an interest at the time of the qualified conservation contribution. Such partners would not have any bases in their partnership interests immediately before the contribution, and thus, without additional rules, their modified bases and relevant bases would be zero. As discussed later in this preamble, these proposed regulations would contain rules under section 706 that would treat a qualified conservation contribution as an extraordinary item under § 1.706-4(e) that must be allocated only to partners holding an interest in the partnership at the time of the contribution. Proposed rules under § 1.706-3 would ensure that only partners holding an interest in an upper-tier partnership at the time of the contribution would receive a distributive share of an allocated portion. Thus, all ultimate members who are partners would be partners at the time of day the contribution is made. In other words, for a partner to be an ultimate member, the partner must have been a partner at the time of day the contribution is made and must have been allocated a distributive share of that contribution. These proposed rules are intended to facilitate the computation of modified basis immediately before the contribution, consistent with section 170(h)(7)(B)(ii)(I).

The proposed regulations would provide a process for determining a partner's modified basis. Proposed § 1.170A-14(l)(2)(i) would provide that, for purposes of § 1.170A-14, the term "modified basis" means, with respect to any ultimate member that is a direct partner in either a contributing partnership or an upper-tier partnership, such ultimate member's adjusted basis in its interest in the partnership in which the ultimate member holds a direct interest as of the beginning of the first day of the partnership's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed § 1.170A-14(l)(2)(ii) through (v). However, if the ultimate member was not a partner as of the beginning of the first day of the partnership's taxable year, then the term "modified basis" would mean such ultimate member's adjusted basis in its interest in the partnership immediately after the transaction that resulted in the ultimate member becoming a partner

with adjustments as determined under proposed § 1.170A-14(l)(2)(ii) through (v). The Treasury Department and the IRS considered alternatives to this rule, including simply requiring that "adjusted basis" be computed immediately prior to the contribution. However, adjusted basis is typically computed as of the beginning of a taxable year, and it may be unclear to taxpayers how to compute adjusted basis as of another time during the year. Current regulations generally do not require partners to compute their adjusted bases in their partnership interests as of the time events, such as the making of a qualified conservation contribution, occur. Accordingly, these proposed regulations would start with a calculation of adjusted basis that partners are familiar with computing, and then make adjustments to arrive at an amount that reflects the partner's modified basis immediately before the contribution.

Proposed § 1.170A-14(l)(2)(ii) through (v) would provide four adjustments that must be made to a partner's adjusted basis to arrive at modified basis. These adjustments would be required to be made in the order in which they are listed. First, proposed § 1.170A-14(l)(2)(ii) would provide that the computation of modified basis must start with the ultimate member's adjusted basis under proposed § 1.170A-14(l)(2)(i) and then reflect an increase for any contributions made by the ultimate member to the partnership during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 722 of the Code.

Second, proposed § 1.170A-14(l)(2)(iii) would provide that the amount determined under proposed § 1.170A-14(l)(2)(ii) must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. For example, if a calendar-year partnership makes a qualified conservation contribution at 9:17 a.m. on November 19 of Year 1, then the hypothetical distributive share would be required to be made based on the partnership items attributable to the period between the beginning of the day on January 1 Year 1 and 9:16 a.m. on November 19 Year 1. In making this determination, the partnership would be

required to apply the rules of § 1.706-4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. Proposed § 1.170A-14(l)(2)(iii) would provide that the partnership cannot apply any convention in § 1.706-4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. Proposed § 1.170A-14(l)(2)(iii) would clarify that this hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. Proposed § 1.170A-14(l)(2)(iii) would also make clear that proposed § 1.170A-14(l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares for the taxable year in which the qualified conservation contribution is made or otherwise. See section 706(d) and the regulations thereunder for the permissible methods that may be used in the determination of the partners' distributive shares for a partnership taxable year in which there is a variation in a partner's interest in the partnership. As described later this preamble, proposed §§ 1.706-3(a) and 1.706-4(e)(2)(ix) would provide special rules for the allocation of qualified conservation contributions.

The Treasury Department and the IRS considered using the partners' actual distributive shares, determined as of the time of the contribution. In the case of a partnership using the proration method, however, such an approach would result in the partners' modified bases reflecting a portion of partnership items earned or incurred by the partnership after the time of the contribution, and thus would be inconsistent with the requirement in section 170(h)(7)(B)(ii)(I) that partners' modified bases be determined immediately before the contribution. The Treasury Department and the IRS request comments on the approach taken in the proposed regulations to determine the partners' distributive shares of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the



qualified conservation contribution is made.

Third, proposed § 1.170A–14(l)(2)(iv) would provide that the amount determined under proposed § 1.170A–14(l)(2)(iii) must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

Fourth, consistent with section 170(h)(7)(B)(ii)(II), proposed § 1.170A–14(l)(2)(v) would provide that the amount determined under proposed § 1.170A–14(l)(2)(iv) must be reduced by the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership). The remaining amount would be such ultimate member's modified basis. Thus, under the proposed regulations, an ultimate member's modified basis may be less than zero. Under the formulas for the determination of relevant basis discussed later in this preamble, a negative modified basis will result in a negative relevant basis. Because the application of the Disallowance Rule is based on the sum of each ultimate member's relevant basis, if one ultimate member's relevant basis is negative, it will be added to all other ultimate members' relevant bases, and the sum may be a positive or negative number.

#### b. Modified Basis of Ultimate Members That Are Shareholders in an S Corporation

Unlike the rules for partnerships discussed previously, S corporations do not have extraordinary items that must be allocated only to shareholders as of the time of day the item occurs. Instead, section 1377 of the Code and existing § 1.1377–1 generally require pro rata allocations. Section 1.1377–1(a) provides that each shareholder's pro rata share of any S corporation item described in section 1366(a) of the Code for any taxable year is the sum of the amounts determined with respect to the shareholder by assigning an equal portion of the item to each day of the S corporation's taxable year, and then dividing that portion pro rata among the shares outstanding on that day. If a shareholder disposes of its entire interest in an S corporation, § 1.1377–1(b) allows the S corporation to make a terminating election, under which the S corporation will determine the terminating shareholder's share as though the S corporation's taxable year

closed on the day of the termination. However, there is no extraordinary item rule for S corporations similar to § 1.706–4(e). As such, it may be the case that an S corporation allocates a portion of a qualified conservation contribution to someone that was not a shareholder at the time of the contribution, but that shareholder would still be treated as an ultimate member because the shareholder received a pro rata share of the qualified conservation contribution.

As described previously, the rules for determining a partner's modified basis start with the partner's adjusted basis at the start of the partnership's taxable year and work forward to determine modified basis immediately before the contribution. However, the Treasury Department and the IRS are concerned that such an approach is not appropriate for S corporation shareholders, as it could be unnecessarily burdensome and, in some cases, impossible to determine each shareholder's modified basis immediately prior to the qualified conservation contribution (because some ultimate members may not be shareholders at the time of the contribution). To provide an administrable standard consistent with the purposes of section 170(h)(7), these proposed regulations would require the computation of an S corporation shareholder's modified basis under an approach that is similar in purpose to the approach for partners but different in application.

Proposed § 1.170A–14(l)(3)(i) would provide that, for purposes of § 1.170A–14, the term “modified basis” means, with respect to any ultimate member that is a shareholder of either a contributing S corporation or an upper-tier S corporation, such ultimate member's adjusted basis in its shares in the S corporation as of the end of the S corporation's taxable year in which the qualified conservation contribution is made with adjustments as determined under proposed § 1.170A–14(l)(3)(ii) and (iii). However, if the ultimate member was not a shareholder at the end of the S corporation's taxable year in which the qualified conservation contribution is made, then the term “modified basis” would mean such ultimate member's adjusted basis in its shares in the S corporation immediately prior to the transaction that terminated its interest in the S corporation with adjustments as determined under proposed § 1.170A–14(l)(3)(ii) and (iii).

The Treasury Department and the IRS considered several alternatives to this rule. One method would be to require a determination of a portion of modified basis for every day during the S corporation's taxable year, because S

corporations generally allocate the contribution on a pro rata basis among the shareholders on each day of the taxable year. These proposed regulations do not take that approach because the Treasury Department and the IRS are concerned that such an approach, although technically accurate and consistent with the purposes of section 170(h)(7), would be too burdensome for taxpayers and difficult for the IRS to administer. The Treasury Department and the IRS also considered using the shareholders' adjusted bases as of the beginning of the S corporation's taxable year (rather than as of the end of the year). However, because qualified conservation contributions are typically made in the second half of the year, especially in syndicated transactions, the Treasury Department and the IRS determined that such an approach would be less accurate than using the shareholders' adjusted bases as of the end of the year (or a shareholder's adjusted basis immediately prior to the transaction that terminated their interest in the S corporation).

Proposed § 1.170A–14(l)(3)(i) would also clarify that modified basis does not include the ultimate member's adjusted basis of any indebtedness of the S corporation to the ultimate member.<sup>1</sup>

Proposed § 1.170A–14(l)(3)(ii) and (iii) would provide two adjustments that must be made to arrive at modified basis. These adjustments would be required to be made in the order in which they are listed. First, proposed § 1.170A–14(l)(3)(ii) would provide that the computation of modified basis must start with the ultimate member's adjusted basis under proposed § 1.170A–14(l)(3)(i) and then must reflect an increase for the extent to which the adjusted basis reflects a reduction as a result of the qualified

<sup>1</sup> As described previously, section 170(h)(7)(B)(ii)(II) provides that the determination of modified basis is to be made without regard to section 752. However, the Code does not contain a rule substantially similar to section 752 for S corporations. Unlike a partner's basis in the partner's interest in the partnership, an S corporation shareholder's basis in stock of the S corporation does not include any share of the S corporation's liabilities. Under section 1367(b)(2)(A) of the Code and § 1.1367–2(b), if an S corporation shareholder's pro rata share of the S corporation's losses, deductions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions exceed the shareholder's stock basis, then these items may reduce the shareholder's basis in indebtedness owed to them by the S corporation (but not below zero). Under section 1367(b)(2)(B) and § 1.1367–2(c), if the basis in indebtedness has been so reduced, then any future net increase must be applied to restore such reduction in indebtedness basis before any of it may be used to increase the shareholder's basis in its stock of the S corporation.

conservation contribution. Thus, the ultimate member's modified basis with respect to a qualified conservation contribution would not reflect any reduction for the ultimate member's pro rata share of the S corporation's basis in the conservation easement or other property contributed in the qualified conservation contribution. This adjustment in proposed § 1.170A-14(l)(3)(ii) would be made because it would not be appropriate or consistent with section 170(h)(7)(B)(ii)(I) for modified basis, and thus relevant basis, to reflect a reduction for the very contribution that is being analyzed under the Disallowance Rule as such an approach might result in deductions being inappropriately disallowed by the Disallowance Rule.

Second, proposed § 1.170A-14(l)(3)(iii) would provide that the amount determined under proposed § 1.170A-14(l)(3)(ii) must be multiplied by the number of days during the S corporation's taxable year in which the ultimate member was a shareholder and divided by the total number of days during the S corporation's taxable year. The resulting amount would be such ultimate member's modified basis. Inappropriate double counting of relevant basis might occur unless the proposed regulations provide this rule. For example, assume individual A owns a portion of the outstanding shares of an S corporation. In early July, A sells all its shares to B. In December, the S corporation makes a qualified conservation contribution. Absent a terminating election under § 1.1377-1(b), the S corporation would allocate some of the qualified conservation contribution to each of A and B. Unless A's and B's modified bases (and thus, their relevant bases) are adjusted to reflect that each was a shareholder for approximately half of the year, the S corporation's computation of the sum of each of its ultimate member's relevant basis would be inappropriately overstated. The Treasury Department and the IRS request comments on whether there are certain situations in which the divisor should be less than the full number of days in the S corporation's taxable year. In particular, the Treasury Department and the IRS request comments on whether, and how, elections under §§ 1.1368-1(g)(2) and 1.1377-1(b) should result in the divisor being less than the full number of days in the S corporation's taxable year. It would be particularly helpful for commenters to address situations in which elections under §§ 1.1368-1(g)(2) and 1.1377-1(b) affect some, but not all, of the shareholders.

Section 170(h)(7)(B)(ii)(III) provides authority for the Secretary to provide for other adjustments in the computation of modified basis. The Treasury Department and the IRS request comments on whether any additional adjustments to arrive at modified basis would be appropriate.

The proposed regulations also contain examples illustrating the determination of modified basis. Comments are requested on whether it would be helpful to add examples with other factual scenarios.

## 2. Allocation of Modified Basis and Determination of Relevant Basis

Proposed § 1.170A-14(m) would provide rules for determining the portion of an ultimate member's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is the final step in the determination of relevant basis. Section 170(h)(7)(B)(i) provides that the allocation is made under rules similar to the rules of section 755. Section 755 provides rules for allocating special basis adjustments to partnership property resulting from partnership distributions or transfers of partnership interests, such as adjustments under section 734(b) of the Code and adjustments under section 743(b) of the Code.

Section 755(a) generally provides that any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) is allocated (1) in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties, or (2) in any other manner permitted by regulations. The regulations under section 755 provide rules for performing these allocations. Those rules can be complex and involve several different methods for allocating basis adjustments among the partnership's properties, including:

(1) Allocating in a manner that reduces the difference between the fair market value and the adjusted basis of partnership properties. *See* § 1.755-1(b)(2)(i) and (b)(3).

(2) Allocating in proportion to the transferee's share of the amount that would be realized by the partnership upon the hypothetical sale of each property. *See* § 1.755-1(b)(5)(iii)(A).

(3) Allocating in proportion to the fair market values of the partnership's properties. *See* § 1.755-1(c)(2)(i).

(4) Allocating in proportion to the partnership's adjusted bases in its properties. *See* § 1.755-1(c)(2)(ii).

(5) Allocating in proportion to the partner's share of the adjusted bases in the partnership's properties. *See* § 1.755-1(b)(5)(iii)(B).

In considering which of these allocation rules would be most appropriate to determine relevant basis, the Treasury Department and the IRS considered the special basis adjustment and loss limitation rules for charitable contributions. Those rules look to a partner's or shareholder's share of the partnership's or S corporation's basis in the contributed property.

Generally, section 705(a)(2) provides that the adjusted basis of a partner's interest in a partnership is decreased (but not below zero) by distributions by the partnership and by the sum of the partner's distributive share for the taxable year and prior taxable years of (1) losses of the partnership, and (2) expenditures of the partnership not deductible in computing its taxable income and not properly chargeable to capital account. Generally, when a partnership makes a charitable contribution, the partners are not required to reduce their adjusted bases in their partnership interests by the fair market value of the contribution. Instead, Revenue Ruling 96-11, 1996-1 C.B. 140, provides that after a partnership makes a charitable contribution of property, the basis of each partner's interest in the partnership is decreased (but not below zero) by the partner's share of the partnership's basis in the property contributed. Revenue Ruling 96-11 explains that reducing the partners' bases in their partnership interests by their respective shares of the permanent decrease in the partnership's basis in its properties preserves the intended benefit of providing a deduction (in circumstances not under section 170(e)) for the fair market value of appreciated property without recognition of the appreciation. In contrast, reducing the partners' bases in their partnership interests by the fair market value of the contributed property would subsequently cause the partners to recognize gain (or a reduced loss), for example, upon a disposition of their partnership interests, attributable to the unrecognized appreciation in the contributed property at the time of the contribution.

The partnership loss limitation rules in section 704(d) of the Code have a similar rule for charitable contributions. Generally, section 704(d)(1) provides that a partner's distributive share of partnership loss is allowed only to the

extent such partner's adjusted basis in its partnership interest at the end of the partnership year in which such loss occurred. Section 704(d)(3)(A) provides, in part, that in determining the amount of any loss under section 704(d)(1), the partner's distributive share of charitable contributions as defined in section 170(c) must be taken into account. However, section 704(d)(3)(B) provides that, in the case of a charitable contribution of property whose fair market value exceeds its adjusted basis, section 704(d)(3)(A) does not apply to the extent of the partner's distributive share of such excess.

The rules for S corporations also look to the shareholder's share of the S corporation's basis in the contributed property. Section 1367(a)(2)(B) of the Code provides that the basis of each shareholder's stock is reduced by the items of loss and deduction described in section 1366(a)(1)(A). However, the second sentence of section 1367(a)(2) provides that the decrease in basis under section 1367(a)(2)(B) by reason of a charitable contribution (as defined in section 170(c)) of property is the amount equal to the shareholder's pro rata share of the adjusted basis of such property.<sup>2</sup>

Generally, section 1366(d)(1) provides that the aggregate amount of losses and deductions taken into account by a shareholder under section 1366(a) for any taxable year cannot exceed the sum of (1) the adjusted basis of the shareholder's stock in the S corporation, and (2) the shareholder's adjusted basis of any indebtedness of the S corporation to the shareholder. However, section 1366(d)(4) provides that, in the case of any charitable contribution of property to which the second sentence of section 1367(a)(2) applies, section 1366(d)(1) does not apply to the extent of the excess (if any) of (1) the shareholder's pro rata share of such contribution, over (2) the shareholder's pro rata share of the adjusted basis of such property. *See also* Rev. Rul. 2008–16, 2008–1 C.B. 585.

Therefore, generally partnerships and S corporations making charitable contributions are already required to track each partner's and shareholder's share of the entity's basis in the contributed property. And as noted previously, in certain circumstances the rules under section 755 also look to the partner's share of the partnership's basis in its properties. Accordingly, as

described in this section of the preamble, these proposed regulations would require the allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made to be based on the ultimate member's share of the entity's bases in its properties. This provides an administrable standard consistent with the purposes of section 170(h)(7).

The Treasury Department and the IRS considered alternatives to this rule. In particular, the Treasury Department and the IRS considered simply cross-referencing the rules under section 755. Under that alternative approach, the amount of each partner's modified basis would be treated for purposes of the computation of relevant basis as a special basis adjustment under section 734(b) or section 743(b); relevant basis would be the portion of modified basis that would be allocated under the rules of section 755 to the portion of the real property with respect to which the contribution was made. Such an approach would be less consistent with the purposes of the Disallowance Rule. As noted previously, basis allocations under section 755 are sometimes made in a way to reduce or eliminate built-in gain or loss in partnership property. The relevant basis rule of section 170(h)(7) is designed to determine the portion of a partner's modified basis that is allocable to the portion of the real property with respect to which the contribution is made, which is a broader and, generally, different concept than determining the partner's share of built-in gain or loss in that property. The approach in the proposed regulations is similar to the rules of section 755 and consistent with the rule of section 170(h)(7)(B)(i). The Treasury Department and the IRS request comments on whether another acceptable allocation approach would be easier or more administrable.

Proposed § 1.170A–14(m)(1) would provide that the allocation of an ultimate member's modified basis to the portion of the real property with respect to which the qualified conservation contribution is made must be made in accordance with proposed § 1.170A–14(m). Rules for allocating an ultimate member's modified basis in a contributing partnership would be provided in proposed § 1.170A–14(m)(2). Rules for allocating an ultimate member's modified basis in a contributing S corporation would be provided in proposed § 1.170A–14(m)(3). Rules for allocating an ultimate member's modified basis in an upper-tier partnership would be provided in proposed § 1.170A–14(m)(4). Rules for allocating an

ultimate member's modified basis in an upper-tier S corporation would be provided in proposed § 1.170A–14(m)(5). Records would be required to be kept in accordance with proposed § 1.170A–14(m)(6).

a. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in a Contributing Partnership

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

The Treasury Department and the IRS note that this numerator determines the ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made, which is what is required by the statute, but may be different than the ultimate member's share of the contributing partnership's adjusted basis in the contributed property. As noted previously, section 704(d) and Revenue Ruling 96–11 require a partner's basis in its interest in the partnership to be decreased (but not below zero) by the partner's share of the partnership's basis in the contributed property. For example, assume a partnership owns 100 acres of real property, and grants a conservation easement that is a qualified conservation contribution on 60 of those acres. Assume the partnership's adjusted basis in the 100 acres is \$100,000, its adjusted basis in the 60 acres is \$60,000, and its adjusted basis in the conservation easement itself is \$45,000. Section 705(a)(2)(B) and Revenue Ruling 96–11 would require each partner's basis in its interest in the partnership to be decreased (but not below zero) by the partner's share of the partnership's \$45,000 basis in the easement. On the other hand, the

<sup>2</sup> Whether a qualified conservation contribution is a disallowed qualified conservation contribution has no effect on the application of sections 705 and 1367 to the contribution. These basis reductions remain required regardless of whether a qualified conservation contribution is a disallowed qualified conservation contribution.

computation of each ultimate member's relevant basis would look to the ultimate member's share of the partnership's \$60,000 basis in the 60 acres (the portion of the real property with respect to which the qualified conservation contribution was made). As described in the following paragraphs, these proposed regulations would provide computational rules for determining an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made. The Treasury Department and the IRS request comments on whether these computations generally align with the methods used by partnerships to determine each partner's share of the partnership's basis in the contributed property for purposes of sections 704(d) and 705(a)(2)(B) and Revenue Ruling 96-11. In terms of the example in this paragraph, the Treasury Department and the IRS request comments on whether the rules in the proposed regulations for determining each ultimate member's share of the partnership's \$60,000 basis in the 60 acres align with the way in which the partnership would determine each partner's share of the partnership's \$45,000 basis in the conservation easement for purposes of applying sections 704(d) and 705(a)(2)(B) and Revenue Ruling 96-11.

Proposed § 1.170A-14(m)(2)(ii) would provide that, for purposes of proposed § 1.170A-14(m), an ultimate member's share of the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made equals the contributing partnership's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made multiplied by a fraction (1) the numerator of which is the ultimate member's distributive share of the qualified conservation contribution; and (2) the denominator of which is the total amount of the contributing partnership's qualified conservation contribution.

The Treasury Department and the IRS considered several alternatives to this rule, including determining the ultimate member's share of the contributing partnership's adjusted basis in the property based on the ultimate member's share of gain, loss, and cash distributions attributable to the property. However, there may be situations in which the allocation of a qualified conservation contribution does not match the partners' shares of gain, loss, or cash distributions with respect to the property. Accordingly, the

Treasury Department and the IRS determined that such an approach would be less accurate. In addition, the proposed rule would be less burdensome for taxpayers and more easily administrable for the IRS because it would be based on the partnership's actual allocation of the contribution, rather than on a hypothetical sale of the property.

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

The Treasury Department and the IRS considered alternatives to this rule, including determining the ultimate member's portion of the partnership's adjusted basis in all its properties in accordance with § 1.743-1(d), which provides for the determination of a transferee partner's share of the partnership's adjusted basis of its property for purposes of computing special basis adjustments under section 743(b). The Treasury Department and the IRS also considered determining the ultimate member's portion of the partnership's adjusted basis in all its properties in proportion to the ultimate member's share of the built-in gain in each of the partnership's properties. The Treasury Department and the IRS determined that these approaches would be more complex and could reach results that are less accurate for purposes of the Disallowance Rule. In

particular, as previously mentioned, the partnership's allocation of the qualified conservation contribution might differ from the way that the partnership would allocate gain and loss and make cash distributions with respect to the contributed property. Moreover, these approaches would require the partnership to obtain a valuation of each of its properties at the time of the qualified conservation contribution. The Treasury Department and the IRS also considered an approach under which each ultimate member's portion of the partnership's adjusted basis in all its properties would be determined in proportion to the ultimate member's share of the qualified conservation contribution. Although such an approach would be simpler than using the partners' interests in the partnership, it would be less accurate. The Treasury Department and the IRS also considered an approach based on section 704(b) capital accounts. However, not all partnerships use the section 704(b) capital account safe harbor, and such an approach would also require a revaluation of partnership properties as of the time of the contribution. The Treasury Department and the IRS also considered a rule based on how the partnership would allocate depreciation from the properties, similar to the rule in § 1.199A-2(a)(3)(ii). However, such a rule would not address property that is not depreciable. The Treasury Department and the IRS request comments on these proposed rules and alternatives.

Proposed § 1.170A-14(m)(2)(iv) would provide a formulaic version of the narrative rules in proposed § 1.170A-14(m)(2)(i) through (iii).

b. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in a Contributing S Corporation

Proposed § 1.170A-14(m)(3)(i) would provide a narrative rule for the determination of relevant basis for an ultimate member holding a direct interest in a contributing S corporation. It would provide that a contributing S corporation must determine each such ultimate member's relevant basis as provided therein. Relevant basis would equal each ultimate member's modified basis as determined under proposed § 1.170A-14(l)(3) multiplied by a fraction (1) the numerator of which is the ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made; and (2) the denominator of which is the ultimate member's pro rata portion of the adjusted basis in all the

contributing S corporation's properties (including the portion of the real property with respect to which the qualified conservation contribution is made). The Treasury Department and the IRS request comments on whether this rule is sufficiently clear, and whether additional rules are needed regarding the time at which the pro rata portions of bases are determined. For example, the regulations could provide that these determinations are made as of the time of the qualified conservation contribution; however, in the event that an ultimate member is not a shareholder at that time, it would be unclear when the determination is to be made.

Proposed § 1.170A-14(m)(3)(ii) would provide a formulaic version of the narrative rules in proposed § 1.170A-14(m)(3)(i).

#### c. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in an Upper-Tier Partnership

Proposed § 1.170A-14(m)(4) would provide rules for determining the relevant basis of an ultimate member holding a direct interest in an upper-tier partnership. Proposed § 1.170A-14(m)(4)(i) would provide that each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier partnership in which the ultimate member holds a direct interest, each upper-tier partnership would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis. For simplicity, proposed § 1.170A-14(m)(4) would describe a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. Proposed § 1.170A-14(m)(4)(i) would provide that, in a situation involving more tiers, each partnership must apply the rules and principles of proposed § 1.170A-14(m)(4) iteratively to determine relevant basis. In a tiered structure, the determination of relevant basis should reflect the basis of the ultimate members that intend to claim a portion of the deduction and thus, cannot be done without computations at the level of each entity. The Treasury Department and the IRS request comments on whether, and how, these rules can be simplified, and whether any additional rules are necessary to prevent the avoidance of the Disallowance Rule in tiered structures.

Proposed § 1.170A-14(m)(4)(ii)(A) would provide a narrative rule for the upper-tier partnership. It would provide that the upper-tier partnership must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers of partnerships, that would be the contributing partnership). This proposed regulation would require this determination to be made in accordance with the principles of proposed § 1.170A-14(m)(2), and the formula provided in proposed § 1.170A-14(m)(4)(ii)(B). In other words, the formula provided in proposed § 1.170A-14(m)(4)(ii)(B) would be similar to the formula provided in proposed § 1.170A-14(m)(2)(iv), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed § 1.170A-14(m)(4)(ii)(B) would determine the portion of modified basis that is allocable to the upper-tier partnership's interest in the next lower-tier partnership. As explained in proposed § 1.170A-14(m)(4)(iii), the contributing partnership then would be required to use the amount determined as the result of the formula in proposed § 1.170A-14(m)(4)(ii)(B) in another set of computations that would determine the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed § 1.170A-14(m)(4)(ii)(B) would provide that the rule of proposed § 1.170A-14(m)(4)(ii) is also expressed in the following formula:<sup>3</sup>

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

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

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

J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership), determined by apportioning among the partners of the upper-tier partnership in accordance with their interests in the partnership under section 704(b) its adjusted basis in each of its properties (other than the upper-tier partnership's interest in the

contributing partnership), using the adjusted bases immediately before the qualified conservation contribution, without duplication or omission of any property, and by treating the adjusted basis in each property as not less than zero.

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula:  $H \times (B + K)$ .

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

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

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

After this formula is computed, then the contributing partnership must perform computations using the amount determined for item "G" to determine relevant basis. Proposed § 1.170A-14(m)(4)(iii)(A) would provide a narrative rule for the contributing partnership to complete this second step. It would provide that the contributing partnership must determine the portion of the amount determined under proposed § 1.170A-14(m)(4)(ii) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. The proposed regulations would require this determination to be made in accordance with the principles of proposed § 1.170A-14(m)(2), and the formula provided in proposed § 1.170A-14(m)(4)(iii)(B).

Proposed § 1.170A-14(m)(4)(iii)(B) would provide that the rule of proposed § 1.170A-14(m)(4)(iii) is also expressed in the following formula:

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

Where:

R = Relevant basis.

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

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

<sup>3</sup> Under the order of operations for mathematical computations, operations contained in parentheses (such as the addition of J and U) are performed before the rest of the equation.

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

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

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

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

*d. Determination of Relevant Basis for an Ultimate Member Holding a Direct Interest in an Upper-Tier S Corporation*

Proposed § 1.170A-14(m)(5) would provide rules for determining relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation. Proposed § 1.170A-14(m)(5)(i) would provide that each such ultimate member's modified basis must be traced through the upper-tier S corporation and any upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This would involve a multi-step process under which, beginning with the upper-tier S corporation, the upper-tier S corporation and any upper-tier partnerships would be required to perform calculations, and then finally the contributing partnership would be required to use those calculations to compute the ultimate member's relevant basis. For simplicity, proposed § 1.170A-14(m)(5) would describe a situation in which there are two tiers—a contributing partnership and an upper-tier S corporation. Proposed § 1.170A-14(m)(5)(i) would provide that, in a situation involving more tiers, each partnership and the upper-tier S corporation must apply the rules and principles of proposed § 1.170A-14(m) iteratively to determine relevant basis.

Proposed § 1.170A-14(m)(5)(ii)(A) would provide a narrative rule for the upper-tier S corporation. It would provide that the upper-tier S corporation must determine the portion of each ultimate member's modified basis that is allocable to the upper-tier S corporation's interest in the partnership in which it holds a direct interest (in a situation involving only two tiers, that would be the contributing partnership). The proposed regulations would require this determination to be made in accordance with the principles of proposed § 1.170A-14(m)(3), and the formula provided in proposed § 1.170A-14(m)(5)(ii)(B). In other words, the

formula provided in proposed § 1.170A-14(m)(5)(ii)(B) would be similar to the formula provided in proposed § 1.170A-14(m)(3)(ii), except that, instead of determining the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made, the formula in proposed § 1.170A-14(m)(5)(ii)(B) would determine the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in proposed § 1.170A-14(m)(5)(iii), the contributing partnership then would be required to use the amount determined as the result of the formula in proposed § 1.170A-14(m)(5)(ii)(B) in another set of computations that would determine the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

Proposed § 1.170A-14(m)(5)(ii)(B) would provide that the rule of proposed § 1.170A-14(m)(5)(ii) is also expressed in the following formula:

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

Where:

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

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

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

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

After this formula is computed, then the contributing partnership must perform computations using the amount determined for item "N" to determine relevant basis. Proposed § 1.170A-14(m)(5)(iii)(A) would provide a narrative rule for the contributing partnership to compute this second step. It would provide that the contributing partnership must determine the portion of the amount determined under proposed § 1.170A-14(m)(5)(ii) with respect to each ultimate member that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made. The proposed regulations would require this determination to be made in accordance with the principles of proposed § 1.170A-14(m)(2), and the formula provided in proposed § 1.170A-14(m)(5)(iii)(B).

Proposed § 1.170A-14(m)(5)(iii)(B) would provide that the rule of proposed § 1.170A-14(m)(5)(iii) is also expressed in the following formula:

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

Where:

R = Relevant basis.

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

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

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

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

Y = Upper-tier S corporation's distributive share of the qualified conservation contribution.

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

The proposed regulations would provide examples illustrating these rules. The Treasury Department and the IRS request comments on the determination of relevant basis.

### 3. Recordkeeping Requirements

Proposed § 1.170A-14(m)(6) would provide that contributing partnerships, contributing S corporations, upper-tier partnerships, and upper-tier S corporations must each maintain dated, written statements in their books and records, by the due date, including extensions, of their Federal income tax returns, substantiating the computation of each ultimate member's adjusted basis, modified basis, and relevant basis. It would also provide that these statements need not be maintained (nor does modified basis or relevant basis need to be computed) with respect to contributions that meet an exception in proposed § 1.170A-14(n)(2) (contributions outside a three-year holding period) or (n)(3) (family pass-

through entities). However, these statements must be maintained with respect to contributions that meet the exception in proposed § 1.170A–14(n)(4) for certified historic structures because section 170(f)(19) imposes special reporting requirements for such contributions if they exceed 2.5 times the sum of relevant basis.

#### F. Exceptions to the Disallowance Rule

Consistent with section 170(h)(7)(C), (D), and (E), the rules in proposed § 1.170A–14(n) would provide definitions and additional guidance relating to the three exceptions to the Disallowance Rule. It would also provide that there is no presumption that such a contribution otherwise is compliant with section 170, any other section of the Code, or the regulations or any other guidance thereunder; being described in proposed § 1.170A–14(n) is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution; such transactions are subject to adjustment or disallowance for any other reason, including failure to satisfy the other requirements of section 170 and overvaluation of the contribution; and taxpayers who engage in such transactions may be required to disclose under § 1.6011–4 the transactions as listed transactions.

##### 1. Exception for Contributions Outside Three-Year Holding Period

Consistent with section 170(h)(7)(C), proposed § 1.170A–14(n)(2)(i) would provide that § 1.170A–14(j) does not apply to any qualified conservation contribution by a contributing partnership or contributing S corporation that is made at least three years after the latest of (1) the last date on which the contributing partnership or contributing S corporation acquired any portion of the real property with respect to which such qualified conservation contribution is made, (2) the last date on which any partner in the contributing partnership or shareholder in the contributing S corporation acquired any interest in such partnership or S corporation, and (3) if the interest in the contributing partnership is held through one or more upper-tier partnerships or upper-tier S corporations (A) the last date on which any such upper-tier partnership or upper-tier S corporation acquired any interest in the contributing partnership or any other such upper-tier partnership, and (B) the last date on which any partner or shareholder in any such upper-tier partnership or upper-tier S corporation acquired any interest

in such upper-tier partnership or upper-tier S corporation.

Neither section 605 of SECURE 2.0 Act nor section 170 defines the phrase “acquired any interest.” An acquisition of an interest in a partnership can occur in several ways, including by inheritance, purchase from an existing partner, in a section 721 exchange with the partnership, in exchange for the provision of services, or as a distribution from an upper-tier partnership. An existing partner can also acquire additional interests in the partnership. In addition, one partner’s complete or partial disposition of an interest in the partnership can be economically similar to the acquisition of an interest in the partnership by the remaining partners. For example, if a partnership makes a distribution that reduces one partner’s interest in the profits or losses of the partnership, the remaining partners’ interests, in the aggregate, may increase in the same manner as if they had acquired additional interests in the partnership.

The rules under section 706(c) and (d) address partnership allocations in situations involving variations in partners’ interests attributable to acquisitions and dispositions. Section 1.706–4(a)(1) provides rules for determining the partners’ distributive shares of partnership items when a partner’s interest in a partnership varies during the taxable year as a result of the disposition of a partial or entire interest in a partnership as described in § 1.706–1(c)(2) and (3),<sup>4</sup> or with respect to a partner whose interest in a partnership is reduced as described in § 1.706–1(c)(3), including by the entry of a new partner, collectively referred to as a “variation.” Generally, a variation includes any acquisition, partial disposition, or complete disposition of an interest in the partnership. However, § 1.706–4(b)(1) provides that the rules in § 1.706–4(a)(3) do not preclude changes in the allocations of the distributive share of items described in section 702(a) among contemporaneous partners, provided that any variation in a partner’s interest is not attributable to a contribution of money or property by a partner to the partnership or a distribution of money or property by the partnership to a partner, and the

<sup>4</sup> Section 1.706–1(c)(2) provides in part that a partnership taxable year closes with respect to a partner who sells or exchanges the partner’s entire interest in the partnership, with respect to a partner whose entire interest in the partnership is liquidated, and with respect to a partner who dies. Section 1.706–1(c)(3) provides that if a partner sells or exchanges a part of the partner’s interest in a partnership, or if the interest of a partner is reduced, the partnership taxable year continues to its normal end.

allocations resulting from the modification satisfy the requirements in section 704(b) and the regulations thereunder. Generally, partnerships are familiar with the rules under § 1.706–4 because they must apply such rules in computing allocations whenever there is an acquisition or disposition of a partner’s interest during the taxable year.

The definition of “variation” in § 1.706–4 would provide an administrable standard consistent with the purposes of section 170(h)(7)(C). Accordingly, proposed § 1.170A–14(n)(2)(ii) would provide that, for purposes of § 1.170A–14(n)(2), an acquisition of any interest in a partnership is any “variation” within the meaning of that term in § 1.706–4(a)(1); however, a variation would not include a change in allocations that satisfies the requirements of § 1.706–4(b)(1). The Treasury Department and the IRS considered alternatives to this rule, including defining acquisition as any acquisition by purchase, contribution, or gift. However, because certain other transactions such as redemptions and abandonments may reach results that are substantively similar to an acquisition by purchase, contribution, or gift, the Treasury Department and the IRS determined that the variation rules of § 1.706–4 would be more appropriate in this context.

Proposed § 1.170A–14(n)(2)(iii) would define an acquisition of any interest in an S corporation as any transfer, issuance, redemption, or other disposition of stock in the S corporation; however, an acquisition would not include any issuance or redemption involving all shareholders that does not affect the proportionate ownership of any shareholder (for example, a stock split). The Treasury Department and the IRS considered alternatives to this rule, including defining acquisition as any acquisition by purchase, contribution, or gift. However, because certain other transactions such as redemptions and abandonments may reach results that are substantively similar to an acquisition by purchase, contribution, or gift, the Treasury Department and the IRS determined that the proposed rule would be more appropriate in this context.

Proposed § 1.170A–14(n)(2)(iv) would provide that, if the contributing partnership or contributing S corporation does not satisfy the requirements of proposed § 1.170A–14(n)(2), then proposed § 1.170A–14(n)(2) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation



contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed § 1.170A–14(n)(2) if the person had been the one to make the qualified conservation contribution. The Treasury Department and the IRS considered alternatives to this rule, such as allowing upper-tier partnerships and upper-tier S corporations to apply the three-year holding-period exception even if the contributing partnership failed to satisfy the exception. Such an approach, however, would be inconsistent with section 170(h)(7)(C), which explicitly applies the holding period requirements to the contributing partnership.

The proposed regulations contain two examples illustrating these rules. The Treasury Department and the IRS request comments on whether any additional rules or examples should be provided for the three-year holding period exception.

## 2. Exception for Family Pass-Through Entities

As mentioned earlier, section 170(h)(7)(D)(i) provides the Disallowance Rule does not apply to any contribution made by any partnership if substantially all of the partnership interests in such partnership are held, directly or indirectly, by an individual and members of the family of such individual. The Treasury Department and the IRS are aware that the meaning of the term “substantially all” in section 170(h)(7)(D)(i) may not be clear and that such ambiguity could impair taxpayers’ ability to determine whether they qualify for the family pass-through entity exception. For purposes of applying different provisions of the Code that also use that term, various Income Tax Regulations define the term “substantially all” as comprising different percentages, including: 70 percent (§ 1.1400Z2(d)–2(d)(4)); 80 percent (§§ 1.41–2(d)(2), 1.41–4(a)(6)); 85 percent (§§ 1.45D–1(c)(5), 1.72(e)–1T, Q&A 3; 1.528–4(b) and (c)); 90 percent (§§ 1.103–8(a)(1)(i), 1.103–16(c), 1.731–2(c)(3)(i); 1.1400Z2(d)–2(d)(3)); and 95 percent (§§ 1.448–1T(e)(4)(i) and (e)(5)(i), 1.460–6(d)(4)(i)(D)(1)). It is appropriate to select a percentage at the higher end of this range to carry out the purpose of section 170(h)(7) of preventing abusive syndications of qualified conservation contributions. Accordingly, the Treasury Department and the IRS propose to define “substantially all” for purposes of section 170(h)(7)(D)(i) and § 1.170A–

14(n)(3)(i) as 90 percent of the interests in the contributing partnership or contributing S corporation that meets the requirements of proposed § 1.170A–14(n)(3).

Thus, proposed § 1.170A–14(n)(3)(i) would provide that § 1.170A–14(j) does not apply with respect to any qualified conservation contribution made by a contributing partnership or contributing S corporation if at least 90 percent of the interests in the contributing partnership or contributing S corporation are held by an individual and members of the family of such individual, and the contributing partnership or contributing S corporation meets the requirements of proposed § 1.170A–14(n)(3).

The Treasury Department and the IRS are also aware that it may be unclear what “interests” in the contributing partnership or contributing S corporation are to be taken into account for purposes of the family pass-through entity exception. Generally, the Code characterizes interests in a partnership as comprising the “capital interests” in the partnership and the “profits interests” in the partnership. *See*, for example, section 707(b) of the Code. The Treasury Department and the IRS propose limiting the family pass-through entity exception to situations in which an individual and the family members of such individual own at least 90 percent of both the capital and profits interests in the contributing partnership. Doing so would help to ensure that the family pass-through entity exception does not apply in situations in which persons outside an individual’s family own a substantial economic interest in the partnership. Accordingly, proposed § 1.170A–14(n)(3)(ii)(A) would provide that, in the case of a contributing partnership, at least 90 percent of the interests in the contributing partnership are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the interests in capital and profits in such partnership are held, directly or indirectly, by an individual and members of the family of such individual.

A similar rule is proposed for S corporations. Section 1361(b)(1)(D) requires that an S corporation have only one class of stock. However, section 1361(c)(4) provides that differences in voting rights alone do not create a second class of stock. The Treasury Department and the IRS propose limiting the family pass-through entity exception in the case of S corporations to situations in which the individual and the family of such individual own stock in the contributing S corporation

possessing at least 90 percent of the total voting power and at least 90 percent of the total value of the outstanding stock of the contributing S corporation. Doing so would help to ensure that the family pass-through exception does not apply in situations in which persons outside an individual’s family own a substantial economic interest in the S corporation. Accordingly, proposed § 1.170A–14(n)(3)(ii)(B) would provide that, in the case of a contributing S corporation, at least 90 percent of the interests in the contributing S corporation are held by an individual and members of the family of such individual if, at the time of the qualified conservation contribution, at least 90 percent of the total value and at least 90 percent of the total voting power of the outstanding stock in such S corporation are held by an individual and members of the family of such individual.

The Treasury Department and the IRS request comments on whether these definitions of “substantially all of the interests” in the contributing partnership or contributing S corporation are appropriate and sufficient to ensure the intended application of the family pass-through entity exception.

Consistent with section 170(h)(7)(D)(ii), proposed § 1.170A–14(n)(3)(iii) would provide that, for purposes of § 1.170A–14(n)(3), the term “members of the family” means, with respect to any individual (1) the spouse of such individual, and (2) any individual who bears a relationship to such individual that is described in section 152(d)(2)(A) through (G). Under these proposed regulations, members of the family would be limited to individuals. The Treasury Department and the IRS request comments on whether certain estates or trusts should be treated as members of the family for purposes of this rule. The Treasury Department and the IRS note that, under existing § 1.1361–1(e)(3)(ii), certain estates and trusts of deceased members of the family are treated as members of the family for purposes of the limitation on the number of shareholders in an S corporation.

As described earlier in this preamble, the Disallowance Rule and its exceptions in section 170(h)(7) are generally mechanical. However, Congress recognized that additional guidance may be needed to prevent situations in which those mechanical rules are used to avoid the purposes of the Disallowance Rule. As mentioned previously, section 170(h)(7)(G)(ii) provides the Secretary with authority to issue regulations or other guidance to

prevent the avoidance of the purposes of section 170(h)(7). Accordingly, these proposed regulations would provide two anti-abuse rules designed to ensure that the family pass-through entity exception in proposed § 1.170A-14(n)(3) is not used inappropriately to circumvent the Disallowance Rule.

First, the Treasury Department and the IRS propose to limit the family pass-through entity exception to situations in which an individual and members of that individual's family have held the requisite ownership interest in the property for at least one year prior to the contribution. The need for such a rule is the concern that, in the absence of a requirement that the members of the family hold the contributed property for a certain period of time before the contribution, promoters could structure transactions to inappropriately take advantage of tacked holding periods under section 1223 of the Code together with the family pass-through entity exception. Due to the operation of section 170(e), most contributions that exceed 2.5 times the sum of relevant basis would be expected to be of long-term capital gain property because, in those situations, the amount of the contribution would not be limited to the donor's basis. Transactions in which a family is relying on a tacked-holding period under section 1223 from another owner outside the family to claim a contribution in excess of 2.5 times the sum of relevant basis raise serious concerns that the family pass-through entity exception is being used inappropriately to circumvent the Disallowance Rule. Accordingly, proposed § 1.170A-14(n)(3)(iv)(A) would provide that the exception in proposed § 1.170A-14(n)(3) does not apply unless at least 90 percent of the interests in the property with respect to which the qualified conservation contribution was made were owned, directly or indirectly, by one individual and members of the family of that individual for at least one year prior to the date of the contribution. The proposed rules would clarify that the members of the family during that year need not be the same members of the family that own an interest at the time of the qualified conservation contribution; however, at least one individual must own an interest for the entire year, and at least 90 percent of the interests in the property must be owned, directly or indirectly, during that year by that individual and members of the family with respect to that individual. The proposed regulations contain an example illustrating the application of this rule.

Second, proposed § 1.170A-14(n)(3)(iv)(B) would provide that the exception in proposed § 1.170A-14(n)(3) does not apply unless at least 90 percent of the qualified conservation contribution is allocated to the individual and all members of the individual's family who own at least 90 percent of all the interests in the contributing partnership or contributing S corporation. The Treasury Department and the IRS are concerned that, without such a rule, contributing partnerships or contributing S corporations might be structured to meet the family pass-through exception, but the qualified conservation contribution would be allocated disproportionately to persons that are not members of the family.

Proposed § 1.170A-14(n)(3)(v) would provide that, in the case of tiered pass-through entities, the family pass-through exception is available only if the contributing partnership or contributing S corporation satisfies the requirements of § 1.170A-14(n)(3). If the contributing partnership or contributing S corporation satisfies the requirements of proposed § 1.170A-14(n)(3), then any upper-tier partnership or upper-tier S corporation need not apply § 1.170A-14(j) through (n) to its allocated portion of such contribution. If the contributing partnership or contributing S corporation does not satisfy the requirements of proposed § 1.170A-14(n)(3), then the exception in § 1.170A-14(n)(3) would not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution (including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of proposed § 1.170A-14(n)(3) if the person had been the one to make the contribution. The Treasury Department and the IRS considered alternatives to this rule, such as allowing upper-tier partnerships and upper-tier S corporations to apply the family pass-through entity exception even if the contributing partnership failed to satisfy the exception. Such an approach, however, would be inconsistent with section 170(h)(7)(D), which explicitly applies the substantially-all requirement to the contributing partnership or contributing S corporation.

### 3. Exception for Contributions To Preserve Certified Historic Structures

Consistent with section 170(h)(7)(E), proposed § 1.170A-14(n)(4) would provide that proposed § 1.170A-14(j) does not apply to any qualified conservation contribution the

conservation purpose of which is the preservation of any building that is a certified historic structure (as defined in section 170(h)(4)(C)). Proposed § 1.170A-14(n)(4) would also contain a cross-reference to the special reporting requirements in proposed § 1.170A-16(f)(6) for a contribution that meets the certified historic structure exception.

### IV. Reporting Requirements

Existing § 1.170A-16 imposes substantiation and reporting requirements for noncash charitable contributions. Subject to certain exceptions, § 1.170A-16 requires the donor to file Form 8283, *Noncash Charitable Contributions*, in the case of a noncash charitable contribution exceeding \$500. Specifically, existing § 1.170A-16(c) generally requires the donor to complete Form 8283 (Section A) in the case of a noncash charitable contribution of more than \$500 but not more than \$5,000. Existing § 1.170A-16(d) generally requires the donor to complete Form 8283 (Section A or Section B, or both, as applicable) in the case of a noncash charitable contribution of more than \$5,000. Existing § 1.170A-16(e) applies to noncash charitable contributions of more than \$500,000 and generally requires the donor to complete Form 8283 (Section A or Section B, or both, as applicable). Consistent with section 170(f)(11)(D), § 1.170A-16(e) requires a donor of a noncash contribution of more than \$500,000 to attach an appraisal to the return on which the deduction is claimed. Existing § 1.170A-16(f) provides additional substantiation rules, including rules for donors that are partnerships or S corporations.

#### A. Requirement That Numbers Be Entered in Sections A and B of Form 8283

Existing § 1.170A-16(c)(3) and (d)(3) define a completed Form 8283 (Section A) and Form 8283 (Section B), respectively. To further clarify reporting requirements for donated property, proposed § 1.170A-16(c)(3)(v) and (d)(3)(ix) would add a requirement that, if a box in Section A or Section B of the Form 8283 (respectively) requests insertion of a number, the taxpayer must include the number in the box or attach a statement explaining why the taxpayer cannot include the number in the box. Taxpayers that do not include numbers where required or engage in a practice to obfuscate or otherwise defeat the requirement to include a number in the box, could be subject to heightened scrutiny and a denial of the deduction for failure to provide the requested information on the Form 8283.

The Treasury Department and the IRS believe that this rule regarding specific reporting of numerical amounts is reasonable and necessary because the IRS has observed a pronounced increase in taxpayers filing a Form 8283 that does not contain any numbers and instead refers the IRS to an attachment. Often, the attachment includes nonresponsive information, such as “available upon request,” is entirely blank, or otherwise does not provide the information required by Form 8283. Other times, the attachment includes multiple numbers for different boxes, leaving the IRS to surmise which of the included numbers is appropriate for a particular box. These actions are to the detriment of fair and effective tax administration. Accordingly, the proposed regulations state that Sections A and B of Form 8283, including any attachments thereto, may not include nonresponsive information, such as “available upon request,” “provided upon request,” or any other nonresponsive information other than the information requested. Including any nonresponsive language may result in a presumption that Form 8283 is incomplete.

While many taxpayers understandably want to attach a statement to the Form 8283 to verify their calculations and provide appropriate supplemental information, having the numerical information in the appropriate box on Sections A and B of Form 8283 is critical to the IRS’s ability to ensure the integrity of each filing, as IRS systems are programmed to match a partner’s or shareholder’s information to the appropriate contributing partnership’s or contributing S corporation’s information. Moreover, information requested on Sections A and B of Form 8283 is information that the partnership or S corporation should already have and is already required to provide to the partner or shareholder, as appropriate. See § 1.170A–16(f)(4).

#### *B. Clarification of Reporting of Certain Qualified Conservation Contributions Made by a Partnership or S Corporation*

Existing § 1.170A–16(d)(3) defines a completed Form 8283 (Section B) required to substantiate charitable contributions of more than \$5,000. To ensure that taxpayers claiming qualified conservation contributions properly comply with section 170(f)(19) and (h)(7), which require a partnership or S corporation to calculate the sum of the relevant basis of the partnership’s or S corporation’s partners or shareholders, the IRS must have relevant basis reporting from both the contributing partnership or contributing S

corporation and each partner or shareholder receiving an allocation of the contribution (which will be ultimate members, upper-tier partnerships, or upper-tier S corporations). Accordingly, these proposed regulations would insert a new paragraph, proposed § 1.170A–16(d)(3)(viii).<sup>5</sup>

The new paragraph would provide that, for certain qualified conservation contributions made by a partnership or S corporation, the sum of each ultimate member’s relevant bases, computed in accordance with § 1.170A–14(j) through (m), must be reported on the Form 8283 (Section B) in order for the Form 8283 (Section B) to be considered complete.

This new requirement applies to contributions described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), regardless of whether they are also described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations). While contributions by partnerships or S corporations to preserve historic structures are exempted from the Disallowance Rule of section 170(h)(7), they are potentially subject to section 170(f)(19), which applies when the amount of the contribution exceeds 2.5 times of the relevant bases. The Treasury Department and the IRS request comments on whether any adjustments to relevant basis are warranted in the case of a contribution to preserve a historic structure.

This new requirement also would apply for any other qualified conservation contribution by a partnership or S corporation, provided that the contribution is not described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) and/or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations). If the contribution is disallowed by section 170(h)(7) and proposed § 1.170A–14(j), then the Treasury Department and the IRS expect that the contribution will not be reported to the IRS on Form 8283 because no deduction can be taken.

<sup>5</sup> The proposed regulations would redesignate existing § 1.170A–16(d)(3)(viii) to § 1.170A–16(d)(3)(x).

#### *C. Clarification of Reporting of Noncash Charitable Contributions Over \$500 Made by a Partnership or S Corporation*

Existing § 1.170A–16(d)(6) refers to existing § 1.170A–16(f) for additional substantiation rules. Existing § 1.170A–16(f)(4) provides special substantiation rules for partner and S corporation shareholders.

Existing § 1.170A–16(f)(4)(i) provides that, if the donor is a partnership or S corporation, the donor must provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation of a charitable contribution under section 170 for the property described in the Form 8283. Similarly, existing § 1.170A–16(f)(4)(i) provides that a recipient partner or shareholder that is a partnership or S corporation must provide a copy of the completed Form 8283 to each of its partners or shareholders who receives an allocation of a charitable contribution under section 170 for the property described in Form 8283.

Existing § 1.170A–16(f)(4)(ii) provides that a partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution under section 170 for property to which § 1.170A–16(c), (d), or (e) applies<sup>6</sup> must attach a copy of the partnership’s or S corporation’s completed Form 8283 to the return on which the deduction is claimed.

In pass-through and tiered entity structures, the IRS regularly observes partners and shareholders providing incomplete information to substantiate their charitable contribution deductions. For example, an ultimate member might complete a Form 8283 that contains the necessary information from the Form K–1 received from the contributing partnership, contributing S corporation, or an upper-tier partnership or upper-tier S corporation. However, often, the ultimate member fails to provide a copy of the appropriate partnership’s or S corporation’s Form 8283 and the Form K–1. In accordance with the authority granted by section 170(h)(7)(G) to “prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance . . . to require reporting, including reporting related to tiered partnerships and the modified basis of partners,” these proposed regulations would revise paragraph § 1.170A–16(f)(4).

<sup>6</sup> In other words, a charitable contribution of more than \$500 but not more than \$5,000, § 1.170A–16(c), a charitable contribution of more than \$5,000, § 1.170A–16(d), or noncash charitable contributions of more than \$500,000, § 1.170A–16(e).

Proposed § 1.170A–16(f)(4)(i) would retain the requirement that a donor that is a partnership or S corporation provide a copy of the completed Form 8283 to every partner or shareholder who receives an allocation. That paragraph also would retain the requirement that a partnership or corporation that receives an allocation of a charitable contribution under section 170 must provide a copy of the donor's Form 8283 to its partners or shareholders who receive an allocation of the deduction, but would clarify that this reporting is required through any additional tiers.

Proposed § 1.170A–16(f)(4)(ii) would retain the rule that a partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution to which § 1.170A–16(c), (d), or (e) applies must attach the donor partnership's or S corporation's Form 8283 to the return on which the deduction is claimed. A clarifying requirement is added that the partner or shareholder must also attach a copy of any additional Forms 8283 that they must receive as provided in proposed § 1.170A–16(f)(4)(iii)(A).

Proposed § 1.170A–16(f)(4)(iii)(A) would provide that a partner of a partnership or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for property to which § 1.170A–16(c), (d), or (e) applies must complete their own Form 8283 with any information required by Form 8283 and the instructions to Form 8283. In addition, a partner that is itself a partnership or S corporation must complete its own Form 8283 and provide a copy of that Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed in addition to the copy of donor's Form 8283 as well as other Forms 8283 that the partner or shareholder received. This new requirement would apply to all noncash charitable contributions over \$500 made by a partnership or S corporation, not just those for conservation easements.

Proposed § 1.170A–16(f)(4)(iii)(B) would provide that, if the contribution was a qualified conservation contribution, an ultimate member's separate Form 8283 must include the ultimate member's own relevant basis. An upper-tier partnership's or upper-tier S corporation's separate Form 8283 must include the sum of each of its ultimate member's relevant bases. However, the requirements that an

ultimate member provide their own relevant basis and that an upper-tier partnership or upper-tier S corporation include the sum of its ultimate member's relevant bases do not apply to contributions described in section 170(h)(7)(C) and § 1.170A–14(n)(2) (for contributions made outside of the three-year holding period) or section 170(h)(7)(D) and § 1.170A–14(n)(3) (for contributions made by certain family partnerships or S corporations), provided that they are not also described in section 170(h)(7)(E) and § 1.170A–14(n)(4) (for contributions to preserve certified historic structures), in which case proposed paragraph § 1.170A–16(f)(4)(iii)(B) does apply. The Form 8283 instructions will be revised accordingly.

#### D. Additional Reporting Required by Section 170(f)(19)

To ensure proper reporting under section 170(f)(19), the proposed regulations would add new § 1.170A–16(f)(6). Specifically, proposed § 1.170A–16(f)(6)(i) would provide that, in the case of any contribution described in section 170(h)(4)(C) and proposed § 1.170A–16(f)(6)(ii) (relating to the preservation of certified historic structures), pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless each partnership or S corporation (1) includes on its return for the taxable year in which the contribution is made a statement that it made such a contribution or received such allocated portion and (2) provides such information about the contribution as the Secretary may require in guidance, forms, or instructions. The reference to “any other provision of the Code under which deductions are allowable to pass-through entities” is included under the authority of section 170(f)(19)(C) to apply these rules to S corporations and other pass-through entities in the same manner as such rules apply to partnerships and their partners, and is necessary to prevent such pass-through entities and their owners from claiming a deduction under a different provision of the Code other than section 170, such as section 642(c), unless the statutory and regulatory requirements of section 170(f)(19) are met.

Proposed § 1.170A–16(f)(6)(ii) describes (using terms defined in proposed § 1.170A–14(j)(3)) the contributions to which proposed § 1.170A–16(f)(6) would apply, namely any qualified conservation contribution

(as defined in section 170(h)(1) and proposed § 1.170A–14) for which: (1) the conservation purpose of which is preservation of a building that is a certified historic structure (as defined in section 170(h)(4)(C)); (2) that is either made by a contributing partnership or contributing S corporation, or that is an allocated portion of an upper-tier partnership or upper-tier S corporation; and (3) the amount of such contribution or such allocated portion exceeds 2.5 times the sum of each ultimate member's relevant basis (as defined in proposed § 1.170A–14(j) through (m)).

Proposed § 1.170A–16(f)(6)(iii) would provide that a partnership or S corporation satisfies the requirement to have made a statement that it made such a contribution or received such allocated portion and to provide such information about the contribution as the Secretary may require by filing Form 8283 (including information about relevant basis) in accordance with section 170, the regulations under section 170 (including those proposed in this notice of proposed rulemaking), and the instructions to Form 8283.

#### V. Section 706 Regulations

The general mechanism of section 170(h)(7) with respect to partnerships is to compare the amount of the partnership's contribution (or its distributive share of a contribution made by another partnership) to 2.5 times the sum of each of its partner's relevant basis. Relevant basis is based on modified basis, which is based on the partner's adjusted basis in its partnership interest immediately before the contribution. Without additional rules, there may be situations in which the contribution is allocated to partners that did not hold an interest at the time of the qualified conservation contribution. Such partners would not have any adjusted basis in their partnership interests immediately before the contribution, and thus, without additional rules, their relevant basis would be zero. Therefore, rules are needed to align the computation of relevant basis (which is generally required to be computed immediately before the computation) with the allocation of the contribution among the partners.

Generally, section 706 and § 1.706–4 of the existing regulations provide rules for determining a partner's distributive share of partnership items when a partner's interest in the partnership varies during the taxable year. For example, assume a partner holding a 25 percent interest in a calendar-year partnership sells its 25 percent interest on July 1. Under section 706 and

§ 1.706–4, the partnership would not allocate the selling partner 25 percent of all items of income for the year because the selling partner had no interest in the partnership for the final half of the year. Instead, the partnership would follow the rules of § 1.706–4 to ensure that the allocations properly reflect the sale of the partner's interest. Generally, the rules of § 1.706–4 allow partnerships to use either a proration method or an interim closing of the books method (interim closing method).<sup>7</sup> In the example, a partnership using the proration method generally would allocate the selling partner 12.5 percent (reflecting the fact that the selling partner held a 25 percent interest in the partnership for half of the year) of every item of the partnership for the full year, regardless of whether the partnership incurred the item in the first or second half of the year. Alternatively, a partnership using the interim closing method generally would allocate the selling partner 25 percent of every item occurring in the first half of the year.

Section 1.706–4 provides an exception to these rules for certain “extraordinary items,” which must be allocated in accordance with the partners' interests in the item at the time of day the extraordinary item occurred. Section 1.706–4(e)(2) provides a list of these extraordinary items. In particular, § 1.706–4(e)(2)(i) and (ii) provide that an extraordinary item includes any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 of the Code (determined without the application of any other rules of law) and any item from the disposition or abandonment (other than in the ordinary course of business) of property used in a trade or business as defined in section 1231(b) of the Code (determined without the application of any holding period requirement). Section 1.706–4(e)(3) provides a “small item exception” under which certain items in the list in § 1.706–4(e)(2) nevertheless are not extraordinary items if they fall below certain thresholds.

Proposed § 1.706–4(e)(2)(ix) would provide that an extraordinary item includes any qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)). The proposed amendments to existing § 1.706–4(e)(3) contained in these proposed regulations would

provide that the small item exception does not apply to any qualified conservation contribution. These rules are designed to ensure that modified basis can be computed immediately before the contribution, as directed in section 170(h)(7). The Treasury Department and the IRS considered alternatives to this rule. However, many, and perhaps most, qualified conservation contributions are already considered extraordinary items under existing § 1.706–4(e)(2)(i) or (ii). The proposed rule, however, provides clarity and uniformity regarding the application of the extraordinary item rule to qualified conservation contributions and facilitates the computation of a partner's modified basis immediately before the contribution as directed by the statute.

Section 706(d)(3) provides rules for an upper-tier partnership's allocation of items to its partners attributable to an interest in a lower-tier partnership. It provides that if, during any taxable year of the upper-tier partnership there is a change in any partner's interest in the upper-tier partnership, then (except to the extent provided in regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership must be determined by assigning the appropriate portion (determined by applying principles similar to the principles of section 706(d)(2)(C) and (D)) of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day. The Treasury Department and the IRS are concerned that, even if a lower-tier partnership's qualified conservation contribution is treated as an extraordinary item with respect to the lower-tier partnership, an upper-tier partnership might nevertheless attempt to rely on section 706(d)(3) and allocate its share of the contribution to partners that were not partners on the date of contribution. To facilitate the computation of a partner's relevant basis immediately before the contribution, proposed § 1.706–3(a) would provide that, for purposes of section 706(d)(3), in the case of a qualified conservation contribution (without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A–14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in

proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under § 1.706–4. The Treasury Department and the IRS request comments on whether these rules are necessary and sufficient to ensure the appropriate operation of the Disallowance Rule.

### Proposed Applicability Dates

Section 605(c) of the SECURE 2.0 Act provides that the amendments made by section 605 of the SECURE 2.0 Act apply to contributions made after December 29, 2022. Pursuant to section 7805(b)(2) of the Code, regulations issued under section 170(f)(19) and (h)(7) within 18 months of the December 29, 2022, date of enactment of section 605 of the SECURE 2.0 Act are permitted to apply to periods ending before the dates provided under section 7805(b)(1). Accordingly, the proposed regulations under §§ 1.170A–14(j) through (n), 1.706–3, and 1.706–4 are proposed to apply to contributions made after December 29, 2022.

To align the reporting requirements under § 1.170A–16 with the publication of the revised Form 8283 and its instructions, the proposed regulations under § 1.170A–16 are proposed to apply to contributions made in taxable years ending on or after November 20, 2023.

### Special Analyses

#### *I. Paperwork Reduction Act*

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

The collection of information contained in these proposed regulations is reflected in the collection of information for Form 8283 and Schedule K–1 for Forms 1065, U.S. Return of Partnership Income, and 1120–S, U.S. Income Tax Return for an S corporation, that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44

<sup>7</sup> The rules of § 1.706–4 also require the use of conventions to determine the date on which variations are deemed to occur. Discussion of these conventions is beyond the scope of this preamble.

U.S.C. 3507(c) under control numbers 1545–0074 and 1545–0123. The estimated burden for taxpayers filing Form 8283 under OMB control number 1545–0074 is nineteen minutes for recordkeeping, twenty-nine minutes for learning about the law or the form, one hour and four minutes for preparing the form, and thirty-four minutes for copying, assembling, and sending the form to the IRS.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Form 8283 and Schedule K–1 for Forms 1065 and 1120–S. The requirement to maintain records to substantiate information on Form 8283 and Schedule K–1 for Forms 1065 and 1120–S is already contained in the burden associated with the control number for the forms and remains unchanged.

## II. Regulatory Flexibility Act

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

The impact of these proposed regulations can be described in the following four categories.

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

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

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

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

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

## III. Unfunded Mandates Reform Act

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

## IV. Executive Order 13132: Federalism

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

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

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

## VI. Regulatory Planning and Review

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

## Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and any paper comments submitted, will be made available at <https://www.regulations.gov> or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

A public hearing has been scheduled for January 3, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC, unless no outlines are received by December 20, 2023. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by December 20, 2023, as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. If no outline of the topics to be discussed at the hearing is received by December 20, 2023, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**. Copies of the agenda will be available free of charge at the hearing, and via the Federal eRulemaking Portal (<https://www.regulations.gov>) under the title of Supporting & Related Material. Copies

of the agenda will also be available by emailing a request to [publichearings@irs.gov](mailto:publichearings@irs.gov). Please put “REG–112916–23 Agenda Request” in the subject line of the email.

Individuals who want to testify in person at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG–112916–23 and the language “TESTIFY In Person.” For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–112916–23.

Individuals who want to testify by telephone at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–112916–23 and the language “TESTIFY Telephonically.” For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–112916–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to have your name added to the building access list. The subject line of the email must contain the regulation number REG–112916–23 and the language “ATTEND In Person.” For example, the subject line may say: Request to ATTEND Hearing In Person for REG–112916–23. Individuals who want to attend the public hearing by telephone without testifying must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–112916–23 and the language “ATTEND Hearing Telephonically.” For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–112916–23. Requests to attend the public hearing must be received by 5 p.m. ET on December 29, 2023.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by December 28, 2023.

## Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the

Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

## Drafting Information

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

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

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

### PART 1—INCOME TAXES

- **Paragraph 1.** The authority citation for part 1 is amended by:
- 1. Adding an entry for § 1.170A–14 in numerical order;
- 2. Revising the entry for § 1.170A–16;
- 3. Adding an entry for § 1.706–3 in numerical order; and
- 4. Revising the entry for § 1.706–4.

The additions and revisions read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

- **Par. 2.** Section 1.170A–14 is amended by:

- 1. Revising paragraph (a);
- 2. Redesignating paragraph (j) as paragraph (o) and adding new paragraph (j);
- 3. Adding paragraphs (k) through (n); and
- 4. Revising newly designated paragraph (o).

The additions and revisions read as follows:



**§ 1.170A-14 Qualified conservation contributions.**

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

\* \* \* \* \*

(j) *Disallowance of certain deductions for contributions by partnerships and S corporations that exceed 2.5 times the sum of relevant bases—(1) In general.* This paragraph (j) applies the rules of section 170(h)(7), which disallow a deduction for certain qualified conservation contributions, as defined in section 170(h)(1) and this section, made by, or allocated to, partnerships or S corporations (as defined in section 1361(a)(1) of the Code) if the amount of the qualified conservation contribution exceeds 2.5 times the sum of the relevant bases, as determined by this paragraph (j) and paragraphs (k) through (m) of this section (Disallowance Rule). See paragraph (n) of this section for certain exceptions. See paragraph (j)(3) of this section for definitions of terms used in this paragraph (j) and paragraphs (k) through (n) of this section.

(2) *Application—(i) Contributing partnerships and contributing S corporations.* Except as provided in paragraph (n) of this section, a qualified conservation contribution by a contributing partnership or a contributing S corporation is a disallowed qualified conservation contribution if the amount of the qualified conservation contribution exceeds 2.5 times the sum of each of the contributing partnership's or contributing S corporation's ultimate member's relevant basis as determined

under this paragraph (j) and paragraphs (k) through (m) of this section.

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

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

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

(ii) *Amount of qualified conservation contribution.* The amount of a contributing partnership's or contributing S corporation's qualified conservation contribution is the amount claimed as a qualified conservation contribution on the return of the contributing partnership or contributing S corporation for the taxable year in which the contribution is made. If the contributing partnership or contributing S corporation files an amended return or administrative adjustment request under section 6227 of the Code claiming a different amount with respect to the qualified conservation contribution, the rules of this section must be re-applied with respect to such different amount to determine the application of section 170(h)(7) and this section.

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

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

(v) *Direct interest.* The term *direct interest* refers to an ownership interest in a contributing partnership, upper-tier partnership, contributing S corporation, or upper-tier S corporation that is held directly, or through an entity disregarded as separate from its owner for Federal income tax purposes, a qualified subchapter S subsidiary as

defined in section 1361(b)(3), or through a grantor trust (under subpart E of part 1 of subchapter J of chapter 1 of the Code). In the case of a partner that is a C corporation (as defined in section 1361(a)(2)), non-grantor trust, or an estate, or an S corporation shareholder that is a non-grantor trust or an estate, the *direct interest* in the partnership or S corporation, as applicable, is held by the C corporation, non-grantor trust, or estate; the C corporation's shareholders, trust beneficiaries, and estate beneficiaries are not considered to hold any interest in the partnership or S corporation, as applicable, for purposes of this paragraph (j) and paragraphs (k) through (n) of this section.

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

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

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

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

(x) *Ultimate member.* The term *ultimate member* means, with respect to any partnership or S corporation, any partner (that is not itself a partnership or S corporation) or S corporation shareholder that receives a distributive share or pro rata share, directly or indirectly, of a qualified conservation contribution. Thus, ultimate members will either be partners holding a direct interest in a partnership, which may be the contributing partnership or an upper-tier partnership, or shareholders holding a direct interest in an S corporation, which may be the contributing S corporation or an upper-tier S corporation. Upper-tier S

corporations and upper-tier partnerships themselves are not considered ultimate members.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Any subsequent upper-tier partnership or upper-tier S corporation that receives an allocated portion of

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

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

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

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

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

deduction with respect to this contribution, even though A's \$50X distributive share of the contribution does not exceed 2.5 times A's \$30X relevant basis.

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

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

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

(B) *Analysis for LTP Partnership.* The ultimate members of LTP Partnership are G, E, and F because they each receive a distributive share of the qualified conservation contribution and are not a partnership or S corporation. Because UTP Partnership is a partnership, it is not an ultimate member of LTP Partnership, even though it receives a distributive share of the qualified conservation contribution.

The amount of LTP Partnership's qualified conservation contribution is \$100X, which does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which is \$105X ( $\$105X = 2.5 \times (G's \$10X \text{ relevant basis} + E's \$11X \text{ relevant basis} + F's \$21X \text{ relevant basis})$ ). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and this paragraph (j)) with respect to LTP Partnership and G.

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

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

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

ultimate member's modified basis is determined by such S corporation in the manner described in paragraph (l)(3) of this section.

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

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

(iii) *Step 2.* Second, the amount determined under paragraph (l)(2)(ii) of this section must be adjusted, as provided in section 705 of the Code, by the ultimate member's hypothetical distributive share of partnership items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made. In making this determination, the partnership must apply the rules of § 1.706-4 and apply a hypothetical interim closing method to allocate the partnership's items attributable to the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of

day at which the qualified conservation contribution is made. The partnership cannot apply any convention in § 1.706–4(c) to the hypothetical determination of the partners' distributive shares, but rather must perform the calculation as though the determination occurred immediately prior to the time of day at which the qualified conservation contribution is made. This hypothetical determination of the partners' distributive shares is only for purposes of calculating modified basis. This paragraph (l) does not require the partnership to use the interim closing method with respect to the determination of its partners' actual distributive shares of partnership items of income, gain, loss, deduction, and credit for the taxable year in which the qualified conservation contribution is made or otherwise. See § 1.706–4 for applicable rules for the determination of a partner's distributive share when a partner's interest varies during a partnership taxable year.

(iv) *Step 3.* Third, the amount determined under paragraph (l)(2)(iii) of this section must be reduced (but not below zero) by any distributions made by the partnership to the ultimate member during the portion of the year commencing with the beginning of the taxable year of the partnership and ending immediately prior to the time of day at which the qualified conservation contribution is made as provided in section 733 of the Code.

(v) *Step 4.* Fourth, the amount determined under paragraph (l)(2)(iv) of this section must be reduced by the full amount of the ultimate member's share of § 1.752–1 liabilities of any partnership (including a lower-tier partnership). The remaining amount is such ultimate member's modified basis. Thus, an ultimate member's modified basis may be less than zero.

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

the transaction that terminated its interest in the S corporation, with adjustments as determined under paragraphs (l)(3)(ii) and (iii) of this section. Modified basis does not include the ultimate member's adjusted basis of any indebtedness of the S corporation to the ultimate member. The adjustments under paragraphs (l)(3)(ii) and (iii) of this section must be made in the order in which they are listed.

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

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

(4) *Examples.* The following examples illustrate the provisions of this paragraph (l). For the three examples in this paragraph (l)(4), assume that the exceptions in paragraph (n) of this section do not apply.

(i) *Example 1—(A) Facts.* AB Partnership is a calendar-year partnership for Federal income tax purposes whose partners are A and B, each of whom is an individual and has a 50 percent interest in income, gain, loss, and deduction. Several years ago, B contributed property to AB Partnership subject to a § 1.752–1 liability. At the beginning of AB Partnership's 2024 taxable year (the beginning of the day on January 1, 2024), A's adjusted basis in its interest in AB Partnership is \$19X, and B's adjusted basis in its interest in AB Partnership is \$17X. At 10:01 a.m. on August 29, 2024, AB Partnership makes a qualified conservation contribution. On August 29, 2024, the amount of the § 1.752–1 liability is \$10X and is allocated under the rules of section 752 to A. During 2024, there were no variations in any partner's interests in AB Partnership within the meaning of section 706. During 2024, AB

Partnership earned \$8X of ordinary income and sustained (\$4X) of capital loss in the ordinary course of its business, both of which are allocated equally to A and B. Within 2024, AB Partnership earned \$6X of ordinary income, and sustained (\$4X) of capital loss between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and AB Partnership earned \$2X of ordinary income, and sustained \$0X of capital loss between 10:01 a.m. on August 29, 2024, and the end of the day on December 31, 2024. Other than the qualified conservation contribution, none of AB Partnership's items are extraordinary items within the meaning of § 1.706–4(e)(2). In April 2024, AB Partnership distributed \$1X cash to A. In November 2024, B contributed \$2X cash to AB Partnership.

(B) *Analysis.* The ultimate members of AB Partnership are A and B because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine A's and B's modified bases, AB Partnership must start with A's and B's adjusted bases in the AB Partnership as of the beginning of the first day of the taxable year of AB Partnership and then make the adjustments required under paragraphs (l)(2)(ii) through (v) of this section. Accordingly, the computation of A's beginning modified basis begins with \$19X, and the computation of B's modified basis begins with \$17X. First, those amounts must be increased by any contributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Because there were none, after this step, the computation of A's modified basis remains at \$19X and the computation of B's modified basis remains at \$17X. Then these amounts must be adjusted as provided in section 705 by A's and B's hypothetical distributive share of AB Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computations of A's and B's modified bases will each reflect an increase for their hypothetical \$3X distributive share of the \$6X ordinary income that AB Partnership earned between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024, and a decrease for their hypothetical (\$2X) distributive share of the (\$4X) capital loss that AB Partnership incurred between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Therefore, after this step, the computation of A's modified basis

reflects an increase from \$19X to \$20X, and the computation of B's modified basis reflects an increase from \$17X to \$18X. Next, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 10:00 a.m. on August 29, 2024. Thus, the computation of A's modified basis reflects a reduction from \$20X to \$19X. B did not receive any distribution, so the computation of B's modified basis remains at \$18X. Finally, the full amount of A's and B's shares of § 1.752-1 liabilities must be subtracted. Thus, the computation of A's modified basis reflects a reduction from \$19X to \$9X, which is A's modified basis. B's modified basis is \$18X.

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

January 1, 2024), is \$8X. E's adjusted basis in its interest in CD Partnership immediately after E acquires C's interest in CD Partnership is \$6X.

(B) *Analysis.* The ultimate members of CD Partnership are D and E because they each receive a distributive share of the qualified conservation contribution and are not partnerships or S corporations. To determine D's and E's modified bases, CD Partnership must start with D's and E's adjusted bases in CD Partnership as of the beginning of the day on January 1, 2024, and then make the adjustments required under paragraphs (l)(2)(ii) through (v) of this section. However, because E was not a partner as of the beginning of the day on January 1, 2024, CD Partnership must start with E's adjusted basis immediately after E's purchase of C's interest in CD Partnership. Accordingly, the computation of D's modified basis begins with \$8X, and the computation of E's modified basis begins with \$6X. Then, these amounts must be increased by any contributions made by D or E, respectively, to CD Partnership between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Therefore, the computation of D's modified basis reflects an increase from \$8X to \$14X (for D's \$6X contribution of cash to CD Partnership in May 2024), and the computation of E's modified basis reflects an increase from \$6X to \$9X (for E's contribution of property to CD Partnership with a basis of \$3X in May 2024). Next, these amounts must be adjusted as provided in section 705 by D's and E's hypothetical distributive share of CD Partnership's items attributable to the portion of the year between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. CD Partnership must perform the analysis using an interim closing method to a hypothetical variation at 1:14 p.m. on September 15, 2024, immediately prior to the qualified conservation contribution. The computation of D's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the beginning of the day on January 1, 2024, through 1:14 p.m. on September 15, 2024. The computation of E's modified basis will reflect an adjustment for its hypothetical distributive share of all CD Partnership's items incurred from the end of the day on March 15, 2024, through 1:14 p.m. on September 15, 2024. For purposes of this paragraph (l)(4)(ii)(B) (*Example 2*), it does not matter that CD Partnership actually used the proration method to allocate its 2024 income. Instead, under

this hypothetical calculation of the distributive share, the computation of D's and E's modified bases will each reflect a reduction for their 50 percent share of the (\$14X) ordinary loss. Because none of CD Partnership's \$8X of ordinary income was earned between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024, neither D's nor E's modified basis will reflect an increase for any amount of that income. Thus, after this step, the computation of D's modified basis reflects a reduction from \$14X to \$7X, and the computation of E's modified basis reflects a reduction from \$9X to \$2X. Then, these amounts must be reduced by any distributions between the beginning of the day on January 1, 2024, and 1:14 p.m. on September 15, 2024. Because there were none, after this step, the computation of D's modified basis remains at \$7X, and the computation of E's modified basis remains at \$2X. Finally, the full amount of D's and E's shares of § 1.752-1 liabilities must be subtracted. Because there were none, D's modified basis is \$7X, and E's modified basis is \$2X.

(iii) *Example 3—(A) Facts.* HI Inc. is a calendar-year S corporation whose shareholders on January 1, 2024, are H and I, each of whom owns 50 percent of the shares. On May 1, 2024, H sells all of its stock to J. In June 2024, HI Inc. contributes a conservation easement that is a qualified conservation contribution on 400 acres of real property. HI Inc.'s adjusted basis in the conservation easement is \$12X (which is different from HI Inc.'s adjusted basis in the 400 acres and also may be different from the value of the conservation easement). On July 1, 2024, I sells all of its stock to K. Under § 1.1377-1, HI Inc. allocates its qualified conservation contribution  $\frac{1}{6}$  to H,  $\frac{1}{4}$  to I,  $\frac{1}{3}$  to J, and  $\frac{1}{4}$  to K. Pursuant to the second sentence of section 1367(a)(2)(B), as a result of the qualified conservation contribution, H's adjusted basis in its shares is reduced by \$2X, I's adjusted basis in its shares is reduced by \$3X, J's adjusted basis in its shares is reduced by \$4X, and K's adjusted basis in its shares is reduced by \$3X. At the end of HI Inc.'s 2024 taxable year (the end of the day on December 31, 2024), J's adjusted basis in its shares is \$15X and K's adjusted basis in its shares is \$11X. Immediately prior to H's sale to J, H's adjusted basis in its shares was \$8X. Immediately prior to I's sale to K, I's adjusted basis in its shares was \$7X. Whether H, I, J, or K have adjusted basis in indebtedness of HI Inc., has no effect on the computation of their modified bases. H is an estate of a deceased

shareholder, and I, J, and K are individuals that are not nonresident aliens.

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

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

(m)(3) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier partnership are provided in paragraph (m)(4) of this section. Rules for allocating an ultimate member's modified basis in an upper-tier S corporation are provided in paragraph (m)(5) of this section. Records must be kept in accordance with paragraph (m)(6) of this section.

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

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

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

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

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

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

(iii) *Ultimate member's portion of the adjusted basis in all the contributing partnership's properties.* For purposes of this paragraph (m)(2), an ultimate

member's portion of the adjusted basis in all the contributing partnership's properties is equal to the sum of:

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

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

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

Figure 1 to Paragraph (m)(2)(iv)  
 $R = M \times (T \div (D + T))$

Where:

R = Relevant basis.

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

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

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

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

B = Ultimate member's distributive share of the qualified conservation contribution.  
 C = Total amount of the contributing partnership's qualified conservation contribution.

(3) *Determination of relevant basis for an ultimate member holding a direct interest in a contributing S*

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

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

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

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

Figure 2 to Paragraph (m)(3)(ii)  
 $R = M \times (E \div F)$

Where:

R = Relevant basis.

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

E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

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

(4) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier partnership—(i)*

*In general.* This paragraph (m)(4) applies in the case of an ultimate member holding a direct interest in an upper-tier partnership. Each such ultimate member's modified basis must be traced through all upper-tier partnerships to the contributing partnership, and the contributing partnership must determine the relevant basis. This involves a multi-step process under which, beginning with the upper-tier partnership in which the ultimate

member holds a direct interest, each upper-tier partnership must perform calculations, and then finally the contributing partnership must use those calculations to compute the ultimate member's relevant basis. For simplicity, this paragraph (m)(4) describes a situation in which there are two tiers of partnerships—a contributing partnership and an upper-tier partnership. In a situation involving more tiers, each partnership must apply the rules and principles of this paragraph (m)(4) iteratively to determine relevant basis.

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

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

Figure 3 to Paragraph (m)(4)(ii)(B)  
 $G = M \times (U \div (J + U))$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

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

J = Ultimate member's portion of the adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing

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

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula:  $H \times (B + K)$ .

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

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

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

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

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

Figure 5 to Paragraph (m)(4)(iii)(B)  
 $R = G \times (V \div (L + V))$

Where:

R = Relevant basis.

G = Amount determined with respect to item G as described under paragraph (m)(4)(ii)(B) of this section.

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



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

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

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

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

(5) *Determination of relevant basis for an ultimate member holding a direct interest in an upper-tier S corporation—*

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

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

is made, the formula in paragraph (m)(5)(ii)(B) determines the portion of modified basis that is allocable to the upper-tier S corporation's interest in the next lower-tier partnership. As explained in paragraph (m)(5)(iii) of this section, the contributing partnership will then use the amount determined under the formula in paragraph (m)(5)(ii)(B) to compute the portion of modified basis that is allocable to the portion of the real property with respect to which the qualified conservation contribution is made.

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

Figure 6 to Paragraph (m)(5)(ii)(B)

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

Where:

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

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

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

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

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

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

Figure 7 to Paragraph (m)(5)(iii)(B)

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

Where:

R = Relevant basis.

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

S = Upper-tier S corporation's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made), determined by

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

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

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

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

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

(6) *Recordkeeping requirements.*

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

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

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

\$8X. Y's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined in accordance with Y's interest in YZ Partnership is \$4X. Z's modified basis is \$12X. Z's portion of YZ Partnership's adjusted basis in all partnership property (other than the 60 acres) as determined in accordance with Z's interest in YZ Partnership is \$14X.

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

Figure 8 to Paragraph (m)(7)(i)(B)  
 $R = M \times (T \div (D + T))$

Where:

R = Relevant basis.

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

D = Ultimate member's portion of the adjusted basis in all of the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

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

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

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

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

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

(1) M = \$8X.

(2) D = \$4X.

(3) A = \$6X.

(4) B = \$12X.

(5) C = \$18X.

(6) Thus, T is  $\$4X = \$6X \times (\$12X \div \$18X)$ .

(7) Accordingly, Y's relevant basis is  $\$4X = \$8X \times (\$4X \div (\$4X + \$4X))$ .

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

(1) M = \$12X.

(2) D = \$14X.

(3) A = \$6X.

(4) B = \$6X.

(5) C = \$18X.

(6) Thus, T is  $\$2X = \$6X \times (\$6X \div \$18X)$ .

(7) Accordingly, Z's relevant basis is  $\$1.5X = \$12X \times (\$2X \div (\$14X + \$2X))$ .

(E) *Sum of relevant bases.* The amount of YZ Partnership's claimed

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

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

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

Figure 9 to Paragraph (m)(7)(ii)(B)  
 $R = M \times (E \div F)$

Where:

R = Relevant basis.

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

E = Ultimate member's pro rata portion of the contributing S corporation's adjusted basis in the portion of the real property with respect to which the qualified conservation contribution is made.

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

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

(1) M = \$8X.

(2) E = \$2X ( $\frac{1}{3}$  of \$6X).

(3) F = \$8X ( $\frac{1}{3}$  of \$24X).

(4) Thus, C's relevant basis is  $\$2X = \$8X \times (\$2X \div \$8X)$ .

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

(1) M = \$12X.

(2) E = \$4X ( $\frac{2}{3}$  of \$6X).

(3) F = \$16X ( $\frac{2}{3}$  of \$24X).

(4) Thus, D's relevant basis is  $\$3X = \$12X \times (\$4X \div \$16X)$ .

(E) *Sum of relevant bases.* The amount of CD Inc.'s claimed qualified conservation contribution is \$9X, which

does not exceed 2.5 times the sum of C's and D's relevant bases, which is \$12.50 ( $\$12.50 = 2.5 \times (\text{C's relevant basis of } \$2X + \text{D's relevant basis of } \$3X)$ ). Accordingly, CD Inc.'s contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

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

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

Figure 10 to Paragraph (m)(7)(iii)(B)(1)  
 $R = M \times (T \div (D + T))$

Where:

R = Relevant basis.

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

D = Ultimate member's portion of the adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

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

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

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

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

(2) With respect to E:

(i) M = \$4X.

(ii) D = \$4.36X.

(iii) A = \$18X.

(iv) B = \$2X.

(v) C = \$22X.

(vi) Thus, T is  $\$1.64X = \$18X \times (\$2X \div \$22X)$ .

(vii) Accordingly, E's relevant basis is  $\$1.09X = \$4X \times (\$1.64X \div (\$4.36X + \$1.64X))$ .

(C) *Analysis: General rule for UTP Partnership.* Because P and Q hold interests in an upper-tier partnership, UTP Partnership must first determine the portions of P's and Q's modified bases that are allocable to UTP Partnership's interest in LTP Partnership. This is to be done according to the following formula: Figure 11 to Paragraph (m)(7)(iii)(C)  
 $G = M \times (U \div (J + U))$

Where:

G = The portion of the ultimate member's modified basis that is allocable to the upper-tier partnership's interest in the contributing partnership.

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

J = Ultimate member's portion of adjusted basis in all the upper-tier partnership's properties (other than the upper-tier partnership's interest in the contributing partnership).

U = Ultimate member's share of the upper-tier partnership's adjusted basis in its interest in the contributing partnership, determined according to the following formula:  $H \times (B + K)$ .

H = Upper-tier partnership's adjusted basis in its interest in the contributing partnership.

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

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

(D) *Analysis: Step 1 for P.* With respect to P:

(1.

(E) *Analysis: Step 1 for Q.* With respect to Q:

(1) M = \$8X.

(2) J = \$2.4X.

(3) H = \$19X.

(4) B = \$14X.

(5) K = \$20X.

(6) Thus, U is  $\$13.30X = \$19X \times (\$14X \div \$20X)$ .

(7) Accordingly, the portion of Q's modified basis that is allocable to UTP Partnership's interest in LTP Partnership is  $\$6.78X = \$8X \times (\$13.30X \div (\$2.40X + \$13.30X))$ .

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

Figure 12 to Paragraph (m)(7)(iii)(F)  
 $R = G \times (V \div (L + V))$

Where:

R = Relevant basis.

G = Amount determined with respect to item G under paragraph (m)(4)(ii)(B) of this section.

L = Upper-tier partnership's portion of adjusted basis in all the contributing partnership's properties (other than the portion of the real property with respect to which the qualified conservation contribution is made).

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

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

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

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

(G) *Analysis: Step 2 for P.* With respect to P:

(1) G = \$7.35X.

(2) L = \$7.64X.

(3) A = \$18X.

(4) K = \$20X.

(5) C = \$22X.

(6) Thus, V is  $\$16.36X = \$18X \times (\$20X \div \$22X)$ .

(7) Accordingly, P's relevant basis is  $\$5.01X = \$7.35X \times (\$16.36X \div (\$7.64X + \$16.36X))$ .

(H) *Analysis: Step 2 for Q.* With respect to Q:

(1) G = \$6.78X.

(2) L = \$7.64X.

(3) A = \$18X.

(4) K = \$20X.

(5) C = \$22X.

(6) Thus, V is  $\$16.36X = \$18X \times (\$20X \div \$22X)$ .

(7) Accordingly, Q's relevant basis is  $\$4.62X = \$6.78X \times (\$16.36X \div (\$7.64X + \$16.36X))$ .

(I) *Analysis: Computation of 2.5 times sum of relevant bases.* The ultimate members of LTP Partnership are E, P, and Q. The amount of LTP Partnership's qualified conservation contribution is \$22X. This does not exceed 2.5 times the sum of each of the ultimate member's relevant basis, which totals \$26.80 ( $\$26.80 = 2.5 \times (\text{E's relevant basis of } \$1.09X + \text{P's relevant basis of } \$5.01X + \text{Q's relevant basis of } \$4.62X)$ ). Therefore, LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

Because UTP Partnership receives an allocated portion, it must apply paragraphs (j) through (l) of this section and this paragraph (m) to determine whether its allocated portion is a disallowed qualified conservation contribution. The ultimate members of UTP Partnership are P and Q. The amount of UTP Partnership's allocated portion of LTP Partnership's qualified conservation contribution is \$20X. This does not exceed 2.5 times the sum of P's and Q's relevant bases, which is  $\$24.08X$  ( $\$24.08X = 2.5 \times (\text{P's relevant basis of } \$5.01X + \text{Q's relevant basis of } \$4.62X)$ ). Therefore, UTP Partnership's allocated portion of LTP Partnership's contribution is not a disallowed qualified conservation contribution (that is, is not disallowed by section 170(h)(7) and paragraph (j) of this section).

(n) *Exceptions—(1) In general.* Paragraph (j) of this section does not apply to any qualified conservation contribution that satisfies one or more of the three exceptions in this paragraph (n). However, as provided in paragraph (j)(5) of this section, there is no presumption that such a contribution is compliant with section 170, any other section of the Code, or the regulations in this part or any other guidance. Being described in this paragraph (n) is not a safe harbor for purposes of any other provision of law or with respect to the value of the contribution. Such transactions are subject to adjustment or disallowance for any other reason,

including failure to satisfy other requirements of section 170 and overvaluation of the contribution. In addition, taxpayers who engage in such transactions may be required to disclose under § 1.6011-4 the transactions as listed transactions.

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

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

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

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

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

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

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

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

(iv) *Exception is determined at the level of the contributing partnership or contributing S corporation.* If the contributing partnership or contributing S corporation does not satisfy the requirements of this paragraph (n)(2), then this paragraph (n)(2) will not apply to any person who receives a distributive share or pro rata share of the qualified conservation contribution

(including an upper-tier partnership or upper-tier S corporation), regardless of whether the person receiving such distributive share or pro rata share would have satisfied the requirements of this paragraph (n)(2) if the person had been the one to make the qualified conservation contribution.

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

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

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

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

qualified conservation contribution to FG Inc.

(2) *Analysis.* Pursuant to paragraph (n)(2)(ii) of this section, the transfer of D's interest in UTP Partnership to D's estate is treated as an acquisition of an interest in UTP Partnership for purposes of paragraph (n)(2) of this section.

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

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

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

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

(iii) *Members of the family.* For purposes of this paragraph (n)(3), the

term *members of the family* means, with respect to any individual—

(A) The spouse of such individual; and

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

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

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

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

(vi) *Examples*. The following examples illustrate the provisions of this paragraph (n)(3). For the two examples in this paragraph (n)(3)(vi),

assume that the exceptions in paragraphs (n)(2) and (4) of this section do not apply.

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

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

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

(2) *Analysis*. F qualifies as a member of the family with respect to E. Accordingly, as of the time of EF Inc.'s qualified conservation contribution, EF

Inc. was owned at least 90 percent by an individual and members of that individual's family. In addition, at least 90 percent of EF Inc.'s qualified conservation contribution is allocated to E and members of E's family. However, E and members of E's family failed to own at least 90 percent of the property with respect to which the qualified conservation contribution was made for at least one year prior to the date of the contribution. In particular, G and H (who are not members of the family with respect to E or F) indirectly owned a 50 percent interest in the property until July 5, 2024. Accordingly, the requirements of this paragraph (n)(3) are not satisfied. EF Inc. must apply the provisions of paragraphs (j) through (m) of this section to determine whether the contribution is a disallowed qualified conservation contribution.

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

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

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

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

- 1. In paragraph (c)(3)(iv)(F), adding the word “and” at the end of the paragraph;
- 2. In paragraph (c)(3)(iv)(G), removing the language “and” at the end of the paragraph;
- 3. Redesignating paragraph (c)(3)(v) as paragraph (c)(3)(vi) and adding new paragraph (c)(3)(v);
- 4. In paragraph (d)(3)(vii), removing the language “and” at the end of the paragraph;
- 5. Redesignating paragraph (d)(3)(viii) as paragraph (d)(3)(x) and adding new paragraph (d)(3)(viii);
- 6. Adding paragraph (d)(3)(ix);
- 7. Revising paragraph (f)(4);
- 8. Adding paragraph (f)(6);
- 9. Revising paragraph (g).

The additions and revisions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

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

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

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

(ix) Where a number can be inserted into any box on Form 8283 (Section B), the number inserted in the box on Form 8283 (Section B). Alternatively, taxpayers may attach a statement to the Form 8283 explaining why a number cannot be inserted. Nothing in this paragraph (d)(3)(ix) precludes a

taxpayer from both inserting the number in the appropriate box on Form 8283 (Section B) and including an attached statement explaining any additional information regarding the number.

Taxpayers may not respond to a request for information on Form 8283 (Section B) with nonresponsive responses, for example, by indicating that the requested information is *available upon request* or will be *provided upon request*. The inclusion of such nonresponsive language in response to a request for information on Form 8283 (Section B) may be treated by the IRS as being an incomplete filing of Form 8283; and

\* \* \* \* \*

(f) \* \* \*

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

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

(iii) *Partners and S corporation shareholders must file separate Forms 8283 and provide copies to any partners*—(A) *In general.* Subject to paragraph (f)(4)(iii)(B) of this section, every partner of a partnership (including a partner that is itself a partnership or S corporation) or shareholder of an S corporation that receives an allocation of a charitable contribution under section 170 for which paragraph (c), (d), or (e) of this section applies must complete a separate Form 8283 with any information required by Form 8283 and

the instructions to Form 8283. In the case of a partner that is itself a partnership or S corporation, that partnership or S corporation must provide a copy of its completed separate Form 8283 to every partner or shareholder who receives an allocation of the charitable contribution, and so on through any additional tiers. The partner or shareholder must attach its separate Form 8283 to the return on which the contribution is claimed, in addition to the copy of each Form 8283 that the partner or shareholder is required to attach pursuant to paragraph (f)(4)(ii) of this section.

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

\* \* \* \* \*

(6) *Conservation contributions by pass-through entities preserving certified historic structures*—(i) *In general.* The terms defined in § 1.170A–14(j)(3) apply for purposes of this paragraph (f)(6). For any contribution described in paragraph (f)(6)(ii) of this section, pursuant to section 170(f)(19), no deduction is allowed under section 170 or any other provision of the Code under which deductions are allowable to pass-through entities with respect to such contribution unless the contributing partnership, the contributing S corporation, the upper-tier partnership, or the upper-tier S corporation, respectively—

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

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

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

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

(B) That is either made by a contributing partnership or contributing S corporation (as defined in § 1.170A-14(j)(3)(iv)), or that is an allocated portion (as defined in § 1.170A-14(j)(3)(i)) of an upper-tier partnership (as defined in § 1.170A-14(j)(3)(xi)) or upper-tier S corporation (as defined in § 1.170A-14(j)(3)(xii)); and

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

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

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

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

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

**§ 1.706-0 Table of contents.**

\* \* \* \* \*

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

- (a) Conservation contributions.
- (b) Applicability date.

\* \* \* \* \*

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

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

(a) *Conservation contributions.* For purposes of section 706(d)(3), in the case of a qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A-14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A-14(j)(3)(vii)) by a partnership that is allocated to an upper-tier partnership, the upper-tier partnership must allocate the contribution among its partners in proportion to their interests in the upper-tier partnership at the time of day at which the contribution was made, regardless of the method (interim closing or proration) and convention (daily, semi-monthly, or monthly) otherwise used by the upper-tier partnership under § 1.706-4.

(b) *Applicability date.* Paragraph (a) of this section applies to qualified conservation contributions made after December 29, 2022.

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

- 1. Redesignating paragraphs (e)(2)(ix) through (xi) as paragraphs (e)(2)(x) through (xii), respectively, and adding new paragraph (e)(2)(ix);
- 2. Adding the word “and” at the end of newly redesignated paragraph (e)(2)(xi); and
- 3. Revising paragraphs (e)(3) and (g).

The addition and revisions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ix) Any qualified conservation contribution (as defined in section 170(h)(1) and § 1.170A-14(a) without regard to whether such contribution is a disallowed qualified conservation contribution within the meaning of § 1.170A-14(j)(3)(vii));

\* \* \* \* \*

(3) *Small item exception.* A partnership may treat an item described in paragraph (e)(2) of this section (except for an item described in paragraph (e)(2)(ix) of this section) as other than an extraordinary item for purposes of this paragraph (e) if, for the partnership's taxable year the total of all items in the particular class of extraordinary items (as enumerated in paragraphs (e)(2)(i) through (xii) of this section, for example, all tort or similar

liabilities, but in no event counting an extraordinary item more than once) is less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items; and the total amount of the extraordinary items from all classes of extraordinary items amounting to less than five percent of the partnership's gross income, including tax-exempt income described in section 705(a)(1)(B), in the case of income or gain items, or gross expenses and losses, including section 705(a)(2)(B) expenditures, in the case of losses and expense items, does not exceed \$10 million in the taxable year, determined by treating all such extraordinary items as positive amounts.

\* \* \* \* \*

(g) *Applicability dates—(1) In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies for partnership taxable years that begin on or after August 3, 2015.

(2) *Paragraph (c)(3) of this section.* The rules of paragraph (c)(3) of this section apply for taxable years of partnerships other than existing publicly traded partnerships that begin on or after August 3, 2015. For purposes of this paragraph (g)(2), an existing publicly traded partnership is a partnership described in section 7704(b) that was formed prior to April 14, 2009. For purposes of this paragraph (g)(2), the termination of a publicly traded partnership under section 708(b)(1)(B) due to the sale or exchange of 50 percent or more of the total interests in partnership capital and profits in a taxable year beginning on or before December 31, 2017, is disregarded in determining whether the publicly traded partnership is an existing publicly traded partnership.

(3) *Paragraph (e)(2)(ix) of this section.* Paragraph (e)(2)(ix) of this section applies to qualified conservation contributions made after December 29, 2022.

**Douglas W. O'Donnell,**

*Deputy Commissioner for Services and Enforcement.*

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