DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 10017]

RIN 1545–BP63

Rules for Supervisory Approval of Penalties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations regarding supervisory approval of certain penalties assessed by the IRS. The final regulations are necessary to address uncertainty regarding various aspects of supervisory approval of penalties that have arisen due to recent judicial decisions. The final regulations affect the IRS and persons assessed certain penalties by the IRS.

DATES:

Effective Date: These regulations are effective December 23, 2024.

Applicability Date: For date of applicability, *see* § 301.6751(b)–1(f).

FOR FURTHER INFORMATION CONTACT: William Prater, (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document amends the Regulations on Procedure and Administration (26 CFR part 301) by adding final regulations under section 6751(b) of the Internal Revenue Code (Code) relating to supervisory approval of certain penalties assessed by the IRS. Section 6751(b)(1) expressly delegates to the Secretary of the Treasury or her delegate the authority to designate, for purposes of approving the initial determination of a penalty assessment under the Code, a higher level official other than the immediate supervisor of the individual making that initial determination. In addition, section 7805(a) of the Code authorizes the Secretary to ''prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.''

Background

On April 11, 2023, a notice of proposed rulemaking (REG–121709–19) relating to supervisory approval of certain penalties under section 6751(b) was published in the **Federal Register** (88 FR 21564). *See* the Background and the Explanation of Provisions sections of the preamble to REG–121709–19 for a discussion of the proposed regulations, which are incorporated in this document to the extent not inconsistent with the Summary of Comments and Explanation of Revisions section of this preamble.

Eight comments responding to the notice of proposed rulemaking were received and are available at *https://www.regulations.gov* or upon request. A public hearing was held on September 11, 2023, and four speakers provided testimony. After careful consideration of all of the written comments and testimony, the proposed regulations are adopted by this Treasury decision with minor modification. The public comments are summarized and discussed in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

Many of the comments addressed similar issues and expressed similar points of view. The comments largely opposed the proposed timing rules and many of the proposed definitions. Comments expressed concern that the proposed regulations would not implement what the comments viewed as the purpose of section 6751(b). The Treasury Department and the IRS disagree with these comments' characterization of the text and effect of the proposed regulations, as well as their characterization of the statute's text and scope, its legislative history, and the caselaw interpreting it.

As explained in the preamble to the proposed regulations, the purpose of these rules is to clarify application of section 6751(b) in a manner that is consistent with the statutory text and that promotes nationwide uniformity, administrability for the IRS, and ease of understanding by taxpayers. Several comments suggested alternative rules that would impose extra-statutory formalities on IRS employees that would increase the probability of appropriate penalties being avoided if IRS employees do not satisfy those formalities. By contrast, the adopted rules faithfully interpret the statutory text, ensure penalties are imposed where appropriate, and guard against inappropriate use of penalties.

1. Comments on Proposed Timing Rules

The proposed regulations included three rules regarding the timing of supervisory approval of penalties under section 6751(b). Proposed § 301.6751(b)–1(c) provided that, for penalties that are included in a pre-assessment notice issued to a taxpayer that provides the basis for jurisdiction in the United States Tax Court (Tax Court) upon timely petition, supervisory approval must be obtained at any time before the notice is mailed by the IRS. Proposed § 301.6751(b)–1(d) provided that, for penalties raised in the Tax Court after a petition, supervisory approval may be obtained at any time prior to the Commissioner requesting that the court determine the penalty. Finally, proposed § 301.6751(b)–1(b) provided that supervisory approval for penalties that are not subject to pre-assessment review in the Tax Court may be obtained at any time prior to assessment.

Comments argued that the proposed timing rules should be rejected in favor of earlier deadlines for supervisory approval of penalties, which the comments asserted would more effectively prevent bargaining by the IRS. The comments' suggested deadlines, however, lack any basis in the statutory text, and are supported by reasoning that has been rejected by three United States Circuit Courts of Appeals (circuit courts). Moreover, the suggested earlier deadlines would not do anything to prevent bargaining, as the preamble to the proposed regulations explained. Despite the comments' stated concerns about the existence of bargaining, no comment identified a specific example of bargaining, and no court has ever found that an IRS employee attempted to use a penalty as a bargaining chip.

Some comments suggested that the timing rule should require supervisory approval before issuance of a 30-day letter [1] (or substantive equivalent). As support for this suggestion, one comment stated that caselaw supported the assertion that the statute is ambiguous regarding when approval must occur. This comment misinterprets the existing caselaw, which has focused on an ambiguity as to what the ''initial determination'' is that must be approved, not on when the approval must occur. On the question of when approval must occur, the circuit courts that have considered the issue have uniformly held that a supervisor can approve a penalty at any point before losing discretion over whether to approve imposition of the penalty. The comments advocating for requiring approval before issuance of a 30-day letter (or substantive equivalent) rest heavily on a misunderstanding of a supervisor's authority and on policy reasons that are not in fact served by the

[1] Typically a 30-day letter proposes penalties and gives the taxpayer an opportunity to request an administrative appeal.

suggested deadline. The comments also fail to address the circuit courts' opinions that are contrary to their recommendations on this issue.

As multiple circuit courts have explained, the statute lacks an ''express timing requirement,'' and the Tax Court's ''formal communication'' rule has no basis in the text of the statute. *Kroner* v. *Commissioner,* 48 F.4th 1272, 1276 (11th Cir. 2022); *Laidlaw's Harley Davidson Sales, Inc.* v. *Commissioner,* 29 F.4th 1066, 1072 (9th Cir. 2022), *reh'g en banc denied,* No. 20–73420 (9th Cir. July 14, 2022); *Minemyer* v. *Commissioner,* Nos. 21–9006 & 21–9007, 2023 WL 314832 (10th Cir. January 19, 2023). As explained in the preamble to the proposed regulations, the lack of any deadline in the statute other than assessment indicates that the provision did not intend an earlier deadline.

Despite this, the Tax Court has continued to apply its own precedent in cases appealable to circuits other than the Ninth, Tenth, and Eleventh. *See Aldridge* v. *Commissioner,* T.C. Memo. 2024–24 (appealable to the Eighth Circuit); *Swift* v. *Commissioner,* T.C. Memo. 2024–13 (appealable to the Fifth Circuit); *Bachner* v. *Commissioner,* T.C. Memo. 2023–148; *Robinson* v. *Commissioner,* T.C. Memo. 2023–147 (appealable to the Fourth Circuit); *Jadhav* v. *Commissioner,* T.C. Memo. 2023–140; *Conrad* v. *Commissioner,* T.C. Memo. 2023–100; *Braen* v. *Commissioner,* T.C. Memo 2023–85 (appealable to the Third Circuit). For cases appealable to the Ninth Circuit, the Tax Court has held that it will follow the timing rule of *Laidlaw's,* which the Tax Court interpreted to require a case-by-case analysis of whether a particular supervisor retained the discretion to approve penalties when they did so. *See Kraske* v. *Commissioner,* 161 T.C. 104 (2023). In *Kraske* and *Pangelina* v. *Commissioner,* T.C. Memo. 2024–5, the Tax Court suggested that an IRS Examination Division (Exam) supervisor's discretion may be lost when a case is transferred to the Independent Office of Appeals (Appeals), but this is factually incorrect. As the Ninth Circuit recognized in *Laidlaw's,* it is only ''once the notice is sent'' that ''the Commissioner begins to lose discretion over whether the penalty is assessed.'' *Laidlaw's,* 29 F.4th at 1071 n.4. Even when a case is transferred from Exam to Appeals, the Exam supervisor still has discretion to provide the required approval because the penalty is still before the IRS as a whole. As the preamble to the proposed regulations noted, a supervisor's discretion is lost only after the IRS issues a pre-assessment notice subject to Tax Court review to a taxpayer. Because a supervisor retains discretion to approve a penalty until that point, issuance of the pre-assessment notice subject to Tax Court review remains the appropriate deadline for obtaining supervisory approval of penalties included in such a notice.

The earlier deadlines that comments recommended and that the Tax Court continues to impose do not serve the legislative purpose that penalties be imposed where appropriate. By contrast, the proposed timing rules serve the legislative purpose of imposing penalties where appropriate while ensuring the requirement for supervisory approval can prevent bargaining. The proposed timing rules are consistent with all of the circuit-level authority interpreting the statute and provide a bright-line rule that is administrable for the IRS and fair to taxpayers. Accordingly, this Treasury decision adopts the proposed timing rules without modification.

2. Comments on Proposed Definitions

A. Individual Who First Proposed the Penalty

The proposed regulations provided that the individual who first proposes a penalty is the individual who section 6751(b)(1) references as the individual making the initial determination of a penalty assessment. A proposal can be made either to a taxpayer (or the taxpayer's representative) or to the individual's supervisor or a designated higher level official. One comment agreed with the proposed definition of ''individual who first proposed the penalty,'' while two others disagreed.

The proposed regulations illustrated the effect of this definition in an example in which a Revenue Agent proposes a penalty to her immediate supervisor, but the supervisor does not approve the penalty and it does not appear in the statutory notice of deficiency; the penalty is then raised by an IRS Office of Chief Counsel (Counsel) Attorney in a Tax Court Answer and that attorney is considered the ''individual who first proposed the penalty.'' Those disagreeing with the proposed definition argued that, in that example, it was the Revenue Agent and not the Counsel attorney that made the initial determination of the penalty. Such a view is at odds with the statutory text, which references (with respect to the penalty) the ''initial determination of . . . assessment'', and caselaw. *See North Donald LA Property, LLC* v. *Commissioner,* T.C. Memo. 2023–50 (citing multiple cases before concluding that ''[w]e have never held that the exam team's decision not to assert a penalty has any bearing on Chief Counsel's ability to assert that penalty later''). As the preamble to the proposed regulations explained, an initial determination that does not ultimately result in an assessment of a penalty is not an ''initial determination of . . . assessment.'' In addition, adopting the comments' suggested interpretation would render section 6214, which allows Counsel to raise a penalty in an answer, amended answer, or other pleading, meaningless because it would remove Counsel's ability to make an independent evaluation of whether a penalty is appropriate.

By contrast, the proposed definition harmonizes the statutory scheme and allows the IRS the flexibility to pursue penalties when appropriate. The IRS should not be prevented from asserting a penalty solely because an individual IRS employee involved earlier in the process did not determine that the penalty was appropriate at the time such employee considered it, a result that would follow from adopting the comments' suggestions. Instead, the IRS should be permitted to assert penalties that both a Counsel attorney and the attorney's supervisor believe are warranted.

Comments' concerns about the proposed definition of ''individual who first proposed the penalty'' have led the Treasury Department and the IRS to conclude that language is needed to clarify that, for purposes of determining which individual first proposed a penalty, the individual must have proposed the penalty either to a taxpayer (or the taxpayer's representative) or to the individual's supervisor or designated higher level official. This requirement is to preclude informal suggestions of coworkers or supervisors as being treated as the initial determination of a penalty assessment when those individuals had no official responsibility with respect to a penalty determination or the responsibility was a supervisory one. This interpretation also allows supervisors to do their job of reviewing and directing a subordinate's work, which may include suggesting that their subordinates propose a penalty. It also eliminates those who are not assigned responsibility for making an initial penalty determination from being treated as having done so by virtue of having made an informal comment about a penalty to a coworker. An example is added to these final regulations to illustrate the effect of the definition. Specifically, the new example highlights that an individual

who did not make a proposal to a taxpayer, supervisor, or designated higher level official is not the individual who made the initial determination of a penalty assessment.

B. Immediate Supervisor and Designated Higher Level Officials

The proposed regulations defined the term ''immediate supervisor'' as any individual with responsibility to review another individual's proposal of penalties without the proposal being subject to an intermediary's approval.

Some comments argued that the proposed definition of ''immediate supervisor'' was too vague, and that it could allow non-managerial, non-supervisory personnel to approve penalties. Some argued that the definition should be revised to mean any individual who ''directly supervises the substantive work'' of an individual, while others recommended that it be limited to a single individual that meets the definition of a ''supervisor'' or ''manager'' under other provisions of Federal law related to labor and employment matters.

These alternative suggestions focus on substantive work generally, rather than penalty review specifically. Because supervisory approval in this context relates only to penalties, this broader focus is not appropriate. By looking to an individual's assigned job duties rather than their title, the proposed definition takes a functional approach that is consistent with the statutory purpose of ensuring that a person that is familiar with the penalty aspects of a case be the one to give approval to assert penalties. *See Sand Inv. Co.* v. *Commissioner,* 157 T.C. 136, 142 (2021) (holding that the legislative history supports the conclusion that the person with the greatest familiarity with the facts and legal issues presented by the case is the ''immediate supervisor'' for purposes of section 6751(b)). Moreover, unlike some of the suggested alternatives, the proposed definition recognizes that IRS employees often have multiple supervisors with different roles for different parts of an examination.

After consideration of the comments, the final regulations adopt the proposed definition with one modification. Rather than defining ''immediate supervisor'' as ''any individual with responsibility to *approve* another individual's proposal of penalties,'' the adopted definition defines it as ''any individual with responsibility to *review* another individual's proposal of penalties.'' This definition recognizes that a person assigned to review a penalty proposal has the responsibility to make a judgment call about the appropriateness of the penalty. Responsibility to review another's work is the hallmark of being a supervisor. The definition adopted in the final regulations takes a practical approach that is consistent with the statute's focus on supervision of the penalty proposal.

Pursuant to the grant of authority in section 6751(b)(1) to designate which higher level officials may approve the initial determination, in addition to the general grant of authority in section 7805(a), the proposed regulations defined a ''higher level official'' as any person who has been directed via the Internal Revenue Manual or other assigned job duties to approve another individual's proposal of penalties before they are included in a notice that is a prerequisite to Tax Court jurisdiction, an answer to a Tax Court petition, or are assessed without the need for such inclusion.

Some comments disagreed with this definition, arguing that it is too vague and should be narrowed to only a small group of upper-level management. But these comments' suggested alternatives reject a functional approach in favor of unnecessary formalities that could result in appropriate penalties being eliminated. They are also inconsistent with section 6751(b)'s provision of discretion to designate which higher level officials may designate a penalty. Accordingly, the final regulations adopt the proposed definition without change.

C. Personally Approved (in Writing)

The proposed regulations define ''personally approved (in writing)'' to mean any writing, including in electronic form, that is made by the writer to signify the writer's assent and that reflects that it was intended as approval.

Comments argued that the definition of ''personally approved (in writing)'' should be revised to require that the approval, if made electronically, be made through a digital signature that includes a software-generated timestamp indicating when the document was signed and who signed it. One comment also argued that, alternatively, the IRS should require that a statement of signing accompany the request for a supervisor's approval of a penalty.

After consideration of the comments, the proposed definition is adopted without change. Adopting the comments' suggestions would impose formalities that frustrate imposition of appropriate penalties. The statute does not mandate the use of a particular type of signature, only that the approval be in writing. While it may be a best practice to use digital signatures with software-generated timestamps, mandating their use would go beyond the scope of the statute and these regulations. Nor does the statute require the immediate supervisor to use any particular format when approving the penalty, such as with a statement of signing. The functional approach adopted in these final regulations ensures that written approval, which is all the statute requires, is obtained. *See PBBM-Rose Hill, Ltd.* v. *Commissioner,* 900 F.3d 193, 213 (5th Cir. 2018) (rejecting an argument that section 6751(b)(1) was not satisfied because the penalty was not on the same page as the signature); *Deyo* v. *Commissioner,* 296 F. App'x 157 (2d Cir. 2008) (rejecting an argument that section 6751(b)(1) was not satisfied because the approval was provided by a stamp rather than a manual signature); *Thompson* v. *Commissioner,* T.C. Memo. 2022–80 (rejecting the argument that cross-examination of a revenue agent and his supervisor was needed because it ''would be immaterial and wholly irrelevant'' where there was written approval in the record); *Raifman* v. *Commissioner,* T.C. Memo. 2018–101 (same).

D. Automatically Calculated Through Electronic Means

The proposed regulations provide that a penalty is ''automatically calculated through electronic means'' if it is proposed by an IRS computer program without human involvement. A penalty is no longer considered ''automatically calculated through electronic means'' if a taxpayer responds to a computer-generated notice proposing a penalty and challenges the penalty or the amount of tax to which the penalty is attributable, and an IRS employee works the case.

Some comments argued that the proposed definition of ''automatically calculated through electronic means'' is too broad and encompasses penalties that, in the comments' view, should never be exempt from supervisory approval for various reasons. As explained in the preamble to the proposed regulations, the scope of this definition is limited to identifying when a penalty should be considered exempt from the supervisory approval requirements of section 6751(b)(1) by operation of section 6751(b)(2)(B). Comments sought to narrow the proposed definition and impose additional requirements on the IRS that are divorced from the statutory requirements. The comments were directed to whether proposal and assessment of certain penalties should

ever be automated, as opposed to whether a specific penalty was in fact ''automatically calculated through electronic means'' within the meaning of section 6751(b)(2)(B). As such, the comments go beyond the scope of the regulations.

One comment recommended that the proposed definition be revised to eliminate the requirement that an IRS employee consider a taxpayer's response to an automatically-generated notice in order to remove the penalty from the automatically-calculated exception. In this comment's view, this requirement could lead to situations where the IRS ignores correspondence and asserts penalties without proper consideration of the taxpayer's response to an automatically-generated penalty notice. The Treasury Department and the IRS are sensitive to the comment's concerns but consider this a matter outside of the scope of these regulations. The stated concerns are policy considerations about how the IRS should handle correspondence. They are not within the scope of these regulations, which seek only to interpret and define the statutory text of section 6751(b). As stated in the preamble to the proposed regulations, it is the policy of the IRS to give ''full and fair consideration to evidence in favor of not imposing [a] penalty, even after the [IRS']s initial consideration supports imposition of a penalty . . . .'' This policy should prohibit the type of conduct with which the comment is concerned. Finally, even if the IRS did fail to consider a taxpayer's response to an automatically-generated penalty notice, there would be no bargaining nor would there be an individual who made an initial determination with respect to the penalty at issue. Accordingly, it would be impossible for the IRS to obtain supervisory approval from the (non-existent) individual's supervisor. As the preamble to the proposed regulations explains, requiring supervisory approval in that situation would disrupt the automated process and would not square with the statutory text. For these reasons, the proposed definition is adopted without modification.

3. Other Comments

Comments made a number of other recommendations that went beyond the scope of the proposed regulations. These recommendations related to the types of forms the IRS should use in documenting supervisory approval and how those forms should be provided to taxpayers, the internal practices the IRS should follow to ensure compliance with section 6751(b) among its employees, and the types of employees that should be permitted to approve certain penalties over a certain dollar threshold. Other comments also criticized the existing penalty approval process as ineffective and stated that pending legislation would soon obviate the need for these regulations. Finally, one comment was submitted that did not relate to section 6751(b).

Aside from being outside of the scope of these regulations, adopting these recommendations would impose laborious formalities that are not required by section 6751(b) and that would give taxpayers and their representatives more opportunities to avoid the penalties that Congress intended be asserted against them. The final regulations therefore do not adopt these recommendations.

Special Analyses

I. Regulatory Planning and Review

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

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on these regulations imposing no obligations on small entities and therefore no economic impact on those entities. Because these regulations ensure that only appropriate penalties will apply by imposing requirements on the IRS and do not otherwise bear on the applicability of any penalty, the final regulations do not impose a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comments were received.

III. Unfunded Mandates Reform Act

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

IV. Executive Order 13132: Federalism

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

V. Congressional Review Act

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

Drafting Information

The principal author of these regulations is William Prater of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry for § 301.6751(b)–1(a)(4) in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 301.6751(b)–1(a)(4) also issued under 26 U.S.C. 6751(b)(1).

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■ **Par. 2.** Section 301.6751(b)–1 is added to read as follows:

§ 301.6751(b)–1 Supervisory and higher level official approval for penalties.

(a) *Approval requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, section 6751(b) of the Internal Revenue Code (Code) generally bars the assessment of a penalty unless the initial determination of the assessment of the penalty is personally approved (in writing) by the immediate supervisor of the individual making the initial determination or such higher level official as the Secretary of the Treasury or her delegate may designate. Paragraph (a)(2) of this section lists penalties not subject to section 6751(b)(1) and this paragraph (a)(1). Paragraph (a)(3) of this section provides definitions of terms used in section 6751(b) and this section. Paragraph (a)(4) of this section designates the higher level officials described in this paragraph (a)(1). Paragraphs (b) through (d) of this section apply section 6751(b)(1) and this paragraph (a)(1) to penalties not subject to pre-assessment review in the United States Tax Court (Tax Court), penalties that are subject to pre-assessment review in the Tax Court, and penalties raised in the Tax Court after a petition is filed, respectively. Paragraph (e) of this section provides examples illustrating the application of section 6751(b) and this section. Paragraph (f) of this section provides dates of applicability of this section.

(2) *Exceptions.* Under section 6751(b)(2), section 6751(b)(1) and this section do not apply to:

(i) Any penalty under section 6651, 6654, 6655, 6673, 6662(b)(9), or 6662(b)(10) of the Code; or

(ii) Any other penalty automatically calculated through electronic means.

(3) *Definitions.* For purposes of section 6751(b) and this section, the following definitions apply—

(i) *Penalty.* The term *penalty* means any penalty, addition to tax, or additional amount under the Code.

(ii) *Individual who first proposed the penalty.* Except as otherwise provided in this paragraph (a)(3)(ii), the *individual who first proposed the penalty* is the individual who section 6751(b)(1) and paragraph (a)(1) of this section reference as the individual making the initial determination of a penalty assessment. For purposes of this section, a proposal of a penalty can be made only to either a taxpayer (or the taxpayer's representative) or to the individual's supervisor or designated higher level official. A proposal of a penalty, as defined in paragraph (a)(3)(i) of this section, to a taxpayer does not include mere requests for information relating to a possible penalty or inquiries of whether a taxpayer wants to participate in a general settlement initiative for which the taxpayer may be eligible, but does include offering the taxpayer an opportunity to agree to a particular penalty in a particular amount other than a penalty under a settlement initiative offered to a class of taxpayers. An individual who first proposed the penalty is not the individual whom section 6751(b)(1) and paragraph (a)(1) of this section reference as the individual making the initial determination of a penalty assessment if the assessment of the penalty is attributable to an independent proposal made by a different individual.

(iii) *Immediate supervisor.* The term *immediate supervisor* means any individual with responsibility to review another individual's proposal of penalties, as defined in paragraph (a)(3)(i) of this section, without the proposal being subject to an intermediary's approval.

(iv) *Higher level official.* The term *higher level official* means any person designated under paragraph (a)(4) of this section as a higher level official authorized to approve a penalty for purposes of section 6751(b)(1).

(v) *Personally approved (in writing).* The term *personally approved (in writing)* means any writing, including in electronic form, made by the writer to signify the writer's assent. No signature or particular words are required so long as the circumstances of the writing reflect that it was intended as approval.

(vi) *Automatically calculated through electronic means.* A penalty, as defined in paragraph (a)(3)(i) of this section, is *automatically calculated through electronic means* if an IRS computer program automatically generates a notice to the taxpayer that proposes the penalty. If a taxpayer responds in writing or otherwise to the automatically-generated notice and challenges the proposed penalty, or the amount of tax to which the proposed penalty is attributable, and an IRS employee considers the response prior to assessment (or the issuance of a notice of deficiency that includes the penalty), then the penalty is no longer considered ''automatically calculated through electronic means.''

(4) *Higher level official.* Any person who has been directed by the Internal Revenue Manual or other assigned job duties to approve another individual's proposal of penalties before they are included in a pre-assessment notice prerequisite to Tax Court jurisdiction, an answer, amended answer, or amendment to the answer to a Tax Court petition, or are assessed without need for such inclusion, is designated as a higher level official authorized to approve the penalty for purposes of section 6751(b)(1).

(b) *Penalties not subject to pre-assessment review in the Tax Court.* The requirements of section 6751(b)(1) and paragraph (a)(1) of this section are satisfied for a penalty that is not subject to pre-assessment review in the Tax Court if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing before the penalty is assessed. Alternatively, a person designated as a higher level official as described in paragraph (a)(4) of this section may provide the approval otherwise required by the immediate supervisor.

(c) *Penalties subject to pre-assessment review in the Tax Court.* The requirements of section 6751(b)(1) and paragraph (a)(1) of this section are satisfied for a penalty that is included in a pre-assessment notice that provides a basis for Tax Court jurisdiction upon timely petition if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing on or before the date the notice is mailed. Alternatively, a person designated as a higher level official as described in paragraph (a)(4) of this section may provide the approval otherwise required by the immediate supervisor. Examples of a pre-assessment notice described in this paragraph (c) include a statutory notice of deficiency under section 6212 of the Code, a notice of final partnership administrative adjustment under former section 6223 of the Code, and a notice of final partnership adjustment under section 6231 of the Code.

(d) *Penalties raised in the Tax Court after a petition.* The requirements of section 6751(b)(1) and paragraph (a)(1) of this section are satisfied for a penalty that the Commissioner raises in the Tax Court after a petition (*see* section 6214(a) of the Code) if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing no later than the date on which the Commissioner requests that the court determine the penalty. Alternatively, a person designated as a higher level official as described in paragraph (a)(4) of this section may provide the approval otherwise required by the immediate supervisor.

(e) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1.* In the course of an audit regarding a penalty not subject to pre-assessment review in the Tax Court,

Revenue Agent A concludes that Taxpayer T should be subject to the penalty under section 6707A of the Code for failure to disclose a reportable transaction. Revenue Agent A sends T a letter giving T the option to agree to the penalty; submit additional information to A about why the penalty should not apply; or request within 30 days that the matter be sent to the Independent Office of Appeals (Appeals) for consideration. After T requests that Appeals consider the case, A prepares the file for transmission, and B (who is A's immediate supervisor, as defined in paragraph (a)(3)(iii) of this section) signs a cover memorandum informing Appeals of the proposed penalty and asks Appeals to consider it. The Appeals Officer upholds the penalty, and it is assessed. The requirements of section 6751(b)(1) are satisfied because B's signature on the cover memorandum is B's personal written assent to the penalty proposed by A and was given before the penalty was assessed.

(2) *Example 2.* In the course of an audit, Revenue Agent A concludes that Taxpayer T should be subject to an accuracy-related penalty for substantial understatement of income tax under section 6662(b)(2). Revenue Agent A sends T a Letter 915, Examination Report Transmittal, along with an examination report that includes the penalty. The Letter 915 gives T the option to agree to the examination report; provide additional information to be considered; discuss the report with A or B (who is A's immediate supervisor, as defined in paragraph (a)(3)(iii) of this section); or request a conference with an Appeals Officer. T agrees to assessment of the penalty and signs the examination report to consent to the immediate assessment and collection of the amounts shown on the report. B provides written supervisory approval of the penalty after T signs the examination report, but before the penalty is assessed. Paragraph (b) of this section applies because T's agreement to assessment of the penalty excepts it from pre-assessment review in the Tax Court. Because B provided written supervisory approval before assessment of the penalty, the requirements of section 6751(b)(1) are satisfied.

(3) *Example 3.* In the course of an audit of Taxpayer T by a team of revenue agents, Revenue Agent A concludes that T should be subject to an accuracy-related penalty for negligence under section 6662(b)(1) and (c). Supervisor B is the issue manager and is assigned the duty to review the Notice of Proposed Adjustment for any penalty A would propose. Revenue Agent A reports to B, but B is not responsible for the overall management of the audit of T. C is the case manager of the team auditing T and is responsible for the overall management of the audit of T. C may assign tasks to A and other team members, and has responsibility for approving any examination report presented to T.

(i) *Alternative Outcome 1:* Only B approves the penalty in writing before the mailing to T of a notice of deficiency that includes the penalty. Under paragraph (a)(3)(iii) of this section, B qualifies as the immediate supervisor of A with respect to A's penalty proposal, and the requirements of section 6751(b)(1) are met.

(ii) *Alternative Outcome 2:* Only C approves the penalty in writing before the mailing to T of a notice of deficiency that includes the penalty. Because C has responsibility to approve A's proposal of the penalty as part of approving the examination report, C qualifies as a higher level official designated under paragraph (a)(4) of this section to approve the penalty proposed by A, and the requirements of section 6751(b)(1) are met.

(4) *Example 4.* In the course of an audit, Revenue Agent A concludes that Taxpayer T should be subject to a penalty for negligence under section 6662(c). Revenue Agent A recommends the penalty to her immediate supervisor B, who thinks more factual development is needed to support the penalty but must close the audit immediately due to the limitations period on assessment expiring soon. The IRS issues a statutory notice of deficiency without the penalty and T files a petition in the Tax Court. In reviewing the case file and conducting discovery, IRS Chief Counsel Attorney C concludes that the facts support imposing a negligence penalty under section 6662(c). Attorney C proposes to her immediate supervisor, D, that the penalty should apply and should be raised in an Answer pursuant to section 6214(a). D agrees and signs the Answer that includes the penalty before it is filed. The section 6662(c) penalty at issue is subject to pre-assessment review in the Tax Court and was raised in the Tax Court after a petition was filed under paragraph (d) of this section. Therefore, written supervisory approval under paragraph (d) of this section was required prior to filing the written pleading that includes the penalty. Attorney C is the individual who first proposed the penalty for purposes of section 6751(b)(1) and paragraphs (d) and (a)(3)(ii) of this section, and she secured timely written supervisory approval from D, the immediate supervisor, as defined in paragraph (a)(3)(iii) of this section. As a result, the requirements of section 6751(b)(1) are met. Revenue Agent A did not make the initial determination of the penalty assessment because any assessment would not be attributable to A's proposal but would be based on the independent proposal of Attorney C raised pursuant to section 6214(a).

(5) *Example 5.* In the course of an audit, Revenue Agent A concludes that Taxpayer T should be subject to a penalty for negligence under section 6662(c). Revenue Agent A includes the penalty in a draft report that she sends for review to her immediate supervisor B. B reviews A's recommendation and notices that A did not consider whether a penalty for a substantial understatement of income tax under section 6662(d) should apply in the alternative. B sends an email to A telling her to ''add a section 6662(d) penalty if the math checks out.'' Revenue Agent A reviews the facts, determines that the imposition of the section 6662(d) penalty is warranted, and adds the penalty to a report she issues to the taxpayer. Revenue Agent A is the individual who first proposed both of the penalties for purposes of section 6751(b)(1) and paragraphs (d) and (a)(3)(ii) of this section because she is the individual who first proposed the penalty to the taxpayer. Supervisor B did not make the initial determination of the section 6662(d) penalty because, even though she first thought of and suggested it, she did not propose it to the taxpayer or her supervisor (or designated higher level official).

(6) *Example 6.* The IRS's Automated Underreporter (AUR) computer program detects a discrepancy between the information received from a third party and the information contained on Taxpayer T's return. AUR automatically generates a CP2000, Notice of Underreported Income, that includes an adjustment based on the unreported income and a proposed penalty under section 6662(d) that is mailed to T. The CP2000 gives T 30 days to respond to contest the proposed adjustments and the penalty. T submits a response to the CP2000, asking only for more time to respond. More time is granted but no further response is received from T, and a statutory notice of deficiency that includes the adjustments and the penalty is automatically generated and issued to T. The section 6662(d) penalty at issue is automatically calculated through electronic means under paragraphs (a)(2)(ii) and (a)(3)(vi) of this section. The penalty was proposed by the AUR computer program, which generated a notice to T that proposed the penalty. Although T submitted a response to the CP2000, the response

did not challenge the proposed penalty, or the amount of tax to which the proposed penalty is attributable. Therefore, the penalty was automatically calculated through electronic means and written supervisory approval was not required.

(f) *Applicability date.* The rules of this section apply to penalties assessed on or after December 23, 2024.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: December 2, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe the spreads component of the interest assumption under the asset allocation regulation for plans with valuation dates of January 31, 2025–April 29, 2025. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective January 31, 2025.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (*odonnell.monica@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–8706. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including an interest assumption—for valuing benefits under terminating single-employer plans covered by title IV of the Employee etirement Income Security Act of 1974 (ERISA). The interest assumption is also posted on PBGC's website (*www.pbgc.gov*).

PBGC uses the interest assumption in § 4044.54 to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions in part 4044 of PBGC's regulations are also used in other situations where it is appropriate for liabilities to align with private sector group annuity prices. For example, PBGC's regulations on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) and Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) provide that these assumptions are used to value liabilities for purposes of determining withdrawn employers' reallocation liability in the event of a mass withdrawal from a multiemployer plan. Multiemployer plans that receive special financial assistance under the regulation on Special Financial Assistance by PBGC (29 CFR part 4262) must, as a condition of receiving special financial assistance, use the interest assumption to determine withdrawal liability for a prescribed period. Additionally, plan sponsors are required to use some, or all of these assumptions for specified purposes (*e.g.,* reporting benefit liabilities in filings required under PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) or determining certain amounts to transfer to PBGC's Missing Participants Program on behalf of a missing participant of a terminating defined benefit plan under PBGC's regulation on Missing Participants (29 CFR part 4050)) and may use them for other purposes (*e.g.,* to ensure that plan spinoffs comply with section 414(l) of the Internal Revenue Code (the Code)).

On June 6, 2024, PBGC issued a final rule at 89 FR 48291 that changes the structure of the interest assumption for valuation dates on or after July 31, 2024, from the select and ultimate approach to a yield curve approach. As described in the June 6 final rule, this ''4044 yield curve,'' is based on a blend of two publicly available bond yield curves that is adjusted to the extent necessary so that the resulting liabilities align with group annuity prices. The adjustments are referred to as ''spreads.'' PBGC determines and publishes spreads quarterly based on survey data on pricing of private-sector group annuities. As noted in the preamble to the June 6 rule, PBGC will post the 4044 yield curve on its website at *www.pbgc.gov* each month shortly after its underlying data become available. In addition, practitioners are able to determine the 4044 yield curve as of the end of any month using the publicly available bond yield curves and the spreads specified in the regulation.

This rule amends the regulation to specify the spreads used to determine the 4044 yield curve as of the last days of January, February, and March of 2025, (*i.e.,* the ''first quarter 2025 spreads'').

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the spreads component of the interest assumption in the asset allocation regulation so that the 4044 yield curve may be determined as soon as the underlying bond yield curves become available. These amendments are merely technical; they ensure that use of PBGC's interest assumption continues to yield liabilities in line with group annuity prices. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In § 4044.54, revise table 1 to paragraph (e) to read as follows:

§ 4044.54 Interest assumptions.

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(e) * * *