

requirements.<sup>38</sup> For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The proposed rule does not contain information collection requirements that require approval by OMB under the PRA.<sup>39</sup> The proposed rule provides regulatory relief by allowing eligible FCUs to expand their investment authority to include the purchase of MSRs under similar standards applicable to the purchase of eligible obligations and other investments.

### C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

### D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>40</sup>

### List of Subjects

#### 12 CFR Part 703

Credit unions, Investments.

#### 12 CFR Part 721

Credit unions, Functions, Implied powers.

By the National Credit Union Administration Board on December 17, 2020.

**Melane Conyers-Ausbrooks,**  
Secretary of the Board.

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR parts 703 and 721 as follows:

## PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 is revised to read as follows:

**Authority:** 12 U.S.C. 1757(7), 1757(8), 1757(14) and 1757(15).

■ 2. Amend § 703.14 by adding paragraph (l) to read as follows:

### § 703.14 Permissible investments.

\* \* \* \* \*

(l) *Mortgage servicing rights.* A Federal credit union may purchase mortgage servicing rights from other federally insured credit unions as an investment if all of the following conditions are met:

(1) The underlying mortgage loans of the mortgage servicing rights are loans the Federal credit union is empowered to grant;

(2) the Federal credit union purchases the mortgage servicing rights within the limitations of its board of directors' written purchase policies; and

(3) the board of directors or investment committee approves the purchase.

### § 703.16 [Amended]

■ 2. Amend § 703.16 by removing and reserving paragraph (a).

## PART 721—INCIDENTAL POWERS

■ 4. The authority citation for part 721 continues to read as follows:

**Authority:** 12 U.S.C. 1757(17), 1766 and 1789.

■ 5. Amend § 721.3 paragraph (h) by revising the last sentence to read as follows:

### § 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

\* \* \* \* \*

(h) \* \* \* These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit, leases, and mortgage loan servicing functions for a member as long as the loan is owned by a member.

\* \* \* \* \*

[FR Doc. 2020-28278 Filed 12-30-20; 8:45 am]

**BILLING CODE 7535-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 300

[REG-114615-16]

RIN 1545-BP75

### User Fee for Estate Tax Closing Letter

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations establishing a new user fee for authorized persons who wish to request the issuance of IRS Letter 627, also referred to as an estate tax closing letter. The Independent Offices Appropriations Act of 1952 authorizes charging user fees in appropriate circumstances. The proposed regulations affect persons who request an estate tax closing letter.

**DATES:** Written or electronic comments and requests for a public hearing must be received by March 1, 2021. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-114615-16) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-114615-16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning submissions of comments and/or requests for a public hearing, Regina Johnson, at (202) 317-5177; concerning cost methodology, Michael Weber, at (202) 803-9738; concerning the proposed regulations, Juli Ro Kim, at (202) 317-6859 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

<sup>38</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

<sup>39</sup> 44 U.S.C. Chap. 35.

<sup>40</sup> Public Law 105-277, 112 Stat. 2681 (1998).

## Background and Explanation of Provisions

### A. Overview

This document contains proposed amendments to the User Fee Regulations (26 CFR part 300) to establish a user fee applicable to requests for estate tax closing letters provided by the IRS to an authorized person. (The term “authorized person” is used herein to refer to a decedent’s estate or other person properly authorized under section 6103 of the Internal Revenue Code (Code) to receive, and therefore, to request, an estate tax closing letter with respect to the estate.) The IRS issues estate tax closing letters upon request of an authorized person only after an estate tax return (generally, Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return) has been accepted by the IRS (1) as filed, (2) after an adjustment to which the estate has agreed, or (3) after an adjustment in the deceased spousal unused exclusion (DSUE) amount. An estate tax closing letter informs an authorized person of the acceptance of the estate tax return and certain other return information, including the amount of the net estate tax, the State death tax credit or deduction, and any generation-skipping transfer tax for which the estate is liable.<sup>1</sup>

The IRS understands that knowledge of the acceptance by the IRS of the estate tax return—including the amount of the gross estate and the estate tax liability—is important to executors or other persons administering estates because of the unique nexus between an estate’s Federal estate tax obligations and State and local law obligations to administer and close a probate estate. This knowledge aids an executor’s ability to make the final division and distribution of estate assets and to avoid potential personal liability for unpaid estate tax in making such distribution. Personal liability can be imposed on an executor when the executor makes preferential payments to creditors or distributions to beneficiaries, leaving insufficient funds for the full payment

of the tax owed to the government. See 31 U.S.C. 3713(b). On the other hand, an estate tax closing letter does not indicate whether any of the estate tax has been paid or the amount of estate tax that has been paid.

The estate tax closing letter also includes relevant procedural and substantive explanations. Addressing the potential for conflating an estate tax closing letter with a formal closing agreement, the letter confirms that it is not a formal closing agreement with the IRS that is described under section 7121 of the Code. Additionally, the estate tax closing letter explains that, consistent with Rev. Proc. 2005–32, 2005–1 C.B. 1206, the IRS will not reopen or examine the estate tax return to determine the estate tax liability of a decedent’s estate unless the estate notifies the IRS of changes to the estate tax return or if there is (1) evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact, (2) a clearly defined substantial error based upon an established IRS position, or (3) a serious administrative omission. However, the estate tax closing letter does not limit or foreclose future adjustments to the DSUE amount shown on the estate tax return, so the estate tax closing letter further explains that the IRS has authority to examine returns of a decedent in the context of determining the DSUE amount for portability purposes. (See part C of this section for a discussion of portability of the DSUE amount.) Finally, the estate tax closing letter includes explanations related to the potential application of sections 6166 and 6324A (installment payments and special extended lien), 2204 (discharge of personal liability), and 6324 (estate tax lien). Currently, the IRS does not charge for providing an estate tax closing letter to authorized persons.

### B. June 2015 Change to IRS Practice in Issuing Estate Tax Closing Letters

The practice of issuing estate tax closing letters to authorized persons is not mandated by any provision of the Code or other statutory requirement. Instead, the practice is fundamentally a customer service convenience offered to authorized persons in view of the unique nature of estate tax return filings and the bearing of an estate’s Federal estate tax obligations on the obligation to administer and close a probate estate under applicable State and local law. Essentially, the practice takes into account estates’ and stakeholders’ need for information regarding the status of an estate’s Federal tax obligations in administering and closing a probate estate. Prior to June 2015, the IRS

generally issued an estate tax closing letter for every estate tax return filed. However, for estate tax returns filed on or after June 1, 2015, the IRS changed its practice and now offers an estate tax closing letter only upon the request of an authorized person.

The IRS changed its practice of issuing estate tax closing letters for every filed Form 706 for two primary reasons. First, the volume of estate tax return filings increased at the same time that the IRS experienced additional budget and resource constraints. In particular, the number of estate tax filings increased dramatically due to the enactment in December 2010 of portability of a deceased spouse’s unused applicable exclusion amount (DSUE amount) for the benefit of a surviving spouse. (See part C for a discussion of the impact of portability of the DSUE amount on estate tax filings.) Second, the IRS recognized that an account transcript with a transaction code and explanation of “421—Closed examination of tax return” is an available alternative to the estate tax closing letter. See Notice 2017–12, I.R.B. 2017–5 (describing the utility of the account transcript in lieu of the estate tax closing letter and its availability at no charge). Notwithstanding these considerations, the IRS was aware that executors, local probate courts, State tax departments, and others had come to rely on the convenience of estate tax closing letters and the return information and procedural and substantive explanations such letters provided for confirmation that the examination of the estate tax return by the IRS had been completed and the IRS file had been closed. Accordingly, in 2015 the IRS decided to continue providing the service of issuing estate tax closing letters, still at no charge, but only upon the request of an authorized person.

Until restrictions were added due to the ongoing Coronavirus Disease 2019 (COVID–19) pandemic, an authorized person was able to request an estate tax closing letter by telephone or fax. Now, due to the COVID–19 pandemic, an authorized person may request an estate tax closing letter only by fax (current procedure and details available at <http://www.irs.gov>).

### C. The Continuing Impact of Portability on Estate Tax Return Filings

Portability of the DSUE amount became effective for estates of decedents dying after December 31, 2010, upon enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312, 124 Stat.

<sup>1</sup> In the context of a Form 706 (a “return” as defined in section 6103(b)(1)), the term “return information” is broadly defined in section 6103(b)(2) to include not only information appearing on the Form 706, but also whether the estate’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary of the Treasury or his delegate (Secretary) with respect to the Form 706 or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

3296, 3302 (Dec. 17, 2010), and became permanent upon enactment of the American Taxpayer Relief Act of 2012, Public Law 112–240, 126 Stat. 2313 (January 2, 2013). In order to elect portability of the DSUE amount for the benefit of the surviving spouse, the estate of the deceased spouse must timely file an estate tax return, even if the sum of the value of the gross estate and the amount of adjusted taxable gifts is insufficient to trigger a filing requirement under section 6018(a). In calendar year 2016, the number of estate tax returns filed solely to elect portability of the DSUE amount was approximately 20,000, compared to approximately 12,000 estate tax returns filed because of a filing requirement under section 6018(a).

#### *D. Establishment of User Fee for Estate Tax Closing Letters*

The IRS continues to experience significant budget and resource constraints that require the IRS to allocate its existing resources as efficiently as possible. The volume of estate tax return filings remains high (approximately 30,500 estate tax returns filed in 2018), in large part attributable to estate tax returns that are filed for estates having no tax liability or filing requirement under section 6018 and that are filed solely to elect portability of the DSUE amount for the benefit of the surviving spouse of a decedent.

While the practice of issuing estate tax closing letters is intended as a customer service convenience to authorized persons based on an understanding of the unique nexus between an estate's Federal estate tax obligations and the estate's obligations under applicable local law for State and local estate and inheritance taxes and to administer and close a probate estate, the Treasury Department and the IRS received feedback from taxpayers and practitioners that the procedure for requesting an estate tax closing letter can be inconvenient and burdensome. When requests had been accepted by telephone, a request could not be made until the IRS's examination of the estate tax return had been completed. Taxpayer representatives, therefore, often needed to repeat the telephone request, sometimes multiple times, before the request could be accepted by the IRS. Currently, the instructions on <http://www.irs.gov> advise that, prior to faxing a request, an account transcript should be requested and reviewed to ensure the transaction code and explanation of "421—Closed examination of tax return" are present. Account transcripts are available online to registered tax professionals using the

IRS's Transcript Delivery System (TDS) or to authorized persons making requests using Form 4506–T.

In view of the resource constraints and purpose of issuing estate tax closing letters as a convenience to authorized persons, the IRS has identified the provision of estate tax closing letters as an appropriate service for which to establish a user fee to recover the costs that the government incurs in providing such letters. Accordingly, the Treasury Department and the IRS propose establishing a user fee for estate tax closing letter requests (see parts E and F for explanation of the authority to establish the user fee). As currently determined, the user fee is \$67, as detailed in part H.

Guidance on the procedure for requesting an estate tax closing letter and paying the associated user fee is not provided in these proposed regulations. The Treasury Department and the IRS expect to implement a procedure that will improve convenience and reduce burden for authorized persons requesting estate tax closing letters by initiating a one-step, web-based procedure to accomplish the request of the estate tax closing letter as well as the payment of the user fee. As presently contemplated, a Federal payment website, such as <http://www.pay.gov>, will be used and multiple requests will not be necessary. The Treasury Department and the IRS believe implementing such a one-step procedure will reduce the current administrative burden on authorized persons in requesting estate tax closing letters and will limit the burden associated with the establishment of a user fee for providing such service.

#### *E. User Fee Authority*

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing the charge for services provided by the agency (user fees). The IOAA provides that these user fee regulations are subject to policies prescribed by the President and shall be as uniform as practicable. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25, 58 FR 38142 (July 15, 1993; OMB Circular).

The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The OMB Circular states that agencies providing services that confer special benefits on identifiable recipients beyond those accruing to the general public must identify those services, determine whether user fees should be assessed for those services,

and, if so, establish user fees that recover the full cost of providing those services.

As required by the IOAA and the OMB Circular, agencies are to review user fees biennially and update them as necessary to reflect changes in the cost of providing the underlying services. During these biennial reviews, an agency must calculate the full cost of providing each service, taking into account all direct and indirect costs to any part of the U.S. Government. The full cost of providing a service includes, but is not limited to, salaries, retirement benefits, rents, utilities, travel, and management costs, as well as an appropriate allocation of overhead and other support costs associated with providing the service.

An agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full cost requirement. The OMB may grant exceptions only where the cost of collecting the fees would represent an unduly large part of the fee for the activity, or where any other condition exists that, in the opinion of the agency head, justifies an exception. When the OMB grants an exception, the agency does not collect the full cost of providing the service and therefore must fund the remaining cost of providing the service from other available funding sources. When the OMB grants an exception, the agency, and by extension all taxpayers, subsidize the cost of the service to the recipients who otherwise would be required to pay the full cost of providing the service, as the IOAA and the OMB Circular directs.

#### *F. Special Benefits Conferred by Issuance of Estate Tax Closing Letters*

The issuance of an estate tax closing letter, and the return information and procedural and substantive explanations such letters provide, constitutes the provision of a service and confers special benefits on identifiable recipients beyond those accruing to the general public. Upon receipt of an estate tax closing letter, authorized persons can make use of the return information and procedural and substantive explanations provided in the letter for non-Federal tax purposes, for example, to facilitate the executor's ability to make the final distribution of estate assets and to respond as needed to non-Federal tax authorities and entities, such as local probate courts, State tax departments, and private stakeholders. Further, executors of such estates can make use of the return information pertaining to the estate's Federal tax

liability to avoid potential personal liability for payment of the tax under 31 U.S.C. 3713.

Moreover, letters comparable to estate tax closing letters are not universally available or provided to taxpayers filing Federal tax returns other than estate tax returns, upon request by authorized persons or otherwise. By comparison, account transcripts are universally provided by the IRS upon request to all taxpayers. After issuing Notice 2017–12 to publicize the availability and utility of an account transcript as an alternative in lieu of an estate tax closing letter, the feedback the IRS received from stakeholders reflects a definite preference for the return information and procedural and substantive explanations provided by the IRS in an estate tax closing letter. While the IRS will continue to offer transcripts as an alternative in lieu of estate tax closing letters at no charge, an authorized person may choose which service best supports their needs based upon the specific circumstances of the decedent's estate. Estate tax closing letters are uniquely available for authorized persons that have need of such special benefits.

For these reasons, the issuance of an estate tax closing letter constitutes the provision of a service and confers special benefits to authorized persons requesting such letters beyond those accruing to the general public. Accordingly, the IRS is authorized, pursuant to the IOAA and the OMB Circular, to charge a user fee for the issuance of an estate tax closing letter that reflects the full cost of providing this service. See also section 6103(p)(2)(B) (allowing for a reasonable fee for furnishing return information to any person).

#### *G. Calculation of User Fees Generally*

User fee calculations begin by first determining the full cost for the service. The IRS follows the guidance provided by the OMB Circular to compute the full cost of the service, which includes all indirect and direct costs to any part of the U.S. Government including but not limited to direct and indirect personnel costs, physical overhead, rents, utilities, travel, and management costs. The IRS's cost methodology is described later in this part G.

Once the total amount of direct and indirect costs associated with a service is determined, the IRS follows the guidance in the OMB Circular to determine the costs associated with providing the service to each recipient, which represents the average per unit cost of that service. This average per unit cost is the amount of the user fee

that will recover the full cost of the service.

The IRS follows generally accepted accounting principles (GAAP), as established by the Federal Accounting Standards Advisory Board (FASAB), in calculating the full cost of providing services. The FASAB Handbook of Accounting Standards and Other Pronouncements, as amended, which is available at [http://files.fasab.gov/pdf/files/2019\\_fasab-handbook.pdf](http://files.fasab.gov/pdf/files/2019_fasab-handbook.pdf), includes the Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts (SFFAS No. 4) for the Federal Government. SFFAS No. 4 establishes internal costing standards under GAAP to accurately measure and manage the full cost of Federal programs. The methodology described in the remainder of this part G is in accordance with SFFAS No. 4.

#### *1. Cost Center Allocation*

The IRS determines the cost of its services and the activities involved in producing them through a cost accounting system that tracks costs to organizational units. The lowest organizational unit in the IRS's cost accounting system is called a cost center. Cost centers are usually separate offices that are distinguished by subject-matter area of responsibility or geographic region. All costs of operating a cost center are recorded in the IRS's cost accounting system and are allocated to that cost center. The costs allocated to a cost center are the direct costs for the cost center's activities as well as all indirect costs, including overhead, associated with that cost center. Each cost is recorded in only one cost center.

#### *2. Determining the per Unit Cost*

To establish the per unit cost, the total cost of providing the service is divided by the volume of services provided. The volume of services provided includes both services for which a fee is charged as well as subsidized services. The subsidized services are those where OMB has approved an exception to the full cost requirement, for example, to charge a reduced fee to low-income taxpayers. The volume of subsidized services is included in the total volume of services provided to ensure that the IRS, and not those who are paying full cost, subsidizes the cost of the reduced-cost services.

#### *3. Cost Estimation of Direct Labor and Benefits*

Not all cost centers are fully devoted to only one service for which the IRS charges a user fee. Some cost centers

work on a number of different services. In these cases, the IRS estimates the cost incurred in those cost centers attributable to the service for which a user fee is being calculated by measuring the time required to accomplish activities related to the service, and estimating the average time required to accomplish these activities. The average time required to accomplish these activities is multiplied by the relevant organizational unit's average labor and benefits cost per unit of time to determine the labor and benefits cost incurred to provide the service. To determine the full cost, the IRS then adds an appropriate overhead charge, as discussed in part G.4.

#### *4. Calculating Overhead*

Overhead is an indirect cost of operating an organization that cannot be immediately associated with an activity that the organization performs. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity.

These costs can include:

- General management and administrative services of sustaining and support organizations;
- Facilities management and ground maintenance services (security, rent, utilities, and building maintenance);
- Procurement and contracting services;
- Financial management and accounting services;
- Information technology services;
- Services to acquire and operate property, plants, and equipment;
- Publication, reproduction, and graphics and video services;
- Research, analytical, and statistical services;
- Human resources/personnel services; and
- Library and legal services.

To calculate the overhead allocable to a service, the IRS multiplies a corporate overhead rate (Corporate Overhead rate) by the direct labor and benefits costs determined as discussed above in part G.3. The Corporate Overhead rate is the ratio of the sum of the IRS's indirect labor and benefits costs from the supporting and sustaining organizational units—those that do not interact directly with taxpayers—and all non-labor costs to the IRS's labor and benefits costs of its organizational units that interact directly with taxpayers. The IRS calculates the Corporate Overhead rate annually based on cost elements underlying the Statement of Net Cost included in the IRS Annual Financial Statements, which are audited

by the Government Accountability Office.

The Corporate Overhead rate of 74 percent (rounded to the nearest hundredth) for costs reviewed during fiscal year (FY) 2018 was calculated based on (FY) 2017 costs, as follows:

*Indirect Labor and Benefits Costs:*

\$1,705,152,274

*Non-Labor Costs:* + \$3,213,504,014

*Total Indirect Costs:* \$4,918,656,288

*Direct Labor and Benefits Costs:*

+ \$6,640,044,003

*Corporate Overhead Rate:* 74.08%

*H. Description and Tables Showing Full Cost Determination for Estate Tax Closing Letter*

The IRS followed the guidance provided by the OMB Circular to compute the full cost of issuing estate tax closing letters to an authorized person. The OMB Circular explains that the full cost includes all indirect and direct costs to any part of the Federal Government including but not limited to direct and indirect personnel costs, physical overhead, rents, utilities, travel, and management costs.

#### 1. Request Processing Costs

Requests for estate tax closing letters are processed by GS Grade 5 and Grade 8 customer service representatives. Grade 5 representatives perform 80 percent of the work and Grade 8 representatives perform the remaining 20 percent of the work. The customer service representative verifies that the request is authorized and that the address information is correct. Because a separate estate tax closing letter is prepared for each executor, responding to requests often requires more than one letter, with an average of three letters per request. It requires approximately 0.65 staff hours for a customer service representative to review the return, create the estate tax closing letters, and prepare the letters for mailing. The IRS received an average of 17,249 requests for estate tax closing letters in FY 2017 and FY 2018 requiring 11,154 staff hours.

Total hours allocated to the cost must also include indirect hours for campus employees. Indirect hours are calculated by multiplying the direct hours by the indirect rate for employees, which is 60 percent. Using this information, IRS determined the total staff hours to process requests for estate tax closing letters are 17,846 as follows:

*Staff Hours:* 11,154

*Indirect Hours (60%):* 6,692

*Total Hours:* 17,846

To determine the labor and benefits costs, IRS converted total hours to full

time employees (FTE) by dividing the total hours by 2,080, which is the number of hours worked by a full time employee during the year, resulting in 8.58 FTE. IRS calculated the cost per FTE by adding 80 percent of the average salary and benefits for a GS 5 to 20 percent of the average salary and benefits for a GS 8 campus employee and determined the cost of labor and benefits related to this program is \$ 578,831 (rounded to the nearest whole dollar), as follows:

*GS-5 Salary and Benefits (\$62,330 × 80%):* \$49,864

*GS-8 Salary and Benefits (\$87,993 × 20%):* \$17,599

*Total Cost per FTE:* \$67,463

*Total FTE:* 8.58

*Total Labor & Benefits for processing requests:* \$578,831

#### 2. Quality Assurance Review Costs

Outgoing estate tax closing letters are subjected to quality review performed by GS 8 Grade quality assurance professionals. Specifically, five of every 100 estate tax closing letters mailed are reviewed for quality assurance. A quality assurance professional opens the return to (1) ensure the estate tax closing letter was authorized, (2) verify that the correct information was included in the letter, and (3) verify the address information. Quality assurance professionals then document their review. On average, quality assurance professionals spend .5 staff hours to review one estate tax closing letter. The estimated labor hours for quality assurance related to estate tax closing letters are 1,294, determined as follows:

*Estimated Volume of Requests:* 17,249

*Average Number of Letters per Request:* × 3

*Total Letters Available for Review:* 51,747

*Estimated Letters Reviewed (5%):* 2,587

*Hours per Review:* × 0.5

*Estimated Quality Assurance Hours:* 1,294

*Indirect Hours (60%):* 776

*Total Quality Assurance Hours:* 2,070

*Total FTE:* 1.00

*Cost Per Grade 8:* \$87,993

*Total Salary and Benefits for Quality Assurance:* \$87,563

#### 3. Overhead Calculation

The IRS applied the Corporate Overhead rate to the labor and benefits costs to calculate the full cost for issuing an estate tax closing letter. The full cost of the program is \$ 1,160,058, determined as follows:

*Total Processing Labor & Benefits:* \$578,831

*Total Quality Assurance Labor & Benefits:* \$87,563

*Total Labor and Benefits:* \$666,394

*Corporate Overhead (74.08%):*

+ \$493,664

*Full Cost:* \$1,160,058

To calculate the cost per request, IRS divided \$ 1,160,058 by the volume of 17,249 requests. The cost to issue an estate tax closing letter is \$ 67 (rounded to the nearest whole dollar), determined as follows:

*Full Cost:* \$1,160,058

*Estimated Volume:* + 17,249

*Cost Per Request:* \$67

#### Proposed Applicability Date

These regulations are proposed to apply to requests for an estate tax closing letter received by the IRS after the date that is 30 days after the date of publication in the **Federal Register** of a Treasury decision adopting these rules as final regulations.

#### Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. 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. The proposed regulations, which prescribe a fee to obtain a particular service, affect decedents' estates, which generally are not "small entities" as defined under 5 U.S.C. 601(6). Thus, these regulations have no economic impact on small entities. In addition, the dollar amount of the fee (\$67 as currently determined) is not substantial enough to have a significant economic impact on any entities that could be affected by establishing such a fee. Accordingly, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and IRS request

comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be available at <http://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments as prescribed in this preamble under the **DATES** heading. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 I.R.B. 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

### Drafting Information

The principal author of these regulations is Juli Ro Kim of the Office of Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document 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 <http://www.irs.gov>.

### List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

### PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

**Authority:** 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended by adding paragraph (b)(13) to read as follows:

#### § 300.0 User fees; in general.

\* \* \* \* \*

(b) \* \* \*

(13) Requesting an estate tax closing letter.

■ **Par. 3.** Section 300.13 is added to read as follows:

#### § 300.13 Fee for estate tax closing letter.

(a) *Applicability.* This section applies to the request by a person described in paragraph (c) of this section for an estate tax closing letter from the IRS.

(b) *Fee.* The fee for issuing an estate tax closing letter is \$67.

(c) *Person liable for the fee.* The person liable for the fee is the estate of the decedent or other person properly authorized under section 6103 of the Internal Revenue Code to receive and therefore to request the estate tax closing letter with respect to the estate.

(d) *Applicability date.* This section applies to requests received by the IRS after [date that is 30 days after these regulations are published as final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Acting Deputy Commissioner for Services and Enforcement.

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## SURFACE TRANSPORTATION BOARD

### 49 CFR Chapter X

[Docket No. EP 766]

### Joint Petition For Rulemaking—Annual Revenue Adequacy Determinations

**AGENCY:** Surface Transportation Board.

**ACTION:** Petition for rulemaking.

**SUMMARY:** The Surface Transportation Board (Board or STB) opens a rulemaking proceeding to consider a petition by several Class I railroads to change the Board's procedures for annually determining whether Class I rail carriers are revenue adequate. The Board seeks public comment on the petition and several specific related issues.

**DATES:** Comments are due March 1, 2021; replies are due March 31, 2021.

**ADDRESSES:** Comments and replies may be filed with the Board via e-filing on the Board's website at [www.stb.gov](http://www.stb.gov) and will be posted to the Board's website.

**FOR FURTHER INFORMATION CONTACT:** Amy Ziehm at (202) 245–0391.

Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** On September 1, 2020, Union Pacific Railroad Company (UP), Norfolk Southern Railway Company, and the U.S. rail operating affiliates of Canadian National Railway Company

(collectively, Joint Carriers) filed a joint petition for rulemaking to change the Board's procedures for determining which Class I rail carriers are earning adequate revenues under 49 U.S.C. 10704(a)(3).

The Board annually determines each Class I railroad's revenue adequacy in successive subdockets under Docket No. EP 552, most recently in *Railroad Revenue Adequacy—2019 Determination*, EP 552 (Sub-No. 24) (STB served Oct. 1, 2020).<sup>1</sup> Under the Board's procedures, “a railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment (ROI) equal to at least the current cost of capital for the railroad industry.” *Id.* at 1.

The Joint Carriers propose two changes to the Board's procedures for annually determining revenue adequacy. First, the Joint Carriers propose that the Board determine whether a railroad is revenue adequate by comparing the extent by which its ROI exceeds the rail industry's cost of capital to the extent by which companies in the S&P 500 exceed their cost of capital—in short, to examine railroads in comparison with the larger universe of S&P 500 companies (the Comparison Proposal). (Pet. 3, 8.) The Joint Carriers contend that railroads compete against other firms for capital, and that the financial health of the railroad industry “must be considered in relation to the competition railroads face in the capital markets from other, unregulated firms.” (*Id.* at 3.) More specifically, the Joint Carriers argue that the Board should define annual revenue adequacy to mean that a railroad's “Adjusted STB ROI”<sup>2</sup> exceeds the rail industry cost of capital by more than the median S&P 500 firm's ROI exceeds its cost of capital. (*Id.* at 20–21.) Under the Comparison Proposal, the Board would direct the Association of American Railroads to submit “Adjusted STB ROI” and cost of capital calculations for every S&P 500 company, and the Board “would calculate the median difference between the Adjusted STB ROI and the cost of capital for all companies in the S&P 500, except for banking and real estate companies.”<sup>3</sup> (*Id.* at 21.) As part

<sup>1</sup> In that decision, the Board found five carriers (BNSF Railway Company, CSX Transportation, Inc. (CSXT), Norfolk Southern Combined Railroad Subsidiaries, Soo Line Corporation, and UP) revenue adequate in 2019. *R.R. Revenue Adequacy—2019 Determination*, EP 552 (Sub-No. 24), slip op. at 2.

<sup>2</sup> The petition also proposes certain modifications to the calculation of ROI, as discussed below. (See also Pet. 35–36.)

<sup>3</sup> The Joint Carriers state that banking and real estate companies were excluded from the comparison groups because they have different