

1 **TITLE _____ —ELIMINATION OF**
2 **DEFERRAL**
3 **Subtitle A—Elimination of Deferral**
4 **for Applicable Taxpayers**

5 **SEC. ___ 01. ELIMINATION OF DEFERRAL OF TAX.**

6 (a) IN GENERAL.—Subchapter E of chapter 1 is
7 amended by adding at the end the following new part:

8 **“PART IV—ELIMINATION OF DEFERRAL FOR**
9 **APPLICABLE TAXPAYERS**

“Subpart A. General provisions.

“Subpart B. Definitions and rules relating to applicable taxpayers.

“Subpart C. Other definitions and rules.

10 **“Subpart A—General Provisions**

“Sec. 490. Elimination of deferral of tax for applicable taxpayers.

“Sec. 491. Treatment of tradable covered assets.

“Sec. 492. Deferral recapture amount on applicable transfers of nontradable covered assets.

“Sec. 493. Special rules for application of nondeferral rules to certain pass-through entities.

“Sec. 494. Treatment of gifts, bequests, and transfers in trust.

11 **“SEC. 490. ELIMINATION OF DEFERRAL OF TAX FOR APPLI-**
12 **CABLE TAXPAYERS.**

13 “In the case of an applicable taxpayer for any taxable
14 year—

15 “(1) if there is a taxable event with respect to
16 any tradable covered asset of the taxpayer during
17 the taxable year, gain or loss shall be recognized as
18 provided in section 491,

1 “(2) if there is an applicable transfer by the
2 taxpayer during the taxable year of any nontradable
3 covered asset—

4 “(A) if such applicable transfer is a dis-
5 regarded nonrecognition event, gain or loss
6 shall be recognized as provided in section
7 492(a)(1), and

8 “(B) the tax imposed by this chapter for
9 the taxable year shall be increased as provided
10 in section 492 with respect to any gain from
11 any such transfer,

12 “(3) gain or loss with respect to any applicable
13 entity held by the taxpayer shall be taken into ac-
14 count as provided in section 493, and

15 “(4) in the case of any gift, bequest, or transfer
16 in trust by an applicable taxpayer or applicable enti-
17 ty held by an applicable taxpayer, section 494 shall
18 apply.

19 **“SEC. 491. TREATMENT OF TRADABLE COVERED ASSETS.**

20 “(a) IN GENERAL.—For purposes of this title, in the
21 case of a taxable event with respect to any tradable cov-
22 ered asset of an applicable taxpayer—

23 “(1) notwithstanding any other provision of this
24 title—

1 “(A) gain or loss shall be recognized and
2 taken into account in the taxable year in which
3 the taxable event occurs as if the taxpayer had
4 sold the tradable covered asset for its fair mar-
5 ket value—

6 “(i) in the case of a taxable event de-
7 scribed in subsection (b)(1), on the date of
8 the taxable event, and

9 “(ii) in the case of a taxable event de-
10 scribed in subsection (b)(2), immediately
11 before the taxable event, and

12 “(B) except as provided in subsection
13 (c)(1), gain or loss taken into account by reason
14 of a taxable event described in subsection (b)(1)
15 with respect to a tradable covered asset which
16 is a capital asset shall be treated as long-term
17 capital gain or long-term capital loss, respec-
18 tively, and

19 “(2) proper adjustments shall be made in the
20 amount of gain or loss subsequently realized for gain
21 or loss taken into account under paragraph (1).

22 “(b) TAXABLE EVENT.—For purposes of this part,
23 the term ‘taxable event’ means, with respect to any
24 tradable covered asset—

1 “(1) the holding of such asset as of the close
2 of any taxable year with respect to which a taxpayer
3 is an applicable taxpayer, and

4 “(2) any disregarded nonrecognition event.

5 “(c) SPECIAL RULES.—

6 “(1) CHARACTERIZATION AS ORDINARY INCOME
7 OR LOSS.— Except as provided by the Secretary,
8 subsection (a)(1)(B) shall not apply to any gain or
9 loss from a tradable covered asset if, under any
10 other provision of this title, such gain or loss—

11 “(A) is treated as gain or loss from the
12 sale or exchange of an asset which is not a cap-
13 ital asset, or

14 “(B) is treated as ordinary income or loss
15 on a basis other than the taxpayer’s holding pe-
16 riod in such asset.

17 “(2) HOLDING PERIOD.— For purposes of this
18 title, any taxable event described in subsection (b)(1)
19 with respect to any tradable covered asset shall not
20 be taken into account in determining the holding pe-
21 riod of the taxpayer with respect to such tradable
22 covered asset.

23 “(3) PROPER ADJUSTMENTS FOR SUBSEQUENT
24 GAIN OR LOSS.—For purposes of subsection (a)(2),
25 section 492(a)(1)(B), section 493(c)(1)(A)(ii), and

1 section 493(e)(3)(C), the proper adjustments re-
2 quired under such provisions shall include such ad-
3 justments in basis of property, or such other adjust-
4 ments in respect of property, as the Secretary deter-
5 mines necessary or appropriate.

6 **“SEC. 492. DEFERRAL RECAPTURE AMOUNT ON APPLICA-**
7 **BLE TRANSFERS OF NONTRADABLE COV-**
8 **ERED ASSETS.**

9 “(a) IN GENERAL.—If there is an applicable transfer
10 during a taxable year of a nontradable covered asset of
11 an applicable taxpayer—

12 “(1) in the case of an applicable transfer which
13 is a disregarded nonrecognition event—

14 “(A) notwithstanding any other provision
15 of this title, gain or loss shall be recognized and
16 taken into account by the taxpayer (including
17 for purposes of paragraph (2) and subsection
18 (c)) in the taxable year in which the transfer
19 occurs as if the taxpayer had sold the
20 nontradable covered asset for its fair market
21 value immediately before such transfer, and

22 “(B) proper adjustments shall be made in
23 the amount of gain or loss subsequently realized
24 for gain or loss taken into account under sub-
25 paragraph (A), and

1 “(2) if there is gain from the applicable trans-
2 fer, the tax imposed by this chapter for the taxable
3 year (determined without regard to this section)
4 shall be increased by the sum of the deferral recap-
5 ture amounts determined under subsection (b) for
6 each such transfer.

7 “(b) DEFERRAL RECAPTURE AMOUNT.—

8 “(1) IN GENERAL.—For purposes of this part—

9 “(A) IN GENERAL.—The term ‘deferral re-
10 capture amount’ means, with respect to any ap-
11 plicable transfer of any nontradable covered
12 asset, the aggregate amount of interest (deter-
13 mined in the manner provided under paragraph
14 (3)) on the deemed tax amount determined
15 under paragraph (2) for each taxable year to
16 which gain is allocated under paragraph (2)(A)
17 and which precedes the taxable year of the ap-
18 plicable transfer.

19 “(B) LIMITATION ON AMOUNT.—The
20 amount determined under subparagraph (A)
21 with respect to any applicable transfer shall not
22 exceed the applicable percentage of the gain
23 from such transfer. For purposes of this sub-
24 paragraph, the applicable percentage is the ex-
25 cess of—

1 “(i) 49 percent, over

2 “(ii) in the case of the transfer of a
3 nontradable covered asset which—

4 “(I) is a capital asset, the rate of
5 tax in effect under section 1(h)(1)(D)
6 for the taxable year of the transfer, or

7 “(II) is not a capital asset, the
8 highest rate of tax in effect under sec-
9 tion 1 for such taxable year.

10 “(2) DEEMED TAX AMOUNT.—For purposes of
11 paragraph (1)—

12 “(A) IN GENERAL.—The deemed tax
13 amount for any taxable year preceding the tax-
14 able year of any applicable transfer of a
15 nontradable covered asset shall be the amount
16 determined—

17 “(i) first, except as provided in sub-
18 paragraph (B), by allocating the amount of
19 gain from such transfer ratably to each
20 day in the taxpayer’s holding period of
21 such asset, and

22 “(ii) then by multiplying the amount
23 allocated under clause (i) to days in such
24 preceding taxable year by—

1 “(I) if such asset is a capital
2 asset, the rate of tax in effect under
3 section 1(h)(1)(D) for the taxable
4 year of such transfer, or

5 “(II) if such asset is not a capital
6 asset, the highest rate of tax in effect
7 under section 1 for such taxable year.

8 “(B) SPECIAL RULE FOR PERIODS BEFORE
9 BECOMING APPLICABLE TAXPAYER.—Notwith-
10 standing subparagraph (A)(i), any gain allo-
11 cated under such subparagraph to any taxable
12 year preceding the first taxable year for which
13 the taxpayer is treated as an applicable tax-
14 payer shall be allocated to such first taxable
15 year.

16 “(3) COMPUTATION OF INTEREST.—

17 “(A) IN GENERAL.—The amount of inter-
18 est referred to in paragraph (1) on any deemed
19 tax amount determined under paragraph (2) for
20 any preceding taxable year shall be determined
21 for the period—

22 “(i) beginning on the due date for
23 such preceding taxable year, and

24 “(ii) ending on the date on which the
25 applicable transfer occurs,

1 by using the rates determined under section
2 6621(b) (plus 1 percentage point), and the
3 method applicable under section 6621, for un-
4 derpayments of tax for such period.

5 “(B) DUE DATE.—For purposes of this
6 paragraph, the term ‘due date’ means, with re-
7 spect to any preceding taxable year, the date
8 prescribed by law (determined without regard to
9 extensions) for filing the return of the tax im-
10 posed by this chapter for such taxable year.

11 “(c) SPECIAL RULE FOR TAXPAYERS WITH NET
12 CAPITAL LOSSES.—

13 “(1) IN GENERAL.—If a taxpayer has a net
14 capital loss for any taxable year for which there is
15 an increase in tax under subsection (a)(2), such in-
16 crease in tax shall be reduced (but not below zero)
17 by the credit equivalent of such net capital loss.

18 “(2) CREDIT EQUIVALENT.—For purposes of
19 this subsection, the term ‘credit equivalent’ means,
20 with respect to any net capital loss for any taxable
21 year, an amount equal to such loss multiplied by the
22 rate of tax in effect under section 1(h)(1)(D) for
23 such taxable year.

24 “(3) COORDINATION WITH CARRYOVERS OF
25 LOSS.—For purposes of subsection (b) of section

1 1212, the net capital loss for a taxable year to which
2 paragraph (1) applies (determined without regard to
3 this subsection) shall be reduced (but not below
4 zero) by an amount equal to the amount of the re-
5 duction under paragraph (1) for such taxable year
6 divided by the rate of tax in effect under section
7 1(h)(1)(D) for such taxable year.

8 “(d) SPECIAL RULES FOR CERTAIN DIVIDEND DIS-
9 TRIBUTIONS.—

10 “(1) EXCESS DIVIDEND DISTRIBUTIONS.—

11 “(A) IN GENERAL.—For purposes of ap-
12 plying this section, any excess dividend shall be
13 treated as gain from an applicable transfer of
14 a nontradable covered asset occurring on the
15 date such dividend is received.

16 “(B) EXCESS DIVIDEND.—For purposes of
17 this part, the term ‘excess dividend’ means,
18 with respect to any nontradable covered asset
19 which consists of stock in a C corporation, any
20 dividend in respect of such stock received dur-
21 ing any taxable year to the extent such dividend
22 does not exceed its ratable portion of the total
23 excess dividends (if any) for such taxable year.

24 “(C) TOTAL EXCESS DIVIDENDS.—For
25 purposes of this paragraph—

11

1 “(i) IN GENERAL.—The term ‘total
2 excess dividends’ means, with respect to
3 stock in a C corporation described in sub-
4 paragraph (B), the excess (if any) of—

5 “(I) the amount of the dividends
6 in respect of such stock received by
7 the taxpayer during the taxable year,
8 over

9 “(II) 125 percent of the average
10 amount of dividends received in re-
11 spect of such stock by the taxpayer
12 during the 3 preceding taxable years
13 (or, if shorter, the portion of the tax-
14 payer’s holding period before the tax-
15 able year).

16 “(ii) NO EXCESS FOR 1ST YEAR.—Ex-
17 cept as provided by the Secretary, the total
18 excess dividends with respect to any stock
19 shall be zero for the taxable year in which
20 the taxpayer’s holding period in such stock
21 begins.

22 “(D) ADJUSTMENTS.—Under regulations
23 prescribed by the Secretary—

24 “(i) determinations under this para-
25 graph shall be made on a share-by-share

1 basis, except that shares with the same
2 holding period may be aggregated and
3 other shares may be aggregated to the ex-
4 tent provided by the Secretary,

5 “(ii) proper adjustments shall be
6 made for stock splits and stock dividends,

7 “(iii) if the taxpayer does not hold the
8 stock during the entire taxable year, divi-
9 dends received during such year shall be
10 annualized, and

11 “(iv) if the taxpayer’s holding period
12 includes periods during which the stock
13 was held by 1 or more other persons, divi-
14 dends with respect to such stock received
15 by such other person shall be taken into
16 account as if received by the taxpayer.

17 “(2) CAPITAL GAIN DIVIDENDS OF CERTAIN
18 REITS.—

19 “(A) IN GENERAL.—For purposes of ap-
20 plying this section, if an applicable taxpayer
21 holds directly (or indirectly through 1 or more
22 nontradable interests) stock in a real estate in-
23 vestment trust which is a nontradable covered
24 asset, any capital gain dividend received by
25 such taxpayer from such entity shall be treated

1 as gain from an applicable transfer of a
2 nontradable covered asset occurring on the date
3 such dividend is received.

4 “(B) REPORTING.—A real estate invest-
5 ment trust shall include in the written notice
6 for a capital gain dividend under section
7 857(b)(3)(B) its holding period in the asset giv-
8 ing rise to the capital gain dividend. The Sec-
9 retary shall provide rules for the determination
10 of holding periods in cases where the dividend
11 is properly allocable to gain from more than 1
12 asset.

13 “(3) HOLDING PERIOD.—Except as prescribed
14 by the Secretary, if an applicable taxpayer is treated
15 under this subsection as receiving gain from an ap-
16 plicable transfer of a nontradable covered asset, the
17 taxpayer’s holding period for purposes of computing
18 the deferral recapture amount under this section
19 shall be the taxpayer’s holding period with respect to
20 the stock or ownership interest in the entity to which
21 paragraph (1) or (2) applies (or, if shorter, the hold-
22 ing period included in the notice described in para-
23 graph (2)(B) in the case of a capital gain dividend).

24 “(e) HOLDING PERIOD.—For purposes of this sec-
25 tion—

1 “(1) IN GENERAL.—The taxpayer’s holding pe-
2 riod shall be determined under section 1223, except
3 that if a tradable covered asset of an applicable tax-
4 payer is converted to, or exchanged for, a
5 nontradable covered asset, such period shall only in-
6 clude the period after the most recent taxable event
7 under this part with respect to such tradable covered
8 asset.

9 “(2) SECRETARIAL AUTHORITY.—The Secretary
10 shall prescribe such regulations, rules, or guidance
11 providing for other modifications to holding periods
12 as may be necessary to carry out the purposes of
13 this section.

14 **“SEC. 493. SPECIAL RULES FOR APPLICATION OF NON-**
15 **DEFERRAL RULES TO CERTAIN PASS-**
16 **THROUGH ENTITIES.**

17 “(a) TREATMENT OF OWNERSHIP INTERESTS IN AP-
18 PLICABLE ENTITIES.—For purposes of applying this part,
19 except as provided in this section, any ownership interest
20 in an applicable entity held directly (or indirectly through
21 1 or more nontradable interests) by an applicable taxpayer
22 which is a tradable or nontradable covered asset shall be
23 treated in the same manner as any other such asset.

1 “(b) ADDITIONAL REQUIREMENTS FOR APPLICABLE
2 TAXPAYERS WHO ARE SIGNIFICANT OWNERS.—For pur-
3 poses of this part—

4 “(1) IN GENERAL.—In the case of any applica-
5 ble taxpayer which is a significant owner of an appli-
6 cable entity—

7 “(A) such taxpayer shall meet the report-
8 ing requirements under paragraph (2) with re-
9 spect to such entity, and

10 “(B) such taxpayer shall take into account
11 amounts with respect to such entity as required
12 under paragraph (3).

13 “(2) REPORTING REQUIREMENTS FOR SIGNIFI-
14 CANT OWNERS.—

15 “(A) NOTICE TO ENTITY OF STATUS.—

16 “(i) IN GENERAL.—In the case of the
17 first taxable year for which a taxpayer—

18 “(I) is an applicable taxpayer,

19 “(II) is a significant owner of an
20 applicable entity, and

21 “(III) holds directly a
22 nontradable interest in such applicable
23 entity,

24 such taxpayer shall, at such time and in
25 such manner as the Secretary shall pre-

1 scribe, notify such applicable entity that
2 such taxpayer is a taxpayer meeting the
3 requirements of subclauses (I), (II), and
4 (III) and that the applicable entity is sub-
5 ject to the notice requirements under sub-
6 section (c) with respect to such taxpayer.
7 Such taxpayer shall include with such no-
8 tice such information as the Secretary may
9 prescribe.

10 “(ii) PERIOD OF NOTICE.—Any notice
11 provided by a taxpayer under clause (i)
12 shall remain in effect, and such entity shall
13 continue to be subject to the reporting re-
14 quirements under subsection (c) with re-
15 spect to such taxpayer, for the period spec-
16 ified by the Secretary. The Secretary may
17 require additional reporting by the tax-
18 payer for purposes of carrying out this
19 clause.

20 “(B) REPORTING OF ELECTIONS TO TREAT
21 NONTRADABLE INTERESTS AS TRADABLE AS-
22 SETS.—If—

23 “(i) section 496(a)(1) applies to an
24 applicable taxpayer for any taxable year
25 for which a notice with respect to such tax-

1 payer is in effect under subparagraph (A),
2 and

3 “(ii) the applicable taxpayer made the
4 election under section 496(a)(3) to treat
5 any nontradable interest in an applicable
6 entity as a tradable covered asset for pur-
7 poses of section 496(a)(1),

8 the applicable taxpayer shall, at such times and
9 in such manner as the Secretary shall prescribe,
10 report to such applicable entity notice of such
11 election, the amount of gain described in section
12 496(c)(1) with respect to such treatment, and
13 the requirement for the entity to make the basis
14 adjustments described in section 496(c)(2).

15 “(3) CERTAIN GAIN OR LOSS OF APPLICABLE
16 ENTITY TAKEN INTO ACCOUNT BY SIGNIFICANT
17 OWNERS.—

18 “(A) IN GENERAL.—Each applicable tax-
19 payer for which a notice with respect to such
20 taxpayer is in effect under paragraph (2)(A) or
21 subsection (c)(2) with respect to an applicable
22 entity for any taxable year of the taxpayer
23 shall, in computing the taxpayer’s tax liability
24 under this chapter for such taxable year, take
25 into account such taxpayer’s share of any gain

1 or loss reported under subsection (c)(1)(A)(i) or
2 (c)(1)(B)(i) to the taxpayer for any taxable year
3 of such entity ending with or within such tax-
4 able year of the taxpayer.

5 “(B) BASIS ADJUSTMENTS.—Under rules
6 prescribed by the Secretary, if gain or loss is
7 taken into account by an applicable taxpayer
8 under subparagraph (A) with respect to any
9 tradable covered asset by reason of the taxpayer
10 holding a nontradable interest in an applicable
11 entity—

12 “(i) the applicable entity’s adjusted
13 basis of such asset (solely for purposes of
14 computing the taxpayer’s share of such ad-
15 justed basis), and

16 “(ii) the taxpayer’s adjusted basis of
17 such nontradable interest,

18 shall each be appropriately adjusted to reflect
19 gain or loss so taken into account. Such rules
20 shall also provide proper adjustments to ad-
21 justed bases where such ownership is held
22 through tiered entities.

23 “(C) SPECIAL RULES FOR DEFERRAL RE-
24 CAPTURE AMOUNT.—

1 “(B) 5-PERCENT OWNER.—

2 “(i) IN GENERAL.—The term ‘5-per-
3 cent owner’ mean, with respect to any ap-
4 plicable entity, an applicable taxpayer who
5 owns (or is considered as owning within
6 the meaning of section 318) at least 5 per-
7 cent of—

8 “(I) in the case of a corporation,
9 the stock (by vote or value) in such
10 corporation, or

11 “(II) in the case of an applicable
12 entity other than a corporation, the
13 capital or profits interests in such en-
14 tity.

15 “(ii) CONSTRUCTIVE OWNERSHIP
16 RULES.—For purposes of this subpara-
17 graph—

18 “(I) subparagraph (C) of section
19 318(a)(2) shall be applied by sub-
20 stituting ‘5 percent’ for ‘50 percent’,
21 and

22 “(II) in the case of an applicable
23 entity which is not a corporation,
24 ownership in such entity shall be de-
25 termined in accordance with regula-

1 tions prescribed by the Secretary
2 which shall be based on principles
3 similar to the principles of section 318
4 (as modified by clause (i)).

5 “(c) ADDITIONAL ENTITY REPORTING REQUIRE-
6 MENTS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (4), an applicable entity for any taxable year
9 shall, at such times and in such manner as the Sec-
10 retary shall prescribe, report to each applicable tax-
11 payer with respect to which a notice is in effect
12 under subsection (b)(2)(A) or paragraph (2)—

13 “(A) in the case of tradable covered assets
14 held by such entity, such taxpayer’s share of—

15 “(i) gain or loss determined by the en-
16 tity under rules similar to the rules under
17 section 491, and

18 “(ii) proper adjustments shall be
19 made in the amount of gain or loss subse-
20 quently realized for gain or loss taken into
21 account under clause (i),

22 “(B) in the case of nontradable covered as-
23 sets held by such entity—

1 “(i) such person’s share of any gain
2 or loss on any applicable transfer during
3 such taxable year of any such asset, and

4 “(ii) the holding period in each such
5 asset, and

6 “(C) such other information as the Sec-
7 retary determines necessary to carry out this
8 part.

9 “(2) NOTICE OF TAXPAYERS HOLDING INDI-
10 RECT INTERESTS IN OTHER APPLICABLE ENTI-
11 TIES.—

12 “(A) IN GENERAL.—Under rules pre-
13 scribed by the Secretary, except as provided in
14 subparagraph (B), if an applicable entity in a
15 tier of entities—

16 “(i) receives a notice under subsection
17 (b)(2)(A) with respect to an applicable tax-
18 payer, such entity shall notify each other
19 applicable entity in which such applicable
20 taxpayer holds, by reason of holding a
21 nontradable interest in such entity, a
22 nontradable interest in such other entity
23 that the person holding such interest in
24 such other entity is an applicable taxpayer
25 with respect to which the notice require-

1 ments of paragraph (1) apply to such other
2 entity, or

3 “(ii) receives a notice under clause (i)
4 or this clause, such entity shall notify each
5 other applicable entity in which the appli-
6 cable taxpayer holds, by reason of holding
7 an interest in the entity receiving such no-
8 tice, a nontradable interest in such other
9 entity that the person holding such interest
10 in such other entity is an applicable tax-
11 payer with respect to which the notice re-
12 quirements of paragraph (1) apply to such
13 other entity.

14 Any such notice shall remain in effect, and any
15 entity receiving such notice shall treat such tax-
16 payer as an applicable taxpayer, for the period
17 specified by the Secretary. The Secretary may
18 require additional reporting by such entities for
19 purposes of carrying out this clause.

20 “(B) REQUIREMENT ONLY APPLIES IF AP-
21 PLICABLE TAXPAYER IS SIGNIFICANT OWNER.—

22 An applicable entity shall be required to report
23 under subparagraph (A) to another applicable
24 entity only if the applicable taxpayer is a sig-
25 nificant owner (within the meaning of sub-

1 section (b)(4)) of such other entity, determined
2 only by taking into account interests in such
3 other entity which such applicable taxpayer
4 holds by reason of its ownership interests in the
5 entity otherwise required to report and such
6 other ownership interests in such other entity
7 as the Secretary may require to be taken into
8 account to prevent the avoidance of the pur-
9 poses of this part.

10 “(3) SPECIAL RULES FOR DISREGARDED NON-
11 RECOGNITION EVENTS.—In the case of an applicable
12 transfer of a nontradable covered asset of an appli-
13 cable entity which is a disregarded nonrecognition
14 event—

15 “(A) notwithstanding any other provision
16 of this title, gain or loss shall be recognized and
17 taken into account in the taxable year in which
18 the transfer occurs as if the entity had sold the
19 nontradable covered asset for its fair market
20 value immediately before such transfer (or such
21 other value as is determined as of such time
22 under rules prescribed by the Secretary),

23 “(B) such entity shall report the amount
24 of gain or loss required to be taken into account
25 under subparagraph (A) to—

1 “(i) each applicable taxpayer with re-
2 spect to which a notice is in effect which
3 such entity has received under subsection
4 (b)(1), and

5 “(ii) each other applicable entity from
6 which it has received a notice under para-
7 graph (2) with respect to such an applica-
8 ble taxpayer, and

9 “(C) proper adjustments shall be made in
10 the amount of gain or loss subsequently realized
11 for gain or loss taken into account under sub-
12 paragraph (A).

13 “(4) DELAY IN REPORTING REQUIREMENT.—
14 If—

15 “(A) a notice is received by an applicable
16 entity under subsection (b)(2)(A) or (c)(2) for
17 any taxable year of the entity with respect to
18 any person holding directly (or indirectly
19 through 1 or more nontradable interests) a
20 nontradable interest in such entity, and

21 “(B) no notice is in effect with respect to
22 such person or any other person for the pre-
23 ceding taxable year,

24 then, except as provided by the Secretary, such no-
25 tice shall be treated as first taking effect for pur-

1 poses of subsection (c), section 351(h), and section
2 1031(i) for the taxable year immediately following
3 the taxable year in which the notice is received. This
4 paragraph shall not apply to a notice described in
5 subparagraph (A) received by an applicable entity
6 from a person who was a significant owner (within
7 the meaning of subsection (b)(4)) of such entity (or
8 any predecessor entity) on the date of the enactment
9 of this part.

10 “(5) SECRETARIAL AUTHORITY.—In prescribing
11 rules for the application of this subsection, the Sec-
12 retary may provide—

13 “(A) simplified methods for applicable en-
14 tities to meet the requirements of this sub-
15 section, including the aggregation of gains and
16 losses where appropriate,

17 “(B) rules for determining a holder’s share
18 of amounts required to be reported by an appli-
19 cable entity under paragraph (1), and

20 “(C) any rules necessary to prevent the
21 avoidance of the purposes of this section, in-
22 cluding through the delay in the reporting re-
23 quirement under paragraph (4).

24 “(d) DEFINITIONS AND RULES RELATING TO APPLI-
25 CATION OF SECTION.—For purposes of this part—

1 “(1) APPLICABLE ENTITY.—The term ‘applica-
2 ble entity’ means any—

3 “(A) partnership,

4 “(B) S corporation, or

5 “(C) other pass-through entity specified in
6 regulations or guidance prescribed by the Sec-
7 retary.

8 “(2) ELECTION TO TREAT ENTITY AS APPLICA-
9 BLE TAXPAYER FOR TAXABLE EVENTS INVOLVING
10 TRADABLE ASSETS.—If an applicable entity elects
11 the application of this paragraph for any taxable
12 year—

13 “(A) this section shall not apply with re-
14 spect to any gain or loss in connection with a
15 taxable event involving any tradable covered
16 asset held directly (or indirectly through 1 or
17 more nontradable interests) by such entity, and

18 “(B) such entity shall be treated as an ap-
19 plicable taxpayer for purposes of applying sec-
20 tions 490(1) and 491 to such taxable event.

21 Such an election shall be made at such time and in
22 such manner as the Secretary may prescribe and,
23 once made, shall be irrevocable without the consent
24 of the Secretary.

1 “(e) NONTRADABLE INTEREST.—For purposes of
2 this part, the term ‘nontradable interest’ means any own-
3 ership interest in an applicable entity which is a
4 nontradable covered asset.

5 “(f) REGULATIONS AND GUIDANCE.—The Secretary
6 shall prescribe such regulations and guidance as are nec-
7 essary to carry out the provisions of this section, including
8 regulations or guidance necessary—

9 “(1) to prevent the use of pass-through entities
10 to avoid the purposes of this part,

11 “(2) to simplify the application of this part.

12 **“SEC. 494. TREATMENT OF GIFTS, BEQUESTS, AND TRANS-**
13 **FERS IN TRUST.**

14 “(a) IN GENERAL.—

15 “(1) DEEMED SALE.—If any person described
16 in paragraph (3) transfers any covered asset by gift,
17 upon death, or in trust, such covered asset shall be
18 treated as sold by such person for its fair market
19 value to the transferee on the date of such gift,
20 death, or transfer.

21 “(2) NO RECOGNITION FOR LOSSES ON TRANS-
22 FERS BY GIFT OR IN TRUST.—

23 “(A) IN GENERAL.—No loss shall be recog-
24 nized with respect to any covered asset which is

1 treated as sold under subsection (a) by reason
2 of a transfer by gift or in trust.

3 “(B) AMOUNT OF GAIN FOR TRANS-
4 FEREE.—If a loss is not recognized by the
5 transferor by reason of subparagraph (A) and
6 the transferee sells or otherwise disposes of the
7 covered asset (or of other property the basis of
8 which in the taxpayer’s hands is determined di-
9 rectly or indirectly by reference to such prop-
10 erty) at a gain, then such gain shall be recog-
11 nized only to the extent that it exceeds so much
12 of such loss as is properly allocable to the cov-
13 ered asset sold or otherwise disposed of by the
14 transferee.

15 “(3) PERSON DESCRIBED.—A person is de-
16 scribed in this section if such person is—

17 “(A) an individual who is an applicable
18 taxpayer for the taxable year in which the
19 transfer is made, or

20 “(B) an applicable entity with respect to
21 which a notice received by the entity under sub-
22 section (b)(2)(A) or (c)(2) of section 493 is in
23 effect at the time of such transfer.

24 “(b) SPECIAL RULES FOR CERTAIN GRANTOR
25 TRUSTS.—

1 “(1) TRANSFERS OF NONTRADABLE COVERED
2 ASSETS INTO CERTAIN GRANTOR TRUSTS.—For pur-
3 poses of applying this section to any transfer in
4 trust, except as otherwise provided in this para-
5 graph, any transfer of a nontradable covered asset
6 from the person treated as the owner of an applica-
7 ble grantor trust (other than a grantor trust which
8 is a wholly revocable trust) to such trust shall be
9 treated as a transfer to which subsection (a) applies.

10 “(2) DEEMED DISTRIBUTIONS.—In the case of
11 any applicable grantor trust, any property held by
12 such trust shall be treated as transferred by the
13 owner in a transfer to which subsection (a) ap-
14 plies—

15 “(A) on any date that—

16 “(i) the owner ceases to be treated as
17 the owner under this chapter,

18 “(ii) such property is distributed to
19 any person other than the owner, or

20 “(iii) the property would no longer be
21 included in the owner’s gross estate under
22 chapter 11, or

23 “(B) on the date of the death of the owner.

24 “(3) APPLICABLE GRANTOR TRUST.—For pur-
25 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘applicable
2 grantor trust’ means the portion of any trust
3 with respect to which an applicable taxpayer is
4 considered the owner under subpart E of part
5 I of subchapter J.

6 “(B) EXCEPTIONS.—The Secretary shall
7 provide for appropriate exceptions to the treat-
8 ment of categories of trusts as applicable grant-
9 or trusts under subparagraph (A), including ar-
10 rangements which are ordinarily used in the
11 course of a trade or business, employee benefit
12 arrangements, and arrangements for
13 securitization transactions.

14 “(c) EXCEPTIONS.—

15 “(1) SPOUSAL EXCEPTION.—

16 “(A) IN GENERAL.—Subsection (a) shall
17 not apply to any transfer if such transfer—

18 “(i) is—

19 “(I) made to the spouse or the
20 surviving spouse of the transferor, or

21 “(II) made to a former spouse of
22 the transferor if the transfer is inci-
23 dent to divorce, or

24 “(ii) is a transfer of qualified ter-
25 minable interest property or of property to

1 which section 2056(b)(5) or 2523(e) ap-
2 plies.

3 “(B) CERTAIN REMAINDER INTERESTS
4 TREATED AS TRANSFERRED BY SPOUSE.—Prop-
5 erty described in subparagraph (A)(ii) shall be
6 treated as sold by the spouse or surviving
7 spouse on the earlier of the date of the dispo-
8 sition of such property by such spouse or sur-
9 viving spouse or the date of the death of such
10 spouse or surviving spouse.

11 “(C) QUALIFIED TERMINABLE INTEREST
12 PROPERTY.—For purposes of this paragraph,
13 the term ‘qualified terminable interest property’
14 means any property described in section
15 2056(b)(7) or 2523(f)(2).

16 “(D) DISALLOWANCE OF SPOUSAL EXCEP-
17 TION WHERE SPOUSE OR SURVIVING SPOUSE
18 NOT UNITED STATES CITIZEN OR LONG-TERM
19 RESIDENT.—

20 “(i) IN GENERAL.—Subparagraph (A)
21 shall not apply if the spouse or surviving
22 spouse of the decedent is not a citizen or
23 long-term resident of the United States.

24 “(ii) LONG-TERM RESIDENT.—For
25 purposes of clause (i), the term ‘long-term

1 resident' means any individual (other than
2 a citizen of the United States) who is a
3 lawful permanent resident of the United
4 States—

5 “(I) for the taxable year in which
6 the transfer described in subsection
7 (a) occurs, and

8 “(II) in at least 8 taxable years
9 during the period of 15 taxable years
10 ending with the taxable year during
11 which the transfer described in sub-
12 section (a) or (b)(1) occurs.

13 For purposes of the preceding sentence, an
14 individual shall not be treated as a lawful
15 permanent resident for any taxable year if
16 such individual is treated as a resident of
17 a foreign country for the taxable year
18 under the provisions of a tax treaty be-
19 tween the United States and the foreign
20 country and does not waive the benefits of
21 such treaty applicable to residents of the
22 foreign country.

23 “(2) GIFTS AND BEQUESTS TO CHARITY.—

24 “(A) IN GENERAL.—Subsection (a) shall
25 not apply to any transfer if such transfer is

1 made to or for the use of an organization de-
2 scribed in section 170(c).

3 “(B) SPECIAL RULE FOR SPLIT-INTEREST
4 TRUSTS.—In the case of any transfer—

5 “(i) to a charitable remainder annuity
6 trust (as defined in section 664) or a char-
7 itable remainder unitrust (as defined in
8 section 664), or

9 “(ii) of an interest described in sec-
10 tion 170(f)(2)(B),

11 subsection (a) shall not apply to the portion of
12 such transfer which is to or for the use of an
13 organization described in section 170(c).

14 “(C) SPECIAL RULE FOR POOLED INCOME
15 FUNDS.—In the case of any transfer to a pooled
16 income fund (as defined in section 642(c)(5)),
17 subsection (a) shall not apply to the portion of
18 such transfer which is to or for the use of an
19 organization described in section 170(b)(1)(A)
20 (other than in clauses (vii) or (viii)).

21 “(3) QUALIFIED DISABILITY TRUSTS AND CEM-
22 ETERY PERPETUAL CARE FUNDS.—Subsection (a)
23 shall not apply to transfers to any qualified dis-
24 ability trust (as defined in section 642(b)(2)(C)(ii))

1 or to transfers to any cemetery perpetual care fund
2 described in section 642(i).

3 “(d) BASIS OF TRANSFEREE.—

4 “(1) IN GENERAL.—Notwithstanding sections
5 1014 and 1015, to the extent that subsection (a) ap-
6 plies to any transfer of property—

7 “(A) except as provided in subparagraph
8 (B), the basis of the property in the hands of
9 the transferee shall be the fair market value of
10 the property (consistent with the amount taken
11 into account by the transferor under subsection
12 (a)), and

13 “(B) in the case such transfer is a transfer
14 upon death to any individual described in sub-
15 section (c)(1)(A)(i), the basis of the property in
16 the hands of the transferee shall be the same as
17 it would be in the hands of the transferor, ex-
18 cept that if such basis (adjusted for the period
19 before the date of the transfer as provided in
20 section 1016) is greater than the fair market
21 value of the property at the time of death, then
22 for the purpose of determining loss the basis
23 shall be such fair market value.

24 “(2) CONSISTENT BASIS RULES FOR TRANS-
25 FERS BY DEATH.—In the case of any transfer upon

1 death, rules similar to section 1014(f) shall apply for
2 purposes of this section.

3 “(e) APPLICATION OF DEPRECIATION RECAPTURE
4 RULES.—Paragraphs (1) and (2) of section 1245(b) and
5 paragraphs (1) and (2) of section 1250(d) shall not apply
6 to any property treated as sold by reason of subsection
7 (a).

8 **“Subpart B—Definitions and Rules Relating to**
9 **Applicable Taxpayers**

“Sec. 495. Applicable taxpayer defined.

“Sec. 496. Special rules for taxpayers entering or changing status as applicable taxpayers.

10 **“SEC. 495. APPLICABLE TAXPAYER DEFINED.**

11 “(a) IN GENERAL.—For purposes of this part—

12 “(1) IN GENERAL.—The term ‘applicable tax-
13 payer’ means, with respect to any taxable year, any
14 taxpayer—

15 “(A) which is an individual who met either
16 the income test of paragraph (2) or the asset
17 test of paragraph (3) for each of the 3 imme-
18 diately preceding taxable years (including tax-
19 able years beginning before the date of the en-
20 actment of this part which are included in any
21 such 3-taxable year period), or

22 “(B) which is—

23 “(i) an applicable trust, or

1 “(ii) the estate of an individual who
2 was an applicable taxpayer for any taxable
3 year during the 4-taxable year period end-
4 ing with the taxable year in which the indi-
5 vidual died.

6 “(2) INCOME TEST.—The requirements of this
7 paragraph are met for any taxable year if the appli-
8 cable adjusted gross income of the taxpayer for the
9 taxable year exceeds \$100,000,000 (\$50,000,000 in
10 the case of a married individual filing separately).

11 “(3) ASSET TEST.—The requirements of this
12 paragraph are met for any taxable year if the aggre-
13 gate applicable value of all tradable and nontradable
14 covered assets held by the taxpayer as of the close
15 of the taxable year exceeds \$1,000,000,000
16 (\$500,000,000 in the case of a married individual
17 filing separately) .

18 “(4) SPECIAL RULES RELATING TO APPLICABLE
19 TAXPAYER STATUS.—

20 “(A) TERMINATION OF STATUS OF INDI-
21 VIDUAL TAXPAYERS.—A taxpayer who is treat-
22 ed as an applicable taxpayer under paragraph
23 (1)(A) for any taxable year shall continue to be
24 so treated until the first taxable year with re-
25 spect to which—

1 “(i) the taxpayer does not, for each of
2 the 3 taxable years immediately preceding
3 such taxable year, meet either—

4 “(I) the income test of paragraph
5 (2) in effect for each such preceding
6 taxable year, or

7 “(II) the asset test of paragraph
8 (3) in effect for such preceding tax-
9 able year,

10 except that each such paragraph shall be
11 applied for purposes of this clause by sub-
12 stituting an amount equal to one-half of
13 the dollar amount in effect under such
14 paragraph for each such preceding taxable
15 year for such dollar amount, and

16 “(ii) the taxpayer elects, in such man-
17 ner and form and at such time as the Sec-
18 retary may prescribe, not to be so treated
19 for such first taxable year.

20 “(B) EARLIER TERMINATION ELECTION OF
21 APPLICABLE TAXPAYER STATUS FOR DIVORCED
22 INDIVIDUALS.—If—

23 “(i) an applicable taxpayer ceases to
24 be a married individual by reason of a de-

1 cree of divorce or separate maintenance
2 issued during any taxable year, and

3 “(ii) such taxpayer, for the first tax-
4 able year following the taxable year de-
5 scribed in clause (i), does not meet ei-
6 ther—

7 “(I) the income test of paragraph
8 (2), except that such paragraph shall
9 be applied for purposes of this sub-
10 clause by substituting ‘\$1,000,000’
11 for ‘\$50,000,000’, or

12 “(II) the asset test of paragraph
13 (3), except that such paragraph shall
14 be applied for purposes of this sub-
15 clause by substituting ‘\$10,000,000’
16 for ‘\$500,000,000’,

17 then such taxpayer may elect, in such manner
18 and form and at such time as the Secretary
19 may prescribe, not to be treated as an applica-
20 ble taxpayer beginning with such first taxable
21 year.

22 “(C) ELECTION.—An election under sub-
23 paragraph (A) or (B)—

24 “(i) shall be made with the taxpayer’s
25 return of tax for the taxable year to which

1 such election first applies (or such other
2 time as the Secretary shall prescribe) and
3 shall be in such form and manner as the
4 Secretary may prescribe, and

5 “(ii) shall apply to such first taxable
6 year and all subsequent taxable years until
7 the first taxable year for which the tax-
8 payer is again treated as an applicable tax-
9 payer by reason of meeting the require-
10 ments of paragraph (1)(A).

11 “(5) SPECIAL RULES FOR MARRIED INDIVID-
12 UALS.—

13 “(A) APPLICABLE TAXPAYERS BECOMING
14 MARRIED INDIVIDUALS.—If an individual was
15 an applicable taxpayer for any taxable year be-
16 fore the individual became a married individual
17 (within the meaning of section 7703), such indi-
18 vidual and the individual’s spouse shall be
19 treated as applicable taxpayers for such taxable
20 year and subsequent taxable years.

21 “(B) MARRIED INDIVIDUALS FILING SEPA-
22 RATELY.—If a married individual filing sepa-
23 rately is treated as an applicable taxpayer for
24 any taxable year, such individual’s spouse shall

1 be treated as an applicable taxpayer for such
2 taxable year.

3 “(C) FIRST-YEAR ELECTIONS.—Under
4 rules prescribed by the Secretary, if an indi-
5 vidual is first treated as an applicable taxpayer
6 for a taxable year by reason of the application
7 of subparagraph (A) or (B), section 496 shall
8 apply to such taxpayer for such first taxable
9 year only with respect to assets held separately
10 by such individual unless such taxable year is
11 also the first taxable year for which the individ-
12 ual’s spouse is an applicable taxpayer.

13 “(6) REGULATORY AUTHORITY.—The Secretary
14 shall prescribe such regulations and guidance as may
15 be necessary to carry out the provisions of this sub-
16 section, including—

17 “(A) rules waiving the application of para-
18 graph (5)(B) in cases where the Secretary de-
19 termines equitable relief is appropriate,

20 “(B) rules providing for the application of
21 this subsection in cases where the filing status
22 of a taxpayer changes between any taxable year
23 and any of the 3 immediately preceding taxable
24 years, including the first taxable year in which

1 a taxpayer files a joint return after becoming
2 married, and

3 “(C) rules requiring such information re-
4 porting as the Secretary determines necessary
5 to determine whether a taxpayer is an applica-
6 ble taxpayer

7 “(b) APPLICABLE ADJUSTED GROSS INCOME.—For
8 purposes of this section, the term ‘applicable adjusted
9 gross income’ means modified adjusted gross income as
10 defined in section 36B(d)(2)(B), except that—

11 “(1) clause (i) thereof shall be applied by sub-
12 stituting ‘sections 911, 931, and 933’ for ‘section
13 911’, and

14 “(2) in the case of a trust, no deduction under
15 section 651 or 661 shall be allowed.

16 “(c) APPLICABLE TRUST.—For purposes of this sec-
17 tion—

18 “(1) IN GENERAL.—The term ‘applicable trust’
19 means a trust (other than a grantor-owned trust)
20 which, for each of the 3 taxable years immediately
21 preceding such taxable year (including taxable years
22 beginning before the date of the enactment of this
23 part which are included in any such 3-taxable year
24 period), meets either—

1 “(A) the income test of subsection (a)(2),
2 except that such subsection shall be applied for
3 purposes of this subparagraph by substituting
4 ‘\$10,000,000’ for ‘\$50,000,000’, or

5 “(B) the asset test of subsection (a)(3), ex-
6 cept that such subsection shall be applied for
7 purposes of this subparagraph by substituting
8 ‘\$100,000,000’ for ‘\$500,000,000’.

9 “(2) EXCEPTIONS.—Such term shall not in-
10 clude—

11 “(A) a qualified disability trust (as defined
12 in section 642(b)(2)(C)(ii)),

13 “(B) any portion of a trust which consists
14 of property permanently set aside for the exclu-
15 sive use of an organization described in section
16 170(c),

17 “(C) a pooled income fund (as defined in
18 section 642(c)(5)) or a cemetery perpetual care
19 fund (as described in section 642(i)),

20 “(D) a settlement trust (as defined in sec-
21 tion 646),

22 “(E) any charitable remainder annuity
23 trust (as defined in section 664),

24 “(F) any charitable remainder unitrust (as
25 defined in section 664), or

1 “(G) any other category of trust identified
2 in regulations or guidance provided by the Sec-
3 retary.

4 “(3) GRANTOR TRUSTS.—For purposes of ap-
5 plying this section—

6 “(A) the term ‘grantor-owned trust’ means
7 any portion of a trust with respect to which the
8 grantor is considered the owner under subpart
9 E of part I of subchapter J, and

10 “(B) in determining whether the grantor
11 of a grantor-owned trust is an individual de-
12 scribed in subsection (a)(1)(A), the assets of
13 such trust shall be included in the assets of
14 such individual.

15 **“SEC. 496. SPECIAL RULES FOR TAXPAYERS ENTERING OR**
16 **CHANGING STATUS AS APPLICABLE TAX-**
17 **PAYERS.**

18 “(a) INITIAL TREATMENT AS APPLICABLE TAX-
19 PAYER.—

20 “(1) IN GENERAL.—In the case of the first tax-
21 able year for which a taxpayer is an applicable tax-
22 payer—

23 “(A) the taxpayer may make the election
24 under paragraph (3) with respect to
25 nontradable covered assets, and

1 “(B) if the taxpayer elects the application
2 of this subparagraph, the net first-year tax li-
3 ability of the taxpayer for such taxable year
4 shall be payable in 5 equal annual installments
5 over the 5-taxable year period beginning with
6 such taxable year.

7 “(2) NET FIRST-YEAR TAX LIABILITY.—For
8 purposes of this section—

9 “(A) IN GENERAL.—The term ‘net first-
10 year tax liability’ means, with respect to the
11 first taxable year described in paragraph (1),
12 the excess (if any) of—

13 “(i) such taxpayer’s net income tax
14 for such taxable year, over

15 “(ii) such taxpayer’s net income tax
16 for such taxable year determined without
17 regard to gain or loss of the taxpayer
18 taken into account for such taxable year by
19 reason of a taxable event described in sec-
20 tion 491(b)(1).

21 “(B) NET INCOME TAX.—The term ‘net
22 income tax’ means the regular tax liability re-
23 duced by the credits allowed under subparts A,
24 B, and D of part IV of subchapter A.

1 “(3) ELECTION TO PAY AND DEFER TAX ON
2 NONTRADABLE ASSETS.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (C), a taxpayer may elect to treat
5 any nontradable covered asset held by the tax-
6 payer as of the end of the first taxable year de-
7 scribed in paragraph (1) as a tradable covered
8 asset for purposes of applying section 491(b)(1)
9 and this subsection.

10 “(B) DETERMINATION OF GAIN.—

11 “(i) IN GENERAL.—For purposes of
12 applying section 491(a)(1)(A), the fair
13 market value of any asset with respect to
14 which an election is in effect under sub-
15 paragraph (A) shall be the amount speci-
16 fied by the taxpayer in such election, ex-
17 cept that such value may not, unless other-
18 wise provided by the Secretary, be less
19 than the taxpayer’s adjusted basis in such
20 asset immediately before the taxable event.

21 “(ii) NO DEDUCTIONS OR CREDITS
22 FOR BASIS INCREASES.—If there is any in-
23 crease under this part in the taxpayer’s ad-
24 justed basis of any asset by reason of an
25 election under this paragraph, no deduc-

1 tion or credit shall be allowed under this
2 title with respect to the portion of such ad-
3 justed basis attributable to such increase.

4 “(C) ONLY SIGNIFICANT OWNER OF APPLI-
5 CABLE ENTITY MAY ELECT.—In the case of a
6 nontradable covered asset which is a
7 nontradable interest in an applicable entity, an
8 applicable taxpayer may make an election under
9 subparagraph (A) with respect to such asset
10 only if such taxpayer is a significant owner (as
11 defined in section 493(b)(4)(A)) of such entity
12 with respect to whom a notice is in effect under
13 section 493(b)(2)(A) for the taxable year for
14 which the election is being made.

15 “(4) SPECIAL RULE WHERE DELAY IN REPORT-
16 ING BY APPLICABLE ENTITY.—

17 “(A) IN GENERAL.—If—

18 “(i) there is a delay in reporting to an
19 applicable taxpayer by 1 or more applicable
20 entities by reason of section 493(e)(4), and

21 “(ii) any gain or loss is reported by
22 such entities to such taxpayer under sec-
23 tion 493(e)(1)(A)(i) and is taken into ac-
24 count in such taxpayer’s taxable year im-

1 mediately succeeding the first taxable year
2 described in paragraph (1),
3 then, subject to such rules as the Secretary may
4 prescribe, the taxpayer may elect under para-
5 graph (1)(B) to treat the net tax liability de-
6 scribed in subparagraph (B) as net first-year
7 tax liability payable in 5 equal annual install-
8 ments beginning with such succeeding taxable
9 year. The rules of paragraph (5) shall apply to
10 such installments in the same manner as such
11 rules apply to installments for such first taxable
12 year.

13 “(B) NET TAX LIABILITY.—For purposes
14 of subparagraph (A), the net tax liability de-
15 scribed in this subparagraph is, with respect to
16 the taxable year described in such subpara-
17 graph, the excess (if any) of—

18 “(i) such taxpayer’s net income tax
19 for such taxable year, over

20 “(ii) such taxpayer’s net income tax
21 for such taxable year determined without
22 regard to gain or loss of the taxpayer de-
23 scribed in subparagraph (A)(ii).

24 “(5) RULES RELATING TO INSTALLMENT PAY-
25 MENTS.—

1 “(II) APPLICABLE PERCENT-
2 AGE.—For purposes of this subpara-
3 graph, the applicable percentage is the
4 percentage determined by dividing the
5 gain not taken into account in deter-
6 mining net income tax under para-
7 graph (2)(A)(ii) with respect to the
8 asset described in subclause (I) by the
9 aggregate amount of all gain not so
10 taken into account.

11 “(ii) FAILURE TO PAY, ETC.—In the
12 case of an addition to tax for failure to
13 timely pay any installment required under
14 this subsection, the death of the taxpayer,
15 or the filing of a petition by the taxpayer
16 in a title 11 or similar case, then the un-
17 paid portion of all remaining installments
18 shall be due on the date of such event (or
19 in the case of a title 11 or similar case, the
20 day before the petition is filed).

21 “(C) PRORATION OF DEFICIENCY TO IN-
22 STALLMENTS.—If an election is made under
23 paragraph (1) to pay the net first-year tax li-
24 ability under this section in installments and a
25 deficiency has been assessed with respect to

1 such net tax liability, the deficiency shall be
2 prorated to the installments payable under
3 paragraph (1). The part of the deficiency so
4 prorated to any installment the date for pay-
5 ment of which has not arrived shall be collected
6 at the same time as, and as a part of, such in-
7 stallment. The part of the deficiency so pro-
8 rated to any installment the date for payment
9 of which has arrived shall be paid upon notice
10 and demand from the Secretary. This sub-
11 section shall not apply if the deficiency is due
12 to negligence, to intentional disregard of rules
13 and regulations, or to fraud.

14 “(D) INSTALLMENTS NOT TO PREVENT
15 CREDIT OR REFUND OF OVERPAYMENTS OR IN-
16 CREASE ESTIMATED TAXES.—If an election is
17 made under paragraph (1) to pay the net first-
18 year tax liability under this subsection in in-
19 stallments—

20 “(i) no installment of such liability
21 shall—

22 “(I) in the case of a request for
23 credit or refund, be taken into ac-
24 count as a liability for purposes of de-
25 termining whether an overpayment ex-

1 ists for purposes of section 6402 be-
2 fore the date on which such install-
3 ment is due, or

4 “**(II)** be treated as a tax imposed
5 by section 1 for purposes of section
6 6654, and

7 “**(ii)** the first sentence of section 6403
8 shall not apply with respect to any such in-
9 stallment.

10 “**(6) ELECTIONS.**—

11 “**(A) IN GENERAL.**—Any election under
12 paragraph (1), (3)(A), or (4)(A) shall be made
13 not later than the due date for the return of tax
14 for the first taxable year described in paragraph
15 (1) and shall be made in such manner as the
16 Secretary shall provide.

17 “**(B) EXTENSIONS.**—The Secretary shall
18 by regulation prescribe such circumstances and
19 procedures under which extensions of time will
20 be granted to make any election under para-
21 graph (1), (3)(A), or (4)(A). In determining
22 whether to grant relief under this subpara-
23 graph, the Secretary shall take into account all
24 relevant circumstances and the time for making

1 the election shall be treated as not expressly
2 provided by statute.

3 “(b) TREATMENT OF TAXPAYERS LEAVING AND RE-
4 ENTERING APPLICABLE STATUS.—If a taxpayer’s status
5 as an applicable taxpayer is terminated under section
6 495(a)(4) and the taxpayer is again treated as an applica-
7 ble taxpayer for a subsequent taxable year by reason of
8 meeting the requirements of section 495(a)(1)(A), the fol-
9 lowing rules shall apply:

10 “(1) SUBSEQUENT YEAR NOT TREATED AS
11 FIRST YEAR OF APPLICABLE TAXPAYER STATUS.—
12 Subsection (a) shall not apply to any taxable year in
13 which the taxpayer is again treated as an applicable
14 taxpayer and such subsequent taxable year shall not
15 be treated as the first taxable year for which the
16 taxpayer is an applicable taxpayer for any other pur-
17 pose of this part.

18 “(2) NONTRADABLE ASSETS.—If there is an
19 applicable transfer by a taxpayer of a nontradable
20 covered asset after the taxpayer is again treated as
21 an applicable taxpayer, the taxpayer’s holding period
22 of such asset for purposes of section 492 shall in-
23 clude all periods during which the taxpayer’s status
24 as an applicable taxpayer was previously terminated
25 and the taxpayer held such asset.

1 “(c) SPECIAL RULES RELATING TO OWNERSHIP OF
2 NONTRADABLE INTERESTS IN APPLICABLE ENTITIES.—

3 “(1) IN GENERAL.—For purposes of subsection
4 (a), if an applicable taxpayer elects under subsection
5 (a)(3) to treat a nontradable interest in an applica-
6 ble entity held directly as a tradable covered asset
7 for the first taxable year described in subsection
8 (a)(1), the amount of the gain taken into account
9 under subsection (a) with respect to such interest
10 shall be equal to the excess (if any) of—

11 “(A) the value of such interest specified by
12 the taxpayer under subsection (a)(3)(B), over

13 “(B) the taxpayer’s adjusted basis in such
14 interest as of the close of such taxable year.

15 “(2) ADJUSTMENTS TO BASES OF ENTITY’S
16 NONTRADABLE ASSETS.—

17 “(A) PARTNERSHIPS.—

18 “(i) IN GENERAL.—If the applicable
19 entity is a partnership, the partnership
20 shall increase the adjusted bases of the
21 partnership’s assets by the amount de-
22 scribed in paragraph (1). Such increase
23 shall constitute an adjustment to the bases
24 of partnership assets solely for determining

1 the applicable taxpayer's share of such
2 bases.

3 “(ii) ALLOCATION.—The Secretary
4 shall prescribe rules for the allocation of
5 the increase in adjusted bases among part-
6 nership assets in a manner which has the
7 effect of reducing the difference between
8 the value and such adjusted bases. Such
9 rules shall also provide proper adjustments
10 to adjusted bases where ownership is held
11 through tiered entities.

12 “(B) OTHER APPLICABLE ENTITIES.—
13 Rules similar to the rules of clause (i) shall
14 apply to applicable entities other than partner-
15 ships.

16 “(C) NO DEDUCTIONS OR CREDITS FOR
17 BASIS INCREASES.—If there is any increase in
18 the applicable entity's adjusted basis of any
19 asset by reason of subparagraph (A), no deduc-
20 tion or credit shall be allowed under this title
21 with respect to the portion of such adjusted
22 basis attributable to such increase.

23 “(3) DEFINITIONS.—Any term used in this sub-
24 section which is also used in section 493 shall have
25 the same meaning as when used in such section.

1 “(d) SPECIAL ELECTION FOR CERTAIN TRADABLE
2 ASSETS OF APPLICABLE TAXPAYERS.—

3 “(1) IN GENERAL.—If a qualified taxpayer
4 makes an election under this subsection, then any
5 stock held by such qualified taxpayer which would
6 (but for such election) be a tradable covered asset
7 and which is specified in such election shall be treat-
8 ed as a as a nontradable capital asset of the tax-
9 payer for purposes of this part.

10 “(2) LIMITATIONS.—

11 “(A) ONLY STOCK OF A SINGLE ENTITY
12 TAKEN INTO ACCOUNT.—An election made
13 under this subsection may not specify stock in
14 more than one C corporation or specify more
15 than one class of stock in such corporation.

16 “(B) VALUE.—

17 “(i) IN GENERAL.—The aggregate
18 value of stock specified in an election made
19 under this subsection shall not exceed
20 \$1,000,000,000.

21 “(ii) DETERMINATION.—For purposes
22 of clause (i), the value of any stock speci-
23 fied in an election made under this section
24 shall be determined as of the last day of

1 the first taxable year for which the tax-
2 payer is an applicable taxpayer.

3 “(3) QUALIFIED TAXPAYER.—For purposes of
4 this subsection, the term ‘qualified taxpayer’ means
5 any taxpayer—

6 “(A) which is not an estate or trust, and

7 “(B) for which the first taxable year for
8 which such taxpayer is an applicable taxpayer is
9 a taxable year that begins before January 1,
10 2023.

11 “(4) ELECTION.—

12 “(A) IN GENERAL.—Any election under
13 this subsection shall be made not later than the
14 due date for the return of tax for the first tax-
15 able year for which the taxpayer is an applica-
16 ble taxpayer and shall be made in such manner
17 as the Secretary shall provide.

18 “(B) EXTENSIONS.—The Secretary shall
19 by regulation prescribe such circumstances and
20 procedures under which extensions of time will
21 be granted to make any election under this sub-
22 section. In determining whether to grant relief
23 under this subparagraph, the Secretary shall
24 take into account all relevant circumstances and

1 the time for making the election shall be treat-
2 ed as not expressly provided by statute.

3 **“Subpart C—Other Definitions and Rules**

“Sec. 497. Terms and rules relating to covered assets.

“Sec. 498. Other definitions; coordination with title.

4 **“SEC. 497. TERMS AND RULES RELATING TO COVERED AS-**
5 **SETS.**

6 “(a) COVERED ASSET.—For purposes of this part,
7 except as otherwise provided in this part, the term ‘cov-
8 ered asset’ means any asset other than—

9 “(1) any interest of the taxpayer in an applica-
10 ble savings plan or in a defined benefit plan,

11 “(2) any cash or cash equivalent, or

12 “(3) any private placement life insurance or an-
13 nuity contract described in section 72(e)(12)(D).

14 “(b) TRADABLE COVERED ASSET.—For purposes of
15 this part, except as provided in section 496(d), the term
16 ‘tradable covered asset’ means—

17 “(1) any covered asset if—

18 “(A) interests in such asset are traded on
19 an established securities market,

20 “(B) interests in such assets are readily
21 tradable on a secondary market (or the sub-
22 stantial equivalent thereof),

23 “(C) interests in such assets are available
24 on an online or electronic platform that regu-

1 larly matches, or facilitates the matching of,
2 buyers and sellers of such assets, or

3 “(D) such asset is an asset for which the
4 Secretary determines there is a reasonable basis
5 to determine the asset’s fair market value annu-
6 ally, and

7 “(2) any derivative with respect to an under-
8 lying investment which—

9 “(A) is an asset described in paragraph
10 (1), or

11 “(B) is a nontradable covered asset which
12 is identified in regulations or other guidance
13 provided by the Secretary.

14 “(c) NONTRADABLE COVERED ASSET.—For pur-
15 poses of this part—

16 “(1) IN GENERAL.—The term ‘nontradable cov-
17 ered asset’ means any covered asset which is not a
18 tradable covered asset.

19 “(2) CERTAIN ASSETS ONLY COUNTED FOR DE-
20 TERMINING AGGREGATE VALUE OF ASSETS.—

21 “(A) IN GENERAL.—Any asset excluded
22 from treatment as a covered asset under para-
23 graph (1), (2), or (3) of subsection (a) shall be
24 taken into account as a nontradable covered
25 asset in computing the aggregate applicable

1 value of all tradable and nontradable covered
2 assets held by the taxpayer as of the close of
3 any taxable year for purposes of section
4 495(a)(3).

5 “(B) PRIVATE PLACEMENT LIFE INSUR-
6 ANCE AND ANNUITY CONTRACTS.—For pur-
7 poses of subparagraph (A)—

8 “(i) IN GENERAL.—The applicable
9 value of an private placement life insur-
10 ance or annuity contract (as defined in sec-
11 tion 72(e)(12)(D)) as of any date shall be
12 its cash surrender value (as determined
13 under section 7702(f)(2)(A)) on such date.

14 “(ii) ADJUSTMENTS.—The Secretary
15 shall by regulation provide for adjustments
16 to the cash surrender value determined
17 under clause (i) with respect to any con-
18 tract to the extent necessary to prevent the
19 avoidance of the purposes of this part, in-
20 cluding regulations which ensure that such
21 value as of any time properly reflects the
22 value of any underlying investments with
23 respect to such contract as of such time.

24 “(3) INVESTMENTS IN QUALIFIED OPPOR-
25 TUNITY FUNDS.—Notwithstanding subsection (b),

1 any investment in a qualified opportunity fund (as
2 defined in section 1400Z-2(d)) shall be treated as a
3 nontradable covered asset.

4 “(d) APPLICABLE VALUE.—For purposes of this
5 part—

6 “(1) TRADABLE COVERED ASSETS.—The appli-
7 cable value of any tradable covered asset as of any
8 date shall be its fair market value on such date.

9 “(2) NONTRADABLE COVERED ASSETS.—The
10 applicable value of any nontradable covered asset as
11 of any date shall be the greatest of—

12 “(A) the original cost basis of such asset,

13 “(B) the adjusted basis of such asset,

14 “(C) the value determined as of the date of
15 the last event with respect to the asset which
16 establishes such value,

17 “(D) in the case of an asset the value of
18 which is included in an applicable financial
19 statement, the value in the latest available
20 statement,

21 “(E) the value of such asset determined
22 for purposes of using such asset to secure any
23 indebtedness, and

1 “(F) the value of such asset determined
2 under such other valuation method as the Sec-
3 retary may prescribe.

4 If a covered asset would, but for subsection (c)(3) or
5 any other provision of this part, be treated as a
6 tradable covered asset, the asset’s applicable value
7 shall be determined under paragraph (1).

8 “(3) ADJUSTMENT FOR DEBT AND OTHER LI-
9 ABILITIES OF THE TAXPAYER.—Except as provided
10 by the Secretary, the aggregate applicable value of
11 all covered assets of the taxpayer as of any date (de-
12 termined without regard to this paragraph) shall be
13 reduced by the aggregate outstanding amount of—

14 “(A) indebtedness of the taxpayer as of
15 such date, and

16 “(B) any other liabilities (other than in-
17 debtedness) of the taxpayer as of such date
18 which the Secretary determines are appropriate
19 to be taken into account for such purpose.

20 “(4) RELIANCE ON VALUATION.—In deter-
21 mining the applicable value of any tradable covered
22 asset for purposes of this section, the taxpayer may
23 rely on a valuation which is—

24 “(A) provided to the taxpayer by a broker
25 under section 6045(b),

1 “(B) provided to the taxpayer by a dealer
2 in securities or a dealer in commodities, within
3 the meaning of section 475,

4 “(C) determined under an applicable finan-
5 cial statement, or

6 “(D) provided to the taxpayer by such
7 other persons as may be designated by the Sec-
8 retary.

9 “(5) APPLICABLE FINANCIAL STATEMENT.—
10 For purposes of this subsection, the term ‘applicable
11 financial statement’ has the meaning given such
12 term by section 451(b)(3).

13 “(6) SPECIAL RULES FOR APPLICABLE ENTI-
14 TIES.—In the case of an applicable entity—

15 “(A) adjustments to basis of any covered
16 asset under section 493(b)(2) shall be taken
17 into account in determining the adjusted basis
18 of such asset for purposes of paragraph (2)(B),

19 “(B) the value of a partner’s ownership in-
20 terest in such partnership under paragraph
21 (2)(C) shall not be less than the value of the
22 partner’s capital account under section 704,
23 and

24 “(C) the Secretary shall provide rules for
25 determining the share of a holder of an owner-

1 ship interest in such an entity of amounts in-
2 cluded in an applicable financial statement of
3 such entity for purposes of applying paragraph
4 (2)(D).

5 “(7) SECRETARIAL AUTHORITY.— The Sec-
6 retary shall prescribe such regulations, rules, and
7 guidance as may be necessary to carry out the pur-
8 poses of this subsection, including regulations, rules,
9 and guidance which—

10 “(A) prevent the avoidance of such pur-
11 poses,

12 “(B) provide rules for the application of
13 paragraph (2)(C), including in cases of trans-
14 actions in which gain or loss is not recognized
15 in connection with contributions, distributions,
16 and sales of substantially similar property from
17 which value may be derived, and

18 “(C) provide rules for determining the ap-
19 plicable value of assets in taxable years begin-
20 ning before the date of the enactment of this
21 part.

22 **“SEC. 498. OTHER DEFINITIONS; COORDINATION WITH**
23 **TITLE.**

24 “(a) APPLICABLE TRANSFER.—For purposes of this
25 part—

1 “(D) any other transaction in which gain
2 or loss is not otherwise recognized and which
3 the Secretary determines is necessary to be
4 treated as a disregarded nonrecognition event in
5 order to prevent the avoidance of the purposes
6 of this part.

7 “(3) CONVERSION OF ASSETS.—

8 “(A) NONTRADABLE TO TRADABLE.—If a
9 taxpayer holds a nontradable covered asset
10 (other than an investment in a qualified oppor-
11 tunity fund (as defined in section 1400Z-2(d)))
12 which, as part of a transaction or series of
13 transactions, is converted to, or exchanged for,
14 a tradable covered asset, such conversion or ex-
15 change shall be treated as a disregarded non-
16 recognition event if gain or loss (if any) on such
17 conversion or exchange is, without regard to
18 this part, not recognized under this chapter.

19 “(B) TRADABLE TO NONTRADABLE.—If a
20 taxpayer holds a tradable covered asset which,
21 as part of a transaction or series of trans-
22 actions, is converted to, or exchanged for, a
23 nontradable covered asset, such conversion or
24 exchange shall be treated as a taxable event
25 with respect to the asset being converted or ex-

1 changed if gain or loss (if any) on such conver-
2 sion or exchange is, without regard to this part,
3 not recognized under this chapter.

4 “(b) APPLICABLE SAVINGS PLAN.—The term ‘appli-
5 cable savings plan’ means—

6 “(1) a defined contribution plan to which sec-
7 tion 401(a) or 403(a) applies,

8 “(2) an annuity contract under section 403(b),

9 “(3) an eligible deferred compensation plan de-
10 scribed in section 457(b) which is maintained by an
11 eligible employer described in section 457(e)(1)(A),

12 “(4) an individual retirement plan.

13 “(5) an Archer MSA (within the meaning of
14 section 220(d)),

15 “(6) a qualified tuition program (as defined in
16 section 529(b),

17 “(7) an ABLE account (as defined in section
18 529A(e)(6)),

19 “(8) a Coverdell education savings account (as
20 defined in section 530), or

21 “(9) a health savings account (within the mean-
22 ing of section 223(d)).

23 “(c) DERIVATIVE; UNDERLYING INVESTMENT.—

1 “(1) DERIVATIVE.—The term ‘derivative’ has
2 the meaning given such term under section
3 59A(h)(4).

4 “(2) UNDERLYING INVESTMENT.—The term
5 ‘underlying investment’ means, with respect to any
6 derivative, any item—

7 “(A) which is described in clauses (i)
8 through (v) of section 59A(h)(4)(A) (or any
9 item substantially the same as any such item),
10 and

11 “(B) by reference to which the value of the
12 derivative, or any payment or other transfer
13 with respect to the derivative, is determined ei-
14 ther directly or indirectly.

15 “(d) REGULATORY AUTHORITY TO PREVENT AVOID-
16 ANCE AND TO COORDINATE WITH OTHER PROVISIONS OF
17 THIS TITLE.—The Secretary shall issue such regulations
18 or other guidance as are necessary to—

19 “(1) prevent taxpayers from avoiding the appli-
20 cation of this part, and

21 “(2) coordinate the provisions of this part with
22 other provisions of this title which require taxpayers
23 to take income into account in the absence of a pay-
24 ment or other distribution.”.

1 (b) CLERICAL AMENDMENT.—The table of parts for
2 subchapter E of chapter 1 is amended by adding at the
3 end the following new item:

“Part IV. Elimination of deferral for applicable taxpayers .”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable events and applicable
6 transfers occurring in taxable years beginning after De-
7 cember 31, 2021.

8 **SEC. _02. CARRYBACK OF CAPITAL LOSSES ATTRIBUTABLE**
9 **TO MARK-TO-MARKET RULES.**

10 (a) IN GENERAL.—Section 1212 is amended by add-
11 ing at the end the following new subsection:

12 “(d) CARRYBACK OF LOSSES OF APPLICABLE TAX-
13 PAYERS FROM ASSETS MARKED TO MARKET.—

14 “(1) IN GENERAL.—If an applicable taxpayer
15 elects to have this subsection apply to any taxable
16 year in which the taxpayer has a net marked-to-mar-
17 ket loss (in this subsection referred to as the ‘loss
18 year’), the amount of such net marked-to-market
19 loss—

20 “(A) shall be a carryback to each of the 3
21 taxable years preceding the loss year, and

22 “(B) to the extent that, after the applica-
23 tion of paragraphs (2) and (3), such loss is al-
24 lowed as a carryback to any such preceding tax-

1 able year, the amount so allowed shall be treat-
2 ed as a long-term capital loss.

3 “(2) AMOUNT CARRIED TO EACH TAXABLE
4 YEAR.—The entire amount of the net marked-to-
5 market loss for any loss year shall be carried to the
6 earliest of the taxable years to which such loss may
7 be carried back under paragraph (1). The portion of
8 such loss which shall be carried to each of the 2
9 other taxable years to which such loss may be car-
10 ried back shall be the excess (if any) of such loss
11 over the portion of such loss which, after the appli-
12 cation of paragraph (3), was allowed as a carryback
13 for any prior taxable year

14 “(3) AMOUNT WHICH MAY BE USED IN ANY
15 PRIOR TAXABLE YEAR.—An amount shall be allowed
16 as a carryback under paragraph (1) from a loss year
17 to any prior taxable year only to the extent—

18 “(A) such amount does not exceed the net
19 marked-to-market gain for such prior year, and

20 “(B) the allowance of such carryback does
21 not increase or produce a net operating loss (as
22 defined in section 172(c)) for such year.

23 “(4) NET MARKED-TO-MARKET LOSS.—For
24 purposes of this subsection, the term ‘net marked-to-

1 market loss' means, with respect to any taxable
2 year, an amount equal to—

3 “(A) the net capital loss for the taxable
4 year determined by taking into account only
5 marked-to-market gains and losses, reduced
6 (but not below zero) by

7 “(B) the aggregate amount of gains from
8 the sale or exchange of capital assets which are
9 not marked-to-market gains.

10 “(5) NET MARKED-TO-MARKET GAIN.—For
11 purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘net
13 marked-to-market gain’ means, with respect to
14 any taxable year, an amount equal to—

15 “(i) the capital gain net income for
16 the taxable year determined by taking into
17 account only marked-to-market gains and
18 losses, reduced (but not below zero) by

19 “(ii) the aggregate amount of losses
20 from the sale or exchange of capital assets
21 which are not marked-to-market losses.

22 “(B) SPECIAL RULE.—The net marked-to-
23 market gain for any taxable year before the loss
24 year shall be computed without regard to the

1 net marked-to-market loss for the loss year or
2 for any taxable year thereafter.

3 “(6) COORDINATION WITH CARRYFORWARD
4 PROVISIONS OF SUBSECTION (B)(1).—

5 “(A) CARRYFORWARD AMOUNT REDUCED
6 BY AMOUNT USED AS CARRYBACK.—For pur-
7 poses of applying subsection (b)(1)(B), if any
8 portion of the net marked-to-market loss for
9 any taxable year is allowed as a carryback
10 under paragraph (1) to any preceding taxable
11 year, the amount allowed as a carryback shall
12 be treated as a long-term capital gain for the
13 loss year.

14 “(B) CARRYOVER LOSS RETAINS CHAR-
15 ACTER AS ATTRIBUTABLE TO MARKED-TO-MAR-
16 KET.—Any amount carried forward as a long-
17 term capital loss to any taxable year under sub-
18 section (b)(1)(B) (after the application of sub-
19 paragraph (A)) shall, to the extent attributable
20 to marked-to market losses, be treated as
21 marked-to-market loss.

22 “(C) COORDINATION WITH REDUCTION IN
23 NET CAPITAL LOSS FOR CREDIT.—For purposes
24 of this paragraph and paragraph (4), any re-
25 duction in net capital loss under section

1 492(c)(3) (relating to reduction for credit
2 against tax attributable to deferral recapture
3 amount) shall, except as provided by the Sec-
4 retary, be applied before the application of such
5 paragraphs.

6 “(7) OTHER DEFINITIONS AND RULES.—For
7 purposes of this subsection—

8 “(A) MARKED-TO-MARKET GAINS AND
9 LOSSES.—

10 “(i) IN GENERAL.—The terms
11 ‘marked-to-market gains’ and ‘marked-to-
12 market losses’ means, with respect to any
13 applicable taxpayer for any taxable year,
14 gains or losses which are recognized and
15 taken into account by such taxpayer for
16 such taxable year under section 491 by
17 reason of taxable events described in sec-
18 tion 491(b)(1) with respect to tradable cov-
19 ered assets which are capital assets. Such
20 terms shall not include gains and losses
21 from nontradable covered assets which are
22 treated as tradable covered assets (and to
23 which section 491 applies) by reason of an
24 election under section 496(a)(3).

1 “(ii) APPLICABLE ENTITIES.—In the
2 case of marked-to-market gains or losses of
3 an applicable entity, this subsection shall
4 be applied at the partner or other owner-
5 ship level.

6 “(B) OTHER TERMS.—Any term used in
7 this subsection which is also used in part IV of
8 subchapter E shall have the same meaning as
9 when used in such part.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to loss years beginning after De-
12 cember 31, 2021.

13 **Subtitle B—Application of Other**
14 **Provisions to Applicable Tax-**
15 **payers and Entities**

16 **PART I—RULES FOR APPLICABLE ENTITIES AND**
17 **TRUSTS**

18 **SEC. ___ 011. TREATMENT OF LIKE-KIND EXCHANGES BY**
19 **APPLICABLE ENTITIES.**

20 (a) IN GENERAL.—Section 1031 is amended by add-
21 ing at the end the following new subsection:

22 “(i) SPECIAL RULES FOR APPLICABLE ENTITIES.—
23 Subsection (a) shall not apply to an exchange by an appli-
24 cable entity if a notice received by the entity under sub-

1 section (b)(2)(A) or (c)(2) of section 493 is in effect at
2 the time of such exchange.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to exchanges completed after De-
5 cember 31, 2021.

6 **SEC. ___ 012. TREATMENT OF TRANSFERS BY APPLICABLE**
7 **ENTITIES IN EXCHANGE FOR STOCK.**

8 (a) IN GENERAL.—Section 351 is amended by redес-
9 ignating subsection (h) as subsection (i) and by inserting
10 after subsection (g) the following new subsection:

11 “(h) SPECIAL RULES FOR APPLICABLE ENTITIES.—

12 “(1) IN GENERAL.—Subsection (a) shall not
13 apply to an exchange by an applicable entity if an
14 applicable notice received by the entity is in effect at
15 the time of such exchange.

16 “(2) APPLICABLE NOTICE.—For purposes of
17 paragraph (1)—

18 “(A) IN GENERAL.—The term ‘applicable
19 notice’ means, with respect to any applicable
20 entity, a notice—

21 “(i) which is received by the entity
22 under subsection (b)(2)(A) or (c)(2) of sec-
23 tion 493, and

1 “(ii) which relates to an applicable
2 taxpayer who is a 20-percent owner with
3 respect to such entity.

4 “(B) 20-PERCENT OWNER.—For purposes
5 of subparagraph (A), a 20-percent owner shall
6 be determined in the same manner as a 5-per-
7 cent owner under section 493(b)(4)(B), except
8 that ‘20 percent’ shall be substituted for ‘5 per-
9 cent’ in applying clauses (i) and (ii)(I) thereof.

10 “(3) APPLICABLE ENTITY.—For purposes of
11 this subsection, the term ‘applicable entity’ has the
12 meaning given such term by section 493.”.

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to exchanges completed after De-
15 cember 31, 2021.

16 **SEC. ___ 013. SPECIAL RULES FOR APPLICABLE TRUSTS.**

17 (a) IN-KIND DISTRIBUTIONS.—Section 643(e)(3) is
18 amended—

19 (1) in subparagraph (A), by striking “to which
20 an election under this paragraph applies” and in-
21 serting “to which this paragraph applies”, and

22 (2) by striking subparagraph (B) and inserting
23 the following:

1 “(B) DISTRIBUTIONS TO WHICH THIS
2 PARAGRAPH APPLIES.—This paragraph shall
3 apply to—

4 “(i) any distribution of property by an
5 estate which is described in section
6 495(a)(1)(B)(ii) or by an applicable trust
7 (as defined in section 495(c)), and

8 “(ii) any distribution during the tax-
9 able year of any other estate or trust which
10 makes an election under this paragraph.

11 Any election made under clause (ii) shall be
12 made on the return of such estate or trust for
13 such taxable year, and, once made, may be re-
14 voked only with the consent of the Secretary.”.

15 (b) TREATMENT OF LOANS.—Section 643(i) is
16 amended—

17 (1) by inserting “or an applicable trust (as de-
18 fined in section 495(c))” after “foreign trust” in
19 paragraph (1) ,

20 (2) by striking “who is a United States person”
21 in paragraph (1)(A) and inserting “who is not ex-
22 empt from tax under this chapter”,

23 (3) by striking “United States person” in para-
24 graph (1)(B) and inserting “person (other than a
25 person who is exempt from tax under this chapter)”,

1 (4) by striking paragraph (2)(C), and

2 (5) by striking “FOREIGN” in the heading
3 thereof and inserting “CERTAIN”.

4 (c) TREATMENT OF MULTIPLE TRUSTS.—Section
5 643(f)(2) is amended by inserting “or the rules of part
6 IV of subchapter E” after “this chapter”.

7 (d) FOREIGN TRUSTS.—

8 (1) IN GENERAL.—Subpart F of part I of sub-
9 chapter J is amended by adding at the end the fol-
10 lowing new section:

11 **“SEC. 686. SPECIAL RULES FOR APPLICABLE FOREIGN**
12 **TRUSTS.**

13 “(a) IN GENERAL.—For purposes of this part, in the
14 case of any beneficiary of an applicable foreign trust who
15 is required to include in income any amount attributable
16 to gain on an applicable transfer of any covered asset, the
17 amount of tax imposed under this chapter shall be in-
18 creased by the amount which bears the same ratio to the
19 amount of the deferral recapture amount which would be
20 determined on such applicable transfer under section
21 492(a) (determined as if such trust were an applicable tax-
22 payer and section 492 applied to any covered asset of the
23 trust) as—

1 “(1) the amount required to be included in in-
2 come attributable to the gain on such applicable
3 transfer, bears to

4 “(2) the total amount of the gain on such appli-
5 cable transfer.

6 “(b) EXCEPTION.—Subsection (a) shall not apply to
7 any amount to the extent that the applicable foreign trust
8 pays (at such time and in such manner as provided by
9 the Secretary) the tax which would be imposed under sec-
10 tion 492(a) (determined as if such trust were an applicable
11 taxpayer and section 492 applied to any covered asset of
12 the trust) with respect to the applicable transfer described
13 in subsection (a).

14 “(c) APPLICABLE FOREIGN TRUST.—For purposes of
15 this section, the term ‘applicable foreign trust’ means any
16 foreign trust which would be an applicable trust if such
17 trust were a domestic trust.

18 “(d) OTHER TERMS.—Any term used in this section
19 which is also used in part IV of subchapter E shall have
20 the same meaning as when used in such part.”.

21 (2) REPORTING.—Section 6048(c)(1) is amend-
22 ed by striking “and”, at the end of subparagraph
23 (B), by redesignating subparagraph (C) as subpara-
24 graph (D), and by inserting after subparagraph (B)
25 the following new subparagraph:

1 “(C) such information as the Secretary
2 shall require for purposes of determining the in-
3 crease (if any) in tax under section 686, and”.

4 (3) CLERICAL AMENDMENT.—The table of sec-
5 tions for subpart F of part I of subchapter J is
6 amended by adding at the end the following new
7 item:

“Sec. 686. Special rules for applicable foreign trusts.”.

8 (e) COORDINATION WITH THROWBACK RULES.—The
9 Secretary of the Treasury (or the Secretary’s delegate)
10 shall provide such regulations or other guidance as nec-
11 essary to coordinate the amendments made by this section
12 with the rules of subpart D of part I of subchapter J.

13 (f) EFFECTIVE DATES.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this section
16 shall apply to taxable years beginning after Decem-
17 ber 31, 2021.

18 (2) FOREIGN TRUSTS.—The amendments made
19 by subsection (e) shall apply to applicable transfers
20 occurring in taxable years beginning after December
21 31, 2021.

1 **PART II—TREATMENT OF DEFERRED COMPENSA-**
2 **TION AND CERTAIN LIFE INSURANCE AND**
3 **ANNUITY CONTRACTS**

4 **SEC. __021. ELIMINATION OF DEFERRAL OF TAX ON CER-**
5 **TAIN COMPENSATION.**

6 (a) IN GENERAL.—Subpart A of part I of subchapter
7 D of chapter 1 is amended by adding at the end the fol-
8 lowing new section:

9 **“SEC. 409B. SPECIAL RULES FOR CERTAIN DEFERRED COM-**
10 **PENSATION.**

11 “(a) IN GENERAL.—In the case of an individual who
12 is an applicable taxpayer for any taxable year, the tax-
13 payer’s tax under this chapter for the taxable year (deter-
14 mined without regard to this section) shall be increased
15 by an amount equal to the sum of—

16 “(1) the deferral recapture amount determined
17 under subsection (b)(1) for any applicable deferred
18 compensation which is includible in the gross income
19 of the individual for the taxable year, and

20 “(2) 10 percent of the amount of any severance
21 pay which is includible in the gross income of the in-
22 dividual during the taxable year.

23 “(b) DEFERRAL RECAPTURE AMOUNT.—For pur-
24 poses of this section—

25 “(1) IN GENERAL.—The term ‘deferral recap-
26 ture amount’ means, with respect to any applicable

1 deferred compensation includible in gross income for
2 the taxable year, the aggregate amount of interest
3 (determined in the manner provided under para-
4 graph (3)) on the deemed tax amount determined
5 under paragraph (2) for each preceding taxable year
6 to which compensation is allocated under paragraph
7 (2)(A).

8 “(2) DEEMED TAX AMOUNT.—

9 “(A) IN GENERAL.—The deemed tax
10 amount for any taxable year preceding the tax-
11 able year in which applicable deferred com-
12 pensation is includible in gross income shall be
13 the amount determined—

14 “(i) first, except as provided in sub-
15 paragraph (B), by allocating the amount of
16 such compensation ratably to each day in
17 the deferral period with respect to the ap-
18 plicable deferred compensation, and

19 “(ii) then by multiplying the amount,
20 if any, allocated under clause (i) to such
21 preceding taxable year by the highest rate
22 of tax in effect under section 1 for the tax-
23 able year in which the compensation is in-
24 cludible in gross income of the individual.

1 “(B) SPECIAL RULE FOR PERIODS BEFORE
2 BECOMING APPLICABLE TAXPAYER.—Notwith-
3 standing subparagraph (A)(i), any compensa-
4 tion which would be otherwise allocated under
5 such subparagraph to any taxable year pre-
6 ceding the first taxable year for which the tax-
7 payer is treated as an applicable taxpayer shall
8 be allocated to such first taxable year.

9 “(3) COMPUTATION OF INTEREST.—

10 “(A) IN GENERAL.—The amount of inter-
11 est referred to in paragraph (1) on any deemed
12 tax amount determined under paragraph (2) for
13 any preceding taxable year with respect to ap-
14 plicable deferred compensation shall be deter-
15 mined for the period beginning on the due date
16 for such preceding taxable year and ending on
17 the last day of the deferral period with respect
18 to the applicable deferred compensation, by
19 using the rates determined under section
20 6621(b) (plus 1 percentage point), and the
21 method applicable under section 6621, for un-
22 derpayments of tax for such period.

23 “(B) DUE DATE.—For purposes of this
24 paragraph, the term ‘due date’ means, with re-
25 spect to any preceding taxable year, the date

1 prescribed by law (determined without regard to
2 extensions) for filing the return of the tax im-
3 posed by this chapter for such taxable year.

4 “(4) LIMITATION.—In no case shall the deferral
5 recapture amount determined with respect to any
6 applicable deferred compensation which is includible
7 in gross income for a taxable year exceed an amount
8 equal to 10 percent of the amount of such com-
9 pensation.

10 “(c) DEFINITIONS.—For purposes of this section—

11 “(1) APPLICABLE TAXPAYER.—The term ‘appli-
12 cable taxpayer’ has the meaning given such term by
13 section 495.

14 “(2) APPLICABLE DEFERRED COMPENSA-
15 TION.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term ‘applicable deferred
18 compensation’ means—

19 “(i) any compensation provided under
20 a nonqualified deferred compensation plan,
21 as defined in section 409A(d)(1), except
22 that—

23 “(I) such term shall include stock
24 appreciation rights, and

1 “(II) compensation shall not fail
2 to be treated as deferred solely be-
3 cause such compensation is not treat-
4 ed as deferred for purposes of section
5 409A by reason of such compensation
6 being includible in gross income for
7 the first taxable year after a taxable
8 year in which such compensation is no
9 longer subject to a substantial risk of
10 forfeiture, and

11 “(ii) any other property transferred in
12 connection with the performance of serv-
13 ices which is subject to section 83.

14 “(B) EXCEPTIONS.—Such term does not
15 include—

16 “(i) severance pay, or

17 “(ii) any transfer of a profits interest
18 in a partnership.

19 “(C) EARNINGS AND INTEREST.—Any
20 earnings, interest, or similar adjustment in-
21 cluded in an amount of applicable deferred com-
22 pensation shall not be treated as separately de-
23 ferred from such amount.

24 “(3) SEVERANCE PAY.—The term ‘severance
25 pay’ means any compensation the payment or vest-

1 ing of which is contingent, in whole or in part, upon
2 the termination of employment or other services, in-
3 cluding cash, property, reimbursement or direct pro-
4 vision of living, travel, and business expenses, and
5 life, health, or other insurance, to the extent other-
6 wise includible in gross income.

7 “(4) DEFERRAL PERIOD.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraphs (B) and (C), the term ‘deferral
10 period’, with respect to any applicable deferred
11 compensation, means the period—

12 “(i) beginning on the date the com-
13 pensation was first deferred, without re-
14 gard to vesting, transferability, or risk of
15 forfeiture, and

16 “(ii) ending on the date such com-
17 pensation is includible in gross income or,
18 if applicable, the date described in section
19 83(a)(1) with respect to such compensa-
20 tion.

21 For purposes of the preceding sentence, com-
22 pensation shall be treated as first deferred as of
23 the date the applicable taxpayer first has a le-
24 gally binding right to the compensation or, in

1 the case of property subject to section 83, the
2 date of transfer of the property.

3 “(B) COMPUTATION OF INTEREST.—Solely
4 for purposes of subsection (b)(3), the deferral
5 period shall end on the last day of the taxable
6 year which includes the date described in sub-
7 paragraph (A)(ii).

8 “(C) PROPERTY TRANSFERRED PURSUANT
9 TO THE EXERCISE OF AN OPTION.—In the case
10 of property acquired pursuant to an option de-
11 scribed in section 83(e)(3), the deferral period
12 shall begin on the date of grant of the option
13 pursuant to which the property was acquired.

14 “(d) REGULATIONS.—The Secretary shall prescribe
15 such regulations as may be necessary or appropriate to
16 carry out the purposes of this section.”.

17 (b) INFORMATION REPORTING WITH RESPECT TO
18 APPLICABLE DEFERRED COMPENSATION.—Subpart B of
19 part III of subchapter A of chapter 61, as amended by
20 this Act, is amended by adding at the end the following
21 new section:

22 **“SEC. 6050AA. INFORMATION WITH RESPECT TO APPLICA-**
23 **BLE DEFERRED COMPENSATION.**

24 “(a) IN GENERAL.—Every person making a payment
25 to an individual in excess of \$5,000,000 of—

1 “(1) any applicable deferred compensation de-
2 scribed in section 409B(c)(2)(A), or

3 “(2) any severance pay (as defined in section
4 409B(d)(3)),

5 shall make a return, not later than January 31 of the first
6 calendar year beginning after the close of the taxable year
7 during which such payment is includible in gross income
8 of the individual.

9 “(b) INFORMATION REQUIRED.—The return required
10 by subsection (a) shall include—

11 “(1) the name, taxpayer identification number,
12 and address of the individual to whom the payment
13 of applicable deferred compensation or severance pay
14 is made,

15 “(2) the date any applicable deferred compensa-
16 tion was first deferred (the date of the transfer, in
17 the case of property subject to section 83, or the
18 date of grant of the option, in the case of property
19 acquired pursuant to an option described in section
20 83(e)(3)), without regard to vesting, transferability,
21 or risk of forfeiture,

22 “(3) the amount of such compensation includ-
23 ible in gross income of the individual for the taxable
24 year,

1 “(4) the amount of such severance pay includ-
2 ible in gross income of the individual for the taxable
3 year, and

4 “(5) such other information as the Secretary
5 may require.

6 “(c) SPECIAL RULES.—

7 “(1) SECTION 83 COMPENSATION.—With re-
8 spect to transfers of property to which section 83
9 applies, the information required under paragraphs
10 (2) and (3) of subsection (b) shall be reported sepa-
11 rately for each item of property transferred, except
12 that property for which the information required by
13 such paragraphs is identical may be aggregated.

14 “(2) OTHER COMPENSATION.—With respect to
15 any applicable deferred compensation not described
16 in paragraph (1), if such compensation is paid pur-
17 suant to more than 1 plan or arrangement or in-
18 volves amounts which were first deferred on more
19 than 1 date, the information required under para-
20 graphs (2) and (3) of subsection (b) shall be re-
21 ported separately with respect to each such plan or
22 arrangement and each such date.

23 “(d) STATEMENTS TO BE FURNISHED TO INDIVID-
24 UALS WITH RESPECT TO WHOM INFORMATION IS RE-
25 PORTED.—Every person required to make a return under

1 subsection (a) shall furnish to each individual with respect
2 to whom such a return is required a written statement
3 showing—

4 “(1) the name, address, and phone number of
5 the information contact of the person making such
6 return, and

7 “(2) the information required by paragraphs
8 (2) through (5) of subsection (b).

9 The written statement required under the preceding sen-
10 tence shall be furnished to the individual on or before Jan-
11 uary 31 of the first calendar year beginning after the close
12 of the taxable year for which the return under subsection
13 (a) was made.

14 “(e) ADJUSTMENTS FOR INFLATION.—

15 “(1) IN GENERAL.—In the case of any taxable
16 year beginning after 2022, the \$5,000,000 amount
17 under subsection (a) shall be increased by an
18 amount equal to the product of—

19 “(A) such dollar amount, and

20 “(B) the cost-of-living adjustment under
21 section 1(f)(3) for the calendar year in which
22 such taxable year begins, determined by sub-
23 stituting ‘calendar year 2021’ for ‘calendar year
24 1992’ in subparagraph (B) thereof.

1 “(2) ROUNDING.—If any amount as adjusted
2 under paragraph (1) is not a multiple of \$250,000,
3 such amount shall be rounded to the next lowest
4 multiple of \$250,000.

5 “(f) REGULATIONS.—The Secretary shall prescribe
6 such regulations as may be necessary or appropriate to
7 carry out the purposes of this section, including regula-
8 tions specifying what constitutes a payment to an indi-
9 vidual of applicable deferred compensation for purposes of
10 subsection (a).”.

11 (c) PENALTIES.—

12 (1) RETURNS.—Section 6724(d)(1)(B), as
13 amended by this Act, is amended by striking “or”
14 at the end of clause (xxvi), by inserting “or” at the
15 end of clause (xxvii), and by inserting after clause
16 (xxvii) the following new clause:

17 “(xxviii) section 6050AA (relating to
18 information with respect to applicable de-
19 ferred compensation),”.

20 (2) STATEMENTS.—Section 6724(d)(2), as
21 amended by this Act, is amended—

22 (A) by striking “or” at the end of subpara-
23 graph (KK),

24 (B) by striking the period at the end of
25 subparagraph (LL) and inserting “, or”, and

1 (C) by inserting after subparagraph (LL)
 2 the following new subparagraph:

3 “(MM) section 6050AA
 4 (relating to private place-
 5 ment life insurance and an-
 6 nuity contracts).”.

7 (d) CLERICAL AMENDMENTS.—

8 (1) IN GENERAL.—The table of sections for
 9 subpart A of part I of subchapter D of chapter 1 is
 10 amended by inserting after the item relating to sec-
 11 tion 409A the following new item:

“Sec. 409B. Special rules for certain deferred compensation.”.

12 (2) INFORMATION REPORTING.—The table of
 13 sections for subpart B of part III of subchapter A
 14 of chapter 61, as amended by this Act, is amended
 15 by inserting after the item relating to section 6050Z
 16 the following new item:

“Sec. 6050AA. Information with respect to applicable deferred compensation.”.

17 (e) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to taxable years beginning after
 19 December 31, 2021.

20 **SEC. ___ 022. RULES RELATING TO CERTAIN LIFE INSUR-**
 21 **ANCE AND ANNUITY CONTRACTS OF APPLI-**
 22 **CABLE TAXPAYERS.**

23 (a) TREATMENT OF AMOUNTS RECEIVED.—

1 (1) IN GENERAL.—Section 72(e) is amended by
2 redesignating paragraph (12) as paragraph (13) and
3 by inserting after paragraph (11) the following:

4 “(12) TREATMENT OF CERTAIN AMOUNTS RE-
5 CEIVED UNDER CERTAIN LIFE INSURANCE AND AN-
6 NUITY CONTRACTS OF APPLICABLE TAXPAYERS.—

7 “(A) IN GENERAL.—In the case of any ap-
8 plicable amount which is received during any
9 taxable year, notwithstanding paragraph (5)(A)
10 or (5)(E)—

11 “(i) if such amount is received on or
12 after the annuity starting date, paragraph
13 (2)(A) shall apply, and

14 “(ii) if such amount is received before
15 the annuity starting date or is received
16 with respect to a life insurance contract to
17 which this section applies, the rules of
18 clauses (i) and (ii) of paragraph (2)(B)
19 shall apply.

20 “(B) APPLICABLE AMOUNT.—

21 “(i) IN GENERAL.—For purposes of
22 this paragraph, the term ‘applicable
23 amount’ means—

24 “(I) any amount to which this
25 subsection applies which is received

1 under an applicable private placement
2 life insurance or annuity contract, and

3 “(II) in the case of an applicable
4 taxpayer, notwithstanding paragraph
5 (5)(A), (5)(E), or (10)(A), any
6 amount or portion described in para-
7 graph (4)(A) with respect to a life in-
8 surance or annuity contract, except
9 that ‘any applicable taxpayer or any
10 related person (as defined in section
11 144(a)(3)) to an applicable taxpayer’
12 shall be substituted for ‘an individual’
13 in applying such paragraph.

14 “(ii) TREATMENT OF REFUNDS, SUR-
15 RENDERS, REDEMPTIONS AND MATU-
16 RITIES.—Notwithstanding paragraph
17 (5)(A) or (5)(E), amounts described in
18 clause (i)(I) shall include amounts de-
19 scribed in clause (i) or (ii) of paragraph
20 (5)(E) received under an applicable private
21 placement life insurance or annuity con-
22 tract.

23 “(iii) AMOUNTS UNDER PRE-1982 AND
24 QUALIFIED PLAN CONTRACTS, ETC. EX-

1 CLUDED.—Such term shall not include
2 amounts received—

3 “(I) under a contract which is
4 described in paragraph (5)(B) or
5 (5)(D), or

6 “(II) under a qualified tuition
7 program (as defined in section
8 529(b)) or under a Coverdell edu-
9 cation savings account (as defined in
10 section 530(b)).

11 “(C) APPLICABLE PRIVATE PLACEMENT
12 LIFE INSURANCE OR ANNUITY CONTRACT.—For
13 purposes of this paragraph—

14 “(i) IN GENERAL.—The term ‘applica-
15 ble private placement life insurance or an-
16 nuity contract’ means a private placement
17 life insurance or annuity contract the hold-
18 er of which (whether directly or indirectly)
19 is an applicable taxpayer.

20 “(ii) SECRETARIAL AUTHORITY.—The
21 Secretary shall prescribe regulations or
22 other guidance which treat a private place-
23 ment life insurance or annuity contract as
24 an applicable private placement life insur-
25 ance or annuity contract in cases where an

1 applicable taxpayer (or a related person)
2 has an interest in such contract not de-
3 scribed in clause (i) if such treatment is
4 necessary to prevent the avoidance of the
5 purposes of this paragraph.

6 “(D) PRIVATE PLACEMENT LIFE INSUR-
7 ANCE OR ANNUITY CONTRACT.—For purposes
8 of this paragraph, the term ‘private placement
9 life insurance or annuity contract’ means any
10 contract—

11 “(i) which is an annuity contract or a
12 life insurance contract, and

13 “(ii) with respect to which the holder
14 of the contract is required, for purposes of
15 obtaining a registration exemption under
16 securities laws as in effect on the date of
17 enactment of this section (including the
18 Securities Exchange Act of 1934 and the
19 Investment Advisors Act of 1940), to make
20 a representation that such owner—

21 “(I) has a specified minimum
22 amount of income or assets,

23 “(II) has completed a specified
24 minimum level of education, or

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply to amounts received in
3 taxable years beginning after December 31, 2021.

4 (c) REPEAL OF EXCLUSION FOR DEATH BENE-
5 FITS.—

6 (1) IN GENERAL.—Section 101 is amended by
7 adding at the end the following new subsection:

8 “(k) EXCLUSION NOT TO APPLY.—

9 “(1) IN GENERAL .—Subsection (a)(1) shall not
10 apply to amounts received by reason of the death of
11 the insured under an applicable private placement
12 life or annuity contract (within the meaning of sec-
13 tion 72(e)(12)).

14 “(2) AMOUNTS PREVIOUSLY INCLUDED.—The
15 Secretary shall prescribe rules to ensure that para-
16 graph (1) shall not apply to any portion of any
17 amount received which was previously included in
18 gross income.”.

19 (2) CONFORMING AMENDMENT.—Section
20 101(a)(1) is amended by striking “and subsection
21 (j),” and inserting “subsection (j), and subsection
22 (k)”.

23 (3) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply to amounts received in
25 taxable years beginning after December 31, 2021.

1 (d) REPORTING REQUIREMENTS.—

2 (1) IN GENERAL.—Subpart B of part III of
3 subchapter A of chapter 61, as amended by this Act,
4 is amended by adding at the end the following new
5 section:

6 **“SEC. 6050BB. RETURNS RELATING TO AMOUNTS RECEIVED**
7 **UNDER CERTAIN LIFE INSURANCE AND AN-**
8 **NUITY CONTRACTS.**

9 “(a) IN GENERAL.—Every person who issues a life
10 insurance or annuity contract or who reinsures such a con-
11 tract shall make an annual return (at such time and in
12 such manner as the Secretary shall prescribe) setting
13 forth—

14 “(1) the name, address, and TIN of such per-
15 son,

16 “(2) the name, address, and TIN of each per-
17 son who receives an applicable amount (as defined in
18 section 72(e)(12)) during the year with respect to
19 any life insurance or annuity contract issued or rein-
20 sured by such person,

21 “(3) the aggregate applicable amounts received
22 by each person identified in paragraph (2), and

23 “(4) such other information as the Secretary
24 may require.

1 “(b) STATEMENT TO BE FURNISHED TO TAXPAYERS
2 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—

3 “(1) IN GENERAL.—Every person that is re-
4 quired to make a return under subsection (a) shall
5 furnish to each person whose identity is required to
6 be set forth under subsection (a)(2) a written state-
7 ment showing—

8 “(A) the name, address, and phone num-
9 ber of the information contact of the person re-
10 quired to make such return, and

11 “(B) the information required to be shown
12 on such return with respect to the person de-
13 scribed in subsection (a)(2) and with respect to
14 applicable amounts received by such person.

15 “(2) FURNISHING OF INFORMATION.—The
16 written statement required under paragraph (1)
17 shall be furnished to the person on or before Janu-
18 ary 31 of the year following the calendar year for
19 which the return under subsection (a) is required to
20 be made.

21 “(c) REGULATORY AUTHORITY.—The Secretary may
22 prescribe such regulations and other guidance as nec-
23 essary for purposes of carrying out this section, including
24 regulations or other guidance to require reporting under

1 this section by such other persons as necessary to carry
2 out the purposes of section 72(e)(12).”.

3 (2) PENALTIES.—

4 (A) RETURNS.—Section 6724(d)(1)(B), as
5 amended by this Act, is amended by striking
6 “or” at the end of clause (xxvii), by inserting
7 “or” at the end of clause (xxviii), and by insert-
8 ing after clause (xxviii) the following new
9 clause:

10 “(xxix) section 6050BB (relating to
11 private placement life insurance and annu-
12 ity contracts),”.

13 (B) STATEMENTS.—Section 6724(d)(2) is
14 amended—

15 (i) by striking “or” at the end of sub-
16 paragraph (LL),

17 (ii) by striking the period at the end
18 of subparagraph (MM) and inserting “,
19 or”, and

20 (iii) by inserting after subparagraph
21 (MM) the following new subparagraph:

22 “(NN) section 6050BB
23 (relating to private place-
24 ment life insurance and an-
25 nuity contracts).”.

1 (3) CLERICAL AMENDMENT.—The table of sec-
2 tions for subpart B of part III of subchapter A of
3 chapter 61, as amended by this Act, is amended by
4 inserting after the item relating to section 6050AA
5 the following new item:

 “Sec. 6050BB. Returns relating to amounts received under certain life insur-
 ance and annuity contracts.”.

6 (4) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to taxable years begin-
8 ning after December 31, 2021.

9 **PART III—REPEAL OF SPECIAL TREATMENT FOR**
10 **CERTAIN INVESTMENTS**

11 **SEC. ___031. TREATMENT OF EXCLUSION FOR CERTAIN**
12 **SMALL BUSINESS STOCK.**

13 (a) IN GENERAL.—Section 1202(a) is amended by
14 adding at the end the following new paragraph:

15 “(5) SPECIAL RULES FOR APPLICABLE TAX-
16 PAYERS.—

17 “(A) IN GENERAL.—This subsection shall
18 not apply to any gain from the sale or exchange
19 of qualified small business stock by an applica-
20 ble taxpayer (as defined in section 495).

21 “(B) EXCEPTION.—Subparagraph (A)
22 shall not apply to any qualified small business
23 stock acquired before October 27, 2021.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this subsection shall apply to sales or exchanges on or
3 after October 27, 2021.

4 **SEC. ___ 032. MODIFICATIONS FOR INVESTMENTS IN QUALI-**
5 **FIED OPPORTUNITY FUNDS.**

6 (a) TERMINATION OF ELECTION.—

7 (1) IN GENERAL.—Section 1400Z–2(a)(2)(B) is
8 amended to read as follows:

9 “(B) except as provided in paragraph (3),
10 with respect to any sale or exchange after the
11 earlier of—

12 “(i) December 31, 2026, or

13 “(ii) in the case of an applicable tax-
14 payer, the last day of the taxable year pre-
15 ceding the first taxable year for which the
16 taxpayer is an applicable taxpayer.”.

17 (2) SPECIAL RULES.—Section 1400Z–2(a) is
18 amended by adding at the end the following new
19 paragraph:

20 “(3) SPECIAL RULES FOR APPLICABLE TAX-
21 PAYERS AND ENTITIES.—For purposes of paragraph
22 (2)(B)—

23 “(A) APPLICABLE ENTITIES.—No election
24 may be made under paragraph (1) by an appli-
25 cable entity with respect to any sale or ex-

1 change if a notice received by the entity under
2 subsection (b)(2)(A) or (c)(2) of section 493 is
3 in effect at the time of such sale or exchange.

4 “(B) SPECIAL RULE FOR 2021.—In the
5 case of a taxpayer which would be an applicable
6 taxpayer for its first taxable year beginning in
7 2021 (determined as if part IV of subchapter E
8 applied to taxable years beginning in 2021),
9 clause (ii) of paragraph (2)(B) shall be applied
10 by substituting ‘October 27, 2021’ for the date
11 otherwise specified in such clause.

12 “(C) DEFINITIONS.—For purposes of this
13 paragraph and subsection (c), any term used in
14 this paragraph which is also used in part IV of
15 subchapter E shall have the same meaning as
16 when used in such part.”.

17 (b) MODIFICATION OF SPECIAL RULE FOR INVEST-
18 MENTS HELD 10 YEARS.—Section 1400Z-2(c) is amend-
19 ed by striking “shall be equal to” and all that follows and
20 inserting “shall be equal to—

21 “(1) in the case of any taxpayer who is an ap-
22 plicable taxpayer for any taxable year during which
23 such investment was held by the taxpayer or any
24 taxpayer which is an applicable entity, the lesser
25 of—

1 “(A) the fair market value of such invest-
2 ment as of the last day of the taxable year
3 which includes the later of—

4 “(i) the date that such investment has
5 been held for 10 years, or

6 “(ii) in the case of—

7 “(I) an applicable taxpayer, the
8 date that such taxpayer first became
9 an applicable taxpayer, or

10 “(II) an applicable entity, the
11 first date a notice was received by the
12 entity under subsection (b)(2)(A) or
13 (c)(2) of section 493, or

14 “(B) the fair market value of such invest-
15 ment on the date that investment is sold or ex-
16 changed, and

17 “(2) in the case of any other taxpayer, the fair
18 market value of such investment on the date the in-
19 vestment is sold or exchanged.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to sales or exchanges after October
22 27, 2021, in taxable years ending after such date.

1 **SEC. ____033. TREATMENT OF DEFERRAL OF TAX ON COV-**
2 **ERED EXPATRIATES.**

3 Section 877A(b) is amended by adding at the end the
4 following new paragraph:

5 “(8) SPECIAL RULE FOR APPLICABLE TAX-
6 PAYERS.—No election may be made under this sec-
7 tion by any individual who is an applicable taxpayer
8 (as defined in section 495) for the taxable year
9 which includes the expatriation date.”.