

4.81.6 Closing Agreements

~~In General (01-28-2016)~~

~~1. References to tax-advantaged bonds in this IRM 4.81.6 are references to tax-[1 \(02-20-2019\)](#)~~

Program Scope and Objectives

1. **Purpose:** This IRM discusses the closing agreement process used to resolve compliance issues found during an examination of tax-advantaged bonds by the office of Indian Tribal Governments/Tax-Exempt Bonds (ITG/TEB). It contains closing agreement procedures for:

A. Tax-exempt bonds,~~tax~~

B. Tax credit bonds,~~and direct pay bonds.~~

~~A. References to tax-exempt bonds are references to state or local bonds issued pursuant to *section 103 of the Internal Revenue Code* (the Code or IRC) and that pay interest that the holder may exclude from gross income.~~

~~B. References to tax credit bonds are references to bonds for which the holder receives a credit against taxes instead of tax-exempt interest, such as:~~

~~1. qualified tax credit bonds issued pursuant to *IRC sections 54, 54A* (and either *section 54B, 54C, 54D, 54E, or 54F*), *1397E* and *1400N(i)* of the Code;~~

- ~~2. build America bonds issued pursuant to IRC 54AA(d), for which holders of such bonds are allowed credits against taxes with respect to a portion of the interest on such bonds; and~~
 - ~~3. any other bonds for which the holder receives a credit against taxes.~~
- ~~C. References to direct pay bonds are references to bonds for which the issuer receives a refund for some or all of the interest it pays on the bonds instead of the holder receiving a tax credit or tax-exempt interest, including:~~
- ~~1. specified tax credit bonds issued pursuant to IRC 6431(f)(3) and IRC 54A(d) (and either IRC 54C, IRC 54D, IRC 54E or IRC 54F);~~
 - ~~2. build America bonds issued pursuant to IRC 54AA(g)(2);~~
 - ~~3. recovery zone economic development bonds issued pursuant to IRC 1400U-2; and~~
 - ~~4. any other bond for which the issuer receives a refund for some of all of the interest it pays on the bonds instead of the holder receiving a tax credit or tax-exempt interest.~~

NOTE:

C. All of these [Direct pay bonds](#)

Note:

These bonds are referred to as "tax-advantaged" because ~~the bond is~~they are qualified to receive tax benefits associated with ~~its~~their status.

~~2.~~ ~~2.~~ The Internal Revenue Service's (~~IRS~~) and the Office of Tax Exempt Bonds' (~~TEB~~) policy is Policy Owner: Tax Exempt and Government Entities

3. Program Owner: Director, Indian Tribal Governments/Tax Exempt Bonds

4.81.6.1.1 (02-20-2019)

Background

~~1.~~ A closing agreement may be entered into to resolve violations of the ~~Code and corresponding Income Tax Regulations (the Regulations or ITR)~~ federal tax laws applicable to tax-advantaged bonds ~~by entering into. A closing agreements (including payment of any resolution amounts) with agreement is the issuer or other parties vehicle used to the transaction that were involved with, permanently and had knowledge of, how the proceeds were used. conclusively resolve such violations.~~ By doing this, the holders of the bonds or investors in the credits, who generally ~~have no knowledge about~~ don't know how the proceeds were used, continue to receive tax benefits on the bonds. and issuers of direct pay bonds protect the subsidy associated with their bonds.

~~3.~~ This section sets forth procedures under which the IRS will enter into closing agreements with issuers and other parties to tax-advantaged bond transactions to resolve compliance failures. These procedures seek to ensure consistency of treatment and to encourage voluntary compliance throughout the municipal bond industry.

~~4.~~ TEB may execute a closing agreement to resolve specific matters identified in an examination or voluntary compliance case. TEB's voluntary compliance programs include the closing agreement programs described in *Notice 2008-31, Tax Exempt Bonds Voluntary Closing Agreement Program*, and *Rev. Proc. 97-15, Program for Closing Agreements for Change in Use*. See also *IRM 7.2.3, Tax Exempt Bonds Voluntary Closing Agreement Program*.

4.81.6.2 ~~Authority (01-28-2016)~~ 1.2 (02-20-2019)

~~Authority Pursuant to IRC 7121 and the corresponding Regulations, the IRS~~

1. The Internal Revenue Service (IRS) may enter into and approve a written closing agreement with any person ~~relating to the~~for his/her liability ~~of such person~~ (or the person or estate for whom she/he acts) in respect of any internal revenue tax for any taxable period. ~~(IRC 7121 and the corresponding Regulations).~~ This authority includes conclusively resolving any specific matters jeopardizing the tax-advantaged status of bonds with the issuer of the bonds even though the issuer may not have ~~no~~ tax liability ~~with respect to~~for the bonds.

2. ~~The IRS may enter into~~ Regulation section 301.7121-1(a) further provides that a closing agreement ~~when~~may be entered into in any exam case in which there appears to be an advantage in having the ~~case exam~~ permanently and conclusively closed, or if ~~the taxpayer shows~~ good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner ~~determines~~ that the United States will ~~not be disadvantaged by entering into the~~sustain no disadvantage through consummation of such an agreement.

3. ~~Pursuant to Delegation Order Number 8-3 (formerly Delegation Order 97) located in IRM 1.2, Servicewide Policies and Authorities,, the~~ The Commissioner delegates to the Director, ~~Tax Exempt Bonds~~ ITG/TEB (the Director) and the Program Manager, ~~Tax Exempt Bonds Compliance and~~ ITG/TEB Technical (the Technical Program Management, Manager) the authority to enter into and approve written closing agreements ~~in cases involving examinations~~ under their jurisdiction. ~~(Delegation Order Number 8-3 (formerly Delegation Order 97) in IRM 1.2, Servicewide Policies and Authorities).~~

4. Typically, ITG/TEB will enter ~~enters~~ into a single closing agreement covering all identified violations and all known tax periods. However, ITG/TEB may enter into a series of closing

agreements ~~relating to~~for a single tax-advantaged bond transaction when appropriate. ~~For example, the~~

Example:

4. The IRS may enter into a subsequent closing agreement when it identifies a matter not previously identified and resolved in the prior closing agreement. ~~Alternatively~~Or, it may enter into a subsequent closing agreement to cover additional tax periods or additional amounts of bonds ~~that were~~ not covered in the prior closing agreement.

4.81.6.1.3- (02-20-2019)

Terms

1. The following acronyms, terms and definitions are applicable throughout IRM 4.81.6:

Acronyms and Terms

<u>Definition</u>	<u>Definition</u>
<u>Chief Counsel</u>	<u>Associate Chief Counsel, Financial Institutions & Products (Branch 5)</u>
<u>Committee</u>	<u>ITG/TEB Closing Agreement Committee</u>
<u>Director</u>	<u>Director, Indian Tribal Governments/Tax Exempt Bonds</u>
<u>Division Counsel</u>	<u>The area field office of Division Counsel</u>
<u>EIN</u>	<u>Employer Identification Number</u>
<u>Examiner</u>	<u>ITG/TEB Revenue Agent or Tax Law Specialist</u>
<u>FQ</u>	<u>Field Operations</u>
<u>FOM</u>	<u>Manager, Field Operations</u>

<u>Acronyms and Terms</u>	<u>Definition</u>
<u>IRM</u>	<u>Internal Revenue Manual</u>
<u>ITG</u>	<u>Indian Tribal Governments</u>
<u>MFT</u>	<u>Master File Transaction</u>
<u>Rev. Proc.</u>	<u>Revenue Procedure</u>
<u>TEB</u>	<u>Tax Exempt Bonds</u>
<u>TEGE</u>	<u>Tax Exempt Government Entities</u>
<u>Technical Program Manager</u>	<u>Program Manager, ITG/TEB Technical</u>
<u>Tax-advantaged bonds</u>	<u>Tax-exempt bonds, tax credit bonds, and direct pay bonds</u>
<u>Tax-exempt bonds</u>	<u>State or local bonds issued under IRC 103 that pay interest the holder may exclude from gross income.</u>
<u>Tax credit bonds</u>	<u>Bonds for which the holder receives a credit against taxes instead of tax-exempt interest, for example:</u> <ul style="list-style-type: none"> • <u>Qualified tax credit bonds issued under IRC 54, IRC 54A (and either IRC 54B, IRC 54C, IRC 54D, IRC 54E, or IRC 54F), IRC 1397E and IRC 1400N(I).</u> • <u>Build America bonds issued under IRC 54AA(d), for which holders are allowed credits against taxes for a portion of the interest on such bonds.</u> • <u>Any other bonds for which the holder receives a credit against taxes.</u>

<u>Acronyms and Terms</u>	<u>Definition</u>
<u>Direct pay bonds</u>	<p><u>Bonds for which the issuer receives a refundable credit for some or all of the interest it pays on the bonds instead of the holder receiving a tax credit or tax-exempt interest, for example:</u></p> <ul style="list-style-type: none">• <u>Specified tax credit bonds issued pursuant to IRC 6431(f)(3) and IRC 54A(d) (and either IRC 54C, IRC 54D, IRC 54E or IRC 54F).</u>• <u>Build America Bonds issued pursuant to IRC 54AA(g)(2).</u>• <u>Recovery zone economic development bonds issued pursuant to IRC 1400U-2.</u>• <u>Any other bond for which the issuer receives a refund for some or all of the interest it pays on the bonds instead of the holder receiving a tax credit or tax- exempt interest.</u>

4.81.6.2 (02-20-2019)

General Rules Applicable to Closing Agreements ~~(01-28-2016)~~

1. Closing agreements are ~~final~~.

~~1.A.~~ Final and conclusive and may not, in the absence of fraud, malfeasance, or misrepresentation of material fact, be reopened as to matters agreed upon or be modified by an officer, employee or agent of the United States. See IRM 4.81.6.7 for further details ~~about this provision~~.

~~2.B.~~ Closing agreements are subject Subject to Code sections ~~of the Code~~ that expressly provide that

effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law.

~~3.C.~~ ~~Closing agreements that cover taxable period(s) ending after the closing agreement effective date are subject~~ Subject to any change in, or modification of, the law enacted ~~subsequent to~~ after the agreement's date ~~of the agreement and made applicable that apply~~ to that taxable period(s). when they cover taxable period(s) ending after the closing agreement effective date.

4.81.6.4-3 (02-20-2019)

Negotiating and Drafting of Closing Agreements ~~(01-28-2016)~~

2. Issuers may ~~request~~:

A. Request a closing agreement with the IRS to preserve the tax-advantaged status of their bonds. ~~Issuers may be~~

~~1.B.~~ Be joined by other parties to a tax-advantaged bond transaction in entering into a closing agreement.

3. ITG/TEB enters into closing agreements with the issuer of the bond issue.

A. In certain exam cases, other parties to the bond transaction may also participate in the negotiations and jointly execute the agreement.

~~2.B.~~ The issuer must complete a Form 8821, Tax Information Authorization, to allow parties who have not been designated as a representative under Form 2848, Power of Attorney and Declaration of Representative, to participate in the negotiations.

~~The conduit borrower for other party may designate its own representative under Form 2848.~~

C. ~~When there is~~ The conduit borrower or other party may designate its own representative under Form 2848.

Note:

The 6700 penalties may apply to parties other than issuers and therefore, closing agreements regarding the 6700 penalties may not include the issuer of the bonds. See *IRM 4.81.6.4.3.7* below.

4. To ensure that taxpayers are treated consistently and that agreements are enforceable, the ITG/TEB Closing Agreement Committee (Committee) reviews all nonstandard closing agreements (See *IRM 4.81.6.5(3)*). The Committee consists of two members from ITG/TEB Technical appointed by the Manager, Technical. The Committee may consult with designated counsel from Associate Chief Counsel, Financial Institutions & Products (Branch 5) and designated counsel from Associate Chief Counsel, Procedures & Administrative.

~~3. In an open examination exam case, the issuer or TEB may initiate closing agreement negotiations at any time. In most cases, the specialist examiner or group manager will negotiate negotiates the terms of the closing agreement. In some cases, the agent examiner and group manager may seek assistance from the Field Office (FO) representative on the Committee in negotiating or drafting of closing agreements.~~

~~5. 4. In most voluntary compliance cases, the specialist will negotiate the terms of the closing agreement. In some cases, ask the specialist and group manager may seek assistance from the Compliance and Program Management (CPM) representative on the Committee in the negotiating or drafting of Committee to help draft closing agreements.~~

~~6. 5. In negotiating the terms of a closing agreement, the agent examiner, specialist, group manager, FO~~

~~representative on~~ and the Committee, ~~or CPM representative on the Committee will~~ ensure the terms:

- Are fair and equitable.
- Promote voluntary compliance and encourage due diligence in complying with all applicable federal tax laws.
- Recognize the difference between the IRS enforcement and voluntary compliance programs ~~established by the IRS.~~

~~7. 6.~~ Closing agreements with issuers generally ~~will not~~ don't contain terms that address any potential IRC 6700 promoter penalty liabilities unless the agreement specifically resolves an open IRC 6700 ~~examination~~ exam case on a party to the agreement. ~~An IRC 6700 examination case is opened on the date TEB sends written notification to the taxpayer of an impending IRC 6700 examination.~~

Note:

~~A.~~ When ITG/TEB completes a bond ~~examination~~ exam, it may enter into a closing agreement ~~resolving~~ that resolves all identified specific matters relating to that issue and, when appropriate, any potential IRC ~~section~~ 6700 promoter penalty liability of the issuer.

~~B.~~ In contrast, closing agreements that TEB executes under its voluntary compliance programs will generally not address any potential IRC 6700 promoter penalty liabilities.

~~8. 7.~~ The ~~agent, group manager or specialist will draft~~ examiner drafts the closing ~~agreements~~ agreement covering specific matters, following the appropriate model closing agreement. ~~In drafting the agreement, the~~ (<https://www.irs.gov/tax-exempt-bonds/model-closing-agreements-for-vcap-and-examinations>). The drafter ~~should~~ must clearly state the violation

that is being resolved with the closing agreement ~~such that~~so the agreement, read on its own, has only one reasonable interpretation as to the specific matter being resolved.

9. ~~8.~~ — Some of the model closing agreement terms apply only to specific situations so the ~~agent, group manager, or specialist should~~ examiner must consider whether the terms ~~described under in IRM section 4.81.6.5-4~~ are appropriate for the agreement. The agreement may also cover related tax issues if the impacted taxpayer is a party to the agreement, such as ~~the denial~~:

A. Denial of interest deductions under IRC ~~section 150(b) and any depreciation~~.

B. Depreciation adjustments under IRC ~~section 168~~ if ~~the impacted taxpayer is a party to the agreement~~.

10. ~~9.~~ — The Closing agreement terms ~~of TEB closing agreements~~ generally ~~will~~ follow the model closing agreements created for ~~examination cases and voluntary compliance cases~~ exam.

~~10. — To ensure that taxpayers are treated consistently and that agreements are enforceable, the TEB Closing Agreement Committee (the Committee) will review all nonstandard closing agreements. The Committee consists of one representative from TEB Field Operations appointed by the Manager, TEB Field Operation, one representative from TEB Compliance & Program Management, appointed by the Manager, TEB Compliance & Program Management, one ad hoc member from Chief Counsel, Financial Institutions & Products (Branch 5), and one ad hoc member from Chief Counsel, Procedures & Administrative.~~

~~11. — Any closing agreements that require the signature of the Director must be submitted for review and clearance using the process described in IRM 4.81.6.8 and the execution of the closing agreements is provided for in IRM 4.81.6.6. Any closing agreements that require the signature of the Manager, Compliance & Program Management must be submitted for review, clearance~~

~~and execution using the process described in IRM 7.2.3.3 and IRM 7.2.3.4, Tax Exempt Bonds Voluntary Closing Agreement Program for voluntary compliance cases.~~

11. The Director executes exam closing agreements under the process in IRM 4.81.6.6.

4.81.6.4-81.6.5- (02-20-2019)

Closing Agreement Terms ~~(01-28-2016)~~

1. 1. ~~ITG/TEB~~ prepares the closing agreements. This section discusses some of the general terms ~~that are used~~ we use to resolve specific matters.

2. 2. ~~There may be~~ Some violations ~~that~~ are covered by a special closing agreement program. Generally, this program is ~~set forth~~ described in a public announcement or notice and includes the closing agreement ~~that is~~ template to ~~be used~~ use. When this program applies, the issuer and the IRS must use the ~~applicable standard~~ closing agreement template that is provided.

3. 3. ~~In determining the~~ To determine a closing agreement's resolution terms ~~to be included in any closing agreement, the agent, specialist, the examiner,~~ group manager, FOM and the Committee ~~will~~ consider the compliance failure's facts and circumstances ~~surrounding the compliance failure as well as the following case resolution factors:~~

~~A. The good faith and due diligence exercised by the transaction parties.~~

~~B. The total taxpayer exposure (as defined in IRM 4.81.6.5.3.1) of the bondholders or the credit maintenance amount, (as defined in IRM 4.81.6.5.3.2), as applicable.~~

~~C. The cooperation of the transaction parties with TEB.~~

- ~~D. Whether the compliance failure was inadvertent or a de minimis part of the transaction.~~
- ~~E. Whether the issuer had implemented appropriate post-issuance tax compliance procedures and the effectiveness of those procedures in identifying the problem.~~
- ~~F. The economic benefits the issuer or other parties received because of the violation.~~
- ~~G. For voluntary closing agreements, how quickly the issuer identified and told TEB about the problem.~~

~~4. 4. If the issuer or other party that executes the agreement fails to comply with the its terms of that agreement, TEB will consider ITG/TEB considers the significance of that failure. TEB will generally determine that any repeated or continuous failure occurring after the execution of a if a failure to comply with a material term of the closing agreement constitutes a new deliberate action or intentional act within the meaning of the Regulations and constitutes a new violation with respect to the bond issue. As provided in IRM 4.81.6.5.2, you may need to prepare a subsequent later closing agreement ~~may be necessary~~ to resolve a new violation arising after the execution of a closing agreement. (See IRM 4.81.6.2).~~

~~4.81.6.54.1- (02-20-2019)~~

~~Bond Redemption (01-28-2016)~~

~~1. ITG/TEB may require as a prerequisite to entering into a closing agreement that the issuer redeem, retire or purchase and cancel defeasible callable bonds of the issue at the earliest possible date.~~

~~2. For examination exam closing agreements, if the issuer ~~cannot~~ can't redeem, retire or purchase and cancel the callable~~

bonds ~~prior to~~before the closing agreement execution date, the closing agreement ~~shall specify~~must:

- A. Specify the date on which the bonds will be redeemed, ~~require~~.
- B. Require the issuer to call the bonds for redemption on that date, ~~and require~~.
- ~~1.C.~~ Require the issuer to provide the bondholders with an irrevocable call notice ~~prior to the closing agreement execution date~~. The irrevocable call notice must include the specific date on which the issuer has stated that the redemption will occur. The issuer must provide ITG/TEB with documentation of this call notice prior to ITG/TEB executing the closing agreement.
- D. ~~Generally for examination closing agreements, if~~Require the ~~bonds will not be redeemed and retired or purchased and cancelled~~issuer to establish prior to ~~the date on which~~ITG/TEB executing the closing agreement ~~is executed by TEB~~, a fully funded irrevocable defeasance escrow or similar escrow satisfactory to ITG/TEB ~~will be established~~ to provide for the payment of the principal and interest on the bonds to the call date. The issuer ~~will~~must provide ~~written notice to~~ ITG/TEB with documentation that it has established the irrevocable defeasance escrow prior to ~~the date the IRS executes~~ITG/TEB executing the closing agreement.

Note:

The ~~issuer's~~issuer's statement, made under penalty of perjury, that the bonds have been irrevocably defeased and an irrevocable call notice was given to bondholders is sufficient ~~written~~documentation.

Note:

~~2.~~ For bonds that are noncallable, payment through maturity of the applicable tax-exposure, credit maintenance amount or other basis for the resolution amount eliminates the requirement for irrevocable call notice and defeasance of the bonds.

4.81.6.54.2- (02-20-2019)

Alternative Use of Proceeds or Facility (01-28-2016)

1. ~~1.~~ Closing agreement terms may require ~~that the:~~

A. ~~The issuer to~~ expend any disposition proceeds for an alternative qualifying use. ~~If the issuer uses disposition proceeds to redeem the bonds, prior to execution of the closing agreement, it has used the proceeds for an alternative qualifying~~

The issuer to use:

B. ~~2.~~ Closing agreement terms may require that the bond-financed property ~~be used~~ for an alternative qualifying use.

~~If so,~~ Note:

All arrangements and contracts must be finalized prior to the execution of the closing agreement.

4.81.6.54.3- (02-20-2019)

Resolution Amount (01-28-2016)

1. Generally, a closing agreement resolution amount for a tax-exempt bond issue is based on 100% of the present value of the taxpayer exposure of the bond issue, as computed in IRM 4.81.6.54.3.1, below. However, as appropriate, you can also base closing agreement resolution amounts ~~may also be based upon the present value of an alternative minimum tax adjustment, IRC~~

~~150(b) adjustments, IRC section 168(g) adjustments, any excessive arbitrage profits, or IRC 6700 penalties.~~ on:

- The present value of an alternative minimum tax adjustment.
- IRC 150(b) adjustments.
- IRC 168(g) adjustments.
- Any excessive arbitrage profits.
- IRC 6700 penalties.

2. Generally, a closing agreement resolution amount for a tax credit bond issue or direct pay bond issue ~~will be~~ is based on 100% of the credit maintenance amount, as computed in ~~IRM 4.81.6.54.3.2~~, below. For direct pay bonds, an issuer and ~~ITG/TEB~~ may agree to modify the amount of future allowable credit payments ~~that~~ the issuer may claim by excluding a portion of interest payments on ~~such~~ those bonds from the calculations of the credits, as appropriate under the facts and circumstances.

3. In certain exam cases, ~~a~~ the closing agreement resolution amount may be based on a ~~computation of a fee~~ specified amount. Generally, a fee specified amount is only appropriate when described in a closing agreement program ~~provided~~ in the IRM, published guidance (including Notices and Announcements), ~~IRM 7.2.3~~ and ~~IRM 4.81.6.54.3.3~~.

4. A resolution amount may consist of one or more amounts described in or computed under ~~IRM 4.81.6.54.3.1 through 1 through IRM 4.81.6.54.3.9~~, including but not limited to an amount representing taxpayer exposure, a credit maintenance amount and/or a fee specified amount. The IRS ~~will not accept less than the amounts set forth below~~ requires a minimum amount even if the computations in ~~IRM 4.81.6.54.3.1 through IRM 4.81.6.54.3.9~~ ~~produces~~ produce a lower amount. For an examination-related closing agreement, the minimum resolution amount is \$5,000 per bond issue.

~~A. For an examination-related closing agreement, TEB will not accept less than \$5,000 per bond issue.~~

~~For a voluntary compliance closing agreement, TEB will not accept less than \$1,000 per bond issue. 4.81.6.54.3.1- (02-20-2019)~~

~~B. Computation of Taxpayer Exposure (01-28-2016)~~

1. Taxpayer exposure represents the estimated amount of tax liability the United States would collect from the bondholders if the bondholders were taxed on the interest they realized from the bonds during the calendar year(s) covered under the closing agreement.

2. ~~Taxpayer~~ Compute the taxpayer exposure for an ~~examination~~ exam closing agreement ~~is computed~~ as follows:

~~A.~~ Step 1. Determine the closing agreement period. This is the period to be covered under the closing agreement by identifying each past calendar year (as determined below) and each future calendar year during which the bonds were or will be outstanding.

~~•~~ Bonds that have been called for redemption and defeased by a defeasance escrow are considered outstanding until their date of redemption. other bonds are considered outstanding until their maturity date.

~~•~~ Past calendar years ~~will~~ generally include calendar years ~~for which the holders would be taxed on the interest and~~ that has have a tax payment date that falls within three years of the date ITG/TEB identified the compliance failure.

- ~~_____~~ A tax payment date ~~with respect to~~for a calendar year is April 15th following the conclusion of that calendar year.
- ~~A. • _____~~ For ~~examination~~exam purposes, ~~ITG/TEB~~ identifies a compliance failure on the date it ~~provides written notification to~~notifies the issuer ~~in writing~~ of that identified issue. ~~TEB may increase the general three year period to up to six years if it determines the issuer or its representative has not acted in good faith in resolving the compliance failure.~~
- ~~B. _____~~ Step 2. Determine the amount of interest accrued or scheduled to accrue on the bonds in each calendar year within the closing agreement period based on the yield of ~~such~~those bonds.
 - ~~_____~~ For bonds originally sold at a discount or premium of less than 5%, ~~you may use~~ the actual amount of interest paid or to be paid ~~may be used for this purpose.~~
 - ~~B. • _____~~ For variable rate bonds, ~~the examiner~~you may determine the interest scheduled to accrue in future years by using the average of the interest rates paid to date, the last interest rate paid on the bonds, or the appropriate fixed swap rate less up to 50 basis points, as appropriate under ~~the~~each exam's facts and circumstances ~~of each case.~~
- ~~C. _____~~ Step 3. Multiply ~~each~~the amount determined in Step 2 for each calendar year by the relevant tax percentage. ~~The relevant tax percentage is based on the IRS's estimate of the average investor's highest tax bracket.~~

C. Unless specifically instructed otherwise or a more accurate measure of the particular ~~holder's~~holder's tax rate is available, ~~the average investor's highest bracket is 29%.~~use the rates below.

- For calendar years before 2018, use 29%.
- For calendar years after 2017, use the sum of (i) the backup withholding rate on interest payment pursuant to IRC 3406(a)(1) and (ii) the net investment income tax rate specified in IRC 1411(a)(1), in effect during the calendar year. For interest scheduled to accrue after the closing agreement is executed, assume no change to these tax rates from the rates in effect.

Note:

Notice 1036 contains early release copies of the withholding tables and includes the backup withholding rates (for example, the backup withholding rate in effect as of January 2018 is 24%).

- D. Step 4. Compute the present value of ~~each~~the amount calculated in Step 3 for each calendar year ~~in accordance with per IRM section 4.81.6.4.3.8~~ by assuming it was due on April 15 in the following calendar year.
- E. Step 5. ~~Total~~Add the present value amounts determined in Step 4 for all calendar years. This is the taxpayer exposure for ~~examination~~exam closing agreements.

~~3. The taxpayer exposure for a voluntary compliance closing agreement is computed as follows:~~

- ~~A. Step 1. Determine the period to be covered under the closing agreement by identifying each past calendar year (as determined below) and each~~

~~future calendar year during which the bonds were or will be outstanding. Bonds that have been called for redemption and defeased by a defeasance escrow are considered outstanding until their date of redemption. Past calendar years will generally include any calendar year for which the holders would be taxed on the interest and that has a tax payment date that falls within three years of the date TEB identified the compliance failure. A tax payment date with respect to a calendar year is April 15th following the conclusion of that calendar year. For voluntary compliance purposes, TEB determines the compliance failure date based upon the representations of the issuer under penalties of perjury in the voluntary compliance request.~~

~~B. Step 2. Compute the amount of interest accrued or scheduled to accrue on all or an appropriate portion of the bonds in each calendar year within the closing agreement period based on the yield of such bonds. For bonds originally sold at a discount or premium of less than 5%, the actual amount of interest paid or to be paid may be used for this purpose. For variable rate bonds, the interest scheduled to accrue in future years may be determined using the average of the interest rates paid to date, the last interest rate paid on the bonds, or the appropriate fixed swap rate less up to 50 basis points, as appropriate under the facts and circumstances of each case.~~

~~C. Step 3. Multiply each amount determined in Step 2 for each calendar year by the relevant tax percentage. The relevant tax percentage is based on the IRS's estimate of the average investor's highest tax bracket. Unless specifically instructed otherwise or a more accurate measure of a particular holder's tax rate is available, the average investor's highest tax bracket is 29%.~~

- ~~D. Step 4. Compute the present value of each amount calculated in Step 3 for each calendar year in accordance with IRM 4.81.6.5.3.9 by assuming it was due on April 15 in the following calendar year.~~
- ~~E. Step 5. Total the present value amounts determined in Step 4 for all calendar years.~~
- ~~F. Step 6. Compute the taxpayer exposure using the methodology in Step 5 of IRM 4.81.6.5.3.1 (2) computed on 100% of the bonds. The taxpayer exposure for voluntary compliance agreements is the lower of the amount computed in Step 5 and Step 6.~~

~~4.81.6.5.3.2~~ 4.81.6.4.3.2 (02-20-2019)

Computation of Credit Maintenance Amount ~~(01-28-2016)~~

1. Generally, the credit maintenance amount applies to fixed rate tax credit bonds and fixed rate direct pay bonds.

- For tax credit bonds, the credit maintenance amount is the present value of credit amounts that would have been allowed or allowable on each credit allowance date during the credit adjustment period of the bonds if the violation had not occurred.
- For direct pay bonds, the credit maintenance amount is the present value of the refundable credits that would have been allowed or ~~are~~ allowable during the credit adjustment period of the bonds, based on the interest rate or rates of the bonds issued, if the violation had not occurred.
- If the IRS and issuer agree, ITG/TEB may ~~take into account~~ consider modifications to future allowable credit payments on direct pay bonds ~~described in~~

~~IRM 4.81.6.5.3 in calculating~~ to calculate the credit maintenance amount.

~~4.2.~~ Closing agreement resolution amounts for variable rate tax credit bonds and variable rate direct pay bonds will be are determined based upon the facts and circumstances, but ~~will~~ generally follow ~~this~~ the computation ~~methodology~~ method described in IRM 4.81.6.4.3.1 and IRM 4.81.6.4.4.

~~2.3.~~ Generally, the credit adjustment period is the period from the date of the violation to the date the bonds are no longer outstanding, subject to the following:

- A. ~~Depending on the facts, the~~ The date of the violation ~~will is~~ generally ~~be~~ either the date of the deliberate action, the date of the intentional act, the issue date, or the date another action occurs which jeopardizes the tax-advantaged status of the bonds. ~~However, in~~ in no event will the credit adjustment period begin earlier than the issue date of the bonds.

- B. ~~Under certain facts and circumstances, if an issuer and TEB agree to modify future allowable~~ The ~~statute for past~~ credit ~~payments with respect to direct pay bonds~~ allowance dates may be controlled as ~~described~~ provided in IRM 4. ~~81.6.5~~ 82.3-4. Otherwise, the credit adjustment period ~~for the particular bonds ends on~~ must not apply to credit allowance dates that occurred more than three years before the date ~~specified in~~ ITG/TEB identified the compliance failure unless the ~~agreement~~ issuer filed the Form 8038-CP for such credit allowance date within three years before the date ITG/TEB identified the compliance failure.

~~4.~~ 3. ~~The~~ Compute the credit maintenance amount for tax credit bonds ~~is computed~~ as follows:

- ~~1.~~A. Step 1. Identify the applicable credit adjustment period.
- ~~2.~~B. Step 2. Determine the amount of ~~each~~the credit allowance for each credit allowance date occurring during the credit adjustment period. The credit allowance amount is determined under IRC 54(b), IRC 54A(b) (as reduced by IRC 54C(b), IRC 54D(b) ~~);~~); or IRC 54AA(b) ~~);~~); as applicable.
- ~~3.~~C. Step 3. Compute the present value of each tax credit allowance calculated in Step 2 for ~~any~~the credit allowance dates ~~;~~ scheduled after the date of the closing agreement ~~in accordance with~~per IRM 4.81.6. ~~54.3.9.~~ by assuming that each tax credit will accrue on the applicable credit allowance date.
- ~~4.~~D. Step 4. Compute the amount of interest ~~in accordance with~~per IRC 6621(a)(2) on each amount calculated in Step 2 for credit allowance dates occurring during the credit adjustment period and prior to the date of the closing agreement, by assuming that each tax credit allowance occurred on the applicable credit allowance date.
- ~~5.~~E. Step 5. ~~Total~~Add: (a) the credit allowances for credit allowance dates occurring prior to the date of the closing agreement ~~;~~plus (b) the interest amounts computed in Step 4 ~~;~~and plus (c) the amount computed in Step 3. This ~~amount~~sum is the credit maintenance amount for tax credit bonds ~~.~~

~~5.~~4. The credit maintenance amount for direct pay bonds is computed as follows:

- A. Step 1. Identify the applicable credit adjustment period.

- B. Step 2. Determine the amount of each interest payment on the bonds scheduled during the credit adjustment period (~~taking~~take into account scheduled sinking fund payments but ~~without regard to~~don't take into account any optional redemption).
- C. Step 3. ~~Multiply~~To determine the refundable credit amount for each interest payment date, multiply each amount determined in Step 2 by the relevant refundable tax credit rate percentage ~~specified~~ in IRC 1400U-2(a)(2) or IRC 6431,~~(b)~~, as applicable, ~~to~~or (iii) determine the ~~refundable credit amount for each interest payment date.~~amounts to be paid pursuant to IRC 6431(f).
- D. Step 4. Compute the present value of each refundable credit amount calculated in Step 3 for interest payment dates, if any, scheduled after the date of the closing agreement and during the credit adjustment period to the date of the closing agreement ~~in accordance with~~per *IRM 4.81.6.54.3.9* by assuming that each refundable credit amount will be paid on the applicable interest payment date (~~taking~~take into account scheduled sinking fund payments but ~~without regard to~~don't take into account any optional redemption).
- E. Step 5. Compute the amount of interest ~~in accordance with~~per IRC 6621(a)(2) on each amount calculated in Step 3 with respect to interest payment dates that occurred during the credit adjustment period and prior to the date of the closing agreement, by assuming that each refundable credit amount was paid on the applicable interest payment date. The credit allowance amount for credit allowance dates occurring during the credit adjustment period and prior to the date of the closing agreement must

reflect any reduction required by sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, or any similar reduction in credits payable.

- F. Step 6. ~~Total~~Add: (a) the sum of all refundable credit amounts with respect to interest payment dates that occurred prior to the date of the closing agreement; plus (b) the interest ~~amounts~~amount computed in Step 5; ~~and plus (c)~~ the amount computed in Step 4. This ~~amount~~sum is the credit maintenance amount for direct pay bonds.

4.81.6.54.3.3-Computation of Fee Amount (01-28-2016 (02-20-2019)

1. Resolutions Involving Specified Amounts

1. In certain ~~cases~~exams, the ~~agent~~examiner, specialist, group manager or ~~member of the~~ Committee may recommend ~~that~~ a resolution ~~should appropriately~~ be conditioned on payment of a fee specified amount. Generally, ~~a fee~~such an amount is only appropriate when described in a formal closing agreement program; or in a Notice or an Announcement; ~~in IRM 4.81.6.5.3 or in a resolution described under IRM 7.2.3.4.~~

2. 2. The fee specified amount ~~will~~is generally ~~be set forth~~listed in the program, but ~~cannot~~if not listed, it must be less than \$~~500.~~ Fee 5,000. Specified amounts have included:

- A. ~~A dollar~~An amount equal to the par amount of the bonds held by the issuer multiplied by a specified percentage and then multiplied by a number of specified time intervals (~~e.g., for example,~~ monthly); ;
- B. The amount required to be paid ~~in connection with~~for a request for a closing agreement, as published annually in the Internal Revenue Bulletin (~~e.g., for example,~~ the amount for ~~2016~~2018 based

on paragraph (a)(3)(d) of Appendix A to Rev. Proc. ~~2016~~2018-1 would be \$28,300; ~~or~~.

C. ~~A dollar~~An amount (~~e.g., for example,~~ \$500) multiplied by a number of specified time intervals (~~e.g., for example,~~ monthly).

D. ~~A fixed amount per bond issue (e.g., for example,~~ \$5,000 in ~~examination~~exam cases ~~or \$1,000 in voluntary compliance cases).~~

4.81.6.54.3.4- ~~(02-20-2019)~~

~~D.~~ **Computation of Alternative Minimum Tax Adjustment** ~~(01-28-2016)~~

1. For closing agreements providing that interest on bonds will not be treated as an item of tax preference for the alternative minimum tax, the closing agreement amount is ~~equal to an~~ estimate of the federal income tax liability that all ~~holders of the bonds~~bondholders referenced in the closing agreement period ~~will not~~would have been or would be required to ~~be paid because pay~~if the items in question were treated as subject to the ~~agreement will provide that the interest is not a~~alternative minimum tax preference item.

2. ~~The~~Compute the alternative minimum tax adjustment ~~is computed~~ as follows:

~~1.A.~~ Step 1. Determine the principal amount of bonds that will be outstanding on January 1 of each calendar year for that period that begins with the calendar year in which the compliance failure occurred and ends with the first calendar year in which the nonqualified bonds will no longer be outstanding.

~~2.B.~~ Step 2. Multiply the amount determined in Step 1 for each calendar year by 0.0014.

~~3.C.~~ Step 3. Compute the present value of each amount determined in Step 2 for each calendar year in accordance with ~~IRM 4.81.6.54.3.9~~ by assuming it is paid on April 15 in the following calendar year.

~~4.D.~~ Step 4. ~~Total~~Add the present value amounts determined in Step 3 for all calendar years. This amount is the alternative minimum tax adjustment.

~~4.81.6.54.3.5~~ [\(01-28-2016\)](#)

IRC Section 150(b) Interest Deduction ~~(01-28-2016)~~

~~1.~~ ~~4.~~ —When a closing agreement addresses nonqualified private activity bonds, the closing agreement terms may require ~~in addition to the taxpayer exposure~~, a payment that recoups the tax benefit that a party to the transaction received for ~~any~~ deduction taken for interest paid for the tax-exempt financing of the bond-financed property that accrued during the nonqualified period.

~~4.81.6.54.3.6~~ [\(01-28-2016\)](#)

IRC Section 168(g) Depreciation Deduction ~~(01-28-2016)~~

~~1.~~ ~~4.~~ —When a closing agreement addresses nonqualified private activity bonds, the closing agreement terms may require ~~in addition to the taxpayer exposure~~, a payment that recoups the tax benefit that a party to the transaction received for a depreciation deduction on the financed property that ~~was not~~~~wasn't~~ allowed under IRC 168(g) during the nonqualified period.

~~4.81.6.54.3.7~~ [\(02-20-2019\)](#)

IRC Section 6700 Penalty ~~(01-28-2016)~~

1. [ITG/TEB](#) may enter into a closing agreement for an IRC 6700 violation. [IRC Section 6700 penalties may be applied to bond counsel, investment bankers, issuers, conduit borrowers, financial advisors, feasibility consultants, engineers or any other person\(s\) who is involved in the organization or sale of the bonds](#)

and knew or had reason to know that their opinions, documents, reports or other statements were false or fraudulent as to any matter material to the tax-advantaged status of the bonds. For these agreements, ~~the agent should~~ determine the ~~section~~ IRC 6700 penalty by treating the sale of each bond denomination as a separate activity.

2. _____ The closing agreement ~~should~~must clearly state ~~that~~:

A. _____ That the payment is being made in resolution of an IRC 6700 ~~examination. The closing agreement should also clearly state whether~~exam.

~~2.B.~~ _____ Whether the closing agreement payment is to be treated as a civil payment or a nondeductible penalty amount.

4.81.6.54.3.8- ~~(01-28-2016)~~

Excessive Arbitrage Profit ~~(01-28-2016)~~

1. _____ 1. ~~_____~~ ~~The excessive~~Excessive arbitrage profit is an estimated amount of the economic benefit realized by the issuer or other parties to the transaction in excess of the amount permitted to be realized under ~~the~~applicable arbitrage yield restriction and rebate rules ~~under IRC 148 and IRC 54A.~~

4.81.6.54.3.9- ~~(02-20-2019)~~

Computing Value as of the Closing Agreement Execution Date ~~(01-28-2016)~~

1. ~~All closing agreement amounts based on Value~~past or future tax liabilities or payments must be valued as of the approximate date that ITG/TEB is required to receivereceives any payment required ~~under~~per the closing agreement terms ~~of (the closing agreement (the "agreement execution date").")~~ including:

- _____ past or future tax liabilities or payments

- past or future excessive arbitrage profit

2. To value ~~any amount representing~~ a past payment ~~or~~ liability, ~~the agent should~~ or benefit, future value that amount to the agreement execution date using both the applicable underpayment rate(s) under IRC 6621 as the discount rate and a daily compounding ~~methodology as required under~~ method per IRC 6622.

3. To value any amount representing a future payment ~~or~~ liability, ~~the agent should present~~ or benefit:

A. Present value that amount to the agreement execution date. ~~In making this computation, the agent should use~~

~~3.B.~~ Use, as the discount rate, the appropriate short-term, mid-term, or long-term semi-annual compounding applicable federal rate (AFR) in effect on the agreement execution date and for the term from the agreement execution date to the assumed April 15 tax payment date corresponding to that future tax year (with respect to tax-exempt bonds ~~and~~), the future credit allowance date (with respect to tax credit bonds) or the future interest payment date (with respect to direct pay bonds) ~~to the agreement execution date~~ (, as applicable, in accordance with the terms provided in IRC 1274(D)(1) ~~)~~ .

~~A.C.~~ In making this computation, the agent should ~~treat~~ Treat any tax year that has an assumed April 15 tax payment date or interest payment date later than the agreement execution date as a future tax year payment.

~~For example, a~~ Examples:

D. A closing agreement expected to be executed on ~~January~~ November 15, ~~2016~~ 2018, includes amounts

corresponding to tax-exempt interest to be paid in future tax years ~~2015~~2018 through ~~2026~~The 2028.

E. Present value the amounts representing estimated tax payments due on the assumed April 15 tax payment dates for tax years 2012~~2018~~ through ~~2015 would be present valued~~2020 at the short-term AFR; ~~the amounts assumed to be due on the April 15 tax payment dates for years 2019 through 2024 would be present valued at the mid-term AFR;~~ and.

F. Present value the amounts assumed to be due on the April 15 tax payment dates for tax years 2021 through 2026 at the mid-term AFR.

G. Present value the amounts assumed to be due on the April 15 tax payment dates for tax years 2025~~2027~~ and ~~2024 would be present valued~~2028 at the long-term AFR. ~~The~~

~~B.H.~~ Use the applicable AFRs in effect on ~~January~~November 15, ~~2016 would be the rates used in~~2018 for these present value computations.

4.81.6.5.4-4 (02-20-2019)

Adjustments to Direct Pay Credits ~~(01-28-2016)~~

1. ~~1.~~ When ITG/TEB and the issuer agree that a closing agreement will exclude ~~from future credit calculations~~ a portion of allowable credit payments from future credit calculations to resolve a direct-pay bond violation ~~as provided in IRM 4.81.6.5.4.3.(2)~~, the agreement ~~will generally include the~~includes these terms ~~and~~ conditions and supporting documentation ~~specified below.~~

A. The closing agreement ~~will identify~~identifies the credits claimed and refunds paid to which the closing agreement applies.

- B. The closing agreement ~~will specify~~specifies that it is executed ~~with respect to~~for the qualification for credit under IRC 6431-.
- C. The closing agreement ~~will specify~~specifies any period for which the IRS ~~will not make an assessment of~~won't assess tax, interest, or penalty.
- D. Any closing agreement terms that affect the future allowability of credits ~~should~~must not indicate specific amounts ~~that are~~ to be allowed, but ~~should~~must describe how the credit amount of ~~credit would be~~is determined for each future interest payment date ~~(for example, the~~.

Example:

~~D.~~ The agreement ~~should~~must specify, as applicable, the date on which bonds are no longer treated as outstanding for purposes of calculating future credits or any other changes to the terms of the bonds on which such calculations will be based~~).~~.

- E. The issuer modifies the debt service schedule that ~~the issuer~~they originally filed with the information return ~~should be modified~~ to reflect the agreement between the issuer and IRS to modify future allowable credits ~~as described in per~~ IRM 4.81.6.54.3.2 and Attach the modified agreement must be attached debt service schedule as an exhibit to the closing agreement. See IRM 8.13.1.3.16 for attachment guidance.
- F. The issuer ~~must represent~~represents that it will not request credits ~~with respect to~~for any portion of interest payments on ~~such~~ bonds which it has agreed ~~will be excluded~~to exclude from calculations of ~~such~~ credits.
- G. The closing agreement ~~will provide~~provides that ~~issuer's~~the issuer's ability to claim future credits ~~is~~

~~dependent upon~~ depends on future compliance with applicable law and the terms of the closing agreement.

2. ~~2.~~ For closing agreements that provide that the issuer ~~is not~~ isn't entitled to a credit for interest paid on the bonds after the effective date of the agreement, include the following in the closing agreement ~~should provide that~~:

- A. The bonds ~~are not~~ aren't qualified bonds for purposes of IRC 6431-.
- B. The issuer ~~is not~~ isn't entitled to a refund of a credit ~~under IRC~~ under IRC 6431 ~~with respect to~~ for the bonds.
- C. The issuer ~~will include~~ includes a representation that it ~~will not~~ won't request a refund of the credit.

3. ~~3.~~ For closing agreements that provide that the issuer may not treat a portion of an issue of direct pay bonds as tax-advantaged bonds, include the following in the closing agreement ~~shall include the following~~:

- A. The portion of each maturity of outstanding bonds that is considered qualified on the effective date of the closing agreement.
- B. How the IRS and issuer treated principal payments or other adjustments affecting the outstanding amount of each maturity of bonds for determining the qualified bonds in each maturity.
- C. The portion of each maturity of outstanding bonds that is considered nonqualified on the effective date of the closing agreement.

4. ~~4.~~ For closing agreements under which credits are calculated by treating the bonds as if a change in bond terms other than that described in paragraph (3) above had occurred,

~~such as~~ (for example, a change in the interest rate for one or more maturities of bonds or the rate of credit ~~to be allowed,)~~ include the following in the closing agreement ~~shall include the following:~~

- A. The specific term(s) ~~upon which such calculation will be based~~ for calculations.
- B. The specific bonds affected by ~~such~~ this change.

4.81.6.4.5.5 ~~(02-20-2019)~~

No Payment from Tax-Advantaged Bond Proceeds ~~(01-28-2016)~~

~~1.~~ 1. — In general, the issuer ~~should~~ must not make payments required under the closing agreement including the redemption of bonds or the establishment of a defeasance escrow from proceeds of bonds described in IRC 103(a), ~~IRC 54A-~~, or IRC 54AA. ~~An exception.~~

Exception:

Exceptions to this rule may ~~exist~~ be made for closing agreements that resolve compliance failures with the arbitrage yield restriction and rebate requirements ~~under IRC 148~~ to permit investment proceeds to be paid, and for disposition proceeds applied to redeem or defease the bonds.

4.81.6.5.6 ~~News Release (01-28-2016)~~ (02-20-2019)

Review and Clearance Process for Examination Closing Agreements ~~1.~~ — ~~As part of~~

1. Examiner: Prepare a briefing memorandum summarizing the proposed resolution terms and include the draft closing agreement ~~process, the agent, group manager, or specialist may negotiate what a news release by.~~ Include in the issuer or other signatory will say briefing memo:

- ~~2.~~ ~~The inclusion~~ Discussion of the ~~terms~~ key facts
- Applicable law
- Identification of the ~~news release must~~ violations
- Proposed resolution terms
- Description of the resolution amount methodology (if any)
- Identification of the bonds to be redeemed or defeased (if any)
- Any proposed deviation from the model closing agreement language
- Any mitigating or aggravating factors used in arriving at the proposed resolution terms.

2. Examiner: Attach the briefing memo and the proposed closing agreement to the Closing Agreement Approval Document and send to your group manager for review and concurrence. When your group manager concurs with the recommendations, discuss the proposed resolution terms with the representative/issuer, emphasizing that the resolution terms have not been reviewed by the Committee or approved by the ~~Committee~~, FOM or the Director. Upon the issuer's tentative approval of the terms of the proposed closing agreement, inform your group manager of the approval.

3. The group manager forwards the Closing Agreement Approval Document and the attached documents to the FOM.

- If the FOM concurs with the resolution terms, and the agreement involves a nonstandard resolution (i.e., resolution terms that are not specifically prescribed in the IRM or guidance) or language that differs substantively from the model closing

agreement or if the FOM believes Committee review is appropriate, he/she sends the Closing Agreement Approval Document to the Committee.

- If the FOM doesn't agree with the resolution terms, she/he sends the Closing Agreement Approval Document back to the group manager and the examiner for further consideration and resubmission.

4. The Committee reviews the proposed resolution terms to determine whether:

- A. The resolution terms are consistent with other ITG/TEB closing agreements for the same type of violation, considering relevant factors that might support different resolution terms, such as ITG/TEB's discovery of the violation rather than the issuer's submission through the Voluntary Closing Agreement Program.
- B. The closing agreement language is enforceable (if it has been substantively modified from the model closing agreement language).

Note:

The Committee may seek advice from the designated counsels from Division Counsel and Chief Counsel when questions of procedure or content make it appropriate, such as when proposed terms of a closing agreement are substantively modified from the model agreement.

5. If the Committee, after consulting the Chief Counsel ad hoc members, determines that changes are needed to make the agreement enforceable, they share those changes with the examiner and the group manager. Generally, the examiner must make those changes. If the Committee concludes that the proposed resolution is inconsistent with other ITG/TEB closing agreements, or they recommend other changes, they list the

changes and their reasons on the Closing Agreement Approval Document and discuss alternative resolutions with the group manager and the examiner. After review and any discussion, the Committee sends the Closing Agreement Approval Document and attached documents to the FOM.

6. _____ If the FOM approves the closing agreement, he/she sends the Closing Agreement Approval Document and attached documents to the group manager and examiner. If the FOM doesn't agree, he/she discusses any concerns with the Committee and the group manager.

7. _____ The FOM may send the exam case back to the examiner for further consideration and resubmission. The FOM may determine that it is in the best interest of ITG/TEB to proceed with execution of the agreement without full Committee concurrence. In such a case, the FOM must notate such on the Closing Agreement Approval Document. The FOM may make or approve changes in the closing agreement which don't impact enforceability or deviate from the model closing agreement language without Committee review or any special notation on the Closing Agreement Approval Document.

Example:

The FOM may change the resolution amount to reflect a different payment date or correct an issuer's name.

8. _____ After receiving the FOM's approval using the approval process, the examiner must discuss with the representative/issuer any changes to the closing agreement, emphasizing that the resolution terms still have not been approved by the Director. When the representative/issuer concur on the approved agreement, the examiner must follow the closing agreement execution procedures in *IRM* 4.81.6.6.

4.81.6.6 (02-20-2019)

Execution of Closing Agreements ~~(01-28-2016)~~

~~1. 1.~~ After the closing agreement has been through the required approval process, the examiner must send an execution copy of the closing agreement to the issuer and any other applicable parties for signature.

~~2.~~ Closing agreements are executed first by the taxpayer and other parties to the transaction, as applicable, and then by ITG/TEB. ~~Once ITG/TEB signs the closing agreement has been through~~ only when the required approval process, TEB will send an execution copy ~~payment of the closing agreement to the issuer~~ resolution amount is verified on IRS systems and proof of any other ~~applicable parties for signature~~ required actions is received.

~~A.~~ ~~The Director executes examination closing agreements. The agent or the FO group manager will forward the executed originals to the Director for signature. The transmittal to the Director will include the Closing Agreement Approval Document, verification that the resolution amount was received by the IRS, closing letters to the other parties to the closing agreement, transmittal letters to any representative required to receive copies pursuant to Form 2848, and any other document that is appropriate to enclose such as a customer satisfaction survey.~~

~~B.~~ ~~To execute voluntary compliance closing agreements, the agent or specialist will follow the procedures described in IRM 7.2.3.3.4 and IRM 7.2.3.3.5, Tax Exempt Bonds Voluntary Closing Agreement Program.~~

~~3. 2.~~ In the transmittal, the examiner must direct the issuer to mail the closing agreement executed by the issuer and other applicable parties directly to the examiner's group manager, at the address set forth in the transmittal. Upon receipt of the executed agreement from the issuer, the group manager e-mails a copy of the executed agreement to the examiner.

4. Examiner must confirm and document:

- Payment of the Settlement Payment was made and is reflected on the proper IRS account module.
- Any required payment was made from sources other than proceeds of tax-advantaged bonds.
- Bonds that were described as redeemed and retired in the lettered paragraphs of the agreement have been redeemed and retired.
- Any public statement or notice required under the agreement has been issued.
- Any required escrow has been established and fully funded with sources other than proceeds of tax-advantaged bonds.
- Any other required terms of the agreement have been met.
- Signatory is someone eligible to sign a tax return or execute contracts.

5. ITG/TEB ~~will receive~~ receives all closing agreement payments through the Electronic Federal Tax Payment System (EFTPS) unless unusual circumstances warrant ~~use of the procedures for~~ manually processing payments by certified check. ~~For example, payments should~~

Example:

Payments must be manually processed if EFTPS is unavailable or otherwise expected to be unavailable on the anticipated due date for the payment ~~of a closing agreement amount.~~ (see IRM 4.4.24).

~~A.6.~~ The issuer of the tax-advantaged bonds, the conduit borrower or, in the case of an IRC 6700 penalty exam, the taxpayer, may submit the closing agreement amounts. ~~If the~~

~~closing agreement payment concerns the potential tax liability of the issuer (e.g., denial of a section 6431 credit payment) or the bondholders (e.g. inclusion of interest income or denial of a tax credit), then the payment is reported using the issuer's EIN regardless of the source of the payment. If the closing agreement amount is a payment concerning the potential tax liability of the conduit borrower (e.g. IRC 150(b) or IRC 168(g) adjustments), then the payment must be credited to the borrower using an appropriate MFT.~~

A. If the closing agreement ~~amount is a~~ payment ~~concerning~~ relates to the issuer's potential tax liability (for example, denial of an IRC 6431 credit payment) or the bondholders (for example, inclusion of interest income or denial of a tax credit), then report the payment using the issuer's EIN regardless of the source of the payment.

B. If the closing agreement payment relates to the potential tax liability of the conduit borrower (for example, IRC 150(b) or IRC 168(g) adjustments), then credit the payment to the borrower using an appropriate MFT.

C. If the closing agreement payment relates to a potential promoter penalty, then credit the payment ~~must be credited~~ to the taxpayer subject to the IRC 6700 penalty.

7. In all cases, the group manager, ~~agent~~ or ~~specialist~~ examiner must verify that the Master File entity account for the EIN of the taxpayer ~~scheduled to~~ who'll submit the electronic payment is accurate. If there ~~is no~~ isn't an entity account for the EIN, the group manager or examiner must ensure that one ~~should be~~ is created on Master File. ~~Entity~~ The group manager or examiner must confirm the existence of the entity accounts ~~should be checked well~~ in advance of ~~when TEB anticipates~~ that execution of the closing agreement ~~will be executed~~ to allow time to establish the account, if ~~needed~~ necessary.

8. ~~Once~~ The agent forwards to the group manager, ~~agent or specialist receive confirmation from the Federal Reserve Bank documentation confirming the issuer's required performance under the terms~~ of the ~~payment as well as proof of any other required actions,,~~ the closing agreement ~~should be forwarded~~ have been met, together with all necessary closing agreement transmittal letters.

9. The group manager:

- Confirms the executed documents are consistent with the document approved by the FOM.
- Confirms any required actions including: settlement payments, redemptions, notices, escrows have been completed.
- Scans the executed closing agreement received from the issuer.
- Prints all closing and transmittal letters and affixes the signature stamp for the FOM and then scans the signed letters.
- ~~B.~~ Securely e-mails the closing agreement package to the ITG/TEB execution.
- ~~3.~~ After Program Assistant or other person designated by the Director ~~executes an examination~~ and the Director (with a cc to the FOM). The closing agreement, ~~the Director's Office will retain~~ package must contain:
 - The Closing Agreement Committee Approval, including the Closing Agreement Briefing Memo.
 - Verification that the IRS received the resolution amount.

- o The scanned executed closing agreement.
- o The scanned signed closing and transmittal letters.

10. The ITG/TEB Program Assistant or other person designated by the Director coordinates with the Director for execution of the closing agreement. The Director may sign the closing agreement with a manual or electronic signature. The ITG/TEB Program Assistant or other person designated by the Director:

- A. Dates all closing and transmittal letters
- B. Securely e-mails an electronic copy of the dated closing and transmittal letters and one copy of the executed closing agreement to the originating group manager (with a cc copy to the FOM).
- C. Mails the executed original agreement ~~and will mail the remaining executed original agreements to the other signatories and to the issuer and sends~~ copies of the agreement to the other signatories and any representative required to receive a copy. ~~The Director's Office will use along with~~ the closing letters and transmittal letters ~~received from the agent or the FO group manager. That office will also arrange for.~~
- D. Securely e-mails an electronic version of the executed closing agreement; ~~to the Committee members.~~

11. The originating group manager ensures that copies of the dated and signed closing ~~letters,~~ and transmittal letters ~~to be e-mailed to the agent of FO manager for inclusion~~ and executed closing agreement are in the case file.

~~4. Once a voluntary compliance closing agreement is executed, the specialist will follow the procedures described in IRM 7.2.3.3.5.~~

12. The originating group manager sends by secure e-mail a copy of the closing agreement involving direct pay bonds to the Direct Pay Bonds Compliance Review Coordinator in ITG/TEB Technical when the resolution involves any change in the debt service schedule for the bonds.

4.81.6.7- (02-20-2019)

Setting Aside or Clarification of Closing Agreements ~~(01-28-2016)~~

1. ~~An~~The Commissioner may set aside an agreement entered into under IRC 7121 ~~may be set aside by the Commissioner upon if there's~~ a showing of fraud or malfeasance, or misrepresentation of a material fact. The ~~Commissioner's~~Commissioner's signature is required to set aside an agreement. Even if there is a basis to set aside the agreement, it is not mandatory. The Commissioner may refrain from doing so if it is in the best interests of the United States ~~to not~~ to set aside the agreement.

2. An agreement entered into under IRC 7121 may be clarified if ~~a provision~~any of ~~that agreement is~~its provisions are unclear and reasonably subject to more than one reasonable interpretation or if surrounding facts and circumstances result in more than one reasonable interpretation of a provision in the agreement.

- A. ITG/TEB ~~will~~ generally ~~clarify~~clarifies its understanding of a closing agreement by issuing a letter to the issuer interpreting the unclear provision and its application to the surrounding facts and circumstances.
- B. ITG/TEB may refuse to clarify a disputed closing agreement term if it determines that the challenging

~~party's~~party's proposed interpretation is unreasonable and unlikely to prevail ~~in the event of litigation~~if it is litigated.

- C. For ~~examination~~exam closing agreements, the Director, ~~Tax Exempt Bonds will decide~~ decides whether it is necessary to clarify the agreement. ~~For voluntary compliance closing agreements, the Manager, Compliance & Program Management will decide whether it is necessary to clarify the agreement.~~

~~4.81.6.8 Review and Clearance Process for Examination Closing Agreements (01-28-2016)~~

~~1. The agent prepares a briefing memorandum summarizing the proposed resolution terms and includes the draft closing agreement. The briefing memorandum will include a discussion of the key facts, applicable law, identification of the violations, the proposed resolution terms, a description of the resolution amount methodology (if any), identification of the bonds to be redeemed or defeased (if any), and any proposed deviation from the model closing agreement language. The briefing memorandum should also describe any mitigating or aggravating factors used in arriving at the proposed resolution terms. The agent will attach the briefing memorandum and the proposed closing agreement to the Closing Agreement Approval Document that the agent will send to his or her group manager for review and concurrence. When the FO manager concurs with the recommendations, the proposed resolution terms may be discussed with the issuer, emphasizing that the resolution terms have not been approved by the FO Manager or the Committee.~~

~~2. The FO group manager will forward the Closing Agreement Approval Document and the attached documents to the FO Manager. The FO Manager will review the briefing memorandum. If the FO Manager does not concur with the resolution terms, the Closing Agreement Approval Document will be sent to the FO group manager and agent for further consideration and resubmission. If the FO Manager concurs with the resolution terms, the FO Manager~~

~~will forward Closing Agreement Approval Document to the FO representative on the Committee only if the agreement involves a nonstandard resolution (i.e., resolution terms that are not specifically prescribed in the IRM or guidance) or terms that substantively differ from the model closing agreement.~~

~~3. The Committee will review the proposed resolution terms to determine whether the resolution terms are consistent with other TEB closing agreements for the same type of violation and, if the closing agreement language has been substantively modified from the standard model closing agreement language, that the changed terms are enforceable. In reviewing resolution terms for consistency, the Committee will consider whether the comparable agreements came in through the voluntary compliance programs versus through an examination and other relevant factors that might support different resolution terms. The FO representative on the Committee may seek advice from the Chief Counsel ad hoc Committee members, such as when a proposed closing agreement contains deviates from the model agreement. If the Committee recommends changes, it will discuss those changes with the agent and FO group manager. If they cannot agree, the Closing Agreement Approval Document will note the disagreement and the reason for the disagreement. After the Committee approves the agreement, the Closing Agreement Approval Document and attached documents will be sent to the FO Manager.~~

~~4. If the FO Manager approves the closing agreement, the Closing Agreement Approval Document and attached documents will be sent to the FO group manager and agent. Once the FO group manager and the representative/issuer have agreed upon the approved agreement, the examiner should follow the procedures for executing the closing agreement. If the FO Manager does not concur, the FO Manager will discuss any concerns with the Committee. If there are any concerns remaining after that discussion, the FO Manager will discuss with the GPM Manager and then share conclusions with the FO group manager and the Committee. If an agreement cannot be reached between the FO Manager and the GPM Manager, the case will be elevated to the TEB Director.~~

~~5. — If the Committee, after consultation with the Chief Counsel and hoc members, determines that changes are need to make the agreement enforceable, those changes will be shared with the agent and the FO group manager and generally, those changes must be made. If the Committee concludes that the proposed resolution is not consistent with other TEB closing agreements, the Committee will put the reasons for the disagreement on the Closing Agreement Approval Document and discuss alternative resolutions with the FO group manager and the agent. If agreement is not reached, the case will be sent to the FO Manager who will consult with the CPM Manager and, if necessary the CPM Manager and FO Manager will bring the case to the TEB Director for a final decision. All persons who approve but do not sign the agreement will sign the Closing Agreement Approval Document.~~

~~6. — The FO Manager may make or approve changes in the closing agreement which do not impact enforceability or deviate from the standard closing agreement language without additional Committee approval. For example, the resolution amount may be changed to reflect a different payment date of the resolution amount.~~

~~7. — After receiving the necessary approvals, the agent will follow the closing agreement execution procedures in *IRM 4.81.6.6*.~~