

amount. The individual's rights to the payment are not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)).

(ii) *Conclusion.* In this *Example 1*, because there is no substantial risk of forfeiture with respect to the agreement to transfer property in 2005, the present value (as of December 1, 2002) of the payment is includible in the individual's gross income for 2002. Under paragraph (a)(4) of this section, when the payment is made on January 15, 2005, the amount includible in the individual's gross income is equal to the excess of the fair market value of the property when paid, over the amount that was includible in gross income for 2002 (which is the basis allocable to that payment).

*Example 2.* (i) *Facts.* As part of an arrangement for the deferral of compensation, individuals A and B rendering services for a tax-exempt entity each receive in 2010 property that is subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and within the meaning of section 83(c)(1)). Individual A makes an election to include the fair market value of the property in gross income under section 83(b) and individual B does not make this election. The substantial risk of forfeiture for the property transferred to individual A lapses in 2012 and the substantial risk of forfeiture for the property transferred to individual B also lapses in 2012. Thus, the property transferred to individual A is included in A's gross income for 2010 when A makes a section 83(b) election and the property transferred to individual B is included in B's gross income for 2012 when the substantial risk of forfeiture for the property lapses.

(ii) *Conclusion.* In this *Example 2*, in each case, the compensation deferred is not subject to section 457(f) or this section because section 83 applies to the transfer of property on or before the date on which there is no substantial risk of forfeiture with respect to compensation deferred under the arrangement.

*Example 3.* (i) *Facts.* In 2004, Z, a tax-exempt entity, grants an option to acquire property to employee C. The option lacks a readily ascertainable fair market value, within the meaning of section 83(e)(3), has a value on the date of grant equal to \$100,000, and is not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and within the meaning of section 83(c)(1)). Z exercises the option in 2012 by paying an exercise price of \$75,000 and receives property that has a fair market value (for purposes of section 83) equal to \$300,000.

(ii) *Conclusion.* In this *Example 3*, under section 83(e)(3), section 83 does not apply to the grant of the option. Accordingly, C has income of \$100,000 in 2004 under section 457(f). In 2012, C has income of \$125,000, which is the value of the property transferred in 2012, minus the allocable portion of the basis that results from the \$100,000 of income in 2004 and the \$75,000 exercise price.

*Example 4.* (i) *Facts.* In 2010, X, a tax-exempt entity, agrees to pay deferred compensation to employee D. The amount

payable is \$100,000 to be paid 10 years later in 2020. The commitment to make the \$100,000 payment is not subject to a substantial risk of forfeiture. In 2010, the present value of the \$100,000 is \$50,000. In 2018, X transfers to D property having a fair market value (for purposes of section 83) equal to \$70,000. The transfer is in partial settlement of the commitment made in 2010 and, at the time of the transfer in 2018, the present value of the commitment is \$80,000. In 2020, X pays D the \$12,500 that remains due.

(ii) *Conclusion.* In this *Example 4*, D has income of \$50,000 in 2010. In 2018, D has income of \$30,000, which is the amount transferred in 2018, minus the allocable portion of the basis that results from the \$50,000 of income in 2010. (Under section 72(e)(2)(B), income is allocated first. The income is equal to \$30,000 (\$80,000 minus the \$50,000 basis), with the result that the allocable portion of the basis is equal to \$40,000 (\$70,000 minus the \$30,000 of income.) In 2020, D has income of \$2,500 (\$12,500 minus \$10,000, which is the excess of the original \$50,000 basis over the \$40,000 basis allocated to the transfer made in 2018).

**§ 1.457-12 Effective dates.**

(a) *General effective date.* Except as otherwise provided in this section, §§ 1.457-1 through 1.457-11 apply for taxable years beginning after December 31, 2001.

(b) *Transition period for eligible plans to comply with EGTRRA.* For taxable years beginning after December 31, 2001, and before January 1, 2004, a plan does not fail to be an eligible plan as a result of requirements imposed by the Economic Growth and Tax Relief Reconciliation Act of 2001 (115 Stat. 385) (EGTRRA) (Public Law 107-16) June 7, 2001, if it is operated in accordance with a reasonable, good faith interpretation of EGTRRA.

(c) *Special rule for distributions from rollover accounts.* The last sentence of § 1.457-6(a) (relating to distributions of amounts held in a separate account for eligible rollover distributions) applies for taxable years beginning after December 31, 2003.

(d) *Special rule for options.* Section 1.457-11(d) does not apply with respect to an option without a readily ascertainable fair market value (within the meaning of section 83(e)(3)) that was granted on or before May 8, 2002.

(e) *Special rule for qualified domestic relations orders.* Section 1.457-10(c) (relating to qualified domestic relations orders) applies for transfers, distributions, and payments made after December 31, 2001.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

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(b) * * *	

CFR part or section where identified and described	Current OMB control No.
* * *	* * *
1.457-8 .....	1545-1580
* * *	* * *

**Robert E. Wenzel,**  
*Deputy Commissioner for Services and Enforcement.*  
Approved: July 2, 2003.

**Pamela F. Olson,**  
*Assistant Secretary of Treasury (Tax Policy)*  
[FR Doc. 03-17523 Filed 7-10-03; 8:45 am]  
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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 50**

**RIN 1505-AA96**

**Terrorism Risk Insurance Program**

**AGENCY:** Departmental Offices, Treasury.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this rule in final form as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. Treasury published an interim final rule with a request for comment on February 28, 2003. That rule set forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. It was the first in a series of regulations that Treasury will be issuing to implement the Program. This final rule generally adopts the interim final rule, but makes revisions in the definition of "affiliate" and certain other changes described in the preamble.

**DATES:** This final rule is effective July 11, 2003.