Reg. Section 1.385-3T

Certain distributions of debt instruments and similar transactions (temporary)

(a) [Reserved]. For further guidance, see §1.385-3(a).

(b)

(1) through (b)(2). [Reserved]. For further guidance, see §1.385-3(b)(1) through (b)(2).

(3)

(i) through (vi). [Reserved]. For further guidance, see §1.385-3(b)(3)(i) through (vi).

(vii) Qualified short-term debt instrument. The term qualified short-term debt instrument means a covered debt instrument that is described in paragraph (b)(3)(vii)(A), (b)(3)(vii)(B), (b)(3)(vii)(C), or (b)(3)(vii)(D) of this section.

(A) Short-term funding arrangement. A covered debt instrument is described in this paragraph (b)(3)(vii)(A) if the requirements of the specified current assets test described in paragraph (b)(3)(vii)(A)(1) of this section or the 270-day test described in paragraph (b)(3)(vii)(A)(2) of this section (the alternative tests) are satisfied, provided that an issuer may only claim the benefit of one of the alternative tests with respect to covered debt instruments issued by the issuer in the same taxable year.

(1) Specified current assets test-

(i) In general. The requirements of this paragraph (b)(3)(vii)(A)(1) are satisfied with respect to a covered debt instrument if the requirement of paragraph (b)(3)(vii)(A)(1)(ii) of this section is satisfied, but only to the extent the requirement of paragraph (b)(3)(vii)(A)(1)(iii) of this section is satisfied.

(ii) Maximum interest rate. The rate of interest charged with respect to the covered debt instrument does not exceed an arm's length interest rate, as determined under section 482 and the regulations thereunder, that would be charged with respect to a comparable debt instrument of the issuer with a term that does not exceed the longer of 90 days and the issuer's normal operating cycle.

(iii) Maximum outstanding balance. The amount owed by the issuer under covered debt instruments issued to members of the issuer's expanded group that satisfy the requirements of paragraph (b)(3)(vii)(A)(1)(ii), (b)(3)(vii)(A)(2) (if the covered debt instrument was issued in a prior taxable year), (b)(3)(vii)(B), or (b)(3)(vii)(C) of this section immediately after the covered debt instrument is issued does not exceed the maximum of the amounts of specified current assets reasonably expected to be reflected, under applicable accounting principles, on the issuer's balance sheet as a result of transactions in the ordinary course of business during the subsequent 90-day period or the issuer's normal operating cycle, whichever is longer. For purposes of the preceding sentence, in the case of an issuer that is a qualified cash pool header, the amount owed by the issuer shall not take into account deposits described in paragraph (b)(3)(vii)(D) of this section. Additionally, the amount owed by any issuer shall be reduced by the amount of the issuer's deposits with a qualified cash pool header, but only to the extent of amounts borrowed from the same qualified cash pool header that satisfy the requirements of paragraph (b)(3)(vii)(A)(2) (if the covered debt instrument was issued in a prior taxable year) or (b)(3)(vii)(A)(1)(ii) of this section.

(iv) Specified current assets. For purposes of paragraph (b)(3)(vii)(A)(1)(iii) of this section, the term specified current assets means assets that are reasonably expected to be realized in cash or sold (including by being incorporated into inventory that is sold) during the normal operating cycle of the issuer, other than cash, cash equivalents, and assets that are reflected on the books and records of a qualified cash pool header.

(v) Normal operating cycle. For purposes of paragraph (b)(3)(vii)(A)(1) of this section, the term normal operating cycle means the issuer's normal operating cycle as determined under applicable accounting principles, except that if the issuer has no single clearly defined normal operating cycle, then the normal operating cycle is determined based on a reasonable analysis of the length of the operating cycles of the multiple businesses and their sizes relative to the overall size of the issuer.

(vi) Applicable accounting principles. For purposes of paragraph (b)(3)(vii)(A)(1) of this section, the term applicable accounting principles means the financial accounting principles generally accepted in the United States, or an international financial accounting standard, that is applicable to the issuer in preparing its financial statements, computed on a consistent basis.

(2) 270-day test-

(i) In general. A covered debt instrument is described in this paragraph (b)(3)(vii)(A)(2) if the requirements of paragraphs (b)(3)(vii)(A)(2)(ii) through (b)(3)(vii)(A)(2)(iv) of this section are satisfied.

(ii) Maximum term and interest rate. The covered debt instrument must have a term of 270 days or less or be an advance under a revolving credit agreement or similar arrangement and must bear a rate of interest that does not exceed an arm's length interest rate, as determined under section 482 and the regulations thereunder, that would be charged with respect to a comparable debt instrument of the issuer with a term that does not exceed 270 days.

(iii) Lender-specific indebtedness limit. The issuer is a net borrower from the lender for no more than 270 days during the taxable year of the issuer, and in the case of a covered debt instrument outstanding during consecutive tax years, the issuer is a net borrower from the lender for no more than 270 consecutive days, in both cases taking into account only covered debt instruments that satisfy the requirement of paragraph (b)(3)(vii)(A)(2)(ii) of this section other than covered debt instruments described in paragraph (b)(3)(vii)(B) or (b)(3)(vii)(C) of this section.

(iv) Overall indebtedness limit. The issuer is a net borrower under all covered debt instruments issued to members of the issuer's expanded group that satisfy the requirements of paragraphs (b)(3)(vii)(A)(2)(ii) and (iii) of this section, other than covered debt instruments described in paragraph (b)(3)(vii)(B) or (b)(3)(vii)(C) of this section, for no more than 270 days during the taxable year of the issuer, determined without regard to the identity of the lender under such covered debt instruments.

(v) Inadvertent error. An issuer's failure to satisfy the 270-day test will be disregarded if the failure is reasonable in light of all the facts and circumstances and the failure is promptly cured upon discovery. A failure to satisfy the 270-day test will be considered reasonable if the taxpayer maintains due diligence procedures to prevent such failures, as evidenced by having written policies and operational procedures in place to monitor compliance with the 270-day test and management-level employees of the expanded group having undertaken reasonable efforts to establish, follow, and enforce such policies and procedures.

(B) Ordinary course loans. A covered debt instrument is described in this paragraph (b)(3)(vii)(B) if the covered debt instrument is issued as consideration for the acquisition of property other than money in the ordinary course of the issuer's trade or business, provided that the obligation is reasonably expected to be repaid within 120 days of issuance.

(C) Interest-free loans. A covered debt instrument is described in this paragraph (b)(3)(vii)(C) if the instrument does not provide for stated interest or no interest is charged on the instrument, the instrument does not have original issue discount (as defined in section 1273 and the regulations thereunder), interest is not imputed under section 483 or section 7872 and the regulations thereunder, and interest is not required to be charged under section 482 and the regulations thereunder.

(D) Deposits with a qualified cash pool header.

(1) In general. A covered debt instrument is described in this paragraph (b)(3)(vii)(D) if it is a demand deposit received by a qualified cash pool header described in paragraph (b)(3)(vii)(D)(2) of this section pursuant to a cash-management arrangement described in paragraph (b)(3)(vii)(D)(3) of this section. This paragraph (b)(3)(vii)(D) does not apply if a purpose for making the demand deposit is to facilitate the avoidance of the purposes of this section or §1.385-3 with respect to a qualified business unit (as defined in section 989(a) and the regulations thereunder) (QBU) that is not a qualified cash pool header.

(2) Qualified cash pool header. The term qualified cash pool header means an expanded group member, controlled partnership, or QBU described in §1.989(a)-1(b)(2)(ii), that has as its principal purpose managing a cash-management arrangement for participating expanded group members, provided that the excess (if any) of funds on deposit with such expanded group member, controlled partnership, or QBU (header) over the outstanding balance of loans made by the header is maintained on the books and records of the header in the form of cash or cash equivalents, or invested through deposits with, or the acquisition of obligations or portfolio securities of, persons that do not have a relationship to the header (or, in the case of a header that is a QBU described in §1.989(a)-1(b)(2)(ii), its owner) described in section 267(b) or section 707(b).

(3) Cash-management arrangement. The term cash-management arrangement means an arrangement the principal purpose of which is to manage cash for participating expanded group members. For

purposes of the preceding sentence, managing cash means borrowing excess funds from participating expanded group members and lending funds to participating expanded group members, and may also include foreign exchange management, clearing payments, investing excess cash with an unrelated person, depositing excess cash with another qualified cash pool header, and settling intercompany accounts, for example through netting centers and pay-onbehalf-of programs.

(viii) [Reserved]. For further guidance, see §1.385-3(b)(viii).

(c)[Reserved]. For further guidance, see §1.385-3(c).

(d)

(1) through (d)(3) [Reserved]. For further guidance, see §1.385-3(d)(1) through (d)(3).

(4)Treatment of disregarded entities. This paragraph (d)(4) applies to the extent that a covered debt instrument issued by a disregarded entity, the regarded owner of which is a covered member, would, absent the application of this paragraph (d)(4), be treated as stock under §1.385-3. In this case, rather than the covered debt instrument being treated as stock to such extent (applicable portion), the covered member that is the regarded owner of the disregarded entity is deemed to issue its stock in the manner described in this paragraph (d)(4). If the applicable portion otherwise would have been treated as stock under §1.385-3(b)(2), then the covered member is deemed to issue its stock to the expanded group member to which the covered debt instrument was, in form, issued (or transferred) in the transaction described in §1.385-3(b)(2). If the applicable portion otherwise would have been treated as stock under §1.385-3(b)(3)(i), then the covered member is deemed to issue its stock to the holder of the covered debt instrument in exchange for a portion of the covered debt instrument equal to the applicable portion. In each case, the covered member that is the regarded owner of the disregarded entity is treated as the holder of the applicable portion of the debt instrument issued by the disregarded entity, and the actual holder is treated as the holder of the remaining portion of the covered debt instrument and the stock deemed to be issued by the regarded owner. Under federal tax principles, the applicable portion of the debt instrument issued by the disregarded entity generally is disregarded. This paragraph (d)(4) must be applied in a manner that is consistent with the principles of paragraph (f)(4) of this section. Thus, for example, stock deemed issued is deemed to have the same terms as the covered debt instrument issued by the disregarded entity, other than the identity of the issuer, and payments on the stock are determined by reference to payments made on the covered debt instrument issued by the disregarded entity. See §1.385-4T(b)(3) for additional rules that apply if the regarded owner of the disregarded entity is a member of a consolidated group. If the regarded owner of a disregarded entity is a controlled partnership, then paragraph (f) of this section applies as though the controlled partnership were the issuer in form of the debt instrument. (d)(5) through (d)(7). [Reserved]. For further guidance, see §1.385-3(d)(5) through (d)(7).

(e)[Reserved]. For further guidance, see §1.385-3(e).

(f)Treatment of controlled partnerships.

(1)In general. For purposes of this section and §§1.385-3 and 1.385-4T, a controlled partnership is treated as an aggregate of its partners in the manner described in this paragraph (f). Paragraph (f)(2) of this section sets forth rules concerning the aggregate treatment when a controlled partnership acquires property from a member of the expanded group. Paragraph (f)(3) of this section sets forth rules concerning the aggregate treatment when a controlled partnership issues a debt instrument. Paragraph (f)(4) of this section deems a debt instrument issued by a controlled partnership to be held by an expanded group partner rather than the holder-in-form in certain cases. Paragraph (f)(5) of this section sets forth the rules concerning events that cause the deemed results described in paragraph (f)(4) of this section to cease. Paragraph (f)(6) of this section exempts certain issuances of a controlled partnership's debt to a partner and a partner's debt to a controlled partnership from the application of this section and §1.385-3. For definitions applicable for this section, see paragraph (g) of this section and §1.385-3(g). For examples illustrating the application of this section, see paragraph (h) of this section.

(2)Acquisitions of property by a controlled partnership.

(i) Acquisitions of property when a member of the expanded group is a partner on the date of the acquisition-

(A) Aggregate treatment. Except as otherwise provided in paragraphs (f)(2)(i)(C) and (f)(6) of this section, if a controlled partnership, with respect to an expanded group, acquires property from a member of the expanded group (transferor member), then, for purposes of this section and §1.385-3, a member of the expanded group that is an expanded group partner on the date of the acquisition is treated as acquiring its share (as determined under paragraph (f)(2)(i)(B) of this section) of the property. The expanded group partner is treated as acquiring its share of the property from the transferor member in the manner (for example, in a distribution, in an exchange for property, or in an issuance), and on the date on which, the property is actually acquired by the controlled partnership from the transferor member. Accordingly, this section and §1.385-3 apply to a member's acquisition of property described in this paragraph (f)(2)(i)(A) in the same manner as if the member actually acquired the property from the transferor member, unless explicitly provided otherwise.

(B) Expanded group partner's share of property. For purposes of paragraph (f)(2)(i)(A) of this section, a partner's share of property acquired by a controlled partnership is determined in accordance with the partner's liquidation value percentage (as defined in paragraph (g)(17) of this section) with respect to the controlled partnership. The liquidation value

percentage is determined on the date on which the controlled partnership acquires the property.

(C) Exception if transferor member is an expanded group partner. If a transferor member is an expanded group partner in the controlled partnership, paragraph (f)(2)(i)(A) of this section does not apply to such partner.

(i) Acquisitions of expanded group stock when a member of the expanded group becomes a partner after the acquisition-

(A) Aggregate treatment. Except as otherwise provided in paragraph (f)(2)(ii)(C) of this section, if a controlled partnership, with respect to an expanded group, owns expanded group stock, and a member of the expanded group becomes an expanded group partner in the controlled partnership, then, for purposes of this section and §1.385-3, the member is treated as acquiring its share (as determined under paragraph (f)(2)(ii)(B) of this section) of the expanded group stock owned by the controlled partnership. The member is treated as acquiring its share of the expanded group stock on the date on which the member becomes an expanded group partner. Furthermore, the member is treated as if it acquires its share of the expanded group stock from a member of the expanded group in exchange for property other than expanded group stock, regardless of the manner in which the partnership acquired the stock and in which the member acquires its partnership interest. Accordingly, this section and §1.385-3 apply to a member's acquisition of expanded group stock described in this paragraph (f)(2)(ii)(A) in the same manner as if the member actually acquired the stock from a member of the expanded group in exchange for property other than expanded group stock, unless explicitly provided otherwise.

(B) Expanded group partner's share of expanded group stock. For purposes of paragraph (f)(2)(ii)(A) of this section, a partner's share of expanded group stock owned by a controlled partnership is determined in accordance with the partner's liquidation value percentage with respect to the controlled partnership. The liquidation value percentage is determined on the date on which a member of the expanded group becomes an expanded group partner in the controlled partnership.

(C) Exception if an expanded group partner acquires its interest in a controlled partnership in exchange for expanded group stock. Paragraph (f)(2)(ii)(A) of this section does not apply to a member of an expanded group that acquires its interest in a controlled

partnership either from another partner in exchange solely for expanded group stock or upon a partnership contribution to the controlled partnership comprised solely of expanded group stock.

(3) Issuances of debt instruments by a controlled partnership to a member of an expanded group-

(i) Aggregate treatment. If a controlled partnership, with respect to an expanded group, issues a debt instrument to a member of the expanded group, then, for purposes of this section and §1.385-3, a covered member that is an expanded group partner is treated as the issuer with respect to its share (as determined under paragraph(f)(3)(ii) of this section) of the debt instrument issued by the controlled partnership. This section and §1.385-3 apply to the portion of the debt instrument treated as issued by the covered member as described in this paragraph (f)(3)(i) in the same manner as if the covered member actually issued the debt instrument to the holder-in-form, unless otherwise provided. See paragraph (f)(4) of this section, which deems a debt instrument issued by a controlled partnership to be held by an expanded group partner rather than the holder-in-form in certain cases.

(ii) Expanded group partner's share of a debt instrument issued by a controlled partnership-

(A) General rule. An expanded group partner's share of a debt instrument issued by a controlled partnership is determined on each date on which the partner makes a distribution or acquisition described in §1.385-3(b)(2) or (b)(3)(i) (testing date). An expanded group partner's share of a debt instrument issued by a controlled partnership to a member of the expanded group is determined in accordance with the partner's issuance percentage (as defined in paragraph (g)(16) of this section) on the testing date. A partner's share determined under this paragraph (f)(3)(ii)(A) is adjusted as described in paragraph (f)(3)(ii)(B) of this section.

(B) Additional rules if there is a specified portion with respect to a debt instrument-

(1) An expanded group partner's share (as determined under paragraph (f)(3)(ii)(A) of this section) of a debt instrument issued by a controlled partnership is reduced, but not below zero, by the sum of all of the specified portions (as defined in paragraph (g)(23) of this section), if any, with respect to the debt instrument that correspond to one or more deemed transferred receivables (as defined in paragraph (g)(8) of this section) that are deemed to be held by the partner.

(2) If the aggregate of all of the expanded group partners' shares (as determined under paragraph (f)(3)(ii)(A) of this section and reduced under paragraph (f)(3)(ii)(B)(1) of this section) of the debt

instrument exceeds the adjusted issue price of the debt, reduced by the sum of all of the specified portions with respect to the debt instrument that correspond to one or more deemed transferred receivables that are deemed to be held by one or more expanded group partners (excess amount), then each expanded group partner's share (as determined under paragraph (f)(3)(ii)(A) of this section and reduced under paragraph (f)(3)(ii)(B)(1) of this section) of the debt instrument is reduced. The amount of an expanded group partner's reduction is the excess amount multiplied by a fraction, the numerator of which is the partner's share, and the denominator of which is the aggregate of all of the expanded group partners' shares.

(iii) Qualified short-term debt instrument. The determination of whether a debt instrument is a qualified short-term debt instrument for purposes of §1.385-3(b)(3)(vii) is made at the partnership-level without regard to paragraph (f)(3)(i) of this section.

(4) Recharacterization when there is a specified portion with respect to a debt instrument issued by a controlled partnership-

(i) General rule. A specified portion, with respect to a debt instrument issued by a controlled partnership and an expanded group partner, is not treated as stock under §1.385-3(b)(2) or (b)(3)(i). Except as otherwise provided in paragraphs (f)(4)(ii) and (f)(4)(iii) of this section, the holder-in-form (as defined in paragraph (g)(15) of this section) of the debt instrument is deemed to transfer a portion of the debt instrument (a deemed transferred receivable, as defined in paragraph (g)(8) of this section) with a principal amount equal to the adjusted issue price of the specified portion to the expanded group partner in exchange for stock in the expanded group partner (deemed partner stock, as defined in paragraph (g)(6) of this section) with a fair market value equal to the principal amount of the deemed transferred receivable. Except as otherwise provided in paragraph (f)(4)(vi) of this section (concerning the treatment of a deemed transferred receivable for purposes of section 752) and paragraph (f)(5) of this section (concerning specified events subsequent to the deemed transfer), the deemed transfer described in this paragraph (f)(4)(i) is deemed to occur for all federal tax purposes.

(ii) Expanded group partner is the holder-in-form of a debt instrument. If the specified portion described in paragraph (f)(4)(i) of this section is with respect to an expanded group partner that is the holder-in-form of the debt instrument, then paragraph (f)(4)(i) of this section will not apply with respect to that specified portion except that only the first sentence of paragraph (f)(4)(i) of this section is applicable.

(iii) Expanded group partner is a consolidated group member. This paragraph (f)(4)(iii) applies when one or more expanded group partners is a member of a

consolidated group that files (or is required to file) a consolidated U.S. federal income tax return. In this case, notwithstanding §1.385-4T(b)(1) (which generally treats members of a consolidated group as one corporation for purposes of this section and §1.385-3), the holder-in-form of the debt instrument issued by the controlled partnership is deemed to transfer the deemed transferred receivable or receivables to the expanded group partner or partners that are members of a consolidated group that make, or are treated as making under paragraph (f)(2) of this section, the regarded distributions or acquisitions (within the meaning of §1.385-4T(e)(5)) described in §1.385-3(b)(2) or (b)(3)(i) in exchange for deemed partner stock in such partner or partners. To the extent those regarded distributions or acquisitions are made by a member of the consolidated group that is not an expanded group partner (excess amount), the holderin-form is deemed to transfer a portion of the deemed transferred receivable or receivables to each member of the consolidated group that is an expanded group partner in exchange for deemed partner stock in the expanded group partner. The portion is the excess amount multiplied by a fraction, the numerator of which is the portion of the consolidated group's share (as determined under paragraph (f)(3)(ii) of this section) of the debt instrument issued by the controlled partnership that would have been the expanded group partner's share if the partner was not a member of a consolidated group, and the denominator of which is the consolidated group's share of the debt instrument issued by the controlled partnership.

(iv) Rules regarding deemed transferred receivables and deemed partner stock-

(A) Terms of deemed partner stock. Deemed partner stock has the same terms as the deemed transferred receivable with respect to the deemed transfer, other than the identity of the issuer.

(B) Treatment of payments with respect to a debt instrument for which there is one or more deemed transferred receivables. When a payment is made with respect to a debt instrument issued by a controlled partnership for which there is one or more deemed transferred receivables, then, if the amount of the retained receivable (as defined in paragraph (g)(22) of this section) held by the holder-in-form is zero and a single deemed holder is deemed to hold all of the deemed transferred receivables, the entire payment is allocated to the deemed transferred receivables held by the single deemed holder. If the amount of the retained receivable held by the holder-in-form is greater than zero or there are multiple deemed holders of deemed transferred receivables, or both, the payment is apportioned among the retained receivable, if any, and each deemed transferred receivable in proportion to the principal amount of all the receivables. The portion of a payment allocated or apportioned to a retained receivable or a deemed transferred receivable reduces the principal amount of, or accrued interest with respect to, as applicable depending on the payment, the retained receivable or deemed transferred receivable. When a payment allocated or apportioned to a deemed transferred receivable reduces the principal amount of the receivable, the expanded group partner that is the deemed holder with respect to the deemed transferred receivable is

deemed to redeem the same amount of deemed partner stock, and the specified portion with respect to the debt instrument is reduced by the same amount. When a payment allocated or apportioned to a deemed transferred receivable reduces accrued interest with respect to the receivable, the expanded group partner that is the deemed holder with respect to the deemed transferred receivable is deemed to make a matching distribution in the same amount with respect to the deemed partner stock. The controlled partnership is treated as the paying agent with respect to the deemed partner stock.

(v) Holder-in-form transfers debt instrument in a transaction that is not a specified event. If the holder-in-form transfers the debt instrument (which is disregarded for federal tax purposes) to a member of the expanded group or a controlled partnership (and therefore the transfer is not a specified event described in paragraph (f)(5)(iii)(F) of this section), then, for federal tax purposes, the holder-in-form is deemed to transfer the retained receivable and the deemed partner stock to the transferee.

(vi) Allocation of deemed transferred receivable under section 752. A partnership liability that is a debt instrument with respect to which there is one or more deemed transferred receivables is allocated for purposes of section 752 without regard to any deemed transfer.

(5) Specified events affecting ownership following a deemed transfer-

(i) General rule. If a specified event (within the meaning of paragraph (f)(5)(iii) of this section) occurs with respect to a deemed transfer, then, immediately before the specified event, the expanded group partner that is both the issuer of the deemed partner stock and the deemed holder of the deemed transferred receivable is deemed to distribute the deemed transferred receivable (or portion thereof, as determined under paragraph (f)(5)(iv) of this section) to the holder-in-form in redemption of the deemed partner stock (or portion thereof, as determined under paragraph (f)(5)(iv) of this section) deemed to be held by the holder-in-form. The deemed distribution is deemed to occur for all federal tax purposes, except that the distribution is disregarded for purposes of §1.385-3(b). Except when the deemed transferred receivable (or portion thereof, as determined under paragraph (f)(5)(iv) of this section) is deemed to be retransferred under paragraph (f)(5)(ii) of this section, the principal amount of the retained receivable held by the holder-in-form is increased by the principal amount of the deemed transferred receivable, the deemed transferred receivable ceases to exist for federal tax purposes, and the specified portion (or portion thereof) that corresponds to the deemed transferred receivable (or portion thereof) ceases to be treated as a specified portion for purposes of this section and §1.385-3.

(ii) New deemed transfer when a specified event involves a transferee that is a covered member that is an expanded group partner. If the specified event is

described in paragraph (f)(5)(iii)(E) of this section, the holder-in-form of the debt instrument is deemed to retransfer the deemed transferred receivable (or portion thereof, as determined under paragraph (f)(5)(iv) of this section) that the holder-in-form is deemed to have received pursuant to paragraph (f)(5)(i) of this section, to the transferee expanded group partner in exchange for deemed partner stock issued by the transferee expanded group partner with a fair market value equal to the principal amount of the deemed transferred receivable (or portion thereof) that is retransferred. For purposes of this section, this deemed transfer is treated in the same manner as a deemed transfer described in paragraph (f)(4)(i) of this section.

(iii) Specified events. A specified event, with respect to a deemed transfer, occurs when, immediately after the transaction and taking into account all related transactions:

(A) The controlled partnership that is the issuer of the debt instrument either ceases to be a controlled partnership or ceases to have an expanded group partner that is a covered member.

(B) The holder-in-form is a member of the expanded group immediately before the transaction, and the holder-in-form and the deemed holder cease to be members of the same expanded group for the reasons described in §1.385-3(d)(2).

(C) The holder-in-form is a controlled partnership immediately before the transaction, and the holder-in-form ceases to be a controlled partnership.

(D) The expanded group partner that is both the issuer of deemed partner stock and the deemed holder transfers (directly or indirectly through one or more partnerships) all or a portion of its interest in the controlled partnership to a person that neither is a covered member nor a controlled partnership with an expanded group partner that is a covered member. If there is a transfer of only a portion of the interest, see paragraph (f)(5)(iv) of this section.

(E) The expanded group partner that is both the issuer of deemed partner stock and the deemed holder transfers (directly or indirectly through one or more partnerships) all or a portion of its interest in the controlled partnership to a covered member or a controlled partnership with an expanded group partner that is a covered member. If there is a transfer of only a portion of the interest, see paragraph (f)(5)(iv) of this section.

(F) The holder-in-form transfers the debt instrument (which is disregarded for federal tax purposes) to a person that is neither a member of the expanded group nor a controlled partnership. See paragraph (f)(4)(v) of

this section if the holder-in-form transfers the debt instrument to a member of the expanded group or a controlled partnership.

(iv) Specified event involving a transfer of only a portion of an interest in a controlled partnership. If, with respect to a specified event described in paragraph (f)(5)(iii)(D) or (E) of this section, an expanded group partner transfers only a portion of its interest in a controlled partnership, then, only a portion of the deemed transferred receivable that is deemed to be held by the expanded group partner is deemed to be distributed in redemption of an equal portion of the deemed partner stock. The portion of the deemed transferred receivable referred to in the preceding sentence is equal to the product of the entire principal amount of the deemed transferred receivable deemed to be held by the expanded group partner multiplied by a fraction, the numerator of which is the portion of the expanded group partner's capital account attributable to the interest that is transferred, and the denominator of which is the expanded group partner's capital account with respect to its entire interest, determined immediately before the specified event.

(6) Issuance of a partnership's debt instrument to a partner and a partner's debt instrument to a partnership. If a controlled partnership, with respect to an expanded group, issues a debt instrument to an expanded group partner, or if a covered member that is an expanded group partner issues a covered debt instrument to a controlled partnership, and in each case, no partner deducts or receives an allocation of expense with respect to the debt instrument, then this section and 1.385-3 do not apply to the debt instrument.

(g)

(1)through (4) [Reserved]. For further guidance, see §1.385-3(g)(1) through (4).

(5)Deemed holder. The term deemed holder means, with respect to a deemed transfer, the expanded group partner that is deemed to hold a deemed transferred receivable by reason of the deemed transfer.

(6)Deemed partner stock. The term deemed partner stock means, with respect to a deemed transfer, the stock deemed issued by an expanded group partner as described in paragraphs (f)(4)(i), (f)(4)(iii), and (f)(5)(ii) of this section. The amount of deemed partner stock is reduced as described in paragraphs (f)(4)(iv)(B) and (f)(5)(i) of this section.

(7)Deemed transfer. The term deemed transfer means, with respect to a specified portion, the transfer described in paragraph (f)(4)(i), (f)(4)(iii), or (f)(5)(ii) of this section.

(8)Deemed transferred receivable. The term deemed transferred receivable means, with respect to a deemed transfer, the portion of the debt instrument described in paragraph

(f)(4)(i), (f)(4)(iii), or (f)(5)(ii) of this section. The deemed transferred receivable is reduced as described in paragraphs (f)(4)(iv)(B) and (f)(5)(i) of this section.

(g)(9) through (14) [Reserved]. For further guidance, see §1.385-3(g)(9) through (14).

(15)Holder-in-form. The term holder-in-form means, with respect to a debt instrument issued by a controlled partnership, the person that, absent the application of paragraph (f)(4) of this section, would be the holder of the debt instrument for federal tax purposes. Therefore, the term holder-in-form does not include a deemed holder (as defined in paragraph (g)(5) of this section).

(16)Issuance percentage. The term issuance percentage means, with respect to a controlled partnership and an expanded group partner, the ratio (expressed as a percentage) of the partner's reasonably anticipated distributive share of all the partnership's interest expense over a reasonable period, divided by all of the partnership's reasonably anticipated interest expense over that same period, taking into account any and all relevant facts and circumstances. The relevant facts and circumstances include, without limitation, the term of the debt instrument; whether the partnership anticipates issuing other debt instruments; and the partnership's anticipated section 704(b) income and expense, and the partners' respective anticipated allocation percentages, taking into account anticipated changes to those allocation percentages over time resulting, for example, from anticipated contributions, distributions, recapitalizations, or provisions in the controlled partnership agreement.

(17)Liquidation value percentage. The term liquidation value percentage means, with respect to a controlled partnership and an expanded group partner, the ratio (expressed as a percentage) of the liquidation value of the expanded group partner's interest in the partnership divided by the aggregate liquidation value of all the partners' interests in the partnership. The liquidation value of an expanded group partner's interest in a controlled partnership is the amount of cash the partner would receive with respect to the interest if the partnership (and any partnership through which the partner indirectly owns an interest in the controlled partnership) sold all of its property for an amount of cash equal to the fair market value of the property (taking into account section 7701(g)), satisfied all of its liabilities (other than those described in §1.752-7), paid an unrelated third party to assume all of its §1.752-7 liabilities in a fully taxable transaction, and then the partnership (and any partnership through which the partner indirectly owns an interest in the controlled partnership) liquidated. (g)(18) through (g)(21) [Reserved]. For further guidance, see §1.385-3(g)(18) through (g)(21).

(22)Retained receivable. The term retained receivable means, with respect to a debt instrument issued by a controlled partnership, the portion of the debt instrument that is not transferred by the holder-in-form pursuant to one or more deemed transfers. The retained receivable is adjusted for decreases described in paragraph (f)(4)(iv)(B) of this section and increases described in paragraph (f)(5)(i) of this section.

(23)Specified portion. The term specified portion means, with respect to a debt instrument issued by a controlled partnership and a covered member that is an expanded group partner, the portion of the debt instrument that is treated under paragraph (f)(3)(i) of this section as issued on a testing date (within the meaning of paragraph (f)(3)(ii) of this section) by the covered member and that, absent the application of paragraph (f)(4)(i) of this section, would be treated as stock under §1.385-3(b)(2) or (b)(3)(i) on the testing date. A specified portion is reduced as described in paragraphs (f)(4)(iv)(B) and (5)(i) of this section.

(g)(24) through (25) [Reserved]. For further guidance, see §1.385-3(g)(24) through (25).

(h)Introductory text through (h)(3), Example 11 [Reserved]. For further guidance, see §1.385-3(h) introductory text through (h)(3), Example 11.

Example (12). Distribution of a covered debt instrument to a controlled partnership.

(i) Facts. CFC and FS are equal partners in PRS. PRS owns 100% of the stock in X Corp, a domestic corporation. On Date A in Year 1, X Corp issues X Note to PRS in a distribution.

(ii) Analysis.

(A) Under §1.385-1(c)(4), in determining whether X Corp is a member of the FP expanded group that includes CFC and FS, CFC and FS are each treated as owning 50% of the X Corp stock held by PRS. Accordingly, 100% of X Corp's stock is treated as owned by CFC and FS, and X Corp is a member of the FP expanded group.

(B) Together CFC and FS own 100% of the interests in PRS capital and profits, such that PRS is a controlled partnership under §1.385-1(c)(1). CFC and FS are both expanded group partners on the date on which PRS acquired X Note. Therefore, pursuant to paragraph (f)(2)(i)(A) of this section, each of CFC and FS is treated as acquiring its share of X Note in the same manner (in this case, by a distribution of X Note), and on the date on which, PRS acquired X Note. Likewise, X Corp is treated as issuing to each of CFC and FS its share of X Note. Under paragraph (f)(2)(i)(B) of this section, each of CFC's and FS's share of X Note, respectively, is determined in accordance with its liquidation value percentage determined on Date A in Year 1, the date X Corp distributed X Note to PRS. On Date A in Year 1, pursuant to paragraph (g)(17) of this section, each of CFC's and FS's liquidation value percentages is 50%. Accordingly, on Date A in Year 1, under paragraph (f)(2)(i)(A) of this section, for purposes of this section and §1.385-3, CFC and FS are each treated as acquiring 50% of X Note in a distribution.

(C) Under §1.385-3(b)(2)(i) and (d)(1)(i), X Note is treated as stock on the date of issuance, which is Date A in Year 1. Under paragraph (f)(2)(i)(A) of this section, each of CFC and FS are treated as acquiring 50% of X Note in a distribution for purposes of this section and §1.385-3. Therefore, X Corp is treated as distributing its stock to PRS in a distribution described in section 305.

Example (13). Loan to a controlled partnership; proportionate distributions by expanded group partners.

(i) Facts. DS, USS2, and USP are partners in PRS. USP is a domestic corporation that is not a member of the FP expanded group. Each of DS and USS2 own 45% of the interests in PRS profits and capital, and USP owns 10% of the interests in PRS profits and capital. The PRS partnership agreement provides that all items of PRS income, gain, loss, deduction, and credit are allocated in accordance with the percentages in the preceding sentence. On Date A in Year 1, FP lends $200x to PRS in exchange for PRS Note with stated principal amount of $200x, which is payable at maturity. PRS Note also provides for annual payments of interest that are qualified stated interest. PRS uses all $200x in its business and does not distribute any money or other property to a partner. Subsequently, on Date B in Year 1, DS distributes $90x to USS1, USS2 distributes $90x to FP, and USP distributes $20x to its shareholder. Each of DS's and USS2's issuance percentage is 45% on Date B in Year 1, the date of the distributions and therefore a testing date under paragraph (f)(3)(ii)(A) of this section.

(ii) Analysis.

(A) DS and USS2 together own 90% of the interests in PRS profits and capital and therefore PRS is a controlled partnership under §1.385-1(c)(1). Under §1.385-1(c)(2), each of DS and USS2 is a covered member.

(B) Under paragraph (f)(3)(i) of this section, each of DS and USS2 is treated as issuing its share of PRS Note, and under paragraph (f)(3)(ii)(A) of this section, DS's and USS2's share is each $90x (45% of $200x). USP is not an expanded group partner and therefore has no issuance percentage and is not treated as issuing any portion of PRS Note.

(C) The $90x distributions made by DS to USS1 and by USS2 to FP are described in §1.385-3(b)(3)(i)(A). Under §1.385-3(b)(3)(iii)(A), the portions of PRS Note treated as issued by each of DS and USS2 are treated as funding the distribution made by DS and USS2 because the distributions occurred within the per se period with respect to PRS Note. Under §1.385-3(b)(3)(i), the portions of PRS Note treated as issued by each of DS and USS2 would, absent the application of (f)(4)(i) of this section, be treated as stock of DS and USS2 on Date B in Year 1, the date of the distributions. See §1.385-3(d)(1)(ii). Under paragraph (g)(23) of this section, each of the $90x portions is a specified portion.

(D) Under paragraph (f)(4)(i) of this section, the specified portions are not treated as stock under §1.385-3(b)(3)(i). Instead, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $90x (the adjusted issue price of the specified portion with respect to DS) to DS in exchange for deemed partner stock in DS with a fair market value of $90x. Similarly, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $90x (the adjusted issue price of the specified portion with respect to USS2) to USS2 in exchange for deemed partner stock in USS2 with a fair market value of $90x. The principal amount of the retained receivable held by FP is $20x ($200x - $90x - $90x).

Example (14). Loan to a controlled partnership; disproportionate distributions by expanded group partners.

(i) Facts. The facts are the same as in Example 13 of this paragraph (h)(3), except that on Date B in Year 1, DS distributes $45x to USS1 and USS2 distributes $135x to FP.

(ii) Analysis.

(A) The analysis is the same as in paragraph (ii)(A) of Example 13 of this paragraph (h)(3).

(B) The analysis is the same as in paragraph (ii)(B) of Example 13 of this paragraph (h)(3).

(C) The $45x and $135x distributions made by DS to USS1 and by USS2 to FP, respectively, are described in §1.385-3(b)(3)(i)(A). Under §1.385-3(b)(3)(iii)(A), the portion of PRS Note treated as issued by DS is treated as funding the distribution made by DS because the distribution occurred within the per se period with respect to PRS Note, but under §1.385-3(b)(3)(i), only to the extent of DS's $45x distribution. USS2 is treated as issuing $90x of PRS Note, all of which is treated as funding $90x of USS2's $135x distribution under §1.385-3(b)(3)(iii)(A). Under §1.385-3(b)(3)(i), absent the application of (f)(4)(i) of this section, $45x of PRS Note would be treated as stock of DS and $90x of PRS Note would be treated as stock of USS2 on Date B in Year 1, the date of the distributions. See §1.385-3(d)(1)(ii). Under paragraph (g)(23) of this section, $45x of PRS Note is a specified portion with respect to DS and $90x of PRS Note is a specified portion with respect to USS2.

(D) Under paragraph (f)(4)(i) of this section, the specified portions are not treated as stock under §1.385-3(b)(3)(i). Instead, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $45x (the adjusted issue price of the specified portion with respect to DS) to DS in exchange for stock of DS with a fair market value of $90x. Similarly, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $90x (the adjusted issue price of the specified portion with respect to USS2) to USS2 in exchange for stock of USS2 with a fair market value of $90x. The principal amount of the retained receivable held by FP is $65x ($200x - $45x - $90x).

Example (15). Loan to partnership; distribution in later year.

(i) Facts. The facts are the same as in Example 13 of this paragraph (h)(3), except that USS2 does not distribute $90x to FP until Date C in Year 2, which is less than 36 months after Date A in Year 1. On Date C in Year 2, DS's, USS2's, and USP's issuance percentages under paragraph (g)(16) of this section are unchanged at 45%, 45%, and 10%, respectively.

(ii) Analysis.

(A) The analysis is the same as in paragraph (ii)(A) of Example 13 of this paragraph (h)(3).

(B) The analysis is the same as in paragraph (ii)(B) of Example 13 of this paragraph (h)(3).

(C) With respect to the distribution made by DS, the analysis is the same as in paragraph (ii)(C) of Example 13 of this paragraph (h)(3).

(D) With respect to the deemed transfer to DS, the analysis is the same as in paragraph (ii)(D) of Example 13 of this paragraph (h)(3). Accordingly, the amount of the retained receivable held by FP as of Date B in Year 1 is $110x ($200x - $90x).

(E) Under paragraph (f)(3)(ii)(A) of this section, USS2's share of PRS Note is determined on Date C in Year 2. On Date C in Year 2, DS's, USS2's, and USP's respective shares of PRS Note under paragraph (f)(3)(ii)(A) of this section $90x, $90x, and $20x. However, because DS is treated as the issuer with respect to a $90x specified portion of PRS Note, DS's share of PRS Note is reduced by $90x to $0 under paragraph (f)(3)(ii)(B)(1) of this section. No reduction to either of USS2's or USP's share of PRS Note is required under paragraph (f)(3)(ii)(B)(2) of this section because the aggregate of DS's, USS2's, and USP's shares of PRS Note as reduced is $110x (DS has a $0 share, USS2 has a $90x share, and USP has a $20x share), which does not exceed $110x (the $200x adjusted issue price of PRS Note reduced by the $90x specified portion with respect to DS). Under paragraph (f)(3)(i) of this section, USS2 is treated as issuing its share of PRS Note.

(F) The $90x distribution made by USS2 to FP is described in §1.385-3(b)(3)(i)(A). Under §1.385-3(b)(3)(iii)(A), the portion of PRS Note treated as issued by USS2 is treated as funding the distribution made by USS2, because the distribution occurred within the per se period with respect to PRS Note. Accordingly, the portion of PRS Note treated as issued by USS2 would, absent the application of paragraph (f)(4)(i) of this section, be treated as stock of USS2 under §1.385-3(b)(3)(i) on Date C in Year 2. See §1.385-3(d)(1)(ii). Under paragraph (g)(23) of this section, the $90x portion is a specified portion.

(G) Under paragraph (f)(4)(i) of this section, the specified portion of PRS Note treated as issued by USS2 is not treated as stock under §1.385-3(b)(3)(i). Instead, on Date C in Year 2, FP is deemed to transfer a portion of PRS Note with a principal amount equal to $90x (the adjusted issue price of the specified portion with respect to USS2) to USS2 in exchange for stock in USS2 with a fair market value of $90x. The principal amount of the retained receivable held by FP is reduced from $110x to $20x.

Example (16). Loan to a controlled partnership; partnership ceases to be a controlled partnership.

(i) Facts. The facts are the same as in Example 13 of this paragraph (h)(3), except that on Date C in Year 4, USS2 sells its entire interest in PRS to an unrelated person.

(ii) Analysis.

(A) On date C in Year 4, PRS ceases to be a controlled partnership with respect to the FP expanded group under §1.385-1(c)(1). This is the case because DS, the only remaining partner that is a member of the FP expanded group, only owns 45% of the total interest in PRS profits and capital. Because PRS ceases to be a controlled partnership, a specified event (within the meaning of paragraph (f)(5)(iii)(A) of this section) occurs with respect to the deemed transfers with respect to each of DS and USS2.

(B) Under paragraph (f)(5)(i) of this section, on Date C in Year 4, immediately before PRS ceases to be a controlled partnership, each of DS and USS2 is deemed to distribute its deemed transferred receivable to FP in redemption of FP's deemed partner stock in DS and USS2. The specified portion that corresponds to each of the deemed transferred receivables ceases to be treated as a specified portion. Furthermore, the deemed transferred receivables cease to exist, and the retained receivable held by FP increases from $20x to $200x.

Example (17). Transfer of an interest in a partnership to a covered member.

(i) Facts. The facts are the same as in Example 13 of this paragraph (h)(3), except that on Date C in Year 4, USS2 sells its entire interest in PRS to USS1.

(ii) Analysis.

(A) After USS2 sells its interest in PRS to USS1, DS and USS1 together own 90% of the interests in PRS profits and capital and therefore PRS continues to be a controlled partnership under §1.385-1(c)(1). A specified event (within the meaning of paragraph (f)(5)(iii)(E) of this section) occurs as result of the sale only with respect to the deemed transfer with respect to USS2.

(B) Under paragraph (f)(5)(i) of this section, on Date C in Year 4, immediately before USS2 sells its entire interest in PRS to USS1, USS2 is deemed to distribute its deemed transferred receivable to FP in redemption of FP's deemed partner stock in USS2. Because the specified event is described in paragraph (f)(5)(iii)(E) of this section, under paragraph (f)(5)(ii) of this section, FP is deemed to retransfer the deemed transferred receivable deemed received from USS2 to USS1 in exchange for deemed partner stock in USS1 with a fair market value equal to the principal amount of the deemed transferred receivable that is retransferred to USS1.

Example (18). Loan to partnership and all partners are members of a consolidated group.

(i) Facts. USS1 and DS are equal partners in PRS. USS1 and DS are members of a consolidated group, as defined in §1.1502-1(h). The PRS partnership agreement provides that all items of PRS income, gain, loss, deduction, and credit are allocated equally between USS1 and DS. On Date A in Year 1, FP lends $200x to PRS in exchange for PRS Note. PRS uses all $200x in its business and does not distribute any money or other property to any partner. On Date B in Year 1, DS distributes $200x to USS1, and USS1 distributes $200x to FP. If neither of USS1 or DS were a member of the consolidated group, each would have an issuance

percentage under paragraph (g)(16) of this section, determined as of Date A in Year 1, of 50%.

(ii) Analysis.

(A) Pursuant to §1.385-4T(b)(6), PRS is treated as a partnership for purposes of §1.385-3. Under §1.385-4T(b)(1), DS and USS1 are treated as one corporation for purposes of this section and §1.385-3, and thus a single covered member under §1.385-1(c)(2). For purposes of this section, the single covered member owns 100% of the PRS profits and capital and therefore PRS is a controlled partnership under §1.385-1(c)(1). Under paragraph (f)(3)(i) of this section, the single covered member is treated as issuing all $200x of PRS Note to FP, a member of the same expanded group as the single covered member. DS's distribution to USS1 is a disregarded distribution because it is a distribution between members of a consolidated group that is disregarded under the one-corporation rule described in §1.385-4T(b)(1). However, under §1.385-3(b)(3)(iii)(A), PRS Note, treated as issued by the single covered member, is treated as funding the distribution by USS1 to FP, which is described in §1.385-3(b)(3)(i)(A) and which is a regarded distribution. Accordingly, PRS Note, absent the application of (f)(4)(i) of this section, would be treated as stock under §1.385-3(b) on Date B in Year 1. Thus, pursuant to paragraph (g)(23) of this section, the entire PRS Note is a specified portion.

(B) Under paragraphs (f)(4)(i) and (iii) of this section, the specified portion is not treated as stock and, instead, FP is deemed to transfer PRS Note with a principal amount equal to $200x to USS1 in exchange for stock of USS1 with a fair market value of $200x. Under paragraph (f)(4)(iii) of this section, FP is deemed to transfer PRS Note to USS1 because only USS1 made a regarded distribution described in §1.385-3(b)(3)(i).

Example (19).

(i) Facts. DS owns DRE, a disregarded entity within the meaning of §1.385-1(c)(3). On Date A in Year 1, FP lends $200x to DRE in exchange for DRE Note. Subsequently, on Date B in Year 1, DS distributes $100x of cash to USS1.

(ii) Analysis. Under §1.385-3(b)(3)(iii)(A), $100x of DRE Note would be treated as funding the distribution by DS to USS1 because DRE Note is issued to a member of the FP expanded group during the per se period with respect to DS's distribution0 to USS1. Accordingly, under §1.385-3(b)(3)(i)(A) and (d)(1)(ii), $100x of DRE Note would be treated as stock on Date B in Year 1. However, under paragraph (d)(4) of this section, DS, as the regarded owner, within the meaning of §1.385-1(c)(5), of DRE is deemed to issue its stock to FP in exchange for a portion of DRE Note equal to the $100x applicable portion (as defined in paragraph (d)(4) of this section). Thus, DS is treated as the holder of $100x of DRE Note, which is disregarded, and FP is treated as the holder of the remaining $100x of DRE Note. The $100x of stock deemed issued by DS to FP has the same terms as DRE Note, other than the issuer, and payments on the stock are determined by reference to payments on DRE Note.

(i)through (j) [Reserved]

(k)Applicability date.

(1)In general. This section applies to taxable years ending on or after January 19, 2017.

(2)Transition rules.

(i) Transition rule for covered debt instruments issued by partnerships that would have had a specified portion in taxable years ending before January 19, 2017. If the application of paragraphs (f)(3) through (5) of this section and §1.385-3 would have resulted in a covered debt instrument issued by a controlled partnership having a specified portion in a taxable year ending before January 19, 2017 but for the application of paragraph (k)(1) of this section and §1.385-3(j)(1), then, to the extent of the specified portion immediately after January 19, 2017, there is a deemed transfer immediately after January 19, 2017.

(ii) Transition rule for certain covered debt instruments treated as having a specified portion in taxable years ending on or after January 19, 2017. If the application of paragraphs (f)(3) through (5) of this section and §1.385-3 would treat a covered debt instrument issued by a controlled partnership as having a specified portion that gives rise to a deemed transfer on or before January 19, 2017 but in a taxable year ending on or after January 19, 2017, that specified portion does not give rise to a deemed transfer during the 90-day period after October 21, 2016. Instead, to the extent of the specified portion immediately after January 19, 2017, there is a deemed transferred immediately after January 19, 2017.

(iii) Transition funding rule. This paragraph (k)(2)(iii) applies if the application of paragraphs (f)(3) through (5) of this section and §1.385-3 would have resulted in a deemed transfer with respect to a specified portion of a debt instrument issued by a controlled partnership on a date after April 4, 2016, and on or before January 19, 2017 (the transition period) but for the application of paragraph (k)(1), (k)(2)(i), or (k)(2)(ii) of this section and §1.385-3(j). In this case, any payments made with respect to the covered debt instrument (other than stated interest), including pursuant to a refinancing, a portion of which would be treated as made with respect to deemed partner stock if there would have been a deemed transfer, after the date that there would have been a deemed transfer and through the remaining portion of the transition period are treated as distributions for purposes of applying §1.385-3(b)(3) for taxable years ending on or after January 19, 2017. In addition, if an event occurs during the transition period that would have been a specified event with respect to the deemed transfer described in the preceding sentence but for the application of paragraph (k)(1) of this section and §1.385-3(j), the distribution or acquisition that would have resulted in the deemed transfer is available to be treated as funded by other covered debt instruments of the covered member for purposes of §1.385-3(b)(3) (to the extent provided in §1.385-

3(b)(3)(iii)). The prior sentence shall be applied in a manner that is consistent with the rules set forth in paragraph (f)(5) of this section and §1.385-3(d)(2)(ii).

(iv) Coordination between the general rule and funding rule. This paragraph (k)(2)(iv) applies when a covered debt instrument issued by a controlled partnership in a transaction described in §1.385-3(b)(2) would have resulted in a specified portion that gives rise to a deemed transfer on a date after April 4, 2016, and on or before January 19, 2017, but there is not a deemed transfer on such date due to the application of paragraph (k)(1), (k)(2)(i), or (k)(2)(ii) of this section and §1.385-3(j). In this case, the issuance of such covered debt instrument is not treated as a distribution or acquisition described in §1.385-3(b)(3)(i), but only to the extent of the specified portion immediately after January 19, 2017.

(v) Option to apply proposed regulations. See §1.385-3(j)(2)(v).

(l) Expiration date. This section expires on October 13, 2019.