weighted to reflect the portion of the year during which each such rate was charged. If a district’s billing rate on such new agricultural loans varies according to the amount of the loan, the rate applicable to a loan in an amount resulting from dividing the total dollar amount of such loans closed during the year by the total number of the loans closed is to be used under section 2032A. Applicable rates may be obtained from the district director of internal revenue.

(2) Adjustment to billing rate of interest. The billing rate of interest determined under this paragraph is to be adjusted to reflect the increased cost of borrowing resulting from the required purchase of land bank association stock. For section 2032A purposes, the rate of required stock investment is the average of the percentages of the face amount of new agricultural loans to farmers and ranchers required to be invested in such stock by the applicable district bank during the year. If this percentage changes during a year, the average is to be adjusted to reflect the period when each percentage requirement was effective. The percentage is viewed as a reduction in the loan proceeds actually received from the amount upon which interest is charged.

(3) Example. The determination of the effective interest rate for any year may be illustrated as follows:

Example. District X of the Federal land bank system charged an 8 percent billed interest rate on new agricultural loans for 8 months of the year, 1976, and an 8.75 percent rate for 4 months of the year. The average billing rate was, therefore, 8.25 percent [(1.08 × 8/12) + (1.0875 × 4/12)=1.0825]. The district required stock equal to 5 percent of the face amount of the loan to be purchased as a precondition to receiving a loan. Thus, the borrower only received 95 percent of the funds upon which he paid interest. The applicable annual interest rate for 1976 of 8.68 percent is computed as follows:

8.25 percent × 1.00 (total loan amount) = 8.25 percent (billed interest rate) divided by 0.95 (percent of loan proceeds received by borrower) = 8.68 percent (effective interest rate for 1976).

[T.D. 7710, 45 FR 50742, July 31, 1980]
heirs only if such remainder interests are not contingent upon surviving a nonfamily member or are not subject to divestment in favor of a nonfamily member.

(3) Time and manner of making election. An election under this section is made by attaching to a timely filed estate tax return the agreement described in paragraph (c)(1) of this section and a notice of election which contains the following information:

(i) The decedent’s name and taxpayer identification number as they appear on the estate tax return;

(ii) The relevant qualified use;

(iii) The items of real property shown on the estate tax return to be specially valued pursuant to the election (identified by schedule and item number);

(iv) The fair market value of the real property to be specially valued under section 2032A and its value based on its qualified use (both values determined without regard to the adjustments provided by section 2032A(b)(3)(B));

(v) The adjusted value (as defined in section 2032A(b)(3)(B)) of all real property which is used in a qualified use and which passes from the decedent to a qualified heir and the adjusted value of all real property to be specially valued;

(vi) The items of personal property shown on the estate tax return that pass from the decedent to a qualified heir and the adjusted value of all real property to be specially valued;

(vii) The adjusted value of the gross estate, as defined in section 2032A(b)(3)(A);

(viii) The method used in determining the special value based on use;

(ix) Copies of written appraisals of the fair market value of the real property;

(x) A statement that the decedent and/or a member of his or her family has owned all specially valued real property for at least 5 years of the 8 years immediately preceding the date of the decedent’s death;

(xi) Any periods during the 8-year period preceding the date of the decedent’s death during which the decedent or a member of his or her family did not own the property, use it in a qualified use, or materialize participate in the operation of the farm or other business within the meaning of section 2032A(e)(6);

(xii) The name, address, taxpayer identification number, and relationship to the decedent of each person taking an interest in each item of specially valued property, and the value of the property interests passing to each such person based on both fair market value and qualified use;

(xiii) Affidavits describing the activities constituting material participation and the identity of the material participant or participants; and

(xiv) A legal description of the specially valued property.

If neither an election nor a protective election is timely made, special use valuation is not available to the estate. See sections 2032A(d)(1), 6075(a), and 6081(a).

(b) Protective election. A protective election may be made to specially value qualified real property. The availability of special use valuation pursuant to this election is contingent upon values as finally determined (or agreed to following examination of a return) meeting the requirements of section 2032A. A protective election does not, however, extend the time for payment of any amount of tax. Rules for such extensions are contained in sections 6161, 6163, 6166, and 6166A. The protective election is to be made by a notice of election filed with a timely estate tax return stating that a protective election under section 2032A is being made pending final determination of values. This notice is to include the following information:

(1) The decedent’s name and taxpayer identification number as they appear on the estate tax return;

(2) The relevant qualified use; and

(3) The items of real and personal property shown on the estate tax return which are used in a qualified use, and which pass to qualified heirs (identified by schedule and item number).

If it is found that the estate qualifies for special use valuation based upon values as finally determined (or agreed to following examination of a return), an additional notice of election must
be filed within 60 days after the date of such determination. This notice must set forth the information required under paragraph (a)(3) of this section and is to be attached, together with the agreement described in paragraph (c)(1) of this section, to an amended estate tax return. The new return is to be filed with the Internal Revenue Service office where the original return was filed.

(c) Agreement to special valuation by persons with an interest in property—(1) In general. The agreement required under section 2032A (a)(1)(B) and (d)(2) must be executed by all parties who have any interest in the property being valued based on its qualified use as of the date of the decedent’s death. In the case of a qualified heir, the agreement must express consent to personal liability under section 2032A(c) in the event of certain early dispositions of the property or early cessation of the qualified use. See section 2032A(c)(6). In the case of parties (other than qualified heirs) with interests in the property, the agreement must express consent to collection of any additional estate tax imposed under section 2032A(c) from the qualified property. The agreement is to be in a form that is binding on all parties having an interest in the property. It must designate an agent with satisfactory evidence of authority to act for the parties to the agreement in all dealings with the Internal Revenue Service on matters arising under section 2032A and must indicate the address of that agent.

(2) Persons having an interest in designated property. An interest in property is an interest which, as of the date of the decedent’s death, can be asserted under applicable local law so as to affect the disposition of the specially valued property by the estate. Any person in being at the death of the decedent who has any such interest in the property, whether present or future, or vested or contingent, must enter into the agreement. Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants, and holders of other undivided interests when the decedent held only a joint or undivided interest in the property or when only an undivided interest is specially valued, and trustees of trusts holding any interest in the property. An heir who has the power under local law to caveat (challenge) a will and thereby affect disposition of the property is not, however, considered to be a person with an interest in property under section 2032A solely by reason of that right. Likewise, creditors of an estate are not such persons solely by reason of their status as creditors.

(3) Consent on behalf of interested party. If any person required to enter into the agreement provided for by paragraph (c)(1) either desires that an agent act for him or her or cannot legally bind himself or herself due to infancy or other incompetency, or to death before the election under section 2032A is timely exercised, a representative authorized under local law to bind such person in an agreement of this nature is permitted to sign the agreement on his or her behalf.

(d) Special rule for estates for which elections under section 2032A are made on or before August 30, 1980. An election to specially value real property under section 2032A that is made on or before August 30, 1980, may be revoked. To revoke an election, the executor must file a notice of revocation with the Internal Revenue Service office where the original estate tax return was filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires). This notice of revocation must contain the decedent’s name, date of death, and taxpayer identification number, and is
§ 20.2036–1 Transfers with retained life estate.

(a) In general. A decedent’s gross estate includes under section 2036 the value of any interest in property transferred by the decedent after March 3, 1931, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money’s worth (see §20.2043–1), if the decedent retained or reserved—

(1) For his life;
(2) For any period not ascertainable without reference to his death (if the transfer was made after June 6, 1932); or
(3) For any period which does not in fact end before his death:

(i) The use, possession, right to income, or other enjoyment of the transferred property.
(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate