after December 31, 2017 and before January 1, 2026. The proposed regulations also provide guidance on determining the character, amount, and allocation of deductions in excess of gross income succeeded to by a beneficiary on the termination of an estate or non-grantor trust.

DATES: The public hearing is being held on Wednesday, August 12, 2020 at 10:00 a.m. The IRS must receive speakers’ outlines of the topics to be discussed at the public hearing by Wednesday, July 29, 2020. If no outlines are received by July 29, 2020, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held by teleconference. Individuals who want to testify (by telephone) at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–113295–18] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–113295–18. The email should also include a copy of the speaker’s public comments and outline of topics. The email must be received by July 29, 2020.

Individuals who want to attend (by telephone) the public hearing must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–113295–18] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–113295–18. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317–5177 (not toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to publichearings@irs.gov.


FOR FURTHER INFORMATION CONTACT:
Concerning the proposed regulations, Margaret Burow, (202) 317–5279; concerning submissions of comments, the hearing, and the access code to attend the hearing by teleconferencing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or publichearings@irs.gov. If emailing please put Attend, Testify, or Agenda Request and [REG–113295–18] in the email subject line.

SUPPLEMENTARY INFORMATION:
The subject of the public hearing is the notice of proposed rulemaking REG–113295–18 that was published in the Federal Register on Monday, May 11, 2020, 85 FR 27693.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that submitted written comments by June 25, 2020, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by July 29, 2020. A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, on Regulations.gov, search IRS and REG–113295–18, or by emailing the request to publichearings@irs.gov. Please put “REG–113295–18 Agenda Request” in the subject line of the email.

Martin V. Franks,
Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–15019 Filed 7–16–20; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF LABOR
Wage and Hour Division
29 CFR Part 825
RIN 1235–AA30
Family and Medical Leave Act of 1993
AGENCY: Wage and Hour Division, U.S. Department of Labor.
ACTION: Request for information.

SUMMARY: The Department of Labor (Department) is seeking information from the public regarding the regulations implementing the Family and Medical Leave Act of 1993 (FMLA or the Act). The Department is publishing this Request for Information (RFI) to gather information concerning the effectiveness of the current regulations and to aid the Department in its administration of the FMLA. The information provided will help the Department identify topics for which additional compliance assistance could be helpful, including opportunities for outreach to ensure employers are aware of their obligations under the law and employees are informed about their rights and responsibilities in using FMLA leave.

DATES: Submit written comments on or before September 15, 2020.

ADDRESSES: To facilitate the receipt and processing of written comments on this RFI, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA30, by either of the following methods:


Mail: Address written submissions to Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This RFI is available through the Federal Register and the http://www.regulations.gov website. You may also access this document via the Wage and Hour Division’s (WHD) website at http://www.dol.gov/whd/. All comment submissions must include the agency name and Regulatory Information Number (RIN 1235–AA30) for this RFI. Response to this RFI is voluntary and respondents need not reply to all questions listed below. The Department requests that no business proprietary information, copyrighted information, individual medical information, or personally identifiable information be submitted in response to this RFI. Submit only one copy of your comment by only one method (e.g., persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to http://www.regulations.gov, including any personal or medical information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this RFI; comments received after the comment period closes will not be considered. Commenters should transmit comments
early to ensure timely receipt prior to the close of the comment period. Electronic submission via http://www.regulations.gov enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this RFI may be obtained in alternative formats (Large Print, braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889–5627 to obtain information or request materials in alternative formats.

Questions concerning enforcement of the agency’s regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD’s toll-free help line at (866) 4US–WAGE (8666) 487–9243 between 8 a.m. and 5 p.m. in your local time zone, or visit WHD’s website at http://www.dol.gov/whd/america2.htm for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

Administering the FMLA while responding to the COVID–19 public health emergency is an ongoing priority for the Department. Workplace flexibility ensured by job-protected leave is essential to American prosperity. Workers are more productive and more likely to remain employed if they do not have to choose between taking care of themselves or their loved ones and keeping their jobs. Likewise, businesses attract and retain the best talent when they give their workers flexibility that encourages productivity and retention.

In keeping with these principles, the FMLA, 29 U.S.C. 2601 et seq., entitles eligible employees of covered employers to take up to a total of 12 workweeks of job-protected, unpaid leave, or to substitute accrued paid leave, during a 12-month period for the birth of the employee’s child; for the placement of a child with the employee for adoption or foster care; to care for the newborn or newly-placed child; to care for the employee’s spouse, parent, son, or daughter with a serious health condition; when the employee is unable to work due to the employee’s own serious health condition; or for any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military member on covered active duty. See 29 U.S.C. 2612(a)(1). An eligible employee may also take up to 26 workweeks of FMLA leave during a “single 12-month period” to care for a covered servicemember with a serious injury or illness when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. See 29 U.S.C. 2612(a)(3).

FMLA leave may be taken in a block or, under certain circumstances, intermittently or on a reduced leave schedule. See 29 U.S.C. 2612(b). In addition to providing job-protected leave, employers covered by the law must maintain for the employee any preexisting group health coverage during the leave period and, once the leave period has concluded, reinstate the employee to the same or an equivalent job with equivalent employment benefits, pay, and other terms and conditions of employment. See 29 U.S.C. 2614.

The Department issued an initial interim final rule after the FMLA became law in 1993, 58 FR 31794, and issued final FMLA regulations in 1995, 60 FR 2180. The Department published significant revisions to the FMLA regulations in 2008, 73 FR 67934, which were informed, in part, by a 2006 Request for Information, 71 FR 69504. The Department next changed the FMLA regulations in 2013 to implement statutory amendments affecting military family leave provisions and airline flight crew eligibility. 78 FR 8834. The FMLA regulations were last updated in 2015 to update the definition of spouse. 80 FR 9989. 1

On August 5, 2019, the Department published a Federal Register notice seeking public comment on proposed revisions to its optional-use FMLA forms. 84 FR 38061. The Department created forms—WH–380–E, WH–380–F, WH–381, WH–382, WH–384, WH–385, and WH–385–V—to assist employers and employees in meeting their FMLA notification and certification obligations. The Department’s proposed revisions to the forms were based on feedback from employees, employers, and health care professionals and are designed to reduce administrative burden, increase compliance with regulatory requirements, and improve customer service. We received 139 comments from employers, industry associations, individual employees, worker advocacy groups, law firms, and other interested members of the public during the notice and comment process and made additional revisions to incorporate this feedback. Additional revisions to incorporate that feedback are in the process of being finalized. The Department notes that the new Families First Coronavirus Response Act (FFCRA), Public Law 116–127 (Mar. 18, 2020), which was passed in response to the public health emergency caused by COVID–19, expands the FMLA. The Department notes that the new Families First Coronavirus Response Act (FFCRA), Public Law 116–127 (Mar. 18, 2020), which was passed in response to the public health emergency caused by COVID–19, expands the FMLA. Workers are now entitled to a total of 10 weeks of paid leave to care for certain family members and 10 weeks of leave for personal medical care. The FFCRA also provides leave to employees who cannot work due to the public health emergency. The FFCRA protections provided under the FFCRA are not addressed in this Request for Information, and the Department does not seek comment on them here. The most up-to-date information about the FFCRA is available at https://www.dol.gov/agencies/whd/ffcra.

II. Request for Public Comment

The Department is aware that its regulations need to be regularly reviewed to explore how such regulations can remain current with workplace and demographic changes. Further, the Department understands the need for compliance assistance, in particular in the form of written informational materials that provide the public with up-to-date information about the protections and requirements of the law in plain language. Extensive compliance assistance regarding the FMLA is currently

1 Additionally, the Department has regularly sought employer and employee feedback on the administration and use of the FMLA through surveys designed to understand the range of perspectives on the FMLA in the U.S. The Department has commissioned four series of these surveys; the fourth is currently underway. Information about the Wave 4 FMLA surveys may be found at https://www.dol.gov/asp/evaluation/currentstudies/Family-and-Medical-Leave-Act-Wave-4-Surveys.htm. Further, the results from the prior Wave 3 FMLA survey (referred to as the 2012 FMLA survey throughout this document) may be found at https://www.dol.gov/asp/evaluation/completed-studies/Family_Medical_Leave_Act_Survey/TECHNICAL_REPORT_family_medical_leave_act_survey.pdf.

2 The FFCRA amended the FMLA to permit certain employees to take up to ten weeks of paid expanded family and medical leave when the employee is unable to work because the employee is caring for his or her son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID–19. This expanded family and medical leave entitlement, which became effective on April 1, 2020, will expire on December 31, 2020. The Department’s regulations implementing paid leave under the FFCRA appear at 29 CFR part 826; all references in this document to FMLA regulations refer to those that appear at 29 CFR part 825.
available. In particular, the
Department’s FMLA web pages, which
received more than 5 million views over
the last year, contain a wealth of
material including Frequently Asked
Questions, Fact Sheets, Employee
Guides, interactive online tools, and a
comprehensive Employer’s Guide
developed for human resource managers
and other leave administrators.

Additionally, while the requirements of
the FMLA are set by statute and
regulations, as part of the administration
of the Act, interested parties may seek
an opinion (i.e., an official written
explanation) of what the FMLA requires
in fact-specific situations. Opinion
letters serve as an important means by
which the public can develop a clearer
understanding of what FMLA
compliance entails. The Department has
issued seven opinion letters6 on FMLA-
related topics since 2018.

Nevertheless, the results of employee
and employer surveys continue to show
an ongoing need for education and
awareness in the administration and use
of FMLA leave. Information from the
public on what is and is not working
well in the administration of the FMLA
can further inform and guide the
Department in issuing modernized tools
to aid in understanding and applying
the FMLA. As such, the Department
seeks input from employers and
employees on the current FMLA
regulations, specifically:

• What would employees like to see
changed in the FMLA regulations to
better effectuate the rights and
obligations under the FMLA?

• What would employers like to see
changed in the FMLA regulations to
better effectuate the rights and
obligations under the FMLA?

The Department invites interested
parties who have knowledge of, or
experience with, the FMLA to submit
comments, information, and data to
provide a foundation for examining the
effectiveness of the current regulations
in meeting the statutory objectives of
the FMLA. The Department suggests the
following questions to frame the
responses. These questions are not
intended to be an exclusive list of issues
for which the Department seeks
information.

1. A serious health condition is
defined as an illness, injury,
impairment, or physical or mental
condition that involves either inpatient
care or continuing treatment by a health
care provider. See 29 U.S.C. 2611(1);
29 CFR 825.113–115. The regulations
outline several types of serious health
conditions involving continuing
treatment by a health care provider:
(1) Incapacity and treatment, with specific
definitions and time-frames for the
incapacity and the treatment; (2)
pregnancy or prenatal care; (3) chronic
conditions, which require, among other
things, at least two visits for treatment
by a health care provider per year; (4)
permanent or long-term conditions; and
(5) conditions that require multiple
treatments. See 29 CFR 825.115. Several
opinion letters issued by the Wage and
Hour Division address questions related
to the definition of serious health
condition. For example, FMLA2018–2–
A, issued on August 28, 2018, clarified
that organ donation can qualify as a
serious health condition when it
involves either inpatient care or
continuing treatment as defined by the
FMLA regulations. While information
provided in the 2012 FMLA survey
indicates that most employers report
that complying with the FMLA imposes
minimal burden on their operations, the
Department is aware that the medical
certification process used to support the
existence of a serious health condition
can, at times, present challenges to both
employers and employees.

What, if any, challenges have
employers and employees experienced in
applying the regulatory definition of
a serious health condition? For example,
what, if any, conditions or circumstances have employers encountered that meet the regulatory
definition of a “serious health
condition” but that they believe the
statute does not cover. If so, what
difficulties have employers experienced
in determining when an employee has
a chronic condition that qualifies as a
serious health condition under the
regulations? Conversely, what, if any,
circumstances have employers
effectuated that they believe the
statute does not cover. If so, what
conditions or circumstances have
employees experienced that they believe
the statute covers, but which their
employer determined did not meet the
regulatory definition of “serious health
condition”? What, if any, difficulties have
employees experienced in
establishing that a chronic condition qualifies as a serious health condition under the
regulations? The Department
welcomes information that will further
its understanding of FMLA serious
health conditions so it can better
effectuate the purposes of the Act.

2. An employee may take FMLA leave on
an intermittent basis (i.e., taking
leave in separate blocks of time for a
single qualifying reason) or on a
reduced leave schedule (i.e., reducing
the employee’s usual weekly or daily
work schedule) due to his or her own
serious health condition, to care for an
immediate family member who has a
serious health condition, or to care for
a covered servicemember with a serious
illness or injury when such leave is
medically necessary. See 29 U.S.C.
2612(b); 29 CFR 825.202–205.

What, if any, specific challenges or
impacts do employers and employees
experience when an employee takes
FMLA leave on an intermittent basis or
on a reduced leave schedule? For
example, what, if any, specific
challenges do employers experience
when the timing or need for intermittent
leave is unforeseeable? Similarly, what,
if any, challenges do employees seeking
or taking intermittent leave or using a
reduced leave schedule experience? For
example, do employees find it difficult
to request and use intermittent leave in
their workplaces? The Department also
seeks information from employers and
employees on best practices and
suggestions to improve implementation
of these intermittent leave provisions.

The Department welcomes information
that will further its understanding of
FMLA leave usage so it can better
effectuate the purposes of the Act.

3. The requirements regarding the
notice that an employee must provide to
an employer of his or her need for
FMLA leave are set out at 29 U.S.C.
2612(e) and 29 CFR 825.302–304. An
employee seeking to use FMLA leave is
required to provide 30-days advance
notice of the need to take FMLA leave
when the need is foreseeable and such
notice is practicable. If leave is
foreseeable fewer than 30 days in
advance, the employee must notify the
employer as soon as practicable—
generally, either the same or next
business day. When the need for leave is
not foreseeable, the employee must
notify the employer as soon as
practicable under the facts and
circumstances of the particular case.

Absence unusual or unexpected
leave an employee must comply with the
employer’s usual and customary notice

6 FMLA2020–1–A (Jan. 7, 2020), available at
https://www.dol.gov/sites/dolgov/files/WHD/legacy/
files/2020_01_07_1A_FMLA.pdf; FMLA2019–3–A
whd/opinion/FMLA/2019/2019_03_10_3A
FMLA.pdf; FMLA2019–7–A (Aug. 8, 2019), available at
https://www.dol.gov/whd/opinion/
FMLA/2019/2019_08_08_2A_FMLA.pdf; FMLA2019–1–A
whd/opinion/FMLA/2019/2019_03_14_1A_FMLA.pdf;
FMLA2018–2–A (Aug. 28, 2018), available at
https://www.dol.gov/whd/opinion/FMLA/2018/
2018_08_28_2A_FMLA.pdf; FMLA2018–4–A (Aug. 28,
2018), available at https://www.dol.gov/whd/opinion/
FMLA/2018/2018_08_28_4A_FMLA.pdf; FLSA2018–19
(Apr. 12, 2018), available at https://www.dol.gov/whd/
opinion/FLSA/2018/2018_04_12_02_FLSA.pdf;
and procedural requirements for requesting leave. An employee must provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. When an employee seeks leave for an FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave due to an FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, however, the employee must specifically reference either the qualifying reason for the leave or the need for FMLA leave.

What, if any, specific challenges do employers and employees experience when employees request leave or notify their employers of their need for leave? For example, do employees convey sufficient information to notify employers that the employee may have an FMLA-qualifying reason for leave or that the employee is requesting FMLA leave? Similarly, are employees aware of and able to comply with their employers’ specific procedural requirements for providing such notice? Are they aware of the specific information they need to provide? The Department welcomes suggestions of how to better assist employers and employees in understanding their rights and obligations under the FMLA regulations. The Department also specifically seeks input on additional tools the Department could provide to facilitate FMLA compliance.

4. Can an employer require an employee to provide a certification issued by a health care provider to support the need for leave for a serious health condition of the employee or the employee’s immediate family member. See 29 U.S.C. 2613; 29 CFR 825.305–.308. The employer must allow the employee at least 15 calendar days to obtain the medical certification. If the employer determines the certification is incomplete or insufficient, the employer must advise the employee in writing of the additional information needed and allow the employee a reasonable opportunity to cure the deficiency. See 29 CFR 825.305.

As noted above, the Department recently published in the Federal Register proposed revisions to the optional-use forms employers and employees may use to meet their FMLA notification and certification obligations. The Department is interested in understanding what, if any, challenges employers and employees have experienced with the medical certification process that are not addressed by those proposed revisions. For example, what, if any, challenges have employers encountered in determining whether a certification establishes that the employee or employee’s immediate family member has a serious health condition under the FMLA and the amount of leave needed? Similarly, what, if any, challenges have employees encountered in obtaining a certification that contains sufficient information to establish the existence of a serious health condition and the amount of leave needed? The Department welcomes suggestions regarding strategies to address challenges with the certification process.

5. As indicated above, the Department has issued seven opinion letters on FMLA topics since 2018. The first, FLSA2018–19, issued on April 12, 2018, concerned the compensability of frequent 15-minute rest breaks under the Fair Labor Standards Act when the breaks are necessary due to a serious health condition under the FMLA and concluded that such short periods of FMLA-protected leave may be unpaid. The letter noted, however, that employees are entitled to compensation for rest periods of short duration on the same basis as co-workers who take non-FMLA leave breaks during a work shift. FLSA2018–1–A, issued on August 28, 2018, addressed an employer’s no-fault attendance policy which effectively froze, throughout the duration of an employee’s FMLA leave, the number of attendance points that the employee accrued prior to taking his or her leave. The letter stated that such a policy does not violate the FMLA, provided it is applied in a nondiscriminatory manner. As noted above, FLSA2018–2–A, also issued on August 28, 2018, stated that organ donation can be a qualifying serious health condition if it requires inpatient care or continuing treatment as defined by the FMLA regulations.

Two letters addressed designation of FMLA leave. FLSA2019–1–A, issued on March 14, 2019, stated that an employer may not delay designating an employee’s leave as FMLA leave if the circumstances qualify for FMLA leave. FMLA2019–3–A, issued on September 10, 2019, similarly stated that an employer may not delay designating an employee’s leave as FMLA leave if the circumstances qualify for FMLA leave, even if a collective bargaining agreement provides that an employee may exhaust paid leave before using unpaid FMLA leave. However, the letter noted that the paid leave could be substituted (i.e., run concurrently) with the FMLA leave. This letter also stated that if an employer provides for the accrual of seniority when employees use paid leave, it must also permit employees to accrue seniority when they substitute FMLA leave for paid leave. FMLA2019–2–A, issued on August 8, 2019, concluded that a parent’s need to attend an Individualized Education Plan meeting addressing the educational and special medical needs of his or her child who has a serious health condition is a qualifying reason for taking intermittent FMLA leave. FMLA2020–1–A, issued on January 7, 2020, addressed whether a combined general health district must count the employees of the County in which it is located for purposes of determining employee eligibility to take FMLA leave.

The Department requests comments about whether it would be helpful to provide additional guidance regarding the interpretations contained in any of these opinion letters through the regulatory process.

6. Please provide specific information and any available data regarding other specific challenges that employers experience in administering FMLA leave or that employees experience in taking or attempting to take FMLA leave. The Department welcomes any information on the administration and effectiveness of the current regulations and suggestions regarding specific strategies to address such challenges. The Department also welcomes information concerning best practices employees and employers may have experienced in using or administering the FMLA.

III. Conclusion

The Department invites interested parties to submit comments and data during the public comment period and welcomes any pertinent information and data that will provide a basis for analyzing the effectiveness of the current regulations in meeting the statutory objectives of the FMLA.

List of Subjects in 29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Reporting and recordkeeping requirements, Teachers.
Signed at Washington, DC, this 6th day of July, 2020.

Cheryl M. Stanton, Administrator, Wage and Hour Division.

FR Doc. 2020–14873 Filed 7–16–20; 8:45 am

BILLING CODE 4510–27–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 210

[Docket No. 2020–12]

Music Modernization Act Transition Period Transfer and Reporting of Royalties to the Mechanical Licensing Collective

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking regarding digital music providers’ obligations to transfer and report accrued royalties for unmatched musical works (or shares) to the mechanical licensing collective for purposes of being eligible for the limitation on liability for prior unlicensed uses under title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”) which, among other things, substantially modifies the compulsory “mechanical” license for making and distributing phonorecords of nondramatic musical works under 17 U.S.C. 115. It does so by switching from a song-by-song licensing system to a blanket licensing regime that will become available on January 1, 2021 (the “license availability date”), and be administered by a mechanical licensing collective (“MLC”) designated by the Copyright Office. Digital music providers (“DMPs”) will be able to obtain the new compulsory blanket license to make digital phonorecord deliveries (“DPDs”) of musical works, including in the form of permanent downloads, limited downloads, or interactive streams (referred to in the statute as “covered activity,” where such activity qualifies for a compulsory license), subject to compliance with various requirements.

Prior to the MMA, DMPs obtained a section 115 compulsory license on a per-work, song-by-song basis, by serving a notice of intention to obtain a compulsory license (“NOI”) on the copyright owner (or filing it with the Copyright Office if the Office’s public records did not identify the copyright owner) and then paying applicable royalties accompanied by accounting statements. The MMA includes a “transition period” for the period following the new law’s enactment, before the blanket license becomes available. During this transition period, anyone seeking to obtain a compulsory license to make DPDs must continue to do so on a song-by-song basis by serving NOIs on copyright owners “if the identity and location of the musical work copyright owner is known,” and paying them applicable royalties accompanied by statements of account. If the musical work copyright owner is unknown, a DMP may no longer file an NOI with the Copyright Office, but instead may rely on a limitation on liability that requires the DMP to “continue [ ] to search for the musical work copyright owner” using good-faith, commercially reasonable efforts and bulk electronic matching processes. The DMPs may eventually either account for and pay accrued royalties to the relevant musical work copyright owner(s) when found or, if they are not found before the end of the transition period, account for and transfer the royalties to the MLC at that time. Congress believed that the liability limitation, which limits recovery in lawsuits commenced on or after January 1, 2018 to the statutory royalty due, would “ensure that more artist royalties will be paid than otherwise would be the case through continual litigation” and viewed this provision as a “key component that was represent licensees in proceedings before the Copyright Royalty Judges (“CRJs”) and the Copyright Office, to serve as a non-voting member of the MLC, and to carry out other functions.


doi.org/10.1002/9780470057045.ch9

For Further Information Contact:
Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov. John R. Riley, Assistant General Counsel, by email at jrrl@copyright.gov, or Jason E. Sloan, Assistant General Counsel, by email at jslo@copyright.gov. Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION: I. Background

This notice of proposed rulemaking (“NPRM”) is being issued subsequent to a notification of inquiry, published in the Federal Register on September 24, 2019, that describes in detail the legislative background and regulatory scope of the present rulemaking proceeding. The Copyright Office assumes familiarity with that document, and encourages anyone reading this NPRM who has not reviewed that notice to do so before continuing here.

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”) which, among other things...

3 As permitted under the MMA, the Office...


1 84 FR 49966 (Sept. 24, 2019). All rulemaking activity, including public comments, as well as legislative history and educational material regarding the Music Modernization Act, can currently be accessed via navigation from https://www.copyright.gov/music-modernization/


