Proposed Special Apportionment Regulation Based on Workgroup Suggestions Updated 4/12/2016:

If the denominator of the receipts factor is [SEE MASS di minimis language] under [REF. STATUTORY PROVISIONS DEFINING/OR EXCLUDING RECEIPTS] then the following rules shall apply to the extent they effectuate an equitable allocation and apportionment of the taxpayer’s income (or loss):

1) The receipts factor shall include:
   a) If the predominance of the taxpayer’s income is derived Receipts from interest and related investment income from the maturity, redemption, sale, exchange or other disposition of [marketable] securities, then which shall be included in numerator of the receipts factor for this state to the extent those receipts would be sourced to this state under the by treating that taxpayer as a financial institution under this state's apportionment statutes, regulations or rules applicable to those institutions [financial institution receipts factor rules];
   b) If the predominance of the taxpayer's income is derived Receipts from dividends paid by a related party [as defined in Sec. 17 or other state law], that income which shall be included in the numerator of the receipts factor for this state on an apportioned basis, as follows, may be apportioned:
      i) Using the dividend payor’s apportionment factors [or property and payroll factors] for this state for the year in which the dividend was paid, if available, or the most recent year available, or
      ii) If it can be shown that the dividend related to income earned in periods other than the year in which the dividend was paid, using of the payor’s apportionment factors [or property and payroll factors] for this state from that period;

2) If the predominance of the taxpayer’s income is derived from capital gains or losses from the disposition of a business, business segment or capital asset used in the unitary business, then by apportioning the taxpayer’s income as follows:
   i) If the capital gain is recognized in a tax period of six months or less, using the prior tax year’s property and payroll factors of the business entity or business segment being disposed of; provided that, if more than 50% of the capital gain represents goodwill or other intangible value, by using the receipts factor of the business entity;
   ii) If the capital gain is recognized in a tax period of longer than six months or longer, using the current year’s property and payroll factors of the business entity or business segment being disposed of; provided that, if more than 50% of the capital gain represents goodwill or other intangible value, by using the receipts factor of the business entity;

3) If paragraphs (a), (b), or (c)sections (1) and (2) do not apply, then the taxpayer’s net income or loss will be apportioned as follows:
   i) Using property and payroll factors of the taxpayer [for states that have property and payroll factors]
ii) Using a receipts factor which includes any gross receipts of the taxpayer in the factor and includes the portion of those receipts in the numerator for this state to the extent the related costs of performance of the activities generating the receipts are in this state;

i) If the taxpayer is a member of a unitary group of corporations but is filing a return as a separate entity, the taxpayer’s income may be apportioned using the factors applicable to that combined group;

ii) Otherwise, the taxpayer’s income may be apportioned using the apportionment factors of the owner of the preponderance of beneficial interests in that taxpayer.

4) If the taxpayer’s income cannot be equitably apportioned under paragraphs above, the taxpayer’s income may be apportioned to this state in a manner which reflects the extent to which the taxpayer’s income was derived from this state in comparison to other states provided that this method would not result in a substantial portion of the income being apportioned to more than one taxing jurisdiction, or not apportioned to any taxing jurisdiction.

Comment [HHS]: Suggested by Helen as another alternative. (Note this may be included here or in section 1 above.)