

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

## ADMINISTRATIVE

### **Announcement 2021-8, page 1146.**

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

## ADMINISTRATIVE, EMPLOYMENT TAX

### **Notice 2021-24, page 1122.**

This notice amplifies the guidance in Notice 2020-22, 2020-17 I.R.B. 664, which provides for penalty relief under section 6656 of the Code for an employer's failure to timely deposit Employment Taxes with the IRS. This notice provides relief from section 6656 for employers required to pay qualified sick leave wages and qualified family leave wages, and qualified health plan expenses allocable to these wages, mandated by the Families First Coronavirus Response Act, as amended by the COVID-related Tax Relief Act of 2020, and the American Rescue Plan Act of 2021 (American Rescue Plan Act). This notice also provides relief from section 6656 for certain employers subject to a full or partial closure order due to COVID-19 or experiencing a statutorily specified decline in business under the Coronavirus Aid, Relief, and Economic Security Act, as amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 and the American Rescue Plan Act. Finally, this notice provides relief from section 6656 for certain employers for which COBRA continuation coverage premiums were not paid by assistance eligible individuals for such coverage

Finding Lists begin on page ii.

**Bulletin No. 2021-18**  
**May 3, 2021**

by reason of section 9501(a)(1) of the American Rescue Plan Act.

## EMPLOYEE PLANS

### **Notice 2021-27, page 1125.**

This notice sets forth updates on the corporate bond monthly yield curve, the corresponding spot segment rates for April 2021 used under § 417(e)(3)(D), the 24-month average segment rates applicable for April 2021, and the 30-year Treasury rates, as reflected by the application of § 430(h)(2)(C)(iv). In addition, it contains 24-month average segment rates for January 2020 through April 2021 determined under § 430(h)(2)(C)(iv) reflecting the modifications made by § 9706(a) of the American Rescue Plan Act of 2021.

## INCOME TAX

### **REG-121095-19, page 1131.**

The Opportunity Zone ("OZ") provision allows taxpayers under certain circumstances to defer capital gain that they reinvest in qualified opportunity funds. These proposed regulations include requirements that certain foreign persons and certain foreign-owned partnerships must meet to defer their capital gains. The proposed regulations also allow, under certain circumstances, for the reduction or elimination of withholding tax under certain Code sections on the capital gain that is deferred under the OZ provision. In addition, these regulations provide flexibility for qualified opportunity zone businesses regarding the working capital safe harbor in the case of Federally declared disasters. REG-121095-19. Published [INSERT PUBLICATION DATE].

### **Rev. Rul. 2021-8, page 1120.**

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term tax exempt rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for May 2021.

## **SPECIAL ANNOUNCEMENT**

### **Notice 2021-28, page 1130.**

This notice requests public recommendations for published guidance projects to be included on the 2021-2022 Priority Guidance Plan.

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

# Part I

## Section 1274.— Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 467, 468, 482, 483,  
1288, 7520, 7872.)

### Rev. Rul. 2021-8

This revenue ruling provides various prescribed rates for federal income

tax purposes for May 2021 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate

percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

**REV. RUL. 2021-8 TABLE 1**  
Applicable Federal Rates (AFR) for May 2021  
*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	0.13%	0.13%	0.13%	0.13%
110% AFR	0.14%	0.14%	0.14%	0.14%
120% AFR	0.16%	0.16%	0.16%	0.16%
130% AFR	0.17%	0.17%	0.17%	0.17%
<i>Mid-term</i>				
AFR	1.07%	1.07%	1.07%	1.07%
110% AFR	1.18%	1.18%	1.18%	1.18%
120% AFR	1.28%	1.28%	1.28%	1.28%
130% AFR	1.39%	1.39%	1.39%	1.39%
150% AFR	1.62%	1.61%	1.61%	1.60%
175% AFR	1.88%	1.87%	1.87%	1.86%
<i>Long-term</i>				
AFR	2.16%	2.15%	2.14%	2.14%
110% AFR	2.38%	2.37%	2.36%	2.36%
120% AFR	2.60%	2.58%	2.57%	2.57%
130% AFR	2.82%	2.80%	2.79%	2.78%

**REV. RUL. 2021-8 TABLE 2**  
Adjusted AFR for May 2021  
*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	0.10%	0.10%	0.10%	0.10%
Mid-term adjusted AFR	0.81%	0.81%	0.81%	0.81%
Long-term adjusted AFR	1.64%	1.63%	1.63%	1.62%

**REV. RUL. 2021-8 TABLE 3**

Rates Under Section 382 for May 2021

Adjusted federal long-term rate for the current month	1.64%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	1.64%

**REV. RUL. 2021-8 TABLE 4**

Appropriate Percentages Under Section 42(b)(1) for May 2021

Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.37%
Appropriate percentage for the 30% present value low-income housing credit	3.16%

**REV. RUL. 2021-8 TABLE 5**

Rate Under Section 7520 for May 2021

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	1.2%
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**Section 42.—Low-Income Housing Credit**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 467.—Certain Payments for the Use of Property or Services**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 483.—Interest on Certain Deferred Payments**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 280G.—Golden Parachute Payments**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs**

The applicable federal short-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change**

The adjusted applicable federal long-term rate is set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 482.—Allocation of Income and Deductions Among Taxpayers**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 7520.—Valuation Tables**

The applicable federal mid-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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**Section 7872.—Treatment of Loans With Below-Market Interest Rates**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2021. See Rev. Rul. 2021-8, page 1120.

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# Part III

## Relief from Penalty for Failure to Deposit Employment Taxes

### Notice 2021-24

#### SECTION 1. PURPOSE

This notice amplifies the guidance in Notice 2020-22, 2020-17 I.R.B. 664, which provides for penalty relief under section 6656 of the Internal Revenue Code (Code) for an employer's failure to timely deposit Employment Taxes<sup>1</sup> with the Internal Revenue Service (IRS). This notice extends the penalty relief provided in Notice 2020-22 to apply to deposits of Employment Taxes reduced in anticipation of the following credits:

- a. Paid sick and family leave credits under the Families First Coronavirus Response Act (Families First Act), Pub. L. No. 116-127, 134 Stat. 179 \_ (March 18, 2020), as amended by the COVID-related Tax Relief Act of 2020 (Tax Relief Act), enacted as Subtitle B of the Consolidated Appropriations Act, 2021 (Appropriations Act), Pub. L. No. 116-260, 134 Stat. 1182 (December 27, 2020), with respect to qualified leave wages paid with respect to the period beginning January 1, 2021, and ending March 31, 2021;
- b. Paid sick and family leave credits under sections 3131, 3132, and 3133 of the Code, added by section 9641 of the American Rescue Plan Act of 2021 (ARP), Pub. L. No. 117-2, 135 Stat. 4 (March 11, 2021), with respect to qualified leave wages paid with respect to the period beginning April 1, 2021, and ending September 30, 2021;
- c. The employee retention credit under section 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020), as amended by the Taxpayer Certainty

and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Appropriations Act, with respect to qualified wages paid with respect to the period beginning January 1, 2021, and ending June 30, 2021;

- d. The employee retention credit under section 3134 of the Code, added by section 9651 of the ARP, with respect to qualified wages paid with respect to the period beginning July 1, 2021, and ending December 31, 2021; and
- e. The credit for Continuation Coverage Premium Assistance under section 6432 of the Code, as added by section 9501(b) of the ARP, for COBRA continuation coverage premiums not paid by assistance eligible individuals for such coverage by reason of section 9501(a)(1) of the ARP during the period beginning April 1, 2021, and ending September 30, 2021.

#### SECTION 2. BACKGROUND

Section 3111(a) of the Code (employer's share of the Old Age, Survivors, and Disability Insurance (social security) portion of FICA tax), section 3111(b) of the Code (employer's share of the Hospital Insurance (Medicare) portion of FICA tax), section 3221(a) of the Code (employer's share of the social security and Medicare portions of RRTA tax), and section 3402 of the Code related to Federal income tax withholding impose Employment Tax liability on employers. For most employers, this liability is reported on the quarterly Form 941, Employer's QUARTERLY Federal Tax Return.

Although Form 941 is due quarterly, section 6302 of the Code and regulations under that section generally require deposits of Employment Taxes to be made on a monthly or semiweekly basis. Employers that accumulate \$100,000 or more of Employment Taxes on any day within a deposit period are required to deposit those liabilities with the IRS the next banking day. See § 31.6302-1(c) of the Employment Taxes and Collection of Income Tax at Source Regulations.

#### *Paid Sick and Family Leave Credits*

The Families First Act generally required employers of fewer than 500 employees to provide paid sick leave and expanded family and medical leave, up to specified limits, to employees unable to work or telework due to certain circumstances related to COVID-19, through December 31, 2020. Generally, employers that were required to pay qualified sick leave wages and qualified family leave wages by the Families First Act (collectively, Qualified Leave Wages), as well as qualified health plan expenses allocable to Qualified Leave Wages (Qualified Health Plan Expenses) under the Families First Act are entitled to refundable tax credits administered by the IRS.

The Tax Relief Act did not extend the requirement to provide the Qualified Leave Wages and Qualified Health Plan Expenses, but did extend the refundable tax credits for Qualified Leave Wages and Qualified Health Plan Expenses, with modifications, paid for periods of leave after December 31, 2020, and before April 1, 2021, that would have been required to have been paid if the requirement to provide such leave had been extended.

Specifically, sections 7001 and 7003 of the Families First Act, as amended by the Tax Relief Act, provide refundable tax credits against an employer's share of the social security portion of FICA tax, and so much of the Railroad Retirement Tax Act Tier 1 rate as is attributable to an employer's share of the social security portion of FICA tax, for each calendar quarter in an amount equal to the Qualified Leave Wages paid by the employer plus Qualified Health Plan Expenses with respect to that calendar quarter, with respect to periods of leave beginning on April 1, 2020, and ending on March 31, 2021. For purposes of this notice, an employer's share of the social security portion of FICA tax and so much of the Railroad Retirement Tax Act Tier 1 rate as is attributable to an employer's share of the social security portion of FICA tax, as applicable, are referred to as Creditable Employer Social Securi-

<sup>1</sup>"Employment Taxes" means withheld income taxes, taxes under the Federal Insurance Contributions Act (FICA), and taxes under the Railroad Retirement Tax Act (RRTA).



ty Taxes. The credits under section 7001 and 7003 are increased by the amount of the employer's share of Medicare tax (or the portion of the Railroad Retirement Tax Act Tier 1 rate as is attributable to the employer's share of Medicare tax) imposed on Qualified Leave Wages. See section 7005(b)(1) of the Families First Act. For purposes of this notice, the increase in the credit under section 7005(b)(1) is treated as a credit under section 7001 or section 7003.

The ARP added sections 3131 and 3132 to the Code, under which eligible employers can claim refundable tax credits for qualified sick leave wages and qualified family leave wages, respectively, with respect to periods of leave beginning on April 1, 2021, and ending on September 30, 2021 (also referred to as Qualified Leave Wages for the remainder of this notice). The refundable tax credits under sections 3131 and 3132 of the Code apply against an employer's share of the Medicare portion of FICA tax, and so much of the Railroad Retirement Tax Act Tier 1 rate as is attributable to the employer's share of Medicare tax, which for purposes of this notice, are referred to as Creditable Employer Medicare Taxes. The refundable tax credits are increased by the health plan expenses (also referred to as Qualified Health Plan Expenses for the remainder of this notice) and certain collectively bargained contributions paid by an eligible employer that are properly allocable to the related Qualified Leave Wages (Qualified Collectively Bargained Contributions), and both the employer's share of the social security and Medicare portions of FICA tax (and the employer's share of the Railroad Retirement Tax Act Tier 1 rate) imposed on the Qualified Leave Wages. See I.R.C. § § 3131(d), 3131(e), 3132(d), 3133(e), and 3133. For purposes of this notice, the increase in the credit under section 3133 is treated as a credit under section 3131 or 3132 of the Code.

The refundable tax credits under section 7001 and 7003 of the Families First Act and sections 3131 and 3132 of the Code are reported on the employer's re-

turn for reporting its liability for FICA tax or RRTA tax, as applicable, which for most employers subject to FICA tax is the quarterly Form 941. An employer may claim an advance payment of the refundable tax credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, in accordance with the instructions to the form.

#### *Employee Retention Credits*

Section 2301 of the CARES Act, as originally enacted, provided for an employee retention credit for eligible employers that pay qualified wages, including certain health plan expenses, to some or all employees after March 12, 2020, and before January 1, 2021. Eligible employers were allowed to claim a refundable tax credit under the CARES Act for fifty percent of qualified wages paid, limited to \$10,000 per employee over all calendar quarters combined in 2020 (Qualified Retention Wages).

Section 206 of the Relief Act amended section 2301 of the CARES Act to modify the employee retention credit for qualified wages paid after March 12, 2020, and before January 1, 2021, primarily relating to who may claim the credit. Section 207 of the Relief Act further amended section 2301 of the CARES Act to modify and extend the application of the employee retention credit for qualified wages paid after December 31, 2020, and before July 1, 2021. Under section 2301 of the CARES Act, as amended by section 207 of the Relief Act, eligible employers can claim a refundable tax credit for seventy percent of qualified wages paid, limited to \$10,000 per employee per calendar quarter in 2021 for the first and second calendar quarters of 2021 (also referred to as Qualified Retention Wages for the remainder of this notice).

Section 9651 of the ARP enacted section 3134 of the Code, which provides a substantially similar employee retention credit for qualified wages paid after June 30, 2021, and before January 1, 2022. Under section 3134 of the Code, eligible employers can claim a refundable tax credit

for seventy percent of qualified wages paid, limited to \$10,000 per employee per calendar quarter in 2021 for the third and fourth calendar quarters of 2021 (also referred to as Qualified Retention Wages for the remainder of this notice).

The refundable tax credit under section 2301 of the CARES Act applies against Creditable Employer Social Security Taxes for each calendar quarter. The refundable tax credit under section 3134 of the Code applies against Creditable Employer Medicare Taxes for each calendar quarter. The refundable tax credits under section 2301 of the CARES Act, as amended, and section 3134 of the Code are reported on the employer's return for reporting its liability for FICA tax or RRTA tax, as applicable, which for most employers subject to FICA tax is the quarterly Form 941. For calendar quarters in 2021, eligible small employers may claim an advance payment of the refundable tax credits for Qualified Retention Wages under section 2301 of the CARES Act and section 3134 of the Code by filing Form 7200 in accordance with the instructions to the form.

#### *COBRA Continuation Coverage Premium Assistance Credit*

Section 9501(b) of the ARP added section 6432 of the Code<sup>2</sup> which provides a refundable tax credit for premiums payable for COBRA continuation coverage under section 9501(a)(1). The credit is calculated with respect to premiums not paid by assistance eligible individuals for such coverage by reason of section 9501(a)(1) during the period beginning April 1, 2021, and ending September 30, 2021.

The refundable tax credit applies against Creditable Employer Medicare Taxes for each calendar quarter. The refundable tax credit is reported on the employer's return for reporting its liability for FICA tax or RRTA tax, as applicable, which for most employers subject to FICA tax is the quarterly Form 941. An employer may claim an advance payment of the refundable tax credit by filing Form 7200 in accordance with the instructions to the form.

<sup>2</sup>A version of section 6432 was originally added to the Code in 2009 by section 3001 of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. Law 111-5, 123 Stat. 115 (February 17, 2009) (ARRA). Section 6432 was repealed by section 401(d)(7)(A) of Division U of Title IV of the Consolidated Appropriations Act, 2018, Pub. Law 115-141, 132 Stat. 348 (March 23, 2018).

## *Failure to Deposit Penalty Relief*

Section 6656 of the Code imposes a penalty for any failure to deposit amounts as required by the Code or regulations on the date prescribed therefor, unless such failure is due to reasonable cause and not due to willful neglect. A failure to deposit taxes as required under section 6302 of the Code would generally subject an employer to the section 6656 penalty.

Sections 7001(i) and 7003(i) of the Families First Act (as added by section 3606(a) and (c) of the CARES Act) and section 2301(k) of the CARES Act instruct the Secretary of the Treasury or her delegate (Secretary) to waive the penalty under section 6656 of the Code for failure to deposit the Creditable Employer Social Security Taxes in anticipation of the allowance of the refundable tax credits allowed under the Families First Act and the CARES Act, respectively. Sections 3131(i), 3132(i), 3134(k) and 6432(c)(2)(C) of the Code instruct the Secretary to waive the penalty under section 6656 of the Code for failure to deposit Creditable Employer Medicare Taxes in anticipation of the allowance of the refundable tax credits allowed under sections 3131, 3132, 3134 and 6432 of the Code, respectively. Furthermore, sections 7001(f) and 7003(f) of the Families First Act and sections 3131(g)(3) and 3132(g)(3) of the Code specifically authorize guidance providing for penalty relief for failure to deposit amounts in anticipation of the allowance of the credits provided by the Families First Act and sections 3131 and 3132 of the Code, respectively. Section 3 of this notice provides relief from the penalty under section 6656 pursuant to the Families First Act, the CARES Act, and sections 3131(i), 3132(i), 3134(k), and 6432(c)(2)(C) of the Code.

### SECTION 3. RELIEF FROM FAILURE TO MAKE A DEPOSIT OF TAXES

#### *a. Reduced Deposits for Paid Sick and Family Leave Credit*

An employer will not be subject to a penalty under section 6656 for failing to deposit Employment Taxes in a calendar quarter if—

(1) The employer paid Qualified Leave Wages, Qualified Health Plan Expenses,

or Qualified Collectively Bargained Contributions with respect to the period beginning on April 1, 2021, and ending on September 30, 2021, to its employees in the calendar quarter prior to the time of the required deposit,

(2) The amount of Employment Taxes that the employer does not timely deposit is less than or equal to the amount of the employer's anticipated credits under sections 7001 and 7003 of the Families First Act or sections 3131 and 3132 of the Code for the calendar quarter as of the time of the required deposit, and

(3) The employer did not seek payment of an advance credit by filing Form 7200 with respect to the anticipated credits it relied upon to reduce its deposits.

Thus, an employer may reduce without a penalty under section 6656 of the Code the amount of a deposit of Employment Taxes by the amount of the paid sick or family leave credit anticipated for the calendar quarter prior to the required deposit, as long as the employer does not also seek an advance credit with regard to the same amount.

For purposes of this section 3.a of this notice, the total amount of any reduction in any required deposit may not exceed the total amount of the employer's anticipated credit under section 7001 or 7003 of the Families First Act or section 3131 or 3132 of the Code as of the time of the required deposit, minus any amount of such anticipated credits that had previously been used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

#### *b. Reduced Deposits for the Employee Retention Credit*

An eligible employer will not be subject to a penalty under section 6656 for failing to deposit Employment Taxes in a calendar quarter if—

(1) The employer paid Qualified Retention Wages with respect to the period beginning January 1, 2021 and ending December 31, 2021, to its employees in the calendar quarter prior to the time of the required deposit,

(2) The amount of Employment Taxes that the employer does not timely deposit, reduced by the amount of Employment

Taxes not deposited in anticipation of the credits claimed under sections 7001 and 7003 of the Families First Act or sections 3131 and 3132 of the Code (as described in section 3.a of this notice), is less than or equal to the amount of the employer's anticipated credits under section 2301 of the CARES Act or section 3134 of the Code for the calendar quarter as of the time of the required deposit, and

(3) The employer did not seek payment of an advance credit by filing Form 7200, with respect to the anticipated credits it relied upon to reduce its deposits.

Thus, after a reduction, if any, of a deposit of Employment Taxes by the amount of the anticipated paid sick or family leave credits, an employer may further reduce, without a penalty under section 6656 of the Code, the amount of the deposit of Employment Taxes by the amount of the employer's employee retention credit anticipated for the calendar quarter prior to the required deposit, as long as the employer does not also seek an advance credit with regard to the same amount.

For purposes of this section 3.b of this notice, the total amount of any reduction in any required deposit may not exceed the total amount of the employer's anticipated credit under section 2301 of the CARES Act or section 3134 of the Code as of the time of the required deposit, minus any amount of such anticipated credit that had previously been used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

#### *c. Reduced Deposits for the COBRA Continuation Coverage Premium Assistance Credit*

An employer will not be subject to a penalty under section 6656 for failing to deposit Employment Taxes in a calendar quarter if—

(1) The employer is a "person to whom premiums are payable" under section 6432(b) of the Code,

(2) The amount of Employment Taxes that the employer does not timely deposit, reduced by the amount of Employment Taxes not deposited in anticipation of the credits claimed under sections 7001 and 7003 of the Families First Act or sections 3131 and 3132 of the Code (as described



in section 3.a of this notice), and the credits claimed under section 2301 of the CARES Act or section 3134 of the Code (as described in section 3.b of this notice), is less than or equal to the amount of the employer's anticipated credits under section 6432 of the Code for the calendar quarter as of the time of the required deposit, and

(3) The employer did not seek payment of an advance credit by filing Form 7200 with respect to the anticipated credits it relied upon to reduce its deposits.

Thus, after a reduction, if any, of a deposit of Employment Taxes by the amount of the anticipated paid sick or family leave credits and the anticipated employee retention credit, an employer may further reduce without a penalty under section 6656 of the Code the amount of the deposit of Employment Taxes by the amount of the employer's COBRA continuation coverage premium assistance credit anticipated for the calendar quarter prior to the required deposit, as long as the employer does not also seek an advance credit with regard to the same amount.

For purposes of this section 3.c of this notice, the total amount of any reduction in any required deposit may not exceed the total amount of the employer's anticipated credit under section 6432 of the Code in the calendar quarter as of the time of the required deposit, minus any amount of such anticipated credit that had previously been used (1) to reduce a prior required deposit in the calendar quarter and obtain the relief provided by this notice or (2) to seek payment of an advance credit.

#### SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2020-22 is amplified.

#### SECTION 5. CONTACT INFORMATION

The principal author of this notice is Michael A. Franklin of the Office of the

Associate Chief Counsel (Procedure and Administration). For further information, please contact Mr. Franklin at (202) 317-5436 (not a toll-free number).

## Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

### Notice 2021-27

This notice provides guidance on the corporate bond monthly yield curve, the corresponding spot segment rates used under § 417(e)(3), and the 24-month average segment rates under § 430(h)(2) of the Internal Revenue Code. In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008 and the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I).

In addition to providing these rates for current periods, this notice provides 24-month average segment rates for earlier periods for plan years beginning in 2020 and 2021, determined under § 430(h)(2)(C)(iv) of the Code reflecting the modifications made by § 9706(a) of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (ARP), which was enacted on March 11, 2021.

#### YIELD CURVE AND SEGMENT RATES

Section 430 specifies the minimum funding requirements that apply to single-employer plans (except for CSEC plans under § 414(y)) pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding

target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. To the extent provided under § 430(h)(2)(C)(iv), these segment rates are adjusted by the applicable percentage of the 25-year average segment rates for the period ending September 30 of the year preceding the calendar year in which the plan year begins.<sup>1</sup> However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, and the 24-month average corporate bond segment rates used to compute the target normal cost and the funding target. Consistent with the methodology specified in Notice 2007-81, the monthly corporate bond yield curve derived from March 2021 data is in Table 2021-3 at the end of this notice. The spot first, second, and third segment rates for the month of March 2021 are, respectively, 0.69, 2.92, and 3.69.

The 24-month average segment rates determined under § 430(h)(2)(C)(i) through (iii) must be adjusted pursuant to § 430(h)(2)(C)(iv) to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates.

The 25-year average segment rates for plan years beginning in 2020 and 2021 were published Notice 2019-51, 2019-41 I.R.B. 866, and Notice 2020-72, 2020-40 I.R.B. 789, respectively.

#### 24-MONTH AVERAGE CORPORATE BOND SEGMENT RATES

The three 24-month average corporate bond segment rates applicable for March 2021 without adjustment for the 25-year average segment rate limits are as follows:

Applicable Month	24-Month Average Segment Rates Without 25-Year Average Adjustment		
	First Segment	Second Segment	Third Segment
April 2021	1.45	2.85	3.52

<sup>1</sup> Pursuant to § 433(h)(3)(A), the 3<sup>rd</sup> segment rate determined under § 430(h)(2)(C) is used to determine the current liability of a CSEC plan (which is used to calculate the minimum amount of the full funding limitation under § 433(c)(7)(C)).

**25-YEAR AVERAGE SEGMENT RATES**

Section 9706(a) of ARP changes the 25-year average segment rates and the applicable minimum and maximum percentages used under § 430(h)(3)(C)(iv) of the Code to adjust the 24-month average segment rates. Prior to this change, the applicable minimum and maximum percentages were 90% and 110% for a plan year beginning in 2020, and 85% and 115% for a plan year beginning in 2021, respectively. After this change, the applicable minimum and maximum percentages are 95% and 105% for a plan year beginning in

2020 or 2021. In addition, pursuant to this change, any 25-year average segment rate that is less than 5% is deemed to be 5%.<sup>2</sup>

Pursuant to § 9706(c)(1) of ARP, these changes apply with respect to plan years beginning on or after January 1, 2020. However, § 9706(c)(2) of ARP provides that a plan sponsor may elect not to have these changes apply to any plan year beginning before January 1, 2022.<sup>3</sup>

The adjusted 24-month average segment rates reflecting § 430(h)(2)(C)(iv) of the Code as amended by § 9706(a) of ARP for January 2020 through March 2021, applicable for plan years beginning in 2020 and 2021, are set forth in the Appendix.

The adjusted 24-month average segment rates set forth in the chart below reflect § 430(h)(2)(C)(iv) of the Code as amended by § 9706(a) of ARP. These adjusted 24-month average segment rates apply only for plan years for which an election under § 9706(c)(2) of ARP is not in effect. For a plan year for which such an election does not apply, the 24-month averages applicable for April 2021, adjusted to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

<i>Adjusted 24-Month Average Segment Rates</i>				
<b>For Plan Years Beginning In</b>	<b>Applicable Month</b>	<b>First Segment</b>	<b>Second Segment</b>	<b>Third Segment</b>
2020	April 2021	4.75	5.50	6.27
2021	April 2021	4.75	5.36	6.11

The adjusted 24-month average segment rates set forth in the chart below do not reflect the changes to § 430(h)(2)(C)(iv) of the Code made by § 9706(a) of ARP. These adjusted 24-month average

segment rates apply only for plan years for which an election under § 9706(c)(2) of ARP is in effect. For a plan year for which such an election applies, the 24-month averages applicable for April 2021, adjusted

to be within the applicable minimum and maximum percentages of the corresponding 25-year average segment rates in accordance with § 430(h)(2)(C)(iv) of the Code, are as follows:

<i>Pre-ARP Adjusted 24-Month Average Segment Rates</i>				
<b>For Plan Years Beginning In</b>	<b>Applicable Month</b>	<b>First Segment</b>	<b>Second Segment</b>	<b>Third Segment</b>
2020	April 2021	3.64	5.21	5.94
2021	April 2021	3.32	4.79	5.47

**30-YEAR TREASURY SECURITIES INTEREST RATES**

Section 431 specifies the minimum funding requirements that apply to multi-employer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) pro-

vides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The

rate of interest on 30-year Treasury securities for March 2021 is 2.34 percent. The Service determined this rate as the average of the daily determinations of yield on the 30-year Treasury bond maturing in February 2051. For plan years beginning in April 2021, the weighted average of the rates of interest on 30-year Treasury securities and the permissible range of rates used to calculate current liability are as follows:

<i>Treasury Weighted Average Rates</i>		
<b>For Plan Years Beginning In</b>	<b>30-Year Treasury Weighted Average</b>	<b>Permissible Range 90% to 105%</b>
April 2021	2.24	2.02 to 2.36

<sup>2</sup>Pursuant to this change, the 25-year averages of the first segment rate for 2020 and 2021 are increased to 5.00% because those 25-year averages as originally published are below 5.00%.  
<sup>3</sup> This election may be made either for all purposes for which the amendments under § 9706 of ARP apply or solely for purposes of determining the adjusted funding target attainment percentage under § 436 of the Code for the plan year.

MINIMUM PRESENT VALUE  
SEGMENT RATES

In general, the applicable interest rates

under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. Notice 2007-81 provides guidelines for determining the minimum pres-

ent value segment rates. Pursuant to that notice, the minimum present value segment rates determined for March 2021 are as follows:

<i>Minimum Present Value Segment Rates</i>			
<b>Month</b>	<b>First Segment</b>	<b>Second Segment</b>	<b>Third Segment</b>
March 2021	0.69	2.92	3.69

DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of the Asso-

ciate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development

of this guidance. For further information regarding this notice, contact Mr. Morgan at 202-317-6700 or Paul Stern at 202-317-8702 (not toll-free numbers).

**Table 2021-3**  
**Monthly Yield Curve for March 2021**  
 Derived from March 2021 Data

<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>	<i>Maturity</i>	<i>Yield</i>
0.5	0.20	20.5	3.52	40.5	3.71	60.5	3.78	80.5	3.82
1.0	0.26	21.0	3.53	41.0	3.71	61.0	3.78	81.0	3.82
1.5	0.34	21.5	3.54	41.5	3.71	61.5	3.78	81.5	3.82
2.0	0.44	22.0	3.54	42.0	3.72	62.0	3.78	82.0	3.82
2.5	0.56	22.5	3.55	42.5	3.72	62.5	3.78	82.5	3.82
3.0	0.70	23.0	3.56	43.0	3.72	63.0	3.79	83.0	3.82
3.5	0.85	23.5	3.56	43.5	3.72	63.5	3.79	83.5	3.82
4.0	1.01	24.0	3.57	44.0	3.73	64.0	3.79	84.0	3.82
4.5	1.17	24.5	3.58	44.5	3.73	64.5	3.79	84.5	3.82
5.0	1.33	25.0	3.58	45.0	3.73	65.0	3.79	85.0	3.82
5.5	1.50	25.5	3.59	45.5	3.73	65.5	3.79	85.5	3.82
6.0	1.66	26.0	3.59	46.0	3.73	66.0	3.79	86.0	3.82
6.5	1.82	26.5	3.60	46.5	3.74	66.5	3.79	86.5	3.82
7.0	1.98	27.0	3.60	47.0	3.74	67.0	3.79	87.0	3.82
7.5	2.12	27.5	3.61	47.5	3.74	67.5	3.79	87.5	3.82
8.0	2.26	28.0	3.61	48.0	3.74	68.0	3.80	88.0	3.82
8.5	2.40	28.5	3.62	48.5	3.74	68.5	3.80	88.5	3.83
9.0	2.52	29.0	3.62	49.0	3.75	69.0	3.80	89.0	3.83
9.5	2.63	29.5	3.63	49.5	3.75	69.5	3.80	89.5	3.83
10.0	2.74	30.0	3.63	50.0	3.75	70.0	3.80	90.0	3.83
10.5	2.83	30.5	3.64	50.5	3.75	70.5	3.80	90.5	3.83
11.0	2.92	31.0	3.64	51.0	3.75	71.0	3.80	91.0	3.83
11.5	3.00	31.5	3.65	51.5	3.75	71.5	3.80	91.5	3.83
12.0	3.07	32.0	3.65	52.0	3.76	72.0	3.80	92.0	3.83
12.5	3.13	32.5	3.66	52.5	3.76	72.5	3.80	92.5	3.83
13.0	3.18	33.0	3.66	53.0	3.76	73.0	3.80	93.0	3.83
13.5	3.23	33.5	3.66	53.5	3.76	73.5	3.81	93.5	3.83
14.0	3.28	34.0	3.67	54.0	3.76	74.0	3.81	94.0	3.83
14.5	3.31	34.5	3.67	54.5	3.76	74.5	3.81	94.5	3.83
15.0	3.34	35.0	3.68	55.0	3.77	75.0	3.81	95.0	3.83
15.5	3.37	35.5	3.68	55.5	3.77	75.5	3.81	95.5	3.83
16.0	3.40	36.0	3.68	56.0	3.77	76.0	3.81	96.0	3.83
16.5	3.42	36.5	3.69	56.5	3.77	76.5	3.81	96.5	3.83
17.0	3.44	37.0	3.69	57.0	3.77	77.0	3.81	97.0	3.83
17.5	3.45	37.5	3.69	57.5	3.77	77.5	3.81	97.5	3.83
18.0	3.47	38.0	3.69	58.0	3.77	78.0	3.81	98.0	3.83
18.5	3.48	38.5	3.70	58.5	3.77	78.5	3.81	98.5	3.84
19.0	3.49	39.0	3.70	59.0	3.78	79.0	3.81	99.0	3.84
19.5	3.50	39.5	3.70	59.5	3.78	79.5	3.81	99.5	3.84
20.0	3.51	40.0	3.71	60.0	3.78	80.0	3.81	100.0	3.84

## Appendix

Adjusted 24-Month Average Segment Rates Reflecting ARP for Plan Years Beginning in 2020

	First Segment	Second Segment	Third Segment
January 2020	4.75	5.50	6.27
February 2020	4.75	5.50	6.27
March 2020	4.75	5.50	6.27
April 2020	4.75	5.50	6.27
May 2020	4.75	5.50	6.27
June 2020	4.75	5.50	6.27
July 2020	4.75	5.50	6.27
August 2020	4.75	5.50	6.27
September 2020	4.75	5.50	6.27
October 2020	4.75	5.50	6.27
November 2020	4.75	5.50	6.27
December 2020	4.75	5.50	6.27
January 2021	4.75	5.50	6.27
February 2021	4.75	5.50	6.27
March 2021	4.75	5.50	6.27

Adjusted 24-Month Average Segment Rates Reflecting ARP for Plan Years Beginning in 2021

	First Segment	Second Segment	Third Segment
September 2020	4.75	5.36	6.11
October 2020	4.75	5.36	6.11
November 2020	4.75	5.36	6.11
December 2020	4.75	5.36	6.11
January 2021	4.75	5.36	6.11
February 2021	4.75	5.36	6.11
March 2021	4.75	5.36	6.11



# Public Recommendations Invited on Items to be Included on the 2021-2022 Priority Guidance Plan

## Notice 2021-28

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (Service) invite the public to submit recommendations for items to be included on the 2021-2022 Priority Guidance Plan.

The Treasury Department's Office of Tax Policy and the Service use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2021-2022 Priority Guidance Plan will identify guidance projects that the Treasury Department and the Service intend to actively work on as priorities during the period from July 1, 2021, through June 30, 2022.

The Treasury Department and the Service recognize the importance of public input in formulating a Priority Guidance Plan that focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law. The published guidance process is most successful if the Treasury Department and the Service have the benefit of the experience and knowledge of taxpayers and practitioners who must apply the rules implementing the tax laws.

This solicitation reflects an emphasis on taxpayer engagement with the Treasury Department and the Service through a variety of channels, consistent with the

directive of the Taxpayer First Act, Pub. L. 116-25, 133 Stat. 981.

In reviewing recommendations and selecting additional projects for inclusion on the 2021-2022 Priority Guidance Plan, the Treasury Department and the Service will consider the following:

1. Whether the recommended guidance resolves significant issues relevant to a broad class of taxpayers;
2. Whether the recommended guidance reduces controversy and lessens the burden on taxpayers or the Service;
3. Whether the recommended guidance relates to recently enacted legislation;
4. Whether the recommendation involves existing regulations or other guidance that is outdated, unnecessary, ineffective, insufficient, or unnecessarily burdensome and that should be modified, streamlined, expanded, replaced, or withdrawn;
5. Whether the recommended guidance promotes sound tax administration;
6. Whether the Service can administer the recommended guidance on a uniform basis; and
7. Whether the recommended guidance can be drafted in a manner that will enable taxpayers to easily understand and apply the guidance.

Please submit recommendations for guidance by Friday, May 28, 2021, for possible inclusion on the original 2021-2022 Priority Guidance Plan. Taxpayers may, however, submit recommendations for guidance at any time during the year. The Treasury Department and the Service will update the 2021-2022 Priority Guidance Plan periodically to reflect additional guidance that the Treasury Department and the Service intend to publish or have published during the plan year. The periodic updates allow the Treasury Department and the Service to respond in a timely manner to the need for additional guidance that may arise during the plan year.

Taxpayers are not required to submit recommendations for guidance in any particular format. Taxpayers should, however, briefly describe the recommended guidance and explain the need for the guidance. In addition, taxpayers may include an analysis of how the issue should be resolved. For recommendations to modify, streamline, or withdraw existing regulations or other guidance, taxpayers should explain how the changes would reduce taxpayer cost and/or burden or benefit tax administration. It would be helpful if taxpayers suggesting more than one guidance project prioritize the projects by order of importance. If a large number of projects are being suggested, it would be helpful if the projects were grouped by subject matter and then in terms of high, medium, or low priority. Requests for guidance in the form of petitions for rulemaking will be considered with other recommendations for guidance in accordance with the considerations described in this notice.

Taxpayers are strongly encouraged to submit recommendations for guidance electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2021-0004 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit recommendations). Taxpayers submitting recommendations by mail should send them to:

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2021-28)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

All recommendations for guidance submitted by the public in response to this notice will be available for public inspection and copying in their entirety. For further information regarding this notice, contact Emily M. Lesniak of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-5409 (not a toll-free number).

# Part IV

## Notice of Proposed Rulemaking

### Requirements for Certain Foreign Persons and Certain Foreign-Owned Partnerships Investing in Qualified Opportunity Funds and Flexibility for Working Capital Safe Harbor Plans

#### REG-121095-19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that include requirements that certain foreign persons and certain foreign-owned partnerships must meet in order to elect the Federal income tax benefits provided by section 1400Z-2 of the Internal Revenue Code (Code). This document also contains proposed regulations that allow, under certain circumstances, for the reduction or elimination of withholding under section 1445, 1446(a), or 1446(f) of the Code on transfers that give rise to gain that is deferred under section 1400Z-2(a). Finally, this document contains additional guidance regarding the 24-month extension of the working capital safe harbor in the case of Federally declared disasters. The proposed regulations affect qualified opportunity funds and their investors.

**DATES:** Written or electronic comments and requests for a public hearing must be received by June 11, 2021. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for Public Hearing**” section.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal

at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-121095-19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-121095-19), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

#### FOR FURTHER INFORMATION

**CONTACT:** Concerning proposed § 1.1400Z2(a)-2 and 1.1445-3, Milton Cahn at (202) 317-4934; concerning proposed § 1.1446-3, 1.1446-6 and 1.1446-7, Ronald Gootzeit at (202) 317-4953; concerning proposed § 1.1446(f)-2, Subin Seth at (202) 317-5003; concerning proposed § 1.1400Z2(a)-1(a), 1.1400Z2(b)-1(c), and 1.1400Z2(d)-1(d), Erika Reigle at (202) 317-7006; concerning submissions of comments and/or requests for a public hearing, Regina L. Johnson, (202) 317-5177 (not toll free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to 26 CFR part 1 under sections 1400Z-2, 1445, and 1446 (proposed regulations). Section 13823 of Public Law 115-97, 131 Stat. 2054, 2184 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), added sections 1400Z-1 and 1400Z-2 to the Code. The purposes of section 1400Z-2 and the section 1400Z-2 regulations (that is, the final regulations set forth in § 1.1400Z2(a)-1 through 1.1400Z2(f)-1, 1.1502-14Z, and 1.1504-3) are to provide specified Federal

income tax benefits to owners of qualified opportunity funds (QOFs) to encourage the making of longer-term investments, through QOFs and qualified opportunity zone businesses, of new capital in one or more qualified opportunity zones designated under section 1400Z-1 and to increase economic growth in such qualified opportunity zones. See § 1.1400Z2(f)-1(c) (1) (describing the purposes of section 1400Z-2 and the section 1400Z-2 regulations; Notice 2018-48, 2018-28 I.R.B. 9, and Notice 2019-42, 2019-29 I.R.B. 352 (setting forth the combined list of population census tracts designated as qualified opportunity zones).

Section 1400Z-1 provides the procedural rules for designating qualified opportunity zones and related definitions. Section 1400Z-2 provides two main tax incentives to encourage investment in qualified opportunity zones. See section 1400Z-2(b) and (c). First, a taxpayer, upon making a valid election, may generally defer, until the earlier of an inclusion event or December 31, 2026, certain gains in gross income that would otherwise be recognized in the tax year if the taxpayer invests a corresponding amount in a qualifying investment in a QOF within 180 days of the date of the sale or exchange. See section 1400Z-2(b)(1)(A) and (B). The taxpayer may potentially exclude ten percent of such deferred gain from gross income if the taxpayer holds the qualifying investment in the QOF for at least five years. See section 1400Z-2(b)(2)(B)(iii). An additional five percent of such gain may potentially be excluded from gross income if the taxpayer holds the qualifying investment for at least seven years. See section 1400Z-2(b)(2)(B)(iv). Second, a taxpayer, upon making a second valid election under section 1400Z-2(c), may also exclude from gross income any appreciation on the taxpayer’s qualifying investment in the QOF if the qualifying investment is held for at least ten years. Section 1400Z-2(e)(4) provides that the Secretary of the Treasury or his delegate shall prescribe regulations as may be necessary or appropriate to carry out the purposes of section 1400Z-2, including rules to prevent abuse.

On October 29, 2018, the Treasury Department and the IRS published in the *Federal Register* (83 FR 54279) a notice of proposed rulemaking (REG-115420-18) providing guidance under section 1400Z-2 for investing in qualified opportunity funds (83 FR 54279 (October 29, 2018)) (October 2018 proposed regulations). A second notice of proposed rulemaking (REG-120186-18) was published in the *Federal Register* (84 FR 18652) on May 1, 2019, containing additional proposed regulations under section 1400Z-2 (May 2019 proposed regulations). The May 2019 proposed regulations also updated portions of the October 2018 proposed regulations. On January 13, 2020, final regulations (TD 9889) under section 1400Z-2 were published in the *Federal Register* (85 FR 1866, as corrected at 85 FR 19082), effective for taxable years beginning after March 13, 2020 (section 1400Z-2 regulations).

Under the section 1400Z-2 regulations, a taxpayer qualifies for deferral under section 1400Z-2(a) only if the taxpayer is an eligible taxpayer. Section 1.1400Z2(a)-1(a)(1). An eligible taxpayer is defined as a person that is required to report the recognition of gains during the taxable year under Federal income tax accounting principles. Section 1.1400Z2(a)-1(b)(13). If an eligible taxpayer that is a partnership does not elect to defer gain, a partner of such partnership may elect to defer its distributive share of the gain. Section 1.1400Z2(a)-1(c)(8).

The section 1400Z-2 regulations provide that only gains that are eligible gains may be deferred. Section 1.1400Z2(a)-1(b)(11). In general, an eligible gain is gain that (i) is treated as a capital gain or is a qualified 1231 gain, (ii) would be recognized for Federal income tax purposes and subject to tax under subtitle A of the Code before January 1, 2027, if section 1400Z-2(a)(1) did not apply to defer the gain, and (iii) does not arise from a sale or exchange of property with certain related persons. *Id.* Thus, for example, a nonresident alien individual or foreign corporation generally may make a deferral election with respect to an item of capital gain that is effectively connected with a U.S. trade or business, because this gain otherwise is subject to Federal income tax. When a partnership chooses to make

a deferral election, the section 1400Z-2 regulations provide an exception to the general requirement that gain be subject to Federal income tax in order to constitute eligible gain, subject to an anti-abuse rule. Section 1.1400Z2(a)-1(b)(11)(ix)(B).

Foreign persons are generally subject to U.S. income tax on amounts that are effectively connected with the conduct of a trade or business within the United States (ECI). A foreign person that directly or indirectly is engaged in a trade or business in the United States must file a U.S. income tax return and pay any tax due.

To ensure the collection of tax, in certain circumstances, the Code imposes withholding requirements on payments or allocations of ECI to foreign persons. See sections 1445, 1446(a), and 1446(f). The amount of withholding under these provisions is intended to serve as a proxy for the amount of the foreign person's substantive tax liability and may not match the actual amount of tax due. The amount withheld may be claimed as a credit against the amount of tax due and shown on the foreign person's tax return.

Specifically, section 1445(a) requires a transferee to withhold tax on a disposition of a United States real property interest (as defined in section 897(c)) (U.S. real property interest) by a foreign person. Generally, the transferee must withhold 15 percent of the amount realized and deposit the tax with the IRS within 20 days of the transfer. Certain exceptions and reductions to the rate of withholding can apply, including by the foreign person obtaining a withholding certificate from the IRS to reduce or eliminate the amount required to be withheld on the transfer.

Section 1445(e)(1) requires a domestic partnership, trust, or estate that disposes of a United States real property interest to withhold on any portion of the gain that is allocable to a foreign partner or beneficiary. The rate of withholding is the highest rate of tax in effect under section 11(b) (currently 21 percent).

Section 1445(e)(2) requires a foreign corporation that recognizes gain on the distribution of a United States real property interest to withhold on the gain at the highest rate of tax in effect under section 11(b).

Section 1445(e)(3) requires a domestic corporation that is or has been a

United States real property holding corporation to withhold 15 percent of a distribution to a nonresident alien or foreign corporation.

Section 1445(e)(6) requires a qualified investment entity to withhold at the highest rate of tax specified in section 11(b) on the amount of the distribution that is treated as gain from the sale or exchange of a United States real property interest.

Section 1446(a) generally requires a partnership to withhold tax on effectively connected taxable income as determined under § 1.1446-2 (ECTI) allocable to a foreign partner, with limited adjustments, regardless of whether the income is distributed to the partner (section 1446(a) tax). A partnership must generally withhold section 1446(a) tax on a foreign partner's allocable share of ECTI at the highest rate of tax specified in section 1 (for a foreign partner other than a corporation) or section 11(b) (for a foreign partner that is a corporation). A partnership is generally required to pay the section 1446(a) tax in four installment payments. The partnership may consider certain partner-level deductions and losses as a reduction to the ECTI on which it must withhold section 1446(a) tax. See § 1.1446-6.

Section 1446(f) requires withholding under certain circumstances in connection with a disposition of a partnership interest. Specifically, if, on a disposition (which includes a distribution from a partnership to a partner) of a partnership interest, section 864(c)(8) treats any portion of a foreign partner's gain as effectively connected gain, section 1446(f) requires the transferee to withhold tax equal to 10 percent of the amount realized, unless an exemption or reduced rate of withholding applies. The transferee must deposit the tax with the IRS within 20 days of the transfer. See § 1.1446(f)-2. For purposes of section 1446(f), a transferor may in certain cases certify to the transferee that the transfer is not subject to withholding or otherwise qualifies for an exception to withholding or an adjustment to the amount required to be withheld. *Id.*

Under sections 33 and 1462, a foreign person subject to withholding under section 1445, 1446(a), or 1446(f) may credit the amount withheld against the amount of income tax liability shown on the person's tax return.



## Explanation of Provisions

### I. Overview of Proposed Regulations

These proposed regulations provide requirements for certain foreign persons and certain foreign-owned partnerships investing in QOFs and flexibility for working capital safe harbor plans.

### II. Requirements for Certain Foreign Persons and Certain Foreign-owned Partnerships Investing in QOFs

#### A. Coordination of the deferral election under section 1400Z-2(a) with the withholding rules under sections 1445, 1446(a) and 1446(f)

The existing section 1400Z-2 regulations do not coordinate the deferral election under section 1400Z-2(a) with the withholding rules in sections 1445, 1446(a), and 1446(f). Generally, these withholding provisions subject a foreign person to withholding to ensure the collection of tax due to the increased risk of noncompliance by a person that is not a United States person. In general, the withholding may be claimed as a credit or refund when the foreign person files its return and pays any substantive tax due. Thus, a foreign person subject to withholding that elects to defer gain under section 1400Z-2(a) may be entitled to apply the credit for withholding against tax on other income or claim a refund for the year in which withholding was applied, as the foreign person will not be required to pay substantive tax on all or a portion of the deferred gain until the gain is recognized upon the earlier of an inclusion event or December 31, 2026. In these circumstances, the withholding will not serve its intended purpose to ensure that the substantive tax is collected. To address the risk of noncompliance by certain foreign persons with respect to their U.S. tax obligations related to deferred gain under section 1400Z-2(a), the Treasury Department and the IRS have determined that coordination is needed between section 1400Z-2 and sections 1445, 1446(a), and 1446(f).

To ensure that the compliance purposes of sections 1445, 1446(a), and 1446(f) are not undermined when a foreign person elects to defer gain under

section 1400Z-2(a), these proposed regulations provide that security-required persons (certain foreign persons and foreign-owned partnerships) investing gain that is a security-required gain (generally, gain from a transfer subject to withholding under section 1445, 1446(a), or 1446(f)) may not make a deferral election under section 1400Z-2(a) unless an eligibility certificate is obtained with respect to that gain. See section II.B of this Explanation of Provisions. At the same time, the proposed regulations eliminate or reduce withholding under section 1445, 1446(a), or 1446(f) on security-required persons that obtain an eligibility certificate and provide security to the IRS before the transaction giving rise to the gain. As discussed in Part II.C of this Explanation of Provisions, this exemption responds to comments received on the proposed regulations under section 1400Z-2 requesting withholding relief so that foreign persons have funds available to invest the entire amount of eligible gain into a QOF. A security-required person that does not obtain an eligibility certificate before the transfer, and thus is withheld upon, must still obtain an eligibility certificate to make a deferral election under section 1400Z-2(a). The security-required person (or, if applicable, its partner, owner, or beneficiary) may also claim a credit or refund for the amount withheld on the deferred gain when filing its return. The IRS intends to require any claim for credit or refund for amounts withheld under section 1445, 1446(a), or 1446(f) on deferred gain under section 1400Z-2(a) to include a copy of the eligibility certificate for the covered transfer (or a statement providing that the transfer was not a covered transfer).

#### B. Requirement for certain persons to obtain eligibility certificate

##### 1. In General

The proposed regulations provide that a taxpayer that is a security-required person may not make a deferral election under section 1400Z-2(a) with respect to part or all of a security-required gain from a covered transfer unless the taxpayer obtains an eligibility certificate from the IRS with respect to such security-required gain by the date on which the deferral

election is filed with the IRS. Proposed § 1.1400Z2(a)-1(a)(3). The eligibility certificate must specify the permitted deferral amount, and the taxpayer may not make a deferral election with respect to the security-required gain in an amount that exceeds the permitted deferral amount. Id.

##### 2. Security-Required Persons

A security-required person means a person that is either (i) a foreign person other than a partnership or (ii) a specified partnership. Proposed § 1.1400Z2(a)-2(b)(1). To minimize burden, the Treasury Department and the IRS have decided not to require that all partnerships electing to defer gain under section 1400Z-2(a) obtain an eligibility certificate. Rather, the rules regarding specified partnerships are intended to impose this requirement only on partnerships that pose a compliance risk with respect to the collection of tax on any deferred gain and that either hold a significant amount of U.S. real property interests or assets used in a U.S. trade or business or that generate a significant amount of gain that the partnership elects to defer. An abusive avoidance of the rules regarding specified partnerships is subject to the existing anti-abuse rule in § 1.1400Z2(f)-1(c)(1) (providing that if a significant purpose of a transaction is to achieve a Federal income tax result that is inconsistent with the purposes of section 1400Z-2 and the section 1400Z-2 regulations, a transaction (or series of transactions) will be recast or recharacterized for Federal income tax purposes as appropriate to achieve tax results that are consistent with the purposes of section 1400Z-2 and the section 1400Z-2 regulations).

A specified partnership is a partnership, foreign or domestic, that meets three tests with respect to a transfer that produces a security-required gain: an ownership test, a closely-held test, and a gain or asset test. Proposed § 1.1400Z2(a)-2(b)(3). The ownership test is met if, at the time of transfer, 20 percent or more of the capital or profits interests in the partnership are owned (directly or indirectly through one or more partnerships, trusts, or estates) by one or more nonresident aliens or foreign corporations. Proposed § 1.1400Z2(a)-2(b)(3)(i). The closely-held test is met if, at any time during a

look-back period, a partnership has 10 or fewer direct partners that own 90 percent or more of the capital or profits interests in the partnership, with any related partners (within the meaning of section 267(b) or 707(b)(1)) being treated as a single partner. Proposed § 1.1400Z2(a)-2(b)(3)(ii). For purposes of the closely-held test, the look-back period is the period that begins on the later of the date that is one year before the date of the transfer or the date on which the partnership was formed, and that ends on the date of the transfer. *Id.* Further, a partner that is a partnership or trust is considered a direct partner. *Id.* The gain or asset test is met if either: (i) The amount of security-required gain from the transfer exceeds \$1 million (the gain test) or (ii) at any time during a look-back period, the value of the partnership's assets that are U.S. real property interests or assets used in a U.S. trade or business exceeds 25 percent of the total value of the partnership's assets (the asset test). Proposed § 1.1400Z2(a)-2(b)(3)(iii). For purposes of the asset test, the look-back period is the same as the look-back period for purposes of the closely held test. *Id.* The proposed regulations allow the partnership to determine the value of an asset on the last day of the taxable year preceding the year in which the look-back period begins or, for any asset acquired after this date (including upon formation of the partnership), on the date of acquisition. *Id.* The proposed regulations also provide rules for looking through interests in other partnerships to value assets that are held indirectly. *Id.* Finally, the proposed regulations state that the value of each asset will be measured according to its gross fair market value. *Id.* The Treasury Department and the IRS request comments on whether a method of valuing assets other than fair market value should be used for purposes of the asset test. The Treasury Department and the IRS also request comments on whether net value, instead of gross value, should be used for purposes of the asset test.

### 3. Covered Transfer and Security-Required Gain

A covered transfer is defined as: (i) A disposition by, or a distribution to, a security-required person that is subject to withholding under section 1445; (ii) a disposition by, or a distribution to, a security-required person that is subject to withholding under section 1446(f); (iii) a disposition by a specified partnership of property, other than an interest in another partnership or a U.S. real property interest, or a distribution to a specified partnership, if any gain that arises is included in computing ECTI; or (iv) a disposition by a partnership that is not a specified partnership of property, or a distribution to such a partnership, if any gain that arises is included in determining the allocable share of a security-required person's ECTI.<sup>1</sup> Proposed § 1.1400Z2(a)-2(c)(2)(i). The proposed regulations generally provide that a transfer subject to section 1445 or 1446(f) is not a covered transfer if an exception to withholding applies under those provisions. Proposed § 1.1400Z2(a)-2(c)(2)(ii). However, in order to impose the eligibility certificate requirements on security-required persons that are domestic specified partnerships, if the exception to withholding is based on the non-foreign status of the transferor, the transfer will continue to be treated as a covered transfer. *Id.* For the same reason, a domestic specified partnership is treated as a foreign person in determining whether a transfer is a covered transfer as defined in (A), (B), and (D) of proposed § 1.1400Z2(a)-2(c)(2)(i).

Security-required gain is certain gain that arises from a covered transfer. Proposed § 1.1400Z2(a)-2(c)(1). For a covered transfer defined in proposed § 1.1400Z2(a)-2(c)(2)(i)(C) (described in (iii) in the first sentence of the preceding paragraph), the amount of security-required gain is the gain that is included in computing ECTI under § 1.1446-2, disregarding § 1.1446-2(b)(4)(i). *Id.* For a covered transfer defined in proposed § 1.1400Z2(a)-2(c)(2)(i)(D) (described in

(iv) in the first sentence of the preceding paragraph), the amount of security-required gain is the gain that is included in computing ECTI under § 1.1446-2 that is allocable to the security-required person. *Id.*

### 4. Application for an eligibility certificate and acceptable security

To obtain an eligibility certificate with respect to any security-required gain, a security-required person must submit an application to the IRS. Proposed § 1.1400Z2(a)-2(d)(2). The IRS is considering requiring electronic submission of the application; this process would be described in forms, instructions, publications, or guidance published in the Internal Revenue Bulletin. The application must generally include the following: (i) Certain information about the security-required person and the covered transfer; (ii) an agreement for the deferral of tax and provision of security (deferral agreement); (iii) an agreement with a U.S. agent (as defined in proposed § 1.1400Z2(a)-2(d)(4)(ii)(D)); and (iv) acceptable security that secures the amount of security-required gain for which the eligibility certificate is being obtained. Proposed § 1.1400Z2(a)-2(d)(3). The application includes the requirement to provide a U.S. taxpayer identification number. If applicants do not yet have a U.S. taxpayer identification number, additional time should be allocated to ensure that a U.S. taxpayer identification number can be obtained; see the instructions to Forms W-7 and SS-4. The IRS may prescribe in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter) procedures for obtaining a U.S. taxpayer identification number under these circumstances.

Acceptable security is defined as an irrevocable standby letter of credit issued by a U.S. bank that meets certain capital and other requirements specified

<sup>1</sup> While both categories (iii) and (iv) describe dispositions or distributions, the gain from which is used in the calculation of ECTI under § 1.1446-2, category (iii) describes transactions directly involving a specified partnership, while category (iv) describes transactions involving a partnership that is not a specified partnership that produce gain allocable to a partner that is a security-required person. The transactions described in category (iii) are limited to those involving property other than partnership interests and U.S. real property interests because the direct transfer by a specified partnership of a partnership interest is subject to withholding under section 1446(f) (and thus is already described in category (ii)), and the direct transfer of a U.S. real property interest is subject to withholding under section 1445 (and thus is already described in category (i)).



in these proposed regulations. Proposed § 1.1400Z2(a)-2(d)(6)(ii). The proposed regulations provide that the IRS may identify in published guidance additional financial institutions that may qualify as issuers of letters of credit. *Id.* The Treasury Department and the IRS request comments on financial institutions other than banks that should qualify as issuers of letters of credit. The Treasury Department and the IRS also request comments on whether additional types of security are needed. Any additional proposed types of security should preserve administrative flexibility to require electronic submission of applications and protect the IRS's collection ability.

#### 5. Deferral Agreement and Events of Default

In general, under the deferral agreement, the security-required person agrees to do the following: timely file a Federal income tax return and pay any tax liability due on the security-required gain for which the security-required person seeks to defer gain under section 1400Z-2(a) when required; report any security-required gain in accordance with the regulations under section 1400Z-2; provide security to the IRS with respect to any tax liability due on security-required gain for which the security-required person seeks to defer gain under section 1400Z-2(a); and appoint a U.S. person to act as the security-required person's limited agent for certain purposes specified in the deferral agreement. Proposed § 1.1400Z2(a)-2(d)(4)(ii). The deferral agreement must conform to the template provided in guidance published in the Internal Revenue Bulletin. Proposed § 1.1400Z2(a)-2(d)(4)(i).

An event of default under the deferral agreement is an inclusion event that triggers recognition of the security-required gain for which the security-required person seeks to defer gain under section 1400Z-2(a). Proposed § 1.1400Z2(a)-2(d)(4)(ii)(E). Defaults, upon which an event of default may be based, will be specified in the deferral agreement, and may include the following: a determination that the security is no longer adequate to protect the IRS's interests; a change in the creditworthiness of the issuer of a letter of credit; and a failure by the securi-

ty-required person to file returns or attach an eligibility certificate (when required) during the period covered by the deferral agreement. Proposed § 1.1400Z2(a)-2(d)(4)(ii)(E). In addition, the deferral agreement will specify whether notice of default and an opportunity to cure will be provided to the security-required person before an event of default arises. *Id.*

#### 6. Amount of Eligibility Certificate

The proposed regulations provide that an eligibility certificate will be issued for a permitted deferral amount. Proposed § 1.1400Z2(a)-2(d)(1). If a security-required person provides security in an amount equal to the maximum security amount, the permitted deferral amount is the total amount of security-required gain. Proposed § 1.1400Z2(a)-2(d)(7)(i). If a security-required person provides security in an amount less than the maximum security amount, the permitted deferral amount is the total amount of security-required gain multiplied by the ratio of the amount of security provided over the maximum security amount. *Id.*

The proposed regulations provide specific rules for determining the maximum security amount, which is generally computed by reference to either a percentage of the amount realized on the covered transfer or the amount of tax due on the security-required gain. See proposed § 1.1400Z2(a)-2(d)(7)(ii). The maximum security amount on a direct disposition by, or a distribution to, a security-required person that is subject to withholding under section 1445 is the lesser of: (i) The amount realized multiplied by the rate specified under section 1445(a) (or, for transfers subject to section 1445(e)(1), (e)(2), or (e)(6), the rate specified in the applicable provision) or (ii) the security-required gain multiplied by the highest rate of tax applicable to the gain, based on the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)-2(d)(7)(ii)(A). The maximum security amount on a direct disposition by, or a distribution to, a security-required person that is subject to withholding under section 1446(f) is the lesser of: (i) The amount realized multiplied by the rate specified under section 1446(f)(1) or (ii) the security-required

gain multiplied by the highest rate of tax applicable to the gain based on the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)-2(d)(7)(ii)(B). If a direct disposition of a partnership interest is subject to withholding under both sections 1445 and 1446(f), the proposed regulations provide that the rate specified in section 1445 is used for purposes of determining the maximum security amount. Proposed § 1.1400Z2(a)-2(d)(7)(ii)(A) and (B).

For a direct disposition of property, other than an interest in another partnership or a U.S. real property interest, by a specified partnership, or a distribution to a specified partnership, the maximum security amount is the security-required gain multiplied by the highest rate of tax applicable to the gain, treating the specified partnership as an individual for this purpose, and taking into account the type of property and holding period. Proposed § 1.1400Z2(a)-2(d)(7)(ii)(C). Therefore, a specified partnership that has gain arising from the direct sale or exchange of an asset used in a U.S. trade or business (other than a U.S. real property interest) will generally be required to obtain an eligibility certificate for such gain if it wants to elect to defer all or part of the gain by investing in a QOF.

For a disposition of property (including an interest in another partnership or a U.S. real property interest) by a partnership that is not a specified partnership, or a distribution to such a partnership, that gives rise to gain that is included in determining the allocable share of a security-required person's ECTI, the maximum security amount is the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and the classification of the security-required person. Proposed § 1.1400Z2(a)-2(d)(7)(ii)(D).

#### *C. Elimination or reduction of withholding based on an eligibility certificate*

Comments on the May 2019 proposed regulations requested relief from withholding under section 1445, 1446(a), or 1446(f) on transactions if gain from those transactions was deferred under section

1400Z-2. One comment requested that a foreign taxpayer engaging in a sale subject to withholding under section 1445 be able to provide a certificate or other form of documentation to avoid withholding based on the taxpayer's intention to invest the resulting gain in a QOF pursuant to a deferral election under section 1400Z-2(a)(1). In addition, the comment suggested that a foreign taxpayer would be required to certify that it will file a tax return in the year the QOF interest is sold. Another comment requested an exemption from withholding when a foreign person enters into an agreement with the IRS to pay the tax when the deferred gain is included under section 1400Z-2(a)(1)(B) and (b), similar to when a gain recognition agreement is "triggered" under section 367 and the regulations thereunder. Another comment suggested that the IRS provide a reduced FIRPTA withholding certificate for foreign persons who intend to invest in QOFs.

The comments noted that withholding may reduce the amount of funds available to the foreign person to invest in the QOF fund within the 180-day investment period. Even though the foreign person may later obtain a refund of the amount withheld, there may be a temporary lack of liquidity that could prevent an investor from investing all of its eligible gain into a QOF.

The proposed regulations address these comments by allowing a security-required person to use an eligibility certificate as a basis for reducing or eliminating withholding under section 1445, 1446(a), or 1446(f) on a covered transfer. For purposes of section 1445, a security-required person may apply for a withholding certificate from the IRS based on an eligibility certificate. For purposes of section 1446(f), the proposed regulations add a rule to allow a transferee to rely on an eligibility certificate to qualify for an exception or adjustment to withholding.

Section 1.1446-3 currently allows a partnership to consider certain partner level deductions and losses certified in accordance with § 1.1446-6 in determining its section 1446 tax. The proposed regulations modify the rules in § 1.1446-3

and 1.1446-6 to allow a partnership to also consider in determining its section 1446 tax the permitted deferral amount of an eligibility certificate submitted by a partner. When determining installments of 1446 tax, to ensure that the reduction in effectively connected items by the permitted deferral amount is fully taken into account, the eligibility certificate must be considered before the effectively connected items are annualized. Proposed § 1.1446-3(b)(2)(i)(B)(I) and 1.1446-6(c)(1)(iv).

Because the withholding requirement on a transfer or distribution with respect to an interest in a publicly traded partnership (PTP) is generally imposed on a broker (or nominee), and it would be administratively difficult for a broker to timely obtain an eligibility certificate, the procedures for using an eligibility certificate to reduce or eliminate withholding do not apply for these purposes. A security-required person that has gain arising from a disposition or distribution with respect to a PTP interest is, however, still required to obtain an eligibility certificate to defer security-required gain.

### III. Flexibility with Respect to Working Capital Safe Harbor Plans in the Event of a Federally Declared Disaster

After the major disaster declarations issued in response to the ongoing novel coronavirus 2019 (COVID-19) pandemic<sup>2</sup>, commenters expressed a need for additional regulatory guidance regarding the operation of the 24-month extension for the working capital safe harbor included in the section 1400Z-2 regulations for Federally declared disasters. Although the final regulations provide a qualified opportunity zone business an additional 24 months to expend its working capital assets, the qualified opportunity zone business must do so in a manner substantially consistent with the original, pre-disaster written designation in which the amount of working capital assets subject to the safe harbor are designated and according to the original, pre-disaster written schedule for expending such amounts. In some cases, the commenters pointed out, the post-disaster environment facing the qualified opportu-

nity zone business may render the original plan suboptimal or even infeasible.

In response, this notice of proposed rulemaking proposes to add three new sentences at the end of § 1.1400Z2(d)-1(d)(3)(v)(D) that provide flexibility for qualified opportunity zone businesses to revise or replace the original written designation and written plan, provided that the remaining working capital assets are expended within the original regulatorily required 31-month period, increased by the 24 additional months provided in response to the Federally declared disaster.

### IV. Applicability Dates

#### A. Proposed regulations related to covered transfers

The proposed regulations relating to covered transfers, including the requirement for eligibility certificates, will apply to any covered transfer that occurs after the date that these regulations are published as final regulations in the *Federal Register*. Taxpayers should not submit applications for eligibility certificates before the date that these regulations are published as final regulations in the *Federal Register*. Any applications submitted before such date will not be processed by the IRS.

#### B. Proposed regulations related to Federally declared disasters

The three new sentences proposed to be added at the end of § 1.1400Z2(d)-1(d)(3)(v)(D) are proposed to apply to taxable years beginning after the date these regulations are published as final regulations in the *Federal Register*. Additionally, a taxpayer may rely on the three new sentences proposed to be added at the end of § 1.1400Z2(d)-1(d)(3)(v)(D) for taxable years beginning after December 31, 2019.

### Special Analyses

#### I. Regulatory Planning and Review

This proposed regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memoran-

<sup>2</sup>See <https://www.fema.gov/coronavirus/disaster-declarations>.

dum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

## II. Paperwork Reduction Act

### A. Collection of information for proposed § 1.1400Z2(a)-2

Proposed § 1.1400Z2(a)-2 contains collections of information that are not on existing or new IRS forms. The proposed regulations require that security-required persons submit to the IRS an application that includes the following information and documents to obtain an eligibility certificate with respect to security-required gain.

1. Identification of security-required person (proposed § 1.1400Z2(a)-2(d)(3)(ii));
2. Information about the covered transfer (proposed § 1.1400Z2(a)-2(d)(3)(iii));
3. Agreement for deferral of tax and provision of security (proposed § 1.1400Z2(a)-2(d)(4));
4. U.S. agent agreement (proposed § 1.1400Z2(a)-2(d)(5)); and
5. Security and any related required documents (proposed § 1.1400Z2(a)-2(d)(6)).

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Comments and recommendations for the proposed information collection may be submitted via [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under Review - Open for Public Comments” then by using the search function. Comments can also be emailed to the IRS at [omb.unit@irs.gov](mailto:omb.unit@irs.gov) (indicate REG-121095-19 on the subject line). Comments also may be mailed to OMB, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed to the IRS, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of

information should be received by June 14, 2021. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The likely respondents required to comply with these proposed regulations are business, other for-profit taxpayers, or individuals. The proposed frequency of recordkeeping and reporting requirement will be as needed.

*Estimated total annual reporting burden:* 35,000 hours.

*Estimated average annual burden hours per respondent:* Approximately 10 hours.

*Estimated number of respondents:* 3,500.

*Estimated annual frequency of responses:* On occasion (as the collections of information do not occur on an annual basis).

### B. Collection of information for proposed § 1.1400Z2(d)-1(d)(3)(v)(D)

Proposed § 1.400Z2(d)-1(d)(3)(v)(D) imposes an additional information collection requirement in the form of recordkeeping. The creation of, or modification of, existing written schedules as required under proposed § 1.1400Z2(d)-1(d)(3)(v)(D) will be performed by qualified opportunity zone businesses that want to receive an additional 24 months to expend their working capital assets, under the extension of time permitted by proposed § 1.1400Z2(d)-1(d)(3)(v)

(D). This recordkeeping requirement will not be conducted using a new or existing IRS form. Such businesses must maintain, as part of their records, a copy of the written working plan including any modifications to the plan and provide these records to the IRS upon its request. This modification encourages investment in QOFs by providing greater specificity to how an entity may consistently satisfy the statutory requirements to be a qualified opportunity zone business in light of the current economic climate. However, the increase in burden on these entities is minimal as these entities were required to maintain such records prior to the proposed modification if they wanted to utilize a working capital safe harbor under § 1.1400Z2(d)-1(d)(3)(v).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## III. Regulatory Flexibility Act

It is hereby certified that the proposed regulations under §§ 1.1400Z2(a)-1, 1.1400Z2(a)-2, 1.1400Z2(b)-1, 1.1445-3, 1.1446-3, 1.1446-6, 1.1446-7 and 1.1446(f)-2, if adopted, will not have a significant economic impact on a substantial number of domestic small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although these proposed regulations would primarily affect foreign persons, they may have an impact on a small number of domestic partnerships. The domestic partnerships affected by these regulations are closely-held partnerships with significant foreign ownership and that either have substantial assets that are either U.S. real property interests or assets used in a U.S. trade or business or a large amount of gain from the sale of such assets. This is a narrow set of taxpayers and is likely a small subset of persons that invest in a QOF.



It is hereby certified that the proposed regulation under § 1.1400Z2(d)-1(d)(3)(v)(D), if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. The Treasury Department and the IRS anticipate that this proposed regulation will provide added clarity for qualified opportunity zone businesses to create or modify existing written plans to expend working capital in the event of a Federally declared disaster.

Taxpayers affected by these proposed regulations include QOFs, investors in QOFs and qualified opportunity zone businesses in which a QOF holds an ownership interest. The proposed regulations will not directly affect the taxable incomes and tax liabilities of qualified opportunity zone businesses; they will affect only the taxable income and tax liabilities of QOFs (and owners of QOFs) that invest in such businesses. Although there is a lack of available data regarding the extent to which small entities invest in QOFs, will certify as QOFs, or receive equity investments from QOFs, the Treasury Department and the IRS project that most of the investment flowing into QOFs will come from large corporations and wealthy individuals though some of these funds would likely flow through an intermediary investment partnership. It is expected that some QOFs and qualified opportunity zone businesses would be classified as small entities; however, the number of small entities significantly affected is not likely to be substantial. Accordingly, the Secretary certifies that these rules will not have a significant economic impact on a substantial number of small entities.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact these regulations would have on small entities.

Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

#### IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and

take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

#### V. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

#### Comments and Requests for Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the “ADDRESSES” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the *Federal Register*. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be

held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

#### Drafting Information

The principal authors of these proposed regulations are Milton Cahn, L. Ulysses Chatman, Ronald M. Gootzeit, and Subin Seth of the Office of the Associate Chief Counsel (International) and Erika Reigle of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

#### Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for § 1.1400Z2(a)-2 and revising the entries for § 1.1445-3, 1.1446-3, 1.1446-6, 1.1446-7 and 1.1446(f)-2 to read in part as follows:

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

Section 1.1400Z2(a)-2 also issued under 26 U.S.C. 1400Z-2(e)(4).

\* \* \* \* \*

Section 1.1445-3 also issued under 26 U.S.C. 1400Z-2(e)(4) and 26 U.S.C. 1445(e)(7).

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Section 1.1446-3 also issued under 26 U.S.C. 1400Z-2(e)(4) and 26 U.S.C. 1446(g).

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Section 1.1446-6 also issued under 26 U.S.C. 1400Z-2(e)(4) and 26 U.S.C. 1446(g).

Section 1.1446-7 also issued under 26 U.S.C. 1400Z-2(e)(4) and 26 U.S.C. 1446(g).

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Section 1.1446(f)-2 also issued under 26 U.S.C. 1400Z-2(e)(4), 26 U.S.C. 1446(f)(6), and 26 U.S.C. 1446(g).

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Par. 2. Section 1.1400Z2-0 is amended by:

1. Revising the introductory text.
2. Adding an entry for § 1.1400Z2(a)-1(a)(3).
3. Revising the entry for § 1.1400Z2(a)-1(g)(2).
4. Adding an entry for § 1.1400Z2(a)-2.
5. Adding an entry for § 1.1400Z2(b)-1(j)(3).
6. Revising the entry for § 1.1400Z2(d)-1(e)(2).

The revisions and additions read as follows:

*§ 1.1400Z2-0 Table of Contents.*

This section lists the table of contents for §§ 1.1400Z2(a)-1 through 1.1400Z2(f)-2.

*§ 1.1400Z2(a)-1 Deferring tax on capital gains by investing in opportunity zones.*

(a) \*\*\*

(3) Eligibility certificate needed to establish the permitted deferral amount for certain foreign persons and foreign-owned partnerships.

\*\*\*\*\*

(g) \*\*\*

(2) Exceptions.

*§ 1.1400Z2(a)-2 Certain foreign persons and foreign-owned partnerships required to provide security.*

- (a) In general.
- (b) Security-required person.
  - (1) In general.

- (2) Foreign person.
- (3) Specified partnership.
- (c) Security-required gain.
  - (1) Definition.
  - (2) Covered transfer.
  - (d) Eligibility certificate.
    - (1) In general.
    - (2) Application materials.
    - (3) Application.
    - (4) Deferral agreement.
    - (5) U.S. agent agreement.
    - (6) Security.
    - (7) Permitted deferral amount.
  - (e) Example.
  - (f) Applicability date.

*§ 1.1400Z2(b)-1 Inclusion of gains that have been deferred under section 1400Z-2(a).*

\*\*\*\*\*

(j) \*\*\*

(3) Specific rules.

*§ 1.1400Z2(d)-1 Qualified opportunity funds and qualified opportunity zone businesses.*

\*\*\*\*\*

(e) \*\*\*

(2) Exceptions.

\*\*\*\*\*

Par. 3. Section 1.1400Z2(a)-1 is amended by:

1. Adding paragraph (a)(3).
2. Revising paragraph (g)(1).
3. Redesignating paragraphs (g)(2) introductory text and (g)(2)(i) and (ii) as paragraphs (g)(2)(i) and (g)(2)(i)(A) and (B), respectively.
4. Adding a subject heading for newly redesignated paragraph (g)(2).
5. Adding new paragraph (g)(2)(ii).

The revisions and additions read as follows:

*§ 1.1400Z2(a)-1 Deferring tax on capital gains by investing in opportunity zones.*

(a) \*\*\*

(3) Eligibility certificate needed to establish the permitted deferral amount for certain foreign persons and foreign-owned partnerships. Notwithstanding any other provision of this section, if a taxpayer is a security-required person (as defined in § 1.1400Z2(a)-2(b)(1)) with respect to a

gain and that gain is a security-required gain (as defined in § 1.1400Z2(a)-2(c)(1)), then the taxpayer may not make a deferral election under section 1400Z-2(a) with respect to part or all of that gain unless the requirements in paragraph (a)(3)(i), (ii), and (iii) of this section are satisfied.

(i) Not later than the date on which the deferral election is filed with the IRS under paragraph (a)(2) of this section, the person obtains an eligibility certificate with respect to that gain (as defined in § 1.1400Z2(a)-2(d)(1));

(ii) The eligibility certificate provides a permitted deferral amount (as defined in § 1.1400Z2(a)-2(d)(7)); and

(iii) The amount of gain sought to be deferred does not exceed the permitted deferral amount.

(iv) See § 1.1400Z2(a)-2 for additional requirements for certain foreign persons and foreign-owned partnerships to make a valid deferral election.

(v) *Examples.* The examples in this paragraph (a)(3)(v) illustrate the rule in paragraph (a)(3) of this section.

(A) *Example 1. Eligibility certificate for a permitted deferral amount that is less than the total amount of security-required gain.* Taxpayer realizes a \$100x gain, which is an eligible gain. In addition, Taxpayer is a security-required person with respect to that gain, and the gain is a security-required gain. Taxpayer invests \$100x in a QOF, and, without taking into account the limitation in paragraph (a)(3)(i) of this section, Taxpayer would be able to make a valid deferral election with respect to the entire \$100x gain. Taxpayer applies for an eligibility certificate with respect to that gain and receives the eligibility certificate before timely filing Taxpayer's Federal income tax return for the taxable year in which the gain would be recognized. The eligibility certificate, however, provides a permitted deferral amount of \$75x. Under paragraph (a)(3) of this section, therefore, a valid deferral election is limited to that deferral amount. Consequently, \$75x of Taxpayer's investment in the QOF is a qualifying investment, which is described in section 1400Z-2(e)(1)(A)(i), and no election under section 1400Z-2(a) can apply to the remaining \$25x (\$100x - \$75x) investment. As a result, that remaining investment in the QOF is a non-qualifying investment, which is described in section 1400Z-2(e)(1)(A)(ii).

(B) *Example 2. Deferring gain from inclusion.* In 2022, Taxpayer realizes a gain of \$x. Taxpayer was a security-required person with respect to that gain, and the gain was a security-required gain. Complying with all the requirements in this section (including paragraph (a)(3) of this section), Taxpayer made a valid election to defer a gain of \$x, after having invested \$x in a QOF. In 2025, after Taxpayer's interest in the QOF had appreciated by \$y, Taxpayer sold that interest for \$x + \$y. The sale was an inclu-



sion event, requiring Taxpayer to include in income the deferred gain of \$x. Under paragraph (c)(1) of this section, the \$x inclusion is a security-required gain because the deferred gain was a security-required gain. If Taxpayer wants to elect to defer the \$x of included gain and Taxpayer is a security-required person with respect to the included gain, the limitation in paragraph (a)(3) of this section applies. Whether the \$y gain from the sale is a security-required gain is determined by whether, independent of the treatment of the inclusion, the \$y gain on the sale is within the definition of security-required gain in § 1.1400Z2(a)-2(c).

\* \* \* \* \*

(g) \* \* \*

(1) *In general.* Except as provided in paragraph (g)(2) of this section, the provisions of this section are applicable for taxable years beginning after March 13, 2020.

(2) *Exceptions.* \* \* \*

(ii) *Eligibility certificate requirement.* Paragraph (a)(3) of this section applies to any security-required gain (as defined in § 1.1400Z2(a)-2(c)(1)) from a covered transfer (as defined in § 1.1400Z2(a)-2(c)(2)) that occurs after [DATE OF PUBLICATION OF FINAL RULE].

Par. 4. Section 1.1400Z2(a)-2 is added to read as follows:

§ 1.1400Z2(a)-2 *Certain foreign persons and foreign-owned partnerships required to provide security.*

(a) *In general.* This section provides definitions and procedures for certain foreign persons and foreign-owned partnerships to obtain an eligibility certificate in order to meet the requirement in § 1.1400Z2(a)-1(a)(3) to make a deferral election with respect to certain gains. Paragraph (b) of this section describes the persons required to obtain an eligibility certificate. Paragraph (c) of this section describes the gains for which an eligibility certificate must be obtained. Paragraph (d) of this section provides the procedures for obtaining an eligibility certificate and defines the type and amount of security required.

(b) *Security-required person*—(1) *In general.* A *security-required person* is, with respect to a gain, a person that would be required to report the recognition of the gain under Federal income tax principles and that is either—

(i) A foreign person that is not a partnership, or

(ii) A specified partnership (as defined in paragraph (b)(3) of this section).

(2) *Foreign person.* The term *foreign person* means a person that is not a United States person under section 7701(a)(30).

(3) *Specified partnership.* The term *specified partnership* means, with respect to a transfer that gives rise to a security-required gain, a partnership that satisfies the requirements of paragraphs (b)(3)(i) through (iii) of this section. For purposes of paragraphs (b)(3)(ii) and (iii) of this section, the look-back period is the period that begins on the later of the date that is one year before the date of the transfer or the date on which the partnership was formed, and that ends on the date of such transfer. A domestic specified partnership means a specified partnership that is a domestic partnership.

(i) *Ownership test.* A partnership satisfies the requirements of this paragraph (b)(3)(i) if, at the time of transfer, 20 percent or more of the capital or profits interests in the partnership are owned (directly or indirectly through one or more partnerships, trusts, or estates) by one or more nonresident aliens or foreign corporations.

(ii) *Closely-held test.* A partnership satisfies the requirements of this paragraph (b)(3)(ii) if, at any time during the look-back period, it has ten or fewer direct partners that own 90 percent or more of the capital or profits interests in the partnership. For this purpose, any partners that are related (within the meaning of section 267(b) or 707(b)(1)) are treated as one partner.

(iii) *Gain or asset test.* A partnership satisfies the requirements of this paragraph (b)(3)(iii) if either the security-required gain is \$1 million or more (the gain test), or the aggregate value of the partnership's assets that are United States real property interests (as defined in section 897(c)) or assets used in the conduct of a trade or business within the United States is, at any time during the look-back period, equal to or greater than 25 percent of the value of all of the assets of the partnership (the asset test). In making the calculation under the asset test described in this paragraph (b)(3)(iii)—

(A) The value of each asset is determined on the last day of the taxable year before the year in which the look-back period begins or, for any asset acquired

after this date, on the date of acquisition (including upon formation of the partnership);

(B) The value of each asset is measured according to its gross fair market value; and

(C) The partnership must include the value of the proportionate share of any assets held by a partnership in which the first-mentioned partnership is a direct or indirect partner, but the first-mentioned partnership must not include the value of a direct or indirect interest in another partnership.

(c) *Security-required gain*—(1) *Definition.* The term *security-required gain* means—

(i) The gain from a covered transfer described in paragraphs (c)(2)(i)(A) or (B) of this section;

(ii) The gain from a covered transfer described in paragraph (c)(2)(i)(C) of this section that is included in computing effectively connected taxable income, as determined under § 1.1446-2 (ECTI), disregarding § 1.1446-2(b)(4)(i); or

(iii) The gain from a covered transfer described in paragraph (c)(2)(i)(D) of this section that is included in computing ECTI allocated to a security-required person.

(2) *Covered transfer*—(i) *In general.* The term *covered transfer* means—

(A) A disposition by, or a distribution to, a security-required person that is subject to withholding under section 1445 (treating a security-required person that is a domestic specified partnership as a foreign person for this purpose);

(B) A disposition by, or a distribution to, a security-required person that is subject to withholding under section 1446(f) (treating a security-required person that is a domestic specified partnership as a foreign person for this purpose);

(C) A disposition by a specified partnership of property, other than an interest in another partnership or a U.S. real property interest, or a distribution to a specified partnership, if any gain that arises is includible in computing ECTI; or

(D) A disposition by a partnership of property, or a distribution to such a partnership, if any gain that arises is includible (by any partnership) in determining the allocable share of a security-required person's ECTI (treating a security-re-

quired person that is a domestic specified partnership as a foreign person for this purpose).

(ii) *Exceptions to withholding.* A disposition or distribution described in paragraph (c)(2)(i)(A) or (B) of this section is not a covered transfer if an exception under § 1.1445-2, 1.1446(f)-2(b), or 1.1446(f)-4(b) applies (other than an exception pertaining to non-foreign status in § 1.1445-2(b), § 1.1446(f)-2(b)(2), or § 1.1446(f)-4(b)(2)). In determining whether an exception applies for purposes of this paragraph (c)(2)(ii), any requirement to provide a certification to the transferee in order to claim the applicable exception is disregarded.

(d) *Eligibility certificate*—(1) *In general.* This paragraph (d) defines an eligibility certificate with respect to a gain and describes the procedures for obtaining such a certificate. The term *eligibility certificate* means, with respect to a security-required gain, a document issued by the IRS pursuant to this paragraph (d) that provides the permitted deferral amount. The eligibility certificate will also include the maximum security amount, the amount of security provided, and any other information as may be prescribed in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter). Generally, the IRS will make a determination with respect to a complete application for an eligibility certificate not later than the 90th day after the date that all information necessary for the IRS to make a determination is received. At its discretion, the IRS may extend this period in unusual circumstances after notifying the security-required person no later than the 45th day after the date that all information necessary for the IRS to make a determination is received. The IRS will send a notification to the security-required person of its determination and, if the application is approved, provide an eligibility certificate to the security-required person. For the use of an eligibility certificate to reduce or eliminate certain withholding taxes, see § 1.1445-3(e)(5), 1.1446-6(c)(1)(iv), and 1.1446(f)-2(b)(8) and (c)(5).

(2) *Application materials.* To obtain an eligibility certificate with respect to security-required gain, a security-required person must submit to the IRS the application

described in paragraph (d)(3) of this section, the deferral agreement described in paragraph (d)(4) of this section, the U.S. agent agreement described in paragraph (d)(5) of this section, and the security (or evidence of security) of the type and in the amount described in paragraphs (d)(6) and (7) of this section.

(3) *Application*—(i) *In general.* An application for an eligibility certificate must be submitted in the form and in the manner prescribed in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter). An application for an eligibility certificate must include the information described in paragraphs (d)(3)(ii) and (iii) of this section and any other information prescribed in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter). The security-required person must sign the application and represent under penalties of perjury that all information provided on or with the application is true, correct, and complete to the best of that person's knowledge and belief.

(ii) *Identification of security-required person and U.S. agent.* The application for an eligibility certificate must include the name, address, and U.S. taxpayer identification number of the security-required person, and the name, address, and U.S. taxpayer identification number of the security-required person's U.S. agent (as defined in paragraph (d)(4)(ii)(D) of this section).

(iii) *Information about the covered transfer*—(A) *Required information.* The application must identify the type of covered transfer. For a covered transfer described in paragraph (c)(2)(i)(A), (B), or (C) of this section that is not a distribution, the application must include a description of the property transferred in the covered transfer, the amount of security-required gain, the amount realized, the adjusted basis in the property, and the maximum security amount. For a covered transfer described in paragraph (c)(2)(i)(A), (B), or (C) of this section that is a distribution, the application must include the amount of the distribution, a description of the property distributed (including cash), the amount of security-required gain, and the maximum

security amount. For a covered transfer described in paragraph (c)(2)(i)(D) of this section, the application must include the amount of security-required gain and the maximum security amount. In each case, the application for the eligibility certificate must also identify the amount of security that has been provided and the amount of security-required gain for which the eligibility certificate is being obtained. If an amount described in this paragraph is not known when the application is submitted, a security-required person may include a reasonable estimate of the amount if the estimate is determined no earlier than 120 days before the covered transfer and the security-required person also includes in the application documentation of the basis for the estimate (for example, a purchase contract).

(B) *Definition of amount realized.* The term *amount realized* means for a covered transfer described in paragraph (c)(2)(i)(A) of this section, the amount determined under § 1.1445-1(g)(5); for a covered transfer described in paragraph (c)(2)(i)(B) of this section, the amount determined under § 1.1446(f)-2(c)(2)(i) (or the amount determined using the alternative procedures under § 1.1446(f)-2(c)(2)(ii), disregarding any requirement to provide a certification) or § 1.1446(f)-4(c)(2)(i); and for a covered transfer described in paragraph (c)(2)(i)(C) of this section, the amount determined under section 1001(b).

(4) *Deferral agreement*—(i) *In general.* A *deferral agreement* is an agreement entered into between a security-required person and the IRS for the deferral of tax and provision of security. The term of the deferral agreement must not end sooner than 36 months after the due date (with extensions) for the filing of the security-required person's Federal income tax return for the taxable year that includes the date specified in section 1400Z-2(b)(1). The deferral agreement must conform to any template provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter).

(ii) *Minimum terms and conditions.* The minimum terms and conditions of a deferral agreement are provided in paragraphs (d)(4)(ii)(A) through (D) of this section. The deferral agreement must also

include any additional terms and conditions provided in a template provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter).

(A) The security-required person will timely file a Federal income tax return and pay any tax liability due on security-required gain deferred under section 1400Z-2(a) and the regulations thereunder for each taxable year in which the security-required person is required to include the gain or a portion thereof in income under § 1.1400Z2(b)-1.

(B) The security-required person will report any security-required gain invested in a QOF held at any point during the taxable year in accordance with § 1.1400Z2(a)-1(d)(2).

(C) The security-required person provides security to the IRS in the amount required for the security-required gain for which the security-required person seeks to defer gain under section 1400Z-2(a). The security may be replaced during the term of the deferral agreement, to the extent provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter). Upon a failure to pay any tax due on security-required gain for which the security-required person seeks to defer gain under section 1400Z-2(a) when the tax is due or upon an event of default (as described in paragraph (d)(4)(iii) of this section) under the deferral agreement, the IRS may collect the entire amount of the liability by recourse to the security and may exercise any other rights and remedies of a secured party under applicable law.

(D) The security-required person appoints a U.S. person to act as the security-required person's limited agent for purposes of accepting communication related to the deferral agreement from the IRS, accepting service of process for the timely enforcement of the terms of the deferral agreement, and any other purposes specified in the deferral agreement (*U.S. agent*). See paragraph (d)(5) of this section for the agreement that the security-required person must enter into with the U.S. agent.

(iii) *Events of default.* The deferral agreement will specify what is considered

a default, the circumstances that give rise to an event of default, and whether a notice of default and an opportunity to cure will be provided to the security-required person before an event of default arises. Defaults include, but are not limited to, a failure by an issuer of a letter of credit to continue to meet the requirements of paragraph (d)(6)(ii) of this section throughout the term of the deferral agreement; a determination by the IRS that the security does not otherwise adequately secure the interests of the IRS; a determination by the IRS that the U.S. agent agreement is no longer in effect; a resignation of the U.S. agent; a failure by the security-required person to file any required Federal income tax returns and information returns or pay any tax due during the term of the deferral agreement; and a failure by the security-required person to attach a copy of the eligibility certificate to any tax returns, information returns, forms, or other filings with the IRS as required in the deferral agreement. The deferral agreement will specify which defaults will require notification from the IRS and an opportunity to cure before a default becomes an event of default. For example, the deferral agreement will provide that a security-required person that fails to report any security-required gain invested in a QOF held at any point during the taxable year in accordance with § 1.1400Z2(a)-1(d)(2) for any given taxable year will be permitted to cure the default by making the report described in the first sentence of § 1.1400Z2(a)-1(d)(2) or establishing to the satisfaction of the Commissioner that an inclusion event described in § 1.1400Z2(b)-1(c) did not occur during that taxable year. The deferral agreement will specify the date of an event of default. See § 1.1400Z2(b)-1(c)(1)(v) for the consequences of an event of default under a deferral agreement.

(5) *U.S. agent agreement.* The security-required person must enter into a binding agreement with a U.S. agent (as defined in paragraph (d)(4)(ii)(D) of this section) authorizing the U.S. agent to act as an agent (*U.S. agent agreement*). The U.S. agent agreement must include the terms and conditions provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter). The U.S. agent agreement must

be executed by the security-required person and the U.S. agent and must remain in effect for as long as the deferral agreement remains in effect.

(6) *Security*—(i) *In general.* The security-required person must provide to the IRS security described in paragraph (d)(6)(ii) of this section. The proposed security (and any required documents described in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter)) must generally be submitted to the IRS with the security-required person's application for an eligibility certificate. The maturity date or expiration of the security must not be earlier than 36 months after the due date (with extensions) for the filing of the security-required person's Federal income tax return for the taxable year that includes the date specified in section 1400Z-2(b)(1). The security cannot be accelerated, cancelled, or otherwise terminated before maturity, other than at the direction of, or with the consent of, the IRS. Additional terms and conditions for the security may be specified in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter). See paragraph (d)(7) of this section for determining the required amount of the security.

(ii) *Letter of credit.* The IRS may accept as security an irrevocable standby letter of credit that is issued by a U.S. bank that is categorized as well capitalized in accordance with applicable Federal banking regulations and regularly issues letters of credit in the ordinary course of business to customers other than security-required persons under this paragraph (d)(6), or any other financial institution acceptable to the IRS, as provided in forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) and 601.602 of this chapter).

(7) *Permitted deferral amount*—(i) *In general.* The *permitted deferral amount* is the amount for which an eligibility certificate is issued to a security-required person with respect to a security-required gain. If a security-required person provides security in an amount equal to the maximum security amount, the permitted deferral



amount is the total amount of security-required gain. If a security-required person provides security in an amount less than the maximum security amount, the permitted deferral amount is the total amount of security-required gain multiplied by the ratio of the amount of security provided over the maximum security amount.

(ii) *Maximum security amount.* The term *maximum security amount* means—

(A) For a covered transfer described in paragraph (c)(2)(i)(A) of this section, the lesser of the amount realized (as defined in paragraph (d)(3)(iii)(B) of this section) multiplied by the rate specified in section 1445(a) (or, for a covered transfer subject to section 1445(e)(1), (e)(2), or (e)(6), the security-required gain multiplied by the rate specified under the applicable provision) or the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and classification of the security-required person (treating a security-required person that is a partnership or trust as an individual for this purpose);

(B) For a covered transfer described solely in paragraph (c)(2)(i)(B) of this section, the lesser of the amount realized (as defined in paragraph (d)(3)(iii)(B) of this section) multiplied by the rate specified in section 1446(f)(1), or the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, holding period, and classification of the security-required person (treating a security-required person that is a partnership or trust as an individual for this purpose);

(C) For a covered transfer described in paragraph (c)(2)(i)(C) of this section, the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property and the specified partnership's holding period, and treating the specified partnership as an individual for this purpose; or

(D) For a covered transfer described in paragraph (c)(2)(i)(D) of this section, the security-required gain multiplied by the highest rate of tax applicable to the gain, taking into account the type of property, the holding period and classification of the security-required person (treating a security-required person that is a partnership or trust as an individual for this purpose).

(iii) *Example.* SRP, an individual who is a security-required person, disposes of U.S. real property that SRP has held for more than one year and that has a basis of \$80x in a covered transfer subject to withholding under section 1445(a). The amount realized is \$200x, and the amount of the security-required gain is \$120x of long-term capital gain (\$200x amount realized less \$80x basis). Because the covered transfer is described in paragraph (c)(2)(i)(A) of this section, the maximum security amount is \$24x (the lesser of \$30x (the amount realized of \$200x multiplied by the rate specified in section 1445(a), (in 2021, 15%)) and \$24x (the security-required gain of \$120x multiplied by the highest rate of tax applicable to the gain taking into account the type of property, holding period and the classification of the security-required person (in 2021, 20%))). SRP applies for and receives an eligibility certificate in accordance with paragraph (d)(1). SRP provides security in the amount of \$15x. Because SRP has provided security in an amount less than the maximum security amount, the eligibility certificate will be issued for less than the total amount of security-required gain. The permitted deferral amount shown on the eligibility certificate is the total amount of security-required gain (\$120x) multiplied by the ratio of the amount of security provided by SRP (\$15x) over the maximum security amount (\$24x). Therefore, SRP will obtain an eligibility certificate for a permitted deferral amount of \$75x (\$120x multiplied by 62.5%).

(e) *Example.* The example in this paragraph (e) illustrates the rules in this section and § 1.1400Z2(a)-1(a)(3).

(1) *Facts.* Partnership P is an eligible taxpayer within the meaning of § 1.1400Z2(a)-1(b)(13) of this section. The relevant events take place during Years 1 through 3, all of which end earlier than 2027. At all times during those years, P was owned by 10 equal partners.

(i) *Three eligible gains.* During Year 2, P recognized three gains— $G_1$ ,  $G_2$ , and  $G_3$ —for, respectively, \$750,000 on September 1, \$2 million on October 1, and \$2 million on December 20. All three gains were eligible gains within the meaning of § 1.1400Z2(a)-1(b)(11) and the transactions that gave rise to the gains were subject to withholding under section 1445 or 1446.

(ii) *Ownership test.* On September 1, Year 2, P satisfied the ownership test in paragraph (b)(3)(i) of this section because on that date partners  $O_1$  through  $O_7$  were United States persons, and partners  $O_8$  through  $O_{10}$  were foreign individuals. On October 1, Year 2, P did not satisfy the ownership test in paragraph (b)(3)(i) of this section because as of that date partners  $O_9$  and  $O_{10}$  had been replaced by  $O_{11}$  and  $O_{12}$ , who were both United States persons. On December 20, Year 2, P satisfied the ownership test in paragraph (b)(3)(i) of this section because as of that date partners  $O_{11}$  and  $O_{12}$  had been replaced by  $O_{13}$  and  $O_{14}$ , which were both foreign corporations.

(iii) *Closely-held test.* At all times during Years 1 through 2, P satisfied the closely-held test in paragraph (b)(3)(ii) of this section because P was owned by 10 partners.

(iv) *Asset test.* At all times during Years 1 through 3, P did not satisfy the asset test in paragraph (b)(3)(iii) of this section because P had total assets in ex-

cess of \$100 million, of which less than \$25 million was United States real property interests or assets used in the conduct of a trade or business within the United States.

(v) *Investment in a QOF and election to defer.* On January 15 of Year 3, P invested \$4.75 million in a QOF, and on P's timely filed Federal income tax return for Year 2, P indicated that it was electing to defer all three gains under § 1.1400Z2(a)-1(a). These three elections are proper unless they are barred by § 1.1400Z2(a)-1(a)(3).

(2) *Analysis—(i)  $G_1$ .* P satisfies the ownership test as of the date of the transfer. P also satisfies the closely-held test during the look-back period for  $G_1$ , but does not satisfy the asset test during the look-back period for  $G_1$ . P does not satisfy the gain test in paragraph (b)(3)(iii) of this section because the amount of the  $G_1$  gain is less than \$1 million. As a result, P is not a specified partnership with respect to  $G_1$ . Accordingly, P is not a security-required person with respect to  $G_1$ , and, thus, P does not need an eligibility certificate with respect to  $G_1$  in order to make a proper deferral election with respect to  $G_1$ .

(ii)  $G_2$ . Unlike  $G_1$ ,  $G_2$  (\$2 million) is large enough to satisfy the gain test in paragraph (b)(3)(iii) of this section (\$1 million or more). P also satisfies the closely-held test during the look-back period for  $G_2$ . However, P does not satisfy the ownership test as of the date of transfer. Accordingly, P is not a specified partnership with respect to  $G_2$  and, thus, P is not a security-required person with respect to  $G_2$ . P does not need an eligibility certificate with respect to  $G_2$  in order to make a proper deferral election with respect to  $G_2$ .

(iii)  $G_3$ . P satisfies the ownership test as of the date of the transfer. P also satisfies the closely-held test during the look-back period for  $G_3$ . Also,  $G_3$  is large enough to satisfy the gain test. Accordingly, P is a security-required person with respect to  $G_3$ , and  $G_3$  is a security-required gain. Consequently, P may not elect to defer  $G_3$  unless, not later than the date on which P files its Federal income tax return for Year 2, P has received an eligibility certificate with respect to  $G_3$ . Even if P has received such an eligibility certificate, P may not elect to defer a larger amount of  $G_3$  than the permitted deferral amount shown on the eligibility certificate.

(f) *Applicability date.* This section applies to any covered transfer that occurs after [DATE OF PUBLICATION OF FINAL RULE].

Par. 5. Section 1.1400Z2(b)-1 is amended by:

1. Revising paragraph (c)(1)(iv).
2. Adding paragraph (c)(1)(v).
3. Revising paragraph (j)(1).
4. Adding paragraph (j)(3).

The revisions and additions read as follows:

§ 1.1400Z2(b)-1 *Inclusion of gains that have been deferred under section 1400Z-2(a).*

\* \* \* \* \*



(c) \* \* \*

(1) \* \* \*

(iv) A QOF in which an eligible taxpayer holds a qualifying investment loses its status as a QOF; or

(v) An event of default occurs under a deferral agreement (described in § 1.1400Z2(a)-2(d)(4)) entered into between a security-required person and the IRS (in which case the deferred gain to be included is the gain whose deferral was made possible by the eligibility certificate that was based on the agreement).

\* \* \* \* \*

(j) \* \* \*

(1) *In general.* Except as provided in paragraph (j)(3) of this section, the provisions of this section are applicable for taxable years beginning after March 13, 2020.

\* \* \* \* \*

(3) *Specific rules.* Paragraph (c)(1)(v) of this section applies to any deferral agreement (as defined in § 1.1400Z2(a)-2(d)(4)) entered into after [DATE OF PUBLICATION OF FINAL RULE].

Par. 6. Section 1.1400Z2(d)-1 is amended by:

1. Revising paragraphs (d)(3)(v)(D) and (e)(1).

2. Redesignating paragraphs (e)(2) introductory text and (e)(2)(i) and (ii) as paragraphs (e)(2)(i) and (e)(2)(i)(A) and (B).

3. Adding a subject heading for newly redesignated paragraph (e)(2).

4. Adding new paragraph (e)(2)(ii).

The revisions and additions read as follows:

§ 1.1400Z2(d)-1 *Qualified opportunity funds and qualified opportunity zone businesses.*

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(v) \* \* \*

(D) *Federally declared disasters.* If the qualified opportunity zone business is located in a qualified opportunity zone impacted by a federally declared disaster (as defined in section 165(i)(5)(A)), the qualified opportunity zone business may receive not more than an additional 24 months to expend its working capital assets, as long as it otherwise meets the

requirements of paragraph (d)(3)(v) of this section. For purposes of the preceding sentence, meeting the requirements of paragraph (d)(3)(v) of this section may be determined by reference either to the original amount of working capital assets designated in writing under paragraph (d)(3)(v)(A) of this section and reasonable written schedule under paragraph (d)(3)(v)(B) of this section or to a new or revised written designation and written schedule that satisfy the requirements of paragraph (d)(3)(v)(A) and (B) of this section, respectively. A new or revised written designation of the amount of working capital assets and reasonable written schedule for expending that amount may be used only if adopted not later than 120 days after the close of the incident period, as defined in 44 CFR 206.32(f), with respect to that disaster. In determining whether a new or revised schedule satisfies the requirements of paragraph (d)(3)(v)(B) of this section, the planned completion of spending must take into account the up-to-31 month period originally allowed under paragraph (d)(3)(v)(B) of this section, plus the up-to-24 additional months provided in this paragraph (d)(3)(v)(D).

\* \* \* \* \*

(e) \* \* \*

(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of this section are applicable for taxable years beginning after March 13, 2020.

(2) *Exceptions.* \* \* \*

(ii) *Flexibility with respect to working capital safe harbor plans in the event of a federally declared disaster.* The final three sentences in paragraph (d)(3)(v)(D) are applicable for taxable years beginning after [DATE OF PUBLICATION OF FINAL RULE].

Par. 7. Section 1.1445-3 is amended by adding paragraph (e)(5) to read as follows:

§ 1.1445-3 *Adjustments to amount required to be withheld pursuant to withholding certificate.*

\* \* \* \* \*

(e) \* \* \*

(5) *Special rule for gain deferred under section 1400Z-2(a).* The Internal Revenue Service will issue a withholding certificate under this paragraph (e) that excuses

withholding or that permits a transferee to withhold a reduced amount if the transferor has obtained an eligibility certificate under § 1.1400Z2(a)-2 from the IRS with respect to the transfer. The amount by which the transferee may reduce the withholding (including a reduction to zero) is the amount of security provided on the eligibility certificate. If this paragraph (e)(5) applies, the requirements in paragraphs (e)(1) through (e)(4) of this section are deemed to have been satisfied. This paragraph (e)(5) applies to any covered transfer defined in § 1.1400Z2(a)-2(c)(2) that occurs after [DATE OF PUBLICATION OF FINAL RULE].

\* \* \* \* \*

Par. 8. Section 1.1446-3 is amended by revising paragraph (b)(2)(i)(B)(I) introductory text to read as follows:

§ 1.1446-3 *Time and manner of calculating and paying over the 1446 tax.*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) \* \* \*

(I) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under § 1.1446-6(c)(1)(i), (ii) or (iv) and the amount of state and local taxes permitted to be considered under § 1.1446-6(c)(1)(iii). For this purpose, a partnership shall first consider under § 1.1446-6(c)(1)(iv) the partner's permitted deferral amounts and then annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before—

\* \* \* \* \*

Par. 9. Section 1.1446-6 is amended by:

1. Revising paragraph (a)(1).

2. Revising the first sentence of paragraph (a)(2).

3. Adding a sentence at the end of paragraph (c)(1).

4. Adding paragraph (c)(1)(iv).

5. Adding a sentence at the end of paragraph (c)(2)(i).

6. Revising the seventh sentence of paragraph (d)(3)(i).

7. Adding a sentence at the end of paragraph (f).

The revisions and additions read as follows:

*§ 1.1446-6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.*

(a) *In general—(1) Purpose and scope.* This section provides rules regarding when a partnership required to pay withholding tax under section 1446 (1446 tax), or an installment of 1446 tax, may consider certain partner-level deductions and losses and eligibility certificates under § 1.1400Z2(a)-2(d) in computing its 1446 tax obligation under § 1.1446-3. This section also provides rules regarding when a partnership is not required to pay a de minimis amount of 1446 tax due with respect to a nonresident alien individual partner. A partnership determines the applicability of the rules of this section on a partner-by-partner basis for each installment period and when completing its Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," and paying 1446 tax for the partnership taxable year. Except with respect to certain state and local taxes paid by the partnership on behalf of the partner, to apply the rules of this section with respect to a foreign partner, the partnership must receive a certificate described in § 1.1446-6(c)(1) (i) and (ii) from such partner for each partnership taxable year or an eligibility certificate described in § 1.1400Z2(a)-2(d) for each security-required gain (as defined in § 1.1400Z2(a)-2(c)(1)). Paragraph (b) of this section identifies the foreign partners to which this section applies. Paragraph (c) of this section identifies the deductions and losses and security-required gains that a foreign partner may certify to the partnership as well as the state and local taxes paid by the partnership on behalf of the foreign partner that can be taken into account without a certification, and establishes an exception that permits a partnership to not pay a de minimis amount of 1446 tax with respect to a nonresident alien partner. Paragraph (c) of this section also sets forth the requirements for a valid certificate. Paragraphs (a)(2) and (d) of this section establish when a partnership may rely on and consider a foreign partner's certificate in computing its 1446 tax,

and the effects of relying on such a certificate. Paragraph (d) of this section also describes the effects of a partnership relying on a certificate (including an updated certificate) and the reporting requirements of a partnership with respect to a certificate. Paragraph (e) of this section sets forth examples that illustrate the rules of this section. Paragraph (f) of this section provides the Effective/Applicability date. Paragraph (g) of this section provides a transition rule.

(2) *Reasonable reliance on a certificate.* Subject to § 1.1446-2 and the rules of this section, a partnership receiving a certificate (including an updated certificate or status update under paragraph (c) (2)(ii)(B) of this section) of deductions and losses or an eligibility certificate from a partner provided in accordance with the provisions of this section may reasonably rely on the certificate of deductions and losses (to the extent of the certified deductions and losses or other representations set forth in the certificate) or eligibility certificate (to the extent of the permitted deferral amount determined in § 1.1400Z2(a)-2(d)(7)) until such time that it has actual knowledge or reason to know that the certificate is defective or that the time for receiving an updated certificate or status update from the partner under paragraph (c)(2)(ii)(B) of this section has expired. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* Under paragraph (c)(1)(iv) of this section, a partnership may take into account eligibility certificates submitted by a foreign partner with respect to security-required gains.

\* \* \* \* \*

(iv) *Consideration of eligibility certificates.* A partner that is a nonresident alien or foreign corporation that satisfies the requirements of § 1.1400Z2(a)-1(a)(3) may provide a copy of an eligibility certificate, as defined in § 1.1400Z2(a)-2(d)(1), for each of the partner's security-required gains, as defined in § 1.1400Z2(a)-2(c)(1).

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \* A partner's certification under paragraph (c)(1)(iv) of this section shall be the eligibility certificate described in § 1.1400Z2(a)-2(d)(1).

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \* For an installment period other than the first installment period for which the partnership considers a foreign partner's certificate or updated certificate, the partnership may, instead of attaching any partner's certificate, attach to Form 8813 a list containing the name, TIN, the amount of certified deductions and losses, the amount of gain excluded resulting from an eligibility certificate, and the amount of state and local taxes the partnership may consider under paragraph (c)(1)(iii) of this section for each foreign partner whose certificate was relied upon.

\* \* \* \* \*

(f) \* \* \* Paragraph (c)(1)(iv) of this section and the references in paragraphs (a)(1), (a)(2), (c)(1), and (d)(3)(i) of this section to eligibility certificates, covered transfers and security-required gains, apply to any covered transfers (as defined in § 1.1400Z2(a)-2(c)(2)) occurring after [DATE OF PUBLICATION OF FINAL RULE].

\* \* \* \* \*

Par. 10. Section 1.1446-7 is amended by adding a sentence at the end of the section to read as follows:

*§ 1.1446-7 Effective/Applicability date.*

\* \* \* The references in § 1.1446-3(b)(2)(i)(B)(I) to § 1.1446-6(c)(1)(iv) apply to partnership taxable years ending after [DATE OF PUBLICATION OF FINAL RULE].

Par. 11. Section 1.1446(f)-2 is amended by adding paragraphs (b)(8) and (c)(5) and by adding a sentence to the end of paragraph (f) to read as follows:

*§ 1.1446(f)-2 Withholding on the transfer of a non-publicly traded partnership interest.*

\* \* \* \* \*

(b) \* \* \*

(8) *Gain deferred under section 1400Z-2(a).* A transferee may rely on a certification from the transferor that includes a copy of an eligibility certificate (as described in § 1.1400Z2(a)-2(d)) with respect to the transfer for an amount of security that is greater than or equal to the maximum security amount. See paragraph (c)(5) of this

section for when an eligibility certificate provides an amount of security that is less than the maximum security amount.

(c) \* \* \*

(5) *Gain deferred under section 1400Z-2(a)*. A transferee may rely on a certification from a transferor that includes a copy of an eligibility certificate (as described in § 1.1400Z2(a)-2(d)) with respect to the transfer to reduce the amount required to be withheld under this section by the amount of security provided on the eligibility certificate.

\* \* \* \* \*

(f) *Applicability date*. \* \* \* Paragraphs (b)(8) and (c)(5) of this section apply to any covered transfer (as defined in § 1.1400Z2(a)-2(c)(2)) that occurs after [DATE OF PUBLICATION OF FINAL RULE].

Sunita Lough,  
*Deputy Commissioner for Services  
and Enforcement.*

(Filed by the Office of the Federal Register on April 12, 2021, 4:15 p.m., and published in the issue of the Federal Register for April 14, 2021, 86 F.R. 19585)

## Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

### Announcement 2021-8

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the

disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81-38 and superseding guidance in Revenue Procedure 2014-42, which govern a preparer's eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer and signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014-42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

**Disbarred from practice before the IRS**—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

**Suspended from practice before the IRS**—An individual who is suspended is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

**Censured in practice before the IRS**—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to practice before the IRS, but OPR may subject the individual's future practice rights to conditions designed to promote high standards of conduct.

**Monetary penalty**—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual's conduct.

**Disqualification of appraiser**—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

**Ineligible for limited practice**—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81-38 or to comply with Circular 230 as required by Revenue Procedure 2014-42 may be determined ineligible to engage in limited practice as a representative of any taxpayer.

Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

**Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing**—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government's summary judgment motion or (2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision becomes the final agency decision.

**Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision**—An ALJ, after finding that no answer to OPR's complaint was filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

**Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal**—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

**Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent**—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming com-

pliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

**Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding**—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

**Determined ineligible for limited practice**—There has been a final determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or failed to comply with any of the requirements to act as a representative.

A practitioner who has been disbarred or suspended under 31 C.F.R. § 10.60, or suspended under § 10.82, or a disqualified appraiser may petition for reinstatement

before the IRS after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period if shorter than 5 years). Reinstatement will not be granted unless the IRS is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to Circular 230, and that granting such reinstatement would not be contrary to the public interest.

Reinstatement decisions are published at the individual’s request, and described in these terms:

**Reinstated to practice before the IRS**—The individual’s petition for reinstatement has been granted. The agent, and eligible to practice before the IRS, or in the case of an appraiser, the individual is no longer disqualified.

**Reinstated to engage in limited practice before the IRS**—The individual’s petition for reinstatement has been granted. The individual is an unenrolled/unlicensed return preparer and eligible to engage in limited practice before the IRS, subject to

requirements the IRS has prescribed for limited practice by tax return preparers.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary’s delegate on appeal has issued a final decision; (2) the individual has settled a disciplinary case by signing OPR’s “consent to sanction” agreement admitting to one or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
<b>Arizona</b>				
Scottsdale	Ketelaar, Erik A.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from March 19, 2021
<b>California</b>				
Fresno	Groom, Kendall J.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 19, 2021
Lakewood	Datta, Gaurav D.	Attorney	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 25, 2021
Pleasanton	Ramanan, Subramanian E.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from March 25, 2021
<b>Colorado</b>				
Denver	Yobst, Stephen J.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 19, 2021
<b>Connecticut</b>				
Danbury	O’Reilly, Francis J.	Attorney	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from March 25, 2021
Fairfield	Glass, David L.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 8, 2021



City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
<b>Georgia</b>				
Canton	Bryan, Matthew A.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 25, 2021
<b>Indiana</b>				
Indianapolis	Wilson, Randall D.	Unenrolled Tax Return Preparer		Reinstated to practice before the IRS, effective January 29, 2021
<b>Kentucky</b>				
Grand Rivers	Craft, Joseph H.	CPA	Suspended by consent for admitted violations of 31 C.F.R. § 10.51(a)(10)	Indefinite from February 19, 2021
<b>Massachusetts</b>				
Medfield	Gaffey, Richard J.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 19, 2021
<b>Maryland</b>				
Potomac	Robbins, Jonathan D.	Attorney	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 24, 2021
<b>Michigan</b>				
N. Bloomfield	Hoffert, Myles B.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 24, 2021
<b>Minnesota</b>				
Rochester	Quinn, Michael J.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 25, 2021
<b>New York</b>				
Brooklyn	Shweky, Alan J.	Attorney		Reinstated to practice before the IRS, effective March 10, 2021
New York	Stamm, Dennis H.	CPA	Suspended by decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from January 25, 2021
<b>North Carolina</b>				
Cary	Thacker, Sarah K.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from February 19, 2021
<b>Tennessee</b>				
White Bluff	Wallick, Stephen	Enrolled Agent	Disbarred by Decision on Appeal	Indefinite from July 24, 2019

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
FR.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020–27 through 2020–52 is in Internal Revenue Bulletin 2020–52, dated December 27, 2020.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2020-27 through 2020-52 is in Internal Revenue Bulletin 2020-52, dated December 27, 2020.



# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at [www.irs.gov/irb/](http://www.irs.gov/irb/).

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