INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–16
April 15, 2024

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 2024-16, page 909.

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). This twenty-fifth report describes the experience, structure, and activities of the APMA Program during calendar year 2023.

REG-117542-22, page 942.

This Notice of Proposed Rulemaking revises the regulations pertaining to the advance notice to be provided to taxpayers prior to IRS contact with third parties to conform to the new statutory language of section 7602(c) enacted as part of the Taxpayer First Act of 2019 (TFA), Public Law 116-25 (133 Stat. 981). The proposed regulations also provide, pursuant to the Secretary's authority in section 7602(c)(1)(B), exceptions to the 45-day advance notice requirement where delaying contact with third parties for 45 days after providing notice to the taxpayer would impair tax administration.

INCOME TAX

Announcement 2024-17, page 932.

REG-101552-24, 2024-13 I.R.B. 741 (March 25, 2024) contains errors in the second sentence of the second column on page 743 and in the first sentence of the third column on page 746. These sentences incorrectly describe the requirement that members in an unincorporated organization reserve the right separately to take in kind or dispose of their pro rata shares of electricity produced, extracted or used, or any associated renewable energy credits or similar credits. This requirement was intended to be conjunctive, applying to both electricity and associated credits. The sentence on page 743 is corrected to read, "Second, the unincorporated organization's members must enter into a joint operating agreement with respect to the applicable credit property in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits." The sentence on page 746 is corrected to read, "(B) The members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits".

Notice 2024-30, page 878.

This notice modifies Notice 2023-29, 2023-29 I.R.B. 1 (July 17, 2023), clarified by Notice 2023-45, 2023-29 I.R.B. 317 (July 17, 2023), by expanding the Nameplate Capacity Attribution Rule under section 4.02(1)(b) of Notice 2023-29 to include additional attribution property and by adding two 2017 North American Industry Classification System (NAICS) industry codes to the table in section 3.03(2) of Notice 2023-29 for purposes of determining the Fossil Fuel Employment rate (as defined in section 3.03(2) of Notice 2023-29).

Notice 2024-32, page 897.

This notice provides guidance for qualified student loan bonds to clarify certain requirements for tax-exempt bond financing for loan programs of general application approved by a State under § 144(b)(1)(B) (State Supplemental Loan programs). Specifically, this notice addresses eligibility of borrowers of loans through State Supplemental Loan programs and the loan size limitation for State Supplemental Loans. This notice also provides guidance on whether an issue of State or local bonds the proceeds of which are used to finance or refinance qualified student loans or to finance qualified mortgage loans is a refunding issue.

Finding Lists begin on page ii.

REG-108761-22, page 933.
This Notice of Proposed Rulemaking (NPRM) would add a new regulation section promulgated under section 6011 of the Code to establish that Charitable Remainder Annuity Trust (CRAT) transactions described in the NPRM are listed transactions for purposes of Treasury Regulation § 1.6011-4 and sections 6111 and 6112. The transaction at issue is one in which taxpayers purport to eliminate recognition of ordinary income and/or capital gain on appreciated property contributed to a CRAT when the CRAT sells that property and purchases a single premium immediate annuity (SPIA). Taxpayers misapply the rules governing CRAT's upon the sale of the appreciated property by the CRAT and also misapply the rules concerning the SPIA by treating the beneficiaries as the owners of the SPIA, rather than it being an asset of the CRAT funding the annuity payments from the trust.

Rev. Proc. 2024-19, page 899.
The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are issuing this revenue procedure to provide the process under § 48(e) of the Internal Revenue Code to apply for an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation) as part of the low-income communities bonus credit program (Program) for the 2024 Program year. Additionally, this revenue procedure describes how the Capacity Limitation for the 2024 Program year will be divided across the facility categories described in §§ 48(e)(2)(A)(iii) and 1.48(e)-1(b)(2), the Category 1 sub-reservation described in § 1.48(e)-1(i)(1), and the additional selection criteria application options described in § 1.48(e)-1(h). Receipt of an allocation of Capacity Limitation increases the amount of an energy investment credit determined under § 48(a) for the taxable year in which certain solar and wind-powered electricity generation facilities are placed in service.

Rev. Rul. 2024-8, page 877.
Fringe benefits aircraft valuation formula. For purposes of section 1.61-21(g) of the Income Tax Regulations, relating to the rule for valuing non-commercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2024 are set forth.

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.

Part I

Section 61.—Gross Income Defined

26 CFR 1.61-21: Taxation of Fringe Benefit

Rev. Rul. 2024-08

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61-21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61-21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61-21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation (DOT) and are reviewed semi-annually.

The following chart sets forth the terminal charge and SIFL mileage rates:

Period During Which the Flight Is Taken	*Terminal Charge*	*SIFL Mileage Rates*
1/1/24 - 6/30/24	$55.05	Up to 500 miles = $.3012 per mile 501-1500 miles = $.2296 per mile Over 1500 miles = $.2208 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 317-6798 (not a toll-free number).

Part III

Energy Community Bonus Credit Amounts Under the Inflation Reduction Act of 2022

Notice 2024-30

SECTION 1. PURPOSE

This notice modifies Notice 2023-29, 2023-29 I.R.B. 1 (July 17, 2023), clarified by Notice 2023-45, 2023-29 I.R.B. 317 (July 17, 2023), by expanding the Nameplate Capacity Attribution Rule under section 4.02(1)(b) of Notice 2023-29 to include additional attribution property and by adding two 2017 North American Industry Classification System (NAICS) industry codes to the table in section 3.03(2) of Notice 2023-29 for purposes of determining the Fossil Fuel Employment rate (as defined in section 3.03(2) of Notice 2023-29). These modifications are set forth in section 3 of this notice.

SECTION 2. BACKGROUND

.01 *In General*. Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended §§ 45 and 48 of the Internal Revenue Code (Code)[1] to provide increased credit amounts or rates if certain requirements pertaining to energy communities are satisfied, and added new §§ 45Y and 48E, which provide increased credit amounts or rates for certain qualified facilities, energy projects, or energy storage technologies that satisfy similar requirements and that are placed in service after December 31, 2024.[2]

Notice 2023-29 describes certain rules that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to include in forthcoming proposed regulations for determining what constitutes an energy community, as defined in § 45(b)(11)(B) and as adopted by §§ 45Y(g)(7), 48(a)(14), and 48E(a)(3)(A), and for determining whether a qualified facility, an energy project, or energy storage technology is located in an energy community. Notice 2023-29 also provides that the Treasury Department and the IRS intend to propose that the forthcoming proposed regulations will apply to taxable years ending after April 4, 2023. Taxpayers may rely on the rules described in sections 3 through 6 of Notice 2023-29 until the proposed regulations are published.

Sections 45(b)(11), 48(a)(14), 45Y(g)(7), and 48E(a)(3)(A) provide the requirements that taxpayers must satisfy to qualify EC Projects (defined in section 2 of Notice 2023-29) for increased energy community bonus credit amounts or rates under those provisions of the Code. Section 2 of Notice 2023-29 provides that the term "EC Project" refers to: (1) a qualified facility eligible for a credit determined under § 45 or determined under § 45Y that is located in an energy community; (2) an energy project eligible for a credit determined under § 48, which may include qualified property for which a taxpayer has made a valid irrevocable election under § 48(a)(5) to treat such qualified property as energy property under § 48, that is placed in service within an energy community; or (3) a qualified investment with respect to a qualified facility or energy storage technology eligible for a credit determined under § 48E that is placed in service within an energy community.

Section 45(b)(11)(B) identifies three location-based categories of energy communities for purposes of §§ 45, 45Y, 48, and 48E, described in Notice 2023-29 as the Brownfield Category, the Statistical Area Category, and the Coal Closure Category. The Statistical Area Category includes a metropolitan statistical area (MSA) or non-metropolitan statistical area (non-MSA) that (1) has (or had at any time after December 31, 2009) 0.17 percent or greater direct employment (Fossil Fuel Employment) or 25 percent or greater local tax revenues (Fossil Fuel Tax Revenue) related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary of the Treasury or her delegate (Secretary)); and (2) has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary).

Section 4 of Notice 2023-29 provides generally applicable rules for determining whether a qualified facility is located in an energy community under §§ 45 or 45Y, and under §§ 48 and 48E, whether an energy project, qualified facility, or energy storage technology, as applicable, is placed in service within an energy community. Section 4.02 of Notice 2023-29 provides that an EC Project is treated as located in or placed in service within an energy community if it satisfies either the Nameplate Capacity Test under section 4.02(1) of that notice or the Footprint Test under section 4.02(2) of that notice.

.02 *The Nameplate Capacity Attribution Rule*. Under the Nameplate Capacity Test, an EC Project that has nameplate capacity is considered located in or placed in service within an energy community if 50 percent or more of the EC Project's nameplate capacity is in an area that qualifies as an energy community. The Nameplate Capacity Test includes a Nameplate Capacity Attribution Rule (described in section 4.02(1)(b) of Notice 2023-29). The Nameplate Capacity Attribution Rule provides that if an EC Project with offshore energy generation units has nameplate capacity but none of the EC Project's energy-generating units are in a census tract, MSA, or non-MSA, then the Nameplate Capacity Test for such EC Project is applied by attributing all the nameplate

[1] *Unless otherwise specified, all "section" or "§" references are to sections of the Code.*

[2] *See § 13101(g) of the IRA for the energy community provisions under § 45(b)(11), § 13102(o) of the IRA for the energy community provisions under § 48(a)(14), § 13701(a) of the IRA for the energy community provisions under § 45Y(g)(7), and § 13702(a) of the IRA for the energy community provisions under § 48E(a)(3)(A).*

capacity of such EC Project to the land-based power conditioning equipment that conditions energy generated by the EC Project for transmission, distribution, or use and that is closest to the point of interconnection. Section 3.01 of this notice expands the Nameplate Capacity Attribution Rule to include additional attribution property.

.03 *NAICS codes used for determining the Fossil Fuel Employment rate*. Section 3.03(2) of Notice 2023-29 provides that for purposes of determining whether an MSA or non-MSA is in the Statistical Area Category based on Fossil Fuel Employment, the relevant direct employment is determined by the number of people employed in the industries identified by the 2017 NAICS industry codes listed in the table in section 3.03(2) of Notice 2023-29. The Fossil Fuel Employment rate is determined as the number of people employed in the industries identified by the 2017 NAICS codes specified in the table and as listed in the annual County Files of the County Business Patterns (CBP) published by the Census Bureau, divided by the total number of people employed in that area. The Fossil Fuel Employment and total employment for each county in an MSA or non-MSA is aggregated for each year to determine whether the MSA or non-MSA meets the Fossil Fuel Employment threshold of 0.17 percent. Section 3.02 of this notice modifies the Fossil Fuel Employment rate determination by adding two NAICS codes to the table provided in section 3.03(2) of Notice 2023-29.

SECTION 3. MODIFICATION OF NOTICE 2023-29

.01 *Modification of the Nameplate Capacity Attribution Rule*. Section 4.02(1)(b) of Notice 2023-29 is modified to read as follows:

(b) *Nameplate Capacity Attribution Rule*. If an EC Project with offshore energy generation units has nameplate capacity but none of the EC Project's energy-generating units are in a census tract, MSA, or non-MSA, then the Nameplate Capacity Test for such EC Project is applied by attributing all the nameplate capacity of such EC Project to: (i) any land-based power conditioning equipment that conditions energy generated by the EC Project for transmission, distribution, or use before the energy is transmitted to the point of interconnection (or in the case of an EC Project with multiple points of interconnection, any land-based power conditioning equipment that conditions energy generated by the EC Project for transmission, distribution, or use before the energy is transmitted to one of the multiple points of interconnection); or (ii) any EC Project supervisory control and data acquisition (SCADA) equipment located in an EC Project Port. EC Project SCADA equipment is property owned by the taxpayer that owns the EC Project and is used to remotely monitor and control the EC Project's operations. An EC Project Port is defined as a port used either full or part-time to facilitate maritime operations necessary for the installation or operation and maintenance of the EC Project, and with a significant long-term relationship with the EC Project at which staff employed by, or working as independent contractors for, the taxpayer that owns the EC Project are based and perform functions essential to the EC Project's operations. A port will be considered to have a significant long-term relationship with the EC Project only if the taxpayer that owns the EC Project owns (in whole or in part) or leases (in whole or in part) under a lease agreement with a term of at least 10 years, the port in which the EC Project SCADA equipment is located. Staff employed by, or working as independent contractors for, the taxpayer that owns the EC Project will be considered based in an EC Project Port to perform functions essential to the EC Project's operations only if the staff perform (collectively, if not individually) all of the following functions: management of marine operations, inventory and handling of spare parts and consumables, and berthing and dispatch of operation and maintenance vessels and associated crews and technicians.

.02 *Modification of the Fossil Fuel Employment rate determination by the addition of two NAICS codes*.

(1) The table in section 3.03(2) of Notice 2023-29 is modified to read as follows (new codes in bold):

2017 NAICS code	Description
211	Oil and Gas Extraction
2121	Coal Mining
213111	Drilling Oil and Gas Wells
213112	Support Activities for Oil and Gas Operations
213113	Support Activities for Coal Mining
2212	**Natural Gas Distribution**
23712	**Oil and Gas Pipeline and Related Structures Construction**
32411	Petroleum Refineries
4861	Pipeline Transportation of Crude Oil
4862	Pipeline Transportation of Natural Gas

(2) Appendix B to Notice 2023-29 provided the list of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold described in § 45(b)(11)(B)(ii)(I) and section 3.03(2) of Notice 2023-29. Appendix 1 to this notice is a list of additional MSAs and non-MSAs that meet the Fossil Fuel Employment threshold described in Notice 2023-29 after including the two additional NAICS codes. Appendix 1 to this notice, Appendix B to Notice 2023-29, and Appendix 1 to Notice 2023-47 together provide the full list of MSAs and non-MSAs that meet the Fossil Fuel Employment threshold applicable to the period beginning on January 1, 2023.

(3) Appendix 2 to Notice 2023-47 is a list of MSAs and non-MSAs that qualify as energy communities because they meet the Fossil Fuel Employment threshold and have an unemployment rate at or above the national average unemployment rate for calendar year 2022 as described in § 45(b)(11)(B)(ii)(II) and section 3.03(3) of Notice 2023-29. Appendix 2 to this notice is a list of additional MSAs and non-MSAs that qualify as energy communities after including the two additional NAICS codes. Appendix 2 to this notice and Appendix 2 of Notice 2023-47 together provide the full list of energy communities in the Statistical Area Category for the period beginning on January 1, 2023. As provided in section 3.03(3) of Notice 2023-29, the energy community status for the MSAs and non-MSAs listed in Appendix 2 of Notice 2023-47 and Appendix 2 of this notice is effective as of January 1, 2023, and that status will continue until the list is updated based on unemployment rates for calendar year 2023.

SECTION 4. APPLICABILITY DATE

Until the proposed regulations are published, taxpayers may rely on the rules described in sections 3 through 6 of Notice 2023-29, as previously clarified by Notice 2023-45 and modified by section 3 this notice, for taxable years ending after April 4, 2023.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2023-29 is modified as provided in section 3 of this notice. Except as provided in section 3 of this notice, this notice does not otherwise affect the guidance provided in Notice 2023-29.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

Appendix 1: Additional MSAs and non-MSAs that meet the Fossil Fuel Employment threshold that were not included in Appendix B to Notice 2023-29

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
01	015	Alabama	Calhoun County	11500	Anniston-Oxford-Jacksonville, AL
01	017	Alabama	Chambers County	100002	Northeast Alabama nonmetropolitan area
01	019	Alabama	Cherokee County	100002	Northeast Alabama nonmetropolitan area
01	027	Alabama	Clay County	100002	Northeast Alabama nonmetropolitan area
01	029	Alabama	Cleburne County	100002	Northeast Alabama nonmetropolitan area
01	037	Alabama	Coosa County	100002	Northeast Alabama nonmetropolitan area
01	049	Alabama	DeKalb County	100002	Northeast Alabama nonmetropolitan area
01	071	Alabama	Jackson County	100002	Northeast Alabama nonmetropolitan area
01	095	Alabama	Marshall County	100002	Northeast Alabama nonmetropolitan area
01	111	Alabama	Randolph County	100002	Northeast Alabama nonmetropolitan area
01	121	Alabama	Talladega County	100002	Northeast Alabama nonmetropolitan area
01	123	Alabama	Tallapoosa County	100002	Northeast Alabama nonmetropolitan area
04	003	Arizona	Cochise County	43420	Sierra Vista-Douglas, AZ
04	005	Arizona	Coconino County	22380	Flagstaff, AZ
04	019	Arizona	Pima County	46060	Tucson, AZ
04	025	Arizona	Yavapai County	39140	Prescott, AZ
05	007	Arkansas	Benton County	22220	Fayetteville-Springdale-Rogers, AR-MO
05	025	Arkansas	Cleveland County	38220	Pine Bluff, AR
05	051	Arkansas	Garland County	26300	Hot Springs, AR
05	069	Arkansas	Jefferson County	38220	Pine Bluff, AR
05	079	Arkansas	Lincoln County	38220	Pine Bluff, AR
05	081	Arkansas	Little River County	45500	Texarkana, TX-AR
05	087	Arkansas	Madison County	22220	Fayetteville-Springdale-Rogers, AR-MO
05	091	Arkansas	Miller County	45500	Texarkana, TX-AR
05	143	Arkansas	Washington County	22220	Fayetteville-Springdale-Rogers, AR-MO
06	003	California	Alpine County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	005	California	Amador County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	009	California	Calaveras County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	011	California	Colusa County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	021	California	Glenn County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	027	California	Inyo County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	035	California	Lassen County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	043	California	Mariposa County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
06	049	California	Modoc County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	051	California	Mono County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	055	California	Napa County	34900	Napa, CA
06	057	California	Nevada County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	063	California	Plumas County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	065	California	Riverside County	40140	Riverside-San Bernardino-Ontario, CA
06	071	California	San Bernardino County	40140	Riverside-San Bernardino-Ontario, CA
06	073	California	San Diego County	41740	San Diego-Carlsbad, CA
06	091	California	Sierra County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	093	California	Siskiyou County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	103	California	Tehama County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	105	California	Trinity County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	107	California	Tulare County	47300	Visalia-Porterville, CA
06	109	California	Tuolumne County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
08	013	Colorado	Boulder County	14500	Boulder, CO
09	009	Connecticut	New Haven County	35300	New Haven-Milford, CT
09	015	Connecticut	Windham County	49340	Worcester, MA-CT
10	003	Delaware	New Castle County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
12	001	Florida	Alachua County	23540	Gainesville, FL
12	027	Florida	DeSoto County	1200003	South Florida nonmetropolitan area
12	033	Florida	Escambia County	37860	Pensacola-Ferry Pass-Brent, FL
12	039	Florida	Gadsden County	45220	Tallahassee, FL
12	041	Florida	Gilchrist County	23540	Gainesville, FL
12	043	Florida	Glades County	1200003	South Florida nonmetropolitan area
12	049	Florida	Hardee County	1200003	South Florida nonmetropolitan area
12	051	Florida	Hendry County	1200003	South Florida nonmetropolitan area
12	065	Florida	Jefferson County	45220	Tallahassee, FL
12	073	Florida	Leon County	45220	Tallahassee, FL
12	087	Florida	Monroe County	1200003	South Florida nonmetropolitan area
12	093	Florida	Okeechobee County	1200003	South Florida nonmetropolitan area
12	113	Florida	Santa Rosa County	37860	Pensacola-Ferry Pass-Brent, FL
12	129	Florida	Wakulla County	45220	Tallahassee, FL
13	013	Georgia	Barrow County	12060	Atlanta-Sandy Springs-Roswell, GA
13	015	Georgia	Bartow County	12060	Atlanta-Sandy Springs-Roswell, GA
13	035	Georgia	Butts County	12060	Atlanta-Sandy Springs-Roswell, GA

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
13	045	Georgia	Carroll County	12060	Atlanta-Sandy Springs-Roswell, GA
13	057	Georgia	Cherokee County	12060	Atlanta-Sandy Springs-Roswell, GA
13	059	Georgia	Clarke County	12020	Athens-Clarke County, GA
13	063	Georgia	Clayton County	12060	Atlanta-Sandy Springs-Roswell, GA
13	067	Georgia	Cobb County	12060	Atlanta-Sandy Springs-Roswell, GA
13	077	Georgia	Coweta County	12060	Atlanta-Sandy Springs-Roswell, GA
13	085	Georgia	Dawson County	12060	Atlanta-Sandy Springs-Roswell, GA
13	089	Georgia	DeKalb County	12060	Atlanta-Sandy Springs-Roswell, GA
13	097	Georgia	Douglas County	12060	Atlanta-Sandy Springs-Roswell, GA
13	113	Georgia	Fayette County	12060	Atlanta-Sandy Springs-Roswell, GA
13	115	Georgia	Floyd County	40660	Rome, GA
13	117	Georgia	Forsyth County	12060	Atlanta-Sandy Springs-Roswell, GA
13	121	Georgia	Fulton County	12060	Atlanta-Sandy Springs-Roswell, GA
13	135	Georgia	Gwinnett County	12060	Atlanta-Sandy Springs-Roswell, GA
13	143	Georgia	Haralson County	12060	Atlanta-Sandy Springs-Roswell, GA
13	149	Georgia	Heard County	12060	Atlanta-Sandy Springs-Roswell, GA
13	151	Georgia	Henry County	12060	Atlanta-Sandy Springs-Roswell, GA
13	159	Georgia	Jasper County	12060	Atlanta-Sandy Springs-Roswell, GA
13	171	Georgia	Lamar County	12060	Atlanta-Sandy Springs-Roswell, GA
13	195	Georgia	Madison County	12020	Athens-Clarke County, GA
13	199	Georgia	Meriwether County	12060	Atlanta-Sandy Springs-Roswell, GA
13	211	Georgia	Morgan County	12060	Atlanta-Sandy Springs-Roswell, GA
13	217	Georgia	Newton County	12060	Atlanta-Sandy Springs-Roswell, GA
13	219	Georgia	Oconee County	12020	Athens-Clarke County, GA
13	221	Georgia	Oglethorpe County	12020	Athens-Clarke County, GA
13	223	Georgia	Paulding County	12060	Atlanta-Sandy Springs-Roswell, GA
13	227	Georgia	Pickens County	12060	Atlanta-Sandy Springs-Roswell, GA
13	231	Georgia	Pike County	12060	Atlanta-Sandy Springs-Roswell, GA
13	247	Georgia	Rockdale County	12060	Atlanta-Sandy Springs-Roswell, GA
13	255	Georgia	Spalding County	12060	Atlanta-Sandy Springs-Roswell, GA
13	297	Georgia	Walton County	12060	Atlanta-Sandy Springs-Roswell, GA
16	001	Idaho	Ada County	14260	Boise City, ID
16	015	Idaho	Boise County	14260	Boise City, ID
16	027	Idaho	Canyon County	14260	Boise City, ID
16	045	Idaho	Gem County	14260	Boise City, ID
16	073	Idaho	Owyhee County	14260	Boise City, ID
17	005	Illinois	Bond County	41180	St. Louis, MO-IL
17	011	Illinois	Bureau County	1700001	Northwest Illinois nonmetropolitan area
17	013	Illinois	Calhoun County	41180	St. Louis, MO-IL
17	015	Illinois	Carroll County	1700001	Northwest Illinois nonmetropolitan area
17	027	Illinois	Clinton County	41180	St. Louis, MO-IL
17	031	Illinois	Cook County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	037	Illinois	DeKalb County	16980	Chicago-Naperville-Elgin, IL-IN-WI

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
17	043	Illinois	DuPage County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	063	Illinois	Grundy County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	083	Illinois	Jersey County	41180	St. Louis, MO-IL
17	085	Illinois	Jo Daviess County	1700001	Northwest Illinois nonmetropolitan area
17	089	Illinois	Kane County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	091	Illinois	Kankakee County	28100	Kankakee, IL
17	093	Illinois	Kendall County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	097	Illinois	Lake County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	099	Illinois	LaSalle County	1700001	Northwest Illinois nonmetropolitan area
17	103	Illinois	Lee County	1700001	Northwest Illinois nonmetropolitan area
17	111	Illinois	McHenry County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	115	Illinois	Macon County	19500	Decatur, IL
17	117	Illinois	Macoupin County	41180	St. Louis, MO-IL
17	119	Illinois	Madison County	41180	St. Louis, MO-IL
17	133	Illinois	Monroe County	41180	St. Louis, MO-IL
17	141	Illinois	Ogle County	1700001	Northwest Illinois nonmetropolitan area
17	155	Illinois	Putnam County	1700001	Northwest Illinois nonmetropolitan area
17	163	Illinois	St. Clair County	41180	St. Louis, MO-IL
17	177	Illinois	Stephenson County	1700001	Northwest Illinois nonmetropolitan area
17	195	Illinois	Whiteside County	1700001	Northwest Illinois nonmetropolitan area
17	197	Illinois	Will County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	009	Indiana	Blackford County	1800002	Central Indiana nonmetropolitan area
18	023	Indiana	Clinton County	1800002	Central Indiana nonmetropolitan area
18	031	Indiana	Decatur County	1800002	Central Indiana nonmetropolitan area
18	041	Indiana	Fayette County	1800002	Central Indiana nonmetropolitan area
18	045	Indiana	Fountain County	1800002	Central Indiana nonmetropolitan area
18	047	Indiana	Franklin County	1800002	Central Indiana nonmetropolitan area
18	053	Indiana	Grant County	1800002	Central Indiana nonmetropolitan area
18	065	Indiana	Henry County	1800002	Central Indiana nonmetropolitan area
18	073	Indiana	Jasper County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	075	Indiana	Jay County	1800002	Central Indiana nonmetropolitan area
18	089	Indiana	Lake County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	107	Indiana	Montgomery County	1800002	Central Indiana nonmetropolitan area
18	111	Indiana	Newton County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	121	Indiana	Parke County	1800002	Central Indiana nonmetropolitan area
18	127	Indiana	Porter County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	135	Indiana	Randolph County	1800002	Central Indiana nonmetropolitan area
18	139	Indiana	Rush County	1800002	Central Indiana nonmetropolitan area
18	159	Indiana	Tipton County	1800002	Central Indiana nonmetropolitan area
18	171	Indiana	Warren County	1800002	Central Indiana nonmetropolitan area
18	177	Indiana	Wayne County	1800002	Central Indiana nonmetropolitan area
19	061	Iowa	Dubuque County	20220	Dubuque, IA
20	045	Kansas	Douglas County	29940	Lawrence, KS

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
20	091	Kansas	Johnson County	28140	Kansas City, MO-KS
20	103	Kansas	Leavenworth County	28140	Kansas City, MO-KS
20	107	Kansas	Linn County	28140	Kansas City, MO-KS
20	121	Kansas	Miami County	28140	Kansas City, MO-KS
20	209	Kansas	Wyandotte County	28140	Kansas City, MO-KS
21	093	Kentucky	Hardin County	21060	Elizabethtown-Fort Knox, KY
21	123	Kentucky	Larue County	21060	Elizabethtown-Fort Knox, KY
21	163	Kentucky	Meade County	21060	Elizabethtown-Fort Knox, KY
23	001	Maine	Androscoggin County	30340	Lewiston-Auburn, ME
24	015	Maryland	Cecil County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
25	001	Massachusetts	Barnstable County	12700	Barnstable Town, MA
25	003	Massachusetts	Berkshire County	38340	Pittsfield, MA
25	007	Massachusetts	Dukes County	2500006	Massachusetts nonmetropolitan area
25	011	Massachusetts	Franklin County	2500006	Massachusetts nonmetropolitan area
25	019	Massachusetts	Nantucket County	2500006	Massachusetts nonmetropolitan area
25	027	Massachusetts	Worcester County	49340	Worcester, MA-CT
26	087	Michigan	Lapeer County	19820	Detroit-Warren-Dearborn, MI
26	093	Michigan	Livingston County	19820	Detroit-Warren-Dearborn, MI
26	099	Michigan	Macomb County	19820	Detroit-Warren-Dearborn, MI
26	115	Michigan	Monroe County	33780	Monroe, MI
26	125	Michigan	Oakland County	19820	Detroit-Warren-Dearborn, MI
26	147	Michigan	St. Clair County	19820	Detroit-Warren-Dearborn, MI
26	161	Michigan	Washtenaw County	11460	Ann Arbor, MI
26	163	Michigan	Wayne County	19820	Detroit-Warren-Dearborn, MI
27	003	Minnesota	Anoka County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	005	Minnesota	Becker County	2700001	Northwest Minnesota nonmetropolitan area
27	007	Minnesota	Beltrami County	2700001	Northwest Minnesota nonmetropolitan area
27	011	Minnesota	Big Stone County	2700003	Southwest Minnesota nonmetropolitan area
27	019	Minnesota	Carver County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	021	Minnesota	Cass County	2700001	Northwest Minnesota nonmetropolitan area
27	023	Minnesota	Chippewa County	2700003	Southwest Minnesota nonmetropolitan area
27	025	Minnesota	Chisago County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	029	Minnesota	Clearwater County	2700001	Northwest Minnesota nonmetropolitan area
27	033	Minnesota	Cottonwood County	2700003	Southwest Minnesota nonmetropolitan area
27	035	Minnesota	Crow Wing County	2700001	Northwest Minnesota nonmetropolitan area
27	037	Minnesota	Dakota County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	041	Minnesota	Douglas County	2700001	Northwest Minnesota nonmetropolitan area
27	051	Minnesota	Grant County	2700001	Northwest Minnesota nonmetropolitan area
27	053	Minnesota	Hennepin County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	057	Minnesota	Hubbard County	2700001	Northwest Minnesota nonmetropolitan area
27	059	Minnesota	Isanti County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	063	Minnesota	Jackson County	2700003	Southwest Minnesota nonmetropolitan area

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
27	067	Minnesota	Kandiyohi County	2700003	Southwest Minnesota nonmetropolitan area
27	069	Minnesota	Kittson County	2700001	Northwest Minnesota nonmetropolitan area
27	073	Minnesota	Lac qui Parle County	2700003	Southwest Minnesota nonmetropolitan area
27	077	Minnesota	Lake of the Woods County	2700001	Northwest Minnesota nonmetropolitan area
27	079	Minnesota	Le Sueur County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	081	Minnesota	Lincoln County	2700003	Southwest Minnesota nonmetropolitan area
27	083	Minnesota	Lyon County	2700003	Southwest Minnesota nonmetropolitan area
27	085	Minnesota	McLeod County	2700003	Southwest Minnesota nonmetropolitan area
27	087	Minnesota	Mahnomen County	2700001	Northwest Minnesota nonmetropolitan area
27	089	Minnesota	Marshall County	2700001	Northwest Minnesota nonmetropolitan area
27	093	Minnesota	Meeker County	2700003	Southwest Minnesota nonmetropolitan area
27	095	Minnesota	Mille Lacs County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	097	Minnesota	Morrison County	2700001	Northwest Minnesota nonmetropolitan area
27	101	Minnesota	Murray County	2700003	Southwest Minnesota nonmetropolitan area
27	105	Minnesota	Nobles County	2700003	Southwest Minnesota nonmetropolitan area
27	107	Minnesota	Norman County	2700001	Northwest Minnesota nonmetropolitan area
27	111	Minnesota	Otter Tail County	2700001	Northwest Minnesota nonmetropolitan area
27	113	Minnesota	Pennington County	2700001	Northwest Minnesota nonmetropolitan area
27	117	Minnesota	Pipestone County	2700003	Southwest Minnesota nonmetropolitan area
27	121	Minnesota	Pope County	2700001	Northwest Minnesota nonmetropolitan area
27	123	Minnesota	Ramsey County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	125	Minnesota	Red Lake County	2700001	Northwest Minnesota nonmetropolitan area
27	127	Minnesota	Redwood County	2700003	Southwest Minnesota nonmetropolitan area
27	129	Minnesota	Renville County	2700003	Southwest Minnesota nonmetropolitan area
27	133	Minnesota	Rock County	2700003	Southwest Minnesota nonmetropolitan area
27	135	Minnesota	Roseau County	2700001	Northwest Minnesota nonmetropolitan area
27	139	Minnesota	Scott County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	141	Minnesota	Sherburne County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	143	Minnesota	Sibley County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	149	Minnesota	Stevens County	2700001	Northwest Minnesota nonmetropolitan area
27	151	Minnesota	Swift County	2700003	Southwest Minnesota nonmetropolitan area
27	153	Minnesota	Todd County	2700001	Northwest Minnesota nonmetropolitan area
27	155	Minnesota	Traverse County	2700001	Northwest Minnesota nonmetropolitan area
27	159	Minnesota	Wadena County	2700001	Northwest Minnesota nonmetropolitan area
27	163	Minnesota	Washington County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	167	Minnesota	Wilkin County	2700001	Northwest Minnesota nonmetropolitan area
27	171	Minnesota	Wright County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
27	173	Minnesota	Yellow Medicine County	2700003	Southwest Minnesota nonmetropolitan area
29	001	Missouri	Adair County	2900002	North Missouri nonmetropolitan area
29	005	Missouri	Atchison County	2900002	North Missouri nonmetropolitan area
29	007	Missouri	Audrain County	2900002	North Missouri nonmetropolitan area

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
29	009	Missouri	Barry County	2900004	Southwest Missouri nonmetropolitan area
29	011	Missouri	Barton County	2900004	Southwest Missouri nonmetropolitan area
29	013	Missouri	Bates County	28140	Kansas City, MO-KS
29	025	Missouri	Caldwell County	28140	Kansas City, MO-KS
29	033	Missouri	Carroll County	2900002	North Missouri nonmetropolitan area
29	037	Missouri	Cass County	28140	Kansas City, MO-KS
29	039	Missouri	Cedar County	2900004	Southwest Missouri nonmetropolitan area
29	041	Missouri	Chariton County	2900002	North Missouri nonmetropolitan area
29	045	Missouri	Clark County	2900002	North Missouri nonmetropolitan area
29	047	Missouri	Clay County	28140	Kansas City, MO-KS
29	049	Missouri	Clinton County	28140	Kansas City, MO-KS
29	057	Missouri	Dade County	2900004	Southwest Missouri nonmetropolitan area
29	061	Missouri	Daviess County	2900002	North Missouri nonmetropolitan area
29	071	Missouri	Franklin County	41180	St. Louis, MO-IL
29	075	Missouri	Gentry County	2900002	North Missouri nonmetropolitan area
29	079	Missouri	Grundy County	2900002	North Missouri nonmetropolitan area
29	081	Missouri	Harrison County	2900002	North Missouri nonmetropolitan area
29	087	Missouri	Holt County	2900002	North Missouri nonmetropolitan area
29	095	Missouri	Jackson County	28140	Kansas City, MO-KS
29	097	Missouri	Jasper County	27900	Joplin, MO
29	099	Missouri	Jefferson County	41180	St. Louis, MO-IL
29	103	Missouri	Knox County	2900002	North Missouri nonmetropolitan area
29	107	Missouri	Lafayette County	28140	Kansas City, MO-KS
29	109	Missouri	Lawrence County	2900004	Southwest Missouri nonmetropolitan area
29	111	Missouri	Lewis County	2900002	North Missouri nonmetropolitan area
29	113	Missouri	Lincoln County	41180	St. Louis, MO-IL
29	115	Missouri	Linn County	2900002	North Missouri nonmetropolitan area
29	117	Missouri	Livingston County	2900002	North Missouri nonmetropolitan area
29	119	Missouri	McDonald County	22220	Fayetteville-Springdale-Rogers, AR-MO
29	121	Missouri	Macon County	2900002	North Missouri nonmetropolitan area
29	127	Missouri	Marion County	2900002	North Missouri nonmetropolitan area
29	129	Missouri	Mercer County	2900002	North Missouri nonmetropolitan area
29	137	Missouri	Monroe County	2900002	North Missouri nonmetropolitan area
29	139	Missouri	Montgomery County	2900002	North Missouri nonmetropolitan area
29	145	Missouri	Newton County	27900	Joplin, MO
29	147	Missouri	Nodaway County	2900002	North Missouri nonmetropolitan area
29	163	Missouri	Pike County	2900002	North Missouri nonmetropolitan area
29	165	Missouri	Platte County	28140	Kansas City, MO-KS
29	171	Missouri	Putnam County	2900002	North Missouri nonmetropolitan area
29	173	Missouri	Ralls County	2900002	North Missouri nonmetropolitan area
29	175	Missouri	Randolph County	2900002	North Missouri nonmetropolitan area
29	177	Missouri	Ray County	28140	Kansas City, MO-KS
29	183	Missouri	St. Charles County	41180	St. Louis, MO-IL

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
29	189	Missouri	St. Louis County	41180	St. Louis, MO-IL
29	197	Missouri	Schuyler County	2900002	North Missouri nonmetropolitan area
29	199	Missouri	Scotland County	2900002	North Missouri nonmetropolitan area
29	205	Missouri	Shelby County	2900002	North Missouri nonmetropolitan area
29	209	Missouri	Stone County	2900004	Southwest Missouri nonmetropolitan area
29	211	Missouri	Sullivan County	2900002	North Missouri nonmetropolitan area
29	213	Missouri	Taney County	2900004	Southwest Missouri nonmetropolitan area
29	217	Missouri	Vernon County	2900004	Southwest Missouri nonmetropolitan area
29	219	Missouri	Warren County	41180	St. Louis, MO-IL
29	227	Missouri	Worth County	2900002	North Missouri nonmetropolitan area
29	510	Missouri	St. Louis city	41180	St. Louis, MO-IL
30	001	Montana	Beaverhead County	3000003	Southwest Montana nonmetropolitan area
30	007	Montana	Broadwater County	3000003	Southwest Montana nonmetropolitan area
30	023	Montana	Deer Lodge County	3000003	Southwest Montana nonmetropolitan area
30	031	Montana	Gallatin County	3000003	Southwest Montana nonmetropolitan area
30	039	Montana	Granite County	3000003	Southwest Montana nonmetropolitan area
30	043	Montana	Jefferson County	3000003	Southwest Montana nonmetropolitan area
30	049	Montana	Lewis and Clark County	3000003	Southwest Montana nonmetropolitan area
30	057	Montana	Madison County	3000003	Southwest Montana nonmetropolitan area
30	059	Montana	Meagher County	3000003	Southwest Montana nonmetropolitan area
30	067	Montana	Park County	3000003	Southwest Montana nonmetropolitan area
30	077	Montana	Powell County	3000003	Southwest Montana nonmetropolitan area
30	093	Montana	Silver Bow County	3000003	Southwest Montana nonmetropolitan area
30	097	Montana	Sweet Grass County	3000003	Southwest Montana nonmetropolitan area
31	079	Nebraska	Hall County	24260	Grand Island, NE
31	081	Nebraska	Hamilton County	24260	Grand Island, NE
31	093	Nebraska	Howard County	24260	Grand Island, NE
31	121	Nebraska	Merrick County	24260	Grand Island, NE
32	003	Nevada	Clark County	29820	Las Vegas-Henderson-Paradise, NV
32	510	Nevada	Carson City	16180	Carson City, NV
34	001	New Jersey	Atlantic County	12100	Atlantic City-Hammonton, NJ
34	005	New Jersey	Burlington County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
34	007	New Jersey	Camden County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
34	015	New Jersey	Gloucester County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
34	033	New Jersey	Salem County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
35	001	New Mexico	Bernalillo County	10740	Albuquerque, NM
35	043	New Mexico	Sandoval County	10740	Albuquerque, NM
35	057	New Mexico	Torrance County	10740	Albuquerque, NM
35	061	New Mexico	Valencia County	10740	Albuquerque, NM

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
36	007	New York	Broome County	13780	Binghamton, NY
36	029	New York	Erie County	15380	Buffalo-Cheektowaga-Niagara Falls, NY
36	063	New York	Niagara County	15380	Buffalo-Cheektowaga-Niagara Falls, NY
36	107	New York	Tioga County	13780	Binghamton, NY
37	049	North Carolina	Craven County	35100	New Bern, NC
37	065	North Carolina	Edgecombe County	40580	Rocky Mount, NC
37	081	North Carolina	Guilford County	24660	Greensboro-High Point, NC
37	103	North Carolina	Jones County	35100	New Bern, NC
37	127	North Carolina	Nash County	40580	Rocky Mount, NC
37	137	North Carolina	Pamlico County	35100	New Bern, NC
37	151	North Carolina	Randolph County	24660	Greensboro-High Point, NC
37	157	North Carolina	Rockingham County	24660	Greensboro-High Point, NC
38	003	North Dakota	Barnes County	3800007	East North Dakota nonmetropolitan area
38	005	North Dakota	Benson County	3800007	East North Dakota nonmetropolitan area
38	019	North Dakota	Cavalier County	3800007	East North Dakota nonmetropolitan area
38	021	North Dakota	Dickey County	3800007	East North Dakota nonmetropolitan area
38	027	North Dakota	Eddy County	3800007	East North Dakota nonmetropolitan area
38	031	North Dakota	Foster County	3800007	East North Dakota nonmetropolitan area
38	039	North Dakota	Griggs County	3800007	East North Dakota nonmetropolitan area
38	045	North Dakota	LaMoure County	3800007	East North Dakota nonmetropolitan area
38	047	North Dakota	Logan County	3800007	East North Dakota nonmetropolitan area
38	051	North Dakota	McIntosh County	3800007	East North Dakota nonmetropolitan area
38	063	North Dakota	Nelson County	3800007	East North Dakota nonmetropolitan area
38	067	North Dakota	Pembina County	3800007	East North Dakota nonmetropolitan area
38	071	North Dakota	Ramsey County	3800007	East North Dakota nonmetropolitan area
38	073	North Dakota	Ransom County	3800007	East North Dakota nonmetropolitan area
38	077	North Dakota	Richland County	3800007	East North Dakota nonmetropolitan area
38	079	North Dakota	Rolette County	3800007	East North Dakota nonmetropolitan area
38	081	North Dakota	Sargent County	3800007	East North Dakota nonmetropolitan area
38	091	North Dakota	Steele County	3800007	East North Dakota nonmetropolitan area
38	093	North Dakota	Stutsman County	3800007	East North Dakota nonmetropolitan area
38	095	North Dakota	Towner County	3800007	East North Dakota nonmetropolitan area
38	097	North Dakota	Traill County	3800007	East North Dakota nonmetropolitan area
38	099	North Dakota	Walsh County	3800007	East North Dakota nonmetropolitan area
38	103	North Dakota	Wells County	3800007	East North Dakota nonmetropolitan area
39	041	Ohio	Delaware County	18140	Columbus, OH
39	045	Ohio	Fairfield County	18140	Columbus, OH
39	049	Ohio	Franklin County	18140	Columbus, OH
39	073	Ohio	Hocking County	18140	Columbus, OH
39	089	Ohio	Licking County	18140	Columbus, OH
39	097	Ohio	Madison County	18140	Columbus, OH
39	117	Ohio	Morrow County	18140	Columbus, OH
39	127	Ohio	Perry County	18140	Columbus, OH

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
39	129	Ohio	Pickaway County	18140	Columbus, OH
39	133	Ohio	Portage County	10420	Akron, OH
39	153	Ohio	Summit County	10420	Akron, OH
39	159	Ohio	Union County	18140	Columbus, OH
40	031	Oklahoma	Comanche County	30020	Lawton, OK
40	033	Oklahoma	Cotton County	30020	Lawton, OK
41	005	Oregon	Clackamas County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	009	Oregon	Columbia County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	029	Oregon	Jackson County	32780	Medford, OR
41	051	Oregon	Multnomah County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	067	Oregon	Washington County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	071	Oregon	Yamhill County	38900	Portland-Vancouver-Hillsboro, OR-WA
42	011	Pennsylvania	Berks County	39740	Reading, PA
42	017	Pennsylvania	Bucks County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	029	Pennsylvania	Chester County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	037	Pennsylvania	Columbia County	14100	Bloomsburg-Berwick, PA
42	041	Pennsylvania	Cumberland County	25420	Harrisburg-Carlisle, PA
42	043	Pennsylvania	Dauphin County	25420	Harrisburg-Carlisle, PA
42	045	Pennsylvania	Delaware County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	049	Pennsylvania	Erie County	21500	Erie, PA
42	091	Pennsylvania	Montgomery County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	093	Pennsylvania	Montour County	14100	Bloomsburg-Berwick, PA
42	099	Pennsylvania	Perry County	25420	Harrisburg-Carlisle, PA
42	101	Pennsylvania	Philadelphia County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	133	Pennsylvania	York County	49620	York-Hanover, PA
45	017	South Carolina	Calhoun County	17900	Columbia, SC
45	039	South Carolina	Fairfield County	17900	Columbia, SC
45	055	South Carolina	Kershaw County	17900	Columbia, SC
45	063	South Carolina	Lexington County	17900	Columbia, SC
45	079	South Carolina	Richland County	17900	Columbia, SC
45	081	South Carolina	Saluda County	17900	Columbia, SC
48	037	Texas	Bowie County	45500	Texarkana, TX-AR
48	145	Texas	Falls County	47380	Waco, TX
48	309	Texas	McLennan County	47380	Waco, TX
51	007	Virginia	Amelia County	40060	Richmond, VA
51	015	Virginia	Augusta County	44420	Staunton-Waynesboro, VA
51	033	Virginia	Caroline County	40060	Richmond, VA
51	036	Virginia	Charles City County	40060	Richmond, VA
51	041	Virginia	Chesterfield County	40060	Richmond, VA

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
51	053	Virginia	Dinwiddie County	40060	Richmond, VA
51	075	Virginia	Goochland County	40060	Richmond, VA
51	085	Virginia	Hanover County	40060	Richmond, VA
51	087	Virginia	Henrico County	40060	Richmond, VA
51	101	Virginia	King William County	40060	Richmond, VA
51	127	Virginia	New Kent County	40060	Richmond, VA
51	145	Virginia	Powhatan County	40060	Richmond, VA
51	149	Virginia	Prince George County	40060	Richmond, VA
51	183	Virginia	Sussex County	40060	Richmond, VA
51	570	Virginia	Colonial Heights city	40060	Richmond, VA
51	670	Virginia	Hopewell city	40060	Richmond, VA
51	730	Virginia	Petersburg city	40060	Richmond, VA
51	760	Virginia	Richmond city	40060	Richmond, VA
51	790	Virginia	Staunton city	44420	Staunton-Waynesboro, VA
51	820	Virginia	Waynesboro city	44420	Staunton-Waynesboro, VA
53	005	Washington	Benton County	28420	Kennewick-Richland, WA
53	011	Washington	Clark County	38900	Portland-Vancouver-Hillsboro, OR-WA
53	015	Washington	Cowlitz County	31020	Longview, WA
53	021	Washington	Franklin County	28420	Kennewick-Richland, WA
53	059	Washington	Skamania County	38900	Portland-Vancouver-Hillsboro, OR-WA
55	009	Wisconsin	Brown County	24580	Green Bay, WI
55	017	Wisconsin	Chippewa County	20740	Eau Claire, WI
55	027	Wisconsin	Dodge County	5500003	South Central Wisconsin nonmetropolitan area
55	035	Wisconsin	Eau Claire County	20740	Eau Claire, WI
55	043	Wisconsin	Grant County	5500003	South Central Wisconsin nonmetropolitan area
55	047	Wisconsin	Green Lake County	5500003	South Central Wisconsin nonmetropolitan area
55	055	Wisconsin	Jefferson County	5500003	South Central Wisconsin nonmetropolitan area
55	059	Wisconsin	Kenosha County	16980	Chicago-Naperville-Elgin, IL-IN-WI
55	061	Wisconsin	Kewaunee County	24580	Green Bay, WI
55	065	Wisconsin	Lafayette County	5500003	South Central Wisconsin nonmetropolitan area
55	077	Wisconsin	Marquette County	5500003	South Central Wisconsin nonmetropolitan area
55	079	Wisconsin	Milwaukee County	33340	Milwaukee-Waukesha-West Allis, WI
55	083	Wisconsin	Oconto County	24580	Green Bay, WI
55	089	Wisconsin	Ozaukee County	33340	Milwaukee-Waukesha-West Allis, WI
55	093	Wisconsin	Pierce County	33460	Minneapolis-St. Paul-Bloomington, MN-WI
55	103	Wisconsin	Richland County	5500003	South Central Wisconsin nonmetropolitan area
55	109	Wisconsin	St. Croix County	33460	Minneapolis-St. Paul-Bloomington, MN-WI

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non-MSA Code	MSA or non-MSA Name
55	111	Wisconsin	Sauk County	5500003	South Central Wisconsin nonmetropolitan area
55	127	Wisconsin	Walworth County	5500003	South Central Wisconsin nonmetropolitan area
55	131	Wisconsin	Washington County	33340	Milwaukee-Waukesha-West Allis, WI
55	133	Wisconsin	Waukesha County	33340	Milwaukee-Waukesha-West Allis, WI
55	135	Wisconsin	Waupaca County	5500003	South Central Wisconsin nonmetropolitan area
55	137	Wisconsin	Waushara County	5500003	South Central Wisconsin nonmetropolitan area

Appendix 2: Additional MSAs and non-MSAs that qualify as energy communities in 2023 by meeting the Fossil Fuel Employment threshold and the unemployment rate requirement for calendar year 2022 that were not included in Appendix 2 to Notice 2023-47

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non- MSA Code	MSA or non-MSA Name
04	003	Arizona	Cochise County	43420	Sierra Vista-Douglas, AZ
04	005	Arizona	Coconino County	22380	Flagstaff, AZ
04	019	Arizona	Pima County	46060	Tucson, AZ
05	025	Arkansas	Cleveland County	38220	Pine Bluff, AR
05	051	Arkansas	Garland County	26300	Hot Springs, AR
05	069	Arkansas	Jefferson County	38220	Pine Bluff, AR
05	079	Arkansas	Lincoln County	38220	Pine Bluff, AR
05	081	Arkansas	Little River County	45500	Texarkana, TX-AR
05	091	Arkansas	Miller County	45500	Texarkana, TX-AR
06	003	California	Alpine County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	005	California	Amador County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	009	California	Calaveras County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	011	California	Colusa County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	021	California	Glenn County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	027	California	Inyo County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	035	California	Lassen County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	043	California	Mariposa County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	049	California	Modoc County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	051	California	Mono County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
06	057	California	Nevada County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	063	California	Plumas County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	065	California	Riverside County	40140	Riverside-San Bernardino-Ontario, CA
06	071	California	San Bernardino County	40140	Riverside-San Bernardino-Ontario, CA
06	091	California	Sierra County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	093	California	Siskiyou County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	103	California	Tehama County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non- MSA Code	MSA or non-MSA Name
06	105	California	Trinity County	600007	North Valley-Northern Mountains Region of California nonmetropolitan area
06	107	California	Tulare County	47300	Visalia-Porterville, CA
06	109	California	Tuolumne County	600006	Eastern Sierra-Mother Lode Region of California nonmetropolitan area
09	009	Connecticut	New Haven County	35300	New Haven-Milford, CT
09	015	Connecticut	Windham County	49340	Worcester, MA-CT
10	003	Delaware	New Castle County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
17	011	Illinois	Bureau County	1700001	Northwest Illinois nonmetropolitan area
17	015	Illinois	Carroll County	1700001	Northwest Illinois nonmetropolitan area
17	031	Illinois	Cook County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	037	Illinois	DeKalb County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	043	Illinois	DuPage County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	063	Illinois	Grundy County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	085	Illinois	Jo Daviess County	1700001	Northwest Illinois nonmetropolitan area
17	089	Illinois	Kane County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	091	Illinois	Kankakee County	28100	Kankakee, IL
17	093	Illinois	Kendall County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	097	Illinois	Lake County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	099	Illinois	LaSalle County	1700001	Northwest Illinois nonmetropolitan area
17	103	Illinois	Lee County	1700001	Northwest Illinois nonmetropolitan area
17	111	Illinois	McHenry County	16980	Chicago-Naperville-Elgin, IL-IN-WI
17	115	Illinois	Macon County	19500	Decatur, IL
17	141	Illinois	Ogle County	1700001	Northwest Illinois nonmetropolitan area
17	155	Illinois	Putnam County	1700001	Northwest Illinois nonmetropolitan area
17	177	Illinois	Stephenson County	1700001	Northwest Illinois nonmetropolitan area
17	195	Illinois	Whiteside County	1700001	Northwest Illinois nonmetropolitan area
17	197	Illinois	Will County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	073	Indiana	Jasper County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	089	Indiana	Lake County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	111	Indiana	Newton County	16980	Chicago-Naperville-Elgin, IL-IN-WI
18	127	Indiana	Porter County	16980	Chicago-Naperville-Elgin, IL-IN-WI
21	093	Kentucky	Hardin County	21060	Elizabethtown-Fort Knox, KY
21	123	Kentucky	Larue County	21060	Elizabethtown-Fort Knox, KY
21	163	Kentucky	Meade County	21060	Elizabethtown-Fort Knox, KY
24	015	Maryland	Cecil County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
25	001	Massachusetts	Barnstable County	12700	Barnstable Town, MA
25	003	Massachusetts	Berkshire County	38340	Pittsfield, MA
25	007	Massachusetts	Dukes County	2500006	Massachusetts nonmetropolitan area
25	011	Massachusetts	Franklin County	2500006	Massachusetts nonmetropolitan area
25	019	Massachusetts	Nantucket County	2500006	Massachusetts nonmetropolitan area

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non- MSA Code	MSA or non-MSA Name
25	027	Massachusetts	Worcester County	49340	Worcester, MA-CT
26	087	Michigan	Lapeer County	19820	Detroit-Warren-Dearborn, MI
26	093	Michigan	Livingston County	19820	Detroit-Warren-Dearborn, MI
26	099	Michigan	Macomb County	19820	Detroit-Warren-Dearborn, MI
26	115	Michigan	Monroe County	33780	Monroe, MI
26	125	Michigan	Oakland County	19820	Detroit-Warren-Dearborn, MI
26	147	Michigan	St. Clair County	19820	Detroit-Warren-Dearborn, MI
26	163	Michigan	Wayne County	19820	Detroit-Warren-Dearborn, MI
32	003	Nevada	Clark County	29820	Las Vegas-Henderson-Paradise, NV
32	510	Nevada	Carson City	16180	Carson City, NV
34	001	New Jersey	Atlantic County	12100	Atlantic City-Hammonton, NJ
34	005	New Jersey	Burlington County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
34	007	New Jersey	Camden County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
34	015	New Jersey	Gloucester County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
34	033	New Jersey	Salem County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
35	001	New Mexico	Bernalillo County	10740	Albuquerque, NM
35	043	New Mexico	Sandoval County	10740	Albuquerque, NM
35	057	New Mexico	Torrance County	10740	Albuquerque, NM
35	061	New Mexico	Valencia County	10740	Albuquerque, NM
36	007	New York	Broome County	13780	Binghamton, NY
36	107	New York	Tioga County	13780	Binghamton, NY
37	049	North Carolina	Craven County	35100	New Bern, NC
37	065	North Carolina	Edgecombe County	40580	Rocky Mount, NC
37	081	North Carolina	Guilford County	24660	Greensboro-High Point, NC
37	103	North Carolina	Jones County	35100	New Bern, NC
37	127	North Carolina	Nash County	40580	Rocky Mount, NC
37	137	North Carolina	Pamlico County	35100	New Bern, NC
37	151	North Carolina	Randolph County	24660	Greensboro-High Point, NC
37	157	North Carolina	Rockingham County	24660	Greensboro-High Point, NC
39	133	Ohio	Portage County	10420	Akron, OH
39	153	Ohio	Summit County	10420	Akron, OH
41	005	Oregon	Clackamas County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	009	Oregon	Columbia County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	029	Oregon	Jackson County	32780	Medford, OR
41	051	Oregon	Multnomah County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	067	Oregon	Washington County	38900	Portland-Vancouver-Hillsboro, OR-WA
41	071	Oregon	Yamhill County	38900	Portland-Vancouver-Hillsboro, OR-WA
42	011	Pennsylvania	Berks County	39740	Reading, PA
42	017	Pennsylvania	Bucks County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD

State FIPS Code	County FIPS Code	State Name	County or County-Equivalent Entity Name	MSA or non- MSA Code	MSA or non-MSA Name
42	029	Pennsylvania	Chester County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	037	Pennsylvania	Columbia County	14100	Bloomsburg-Berwick, PA
42	041	Pennsylvania	Cumberland County	25420	Harrisburg-Carlisle, PA
42	043	Pennsylvania	Dauphin County	25420	Harrisburg-Carlisle, PA
42	045	Pennsylvania	Delaware County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	049	Pennsylvania	Erie County	21500	Erie, PA
42	091	Pennsylvania	Montgomery County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	093	Pennsylvania	Montour County	14100	Bloomsburg-Berwick, PA
42	099	Pennsylvania	Perry County	25420	Harrisburg-Carlisle, PA
42	101	Pennsylvania	Philadelphia County	37980	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
42	133	Pennsylvania	York County	49620	York-Hanover, PA
48	037	Texas	Bowie County	45500	Texarkana, TX-AR
53	005	Washington	Benton County	28420	Kennewick-Richland, WA
53	011	Washington	Clark County	38900	Portland-Vancouver-Hillsboro, OR-WA
53	015	Washington	Cowlitz County	31020	Longview, WA
53	021	Washington	Franklin County	28420	Kennewick-Richland, WA
53	059	Washington	Skamania County	38900	Portland-Vancouver-Hillsboro, OR-WA
55	059	Wisconsin	Kenosha County	16980	Chicago-Naperville-Elgin, IL-IN-WI

Qualified Student Loan and Qualified Mortgage Bonds

Notice 2024-32

SECTION 1. PURPOSE

This notice provides guidance regarding qualified student loan bonds under § 144(b) of the Internal Revenue Code (Code)[1] to clarify certain requirements for tax-exempt bond financing for loan programs of general application approved by a State under § 144(b)(1)(B) (State Supplemental Loan programs). Specifically, this notice addresses eligibility of borrowers of loans through State Supplemental Loan programs and the loan size limitation for State Supplemental Loans. This notice also provides guidance regarding whether an issue of State or local bonds the proceeds of which are used to finance or refinance qualified student loans (as defined in § 1.150-1(b)) or to finance qualified mortgage loans (as defined in § 1.150-1(b)) is a refunding issue.

SECTION 2. BACKGROUND

Section 144(b)(1) defines a "qualified student loan bond" for which tax-exempt private activity bonds may be issued to mean any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans (that is, loans to pay the costs of postsecondary education) under two types of loan programs.

The first type of loan program, described in § 144(b)(1)(A), is the Federal Family Education Loan Program (FFELP) under the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (Higher Education Act), under which education loans are indirectly Federally guaranteed. The FFELP loans that are eligible for tax-exempt bond financing under § 144(b)(1)(A) include, among other types of loans, loans made to parents of undergraduate students under the program known as the "PLUS" loan program. H.R. Conf. Rep. No. 99-841, at II-712 (1986); Sen. Rep. No. 99-313, at 842 (1986). The FFELP guarantee authority extends only to loans originated before July 1, 2010, and was discontinued for loans originated on or after that date. Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 2201, 124 Stat. 1029, 1074 (2010).

The second type of loan program, described in § 144(b)(1)(B), is for State Supplemental Loans. Section 144(b)(1)(B) describes a State Supplemental Loan program as a program of general application approved by the State if no loan under such program exceeds the difference between (1) the total cost of attendance and (2) subject to certain stated exceptions, the other forms of student assistance for which the student borrower may be eligible. A program is not treated as described in § 144(b)(1)(B) if such program is described in § 144(b)(1)(A).

.01 *Eligible borrower*.

Notice 2015-78, 2015-48 I.R.B. 690, provides guidance regarding qualified student loan bonds, including the use of the proceeds of these bonds to make loans that refinance qualified student loans (refinancing loans). Section 3.1 of Notice 2015-78 provides that an eligible borrower of an original loan under a State Supplemental Loan program is a student (with or without a co-obligor or guarantor) or a parent (with or without a co-obligor or guarantor) borrowing on behalf of a child who is a student. Section 3.1 of Notice 2015-78 further provides that an eligible borrower of a refinancing loan under a State Supplemental Loan program is the student or parent borrower of the original loan.

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) are aware of questions that have arisen as to whether, if the student was the original borrower, the parent of that student is an eligible borrower of a refinancing loan, and similarly, if the parent was the original borrower, whether the student on whose behalf the original loan was made is an eligible borrower of a refinancing loan. Section 4.01 of this notice clarifies that an eligible borrower of a refinancing loan includes either of these parties, regardless of which was the original borrower.

.02 *Loan size limitation*.

Notice 2015-78 also addresses the loan size limitation for a State Supplemental Loan. The amount of an original State Supplemental Loan must not exceed the difference between the total cost of attendance and other forms of student assistance for which the student may be eligible. Section 3.3 of Notice 2015-78 provides, for an original loan, that an issuer may rely on a certification of these amounts by the higher education institution at which the student is enrolled. For a refinancing loan, section 3.3 of Notice 2015-78 provides that (1) the original loan must have met the loan size limitation under § 144(b)(1)(B) and (2) the stated principal amount of the refinancing loan may not exceed the sum of the refinanced loan's outstanding stated principal amount and any accrued but unpaid stated interest as of the date of the refinancing.

The Treasury Department and IRS are aware of issuers' questions about how to establish, for purposes of a refinancing loan, that the original loan met the loan size limitation under § 144(b)(1)(B) and issuers' concerns regarding the attendant administrative burden. Refinancing loans generally are sought after the students have finished their educations, and several years may have passed since the higher education institutions provided the information needed to determine the original loan amounts. Often, however, the original loans were made under the FFELP, another loan program under Title IV of the Higher Education Act, a State Supplemental Loan program, or other student loan program subject to the same loan size limitation as in § 144(b)(1)(B) or a stricter one. Section 4.02 of this notice provides that original loans made under these programs will be treated as meeting the loan size limitation under § 144(b)(1)(B). Section 4.02 of this notice also provides issuers with sources that can be used to ascertain the amounts of (1) the original loan, (2) the student's total cost of attendance,

[1] *Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).*

and (3) other forms of student assistance for this purpose.

.03 *Refunding bonds*.

Section 1.150-1 provides definitions for all purposes of §§ 103 and 141 through 150, which are applicable to tax-exempt bonds. Section 1.150-1(d)(1) defines a "refunding issue" generally to mean an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue, provided the obligor on both issues is the same person or a related party (as defined in § 1.150-1(b)). For this purpose, if proceeds are used to finance a purpose investment (as defined in § 1.148-1(b)), the obligor means the conduit borrower of the purpose investment rather than the actual issuer of the bonds, except that, for qualified mortgage loans, qualified student loans, and similar program investments (as defined in § 1.148-1(b)), the obligor does not include the ultimate recipients of the loans (for example, the homeowner or the student). Section 1.150-1(d)(2)(iii) provides, with one exception, that the actual issuer's use of the proceeds of an issue that refunds a purpose investment determines whether that issue is also a refunding of the issue that originally financed the purpose investment. Section 1.150-1 does not provide a definition of "proceeds" for this purpose.

Questions have arisen regarding the determination of whether an issue that is used to refinance qualified student loans is a refunding issue. Issuers are concerned that if the borrowers of the refinancing loans repay their original loans and the issuer then uses the funds to redeem the bonds that financed the original loans, the bonds might be treated as refunding bonds and, given that this redemption would frequently occur more than 90 days after the issuance of the bonds financing the refinancing loans, potentially treated as taxable advance refunding bonds. If this were the case, issuers would be prevented from issuing tax-exempt bonds to refinance the qualified student loans of their existing borrowers. Another question concerns whether the use of investment proceeds from the repayments of qualified student loans or qualified mortgage loans allocated to one issue to redeem bonds of another issue, a practice sometimes referred to as "cross-calling," results in bonds of the former issue being treated as taxable advance refunding bonds. An issuer engaged in cross-calling first uses proceeds of the issue to make qualified student loans or qualified mortgage loans and then uses the repayments of the loans to redeem bonds, generally selecting bonds with the highest interest rates. Section 4.03 of this notice addresses these questions.

SECTION 3. SCOPE

Sections 4.01 and 4.02 of this notice apply for purposes of the requirements applicable to State Supplemental Loan programs financed with qualified student loan bonds under § 144(b). Section 4.03 of this notice applies to qualified student loan bonds under § 144(b) and qualified mortgage bonds under § 143.

SECTION 4. APPLICATION

.01 *Eligible borrower*. An *eligible borrower* of a refinancing loan under a State Supplemental Loan program includes the student or parent borrower of the original loan. An eligible borrower of a refinancing loan under a State Supplemental Loan program also includes a parent of the student borrower of an original loan (or a refinancing loan) and a child of a parent who borrowed an original loan (or a refinancing loan) on the child's behalf.

.02 *Loan size limitation*.

(1) For purposes of establishing that the original loan to be refinanced met the loan size limitation under § 144(b)(1)(B), the original loan will be treated as having met the loan size limitation under § 144(b)(1)(B) if–

(a) The original loan was made under a student loan program that applied the same loan size limitation as in § 144(b)(1)(B) or a stricter one during the period when the original loan was made; for example, the FFELP and other loan programs under Title IV of the Higher Education Act and State Supplemental Loan programs (as described in § 144(b)(1)(B)), whether or not financed with tax-exempt bonds; or

(b) The previous lender, other holder, or loan servicer of the original loan certifies that the original loan amount did not exceed the difference between the total cost of attendance and other forms of student assistance as reported on the original loan application.

(2) In addition, to establish that the original loan to be refinanced met the loan size limitation under § 144(b)(1)(B), an issuer may rely on—

(a) The amount of the original loan as stated on the promissory note for the original loan or as otherwise provided by the previous lender, other holder, or loan servicer of the original loan; and

(b) The amounts of the student's total cost of attendance and other forms of student assistance for the academic period for which the original loan was made—

(i) As reported on the original loan application and provided by either (A) the previous lender, other holder, or loan servicer of the original loan; or (B) the educational institution the student attended for the academic period of the original loan, or

(ii) As stated in the student's financial aid award letter that is from the educational institution the student attended for the academic period and includes the amount of the original loan.

.03 *Refunding bonds*. An issue is not a refunding issue to the extent that the actual issuer reasonably expects as of the issue date of the issue to use net proceeds of the issue within two years of the issue date to refinance one or more obligations that are qualified student loans. For purposes of determining whether an issue is a refunding issue, proceeds means any sales proceeds, investments proceeds, or transferred proceeds (all as defined in § 1.148-1(b)), except that proceeds does not include investment proceeds (or transferred proceeds allocable to investment proceeds) received from investing in a qualified student loan or a qualified mortgage loan.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Sections 4.01 and 4.02 of this notice amplify Notice 2015-78.

SECTION 6. EFFECTIVE DATE

This notice applies to bonds sold on or after April 15, 2024. An issuer may apply

this notice to bonds sold before April 15, 2024.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Jason Deirmenjian or Johanna Som de Cerff at (202) 317-6980 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.

Rev. Proc. 2024-19

SECTION 1. PURPOSE

This revenue procedure provides the process under § 48(e) of the Internal Revenue Code (Code)[1] to apply for an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation) as part of the low-income communities bonus credit program (Program) for 2024 (2024 Program year). Solely with respect to the 2024 Program year, this revenue procedure supersedes Rev. Proc. 2023-27, 2023-35 I.R.B. 655, and provides important clarifying changes to the application, documentation, and lottery procedures that apply to the 2024 Program year. In addition, this revenue procedure describes how the Capacity Limitation for the 2024 Program year will be divided across the facility categories described in §§ 48(e)(2)(A)(iii) and 1.48(e)-1(b)(2), the Category 1 sub-reservations described in § 1.48(e)-1(i)(1), and the additional selection criteria application options described in § 1.48(e)-1(h). Receipt of an allocation increases the amount of an energy investment credit determined under § 48(a) (§ 48 credit) for the taxable year in which certain solar and wind-powered electricity generation facilities are placed in service.

SECTION 2. BACKGROUND

.01 Section 13103 of Public Law 117–169, 136 Stat. 1818, 1921 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new § 48(e) to the Code. Section 48(e) increases the amount of the § 48 credit with respect to eligible property that is part of a qualified solar or wind facility that is awarded an allocation of Capacity Limitation as part of the Program. The § 48 credit for a taxable year is generally calculated by multiplying the basis of each energy property placed in service during that taxable year by the energy percentage (as defined in § 48(a)(2)). Section 48(e) increases the § 48 credit by increasing the energy percentage used to calculate the amount of the § 48 credit (§ 48(e) Increase) in the case of qualified solar and wind facilities that receive an allocation of Capacity Limitation.

.02 Section 48(e)(4) directs the Secretary of the Treasury or her delegate to establish a program, within 180 days of enactment of the IRA, to allocate amounts of Capacity Limitation to qualified solar and wind facilities. Notice 2023–17, 2023–10 I.R.B. 505, established the Program and provided definitions and other guidance related to the Program. On June 1, 2023, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the Federal Register (88 FR 35791) a notice of proposed rulemaking (REG-110412-23, 2023-26 I.R.B. 1098) under § 48(e) (Proposed Rules) relating to the Program. On August 15, 2023, Treasury Decision 9979 was published in the Federal Register (88 FR 55506) to adopt the Proposed Rules with modifications as final regulations codified at § 1.48(e)-1 (Final Regulations).

.03 On August 28, 2023, the Treasury Department and the IRS published Rev. Proc. 2023-27, which provided guidance necessary to implement the Program for 2023 (2023 Program year), including the information an applicant must submit to apply for a Capacity Limitation allocation, the application review process, the manner of obtaining a Capacity Limitation allocation from the IRS, and the procedures and documentation requirements for reporting that a facility was placed in service. This revenue procedure supersedes Rev. Proc. 2023-27 solely with respect to the 2024 Program year and provides guidance necessary to implement the Program for the 2024 Program year. The procedures for the 2024 Program year provided in this revenue procedure generally follow those provided in Rev. Proc. 2023-27 with certain clarifying changes to the application and documentation requirements described in more detail in sections 3 through 13 of this revenue procedure.

SECTION 3. CAPACITY LIMITATION AVAILABLE FOR ALLOCATION

.01 The amount of Capacity Limitation for the 2024 Program year available for allocation through the application process provided in this revenue procedure is limited to the annual Capacity Limitation of 1.8 gigawatts of direct current capacity plus any unallocated Capacity Limitation carried over from the 2023 Program year. If any such Capacity Limitation from the 2023 Program year is carried over to the 2024 Program year, the Treasury Department and the IRS will announce the distribution of that Capacity Limitation.

.02 As provided in § 1.48(e)-1(g), the annual Capacity Limitation available for allocation is divided across the four facility categories described in §§ 48(e)(2)(A)(iii) and 1.48(e)-1(b)(2). For the 2024 Program year, the Treasury Department and the IRS plan to distribute the annual Capacity Limitation of 1.8 gigawatts of direct current capacity as shown in Table 1. As described in § 1.48(e)-1(g), the Treasury Department and the IRS may later reallocate Capacity Limitation across facility categories in the event any category is oversubscribed or has excess capacity.

[1] *Unless otherwise specified, all "section" or "§" references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).*

Table 1

Category 1: Located in a Low-Income Community	600 megawatts
Category 2: Located on Indian Land	200 megawatts
Category 3: Qualified Low-Income Residential Building Project	200 megawatts
Category 4: Qualified Low-Income Economic Benefit Project	800 megawatts

SECTION 4. CATEGORY 1 SUB-RESERVATIONS

As provided in § 1.48(e)-1(i)(1), Category 1 Capacity Limitation is subdivided for each Program year, with a specific sub-reservation for eligible residential behind the meter (BTM) facilities. Accordingly, the 600 megawatts of Capacity Limitation for Category 1 facilities will be subdivided for facilities seeking a Category 1 allocation with 400 megawatts of Capacity Limitation reserved specifically for eligible residential BTM facilities described in § 1.48(e)-1(i)(2)(ii), including rooftop solar. The remaining 200 megawatts of Capacity Limitation distributed to Category 1 is available for applicants with front of the meter (FTM) facilities described in § 1.48(e)-1(i)(2)(iii) as well as non-residential BTM facilities that meet the requirements of § 1.48(e)-1(i)(2)(i).

SECTION 5. APPLICATION

.01 *In general*. An applicant (described in section 6 of this revenue procedure) must apply for an allocation of Capacity Limitation through Department of Energy's (DOE) online Program portal system (Portal), available at https://eco.energy.gov/ejbonus/s/. The application must contain all information, documentation, and attestations specified in section 7 of this revenue procedure and any additional information required by DOE's publicly available written procedures.

.02 *Selection of the appropriate category or sub-reservation*. Applicants must submit applications for a particular facility category described in § 1.48(e)-1(b)(2) (that is, Category 1 Facility, Category 2 Facility, Category 3 Facility, or Category 4 Facility). If the applicant is applying in Category 1, the applicant must also select the appropriate Category 1 sub-reservation described in § 1.48(e)-1(i) (that is, eligible residential BTM or other facilities located in low-income communities). In addition, applicants must select the appropriate application option (for example, additional selection criteria, if applicable) within the facility category or Category 1 sub-reservation to which they are applying. DOE will not move applications to a different facility category or Category 1 sub-reservation.

.03 *One application for the 2024 Program year*. Applicants may only submit one application per facility for the 2024 Program year. If, after submitting an application for a facility, the applicant decides that it would rather have the facility considered for an allocation under a different facility category or Category 1 sub-reservation, the applicant must withdraw the first application and submit a second application under the other facility category or Category 1 sub-reservation. If DOE identifies that an applicant has submitted more than one application for a facility (and the applicant has not withdrawn a previously submitted application(s)), any application submitted after the first submitted application will be considered a duplicate application and will be treated as withdrawn.

.04 *Opening and closing dates of 2024 Program year application period*. The Treasury Department and the IRS will publicly announce the opening and closing dates for the 2024 Program year application period on DOE's landing page for the Program (Program Homepage), available at https://www.energy.gov/justice/low-income-communities-bonus-credit-program. DOE will not accept new application submissions for the 2024 Program year after 11:59 PM ET on the date the application period closes.

SECTION 6. APPLICANT

.01 *In general*. The owner of the solar or wind facility is the person who must apply for an allocation of Capacity Limitation. If the facility is determined to be eligible for an allocation, and there is Capacity Limitation available to allocate, the owner of the facility is the recipient of the allocation of Capacity Limitation.

.02 *Disregarded entities*. If a qualified solar or wind facility is owned by an entity that is disregarded as separate from its owner for federal income tax purposes, the owner of the disregarded entity is the owner of the facility and is the applicant.

.03 *Partnerships and S corporations*. If a qualified solar or wind facility is owned by a partnership or S corporation, then the partnership or S corporation, and not its partners or shareholders, is the owner of the facility and is the applicant. For unincorporated organizations that have made or will make an election under § 761(a) to be excluded from the application of subchapter K of chapter 1 of the Code (subchapter K), the organization, and not its members, is the applicant.

SECTION 7. APPLICATION PROCESS

.01 *Registration in general*. Applicants must register in the Portal before they can begin the application process. Potential applicants should follow DOE's publicly available procedures to register in the Portal and to submit applications. To register, applicants must first create a login.gov account before accessing the Portal. After a login.gov account has been created, the user can register as the applicant in the Portal. See the Applicant User Guide, which can be found on the Program Homepage, for more information. Applications may be submitted only through the Portal.

.02 *Application Submission*. The applicant must submit their application, including any required information, documentation, and attestations required by section 7 of this revenue procedure, under penalties of perjury. The person completing and submitting the application must have personal knowledge of the facts related to the application and be a per-

son who is legally authorized to (1) bind the applicant entity for federal income tax purposes, including providing, under penalties of perjury, the attestations under sections 7.06, 7.07, 7.08 and 10.02 of this revenue procedure; (2) communicate with DOE about the application prior to and after submission of the application; and (3) receive notifications, letters, and other communications from DOE and the IRS about the Program. For example, an application may be authorized by an officer of a corporation, a general partner of a state law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, or the proprietor in the case of a sole proprietorship. The person submitting the application must attest through the Portal that they have the requisite authority to legally bind the applicant with respect to federal income tax matters.

.03 *Applicant Information*. The application must include the following identifying information of the applicant:

(1) The name of the applicant;

(2) The unique federal taxpayer identification number for the applicant. Unless a transfer request is reviewed and approved by the IRS or the unincorporated organization has made a § 761(a) election to be excluded from the application of subchapter K (see section 13 of this revenue procedure), the taxpayer identification number of the applicant must match the taxpayer identification number of the taxpayer that will claim the energy percentage increase under § 48(e), or, in the case of a partnership or S corporation, the partnership or S corporation that owns the facility when it is placed in service;

(3) The applicant's address;

(4) If the applicant is a subsidiary corporation of a consolidated group filing a consolidated federal income tax return, the legal name and federal taxpayer identification number of the parent corporation of the consolidated group; and

(5) Any other information required by DOE's publicly available written procedures.

.04 *Facility Information*.

(1) *In general*. The application requires the applicant to provide the information about the facility described in section 7.04(2) and 7.04(3) of this revenue procedure.

(2) *Facility maximum net output and nameplate capacity*.

(a) *Wind facility.* Applicants seeking an allocation for a wind facility must report the expected maximum net output of the facility defined as the nameplate capacity of the facility in alternating current. Wind facilities selected for an allocation will be awarded an amount of Capacity Limitation in direct current that is equal to the facility's reported nameplate capacity in alternating current.

(b) *Solar facility.* Applicants seeking an allocation for a solar facility must report the expected maximum net output of the facility as measured in alternating current and the nameplate capacity of the facility in direct current. Solar facilities selected for an allocation will be awarded an amount of Capacity Limitation in direct current that is equal to the facility's reported nameplate capacity in direct current.

(3) *Facility location*. Applicants are required to report the location of the facility, including street address (if applicable) and coordinates (latitude and longitude).

.05 *Documentation*.

(1) *In general*. Applicants must submit the documentation specified in sections 7.05(2) and 7.05(3) of this revenue procedure with an application for an allocation of Capacity Limitation. An application is not complete and may be rejected if any required documentation is not included.

(2) *Facility documentation*. As specified in Table 2, the following documents are required for each facility for which an application is submitted:

Table 2

Document Requirement	FTM2	BTM3 <= 1 MW AC	BTM > 1 MW AC
One of the following documents, in its entirety, inclusive of any amendments, appendices, consumer disclosures, and schedules thereto, executed by each party[4] on or before the date of application submission: 1) If the applicant will *not* execute a lease or a power purchase agreement (PPA) with respect to the facility, an executed contract for the installation of the facility owned by the applicant (for example, an engineering, procurement, and construction contract). For purposes of meeting this requirement, if the applicant will self-install the facility, the applicant must submit a contract to purchase the solar generation or wind generation equipment; 2) If the applicant will execute a lease with respect to the facility, an executed contract to lease the facility between the applicant (as the lessor) and the lessee; or 3) If the applicant will execute a PPA with respect to the facility, an executed power purchase agreement for the generation by the facility between the applicant and the offtaker of the electricity generated.	No	Yes	Yes
A copy of the final, executed interconnection agreement, if applicable (see below). If the facility is located in a market where the interconnection agreement cannot be countersigned by the interconnecting utility prior to completion of construction or interconnection of the facility, the applicant must provide: 1) a copy of the interconnection agreement or offer signed by the applicant (or its agent), 2) a copy of the final completed interconnection screen/study, and 3) either a conditional approval letter from the interconnecting utility or an affidavit[5] stating that, based on the interconnecting utility's guidance, the facility's interconnection agreement cannot be countersigned by the interconnecting utility and executed until after construction of the facility. If an interconnection agreement is not applicable to the facility (for example, due to utility ownership), the interconnection agreement requirement is satisfied by a final written decision from a Public Utility Commission, cooperative board, or other governing body with sufficient authority that financially authorizes the facility.	Yes	No	Yes

(3) *Facility category specific document*. The application must include the following documents for the applicable facility category:

Table 3

Document Requirement	Category 1	Category 2	Category 3	Category 4
Documentation demonstrating property will be installed on an eligible residential building.	No	No	Yes	No
Draft Benefits Sharing Statement.	No	No	Yes	No

[2] *As defined in § 1.48(e)-1(i)(2)(iii), for the purposes of the Program, a qualified solar or wind facility is front of the meter (FTM) if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, FTM is defined as a facility that is not BTM. For the purposes of Category 4, a qualified solar or wind facility is also FTM if 50 percent or more of its electricity generation on an annual basis is physically exported to the broader electricity grid.*

[3] *As defined in § 1.48(e)-1(i)(2)(i), a qualified wind or solar facility is behind the meter (BTM) if (1) it is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located, (2) it is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid), and its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located.*

[4] *If the applicant is not a party named in the contract, the applicant must provide with the applicable contract a statement explaining why the applicant is not named in the contract and the relationship between the appropriate entity named in the contract and the applicant—the latter of which must be the owner of the facility to be eligible to apply for an allocation of Capacity Limitation.*

[5] *If an affidavit is provided, it must be signed by an individual with authority to bind the applicant.*

.06 *Attestations*.

(1) *In general*. Each applicant must make the required attestations as specified in sections 7.06(2) and 7.06(3) of this revenue procedure. The attestations in sections 7.06(2) and 7.06(3) are included as part of the application in the Portal. An applicant will be unable to submit their application if any required attestations are not completed.

(2) *For all facilities*. As specified below in Table 4, the following attestations are required for each facility for which an application is submitted:

Table 4

Attestation Requirement	FTM	BTM <= 1 MW AC	BTM > 1 MW AC
I attest that the qualifying facility has site control of the real property on which the facility will be installed and placed in service through ownership of the real property, an executed lease for the real property, or a site access agreement or similar agreement between the real property owner and the applicant.	Yes	No	No
For a facility on lands under 25 U.S.C. 3501(2)(A)-(C) (Indian Land), I attest that I have obtained the applicable approval of the Tribal government or Alaska Native Corporation landowner. For a facility not on Indian Land, complete this attestation to attest that the facility is not on Indian Land.	Yes	Yes	Yes
I attest that the qualifying facility has obtained all applicable federal, state, tribal, and local non-ministerial permits for the facility, or that the facility is not required to obtain such permits.[5]	Yes	Yes	Yes
I attest that when performing the activities that support this application, I was, or will be, in compliance with all relevant federal, state, and local laws, including consumer protection provisions, and safety obligations, and that the applicant did not and will not engage in any unfair or deceptive acts or practices.	Yes	Yes	Yes
I attest that the qualified facility is sized, or that customer/offtaker subscriptions will be sized, to meet the customer's energy needs, considering historical customer load and/or reasonable future load projections, and is in accordance with applicable state and local requirements.	Yes	Yes	Yes
I attest that the proposed location of the facility has been determined suitable for installation.	Yes	Yes	Yes
I attest that I reasonably believe the qualifying facility meets the statutory definition of a single "qualified solar and wind facility" (§ 48(e)(2)(A) and, if applicable, multiple solar or wind energy properties or facilities that are operated as part of a single project (consistent with the single-project factors provided in section 7.01(2)(a) of Notice 2018–59, 2018–28 I.R.B. 196 or section 4.04(2) of Notice 2013–29, 2013–20 I.R.B. 1085) are aggregated and treated as a single facility.	Yes	Yes	Yes
I attest that the qualifying facility has not been placed in service at the time of this submission and will not be placed in service prior to being awarded an allocation of Capacity Limitation.	Yes	Yes	Yes

[6] *Non-ministerial permits are permits in which one or more officials or agencies consider various factors and exercise some discretion in deciding whether to issue or deny permits. This does not include ministerial permits based upon a determination that the request complies with established standards such as electrical or building permits. Non-ministerial permits typically come with conditions and usually require public notice or hearings. Examples of non-ministerial permits include local planning board authorization, conditional use permits, variances, and special orders.*

(3) *Facility and category specific attestations*. The application must include the following attestations for the applicable facility category:

Table 5

Attestation Requirement	Category 1	Category 2	Category 3	Category 4
Facility location is eligible.[6]	Yes	Yes	No	No
I attest that any end-use customer(s)/offtaker(s) of the qualifying facility have and/or will receive consumer disclosures informing them of their legal rights and protections prior to executing a contract to subscribe or purchase power from the facility or lease a facility.	Yes	Yes	Yes	Yes
I attest that at least 50% of the qualifying facility's total kW output will be assigned to qualified low-income households (defined under § 48(e)(2)(C)(i) or (ii)) at a minimum 20% bill credit discount rate, defined as the difference between the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on their utility bill) and the cost of participating in the program (including subscription payments for renewable energy and any other fees or charges), expressed as a percentage of the financial benefit provided to the low-income household.	No	No	No	Yes

.07 *Ownership Criteria documentation and attestation*. In addition to the information, documentation, and attestations required above, any applicant purporting to meet the Additional Selection Criteria for Ownership Criteria, as described under § 1.48(e)-1(h)(2), must submit with their application the documentation specified below to demonstrate that they meet the Ownership Criteria.

(1) *Tribal Enterprise*. An applicant claiming to be a Tribal Enterprise must provide proof of inclusion of its Indian Tribal government (Tribal government) owner on the current list of Tribal entities recognized and eligible for funding and services by the Bureau of Indian Affairs (BIA).

(2) *Alaska Native Corporation*. An applicant claiming to be an Alaska Native Corporation (ANC) must provide a copy of the relevant portions of the ANC's articles of incorporation and bylaws (and any relevant amendments), including the first page with the title of the document and, if applicable, the signature pages.

(3) *Renewable Energy Cooperative*. An applicant that claims to be a Renewable Energy Cooperative, as described under § 1.48(e)-1(h)(2)(v), must provide a copy of its articles of incorporation and bylaws. The applicant must highlight the relevant language in these documents that demonstrates the entity meets either the consumer/purchasing cooperative requirements under § 1.48(e)-1(h)(2)(v)(A) or is a worker cooperative controlled by its worker-members with each member having an equal voting right as described under § 1.48(e)-1(h)(2)(v)(B).

(4) *Qualified Renewable Energy Company*. Applicants claiming to be a qualified renewable energy company (QREC), as described in § 1.48(e)-1(h)(2)(vi), must provide documentation to support each of the below requirements in a single package upload.

(a) *Statement of business purpose attestation*. The applicant must submit the following attestation: "*I declare that the business purpose of this organization is to serve low-income communities and provide pathways for the adoption of clean energy by low-income households, as required under § 1.48(e)-1(h)(2)(vi).*" This attestation must be signed by the applicant and uploaded as an Additional Selection Criteria Ownership Criteria document in the Portal.

(b) *At least 51 percent ownership requirement*. The applicant must provide documentation which demonstrates that the applicant entity meets the at least 51 percent ownership requirements under § 1.48(e)-1(h)(2)(vi)(A)-(F).

(i) For applicants whose equity interests are at least 51 percent owned and controlled by one or more individuals, the applicant must provide a list of all individuals with an equity interest in the entity and specify for each individual the percentage of their ownership interest in the applicant entity.

(ii) For applicants whose equity interests are at least 51 percent owned and controlled by a Community Development Corporation (CDC), the applicant must submit (1) a copy of the award letter, or other communication, from the Department of Housing and Urban Development (HUD) demonstrating that the CDC which owns and controls the applicant has received financial assistance under HUD's Urban and Rural Special Impact Programs

[7] *For Category 1, the applicant must attest that the facility will be located in a low-income community, as defined in the Final Regulations for the Program, specifically § 1.48(e)-1. A map that captures applicable census tracts will be available in DOE's publicly available written procedures to assist applicants. For Category 2, the applicant must attest that the facility will be located on Indian Land as defined in § 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).*

(42 U.S.C. 9806); and (2) documentation showing the CDC owns and controls the applicant entity.

(iii) For applicants whose equity interests are at least 51 percent owned and controlled by an agricultural or horticultural cooperative, documentation demonstrating that the applicant entity is at last 51 percent owned and controlled by an agricultural or horticultural cooperative,

(iv) For applicants whose equity interests are at least 51 percent owned and controlled by a Tribal government, the applicant entity must provide (1) documentation that its Tribal government owner is on the current list of Tribal entities recognized and eligible for funding and services by the BIA; and (2) documentation showing the Tribal government owns and controls the applicant entity.

(v) For applicants whose equity interests are at least 51 percent owned and controlled by an ANC, the applicant must provide (1) a copy of the ANC's Articles of Incorporation and bylaws (including any amendments); and (2) documentation showing the ANC owns and controls the applicant entity.

(vi) For applicants whose equity interests are at least 51 percent owned and controlled by a Native Hawaiian organization (NHO), the applicant must provide (1) documentation which demonstrates the legal status of the NHO; and (2) documentation showing the NHO owns and controls the applicant entity.

(c) *Employment and gross receipts*. The applicant entity must provide documentation that demonstrates it meets the employment and gross receipts requirements under § 1.48(e)-1(h)(2)(vi)(G). To demonstrate this, the applicant entity must provide the following documentation:

(i) A list of all current employees of the applicant, indicating the number of full-time and full-time equivalent employees, as provided in § 1.48(e)-1(h)(2)(vi)(G).

(ii) A copy of a federal tax filing for the previous tax year listing the applicant entity's gross receipts.

(iii) Either a statement providing that the applicant does not have any affiliates or, if the applicant has affiliates, a summary list of each affiliate entity of the applicant and a list of all current employees of affiliates, indicating the number of full-time and full-time equivalent employees, as provided in § 1.48(e)-1(h)(2)(vi)(G), and a list of affiliate entity gross receipts from the previous taxable year, broken down by each affiliate entity.

(d) *Installation, operation, or services requirement*. The applicant entity must provide documentation to demonstrate the applicant meets the requirements of § 1.48(e)-1(h)(2)(vi)(H) or (I).

(i) To demonstrate that the applicant meets the requirements of § 1.48(e)-1(h)(2)(vi)(H), the applicant must provide (1) documentation indicating the QREC has been in existence and operating for at least two years; and (2) an executed (by each party) contract, in its entirety (including any amendments, appendices, consumer disclosures, and schedules, and dated at least two years prior to the date of application to this Program), to install and/or operate a qualified facility as defined in § 48(e)(2)(A).

(ii) To demonstrate that the applicant meets the requirements of § 1.48(e)-1(h)(2)(vi)(I), the applicant must provide a list of all qualified solar or wind facilities, as defined in § 48(e)(2)(A), to which the applicant has provided services in eligible low-income communities, the geographic coordinates of each facility, and the nameplate capacity of each facility. For any selection of the facilities in the list which cumulatively amount to at least 100 kW in nameplate capacity, the applicant must provide executed contracts (in their entirety, inclusive of any amendments, appendices, consumer disclosures, and schedules) to install and/or operate the facility.

(5) *Qualified tax-exempt entity*. An applicant claiming to be a qualified tax-exempt entity described in § 1.48(e)-1(h)(2)(vii) must provide documentation supporting its claim as described below.

(a) An applicant claiming to be described in § 501(c)(3), § 501(c)(12), or § 501(d) must provide the following:

(i) If its exempt status is currently recognized by the IRS, proof of listing in IRS Pub. 78, *Cumulative List of Organizations Described in § 170(c)* (see the "Tax Exempt Organization Search" page on the IRS website), or in the Exempt Organizations Business Master File Extract (also available on the IRS website), such as a screenshot within the last 30 days, or, if issued within the last 12 months, a copy of its IRS determination letter or a letter from the IRS affirming its exempt status. *See* Pub. 4573, *Group Exemptions*, for information on group exemptions and returns.

(ii) If its exempt status has never been recognized by the IRS, a copy of its annual information return or notice under § 6033 filed within the last two years (if it has so filed). Section 501(c)(3) and 501(c)(12) organizations file a Form 990-series return or notice such as Form 990, *Return of Organization Exempt from Tax*. Section 501(d) organizations file Form 1065, *U.S. Return of Partnership Income.*

(iii) If an applicant's exempt status has never been recognized by the IRS and it has not filed an annual information return or notice within the last two years, the applicant must provide other documentation demonstrating that it is described in § 501(c)(3), § 501(c)(12), or § 501(d) (such as its governing documents) and demonstrating that it is currently excepted from, or otherwise in compliance with, its exemption application requirements and information return filing requirements, unless it is a church or a convention or association of churches described in § 170(b)(1)(A)(i), in which case it may submit the following attestation, uploaded by the applicant in the Portal, signed by a person authorized to bind the entity: "*Solely for purposes of the § 48(e) credit, I certify that Entity is a church or a convention or association of churches described in § 170(b)(1)(A)(i). I further certify that I am an officer of the Entity and that I am duly authorized to sign this statement on behalf of the Entity.*"

(iv) An applicant described in § 501(c)(12) must also demonstrate that it is a corporation that operates on a cooperative basis and explain, in a statement uploaded by the applicant in the Portal, the extent to which it is engaged in furnishing electric energy to persons in rural areas.

(b) An applicant claiming to be a State, the District of Columbia, a Tribal government (as defined in § 30D(g)(9)[8]), a politi-

[8] *For a general discussion of Tribal governments and their subdivisions, see Section 5.12 of Rev. Proc. 2024-1, 2024-1 IRB 1, and § 7871.*

cal subdivision of any of the foregoing,[9] or an agency or instrumentality of any of the foregoing,[10] must provide the following:

(i) A private letter ruling issued by the IRS ruling on its status, if any, or

(ii) An attestation signed under penalties of perjury, by a person authorized to bind the applicant, certifying that, to the best of the person's knowledge and belief, that the entity is a State, the District of Columbia, a Tribal government, a political subdivision of any of the foregoing, or an agency or instrumentality of any of the foregoing, and acknowledging that this representation is not for the purpose of examination or inspection within the meaning of IRC § 7605(b). The attestation must be uploaded as part of the application in the Portal by the applicant. In addition to the acknowledgment described above, the attestation must include the following statement: "*Solely for purposes of the § 48(e) credit, the applicant qualifies as a [insert the entity type as described above in this section].*"

(iii) In the case of an applicant claiming to be a Tribal government, a subdivision of a Tribal government, or an agency or instrumentality of any of the foregoing, proof that the Tribe is on the current list of Tribal entities recognized and eligible for funding and services published by the BIA, available on the BIA website.

(6) *Qualifying entity in a partnership*. If an applicant does not itself meet the Ownership Criteria described in § 1.48(e)-1(h)(2), but the applicant is an entity treated as a partnership for federal income tax purposes, and an entity described in § 1.48(e)-1(h)(2) and section 7.07 of this revenue procedure (that is, an entity that meets the Ownership Criteria) owns at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the qualified solar or wind facility owned by the applicant will be deemed to meet the Ownership Criteria. In addition to providing the documentation described in section 7.07 of this revenue procedure with respect to the relevant partner meeting the requirements of § 1.48(e)-1(h)(2) (that is, the partner which the applicant is claiming meets the Ownership Criteria), the applicant must also submit documentation to demonstrate that the requirements described in § 1.48(e)-1(h)(2)(ii)(B) are satisfied if the applicant is claiming to meet the Ownership Criteria based on this provision.

.08 *Geographic Criteria attestation*. If the applicant claims that it meets the Additional Selection Criteria for Geographic Criteria described in § 1.48(e)-1(h)(3) with respect to Categories 1, 3, or 4, it must provide an attestation that the qualifying facility will be located in a Persistent Poverty County (PPC) or in a census tract that is designated as disadvantaged in the Climate and Economic Justice Screening Tool (CEJST) as defined in § 1.48(e)-1(h)(3).[11]

SECTION 8. REVIEW AND SELECTION PROCESS

.01 *In general*. DOE will review applications for the Program and provide a recommendation to the IRS regarding whether to award an applicant an amount of Capacity Limitation with respect to a facility. Based on DOE's recommendation, the IRS will award the applicant a Capacity Limitation allocation or reject the application.

.02 *Order of application review and recommendation for allocation*.

(1) *First 30 days*. When the application period opens for the 2024 Program year, there will be a 30-day period during which applications will initially be accepted for each facility category. All applications submitted within the first 30-days will be treated as submitted on the same date and at the same time. DOE will publicly announce on the Program Homepage the opening and closing dates of the 30-day period. All applications submitted by 11:59 PM ET on the closing date will be considered submitted during the initial 30-day period. Refer to section 8.02(3) of this revenue procedure for information regarding the lottery for applications submitted during the first 30 days in oversubscribed facility categories or Category 1 sub-reservations.

(2) *Applications submitted after the 30-day period*. Following the 30-day period, DOE will continue to accept applications until the close of the 2024 Program year application period. Provided there is remaining Capacity Limitation in a facility category or Category 1 sub-reservation, DOE will review applications submitted in those facility categories or Category 1 sub-reservation after the 30-day period. Within each facility category or Category 1 sub-reservation, DOE will make recommendations for an allocation of Capacity Limitation with respect to applications submitted after the close of the 30-day period in the order in which applications are received in a particular facility category or Category 1 sub-reservation. The IRS will award Capacity Limitation allocations in the order that it receives recommendations from DOE.

(3) *Lottery for applications submitted during the 30-day period*. For oversubscribed facility categories and Category 1 sub-reservations, DOE will conduct a lottery at the end of the 30-day period described in section 8.02(1) of this revenue procedure for applications submitted during that period. The lottery is conducted prior to application review. Lottery scores will be used to determine which qualified facilities are eligible for a recommendation for an allocation of Capacity Limitation if a facility category or Category 1 sub-reservation is oversubscribed. Refer to section 8.03(2) of this revenue procedure for information regarding how applications meeting Additional Selection Criteria are prioritized over other applications. Regardless of an application's lottery score, a facility will not receive a recommendation for an allocation of Capacity Limitation if the facility and the application with respect to that facility

[9] *For a general discussion of political subdivisions of States, see Rev. Rul. 77-164, 1977-1 C.B. 20, Rev. Rul. 78-276, 1978-2 C.B. 256, and Rev. Rul. 83-131, 1983-2 C.B. 184.*

[10] *For a general discussion of agencies and instrumentalities of governments, see Rev. Rul. 57-128, 1957-1 C.B. 311, Rose v. Long Island Railroad Pension Plan, 828 F.2d 910, 918 (2d Cir. 1987), cert. denied, 485 U.S. 936 (1988), and Bernini v. Federal Reserve Bank of St. Louis, Eighth District, 420 F. Supp. 2d 1021 (E.D. Mo. 2005).*

[11] *Maps that capture applicable census tracts are available in DOE's publicly available written procedures to assist applicants.*

do not meet the requirements of the Final Regulations and this revenue procedure.

(4) *Close of program year*. After the IRS awards all the Capacity Limitation within each facility category or Category 1 sub-reservation, or the 2024 Program year is closed, DOE will cease review of any remaining applications. At the end of the 2024 Program year, no further action will be taken on applications submitted but not awarded an allocation. DOE will publicly announce on the Program Homepage when the 2024 Program year closes.

.03 *Processing Additional Selection Criteria applications*.

(1) *In general*. Fifty percent of the Capacity Limitation in each facility category will be reserved for qualified solar or wind facilities meeting the Ownership Criteria described in § 1.48(e)-1(h)(2) and the Geographic Criteria described in § 1.48(e)-1(h)(3). This reservation will remain beyond the initial 30-day period described in section 8.02(1) of this revenue procedure. However, as described in § 1.48(e)-1(h)(1), the Treasury Department and the IRS may later decide to reallocate reserved capacity across facility categories and Category 1 sub-reservations in the event one facility category or Category 1 sub-reservation is oversubscribed and another has excess capacity. Allocations for facilities meeting one or more of the Additional Selection Criteria will be made from the 50-percent reserve for such facilities before additional amounts reserved for a facility category are allocated to facilities meeting these criteria. If the 50-percent reserve is depleted, however, applications meeting the Additional Selection Criteria submitted during the initial 30-day period are prioritized with respect to all available Capacity Limitation in each facility category or Category 1 sub-reservation as provided in section 8.03(2) of this revenue procedure.

(2) *Review of Additional Selection Criteria applications*. If a facility category or Category 1 sub-reservation is oversubscribed at the end of the 30-day period, applications purporting to meet one or more Additional Selection Criteria are included in the lottery (described in section 8.02(3) of this revenue procedure) with non-Additional Selection Criteria applications for that oversubscribed Category or Category 1 sub-reservation. However, applications purporting to meet one or more Additional Selection Criteria as a group will be prioritized for an allocation over non-Additional Selection Criteria applications within the same facility category or Category 1 sub-reservation. DOE will use lottery scores to determine which qualified facilities are eligible for a recommendation for an allocation of Capacity Limitation if a facility category or Category 1 sub-reservation is oversubscribed. If the eligible applications for Capacity Limitation for facilities that meet at least one of the two Additional Selection Criteria exceed the Capacity Limitation for a facility category or Category 1 sub-reservation, applications purporting to meet both of the Additional Selection Criteria receive a higher score so that they are prioritized over other applications within each facility category or Category 1 sub-reservation. If upon DOE review it is determined that an application does not meet one or both Additional Selection Criteria purported in the application, then the application's score may be reduced resulting in a change to the application's priority status.

.04 *Cure period for application defects*.

(1) *In general*. If the assigned DOE reviewer identifies a defect with a submitted application, such as missing or incorrect information or documentation, DOE will contact the applicant via the Portal. The reviewer will request that the applicant submit additional information or documentation to correct or complete the application via the Portal.

(2) *Timing for applicant response*. An applicant that is contacted by a DOE reviewer to submit additional information or documentation or provide corrected information will have 12 business days (12-business day cure period) to respond and provide such requested information or documentation.

(3) *Consequences for failure to respond or provide information*. If an applicant fails to respond and provide the requested information or documentation within the 12 business-day cure period, DOE will cease review and mark the application as withdrawn. The applicant may create and submit a new application for review, at a later date, if the facility remains eligible and the Program is still accepting applications.

SECTION 9. NOTIFICATION OF ALLOCATION DECISION FROM IRS

.01 *In general*. The IRS will send final decision letters through the Portal to inform applicants of the outcome of the application process. For any applicant that receives an award of Capacity Limitation, the letter will state the amount of the allocated Capacity Limitation.

.02 *Allocation amount*. The Capacity Limitation allocated to a facility will be determined based on the nameplate capacity of the facility as stated in the application. The Capacity Limitation allocation will be provided in direct current. For wind facilities, alternating current will be treated as equivalent to direct current for purposes of determining the amount of a Capacity Limitation allocation. The facility that receives the final allocation of Capacity Limitation in each facility category or Category 1 sub-reservation may receive an allocation less than its nameplate capacity.

SECTION 10. PLACED IN SERVICE

.01 *In general*. To satisfy the requirements of § 1.48(e)-1(k), for any facility that receives an allocation of Capacity Limitation, the owner of the facility must report to DOE through the Portal the date the facility was placed in service.

.02 *Documentation and attestation requirements*. To satisfy the requirements of § 1.48(e)-1(k), the owner must provide the following through the Portal:

(1) A Permission to Operate (PTO) letter (or commissioning report for off-grid facilities) confirming that the facility has been placed in service and the location of the facility being placed in service;

(2) A Final, Professional Engineer (PE) stamped (if required by applicable state or local law) as-built design plan, PTO letter with nameplate capacity listed, or other documentation from an unrelated party verifying as-built nameplate capacity;

(3) For Category 3 Facilities, a Benefits Sharing Statement as defined in § 1.48(e)-1(e)(6) demonstrating that the financial benefits requirements will be met based on the expected annual energy produced by the as-built facility at placed in service;

(4) For Category 4 Facilities, a final list of low-income households served with name, address, subscription share, and the income verification method used. Alternatively, if financial benefits are delivered through a utility or government body where the utility or government body cannot provide a final list of low-income households served with all relevant details, documentation issued from the participating utility or government body (for example, a Public Utility Commission, state energy office, or Tribal government) or the program administrator acting on behalf of the utility or government body that confirms that the facility is participating in a low-income program that ensures that at least fifty percent of the facility's total output is assigned to qualifying low-income households under § 48(e)(2)(C)(i) or (ii) (Qualifying Household). If documentation is submitted from the participating utility, government body, or program administrator, the documentation must also include additional information, such as a copy of the relevant statute or regulatory order, that confirms that the low-income program in which the facility is participating requires the facility to serve multiple Qualifying Households; and

(5) For Category 4 Facilities, a spreadsheet demonstrating the expected financial benefit to low-income subscribers to demonstrate the 20 percent bill credit discount rate.

(6) An attestation confirming that a disqualification event under § 1.48(e)-1(m)(1) through (5) has not occurred.

(7) An attestation stating that the person submitting the information and documentation at placed in service is authorized to legally bind the owner, and that, under penalties of perjury, they have examined the submission, including any accompanying documents, and that, to the best of their knowledge and belief, all of the facts contained therein are true, correct, and complete.

SECTION 11. EFFECT OF ALLOCATION OR OTHER NOTIFICATION

A Capacity Limitation allocation or a notification that a facility has met the eligibility requirements under the Program at the time the facility is placed in service is not a final determination that property is eligible for an increased credit under § 48(e). The IRS may, upon examination, determine that property does not qualify for the increased credit.

SECTION 12. CLAIMING THE ENERGY PERCENTAGE INCREASE

.01 *In general*. After the facility is placed in service, and the owner submits the additional documentation and attestations described in § 1.48(e)-1(k) and section 10 of this revenue procedure, the owner is notified that it (or the applicable partners or shareholders in the case of a partnership or an S corporation) may claim the energy percentage increase on Form 3468, *Investment Credit* (or successor form) or Form 3800, *General Business Credit* (or successor form), if eligible, make an elective payment election under § 6417, or, if eligible, make a transfer election under § 6418.

.02 *Reduction in Increased Energy Percentage*. In cases where the facility size is larger than the allocated capacity when placed in service (but still below 5 MW AC), the 10 percentage or 20 percentage point increase will be reduced by a reduction factor which is calculated by the amount of Capacity Limitation allocated (kW) divided by the total nameplate capacity installed (kW) at the time the owner of the facility claims the energy percentage increase under § 48(e). See § 48(e)(1)(B).

SECTION 13. SUCCESSOR IN INTEREST

.01 *In general*. Except as otherwise provided in this section 13, a Capacity Limitation allocation award applies only to the taxpayer who applied for and received an allocation award for the facility the taxpayer owns. If a taxpayer wants to request a transfer of an allocation, it should refer to DOE's publicly available written procedures to initiate a transfer request in the Portal. Transfer requests will be reviewed and approved by the IRS. The IRS intends to provide future guidance regarding uninincorporated organizations that elect to be excluded from the application of subchapter K.

.02 *Additional Selection Criteria*. Applicants who received an allocation based on the Additional Selection Criteria should refer to § 1.48(e)-1(m)(5) regarding potential disqualification if the original applicant does not retain the requisite interest described in § 1.48(e)-1(m)(5) in an entity treated as a partnership for federal income tax purposes that owns the facility.

SECTION 14. EFFECT ON OTHER DOCUMENTS

Solely with respect to the 2024 Program year, this revenue procedure supersedes Rev. Proc. 2023-27.

SECTION 15. APPLICABILITY DATES

This revenue procedure applies to the 2024 Program year.

SECTION 16. PAPERWORK REDUCTION ACT

This revenue procedure is not creating a new collection of information as described by the Paperwork Reduction Act (44 U.S.C. 3507(d)). The collections of information contained within this revenue procedure, and their associated burdens, have been submitted to the Office of Management and Budget as part of TD 9979 and was approved under OMB Control Number 1545-2308.

SECTION 17. DRAFTING INFORMATION

The principal author of this revenue procedure is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this revenue procedure, call the energy security guidance contact number at (202) 317-5254 (not a toll-free number).

Part IV

Announcement and Report Concerning Advance Pricing Agreements

Announcement 2024-16

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2022 separately. This twenty-fifth report describes the experience, structure, and activities of the APMA Program during calendar year 2023. It does not provide guidance regarding the application of the arm's length standard.

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2023, including types of transactions covered, transfer pricing methods used, and completion time.

John M. Wall
Acting Director, APMA Program

Part I. The APMA Program – Structure, Composition, and Operation

[Pub. L. 106-170 § 521(b)(2)(A)]

In February 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations[1] within the Large Business and International Division of the IRS and combined with the U.S. Competent Authority staff responsible for transfer pricing cases, thereby forming the APMA Program (APMA).

As of December 31, 2023, APMA's APA cases were handled by 70 team leaders, 29 economists, 12 managers, and 3 assistant directors.[2] Each assistant director oversees four managers who lead teams consisting of both team leaders and economists. APMA's main office is in Washington, DC, and it also has offices in northern California, southern California, and the Atlanta, Boston, Chicago, Denver, Miami, New York, and Seattle metropolitan areas.

On August 31, 2015, the current revenue procedure governing APA applications was published in 2015-35 I.R.B. on page 263. Revenue Procedure (Rev. Proc.) 2015-41 provides guidance, information and instructions on APA requests and the administration of APAs. Rev. Proc. 2015-41 updates and supersedes Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded.

The model for APAs covered by Rev. Proc. 2006-9 was updated to serve as the current model APA for APAs covered by Rev. Proc. 2015-41. The model APA is included as Appendix 1 to this report. A list of primary APMA contacts is available at https://www.irs.gov/businesses/corporations/apma-contacts.

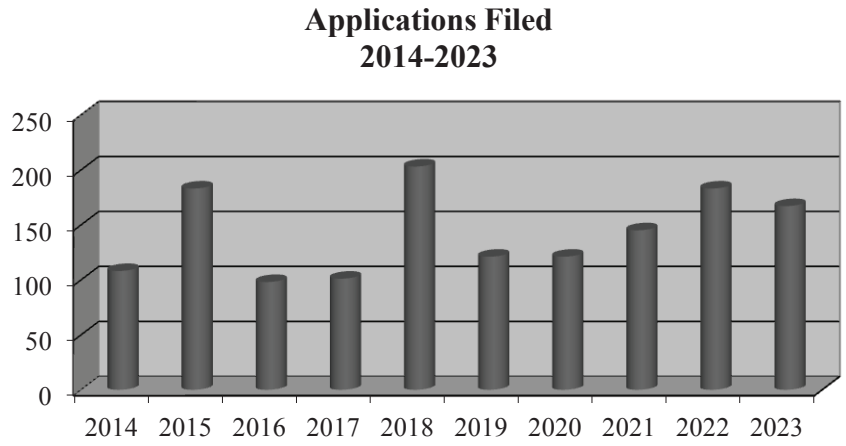
[1] In 2017, Transfer Pricing Operations became Treaty & Transfer Pricing Operations ("TTPO").

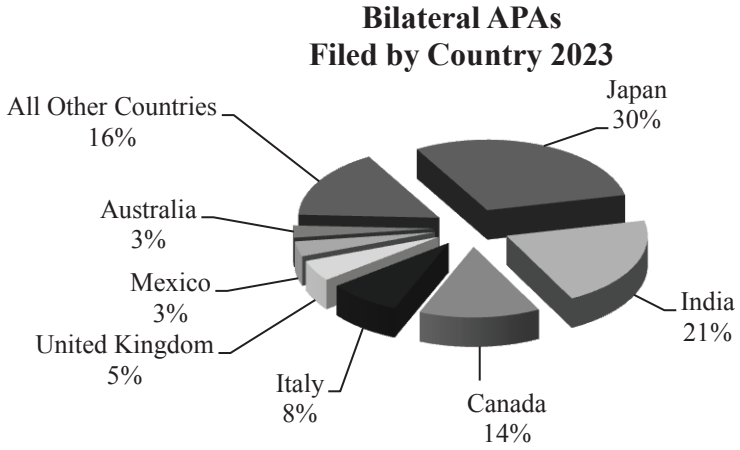
[2] In late 2020, TTPO's Treaty Assistance and Interpretation Team (TAIT) joined APMA, bringing the total number of groups in APMA to four. The three legacy APMA groups have primary responsibility for cases arising under the business profits and associated enterprises articles of U.S. tax treaties. TAIT endeavors to resolve competent authority issues arising under all other articles of U.S. tax treaties including issues arising under U.S. tax treaties relating to estate and gift taxes. As such, TAIT is separate from APMA's APA program, and the total numbers of team leaders and managers handling APA cases do not include TAIT analysts and managers.

Part II. APMA Program Statistical Data
[Pub. L. 106-170 § 521(b)(2)(C)(i-viii)]

Table 1: APA Applications Filed
§ 521(b)(2)(C)(i)

	Unilateral	Bilateral	Multilateral	Total
Filed 1991-1999[3]				401
Filed 2000-2022	675	1,999	44	2,718
Filed in 2023	17	144	6	167
Total Filed 1991-2023				**3,286**



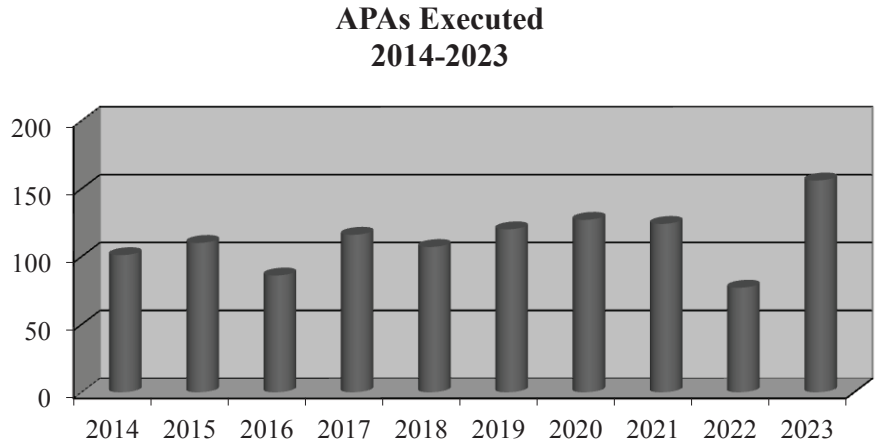


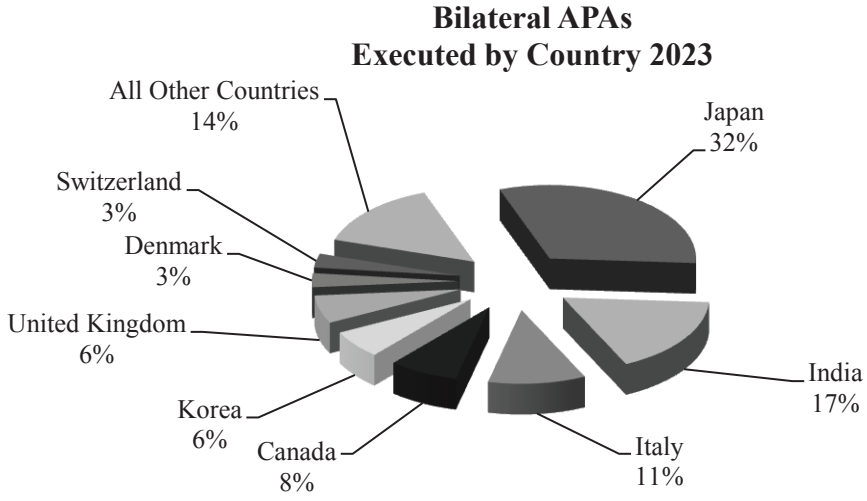
The charts above illustrate the number of complete applications filed per year and the percentage of bilateral requests received in 2023 per foreign country. As of December 31, 2023, APMA had also received 22 user fee filings that were not yet accompanied by a substantially complete APA application, in addition to the 167 complete APA applications.

3 The first APA Statutory Report, which compiled APA data from 1991-1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

Table 2: Executed[4] and Pending APAs
§ 521(b)(2)(C)(ii-vi)

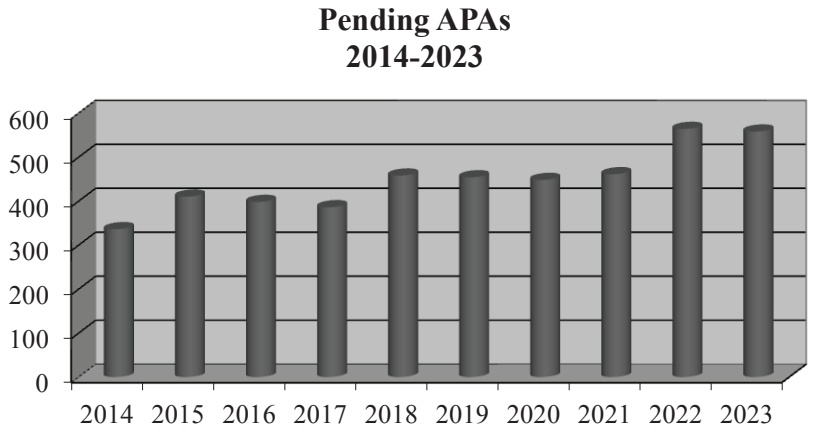
	Unilateral	Bilateral	Multilateral	**Total**
Total Executed 1991-2022	697	1,549	22	2,268
Total Executed in 2023	24	130	2	156
Total Executed 1991-2023	**721**	**1,679**	**24**	**2,424**
Total Pending as of 12/31/2023	**44**	**480**	**34**	**558**
Renewals Executed in 2023[5]	*15*	*59*	*0*	*74*
Renewals Pending[6] *as of 12/31/2023*	*33*	*199*	*20*	*252*

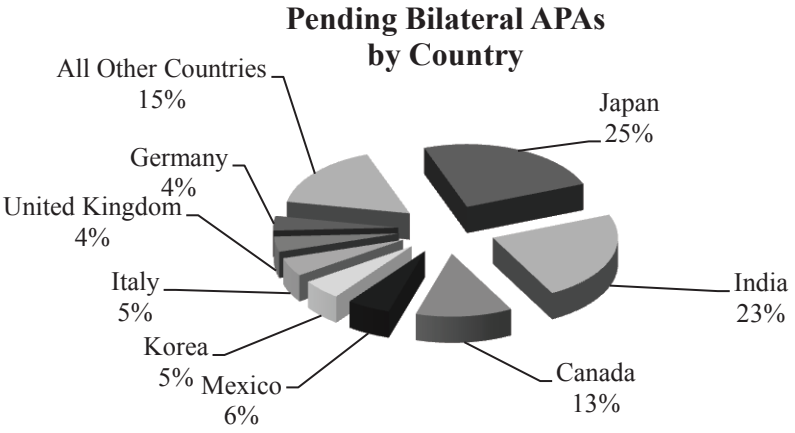




In 2023, the percentage of renewals executed decreased (47 percent of all APAs executed in 2023 versus 55 percent of all APAs executed in 2022). The charts above illustrate trends in the number of APAs executed per year and the countries involved in the bilateral APAs that were executed in 2023.

[4] "Executed APAs" refers to APAs that were finalized and includes both initial and renewal APAs.
[5] The number of renewals executed is included in the total number of APAs executed during the year.
[6] The number of renewals still pending as of year-end is also included in the total number of pending APAs.





As the top chart illustrates, the number of pending requests decreased slightly relative to December 31, 2022. As of December 31, 2023, almost half of the pending bilateral APA requests involved either Japan or India.

Table 3: APAs Revoked or Cancelled and Applications Withdrawn
§ 521(b)(2)(C)(vii)

	Unilateral	Bilateral	Multilateral	Total
Revoked or Cancelled 1991-2000[7]				1
Revoked or Cancelled 2001-2022	8	2	0	10
Revoked or Cancelled in 2023	0	0	0	0
Total Revoked or Cancelled 1991-2023				**11**
Withdrawn 1991-2000[8]				49
Withdrawn 2001-2022	76	157	2	235
Withdrawn in 2023	2	11	0	13
Withdrawn 1991-2023				**297**

[7] The first APA Statutory Report, which compiled APA data from 1991-1999, and the second APA Statutory Report, which compiled APA data for 2000, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.
[8] *See supra* note 7.

Table 4: APAs Executed in 2023 by Industry
§ 521(b)(2)(C)(viii)

Industry	
Manufacturing	48
Wholesale/Retail Trade	47
Services	26
Finance, Insurance and Real Estate	18
Management	10
All Other Industries	6

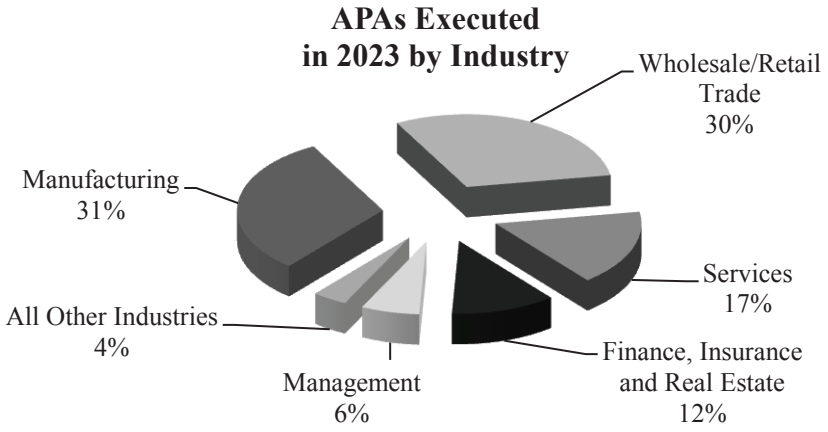
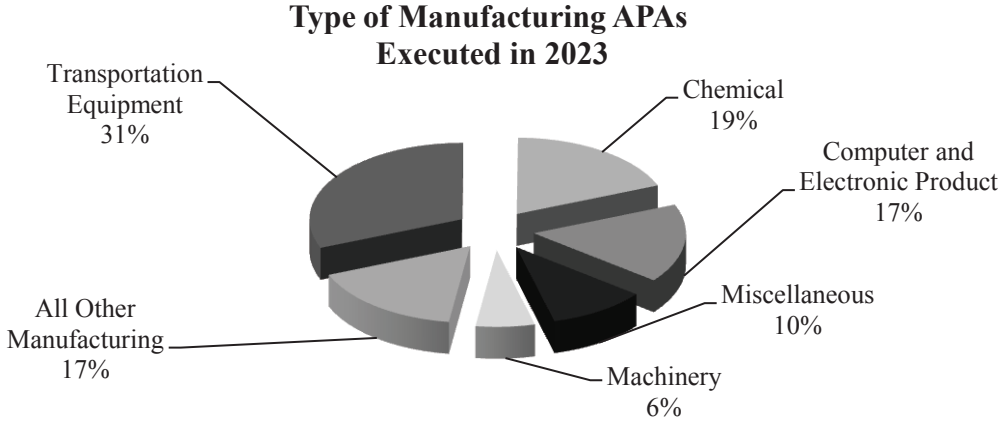


Table 4a: Manufacturing APAs Executed in 2023

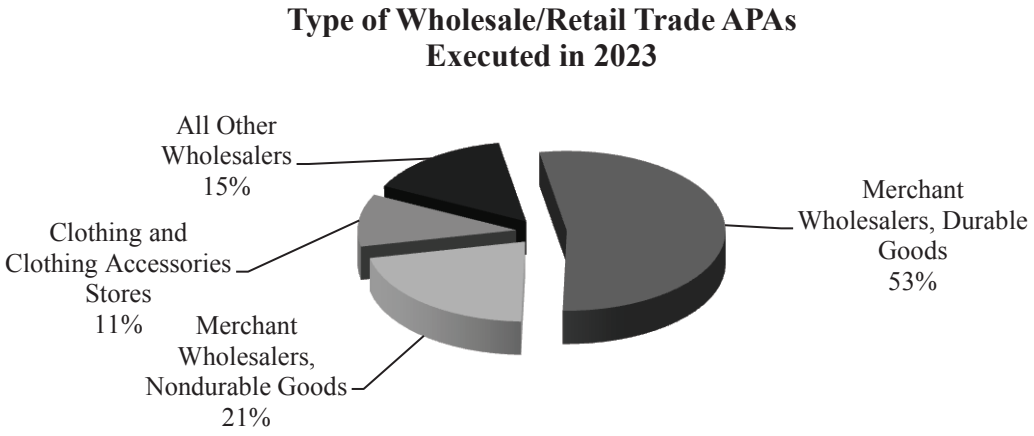
Type of Manufacturing	
Transportation Equipment	15
Chemical	9
Computer and Electronic Product	8
Miscellaneous[9]	5
Machinery	3
All Other Manufacturing	8



[9] Industries in the Miscellaneous Manufacturing subsector (NAICS Code 339) make a wide range of products that cannot readily be classified in specific NAICS manufacturing subsectors.

Table 4b: Wholesale/Retail Trade APAs Executed in 2023

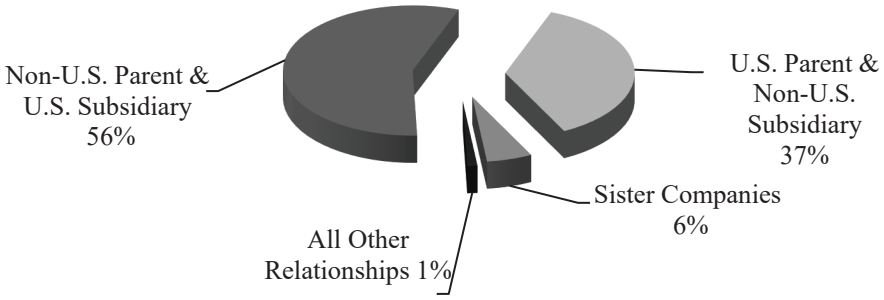
Type of Wholesale/Retail Trade	
Merchant Wholesalers, Durable Goods	25
Merchant Wholesalers, Nondurable Goods	10
Clothing and Clothing Accessories Stores	5
All Other Wholesalers	7



Part III. General Descriptions of APAs Executed in 2023
[Pub. L. 106-170 § 521(b)(2)(D) and (E)]

Nature of the Relationships
§ 521(b)(2)(D)(i)

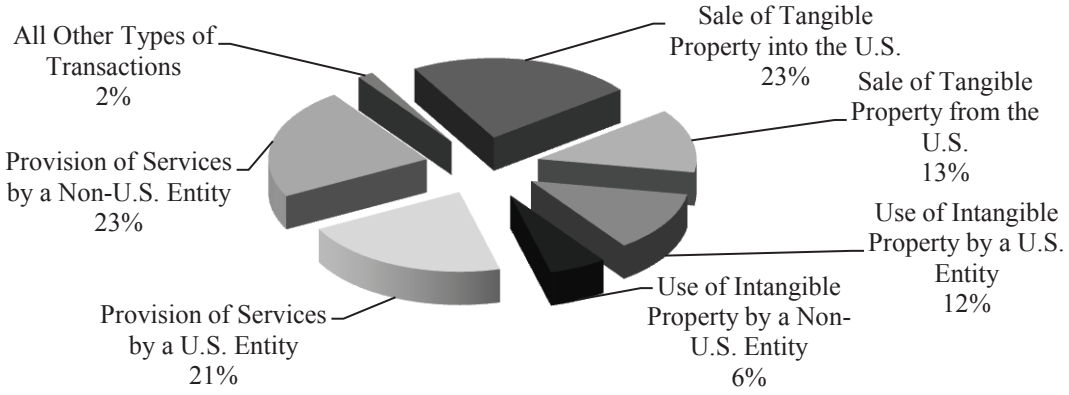
Relationships between Controlled Parties



As in prior years, more than half of the APAs executed in 2023 involved transactions between non-U.S. parents and U.S. subsidiaries.

Covered Transactions, Functions and Risks, and Tested Parties
§ 521(b)(2)(D)(ii-iii)

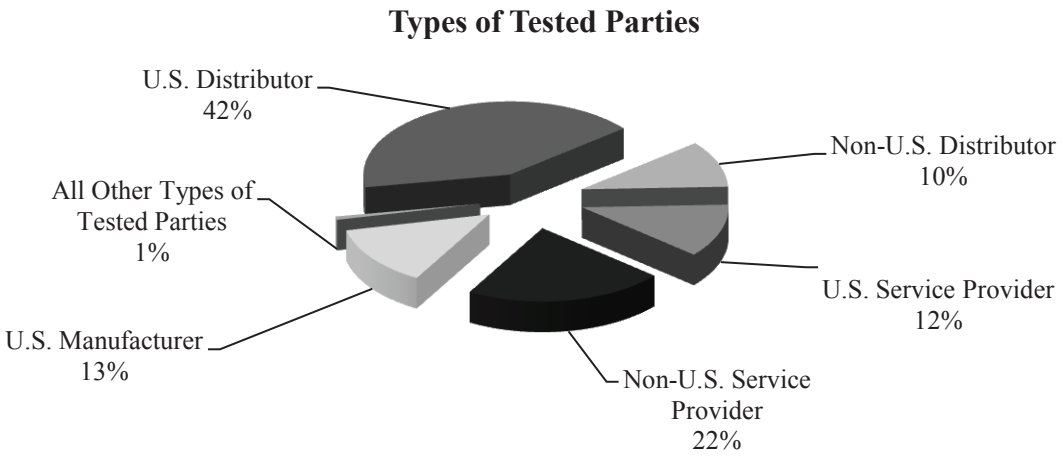
Types of Covered Transactions



Most of the transactions[10] covered in APAs executed in 2023 involve the sale of tangible goods or the provision of services. Eighteen percent of the transactions involve the use of intangible property, which can be among the most challenging transactions in APMA's inventory.

In the majority of APAs, the covered transactions involve numerous business functions and risks. For instance, with respect to functions, APAs involving manufactured products typically involve a controlled group that conducts research and development (R&D), engages in product design and engineering, manufactures the product, markets and distributes the product, and performs support functions such as legal, finance, and human resources. Regarding risks, the controlled group may assume a variety of risks, including market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process, a significant amount of time and effort is devoted to understanding how functions and risks are allocated among the controlled group of companies that are party to the covered transactions. For methods requiring the selection of a tested party, the tested party chosen generally will be the least complex of the controlled taxpayers.

[10] APAs often cover more than one type of transaction.



Consistent with prior years, a majority of tested parties[11] in 2023 were U.S. distributors, U.S. manufacturers, or U.S. service providers.

Transfer Pricing Methods Used
§ 521(b)(2)(D)(iv)

In 2023, the most commonly used transfer pricing method (TPM) for both the sale of tangible property and the use of intangible property continued to be the comparable profits method/transactional net margin method (CPM/TNMM). The CPM/TNMM was used for 80 percent of these types of transactions.

As in recent years, for covered transactions involving tangible and intangible property that used the CPM/TNMM, the operating margin (OM) is still the most common profit level indicator (PLI) used to benchmark results. It was used 60 percent of the time. Other PLIs, such as the Berry Ratio and return on total cost, made up the other 40 percent. As used here, "OM" is defined as the ratio of operating profit to sales,[12] and "Berry Ratio" is defined as the ratio of gross profit to operating expenses.[13] Most services transactions (86 percent) also used the CPM/TNMM with the OM and operating profit to operating expense being the most common PLIs (used 48 percent of the time).[14]

Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparables or Tested Party Data
§ 521(b)(2)(D)(v-vii)

For the APAs executed in 2023 that involved the CPM/TNMM with a North American tested party, the most widely used data source for comparables was Standard and Poor's Compustat/Capital IQ database. Different sources were used in other cases (e.g., where the tested party was not a North American entity or where transaction-based methods were applied). Other commonly used databases are listed in the table below.

Table 5: Sources of Comparable Data

Bureau van Dijk (BvD) Orbis	Capitaline TP
Global Vantage	RoyaltySource
ktMINE	RoyaltyStat
Ace TP	

In making comparability adjustments, typical balance sheet adjustments, as identified in Treas. Reg. §§ 1.482-1(d)(2) and 1.482-5(c)(2)(iv), were made in most cases, including, where appropriate, adjustments for payables, receivables, inventory, and fixed assets. In addition, where appropriate, adjustments for different accounting practices were made to convert from LIFO to FIFO inventory accounting, and a small number of cases involved the accounting reclassification of expenses, e.g., from COGS to operating expenses.

[11] Not all the executed APAs involve a tested party. Whether an APA involves a tested party would depend on the transfer pricing method used.
[12] *See* Treas. Reg. § 1.482-5(b)(4)(ii)(A).
[13] *See* Treas. Reg. § 1.482-5(b)(4)(ii)(B).
[14] The majority of APAs that covered services transactions also included tangible/intangible transactions, which were not tested under a separate PLI.

Ranges and Adjustment Mechanisms
§ 521(b)(2)(D)(viii-ix)

Most transactions covered in APAs target an interquartile range as described in Treas. Reg. § 1.482-1(e)(2)(iii)(C), a point within the interquartile range, or another targeted arm's length range. Where the transaction involves a royalty payment for the use of intangible property, both specific royalty rates and ranges have been used. Where the covered transaction is the sale or license of intangible property, and the payment for such transfer would be a royalty based solely on external comparable uncontrolled transactions, a secondary or confirming method, e.g., a test of the post-royalty operating margin or cost-plus mark-up, has sometimes also been used. The testing periods of the APAs executed in 2023 were either a single year, the term of the APA only, or the term of the APA plus rollback years.

APAs executed in 2023 included several mechanisms for making adjustments to the tested party's results when the results fall outside the agreed range or do not match the point required by the APA. Examples of the mechanisms used include an adjustment bringing the tested party's results for a single year to either the closer edge of the range or the median of the range, an adjustment to bring the results over the APA term to the closer edge of the range, or an adjustment to bring the results to a specified point or royalty rate.

Critical Assumptions
§ 521(b)(2)(D)(v)

The model APA used by the IRS (included as Appendix 1 of this report) includes standard critical assumptions that there will be no material changes to the taxpayer's business or to its tax or financial accounting practices during the APA term. Some bilateral cases have also included critical assumptions tied to the taxpayer's profitability in a certain year or over the term of the APA. Pursuant to § 7.06(3) of Rev. Proc. 2015-41, APMA will cancel an APA in the event of a failure of a critical assumption unless the parties agree to revise the APA.

Term Lengths of APAs Executed in 2023
§ 521(b)(2)(D)(x)

Table 6: Term Lengths of APAs Executed in 2023

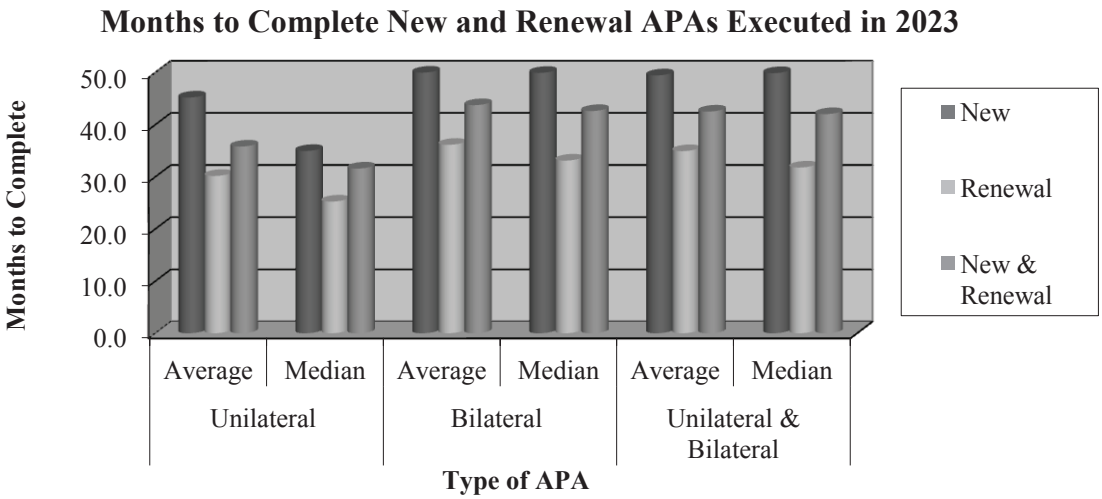
Term Length (years)	Number of APAs
2	9
3	5
4	5
5	70
6	20
7	31
8	6
9	5
10	2
11	1
14	2
Average	6

As described in § 3.03(1) of Rev. Proc. 2015-41, taxpayers should request an APA term that will cover at least five prospective taxable years and may also request that the APA be "rolled back" to cover one or more earlier taxable years, although the appropriate APA term is decided on a case-by-case basis. Of the APAs executed in 2023, 19 percent included rollback years. A substantial number of APAs with terms of greater than five years were submitted as a request for a five-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer's request) to ensure a reasonable amount of prospectivity in the APA term.

Amount of Time Taken to Complete New and Renewal APAs
§ 521(b)(2)(E)

Table 7: Months to Complete New and Renewal APAs Executed in 2023

	Unilateral		Bilateral		**Unilateral & Bilateral**	
	Average	Median	Average	Median	**Average**	**Median**
New	45.2	34.9	50.0	49.9	**49.4**	**49.9**
Renewal	30.2	25.2	36.1	33.1	**34.9**	**31.8**
New & Renewal	**35.8**	**31.6**	**43.7**	**42.6**	**42.5**	**42.0**



Median completion time decreased in 2023 to 42.0 months (from 43.4 months in 2022).

Efforts to Ensure Compliance with APAs
§ 521(b)(2)(F)

As described in § 7.02(1) of Rev. Proc. 2015-41, taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of their APAs. The filing and review of these annual reports are critical parts of the APA process. Through annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review also provides current information on the success or problems associated with the various TPMs adopted in the APA process.

Nature of Documentation Required in Annual Report
§ 521(b)(2)(D)(xi)

APAs require taxpayers to file timely and complete annual reports describing their operations and demonstrating compliance with the APA's terms and conditions. Not every annual report will include each of the items listed in Appendix C of the Model APA; items are required to be included where the facts demonstrate a need for such documentation. The requirements for the information to be included in a specific APA annual report is included in Appendix C of the executed APA.

Approaches for Sharing of Currency or Other Risks
§ 521(b)(2)(D)(xii)

In appropriate cases, APAs may provide specific approaches for dealing with risks, including currency risk, such as adjustment mechanisms and/or critical assumptions.

ADVANCE PRICING AGREEMENT

between

[*Insert Taxpayer's Name*]

and

THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [*Insert Taxpayer's Name*], EIN _____.

RECITALS

[*Insert Taxpayer Name*] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as "Taxpayer") and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer's principal place of business is [*City, State*]. [*Insert general description of Taxpayer and other relevant parties*].

This APA contains the Parties' agreement on the best method for determining arm's-length prices of the Covered Issues under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending _____ to _____, executed on _____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Issues.* This APA applies to the Covered Issues, as defined in Appendix A.

2. *Covered Methods.* Appendix A sets forth the Covered Methods for the Covered Issues.

3. *Term*. This APA applies to the APA Term, as defined in Appendix A.

4. *Operation.*

    a. Revenue Procedure 2015-41 governs the interpretation, legal effect, and administration of this APA.

    b. Nonfactual oral and written representations, within the meaning of sections 6.04 and 6.05 of Revenue Procedure 2015-41 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.

5. *Compliance.*

    a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer's timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA: (i) on a timely-filed U.S. Return, (ii) on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or (iii) by an alternative means (for example, by agreed adjustments with the IRS office with examination jurisdiction over the taxpayer for any APA year currently under examination).

b. *{Use or edit the following when U.S. Group or Foreign Group contains more than one member.}* [This APA addresses the arm's-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Issues. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]

c. The IRS will not reconsider any Covered Method but will instead limit any examination of Taxpayer's treatment of Covered Issues in their U.S. Return for any APA Year to, and may require that Taxpayer establish, the following: (i) Taxpayer's compliance with the terms and conditions of this APA, (ii) the accuracy of material representations included in APA annual reports submitted pursuant to this APA, and (iii) the correctness of the supporting data and computations used to apply the Covered Method. The IRS may audit and propose adjustments to Taxpayer's results as determined under this APA's Covered Method without affecting the APA's validity or applicability. Taxpayer may agree with the proposed adjustments in the same manner as any other adjustment, in which case the IRS will assess any resulting additional tax or refund any resulting overpayment of tax accordingly. If it does not agree with the proposed adjustment, Taxpayer may contest it through available administrative and judicial procedures. Taxpayer must include the audit adjustments as finally determined for the purpose of applying the Covered Method and must then make any resulting APA primary adjustments.

d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

   i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;

   ii. cancel or revoke this APA under section 7.06 of Revenue Procedure 2015-41; or

   iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report that includes a signed "penalties of perjury" declaration for each APA Year in accordance with Appendix C and section 7.02 of Revenue Procedure 2015-41. The Annual Report may be submitted only by electronic transmission pursuant to paragraph 15 and must include an image of an original signature or a digital signature that uses encryption techniques to provide proof of original and unmodified documentation. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer's U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer's Financial Statements present fairly, in all material respects, Taxpayer's financial position under applicable generally accepted accounting standards.

g. In accordance with section 7.04 of Revenue Procedure 2015-41, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 7.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Issues for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482-1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer's compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA's critical assumptions, within the meaning of Revenue Procedure 2015-41, section 1.04, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2015-41, section 7.06, governs.

7. *Disclosure.* An APA, any background information relating to the APA, and the taxpayer's APA request and any supplementary materials submitted in conjunction with the APA request are subject to various sections of the I.R.C. and U.S. competent authority treaty obligations as more fully explained in section 9 of Rev. Proc. 2015-41.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the IRS's Director, Treaty and Transfer Pricing Operations, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms "material" and "materially" will be interpreted consistently with the definition of "material facts" in Revenue Procedure 2015-41, section 7.06(4).

10. *Section Captions.* This APA's section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions*. Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties' agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties' intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2015-41 must be in writing. Taxpayer will send notices to the IRS at:

    Commissioner, Large Business and International Division
    Internal Revenue Service
    1111 Constitution Avenue, NW
    SE:LB:TTPO:APMA:K:APMA Director
    Washington, DC 20224
    (Attention: APMA)

    The IRS will send notices to the taxpayer at:

    Taxpayer Corporation
    Attn: Jane Doe, Sr. Vice President (Taxes)
    1000 Any Road
    Any City, USA 10000
    (phone: _____)

15. *Submission by electronic transmission.* The form of electronic document transmittal will be one of the three alternatives described below. Regardless of the transmittal mode, Taxpayer must contact APMA by email at lbi.ttpo.apma.feedback@irs.gov to initiate the mode.

    a. *Taxpayer-Licensed Secure Portal.* APMA prefers to send and receive documents to/from taxpayers through a taxpayer-licensed secure portal as this provides the highest degree of protection.

    b. *Email with encrypted attachments.* When secure portal mode is not selected, Taxpayer may send and receive documents to and from APMA by email. Before employing this document transmittal mode, an APMA employee will authenticate that Taxpayer initiated the mode at the email noted above. After authentication, Taxpayer must then submit consent to transmit encrypted documents by email in the following form:

    "I consent to receive encrypted documents by email from APMA employees for the duration of this APA/MAP request."

    c. Unencrypted email. Communication by unencrypted email is not secure, and therefore not encouraged. However, if Taxpayer chooses this mode, Taxpayer should:

    i. Exclude sensitive information, including portions of Taxpayer's TIN or name, from the subject line and body of emails.

ii. Transmit any potentially sensitive information, including personally identifiable information, only via encrypted, password-protected attachments.

The User Guide at Sign and Send Documents Electronically | Internal Revenue Service (irs.gov) contains additional information about encrypting files and sending documents to IRS by email.

16. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____ Date: _____, 202___
Jane Doe
Sr. Vice President (Taxes)

IRS
By: _____ Date: _____, 202___
John M. Wall
Acting Director, APMA Program

APPENDIX A

COVERED ISSUES AND COVERED METHOD

1. **Covered Issues.**
[Define the Covered Issues.]

2. **APA Term.**
This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).

3. **Covered Methods.**
{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

CUP Method

The covered method is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

CUT Method

The covered method is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____is between ____% and ___ % of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

Resale Price Method (RPM)

The covered method is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ____% and ___ %, and the Median of the Arm's Length Range is ___%.

Cost Plus Method

The covered method is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between ___% and___%, and the Median of the Arm's Length Range is___%.

CPM with Berry Ratio PLI

The covered method is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between ___ % and ___%, and the Median of the Arm's Length Range is ___%

CPM using an Operating Margin PLI

The covered method is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between ____% and ___ %, and the Median of the Arm's Length Range is ___.

CPM using a Three-year Rolling Average Operating Margin PLI

The covered method is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulations section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulations section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between ____% and ____%, and the Median of the Arm's Length Range is ___%.

Residual Profit Split Method

The covered method is the residual profit split method. [*Insert description of routine profit level determinations and residual profit-split mechanism*].

[*Insert additional provisions as needed.*]

4. Application of Covered Method.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Issues] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under applicable generally accepted accounting standards [*insert another relevant accounting standard if applicable*], with the following adjustments:

(a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited Financial Statements shall be treated as an operating expense]; and

(b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

5. Conforming Adjustments

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (an "APA primary adjustment", see Revenue Procedure 2015-41, section 7.01(1)), a conforming adjustment will be required as specified in Revenue Procedure 2015-41, section 7.01(2)(a). For this purpose, if there are multiple APA primary adjustments for an APA Year, those adjustments will first be netted to derive a net APA primary adjustment, for which a conforming adjustment will be required. In some cases, the conforming adjustment can be accomplished by a repatriation of funds as specified in Revenue Procedure 2015-41, section 7.01(2). Except as specified in this APA, conforming adjustments (including any repatriation of funds) are governed by the applicable rules under the I.R.C., including Rev. Proc. 99-32, 1992-2 C.B. 296, or successor guidance.

[*Per Revenue Procedure 2015-41, section 7.01(2)(d), the APA "will specify the terms of conforming adjustments, including, but not limited to, the terms of any repatriation of funds." Also, any deviation from the treatment under the Code (e.g., no interest on repatriation payments) must be specified in the APA, and must be pursuant to a competent authority resolution (see Revenue Procedure 2015-41, section 7.01(2)(b)).*]

APPENDIX B

CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Issues will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

   [*Insert additional provisions as needed.*]

APPENDIX C

APA RECORDS AND ANNUAL REPORT

APA Records

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

Annual Report

The Annual Report will include:

1. A properly completed APA Annual Report Summary in the form of Appendix E to this APA;

2. A table of contents, organized as follows; and

3. Statements that fully identify, describe, analyze, and explain:

    a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.

    b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in applicable generally accepted accounting standards (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.

    c. Any change to the Taxpayer notice information in paragraph 14 of this APA.

    d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.

    e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.

    f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Issues or is otherwise relevant to the covered method.

    g. The following regarding any APA primary adjustments made under Appendix A for the APA Year:

        i. The amounts of any APA primary adjustments;

        ii. The circumstances that led to such APA primary adjustments being necessary;

        iii. A calculation of the net APA primary adjustment as defined in Appendix A;

        iv. A complete description of the means by which the conforming adjustment (see Appendix A) is accomplished, including:

            A. a description of any accounts payable established in connection with a repatriation of funds pursuant to paragraph 5 of Appendix A and section 7.01(2) of Revenue Procedure 2015-41, including the entities involved and when the payables are established;

B. a description of any amounts paid or deemed paid (including amounts paid in satisfaction of such accounts payable), that specifies the entities involved, when the amounts are paid or deemed paid, and by what means any amounts are actually paid;

C. the character (such as capital, ordinary, income, expense, dividend, contribution to capital) and country source of any payments and deemed payments, and the specific affected line item(s) of any affected U.S. Return.

h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the covered method for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.

i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.

4. The Financial Statements, and any necessary account detail to show compliance with the covered method, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the covered method are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.

5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

6. A financial analysis that reflects Taxpayer's covered method calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the covered method.

7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Issues or are otherwise relevant to the covered method.

8. A copy of the APA and any amendment.

9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2015-41, section 7.02(8) and (9).

APPENDIX D

DEFINITIONS

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

Term	Definition
Annual Report	An APA annual report within the meaning of Revenue Procedure 2015-41, sections 1.04 and 7.02.
APA	This Advance Pricing Agreement, which is an "advance pricing agreement" within the meaning of Revenue Procedure 2015-41, section 1.04.
APA Records	The records specified in Revenue Procedure 2015-41, section 7.04 and Appendix C of this APA.
APA Request	Taxpayer's request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in Appendix A of this APA.
Applicable generally accepted accounting standards	As the context requires, United States Generally Accepted Accounting Principles, International Financial Accounting Standards, or similar pronouncements to which reporting enterprises are obliged to conform in preparing financial statements for investors, creditors, and governmental agencies.
Covered Issue(s)	This term is defined in Appendix A of this APA.
Covered Method(s)	Transfer Pricing Method described in Appendix A of this APA.
Financial Statements	As the context requires, those financial statements prepared in accordance with applicable generally accepted accounting standards, and any necessary account detail to show compliance with the covered method, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the covered method are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Issues].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106-170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2015-41	Rev. Proc. 2015-41, 2015-35 IRB 263.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulations section 1.482-1(b).
U.S. GAAP	U.S. generally accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.
U.S. Return	For each taxable year, the "returns with respect to income taxes under subtitle A" that Taxpayer must "make" in accordance with I.R.C. section 6012. {*Or substitute for partnership:* For each taxable year, the "return" that Taxpayer must "make" in accordance with I.R.C. section 6031.}
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

Internal Revenue Service	APMA Case No.	
Large Business and International Division	Reviewer	
Treaty & Transfer Pricing Operations	Team Leader	
Advance Pricing Mutual Agreement Program	Economist	
	Other APA Team Members	

APA Information

U.S. Taxpayer's Name	
U.S. Taxpayer's EIN	
U.S. Taxpayer's NAICS	
Unilateral/Bilateral/Multilateral	
Original or Renewal	
APA Common Name, if any	
APA Request Filing Date	
Date APA Executed	
APA Term (date-to-date, inclusive)	
Foreign Country(ies) Involved	
Annual Report Due Dates for years ending on or before [date]:	
Annual Report Due Dates for other years: [last month of tax year] 15 following close of year	
Covered Methods Summary Description	
(e.g., CPM, operating margin 2%-5%)	
Taxpayer's Principal Representative	

APA Annual Report Information

Year(s) covered by this Annual Report		
Issues for APMA's special attention (or "None")		
Taxpayer Notice Person	Name	
If necessary, include a current Form 2848 for the Notice Person	Title	
	Address	
	City/State/Zip	
	Phone/Fax	
	Email	
Current Representative, if any	Name	
Include a current Form 2848 for the representative	Title	
	Address	
	City/State/Zip	
	Phone/Fax	
	Email	

Date Annual Report Filed (to be filled in by APMA):

Correction to REG-101552-24, I.R.B. 2024-13

Announcement 2024-17

This document contains corrections to Revenue Procedure 2016-34, as published on Monday, March 25, 2024 (I.R.B. 2024-13, 741). In particular, this announcement corrects the following administrative items.

Correction 1:

In the **Explanation of Provisions**, the second sentence of the second column on page 743 incorrectly describes the requirement that members in an unincorporated organization reserve the right separately to take in kind or dispose of their pro rata shares of electricity produced, extracted or used, or any associated renewable energy credits or similar credits. The sentence is corrected to read, "Second, the unincorporated organization's members must enter into a joint operating agreement with respect to the applicable credit property in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits."

Correction 2:

Proposed §1.761-2(a)(4)(ii)(B) incorrectly requires that members in an unincorporated organization reserve the right separately to take in kind or dispose of their pro rata shares of electricity produced, extracted or used, or any associated renewable energy credits or similar credits. The sentence is corrected to read, "(B) The members of which enter into a joint operating agreement in which the members reserve the right separately to take in kind or dispose of their pro rata shares of the electricity produced, extracted, or used, and any associated renewable energy credits or similar credits,".

Charitable Remainder Annuity Trust Listed Transaction

REG-108761-22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would identify certain charitable remainder annuity trust (CRAT) transactions and substantially similar transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors but provide that certain organizations whose only role or interest in the transaction is as a charitable remainderman will not be treated as participants in the transaction or as parties to a prohibited tax shelter transaction subject to excise taxes and disclosure requirements. Finally, this document provides notice of a public hearing on the proposed regulations.

DATES: *Comments*: Electronic or written comments must be received by May 24, 2024. *Public Hearing*: A public hearing on the proposed regulation is scheduled for July 11, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 24, 2024. If no outlines are received by May 24, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. on July 9, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://regulations.gov* (indicate IRS and REG-108761-22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section. Once submitted to the Federal eRulemaking Portal comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish availability any comments submitted to the IRS's public docket. Send paper submission to CC:PA:01:PR (REG-108761-22) room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries), (202) 317-5279; concerning submissions of comments and requests for hearing, Vivian Hayes at (202) 317-6901 (not toll-free numbers) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The additions identify certain transactions as "listed transactions" for purposes of section 6011.

I. *Disclosure of Reportable Transactions by Participants and Penalties for Failure to Disclose*

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), "any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations."

Section 1.6011-4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of §1.6011-4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in §1.6011-4(e).

Reportable transactions are identified in §1.6011-4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* §1.6011-4(b)(2) through (6). Section 1.6011-4(b)(2) defines a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction.

Section 1.6011-4(c)(4) provides that a transaction is "substantially similar" if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011-4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under §1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction.

Section 1.6011-4(d) and (e) provide that the disclosure statement Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to the IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer

pertaining to a particular reportable transaction.

Section 1.6011-4(e)(2)(i) provides that, if a transaction becomes a listed transaction after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the listed transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction. The Commissioner of Internal Revenue (Commissioner) also may determine the time for disclosure of listed transactions in the published guidance identifying the transaction.

Participants required to disclose these transactions under §1.6011-4 who fail to do so are subject to penalties under section 6707A of the Code. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For a listed transaction, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case.

Additional penalties also may apply. In general, section 6662A of the Code imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item that is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so also are subject to an extended period of limitations under section 6501(c)(10) of the Code. That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A) of the Code.

II. *Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure to Disclose*

Section 6111(a) provides that each material advisor with respect to any reportable transaction shall make a return setting forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return shall be filed not later than the date specified by the Secretary.

Section 301.6111-3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in §1.6011-4(b), must file a return as described in §301.6111-3(d) by the date described in §301.6111-3(e).

Section 301.6111-3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in §301.6111-3(b)(3) for the material aid, assistance, or advice. Under §301.6111-3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in §1.6011-4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in §301.6111-3(d) and (e). Section 301.6111-3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with the OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to the OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111-3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in §301.6111-3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor's receipt of the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) of the Code provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

Additionally, section 6112(a) provides that each material advisor with respect to any reportable transaction shall (whether or not required to file a return under sec-

tion 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require. Material advisors must furnish such lists to the IRS in accordance with §301.6112-1(e).

A material advisor may be subject to a penalty under section 6708 of the Code for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

III. *Tax-Exempt Entities as Parties to Prohibited Tax Shelter Transactions*

Section 4965 of the Code is intended to deter certain "tax-exempt entities" (as defined in section 4965(c)) from facilitating "prohibited tax shelter transactions," which include listed transactions. Section 4965(a)(1), in part, imposes an excise tax on a tax-exempt entity for the taxable year in which the tax-exempt entity becomes a party to a transaction that is a "prohibited tax shelter transaction" at the time it becomes a party to the transaction, and for any subsequent taxable year, in the amount determined under section 4965(b)(1) (section 4965 tax). Tax-exempt entities subject to the section 4965 tax are listed in section 4965(c)(1) through (3) and include, among others, entities and governmental units described in sections 501(c) and 170(c) of the Code (other than the United States). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally also is subject to various reporting and disclosure obligations.

Additionally, section 4965(a)(2) imposes an excise tax on an "entity manager" if the manager approves the tax-exempt entity as a party (or otherwise causes the tax-exempt entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. The amount of this excise tax is determined under section 4965(b)(2) (entity manager tax).

A. *The section 4965 tax*

The amount of the section 4965 tax owed by a tax-exempt entity depends on whether the tax-exempt entity knows, or has reason to know, that a transaction is a prohibited tax shelter transaction at the time the entity becomes a party to the transaction. A tax-exempt entity is treated as knowing or having reason to know that a transaction is a prohibited tax shelter transaction if one or more of its entity managers knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the entity manager(s) approved the tax-exempt entity as (or otherwise caused the entity to be) a party to the transaction.[1] The tax-exempt entity also is attributed the knowledge or reason to know of certain entity managers—those persons with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization—even if the entity manager does not approve the entity as (or otherwise cause the entity to be) a party to the transaction.

Section 53.4965-4(a)(1) provides that a tax-exempt entity is a "party" to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status. In addition, under §53.4965-4(a)(2) and (b), the Secretary may issue published guidance to identify tax-exempt entities by type, class, or role that will or will not be treated as parties to a prohibited tax shelter transaction.

If the tax-exempt entity unknowingly becomes a party to a prohibited tax shelter transaction, the section 4965 tax generally equals the greater of (1) the product of the highest rate of tax under section 11 of the Code (currently 21 percent) and the tax-exempt entity's net income attributable to the prohibited tax shelter transaction, or (2) the product of the highest rate of tax under section 11 and 75 percent of the proceeds received by the tax-exempt entity that are attributable to the prohibited tax shelter transaction. If the tax-exempt entity knew or had reason to know that the transaction was a prohibited tax shelter transaction at the time the tax-exempt entity became a party to the transaction, the section 4965 tax increases to the greater of (1) 100 percent of the tax-exempt entity's net income attributable to the prohibited tax shelter transaction, or (2) 75 percent of the tax-exempt entity's proceeds attributable to the prohibited tax shelter transaction.

The terms "net income" and "proceeds" are defined in §53.4965-8. In general, a tax-exempt entity's net income attributable to a prohibited tax shelter transaction is its gross income derived from the transaction, reduced by those deductions that are attributable to the transaction and that would be allowed by chapter 1 of the Code (chapter 1) if the tax-exempt entity were treated as a taxable entity for this purpose, and further reduced by the taxes imposed by subtitle D of the Code (other than the section 4965 tax) with respect to the transaction. In the case of a tax-exempt entity that is a party to the transaction by reason of facilitating a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status, the term "proceeds," solely for purposes of section 4965, means the gross amount of the tax-exempt entity's consideration for facilitating the transaction, not reduced for any costs or expenses attributable to the transaction. Published guidance with respect to a particular prohibited tax shelter transaction may designate additional amounts as proceeds from the transaction for purposes of section 4965. In addition, for all tax-exempt entities that are parties to a prohibited tax shelter transaction, any amount that is a gift or a contribution to a tax-exempt entity and that is attributable to a prohibited tax shelter transaction is treated as proceeds for purposes of section 4965, unreduced by any associated expenses.

[1] Section 53.4965-6 of the Foundation and Similar Excise Tax Regulations (26 CFR part 53) provides factors to be considered in determining whether an entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction.

B. *Entity manager tax*

The amount of the entity manager tax determined under section 4965(b)(2) on an entity manager (as defined in section 4965(d)) equals $20,000 for each instance that the manager approves the tax-exempt entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. This liability is not joint and several.

C. *Disclosures*

Section 53.6011-1 requires that a tax-exempt entity subject to the section 4965 excise tax must file Form 4720, *Return of Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, to report the liability and pay the tax due under section 4965(a)(1). Under §1.6033-5, a tax-exempt entity that is a party to a prohibited tax shelter transaction must file Form 8886-T, *Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction*, to disclose that it is a party to a prohibited tax shelter transaction, the identity of any other party (whether taxable or tax-exempt) to such transaction that is known to the tax-exempt entity, and certain other information. Under §1.6033-2, if the tax-exempt entity is required to file Form 990, *Return of Organization Exempt From Income Tax*, it must disclose on that form that it is a party to a prohibited tax shelter transaction, whether any taxable party notified the tax-exempt entity that it was or is a party to a prohibited tax shelter transaction, and whether the tax-exempt entity filed Form 8886-T.

Section 6011(g) and §301.6011(g)-1 provide that any taxable party to a prohibited tax shelter transaction must disclose to each tax-exempt entity that the taxable party knows or has reason to know is a party to such transaction that the transaction is a prohibited tax shelter transaction.

IV. *Charitable Remainder Annuity Trusts (CRATs)*

For purposes of section 664 of the Code, section 664(d)(1) provides that a charitable remainder annuity trust (CRAT) is a trust:

(A) From which a sum certain (which is not less than 5 percent nor more than 50 percent of the initial fair market value (FMV) of all property placed in trust) is to be paid, not less often than annually, to one or more persons (at least one of which is not an organization described in section 170(c), and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals;

(B) From which no amount other than the payments described in section 664(d)(1)(A) and other qualified gratuitous transfers described in section 664(d)(1)(C) may be paid to or for the use of any person other than an organization described in section 170(c);

(C) Whose remainder interest, following the termination of the payments described in section 664(d)(1)(A), is to be transferred to, or for the use of, an organization described in section 170(c) or is to be retained by the trust for such a use or, to the extent the remainder interest is in qualified employment securities (as defined by section 664(g)(4)), all or part of such securities are to be transferred to an employee stock ownership plan (as defined in section 4975(e)(7) of the Code) in a qualified gratuitous transfer (as defined by 664(g)); and

(D) Whose remainder interest has a value (determined under section 7520) of at least 10 percent of the initial net FMV of all property placed in the trust.

Section 664(b) provides, in part, that amounts distributed by a CRAT are considered as having the following characteristics in the hands of a beneficiary to whom the annuity described in section 664(d)(1)(A) is paid:

(1) First, as amounts of income (other than gains, and amounts treated as gains, from the sale or other disposition of capital assets) includible in gross income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years;

(2) Second, as a capital gain to the extent of the capital gain of the trust for the year and the undistributed capital gain of the trust for prior years;

(3) Third, as other income to the extent of such income of the trust for the year and such undistributed income of the trust for prior years; and

(4) Fourth, as a distribution of trust corpus.

Under section 664(c)(1), a CRAT is not subject to any tax imposed by subtitle A of the Code. Section 664(c)(2), in part, imposes an excise tax on a CRAT that has unrelated business taxable income (within the meaning of section 512, determined as if part III of subchapter F of chapter 1 applies to such trust) for a taxable year. That excise tax is equal to the amount of such unrelated business taxable income.

V. *Tax Avoidance Transactions using a CRAT*

The Treasury Department and the IRS are aware of transactions in which taxpayers attempt to use a CRAT and a single premium immediate annuity (SPIA) to permanently avoid recognition of ordinary income and/or capital gain. Taxpayers engaging in these transactions claim that distributions from the trust are not taxable to the beneficiaries as ordinary income or capital gain under section 664(b) because the distributions constitute the trust's unrecovered investment in the SPIA, thus claiming that a significant portion of the distributions is excluded from gross income under section 72(b)(2) of the Code. Taxpayers also claim that the trust qualifies as a CRAT and thus is not subject to tax on the trust's realized ordinary income or capital gain under section 664(c)(1), even though the trust may not meet all of the requirements of section 664(d)(1).

In these transactions, a grantor creates a trust purporting to qualify as a CRAT under section 664. Generally, the grantor funds the trust with property having a FMV in excess of its basis (appreciated property) such as interests in a closely-held business, and/or assets used or produced in a trade or business. The trust then sells the appreciated property and uses some or all of the proceeds from the sale of the contributed property to purchase an annuity. On a Federal income tax return, the beneficiary of the trust treats

the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72[2], instead of as carrying out to the beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

As result of treating section 72 as applying to the amounts received (typically paid by an insurance company) as part of the annuity amount, the beneficiary reports as income only a small portion of the amount the beneficiary received from the SPIA. The beneficiary treats the balance of the annuity amount as an excluded portion representing a return of investment.[3] The beneficiary thus claims that the beneficiary is taxed as if the beneficiary were the owner of the SPIA, rather than the SPIA being an asset owned by the CRAT, which the trustee purchased to fund the annuity amount payable from the trust. Under the beneficiary's theory, until the entire investment in the SPIA has been recovered, the only portion of the annuity amount includable in the beneficiary's income is that portion of the SPIA annuity required to be included in income under section 72. The beneficiary also maintains that the distribution is not subject to section 664(b), which would treat a substantial portion of the annuity amount as gain attributable to the sale of the appreciated property contributed to the CRAT.

The trustee also might take the position that the transfer of the appreciated property to the purported CRAT gives those assets a step-up in basis to FMV as if they had been sold to the trust. The transfer of property to a CRAT, however, does not give those assets a step-up in basis to FMV, as if they had been sold to the trust, giving the trust a cost basis under section 1012 of the Code. Instead, the transfer to the CRAT is a gift for Federal tax purposes. When a grantor transfers appreciated property to a CRAT, the CRAT's basis in the assets is determined under section 1015 of the Code. Under section 1015(a) and (d), property transferred by gift (whether or not in trust) retains its basis in the hands of the donor, increased (but not above FMV) by any gift tax paid on the transfer.

The claimed application of sections 664 and 72 to the transaction is incorrect. Proper application of the rules of sections 664 and 72 to the transaction results in annual ordinary income from the annuity payments from the SPIA being added to the section 664(b)(1) (ordinary income) tier of the CRAT's income each year, and a one-time amount being added to the section 664(b)(2) (capital gains) tier at the time of the sale of the property by the CRAT (assuming the asset is of a kind to produce capital gain). Assuming no other activity in the CRAT, under section 664(b), the beneficiary of the CRAT must treat the annuity amount each year as first consisting of the ordinary income portion of the annuity payments from the SPIA. The balance of the annuity amount must be treated as consisting of any accumulated ordinary income of the CRAT, then accumulated capital gain, and then other income of the CRAT, only reaching non-taxable corpus to the extent these three accounts have been exhausted.

In addition, certain features of the trust may cause the trust to fail to meet all of the requirements of section 664(d)(1). While the trust instrument generally resembles one of the eight sample CRAT forms provided in Rev. Proc. 2003-53, 2003-2 C.B. 230; Rev. Proc. 2003-54, 2003-2 C.B. 236; Rev. Proc, 2003-55, 2003-2 C.B. 242; Rev. Proc. 2003-56, 2003-2 C.B. 249; Rev. Proc. 2003-57, 2003-2 C.B. 257; Rev. Proc. 2003-58, 2003-2 C.B. 262; Rev. Proc. 2003-59, 2003-2 C.B 268; and Rev. Proc. 2003-60, 2003-2 C.B. 274 (Sample CRAT Revenue Procedures), it might have one or more significant modifications. For example, the trust instrument might provide that, in each taxable year of the trust, the trustee must pay to the beneficiary during the annuity period, an annuity amount equal to the greater of (1) an amount which meets the requirements of section 664(d)(1)(A) or (2) the payments received by the trustee from one or more SPIAs purchased by the trustee.

The trust instrument also might provide for a current payment to an organization described in section 170(c) (Charitable Remainderman) in lieu of the payment of the remainder interest described in section 664(d)(1)(C). For example, the trust instrument might state that, in lieu of transferring the remainder amount required pursuant to section 664(d)(1)(C) (Remainder Interest) to the Charitable Remainderman, the trustee, upon the availability of adequate funding, currently may pay to the Charitable Remainderman a cash sum equal to at least 10 percent of the initial FMV of the trust property plus a nominal amount of cash. The trust agreement also might provide that the trustee cannot make a distribution in kind to satisfy this cash distribution. This payment, equal to at least 10 percent of the initial FMV of the trust property, would be the only payment to the Charitable Remainderman. The governing instrument of a CRAT may provide for an amount other than the annuity amount described in §1.664-2(a)(1) to be paid (or to be paid in the discretion of the trustee) to an organization described in §170(c) provided that, in the case of distributions in kind, the adjusted basis of the property distributed is fairly representative of the adjusted basis of the property available for payment on the date of payment. *See* §1.664-2(a)(4). However, nowhere in section 664(d)(1)(D) does it permit a current payment, determined based on the value of the trust at its funding, to be made in lieu of, and as a substitute for, the required payment of the remainder interest (that is, the entire corpus of the trust at termination of the annuity period) described in section 664(d)(1)(C) to the Charitable Remainderman.

The significant modifications identified in the prior paragraphs deviate from the Sample CRAT Revenue Procedures in ways that prevent the qualification of the trust as a valid CRAT under section 664, regardless of the actual administration of the CRAT. These modifications are made in these transactions in order to effectuate the structure. Specifically, a

[2] Section 72 governs the tax treatment of payments received as an annuity, and generally causes only the portion of each payment in excess of the investment in the contract (basis) to be included in the recipient's gross income.

[3] The beneficiary also claims that section 72(u) does not apply because the SPIA is an "immediate annuity" under section 72(u)(3)(E).

provision authorizing the payment of an annuity amount in excess of the amount described in section 664(d)(1)(A), and a provision authorizing a current payment in lieu of the payment of the remainder interest described in section 664(d)(1)(C), violate mandatory requirements of a valid CRAT.

VI. *Purpose of Proposed Regulations*

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction v. United States*, 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007-83, 2007-2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the Administrative Procedure Act (APA), 5 U.S.C. 551-559, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. See *Mann Construction, Inc. v. United States*, 539 F.Supp.3d 745, 763 (E.D. Mich. 2021).

Relying on the Sixth Circuit's analysis in *Mann Construction*, three district courts and the Tax Court have concluded that IRS notices identifying listed transactions were improperly issued because they were issued without following the APA's notice and comment procedures. See *Green Rock, LLC v. IRS*, 2023 WL 1478444 (N.D. AL., February 2, 2023) (Notice 2017-10); *GBX Associates, LLC, v. United States*, 1:22cv401 (N.D. Ohio, Nov. 14, 2022) (same); *Green Valley Investors, LLC, et al. v. Commissioner*, 159 T.C. No. 5 (Nov. 9, 2022) (same); see also *CIC Services, LLC v. IRS*, 2022 WL 985619 (E.D. Tenn. March 21, 2022), *as modified by* 2022 WL 2078036 (E.D. Tenn. June 2, 2022) (Notice 2016-66, identifying a transaction of interest).

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the subsequent decisions that have applied that reasoning to find other IRS notices invalid and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. At the same time, however, to avoid any confusion and to ensure consistent enforcement of the tax laws throughout the nation, the Treasury Department and the IRS are issuing these proposed regulations to identify certain charitable remainder trust transactions as listed transactions for purposes of all relevant provisions of the Code and Treasury Regulations.

These proposed regulations propose to identify the charitable remainder trust transactions described in proposed §1.6011-15(b), and substantially similar transactions, as listed transactions for purposes of §1.6011-4(b)(2) and sections 6111 and 6112. In addition, they inform taxpayers that participate in these transactions, and persons who act as material advisors with respect to these transactions, that they would need to disclose the transaction in accordance with the final regulations and the regulations issued under sections 6011 and 6111. Material advisors must also maintain lists as required by section 6112.

Explanation of Provisions

I. *Charitable Remainder Annuity Trust Transaction*

Proposed §1.6011-15(a) would identify a transaction that is the same as, or substantially similar to, the transaction described in proposed §1.6011-15(b) as a listed transaction for purposes of §1.6011-4(b)(2). "Substantially similar" is defined in §1.6011-4(c)(4) to include any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or a similar tax strategy.

A transaction is described in proposed §1.6011-15(b) if it includes the following elements:

(i) The grantor creates a trust purporting to qualify as a CRAT under section 664;

(ii) The grantor funds the trust with property having a FMV in excess of its basis (contributed property);

(iii) The trustee sells the contributed property;

(iv) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(v) On a Federal income tax return, the beneficiary of the trust (Beneficiary) treats the amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72, instead of as carrying out to the Beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

II. *Participants*

Whether a taxpayer has participated in the listed transaction described in proposed §1.6011-15(b) is determined under §1.6011-4(c)(3)(i)(A). Participants include any person whose tax return reflects tax consequences or a tax strategy described in proposed §1.6011-15(b). These tax consequences include those tax consequences described in proposed §1.6011-15(b) that would affect any gift tax return, whether or not such gift tax return was filed. *See* §25.6011-4. A taxpayer also has participated in a transaction described in proposed §1.6011-15(b) if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences, or a tax strategy, described in proposed §1.6011-15(b).

III. *Material Advisors*

Material advisors who make a tax statement with respect to transactions identified as listed transactions in proposed §1.6011-15(b) would have disclosure and list maintenance obligations under sections 6111 and 6112. *See* §§301.6111-3 and 301.6112-1. One of the requirements to be a material advisor under section 6111(b)(1) is that the person must directly or indirectly derive gross income in excess of the threshold amount provided in 6111(b)(1)(B) for providing material aid, assistance, or advice with respect to the listed transaction. That threshold in the case of a listed transaction is reduced to $10,000 if substantially all of the tax benefits are provided to natural persons (looking through any partnerships, S corporations, or trusts), or to $25,000 for any other transaction. *See* §301.6111-3(b)(3)(i)(B). The regulations under section 6111 provide that gross income includes all fees for a tax strategy, for services for advice

(whether or not tax advice), and for the implementation of a reportable transaction. *See* §301.6111-3(b)(2)(ii). However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* §301.6111-3(b)(3)(ii).

IV. *Effect of Participating in Listed Transaction Described in Proposed §1.6011-15(b)*

Participants required to disclose these transactions under §1.6011-4 who fail to do so will be subject to penalties under section 6707A. Such disclosure also must include any gift tax consequences. *See* §25.6011-4. Participants required to disclose these transactions under §1.6011-4 who fail to do so also are subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so are subject to penalties under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to penalties under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the penalty under section 6694 for understatements of a taxpayer's liability by a tax return preparer, the penalty under section 6700 for promoting abusive tax shelters, and the penalty under section 6701 for aiding and abetting understatement of tax liability.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding §301.6111-3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after [DATE 6 YEARS BEFORE DATE OF PUBLICATION OF FINAL RULE].

Because the IRS will take the position that taxpayers are not entitled to the purported tax benefits of the listed transactions described in the proposed regulations, taxpayers who have filed tax returns taking the position that they were entitled to the purported tax benefits should consider filing amended returns or otherwise ensure that their transactions are disclosed properly.

V. *Role of Charitable Remainderman in the Transaction*

As stated in section 1 of this Explanation of Provisions, the transaction described in proposed §1.6011-15(b) attempts to use a CRAT under section 664 to permanently avoid recognition of ordinary income and/or capital gain on the sale of contributed property having a FMV in excess of its basis. Under the mandatory requirements of section 664(d), a trust does not qualify as a CRAT unless, following the termination of the annuity payments described in section 664(d)(1)(A), the Remainder Interest is to be transferred to or for the use of an organization described in section 170(c).

A. *Charitable Remainderman as a Party to a Transaction under Section 4965*

As stated in section III of the Background, section 4965 provides, in part, that, if a transaction is a prohibited tax shelter transaction at the time a tax-exempt entity (which includes an organization described in section 170(c), other than the United States) becomes a party to the transaction, the entity must pay the section 4965 tax for the taxable year and any subsequent taxable year as determined under section 4965(b)(1). Section 4965(e)(1) provides in part that the term "prohibited tax shelter transaction" means any listed transaction (within the meaning of section 6707A(c)(2)). A tax-exempt entity that is a party to a prohibited tax shelter transaction generally is subject to various reporting and disclosure obligations. Additionally, an entity manager is subject to the entity manager tax imposed by section 4965(a)(2) if the entity manager approves the tax-exempt entity as a party (or otherwise causes the entity to be a party) to a prohibited tax shelter transaction and knows or has reason to know that the transaction is a prohibited tax shelter transaction. Section 53.4965-4(a) provides in part that a tax-exempt entity is a "party" to a prohibited tax shelter transaction if it facilitates a prohibited tax shelter transaction by reason of its tax-exempt, tax-indifferent, or tax-favored status.

The trust used in a transaction identified as a listed transaction in proposed §1.6011-15(a) would not qualify as a CRAT unless the entire Remainder Interest is required to be transferred to or for the use of a Charitable Remainderman. Thus, the tax-exempt entity that the CRAT designates for the Remainder Interest facilitates the transaction by reason of its tax-exempt status because, absent that status, the CRAT would not satisfy the mandatory requirement of section 664(d)(1)(C). Accordingly, that designated tax-exempt entity would meet the definition of a party to a prohibited tax shelter transaction in §53.4965-4(a)(1).

However, notwithstanding the general rule in §53.4965-4(a), §53.4965-4(b) provides that published guidance may identify, by type, class, or role, which tax-exempt entities will or will not be treated as parties to a prohibited tax shelter transaction. The Treasury Department and the IRS understand that, in a transaction described in proposed §1.6011-15(b), an organization described in section 170(c) that is designated as the Charitable Remainderman might not become aware of its Remainder Interest in the purported CRAT until it receives a distribution from the trust. In that situation, it may be difficult for the organization described in section 170(c) to determine when section 4965 excise taxes and related reporting requirements apply. For this reason, these proposed regulations would provide that an organization described in section 170(c) that the purported CRAT designates as the recipient of the Remainder Interest will not be treated as a party under section 4965 to the listed transaction described in proposed §1.6011-15 solely by reason of its status as a Charitable Remainderman.

B. *Participation by a Charitable Remainderman*

As stated in section II of the Background, a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in this proposed regulation. *See* §1.6011-4(c)(3)(i)(A). Published guidance may identify other types or classes of persons that will be treated

as participants in a listed transaction. Published guidance also may identify types or classes of persons that will not be treated as participants in a listed transaction. In general, the Treasury Department and the IRS do not expect that an organization described in section 170(c), whose only role or interest in the transaction described in these proposed regulations is as a Charitable Remainderman, would meet the definition of a participant under §1.6011-4(c)(3)(i)(A). Nevertheless, to avoid potential uncertainty, the proposed regulations provide that an organization described in section 170(c) that the purported CRAT designates as the recipient of the Remainder Interest is not treated as a participant in the listed transaction described in these proposed regulations solely by reason of its status as a Charitable Remainderman.

C. *Charitable Remainderman as a Material Advisor*

As stated in section III of the Background, a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount for the material aid, assistance, or advice. *See* section 6111(b)(1)(A). The regulations provide that gross income includes all fees for a tax strategy, for services or advice (whether or not tax advice), and for the implementation of a reportable transaction. However, a fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. *See* §301.6111-3(b)(3)(ii)).

The Treasury Department and the IRS request comments on whether the Charitable Remainderman ever provides material aid, assistance, or advice with respect to transactions described in proposed §1.6011-15(b) and the nature of the services being provided. The Treasury Department and the IRS also request comments on what fees the Charitable Remainderman receives, either directly or indirectly, for providing such material aid, assistance or advice.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be made available at *https://www.regulations.*gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for July 11, 2024, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Service Building, 1111 Constitution Avenue, NW. Washington, DC. Due to the building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants alternatively may attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by May 24, 2024. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be free of charge at the hearing. If no outline of topics to be discussed at the hearing is received by May 24, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number (REG-108761-22) and the language "TESTIFY In Person". For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-108761-22.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-108761-22 and the language "TESTIFY Telephonically". For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-108761-22.

Individuals who want to attend the public hearing in person without testifying also must send an email to *publichearings@irs.gov* to have their names added to the building access list. The subject line of the email must contain the regulation number REG-108761-22 and the language "ATTEND in Person". For example, the subject line may say: Request to ATTEND Hearing In Person REG-108761-22. Requests to attend the public hearing must be received by 5 p.m. ET on July 9, 2024.

Individuals who want to attend the public hearing by telephone without testifying also must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of email must contain the regulation number (REG-108761-22 and the language "ATTEND Hearing Telephonically". For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-108761-22. Requests to attend the public hearing must be received by 5 p.m. ET on July 9, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing, please contact the Publication and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) at least July 8, 2024.

Applicability Date

Proposed §1.6011-15 would identify charitable remainder annuity trust transactions described in proposed §1.6011-15(b), and transactions that are substan-

tially similar to those transactions, as listed transactions, effective as of the date the final regulations are published in the **Federal Register**.

Special Analyses

I. *Paperwork Reduction Act*

The estimated number of taxpayers impacted by these proposed regulations is between 50 to 100 per year. No burden on these taxpayers is imposed by these proposed regulations. Instead, the collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 already is contained in the burden associated with the control number for the forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

II. *Regulatory Flexibility Act*

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (Act) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that "describe[s] the impact of the proposed rule on small entities." 5 U.S.C. 603(a). The term "small entities" is defined in 5 U.S.C. 601 to mean "small business," "small organization," and "small governmental jurisdiction," which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is "small" and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). *See* Title 13, Part 121 of the Code of Federal Regulations (titled "Small Business Size Regulations"). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. *See* Title 13, Part 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the Act provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on trusts. Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 (updated annually for inflation). This proposed 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.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (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 and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal author of these proposed regulations is Charles D. Wien, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

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

* * * * *

Section 1.6011-15 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011 * * *

* * * * *

Par. 2. Section 1.6011-15 is added to read as follows:

§1.6011-15 Charitable Remainder Annuity Trust Listed Transaction.

(a) *In general*. Transactions that are the same as, or substantially similar to, a transaction described in paragraph (b) of this section are identified as listed transactions for purposes of §1.6011-4(b)(2).

(b) *Charitable remainder annuity trusts*. A transaction is described in this paragraph (b) if:

(1) The grantor creates a trust purporting to qualify as a charitable remainder annuity trust under section 664(d)(1) of the Internal Revenue Code (Code);

(2) The grantor funds the trust with property having a fair market value in excess of its basis (contributed property);

(3) The trustee sells the contributed property;

(4) The trustee uses some or all of the proceeds from the sale of the contributed property to purchase an annuity; and

(5) On a Federal income tax return, the beneficiary of the trust treats the annuity amount payable from the trust as if it were, in whole or in part, an annuity payment subject to section 72 of the Code, instead of as carrying out to the beneficiary amounts in the ordinary income and capital gain tiers of the trust in accordance with section 664(b).

(c) *Participation*—(1) *In general*. A taxpayer has participated in a transaction identified as a listed transaction in paragraph (a) of this section if the taxpayer's tax return reflects tax consequences or a tax strategy described in this section as provided under §1.6011-4(c)(3)(i)(A). These tax consequences include those tax consequences that would affect any gift tax return, whether or not such gift tax return was filed. *See* §25.6011-4 of this chapter.

(2) *Treatment of charitable remainderman*. An organization described in section 170(c) of the Code that the purported Charitable Remainder Annuity Trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a participant under §1.6011-4(c)(3)(i)(A) in the transaction described in this section solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(d) *Treatment of charitable remainderman under section 4965*. A tax-exempt entity (as defined in section 4965 of the Code) that is an organization described in section 170(c) and that the purported Charitable Remainder Annuity Trust designates as a recipient of the remainder interest described in section 664(d)(1) is not treated as a party to the transaction described in this section for purposes of section 4965 solely by reason of its status as a recipient of the remainder interest described in section 664(d)(1).

(e) *Applicability date*. This section's identification of transactions that are the same as, or substantially similar to, the transaction described in paragraph (b) of this section as listed transactions for purposes of §1.6011-4(b)(2) is effective on [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement

(Filed by the Office of the Federal Register March 5, 2024, 8:45 a.m., and published in the issue of the Federal Register for March 11, 2024, 89 FR 17613)

Advance Notice of Third-Party Contacts

REG-117542-22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the notice that the IRS must provide to a taxpayer in advance of IRS contact with a third party with respect to the determination or collection of the taxpayer's tax liability, to reflect amendments made to the applicable tax law by the Taxpayer First Act of 2019. The regulations would affect taxpayers to whom the IRS must provide advance notice of IRS contact with such third parties.

DATES: Electronic or written comments and requests for a public hearing must be received by May 21, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and IRS REG-117542-22) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for Public Hearing" section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments submitted electronically or on paper to the public docket. *Send paper submissions to*: CC:PA:01:PR (REG-117542-22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317-6833 (not toll-free number); concerning the submission of comments and requests for a public hearing, Vivian Hayes, (202) 317-6901 (not toll-free number) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that would amend the Procedure and Administration Regulations (26 CFR part 301) relating to the advance notice of

IRS contact with third parties that must be provided to taxpayers under section 7602(c) of the Internal Revenue Code (Code).

Generally, the Federal tax system relies upon taxpayers' self-assessment and reporting of their tax liabilities. The expansive information-gathering authority that Congress has granted to the Secretary of the Treasury or her delegate (Secretary) under the Code includes the IRS's broad examination and summons authority, which allows the IRS to determine the accuracy of that self-assessment. *See United States v. Arthur Young & Co.*, 465 U.S. 805, 816 (1984). Section 7602(a) provides that, for the purpose of ascertaining the correctness of any return, making a return in cases in which none has been made, determining the liability of any person for any internal revenue tax, or collecting any such liability, the Secretary is authorized to examine books and records, issue summonses seeking documents and testimony, and take testimony from witnesses under oath as may be relevant or material. Section 7602(b) further provides that the purposes for which the Secretary may examine books and records, issue summonses, and take testimony under oath include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

Section 7602(c) was added to the Code by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685 (RRA 98). Section 7602(c)(1), as added by RRA 98, required that the IRS provide the taxpayer "reasonable notice in advance" before it contacted a third party with respect to the determination or collection of the tax liability of such taxpayer. Final regulations interpreting and implementing section 7602(c) as enacted by RRA 98 were promulgated in 2002. TD 9028 (67 FR 77419). Section 301.7602-2(d)(1) of the Procedure and Administration Regulations provides that the pre-contact notice may be given either orally or in writing. If notice is written, it may be given in any manner that the IRS employee who gives such notice reasonably believes will be received by the taxpayer prior to the contact with the third party. Written notice is considered reasonable if it is mailed to the taxpayer's last known address, given in person, left at the taxpayer's dwelling or usual place of business, or actually received by the taxpayer. Section 301.7602-2(d)(2) provides that taxpayers need not be given pre-contact notice for contacts with third parties of which advance notice otherwise has been provided to the taxpayer pursuant to another statute, regulation, or administrative procedure.

Section 1206 of the Taxpayer First Act of 2019 (TFA), Public Law 116-25 (133 Stat. 981), which was enacted into law on July 1, 2019, amended section 7602(c)(1) to provide that IRS officers or employees may not contact a third party with respect to the determination or collection of the tax liability of a taxpayer unless the IRS first provides the taxpayer with advance notice meeting certain requirements. The notice must specify the period, not to exceed one year, during which the IRS intends to make the contact. The IRS must provide the notice to the taxpayer no later than 45 days before the beginning of such period, except as otherwise provided by the Secretary. The IRS may issue multiple notices to the same taxpayer with respect to the same tax liability that, taken together, cover an aggregate period greater than one year. The IRS may not issue a notice under section 7602(c) unless the IRS intends, at the time the notice is issued, to contact third parties during the period specified in that notice. The IRS may meet this intent requirement based on the assumption that the information sought to be obtained by the contact will not be obtained by other means before such contact. The TFA amendments apply to notices provided, and contacts made, after August 15, 2019.

Explanation of Provisions

I. *Overview*

These proposed regulations would update the regulations in §301.7602-2(a) and (d) pertaining to the advance notice that must be provided to taxpayers prior to IRS contact with third parties to conform to the new statutory language of section 7602(c). These proposed regulations also would provide, pursuant to the Secretary's authority in section 7602(c)(1)(B), exceptions to the 45-day advance notice requirement if delaying contact with third parties for 45 days after providing notice to the taxpayer would impair tax administration. In these situations, the 45-day advance notice period is proposed to be reduced or eliminated to ensure sufficient time for the IRS to properly conduct certain time-sensitive examination or collection activities.

II. *Notice of Third-party Contacts*

The proposed regulations would amend §301.7602-2(a) and (d) pertaining to third-party contacts to implement the amendments made to section 7602(c)(1) by section 1206 of the TFA. Like existing §301.7602-2(a), proposed §301.7602-2(a)(1) would provide that, subject to the exceptions in existing §301.7602-2(f), IRS officers or employees may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer unless the requirements of section 7602(c) and proposed §301.7602-2(d) have been satisfied. The exceptions in existing §301.7602-2(f) implement the statutory exceptions set forth in section 7602(c)(3) prior to, and unaffected by, the TFA.

In cases not covered by the exceptions in section 7602(c)(3) and existing §301.7602-2(f), proposed §301.7602-2(d)(1) would implement the requirements of section 7602(c)(1) as amended by the TFA that IRS officers or employees may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer unless the IRS provides advance notice to the taxpayer (third-party contact notice). The third-party contact notice must specify a period, not to exceed one year, during which the contact is intended to occur and inform the taxpayer that third-party contacts are intended to be made during such period. Proposed §301.7602-2(d)(1) further provides that the third-party contact notice must be in writing. The requirement that the third-party contact notice be in writing is intended to ensure compliance with the advance notice requirement and to eliminate any potential confusion as to the date on which notice was provided to the taxpayer or the contents of the third-party contact notice. Subject to certain enumerated exceptions described in part III of this Explanation of Provisions, proposed

§301.7602-2(d)(1)(iii) would implement the requirement of section 7602(c)(1)(B) that the third-party contact notice generally must be provided to the taxpayer no later than 45 days before the beginning of the period in which the contact is intended to be made (45-day advance notice period). Proposed §301.7602-2(d)(2) would further provide the methods by which the IRS will provide a third-party contact notice to the taxpayer, which are similar to the methods set forth in existing §301.7602-2(d)(1)(i) through (iv).

As provided in the second sentence of section 7602(c)(1), proposed §301.7602-2(d)(3) provides that the IRS is not prevented from issuing successive notices to the same taxpayer with respect to the same tax liability for periods (each not greater than one year) that, in the aggregate, exceed one year.

As provided in the third and fourth sentences of section 7602(c)(1), proposed §301.7602-2(d)(4) would provide that no third-party contact notice will be issued under proposed §301.7602-2(d) unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice, which intent may be met by the IRS on the basis of the assumption that the information sought to be obtained by the third-party contact will not be obtained by other means before such contact.

III. *Exceptions to the 45-Day Advance Notice Requirement*

Proposed §301.7602-2(d)(5) provides several exceptions to the 45-day advance notice requirement, in particular with respect to the IRS's fuel compliance program, nonjudicial redemption investigations, and in limited time-sensitive circumstances involving assessment or collection of tax.

A. *Fuel compliance program*

Section 4081 of the Code imposes an excise tax on certain motor and aviation fuels. Section 4082 of the Code exempts diesel fuel and kerosene from such tax if used for certain nontaxable purposes specified in section 4082(b), including fuel sold for use or used in a train, school bus, or intracity transportation; for farm use; or for an off-highway business use, as defined in section 6421(e)(2) of the Code, except mobile machinery, as defined in section 6421(e)(2)(C). Tax-exempt fuel is required to be indelibly dyed in a minimum concentration specified in §48.4082-1(b)(1) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) or otherwise pre-approved by the IRS. Section 4083(d) of the Code provides that in administering sections 4081 through 4084 of the Code the Secretary may enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, taking and removing samples of such fuel, and inspecting any books and records and any shipping papers pertaining to fuel. Section 4083(d) further provides that the Secretary may also detain, for these purposes, any container that contains or may contain any taxable fuel. Refusal to admit entry or other refusal to permit an action authorized by section 4083(d) may result in certain penalties under sections 6717 and 7342 of the Code.

Section 6715(a) of the Code provides that a penalty in the amount prescribed in section 6715(b) will be imposed, in addition to any tax, if (1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel, (2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, (3) any person willfully alters, chemically or otherwise, or attempts to so alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel, or (4) any person who has knowledge that a dyed fuel which has been altered (as described in section 6715(a)(3)) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel. Section 6715(d) provides that if a penalty is imposed under section 6715 on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty is jointly and severally liable with such entity for such penalty.

Section 6715A of the Code provides that a person who tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, or any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 who fails to maintain the security standards for such system as established by the Secretary, must pay a penalty in the amount prescribed in section 6715A(b) in addition to any tax. As with section 6715, if a penalty is imposed under section 6715A on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty is jointly and severally liable with such entity for such penalty.

Section 6720A(a) of the Code provides that any person who knowingly transfers for resale, sells for resale, or holds out for resale any liquid for use in a diesel-powered highway vehicle or a diesel-powered train that does not meet applicable Environmental Protection Agency regulations must pay, in addition to any tax, a penalty of $10,000 for each such transfer, sale, or holding out for resale. In addition, section 6720A(b) provides that any person who knowingly holds out for sale (other than for resale) any liquid described in section 6720A(a) must pay a penalty of $10,000 for each such holding out for sale, in addition to any tax on such liquid.

Under the IRS's Fuel Compliance Program, fuel compliance officers and agents (FCO/As) conduct field inspections authorized under section 4083(d). If they discover an improper use of dyed fuel or an improper dye concentration, they determine how the fuel came to be in the vehicles inspected. The individuals and entities inspected by FCO/As may be classified as either taxpayers or third parties, depending on the facts of a given inspection. FCO/As typically cannot know how to classify the parties involved until the inspection is conducted.

One type of inspection conducted by FCO/As occurs after fuel is removed via a terminal rack into a transporting truck or railcar. A terminal is a taxable fuel storage and distribution facility that is supplied by pipeline or vessel and from which taxable fuel may be removed at a rack. A rack is a mechanism capable of delivering taxable fuel, usually through pipes, into a means

of transport other than a pipeline or vessel. *See* §48.4081-1(b). The owner of the terminal rack could be liable for a penalty if the dye concentration is incorrect. Because the transport truck drivers are typically not employed by the owner of the terminal, they may be considered third parties relative to the owner of the terminal. FCO/As require immediate access to the fuel in the loaded transport trucks to determine the correct dye concentration prior to the fuel being delivered into the fuel distribution system. FCO/As also conduct inspections of various vehicles other than those leaving the terminal racks; for example, they may inspect a truck at a weigh station to determine if the truck contains dyed fuel. In such situations FCO/As require the ability to quickly investigate the origin of dyed fuel if impermissible dyed fuel is discovered. For example, if the driver of the vehicle is a company employee and the driver tells the FCO/A that the company owner instructed the driver to use dyed fuel, then the FCO/A ordinarily would want to conduct an investigation at the company's yard as soon as possible to determine culpability.

Requiring that the IRS provide 45 days advance notice of third-party contacts in the context of these fuel compliance examinations would significantly impair the enforcement work performed by FCO/As. Because these inspections are conducted in real time and are not based on a tax return, it is imperative that FCO/As have the ability to obtain information, develop facts, and determine potential liability in real time, given the risk that any delay would result in an inability to properly conduct the examination as information dissipates. For example, dyed diesel fuel may be removed or replaced from an oil drilling rig before the FCO/A is able to complete an investigation. Proposed §301.7602-2(d)(5)(i) therefore would provide that the IRS may provide same-day third-party contact notices to the taxpayer with respect to contacts intended to be made by the IRS, which would be made after the provision of the third-party contact notice on that day, in connection with investigations involving potential liability for penalties under section 6715, 6715A, or 6720A or in connection with the IRS's exercise of authority under section 4083(d). The IRS would therefore be able to make third-party contacts in these types of investigations immediately after providing the taxpayer with a third-party contact notice.

B. *Nonjudicial sale redemption investigations*

Creditors may foreclose on property through judicial or nonjudicial processes, as provided by State law. Pursuant to section 7425(b) of the Code, a nonjudicial foreclosure sale will discharge a junior Federal tax lien from real or personal property if a notice of Federal tax lien has been filed more than 30 days before the sale and the foreclosing creditor gives the IRS notice of the sale at least 25 days in advance. Under section 7425(d) of the Code, however, the IRS has 120 days from the date of the nonjudicial foreclosure sale (or longer if provided by State law) to redeem real property from the purchaser. Redemption is accomplished by paying the purchaser the amount paid at the sale, interest, and certain expenses. The purpose of the redemption is for the IRS to sell the real property for a higher amount, a result which would benefit the taxpayer as well, as any additional sale proceeds would satisfy more of the taxpayer's liability or potentially lead to a surplus over the amount of the liability.

Prior to redeeming the property, the IRS must undertake an investigation in order to determine the potential benefits and viability of a potential redemption. The IRS's Civil Enforcement Advisory and Support Office (CEASO) has primary responsibility for receiving and screening nonjudicial sale notices for redemption potential. Generally, if the property value significantly exceeds the nonjudicial sale price, the CEASO refers the case to a revenue officer for a more thorough investigation and, if appropriate, redemption action. Such an investigation may involve the CEASO or the assigned revenue officer discussing the property and foreclosure with third parties. For example, it may be necessary for the IRS to determine the value of the property by researching records or consulting valuation specialists; to gather information about the nonjudicial sale by researching the balances of encumbrances against the property and inquiring about issues that could affect the amount realized through a redemption sale, for example, renter's claims; to notify the nonjudicial sale purchaser of the possible redemption; to secure a guaranteed bidder for the post-redemption sale by contacting prospective bidders or advertising for bids; to obtain management approval for the redemption; to secure funding for the redemption from the revolving fund for redemption of real property under section 7810 of the Code; to deliver the redemption check to the sale purchaser; and to complete the redemption by filing the necessary documentation with the recording office within 120 days from the date of sale. Some of these contacts may be considered third party contacts subject to the 45-day advance notice requirement.

The 45-day advance notice requirement of section 7602(c) would jeopardize the IRS's ability to redeem property. The redemption investigation cannot begin in earnest until after the foreclosure sale, at which point the sale price is known, and which commences the 120-day redemption period. The earliest date that the IRS could give the taxpayer advance notice of third-party contacts is on the date the CEASO receives notice of the sale. The 45-day advance notice period would thus necessarily start after the beginning of the 120-day redemption period, and the IRS may not be able to notify the sale purchaser of the possible redemption until the 46th day of the redemption period. As a consequence, the IRS would have fewer than 74 days to fully determine the redemption potential, negotiate with the purchaser on potentially releasing the IRS's redemption rights, canvas for bidders, secure funding, and complete the redemption process. This is highly unlikely to be feasible. Therefore, proposed §301.7602-2(d)(5)(ii) would reduce the 45-day advance notice period to 10 days of advance notice in these situations.

C. *Statutory period for assessment expiring in one year or less*

Section 6501(a) of the Code provides that the IRS generally has three years after an original return is filed or three years from the due date of the original return, whichever is later, within which to assess tax with respect to a particular

tax year (statutory assessment period). Taxpayers and the IRS may extend the statutory assessment period by agreement under section 6501(c)(4). If the IRS needs to contact third parties in situations in which certain circumstances are present and one year or less remains on the statutory assessment period, tax administration would be impaired if the IRS were required to provide 45 days advance notice to the taxpayer before contacting the third parties.

1. Certain Examination Cases

Proposed §301.7602-2(d)(5)(iii) would reduce the 45-day advance notice requirement to 10 days of advance notice in certain examinations in which the statutory assessment period will expire one year or less from the date the IRS intends to contact third parties and delaying such contacts for 45 days will impair the government's ability to expeditiously determine and assess tax. This proposed reduction would allow the IRS to move forward and promptly conduct examination activities in cases in which the time to do so is limited and a delay will impair the government's ability to expeditiously determine and assess tax.

The 45-day advance notice period would be reduced to 10 days of advance notice if both the IRS has requested that the taxpayer provide, and the taxpayer has not provided within the time requested, a Form 872, *Consent to Extend the Time to Assess Tax*, to extend the statutory assessment period for a period necessary to complete the examination and other administrative actions, and the IRS case involves an issue or issues with respect to which the burden of proof would rest with the IRS in a court proceeding. The amount of evidence necessary to support the IRS's position will generally be greater in cases in which the IRS would have the burden of proof if a case were to proceed to trial (for example, in cases involving unreported income). The IRS therefore needs additional time within which to attempt to gather this evidence through the use of, among other things, contacts with third parties. Requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer that such contacts are intended to be made would hinder the IRS's ability to complete its investigation prior to the end of the statutory assessment period and would negatively impact its ability to meet its burden. Proposed §301.7602-2(d)(5)(iii) would therefore reduce the 45-day advance notice period to 10 days of advance notice in these situations.

2. Trust Fund Recovery Penalty Cases

Proposed §301.7602-2(d)(5)(iv) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which the IRS's contact with third parties is made as part of an investigation into potential liability for the trust fund recovery penalty (TFRP) under section 6672 of the Code that includes one or more tax periods with one year or less remaining on the assessment statute of limitations as of the date the IRS intends to contact third parties. A revenue officer investigating potential TFRP liability must determine whether a person is both responsible and willful, and multiple persons may be liable for the same TFRP liability, making such investigations highly fact-intensive and challenging. As a result, an investigating revenue officer who is faced with a statutory assessment period that is ending will need to obtain information and documentation from third parties expeditiously in order to identify all responsible persons liable for the TFRP before the statutory assessment period ends. Waiting 45 days to contact third parties may prevent the revenue officer from identifying all responsible persons and from completing the TFRP investigation before the statutory assessment period ends. For example, if a potentially responsible person does not provide requested information and documentation by the deadline set by the revenue officer, provides only part of the information and documentation by the deadline, or asks for one or more extensions of time to respond, a revenue officer faced with a statutory assessment period that is ending will need to obtain information and documentation from third parties. Waiting 45 days before contacting third parties could result in assessments against some but not all responsible persons, assessments made against persons who were not responsible, or assessments against responsible persons who were not willful for some of the tax periods for which the trust fund taxes were not turned over to the IRS.

D. *Statutory period for collection expiring in one year or less*

Section 6502 of the Code provides that the length of the period for collection after assessment of a tax liability generally is 10 years (statutory collection period). The end of the statutory collection period ends the government's right to pursue collection of an unpaid tax liability. If the IRS needs to contact third parties in situations in which certain circumstances are present and one year or less remains on the statutory collection period, tax administration would be impaired if the IRS were required to provide 45 days advance notice to the taxpayer before contacting the third parties.

Proposed §301.7602-2(d)(5)(v) would reduce the 45-day advance notice requirement to 10 days of advance notice in two situations in which there is one year or less remaining before the statutory collection period ends as of the date the IRS intends to make contact with third parties. The first situation is if providing 45 days advance notice would prevent the IRS from having sufficient time to prepare a suit referral and deliver it to the Department of Justice (DOJ). The second situation is if reducing the 45-day advance notice period to 10 days of advance notice is necessary to allow sufficient time for collection activities.

1. Preparation and delivery of suit referral to DOJ

Proposed §301.7602-2(d)(5)(v)(A) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which one year or less remains before the statutory collection period ends as of the date the IRS intends to contact third parties and the IRS plans to prepare a suit referral requesting that DOJ file suit to reduce assessments to judgment or to foreclose Federal tax liens before the statutory collection period ends. In these types of cases, collection cannot be accomplished by administrative methods within the normal statutory period. The United States' success in litigation, how-

ever, is highly dependent upon the full and complete development of factual and legal issues before the suit is filed. The IRS therefore needs as much time as possible to develop its case prior to making the referral, and requiring a revenue officer to wait 45 days to contact third parties after notifying the taxpayer that such contact is intended to be made would impair the IRS's ability to timely make the referral. A suit recommendation to foreclose Federal tax liens against specific property titled in the name of someone other than the taxpayer, for example, may require a revenue officer to develop evidence, including by issuing third-party summonses, to prove the taxpayer's property was fraudulently transferred or that a person holds the property as the taxpayer's nominee. The IRS's Office of Chief Counsel must then review and approve the suit recommendation before a referral is made to DOJ. Finally, DOJ reviews the recommendation, drafts the pleadings, and files suit. Depending on the complexity of facts, this process can take a significant amount of time. Therefore, in these situations, proposed §301.7602-2(d)(5)(v)(A) would provide that the IRS may contact the third parties 10 days after providing the third-party contact notice to the taxpayer.

2. Insufficient time for collection activities

Proposed §301.7602-2(d)(5)(v)(B) would reduce the 45-day advance notice period to 10 days of advance notice in cases in which there is one year or less remaining before the statutory collection period ends as of the date the revenue officer intends to contact third parties and the revenue officer is unable to contact the taxpayer or the taxpayer refuses to pay, if the revenue officer concludes that the period should be reduced in order to maximize the amount of unpaid tax that can be collected by levy within the time remaining before the statutory collection period expires. This reduction in advance notice will allow the IRS sufficient time for investigative work, including to serve collection summonses, to find assets on which to levy, and to execute levies. Proposed §301.7602-2(d)(5)(vi) would provide that a revenue officer is considered unable to contact the taxpayer if the taxpayer fails to respond to the revenue officer's reasonable attempts to contact the taxpayer directly within the time requested by the revenue officer.

Proposed §301.7602-2(d)(5)(vii) would provide that the category of taxpayers who are considered to have refused to pay includes: (1) taxpayers who have the ability to pay their currently due and owing taxes including required tax deposits and estimated tax payments and to pay their delinquent taxes through an alternative collection method but will not do so; (2) taxpayers who cannot pay currently due taxes or pay their delinquent taxes, but who have assets in excess of amounts exempt from levy that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets; (3) taxpayers who are accruing employment tax liabilities without making required tax deposits; (4) taxpayers who use frivolous tax arguments and continue to resist the requirements to file and pay; (5) taxpayers who will not cooperate with the IRS (for example, taxpayers that evade contact or will not provide financial information); (6) taxpayers who will not comply with the results of the IRS's financial analysis or will not enter into an installment agreement or offer in compromise; (7) taxpayers who are wage earners who have not paid their tax liability and will not adjust their withholdings to prevent future delinquencies; (8) taxpayers who are self-employed, have not paid their tax liability, and will not make estimated tax payments to prevent future delinquencies; and (9) taxpayers who do not meet their commitments (without a valid reason) as required by an installment agreement, offer in compromise, or extension of time to pay. Proposed §301.7602-2(d)(5)(vii) does not provide an exhaustive list of taxpayers who are considered to have refused to pay, and taxpayers who engage in conduct not specifically listed in the text of proposed §301.7602-2(d)(5)(vii) may be considered to have refused to pay.

In these situations, the IRS faces significant delays in carrying out its collection activities and often must contact third parties. Requiring the IRS to wait 45 days prior to making contact with third parties after notifying the taxpayer that such contacts are intended to be made would hinder the IRS's ability to complete its collection activities in time. Therefore, in these situations, proposed §301.7602-2(d)(5)(v)(B) and (d)(5)(vii) would provide the IRS the ability to contact third parties 10 days after providing the third-party contact notice to the taxpayer.

Proposed Applicability Date

The proposed regulations are proposed to apply to any contacts made on or after the date 30 days after the date of publication of final regulations in the *Federal Register*.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulation solely provides for the elimination or reduction of the time period between when the IRS informs a taxpayer that it intends to contact third parties and when the actual contact may take place in certain situations. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

III. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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.

IV. *Executive Order 13132: Federalism*

Executive Order 13132 (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. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the ***Federal Register***.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these temporary regulations is Brittany Harrison of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 301.7602-2 is amended by revising paragraphs (a), (d), and (g) to read as follows:

§301.7602-2 Third party contacts.

(a) *Advance notice of third-party contacts*—(1) *In general*. Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability unless the requirements of section 7602(c) of the Internal Revenue Code (Code) and paragraph (d) of this section have been satisfied.

(2) *Record of contacts*. A record of persons so contacted must be made and given to the taxpayer upon the taxpayer's request in accordance with paragraph (e) of this section.

* * * * *

(d) *Notice of third-party contacts*—(1) *In general*. An officer or employee of the IRS may not make third-party contacts with respect to the determination or collection of the liability of a taxpayer unless such contact occurs during a period (not greater than one year) that is specified in a written notice (third-party contact notice) that—

(i) The IRS provides to the taxpayer in accordance with paragraph (d)(2) of this section;

(ii) Informs the taxpayer that third-party contacts are intended to be made during such period; and

(iii) Except as set forth in paragraph (d)(5) of this section, is provided to the taxpayer no later than 45 days before the beginning of such period (45-day advance notice period).

(2) *Provision of third-party contact notice*. A third-party contact notice must be—

(i) Mailed to the taxpayer's last known address;

(ii) Given in person to the taxpayer;

(iii) Left at the taxpayer's dwelling or usual place of business; or

(iv) Actually received by the taxpayer.

(3) *Successive notices*. Nothing in paragraph (d)(1) of this section prevents the IRS from issuing successive notices to the same taxpayer with respect to the same tax liability for periods (each not greater than one year) that, in the aggregate, exceed one year.

(4) *Intent to contact.* A third-party contact notice will not be issued under paragraph (d) of this section unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. Nothing in the preceding sentence will prevent the issuance of a third-party contact notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be obtained by such contact will not be obtained by other means before such contact.

(5) *Exceptions to 45-day advance notice period*. The 45-day advance notice period of section 7602(c)(1)(B) of the Code and paragraph (d)(1) of this sec-

tion is reduced in the case of third-party contacts described in paragraphs (d)(5)(i) through (v) of this section.

(i) *Fuel compliance program*. The 45-day advance notice period is reduced to zero days, and the IRS may make a third-party contact at any time after the third-party contact notice has been given to the taxpayer, if—

(A) The IRS officer or employee intends to make a third-party contact in connection with its investigation of potential liability for penalties under section 6715, 6715A, or 6720A of the Code; or

(B) The IRS officer or employee intends to make a third-party contact in connection with its exercise of authority under section 4083(d) of the Code.

(ii) *Nonjudicial sale redemption investigations*. The 45-day advance notice period is reduced to 10 days if the IRS officer or employee intends to make a third-party contact in connection with an investigation into a potential nonjudicial sale redemption.

(iii) *Examination cases involving certain issues in which statutory period for assessment expiring within one year or less*. The 45-day advance notice period is reduced to 10 days in cases under examination in which there is one year or less remaining before the expiration of the period for assessment under section 6501(a) of the Code determined with regard to extensions (statutory assessment period) for any period included in the examination as of the date the IRS intends to make a third-party contact if:

(A) The case involves an issue with respect to which the IRS would have the burden of proof in any court proceeding; and

(B) The IRS has requested that the taxpayer provide the IRS with an unrestricted, signed Form 872, *Consent to Extend the Time to Assess Tax*, to extend the statutory assessment period by a period necessary to complete the examination and other administrative actions, and the taxpayer has not provided the requested signed Form 872 within the time requested.

(iv) *Trust fund recovery penalty investigations in which statutory period for assessment expiring within one year or less*. The 45-day advance notice period is reduced to 10 days in investigations into potential liability for penalties under section 6672 of the Code if there is one year or less remaining before the expiration of the statutory assessment period for any period included in the investigation as of the date the IRS intends to make a third-party contact.

(v) *Statutory period for collection expiring within one year or less*. The 45-day advance notice period is reduced to 10 days if there is one year or less remaining in the time period (or, in cases involving multiple time periods, in any time period in the case) under section 6502 of the Code within which the IRS may collect an assessed tax by levy or by a proceeding in court (statutory collection period) as of the date the IRS intends to make a third-party contact and either—

(A) The IRS intends to prepare and deliver to the Department of Justice (DOJ) a suit referral requesting that DOJ file suit to reduce assessments to judgment or to foreclose Federal tax liens before the expiration of the statutory collection period; or

(B) The revenue officer is unable to contact the taxpayer (as defined in paragraph (d)(5)(vi) of this section), or the taxpayer refuses to pay (as defined in paragraph (d)(5)(vii) of this section), and the revenue officer concludes that the advance notice period should be reduced in order to maximize the amount of unpaid tax that can be collected by levy within the time remaining before the statutory collection period expires.

(vi) *Unable to contact the taxpayer*. The revenue officer is unable to contact the taxpayer for purposes of paragraph (d)(5)(v)(B) of this section if the taxpayer fails to respond to the revenue officer's reasonable attempts to contact the taxpayer directly within the time requested by the revenue officer.

(vii) *Taxpayer refuses to pay.* The category of taxpayers who are considered to have refused to pay for purposes of paragraph (d)(5)(v)(B) of this section includes taxpayers described in this paragraph (d)(5)(vii). This paragraph (d)(5)(vii) is not an exhaustive list of taxpayers considered to have refused to pay, and taxpayers who engage in conduct not specifically described in this paragraph (d)(5)(vii) may be considered to have refused to pay.

(A) Taxpayers who have the ability to pay their currently due and owing taxes including required tax deposits and estimated tax payments and to pay their delinquent taxes through an alternative collection method but will not do so.

(B) Taxpayers who cannot pay currently due taxes or pay their delinquent taxes, but who have assets in excess of amounts exempt from levy that will yield net proceeds and are unwilling or unable to borrow against or liquidate these assets.

(C) Taxpayers who are accruing employment tax liabilities without making required tax deposits.

(D) Taxpayers who use frivolous tax arguments and continue to resist the requirements to file returns and pay their tax liability.

(E) Taxpayers who will not cooperate with the IRS (for example, taxpayers that evade contact or will not provide financial information).

(F) Taxpayers who will not comply with the results of the IRS's financial analysis or will not enter into an installment agreement or offer in compromise.

(G) Taxpayers who are wage earners who have not paid their tax liability and will not adjust their withholdings to prevent future delinquencies.

(H) Taxpayers who are self-employed, have not paid their tax liability, and will not make estimated tax payments to prevent future delinquencies.

(I) Taxpayers who do not meet their commitments (without a valid reason) as required by an installment agreement, offer in compromise, or extension of time to pay.

* * * * *

(g) *Applicability dates*—(1) *In general*. Except as provided for in paragraph (g)(2) of this section, this section is applicable on December 18, 2002.

(2) *Exceptions*. Paragraphs (a)(1) and (d) of this section apply to third-party contacts made on or after 30 days after [DATE OF PUBLICATION OF FINAL RULE].

Douglas W. O'Donnell,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register March 21, 2024, 8:45 a.m., and published in the issue of the Federal Register for March 22, 2024, 89 FR 20371)

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.
F.R.—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.

Numerical Finding List[1]

Bulletin 2024–16

Announcements:

Notices:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

Finding List of Current Actions on Previously Published Items[1]

Bulletin 2024–16

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2023–27 through 2023–52 is in Internal Revenue Bulletin 2023–52, dated December 26, 2023.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

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/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page *www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.