

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

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

### EMPLOYMENT TAX, SELF-EMPLOYMENT TAX

#### **Notice 2020-54, page 226.**

Notice 2020-54 provides guidance to employers on the requirement to report the amount of qualified sick leave wages and qualified family leave wages paid to employees under the Families First Coronavirus Response Act (Families First Act), Pub. L. No. 116-127, 134 Stat. 178 (March 18, 2020). Employers will be required to report these amounts either on Form W-2, Box 14, or on a separate statement. This required reporting provides employees who are also self-employed

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with information necessary for properly claiming qualified sick leave equivalent or qualified family leave equivalent credits under the Families First Act.

### INCOME TAX

#### **REG-123027-19, page 229.**

These proposed regulations relax the minimum compliance-monitoring sampling requirement for purposes of physical inspections and low-income certification review provided in the Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations (T.D. 9848) published in the Federal Register (84 FR 6076).

# 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.

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# Part III

## Guidance on Reporting Qualified Sick Leave Wages and Qualified Family Leave Wages Paid Pursuant to the Families First Coronavirus Response Act

### Notice 2020-54

#### I. PURPOSE

This notice provides guidance to employers on the requirement to report the amount of qualified sick leave wages and qualified family leave wages paid to employees under the Families First Coronavirus Response Act (Families First Act), Pub. L. No. 116-127, 134 Stat. 178 (March 18, 2020). Employers will be required to report these amounts either on Form W-2, Box 14, or on a separate statement. This required reporting provides employees who are also self-employed with information necessary for properly claiming qualified sick leave equivalent or qualified family leave equivalent credits under the Families First Act.

#### II. BACKGROUND

The Families First Act generally requires employers with fewer than 500 employees to provide paid leave due to certain circumstances related to the Coronavirus Disease 2019 (COVID-19) through two separate provisions: the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

Division E of the Families First Act, the Emergency Paid Sick Leave Act (EPSLA), requires certain employers to provide employees with up to 80 hours of paid sick leave if the employee is unable to work or telework because the employ-

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(4) is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or

(6) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor.<sup>1</sup>

An employee who is unable to work or telework for reasons related to COVID-19 described in (1), (2), or (3) above is entitled to paid sick leave at the employee's regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$511 per day and \$5,110 in the aggregate. An employee who is unable to work or telework for reasons related to COVID-19 described in (4), (5), or (6) above is entitled to paid sick leave at two-thirds the employee's regular rate of pay or, if higher, the Federal minimum wage or any applicable State or local minimum wage, up to \$200 per day and \$2,000 in the aggregate.

Division C of the Families First Act, the Emergency Family and Medical Leave Expansion Act (EFMLEA), amends the Family and Medical Leave Act of 1993 to require employers to provide expanded paid family and medical leave to employees who are unable to work or telework

for reasons related to COVID-19. An employee can receive up to 10 weeks of paid family and medical leave at two-thirds the employee's regular rate of pay, up to \$200 per day and \$10,000 in the aggregate if the employee is unable to work or telework because the employee is caring for a son or daughter whose school or place of care is closed or whose child care provider is unavailable for reasons related to COVID-19.

Sections 7001 and 7003 of the Families First Act generally provide that employers subject to the paid leave requirements under EPSLA and EFMLEA ("eligible employers") are entitled to fully refundable tax credits to cover the cost of the leave required to be paid for those periods of time during which employees are unable to work or telework for reasons related to COVID-19.<sup>2</sup>

Eligible employers are entitled to receive a refundable credit equal to the amount of the qualified sick leave wages and qualified family leave wages (collectively "qualified leave wages"), plus allocable qualified health plan expenses. The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (Code) (the Old-Age, Survivors, and Disability Insurance tax (social security tax)), first reduced by any credits claimed under sections 3111(e) and (f) of the Code, and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 tax), on all wages and compensation paid to all employees. Under section 7005 of the Families First Act, the qualified leave wages are not subject to the taxes imposed on employers by sections 3111(a) and 3221(a) of the Code. In addition, section 7005 provides that the credits under sections 7001 and 7003 of the Families First Act are increased by the amount of the tax imposed by section 3111(b) of the Code (employer's share of Medicare tax) on qualified leave wages.<sup>3</sup>

Specifically, section 7001(b) of the Families First Act provides eligible em-

<sup>1</sup> As of the date this Notice is being released, the U.S. Department of Health and Human Services has not yet specified any other such conditions.

<sup>2</sup> Under sections 7001(d)(4) and 7003(d)(4) of the Families First Act, these credits do not apply to the government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

<sup>3</sup> The credit for the employer's share of Medicare tax does not apply to eligible employers that are subject to Railroad Retirement Tax Act (RRTA) because under section 7005(a) of the Families First Act qualified leave wages are not subject to Medicare tax under RRTA due to that section's reference to section 3221(a) of the Code, which includes both social security tax and Medicare tax.

employers with a refundable tax credit for qualified sick leave wages paid to an employee not to exceed \$200 (or \$511 in the case of any day any portion of which the employee is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the EPSLA) for any day (or portion thereof), and the maximum number of days that may be taken into account per employee is ten days. Section 7003(b) of the Families First Act provides eligible employers with a refundable tax credit for qualified family leave wages paid to an employee not to exceed \$200 per day, and the aggregate credit may not exceed \$10,000 per employee. Up to ten weeks of qualifying family leave wages can be taken into account for the credit.

Sections 7002(a) and 7004(a) of the Families First Act entitle a self-employed individual to a refundable credit against income tax imposed on self-employment income for qualified sick leave equivalent amounts and qualified family leave equivalent amounts. The credit is available to self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be entitled to receive paid leave under the EPSLA or the EFMLEA if the individual were an employee of an employer (other than himself or herself).

The refundable credits authorized under the Families First Act apply to qualified sick leave wages and qualified family leave wages paid with respect to the period beginning on April 1, 2020, and ending on December 31, 2020.<sup>4</sup> The same period is used to determine the refundable credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for self-employed individuals.

If a self-employed individual is entitled to a refundable credit for a qualified sick leave equivalent amount under section 7002(a) of the Families First Act and also receives qualified sick leave wages as an employee that are required to be paid un-

der the EPSLA, section 7002(d)(3) of the Families First Act reduces the qualified sick leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 7002(c) of the Families First Act and any qualified sick leave wages under section 7001(b)(1) of the Families First Act exceeds \$2,000 (or \$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the EPSLA). Similarly, if a self-employed individual is entitled to a refundable credit for a qualified family leave equivalent amount under section 7004(a) of the Families First Act and also receives qualified family leave wages as an employee under the EFMLEA, section 7004(d)(3) of the Families First Act reduces the qualified family leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave equivalent amount described in section 7004(c) of the Families First Act and the qualified family leave wages under section 7003(b)(1) of the Families First Act exceeds \$10,000.

Section 7002(g) and section 7004(e) of the Families First Act provide that the Secretary of the Treasury shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of sections 7002 and 7004 of the Families First Act, respectively.

### III. REPORTING REQUIREMENTS

In order to provide self-employed individuals who also receive wages or compensation as employees with the information they need to properly claim any qualified sick leave equivalent or qualified family leave equivalent credits for which they are eligible, this notice requires employers to report to employees the amount of qualified sick leave wages and qualified family leave wages paid to the employees under sections 7001 or 7003 of the Fam-

ilies First Act, respectively. Employers must separately state the total amount of qualified sick leave wages paid pursuant to paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA, qualified sick leave wages paid pursuant to paragraphs (4), (5), and (6) of section 5102(a) of the EPSLA, and qualified family leave wages paid pursuant to section 3102(b) of the EFMLEA. Employers must separately state each of these wage amounts either on Form W-2, Box 14 or on a separate statement. Self-employed individuals claiming qualified sick leave equivalent or qualified family leave equivalent credits must then report these qualified sick leave and qualified family leave wage amounts on Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, included with their income tax returns, and reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages.

#### *Reporting Qualified Sick Leave Wages*

In addition to including qualified sick leave wages in the amount of wages paid to the employee reported in Boxes 1, 3 (up to the social security wage base), and 5 of Form W-2 (or, in the case of compensation subject to the RRTA, in the amount of RRTA compensation paid to the employee reported in Boxes 1 and 14 of Form W-2<sup>5</sup>), employers must report to the employee the following type and amount of the wages that were paid, with each amount separately reported either in Box 14 of Form W-2 or on a separate statement:

- the total amount of qualified sick leave wages paid for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA; in labeling this amount, the employer must use the following, or similar, language: “sick leave wages subject to the \$511 per day limit;” and
- the total amount of qualified sick leave wages paid for reasons de-

<sup>4</sup>Sections 7001(g) and 7003(g) of the Families First Act provide that sections 7001 and 7003 apply to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury which is during the 15-day period beginning on the date of the enactment of the Families First Act (March 18, 2020). Notice 2020-21, 2020-16 I.R.B. 660, provides that the tax credits for qualified sick leave wages and qualified family leave wages under sections 7001 and 7003 of the Families First Act apply to wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020.

<sup>5</sup>Railroad employers are directed by the instructions to Form W-2 to report certain specified amounts in Box 14. Other employers are directed to use Box 14 “for any other information that you want to give to your employee. Label each item.” This notice directs all employers to use Box 14 to report qualified sick leave wages and qualified family leave wages, unless a separate statement is used instead.

scribed in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA; in labeling this amount, the employer must use the following or similar language: “sick leave wages subject to the \$200 per day limit.”

If a separate statement is provided and the employee receives a paper Form W-2, then the statement must be included with the Form W-2 provided to the employee, and if the employee receives an electronic Form W-2, then the statement shall be provided in the same manner and at the same time as the Form W-2.

#### *Reporting Qualified Family Leave Wages*

In addition to including qualified family leave wages in the amount of wages paid to the employee reported in Boxes 1, 3 (up to the social security wage base), and 5 of Form W-2 (or, in the case of compensation subject to RRTA, in the amount of RRTA compensation paid to the employee reported in Boxes 1 and 14 of Form W-2), employers must separately report to the employee the total amount of qualified family leave wages paid to the employee under the EFMLEA either in Box 14 of Form W-2 or on a separate statement. In labeling this amount, the employer must use the following, or similar, language: “emergency family leave wages.” If a separate statement is provided and the employee receives a paper Form W-2, then the statement must be included with the Form W-2 sent to the employee, and if the employee receives an electronic Form

W-2, then the statement shall be provided in the same manner and at the same time as the Form W-2.

#### *Model Language for Employee Instructions*

As part of the Instructions for Employee, under the instructions for Box 14, for the Forms W-2, or in a separate statement sent to the employee, the employer may provide additional information about qualified sick leave wages and qualified family leave wages and explain that these wages may limit the amount of the qualified sick leave equivalent or qualified family leave equivalent credits to which the employee may be entitled with respect to any self-employment income. The following model language (modified as necessary) may be used:

“Included in Box 14, if applicable, are amounts paid to you as qualified sick leave wages or qualified family leave wages under the Families First Coronavirus Response Act. Specifically, up to three types of paid qualified sick leave wages or qualified family leave wages are reported in Box 14:

- Sick leave wages subject to the \$511 per day limit because of care you required;
- Sick leave wages subject to the \$200 per day limit because of care you provided to another; and
- Emergency family leave wages.

If you have self-employment income in addition to wages paid by your

employer, and you intend to claim any qualified sick leave or qualified family leave equivalent credits, you must report the qualified sick leave or qualified family leave wages on Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, included with your income tax return and reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages. If you have self-employment income, you should refer to the instructions for your individual income tax return for more information.”

#### IV. PAPERWORK REDUCTION ACT

Any collection of information associated with this notice has been submitted to the Office of Management and Budget for review under OMB control number 1545-0008 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

#### V. DRAFTING INFORMATION

The principal author of this notice is Michael Gitlin. For further information on the provisions of this notice, please contact Mr. Gitlin at 202-317-6798 (not a toll-free number).

# Part IV

## Notice of Proposed Rulemaking

### Low-Income Housing Credit Compliance-Monitoring Regulations

#### REG-123027-19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the compliance-monitoring duties of State or local housing credit agencies (Agencies) for purposes of the low-income housing credit under section 42 of the Internal Revenue Code (Code). These proposed regulations would relax the minimum compliance-monitoring sampling requirement for purposes of physical inspections and low-income certification review provided in the Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations (T.D. 9848) published in the **Federal Register** (84 FR 6076). The proposed regulations will affect owners of low-income housing projects, tenants in those low-income housing projects, and Agencies that administer the credit.

DATES: Written or electronic comments and requests for a public hearing must be received by September 8, 2020.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-123027-19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemak-

ing Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LP-D:PR (REG-123027-19), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dillon Taylor or Michael J. Torruella Costa at (202) 317-4137; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-5177 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Code.

Section 42(m)(1) requires an Agency to allocate housing credit dollar amounts (the potential to earn low-income housing credits) among candidate proposed buildings/projects. The allocation must be pursuant to a qualified allocation plan (QAP) that has been approved by the governmental unit of which the Agency is a part. A QAP not only sets forth selection criteria by which an Agency makes these allocations but also provides a procedure that the Agency must follow in monitoring for noncompliance with the provisions of section 42, including monitoring for non-

compliance with habitability standards through regular site visits.

Section 1.42-5 of the Income Tax Regulations (the compliance-monitoring regulations) provides the requirements of a monitoring procedure that must be part of any QAP. Among the requirements, an Agency must perform physical inspections and low-income certification review.

The compliance-monitoring regulations, however, do not require that *every* low-income unit in a project be monitored for noncompliance. Instead, Agencies are permitted to satisfy their compliance-monitoring duties by physically inspecting, and performing low-income certification review, on only samples of those units. *See* T.D. 8430, 57 FR 40118, 40121 (Sept. 2, 1992).<sup>1</sup> For many years, starting in 2000, the minimum sample size for both file review and on-site inspections was 20 percent of the low-income units, regardless of the size of the total population of low-income units in a project. *See* T.D. 8859, 65 FR 2323, 2327 (Jan. 14, 2000).

On February 25, 2016, the Treasury Department and the IRS published temporary regulations (T.D. 9753) in the **Federal Register** (81 FR 9333), which amended §1.42-5 of the Income Tax Regulations and permitted the IRS to establish sample-size criteria in guidance published in the Internal Revenue Bulletin. *See* §601.601(d)(2)(ii)(b) of 26 CFR Chapter 1.<sup>2</sup> Concurrently with the issuance of the temporary regulations, Revenue Procedure 2016-15, 2016-11 I.R.B. 435, was published in the Internal Revenue Bulletin. This revenue procedure permitted an Agency to elect to use sample sizes of either a minimum of 20 percent of the low-income units in a project (rounded up to the nearest whole number) or the number in a chart identifying minimum sample sizes depending on the number of low-income units in a project (the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart).

<sup>1</sup> Initially, the requirements were that the Agency choose which units receive low-income certification review, that the owner receive no more than reasonable notice of the review, and that the Agency have the right to perform on-site inspection. *See* T.D. 8430 at 40122-23. Subsequently, some on-site inspections were required, and samples for both review and inspection were required to be chosen randomly. *See* T.D. 8859, 65 FR 2323, 2327 (Jan. 14, 2000).

<sup>2</sup> Also in the same issue of the **Federal Register**, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-150349-12, 81 FR 9379) (proposed regulations). The text of the proposed regulations incorporated by cross-reference the text of the temporary regulations.

The minimum sample sizes in the chart correspond to the minimum sample sizes required by the Department of Housing and Urban Development's (HUD's) Real Estate Assessment Center for inspections under HUD programs (the REAC numbers). HUD designed this table of sample sizes to produce a statistically consistent level of confidence in the results of physical inspections across a broad range of project sizes.

The revenue procedure had the effect of reducing the minimum sample sizes for large low-income housing projects (those with more than 110 low-income units). Because of the choice between using the REAC number and 20 percent of the low-income units, the revenue procedure did not impact projects with fewer than 111 low-income units.

The same sample-size provisions applied to independently selected samples on which the Agency must perform low-income certification review. The revenue procedure provided only minimum sample sizes, permitting Agencies to monitor compliance in more units, if desired.

In the preamble to the temporary regulations, the Treasury Department and the IRS expressed concern that, in smaller projects, physical inspection or low-income certification review of only 20 percent of the units might fail to produce sufficiently accurate estimates of the remaining units' overall compliance with habitability and low-income certification. To address this concern, the preamble added that "the Treasury Department and the IRS intend to consider whether Rev. Proc. 2016-15 should be replaced with a revenue procedure that does not permit use of the 20 percent rule in those circumstances." 81 FR at 9334. The removal of the 20 percent option would generally increase the number of units that needed to be inspected in smaller projects. The public comments on the temporary regulations directed very little attention to this potential increase.

In addition, the preamble invited fundamental suggestions to make inspections less burdensome:

The Treasury Department and the IRS believe the methods in Rev. Proc. 2016-15 reasonably balance the bur-

den on Agencies, tenants, and building owners while adequately monitoring compliance. However, additional comments may be submitted on other possible methods, including stratified sampling procedures and estimation methodologies. To be useful, any such comments should include substantial detail regarding the procedures to be adopted and should provide thorough justification as to whether the suggested methods effectively reduce burden without negatively impacting the confidence that can be placed in the results obtained from the resulting samples.

*Id.* at 9336. The public submitted no comment letters specifically responsive to this request.

On February 26, 2019, the Treasury Department and IRS published regulations (T.D. 9848) in the **Federal Register** (84 FR 6076), finalizing the temporary regulations. Because these final regulations contain provisions directly addressing all issues previously addressed in Revenue Procedure 2016-15, the preamble of the final regulations declares that revenue procedure obsolete with respect to an Agency as of the date on which the Agency's QAP is amended to reflect the final regulations and, in all cases, after December 31, 2020. *See* 84 FR at 6078. Among other provisions, the final regulations require Agencies to inspect no fewer units than the number specified for projects of the relevant size in the REAC numbers. This requirement has the effect of increasing the sample sizes for smaller projects. The Treasury Department and the IRS determined that the REAC numbers produce a statistically valid sampling of units and that using them yielded a consistent level of confidence in the compliance-monitoring results for projects of various sizes. The final regulations allow Agencies a reasonable period of time to amend their QAPs for this purpose, but require QAPs to be amended no later than December 31, 2020.

Since the publication of the final regulations, the Treasury Department and the IRS have received numerous oral and written comments from Agencies, stakeholders, and trade groups representing Agencies. In particular, these comments

expressed concern that the final regulations ended Agencies' ability to use samples of 20 percent of the low-income units in a project when the applicable REAC number is larger. Consistent with the comments and letters, the trade groups' comment letters expressed concern about the situations in which the REAC numbers would increase the number of units that Agencies must examine, thereby increasing Agencies' costs for additional staff and other related expenditures and burdens. One trade group further explained that many Agencies would encounter difficulty in addressing increased staffing needs and other new costs due to overall State budget constraints. The trade group observed that cost increases are also likely to cause Agencies to increase the compliance-monitoring fees that they charge to building owners. If fees are not increased enough to cover the increased costs, Agencies will have to divert resources from other affordable housing priorities to fund their compliance-monitoring activities. The trade group noted that terminating the ability to use the 20 percent samples will have its most significant impact on States with numerous small projects, predominantly in rural areas, and that some States with only small projects may even experience a 100 percent increase in burden.

### Explanation of Provisions

The final regulations reflected the belief of the Treasury Department and the IRS that a higher compliance-monitoring burden on Agencies was justified by the increased statistical confidence that results from the use of the REAC numbers to determine sample sizes for smaller projects. The comments on the final regulations, however, have demonstrated the magnitude of the increased costs and burdens that this requirement imposes on Agencies. As a result of these comments, the Treasury Department and the IRS have greater awareness of the many practical challenges Agencies experience in using samples greater than 20 percent while carrying out their compliance-monitoring responsibilities. Furthermore, the comments noted that many Agencies typically evaluate each project to determine if circum-

stances warrant the inspection and review of more units than the required minimum. Complying with the REAC numbers when an Agency believes that smaller samples would be sufficient may have the effect of depriving the Agency of the resources that it requires to engage in additional compliance-monitoring activities on projects that manifest the need for inspection and review of more than the minimum sample of units.

Although there is value in providing a level of confidence that is more consistent over a broad range of project sizes, that increased consistency is outweighed in this context by concerns over Agencies' compliance-monitoring burdens. One goal of the compliance-monitoring regulations is to increase flexibility and reduce burden, so that Agencies may fulfill their compliance-monitoring responsibilities in an efficient and cost-effective manner. Accordingly, the Treasury Department and the IRS propose returning to the sample-size requirements that applied under the temporary regulations. Thus, under these proposed regulations, the minimum number of low-income units that must be included in the random samples on which an Agency conducts physical inspections or low-income certification review is the lesser of the applicable REAC number or 20 percent of the low-income units in the project, rounded up to the next whole number.

#### **Proposed Applicability Date**

These regulations are proposed to apply beginning after the date these regulations are published as final regulations in the **Federal Register**. However, an Agency may rely on these proposed regulations beginning on February 26, 2019, until December 31 of the calendar year following the year that contains the date these regulations are published as final regulations in the **Federal Register**.

#### **Special Analyses**

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

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

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6) it is hereby certified that these regulations will not impose a significant economic impact on a substantial number of small entities. These regulations reinstate the minimum compliance-monitoring sampling requirement for purposes of physical inspections and low-income certification review previously provided under the temporary regulations (T.D. 9753) published in the **Federal Register** (81 FR 9333) on February 25, 2016. These previously provided requirements had been and continue to be relied upon by Agencies since 2016.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### **Comments and Requests for a Public Hearing**

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

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

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

#### **Drafting Information**

The principal authors of these regulations are Dillon Taylor and Michael J. Torruella Costa, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

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

Income taxes, Reporting and record-keeping requirements.

#### **Proposed Amendments to the Regulations**

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

#### **PART 1—INCOME TAXES**

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

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

**Par. 2.** Amend §1.42-5 by revising paragraphs (c)(2)(iii)(B) and (h) to read as follows:

*§1.42-5 Monitoring compliance with low-income housing credit requirements.*

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(B) *Number of low-income units.* The minimum number of low-income units for which the Agency must conduct on-site inspections and low-income certification review is the lesser of—

(1) 20 percent of the low-income units in the low-income housing project, rounded up to the nearest whole number of units; or

(2) the Minimum Unit Sample Size set forth in the following Low-Income Housing Credit Minimum Unit Sample Size Reference Chart:



Table 1 to Paragraph (c)(2)(iii)

| Number of Low-Income Units in the Low-Income Housing Project | Number of Low-Income Units Selected for Inspection or for Low-Income Certification Review (Minimum Unit Sample Size) |
|--|--|
| 1  | 1  |
| 2  | 2  |
| 3  | 3  |
| 4  | 4  |
| 5-6  | 5  |
| 7  | 6  |
| 8-9  | 7  |
| 10-11  | 8  |
| 12-13  | 9  |
| 14-16  | 10   |
| 17-18  | 11   |
| 19-21  | 12   |
| 22-25  | 13   |
| 26-29  | 14   |
| 30-34  | 15   |
| 35-40  | 16   |
| 41-47  | 17   |
| 48-56  | 18   |
| 57-67  | 19   |
| 68-81  | 20   |
| 82-101   | 21   |
| 102-130  | 22   |
| 131-175  | 23   |
| 176-257  | 24   |
| 258-449  | 25   |
| 450-1,461  | 26   |
| 1,462-9,999  | 27   |

\* \* \* \* \*

(h) *Applicability dates.* The requirements in paragraph (c)(2)(iii)(B) of this section apply beginning after the date final regulations are published in the **Federal Register**.

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

(Filed by the Office of the Federal Register on July 2, 2020, 4:15 p.m., and published in the issue of the Federal Register for July 7, 2020, 85 F.R. 40610)

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2018–27 through 2018–52 is in Internal Revenue Bulletin 2018–52, dated December 27, 2018.

# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

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

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## **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](http://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.