

# 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.

**Bulletin No. 2023-10**  
**March 6, 2023**

### EXCISE TAX

#### **AOD 2023-1, page 502.**

Acquiescence to the holding that § 4611(b)(1)(A) imposes a tax on exports in violation of the Export Clause of the United States Constitution, U.S. Const. art. I, § 9, cl. 5. Although the Service disagrees with the decision, in the interest of sound tax administration, it will follow the decision in all circuits.

### INCOME TAX

#### **Notice 2023-17, page 505.**

This notice establishes the program to allocate environmental justice solar and wind capacity limitation, as required under § 48(e) of the Internal Revenue Code. This notice also provides initial program guidance for potential applicants for allocations of calendar year 2023 capacity limitation. This initial guidance provides the general eligibility requirements, a description of the four statutory facility categories for which an eligible facility may request an allocation, amounts of capacity limitation reserved for each facility category, a general description of the program design and goals, the application review process, and the proposed timeline for opening two 60-day application periods in 2023 based on project categories.

#### **Notice 2023-18, page 508.**

The notice establishes the section 48C(e) program to allocate \$10 billion of section 48C credits (\$4 billion of which

may only be allocated to projects located in certain energy communities census tracts) and provides initial program guidance. The Department of Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate allocating \$4 billion of section 48C credits in the first allocation round, with approximately \$1.6 billion of these credits to be allocated to projects located in certain energy communities census tracts. The Treasury Department and the IRS will allocate the remaining credits in future allocation rounds. This notice also provides the general rules for determining the section 48C credit, definitions of qualifying advanced energy projects, and the procedures for allocating the credits.

#### **Notice 2023-20, page 523.**

This notice provides interim guidance to insurance companies and certain other taxpayers related to their determination of adjusted financial statement income (AFSI) for purposes of the corporate alternative minimum tax, as added to the Code by the Inflation Reduction Act of 2022. This notice provides interim guidance for the determination of AFSI as it relates to (1) variable contracts and similar contracts, (2) funds withheld reinsurance and modified coinsurance agreements, and (3) the basis of certain assets held by certain previously tax-exempt entities that received a “fresh start” basis adjustment.

#### **Rev. Rul. 2023-5, page 503.**

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term tax exempt rate. For purposes of sections 382, 1274, 1288, 7872 and other sections of the Code, tables set forth the rates for March 2023.

# The IRS Mission

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

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

## Actions Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommenda-

tion of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the **Internal Revenue Bulletin**.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the

court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Commissioner DOES ACQUIESCE in the following decision:

*Trafigura Trading LLC v. United States*, 29 F.4th 286 (5th Cir. 2022)<sup>1</sup>

<sup>1</sup> Acquiescence to the holding that § 4611(b)(1)(A) imposes a tax on exports in violation of the Export Clause of the United States Constitution, U.S. Const. art. I, § 9, cl. 5. Although the Service disagrees with the decision, in the interest of sound tax administration, it will follow the decision in all circuits.

# Part I

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

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

### Rev. Rul. 2023-5

This revenue ruling provides various prescribed rates for federal income tax

purposes for March 2023 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropri-

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

<b>REV. RUL. 2023-5 TABLE 1</b>				
Applicable Federal Rates (AFR) for March 2023				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
		<i>Short-term</i>		
AFR	4.50%	4.45%	4.43%	4.41%
110% AFR	4.96%	4.90%	4.87%	4.85%
120% AFR	5.41%	5.34%	5.30%	5.28%
130% AFR	5.87%	5.79%	5.75%	5.72%
		<i>Mid-term</i>		
AFR	3.70%	3.67%	3.65%	3.64%
110% AFR	4.08%	4.04%	4.02%	4.01%
120% AFR	4.45%	4.40%	4.38%	4.36%
130% AFR	4.83%	4.77%	4.74%	4.72%
150% AFR	5.59%	5.51%	5.47%	5.45%
175% AFR	6.52%	6.42%	6.37%	6.34%
		<i>Long-term</i>		
AFR	3.74%	3.71%	3.69%	3.68%
110% AFR	4.12%	4.08%	4.06%	4.05%
120% AFR	4.50%	4.45%	4.43%	4.41%
130% AFR	4.88%	4.82%	4.79%	4.77%

<b>REV. RUL. 2023-5 TABLE 2</b>				
Adjusted AFR for March 2023				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	3.41%	3.38%	3.37%	3.36%
Mid-term adjusted AFR	2.81%	2.79%	2.78%	2.77%
Long-term adjusted AFR	2.84%	2.82%	2.81%	2.80%

**REV. RUL. 2023-5 TABLE 3**

## Rates Under Section 382 for March 2023

Adjusted federal long-term rate for the current month	2.84%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.92%

**REV. RUL. 2023-5 TABLE 4**

## Appropriate Percentages Under Section 42(b)(1) for March 2023

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

Appropriate percentage for the 70% present value low-income housing credit	7.86%
Appropriate percentage for the 30% present value low-income housing credit	3.37%

**REV. RUL. 2023-5 TABLE 5**

## Rate Under Section 7520 for March 2023

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	4.40%
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**Section 42.—Low-Income Housing Credit**

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The adjusted applicable federal long-term rate is set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The applicable federal short-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

**Section 7520.—Valuation Tables**

The applicable federal mid-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

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

The applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2023. See Rev. Rul. 2023-5, page 503.

# Part III

## Initial Guidance Establishing Program to Allocate Environmental Justice Solar and Wind Capacity Limitation Under Section 48(e)

### Notice 2023-17

#### SECTION 1. PURPOSE

This notice establishes the program under § 48(e) of the Internal Revenue Code (Code)<sup>1</sup> to allocate amounts of environmental justice solar and wind capacity limitation (Capacity Limitation) to qualified solar and wind facilities eligible for the energy investment credit determined under § 48 (Low-Income Communities Bonus Credit Program). In addition, this notice provides initial guidance regarding the overall program design, the application process, and additional criteria that will be considered in determining which applicants will receive an allocation of Capacity Limitation in calendar year 2023 under the Low-Income Communities Bonus Credit Program. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will issue further guidance (forthcoming guidance) outlining the specific application procedures, additional criteria, applicable definitions, and other information necessary to submit an application to request an allocation of Capacity Limitation for calendar year 2023 under the Low-Income Communities Bonus Credit Program.

After the 2023 allocation process begins, the Treasury Department and IRS will monitor and assess whether to implement any modifications to the Low-Income Communities Bonus Credit Program for calendar year 2024 allocations of Capacity Limitation.

#### SECTION 2. BACKGROUND

.01 *Overview.* The amount of the energy investment credit determined under

§ 48(a) (§ 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)). Section 13103 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), amended § 48, in part, to add new § 48(e) to potentially increase the amount of the § 48 credit with respect to eligible property that is part of a qualified solar and wind facility.

.02 *Eligible Property.* The term *eligible property* is defined in § 48(e)(3) to mean energy property (including energy storage technology described in § 48(a)(3)(A)(ix) installed in connection with such energy property) that (i) is part of a wind facility described in § 45(d)(1) for which an election to treat the facility as energy property was made under § 48(a)(5) (wind facility), or (ii) is solar energy property described in § 48(a)(3)(A)(i) (solar energy property) or qualified small wind energy property described in § 48(a)(3)(A)(vi) (small wind energy property).

.03 *Qualified Solar and Wind Facility.* The term *qualified solar and wind facility* is defined in § 48(e)(2) to mean any facility (i) that generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) that has a maximum net output of less than 5 megawatts (as measured in alternating current); and (iii) that is described in at least one of the following four categories described in § 48(e)(2)(A)(iii):

(1) *Category 1:* The facility is located in a low-income community described in section 3.01 of this notice.

(2) *Category 2:* The facility is located on Indian land described in section 3.02 of this notice.

(3) *Category 3:* The facility is part of a qualified low-income residential building project described in section 3.03 of this notice.

(4) *Category 4:* The facility is part of a qualified low-income economic benefit project described in section 3.04 of this notice.

.04 *Increase in Section 48 Credit.* Section 48(e) provides for an increase in 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. Depending on the category of the facility, the § 48(e) Increase is either 10 percentage points or 20 percentage points. Section 48(e)(1)(A)(i) provides for a § 48(e) Increase of 10 percentage points for eligible property that is part of a Category 1 facility or a Category 2 facility that is not also a Category 3 facility or Category 4 facility. See the rules in section 3.01 and section 3.02 in this notice concerning facilities that are described in multiple categories. Section 48(e)(1)(A)(ii) provides for a § 48(e) Increase of 20 percentage points for eligible property that is part of a Category 3 facility or a Category 4 facility. Section 3 of this notice provides additional information regarding the four categories for qualified solar and wind facilities. Section 48(e)(1)(B) provides that the § 48(e) Increase for any taxable year for all property that is part of a qualified solar and wind facility cannot exceed the amount that bears the same ratio to the amount of the § 48 Increase as the Capacity Limitation allocated to such facility bears to the total megawatt nameplate capacity of such facility, as measured in direct current.

.05 *Placed in Service Deadline.* To be eligible for the § 48(e) Increase, § 48(e)(4)(E) requires that the property must be placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility of which such property is a part. Any Capacity Limitation that is allocated but expires because property is not placed in service within four years is taken into account as an excess, or increase in excess, under the carryover rules in § 48(e)(4)(D). See section 2.07(2) of this notice.

.06 *Placed in Service.*

(1) *In general.* Eligible property is considered placed in service in the earlier of the following taxable years:

<sup>1</sup> Unless otherwise specified, all “section” or “§” references are to sections of the Code.

(A) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such eligible property begins; or

(B) The taxable year in which the eligible property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

(2) *Eligible property subject to § 1.48-4 election to treat lessee as purchaser.* Eligible property with respect to which an election is made under § 1.48-4 of the Income Tax Regulations (26 C.F.R. part 1) to treat the lessee as having purchased such energy property is considered placed in service by the lessor in the taxable year in which possession is transferred to such lessee.

.07 *Establishment of Allocation Program.*

(1) *In general.* Section 48(e)(4) directs the Secretary of the Treasury or her delegate (Secretary) to establish a program, within 180 days of enactment of the IRA, to allocate amounts of Capacity Limitation to qualified solar and wind facilities.

(2) *Annual Capacity Limitation.* Under § 48(e)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts of direct current capacity for each of the calendar years 2023 and 2024. Under § 48(e)(4)(D), if the annual Capacity Limitation for any calendar year exceeds the aggregate amount allocated for such year, the excess is carried forward to the next year, but not beyond calendar year 2024. Any excess from calendar year 2024 may be carried forward and applied to the Capacity Limitation for calendar year 2025 under new § 48E(h)(4)(D)(ii).<sup>2</sup>

### SECTION 3. FACILITY CATEGORIES

.01 *Category 1: Located in a Low-Income Community.* Under § 48(e)(2)(A)(iii)(I), the term *low-income community* is generally defined under § 45D(e)(1), with certain modifications described elsewhere in § 45D(e), as any population census tract if the poverty rate for such

tract is at least 20 percent, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. A qualified solar and wind facility that is described in this section 3.01 and also in section 3.03 or 3.04 of this notice is considered a Category 3 facility or Category 4 facility (as applicable).

.02 *Category 2: Located on Indian Land.* Section 48(e)(2)(A)(iii)(I) provides that *Indian land* is defined in § 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)). A qualified solar and wind facility that is described in this section 3.02 and also in section 3.03 or 3.04 of this notice is considered a Category 3 facility or Category 4 facility (as applicable).

.03 *Category 3: Qualified Low-Income Residential Building Project.*

(1) Section 48(e)(2)(B) provides that a facility will be treated as part of a *qualified low-income residential building project* if such facility is installed on a residential rental building which participates in an affordable housing program, and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

(2) An *affordable housing program* includes any of the following:

(A) A covered housing program (as defined in § 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)).

(B) A housing assistance program administered by the Department of Agriculture under title V of the Housing Act of 1949.

(C) A housing program administered by a tribally designated housing entity (as defined in § 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22)).

(D) Such other affordable housing programs as the Secretary may provide.

(3) For a qualified low-income residential building project, § 48(e)(2)(D) provides that electricity acquired at a below-market rate will be considered a financial benefit. The forthcoming guidance will further clarify the parameters of financial benefit.

.04 *Category 4: Qualified Low-Income Economic Benefit Project.*

(1) Section 48(e)(2)(C) provides that a facility will be treated as part of a *qualified low-income economic benefit project* if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line (as defined in § 36B(d)(3)(A)) applicable to a family of the size involved, or less than 80 percent of area median gross income (as determined under § 142(d)(2)(B)).

(2) For a qualified low-income economic benefit project, § 48(e)(2)(D) provides that electricity acquired at a below-market rate will be considered a financial benefit. The forthcoming guidance will further clarify the parameters of financial benefit.

### SECTION 4. DESIGN AND IMPLEMENTATION OF LOW-INCOME COMMUNITIES BONUS CREDIT PROGRAM

.01 *In general.* Consistent with the statutory references in § 48(e) to low-income communities and environmental justice as well as the statute's four categories, the allocation program's broad goals are to increase adoption of and access to renewable energy facilities in low-income and other communities with environmental justice concerns; encourage new market participants; and provide social and economic benefits to individuals and communities that have been historically overburdened with pollution, adverse human health or environmental effects, and marginalized from economic opportunities.

.02 *Facility Category Allocations.* For calendar year 2023, the total annu-

<sup>2</sup> Section 13702(a) of the IRA also enacted § 48E(h), which generally provides for a program similar to the Low-Income Communities Bonus Credit Program for calendar years after 2024. Section 48E(i) directs the Secretary to issue guidance regarding the implementation of § 48E not later than January 1, 2025.

al Capacity Limitation of 1.8 gigawatts of direct current capacity will be divid-

ed among the four categories described in section 3. The allocation of Capacity

Limitation reserved for each facility category for calendar year 2023 is as follows:

Category 1: Located in a Low-Income Community	700 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	700 megawatts

See section 4.04 of this notice (relating to allocations of excess Capacity Limitation reserved for categories). As described in section 2.07(2) of this notice, if the annual Capacity Limitation for calendar year 2023 exceeds the aggregate amount allocated for calendar year 2023, the excess will be carried forward to calendar year 2024 pursuant to § 48(e)(4)(D).

.03 *Additional Criteria.* To further the overall program goals, the program will incorporate additional criteria in determining how to allocate the Capacity Limitation reserved for each facility category among eligible applicants. These criteria may include a focus on facilities that are (i) owned or developed by community-based organizations and mission-driven entities, (ii) have an impact on encouraging new market participants, (iii) provide substantial benefits to low-income communities and individuals marginalized from economic opportunities, and (iv) have a higher degree of commercial readiness. The forthcoming guidance will fully describe these additional criteria.

.04 *Allocation Process.* If selected applications for facilities with a collective total megawatt nameplate capacity exceed the Capacity Limitation reserved for each category, then a lottery or other processes may be used to allocate the Capacity Limitation to applicants. In the event a facility category has excess Capacity Limitation, such excess may be reallocated between the categories to maximize 2023 calendar year allocations.

.05 *Placed in Service Prior to Allocation Award.* Facilities placed in service prior to being awarded an allocation of Capacity Limitation are not eligible to receive an allocation.

.06 *Eligible Applicant.* Only the owner of a facility may apply for an allocation of Capacity Limitation. For each facility owned by an applicant, the applicant may apply for an allocation of Capacity Limitation in only one category for calendar year 2023. Applicants that do not receive an allocation of Capacity Limitation will be permitted to apply for future allocations after calendar year 2023. There will be no waitlist created from calendar year 2023 applications that did not receive an allocation of Capacity Limitation.

.07 *Phased Approach.* Applications will be accepted in a phased approach for calendar year 2023, during 60-day application windows. First, the Treasury Department and IRS anticipate that applications will be accepted for Category 3 facilities, as defined in section 3.03 of this notice, and Category 4 facilities, as defined in section 3.04 of this notice, in the third calendar quarter of 2023. Next, the Treasury Department and IRS anticipate that applications will be accepted for Category 1 facilities, as defined in section 3.01 of this notice, and Category 2 facilities, as defined in section 3.02 of this notice, thereafter. Forthcoming guidance on the application process and facility eligibility for all categories will be provided.

.08 *Program Administration.* The Department of Energy (DOE) will provide administration services for the Low-Income Communities Bonus Credit Program. DOE will review the applications for statutory eligibility and additional criteria as will be set out in forthcoming guidance and will provide recommendations to the IRS regarding the selection of applications for an allocation of Capacity Limitation. DOE will also perform the lottery or other process for allocation, de-

scribed in section 4.04 of this notice, as needed. Based on DOE's recommendation and the process for allocation, described in section 4.04 of this notice, the IRS will accept or reject the applicant's request for an allocation of Capacity Limitation and notify the applicant of its decision. An acceptance notification will state the amount of Capacity Limitation allocated to the applicant. The amount of Capacity Limitation allocated will not exceed the nameplate capacity of the facility (as measured in direct current) and will not be prorated. As required by § 48(e)(4)(E), applicants have four years from the date of the acceptance notification to place the property in service.

.09 *Effect of an Allocation.* The allocation of an amount of Capacity Limitation by the IRS under the Low-Income Communities Bonus Credit Program is not a determination that the facility will qualify for the § 48(e) Increase or the § 48 credit generally. This notice does not alter the rules regarding the determination and eligibility to claim a § 48 credit, including any § 48(e) Increase in energy percentage attributable to the Low-Income Communities Bonus Credit Program.

## SECTION 5. 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).



# Initial Guidance Establishing Qualifying Advanced Energy Project Credit Allocation Program Under Section 48C(e)

## Notice 2023-18

### SECTION 1. PURPOSE

.01 This notice establishes the program under § 48C(e)(1) of the Internal Revenue Code (Code)<sup>1</sup> to allocate \$10 billion of credits (\$4 billion of which may be allocated only to projects located in certain energy communities) for qualified investments in eligible qualifying advanced energy projects (§ 48C(e) program). The goal of the § 48C(e) program is to expand U.S. manufacturing capacity and quality jobs for clean energy technologies (including production and recycling), to reduce greenhouse gas emissions in the U.S. industrial sector, and to secure domestic supply chains for critical materials (including specified critical minerals) that serve as inputs for clean energy technology production.

.02 This notice and its appendices provide the initial program guidance for the § 48C(e) program. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue a supplemental notice and appendices (additional § 48C(e) program guidance) by May 31, 2023.

.03 The Treasury Department and the IRS anticipate providing at least two allocation rounds under the § 48C(e) program. For the first allocation round (Round 1) of the § 48C(e) program, which will begin on May 31, 2023, the Treasury Department and the IRS anticipate allocating \$4 billion of qualifying advanced energy project credits (§ 48C credits) with approximately \$1.6 billion in § 48C credits to be allocated to projects located in certain energy communities. Although the Treasury Department and the IRS intend to allocate a total of \$10 billion of § 48C credits with not less than \$4 billion of § 48C credits to proj-

ects located in certain energy communities over the duration of the § 48C(e) program, depending upon applications received, the Treasury Department and the IRS may not allocate exactly 40 percent of the total § 48C credits allocated in Round 1 to projects located in certain energy communities. To be considered for an allocation of § 48C credits in the § 48C(e) program for Round 1, taxpayers must submit concept papers to the Department of Energy (DOE) by July 31, 2023. Following submission of a concept paper, DOE will encourage or discourage taxpayers from submitting a joint application for DOE recommendation and for IRS § 48C(e) certification (§ 48C(e) application).

### SECTION 2. BACKGROUND

.01 For purposes of the § 38 general business credit, § 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the § 48C credit, which was originally enacted by § 1302(b) of the American Recovery and Reinvestment Act of 2009 (2009 Act), Public Law 111-5, Division B, Title I, Subtitle D, 123 Stat. 115, 345 (February 17, 2009), to provide an allocated credit for qualified investments in qualifying advanced energy projects.

.02 In addition to certain amendments made by the Tax Increase Prevention Act of 2014, Public Law 113-295, 128 Stat. 4010 (December 19, 2014), § 48C was most recently amended by § 13501 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). Section 13501(a) of the IRA added § 48C(e) to the Code to extend the § 48C credit and to provide an additional credit allocation of \$10 billion. Section 13501(b) of the IRA modified the definition of a “qualifying advanced energy project” contained in § 48C(c)(1)(A). Section 13501(c) and (d) of the IRA made conforming amendments to § 48C(c)(2)(A) and (f). The amendments made by § 13501 of the IRA became effective on January 1, 2023. *See* § 13501(e) of the IRA.

.03 Section 48C(a) provides that the § 48C credit for any taxable year is an amount equal to a certain percentage of the qualified investment (as defined in § 48C(b)) for such taxable year with respect to any qualifying advanced energy project (as defined in § 48C(c)(1) and section 3.01 of this notice) of the taxpayer. The § 48C credit generally is allowed in the taxable year in which the eligible property (as defined in § 48C(c)(2) and section 3.03 of this notice) is placed in service (as defined in section 3.04 of this notice). For purposes of § 48C credit allocations under the § 48C(e) program, § 48C(e)(4)(A) provides a base credit rate of 6 percent of the qualified investment. In the case of any project which satisfies the requirements of § 48C(e)(5)(A) and (6) (prevailing wage and apprenticeship requirements), § 48C(e)(4)(B) provides an alternative rate of 30 percent of the qualified investment. *See* section 4 of this notice.

.04 Section 48C(b)(1) provides that the qualified investment for any taxable year is the basis of eligible property that is placed in service by the taxpayer during such taxable year and is part of a qualifying advanced energy project.

.05 Section 48C(b)(3) provides that the amount which is treated as the qualified investment for all taxable years with respect to any qualified advanced energy project must not exceed the amount designated by the Secretary as eligible for the § 48C credit.

.06 Section 48C(e)(1) directs the Secretary of the Treasury or her delegate (Secretary) to establish the § 48C(e) program to consider and award certifications for qualified investments eligible for § 48C credits to qualifying advanced energy project sponsors.

.07 Section 48C(e)(2) provides that the total amount of § 48C credits which may be allocated under the § 48C(e) program may not exceed \$10 billion, of which not greater than \$6 billion may be allocated to qualified investments which are not located within census tracts that--

(1) Prior to August 16, 2022 (the date of enactment of § 48C(e)), had no project that received a certification and allocation

<sup>1</sup> Unless otherwise specified, all “section” or “§” references are to sections of the Code.

of credits under the § 48C(d) allocation program established under the 2009 Act, and

(2) Are described in § 45(b)(11)(B)(iii) as one of the following:

(a) a census tract in which a coal mine has closed after December 31, 1999;

(b) a census tract in which a coal-fired electric generating unit has been retired after December 31, 2009; or

(c) a census tract directly adjoining a census tract described in section 2.07(2) (a) or (b) of this notice.

.08 Section 48C(e)(3)(A) provides that each applicant for certification must submit an application at such time and containing such information as the Secretary may require.

.09 Section 48C(e)(3)(B) provides that each applicant for certification has 2 years from the date of acceptance by the Secretary of the § 48C(e) application during which to provide to the Secretary evidence that the requirements of the certification have been met.

.10 Section 48C(e)(3)(C) provides that an applicant who receives a certification has 2 years from the date of issuance of the certification to place the project in service and to notify the Secretary that such project has been so placed in service. If the project is not placed in service within the 2-year period, then the certification is no longer valid. If any certification is revoked under § 48C(e)(3), the total amount of the credits that may be allocated under § 48C(e)(2) is increased by the amount of § 48C credits with respect to such revoked certification.

.11 Section 48C(e)(3)(D) provides that in the case of an applicant which receives a certification, if the Secretary determines that the project has been placed in service at a location that is materially different than the location specified in the § 48C(e) application for such project, the certification is no longer valid.

.12 The at-risk rules provided by § 49, the credit recapture and other special rules provided in § 50, and pursuant to § 48C(b) (2), rules regarding qualified progress expenditures (similar to the rules of § 46(c) (4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990)) apply for purposes of the § 48C credit.

### SECTION 3. DEFINITIONS

The following definitions apply solely for purposes of the § 48C(e) program:

.01 *Qualifying Advanced Energy Project*. The term *qualifying advanced energy project* means a project that meets the following requirements:

(1) the project:

(a) re-equips, expands or establishes an industrial or a manufacturing facility (as defined in sections 3.05 and 3.06 of this notice) for the production or recycling of specified advanced energy property (as defined in section 3.02 of this notice) (see Appendix A for more information regarding these definitions);

(b) re-equips any industrial or manufacturing facility, with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of—

(i) low- or zero-carbon process heat systems;

(ii) carbon capture, transport, utilization and storage systems;

(iii) energy efficiency and reduction in waste from industrial processes; or

(iv) any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary (see Appendix A for more information regarding these definitions); or

(c) re-equips, expands or establishes an industrial facility for the processing, refining or recycling of critical materials (as defined in § 7002(a) of the Energy Act of 2020) (see Appendix A for more information regarding these definitions);

(2) the Secretary has certified pursuant to § 48C(e)(3) that part or all of the qualified investment in the qualifying advanced energy project is eligible for a § 48C credit; and

(3) the project does not include any portion of a project for the production of any property that is used in the refining or blending of any transportation fuels (other than renewable fuels).

.02 *Specified Advanced Energy Property*. The term *specified advanced energy property* means any of the following:

(1) property designed for use in the production of energy from the sun, water, wind, geothermal deposits (within the meaning of § 613(e)(2)), or other renewable resources;

(2) fuel cells, microturbines, or energy storage systems and components;

(3) electric grid modernization equipment or components;

(4) property designed to capture, remove, use, or sequester carbon oxide emissions;

(5) equipment designed to refine, electrolyze, or blend any fuel, chemical, or product which is renewable, or low-carbon and low-emission;

(6) property designed to produce energy conservation technologies (including residential, commercial, and industrial applications);

(7) light-, medium-, or heavy-duty electric or fuel cell vehicles, as well as technologies, components, or materials for such vehicles, and associated charging or refueling infrastructure;

(8) hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds as well as technologies, components, or materials for such vehicles; or

(9) other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary.

See Appendix A for more information regarding these definitions.

.03 *Eligible Property*. The term *eligible property* means any property that meets the following requirements:

(1) the property is necessary for the production or recycling of specified advanced energy property described in § 48C(c)(1) (A)(i) (and section 3.02 of this notice), re-equipping an industrial or manufacturing facility described in § 48C(c)(1)(A)(ii) (and section 3.01(1)(b) of this notice), or re-equipping, expanding, or establishing an industrial facility described in § 48C(c)(1)(A)(iii) (and section 3.01(1)(c) of this notice).

(2) the property is:

(a) tangible personal property; or

(b) other tangible property (not including a building or its structural components) that is used as an integral part of the qualifying advanced energy project.

(3) depreciation (or amortization in lieu of depreciation) is allowable with respect to the property.

.04 *Placed In Service*. (1) *In general*. Eligible property (as defined in § 48C(c) (2) and section 3.03 of this notice) is

placed in service in the earlier of the following taxable years:

(A) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such eligible property begins; or

(B) The taxable year in which the eligible property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

*.05 Industrial Facility.* The term *industrial facility* means a facility that produces, processes, or refines materials or products from raw or manufactured inputs.

*.06 Manufacturing Facilities.* The term *manufacturing facility* means a facility that makes or processes raw materials into finished products (or accomplishes any intermediate stage in that process).

*.07 Recycling Facility.* The term *recycling facility* means a facility that:

(1) reclaims, recovers, or otherwise processes waste materials (including, but not limited to, property and components of property at end-of-service), the result of which is a useful product or material for use in the manufacture of a useful product; or

(2) performs an activity or series of activities in the processes described in section 3.07(1) of this notice.

#### **SECTION 4. PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS**

##### *.01 Prevailing Wage Requirement*

(1) Pursuant to § 48C(e)(5)(A), to meet the prevailing wage requirements, a taxpayer must ensure that any laborers and mechanics employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility that is part of a qualifying advanced energy project are paid wages at rates not less than the prevailing rates for construction, alteration, or repair of a similar character in the locality in which such project is located as most recently determined by the Secretary of Labor. See section 3 of Notice 2022-61, 87 F.R. 73580 (Nov. 30, 2022), for additional information regarding the prevailing wage requirements.

(2) In accordance with § 48C(e)(5)(B), a taxpayer that fails to satisfy the prevailing wage requirements for any laborer or mechanic employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility that is part of a qualifying advanced energy project will be deemed to have satisfied the prevailing wage requirement if the taxpayer:

(a) makes a payment to any such laborer or mechanic employed by the taxpayer or any contractor or subcontractor in the re-equipping, expansion, or establishment of a manufacturing facility in an amount equal to the sum of the difference between the amount of wages paid to such laborer or mechanic and the amount of wages required to be paid to such laborer or mechanic (three times the sum of back wages due in the case of intentional disregard), plus interest on such difference at the underpayment rate established under § 6621 (substituting "6 percentage points" for "3 percentage points" in § 6621(a)(2)) and

(b) makes a payment to the Secretary of \$5,000 (\$10,000 in the case of intentional disregard) multiplied by the number of laborers and mechanics who were paid wages below the prevailing wage for any period during such year.

##### *.02 Apprenticeship Requirements*

(1) In accordance with § 48C(e)(6) and rules similar to § 45(b)(8), to meet the apprenticeship requirements, taxpayers must ensure that not less than 10 percent, 12.5 percent, or 15 percent (depending on the beginning of construction date) of the total labor hours for the construction, alteration or repair work must be performed by qualified apprentices. The labor hours requirement is subject to the apprentice-to-journey worker ratios of the Department of Labor or applicable State apprenticeship agency. In addition, each taxpayer, contractor, or subcontractor who employs 4 or more individuals to perform construction, alteration or repair work related to re-equipping, expanding, or establishing an industrial or manufacturing facility must employ 1 or more qualified apprentices to perform the work. See section 4 of Notice 2022-61 for additional information about the apprenticeship requirements.

(2) A taxpayer will not be treated as failing to satisfy the apprenticeship re-

quirements if the taxpayer satisfies either of the following:

(a) The taxpayer pays a penalty to the Secretary in the amount of \$50 (\$500 if the failure is due to intentional disregard) multiplied by the total labor hours for which the taxpayer failed to meet the apprenticeship requirements, or

(b) The taxpayer made a good faith effort in accordance with section 4.01 of Notice 2022-61.

*.03 Credit Rate Conditioned Upon Prevailing Wage and Apprenticeship Requirements.*

(1) A taxpayer that satisfies the prevailing wage and apprenticeship requirements may claim a credit that is equal to 30 percent of the taxpayer's qualified investment for such taxable year with respect to any qualified energy project.

(2) A taxpayer that fails to satisfy the prevailing wage and apprenticeship requirements generally may only claim a credit equal to 6 percent of the taxpayer's qualified investment for such taxable with respect to any qualified advanced energy project. However, such a taxpayer may claim a credit equal to 30 percent of the taxpayer's qualified investment for such taxable year with respect to any qualified advanced energy project if:

(a) In the event the taxpayer failed to meet the prevailing wage requirements, it pays the correction and penalty amounts related to such failure to satisfy the prevailing wage requirements as described in section 4.01(2) of this notice; or

(b) In the event the taxpayer failed to meet the apprenticeship requirements, it pays the penalty amount related to such failure to satisfy the apprenticeship requirements or meets the good faith effort exception described in section 4.02(2) of this notice.

(3) See section 5.07 of this notice for information regarding when an applicant must declare whether it will meet the prevailing wage and apprenticeship requirements for § 48C.

#### **SECTION 5. SECTION 48C(e) PROGRAM**

*.01 In General.* The IRS will consider a project under the § 48C(e) program only if DOE provides a recommendation and ranking for the project (DOE recommen-

dation) to the IRS. DOE will provide a recommendation and ranking only if it determines that the project has a reasonable expectation of commercial viability and merits a recommendation based on the criteria provided in the additional § 48C(e) program guidance. See section 5.03(3) of this notice for additional information regarding DOE recommendations.

.02 *Program Timeline.* Generally, the § 48C(e) program will proceed as follows:

(1) A taxpayer submits a concept paper to DOE through the eXCHANGE portal, an online application portal used by DOE available at <https://infrastructure-exchange.energy.gov/> (or any successor interface) (eXCHANGE portal). See Appendix B for additional information.

(2) DOE reviews the concept paper and sends the taxpayer a letter encouraging or discouraging the submission of a § 48C(e) application. After receiving a letter of encouragement or discouragement from DOE, the taxpayer determines whether to submit a § 48C(e) application. All taxpayers who submit concept papers are eligible to submit a § 48C(e) application, regardless of DOE's response to its concept paper.

(3) Taxpayers submit § 48C(e) applications through the eXCHANGE portal. See Appendix B for additional information.

(4) DOE reviews the § 48C(e) applications for compliance with eligibility and other threshold requirements.

(5) If the § 48C(e) application complies with all eligibility and threshold requirements, DOE conducts a technical review of the application to form a DOE recommendation.

(6) DOE provides a recommendation to the IRS regarding the acceptance or rejection of each § 48C(e) application and a ranking of the applications.

(7) The IRS makes a decision regarding the acceptance or rejection of each § 48C(e) application based on DOE's recommendation and ranking and notifies each taxpayer that submitted a § 48C(e) application of the outcome by sending a letter allocating § 48C credits in the case of an acceptance (Allocation Letter) or letter denying the requested allocation in the case of a rejection (Denial Letter). In the case of an acceptance, the amount of § 48C credits allocated to a project will also be based on the taxpayer's qualified

investment in the qualifying advanced energy project and whether the taxpayer intends to apply for and receive an allocation of § 48C credits calculated at the 30 percent credit rate (see section 5.07 of this notice). A taxpayer that receives a Denial Letter may be eligible to request a debriefing in accordance with the criteria set forth in section 5.03(9) of this notice.

(8) Within 2 years of receiving an Allocation Letter, a taxpayer must notify DOE that the certification requirements have been met by submitting this information through the eXCHANGE portal. See Appendix B for additional information.

(9) DOE notifies the taxpayer and the IRS that it has received the taxpayer's notification that the certification requirements have been met.

(10) The IRS certifies the project by sending a letter (Certification Letter).

(11) Within 2 years of receiving the Certification Letter, the taxpayer notifies DOE that the project has been placed in service by submitting such information through the eXCHANGE portal. See Appendix B for additional information. A taxpayer that does not notify DOE that it has placed the project in service within the required 2-year period will forfeit § 48C credits allocated to the taxpayer for such project.

(12) DOE notifies the taxpayer and the IRS that it has received the taxpayer's notification that the project has been placed in service or notification that the taxpayer will not place the project in service within the required 2-year period.

(13) If the taxpayer has placed the project in service within the required 2-year period and has notified DOE, the taxpayer claims the § 48C credit on its income tax return for the taxable year in which the project was placed in service. If the taxpayer has not placed the project in service within the required 2-year period or has not notified DOE that the project has been placed in service within the required 2-year period, then the § 48C credit allocated to the taxpayer's project is forfeited.

.03 *Program Specifications.*

(1) For each project that a taxpayer sponsors, the taxpayer must submit the following to request a credit allocation:

(a) A concept paper for DOE consideration;

(b) A § 48C(e) application.

(2) A taxpayer must submit a concept paper as specified in section 6 of this notice through the eXCHANGE portal. See Appendix B for additional information. This portal will allow applicants to securely input their data and information for review by DOE and the IRS.

A taxpayer that receives a letter of discouragement in response to a submitted concept paper may still submit a § 48C(e) application in accordance with the additional § 48C(e) program guidance. Receiving such a letter does not disqualify a taxpayer from submitting a § 48C(e) application but represents DOE's feedback that the project is unlikely to receive a recommendation based on the information provided in the concept paper.

(3) DOE's recommendation provided to the IRS will include a ranking of projects in descending order (that is, first, second, third, etc.). See section 5.06 of this notice for additional information regarding DOE recommendations with respect to projects located in § 48C(e) Energy Communities Census Tracts (as defined in section 5.06 of this notice). The amount of credit allocated to a project reduces the amount of credit available to the remaining pool of recommended projects. The IRS will make allocations to successive projects according to DOE recommendations and ranking until the amount available for allocation is exhausted. The amount of § 48C credits allocated to a project will be based on the taxpayer's qualified investment in the qualifying advanced energy project and whether the taxpayer intends to apply for and receive an allocation of § 48C credits calculated at the 30 percent credit rate (see section 5.07 of this notice). DOE will recommend and rank projects only to the extent necessary to exhaust the amount available for allocation in each § 48C(e) program allocation round.

(4) For Round 1 of the § 48C(e) program, the application period begins on May 31, 2023, and ends on the date by which § 48C(e) applications must be submitted as specified in additional § 48C(e) program guidance (end of the application period). Any § 48C(e) application submitted through the eXCHANGE portal after May 31, 2023, and on or before the date that ends the application period will be deemed to be submitted by the taxpayer

on the date that ends the application period.

(5) For Round 1 of the § 48C(e) program, a concept paper for DOE consideration must be submitted by July 31, 2023. The § 48C(e) application (as defined in section 5.02(3) of this notice) must be submitted by the date specified in additional § 48C(e) program guidance. If a project meets the preliminary compliance review criteria (as specified in section 6.01 of this notice), DOE will determine the merits of the project and (for projects determined to be meritorious) provide DOE recommendation to the IRS

(6) Each applicant will receive an electronically generated confirmation of receipt upon submission of (a) the concept paper and (b) the § 48C(e) application. The timeliness of submission of the § 48C(e) application will be determined by the submittal date and time shown on the confirmation of receipt.

(7) For Round 1 of the § 48C(e) program, the IRS will send each applicant an Allocation Letter in the case of an acceptance or a Denial Letter in the case of a rejection and will also notify DOE.

(8) If the taxpayer's § 48C(e) application is accepted, the IRS will determine the amount of the § 48C credit allocated to the project and the Allocation Letter will state the amount of the credit allocated to the project. The date of the Allocation Letter will be treated as the date of acceptance by the Secretary of the taxpayer's § 48C(e) application for purposes of establishing the time to meet criteria for certification as required by § 48C(e)(3)(B).

(9) Upon request, DOE will offer a debriefing to an applicant that submitted a § 48C(e) application (after submitting a concept paper and being encouraged to submit such § 48C(e) application) and subsequently, was not allocated a credit in Round 1 of the § 48C(e) program. Debriefings will not be available to applicants that receive a letter of discouragement. Debriefings will be held by DOE after the application period ends. Requests for a debriefing must be received by DOE no later than 30 business days from the date of the Denial Letter issued to the applicant. The sole purpose of the debriefing is to provide DOE's impression of the strengths and weaknesses of the rejected § 48C(e) application to

enable applicants to improve § 48C(e) applications for future rounds of the § 48C(e) program or § 48C credit allocation programs.

(10) The Allocation Letter applies only to the taxpayer who requested it. Any successor in interest may request that the IRS, by letter, transfer the credit allocation for the project to the successor in interest. The due date for making this request with the IRS is no later than 30 days prior to the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs.

The successor's letter must be signed by a person who meets the requirements of section 7.02(2) of this notice. The successor's letter should provide:

(a) the name of the transferor and its TIN;

(b) the name and TIN of the successor's parent (if any) if the successor files a return as a member of a consolidated group;

(c) DOE control number, and project name and location;

(d) the successor's tax name and its TIN;

(e) the successor's contact telephone number; and

(f) copy of binding contract of the transfer;

(g) a statement that there is no significant change from the application information provided by the transferor, including that the project has not been placed in service at a location which is materially different than the location specified in the application for such project.

The successor's letter must include a signed attestation using the language from section 7.02(1) of this notice (replacing "submission" with "letter"), be signed by a person who meets the requirements of section 7.02(2) of this notice, and should include the name, title, and contact information (address, phone number, fax number (if available), and email address) of the signer.

The successor in interest must submit the letter through the eXCHANGE portal.

The IRS will review the taxpayer's request and determine whether to transfer the project's allocation to the successor in interest and will notify the successor in interest by letter of its decision. If the project's credit allocation is not transferred to

the successor in interest, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying advanced energy project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

(b) In the case of an interest acquired after the qualifying advanced energy project is placed in service, the project ceases to be investment credit property and the recapture rules of § 50(a) (and similar rules with respect to qualified progress expenditures) apply.

(11) The additional § 48C(e) program guidance will provide further details of the information required to be submitted to DOE in an application for DOE recommendation. The additional § 48C(e) program guidance will also provide additional details regarding the process for applying for DOE recommendation and the instructions for filing concept papers and applications for DOE recommendation.

*.04 Limitation on Qualified Investment.* A taxpayer's qualified investment in a qualified advanced energy property is limited to the basis of eligible property (as defined in § 48C(c)(2) and section 3.03 of this notice).

*.05 Denial of Double Benefit.*

(1) *In general.* Section 48C(f) provides that a credit is not allowed under § 48C for any qualified investment for which a credit is allowed under §§ 48, 48A, 48B, 48E, 45Q, or 45V. If the IRS determines a credit has been claimed for that same investment under §§ 48, 48A, 48B, 48E, 45Q, or 45V, the IRS will not allocate the § 48C credit and any previously sent Allocation Letter is void."

(2) *Coordination with § 45X credit.* Additionally, property is not an "eligible component" for purposes of the credit under § 45X (§ 45X credit) if it is produced at a facility and the basis of any property included in such facility is taken into account for purposes of § 48C after August 16, 2022. See § 45X(c)(1)(B). For purposes of § 48C, a facility includes all eligible property included in a qualifying advanced energy project for which a taxpayer receives an allocation of § 48C credits and claims such credits after August 16, 2022. Guidance regarding wheth-

er property has been produced at a facility the basis of which has been taken into account for purposes of § 48C will be provided in additional guidance regarding the § 45X credit.

(3) *Required taxpayer certification.* A taxpayer must certify under penalties of perjury that the taxpayer did not claim a credit for that same investment under any of §§ 45X, 48, 48A, 48B, 48E, 45Q, or 45V.

“Under penalties of perjury, I declare that I have examined the information contained in this affirmative statement and the documents that substantiate this affirmative statement, and to the best of my knowledge and belief, it is true, correct, and complete.”

Additionally, the person signing the penalty of perjury statement must also certify the following:

“I further declare that I have authority to sign this document on behalf of the taxpayer.”

A taxpayer must provide this certification statement with (1) its § 48C(e) application and (2) at the time it notifies DOE that the project has been placed in service.

.06 *Section 48C(e) Energy Communities Census Tracts.* Section 48C(e)(2) limits the total amount of § 48C credits that the Secretary may allocate under the § 48C(e) program to \$10 billion. Of that amount, the Secretary must allocate at least \$4 billion of § 48C credits to projects located in certain energy communities (as described in § 45(b)(11)(B)(iii)) that did not have a project that received a certification and allocation of credits under the § 48C(e) allocation program (§ 48C(e) Energy Communities Census Tracts). Accordingly, as part of DOE’s recommendations, DOE will determine which projects are in § 48C(e) Energy Communities Census Tracts and are therefore eligible for an allocation of the \$4 billion of § 48C credits that are available only for projects located in those census tracts. Because of the limitation in § 48C(e)(2) on allocations with respect to projects that are not in § 48C(e) Energy Communities Census Tracts, whether a project is in a § 48C(e) Energy Communities Census Tract may impact DOE’s recommendation with respect to a project. An applicant will be able to determine whether its project is located in a § 48C(e) Energy Communi-

ties Census Tract using the mapping tool that will be referenced in the additional § 48C(e) program guidance. The determination of whether a project is located in a § 48C(e) Energy Communities Census Tract will be made at the time that DOE provides recommendations to the IRS and will not be redetermined.

.07 *Certification for Prevailing Wage and Apprenticeship Requirements.* As part of a § 48C(e) application (as described in section 6 of this notice), an applicant who intends to apply for and receive an allocation of § 48C credits calculated at the 30 percent credit rate must confirm that it intends to satisfy the prevailing wage and apprenticeship requirements described in section 4 of this notice (Initial PWA Confirmation). When the taxpayer notifies DOE that it has placed the project in service (pursuant to section 5.09 of this notice), such taxpayer must also confirm that it satisfied the requirements in section 4 of this notice (Final PWA Confirmation). If a taxpayer does not provide an Initial and Final PWA Confirmation at the times described in this paragraph, such taxpayer will be required to claim the § 48C credit at the 6 percent credit rate and the remainder of § 48C credits allocated to such project, if any, will be forfeited and available for reallocation in a future § 48C(e) program allocation round. Nothing in this paragraph prevents the IRS from determining during an examination that a taxpayer did not satisfy the requirements in section 4 of this notice.

.08 *IRS Issuance of Certification.* A taxpayer whose application is accepted and who received an Allocation Letter from the IRS pursuant to section 5.02(8) of this notice must obtain a Certification Letter pursuant to section 7 of this notice to be eligible to claim the § 48C credit specified in its Allocation Letter.

.09 *Notification that Project is Placed In Service.*

(1) A taxpayer has 2 years from the date of the Certification Letter (as described in section 5.08 and section 7 of this notice) to place the project in service. See section 3.04 of this notice for the definition of placed in service. A taxpayer must notify DOE when the project is placed in service by submitting such notification through the eXCHANGE portal. DOE will accept a taxpayer’s notification that the project

was placed in service and send an acknowledgement letter.

(2) If a taxpayer fails to place a project in service within 2 years from the date of the Certification Letter, a taxpayer must promptly notify DOE and the IRS within 60 days of the date that is 2 years from the date of the Certification Letter by submitting such notification through the eXCHANGE portal. Under § 48C(e)(3)(C), any certification is void if the project is not placed in service within 2 years from the date of the Certification Letter.

## SECTION 6. CONCEPT PAPERS AND § 48C(e) APPLICATIONS

.01 *In General.* A taxpayer must submit for each project for which it seeks a § 48C allocation for Round 1 (1) by July 31, 2023, a concept paper for DOE consideration and (2) by the date specified in the additional § 48C(e) program guidance, the § 48C(e) application. If an application for DOE recommendation does not (1) propose an eligible project or (2) include all of the information required in this notice and the additional § 48C(e) program guidance (referred to herein as *compliance review criteria*), DOE may decline to consider the application, or DOE may request an applicant resubmit its application with the missing information. If DOE does not provide a recommendation for the application, the IRS will not consider § 48C(e) application.

.02 *Information Required in the § 48C Application.* By submitting an application through the eXCHANGE portal, an applicant is submitting a joint application for DOE recommendation and an application for § 48C(e) certification. The eXCHANGE portal will prompt an applicant to enter necessary information and will provide corresponding instructions regarding the requirements for the § 48C(e) application. This information will include:

(1) The name, address, federal employer identification number, and unique entity identifier number of the taxpayer (more information on unique entity identifier numbers at [https://www.gsa.gov/about-us/organization/federal-acquisition-service/technology-transformation-services/office-of-systems-management/integrated-award-environment-iae/iae-systems-information-kit/unique-entity-id-is-here?\\_](https://www.gsa.gov/about-us/organization/federal-acquisition-service/technology-transformation-services/office-of-systems-management/integrated-award-environment-iae/iae-systems-information-kit/unique-entity-id-is-here?_)

ga=2.5445299.1413902251.1675976444-2019528746.1671035291). If the taxpayer is a member of an affiliated group filing consolidated returns, the taxpayer must also provide the name, address, and TIN of the common parent of the group.

(2) The name, telephone number, and email address of a contact person.

(3) The census tract where the taxpayer will locate the project.

(4) Whether the taxpayer will satisfy the prevailing wage and apprenticeship requirements and seeks a credit allocation in an amount that is 30 percent of the qualified investment. If the taxpayer intends to comply with the prevailing wage and apprenticeship requirement, the application should include the Initial PWA Confirmation. See section 5.07 of this notice.

(5) The information requested in Appendix B of this notice and additional information specified in the additional § 48C(e) program guidance.

## SECTION 7. ISSUANCE OF CERTIFICATION

.01 *In General.* Section 48C(e)(3)(B) provides that a taxpayer has 2 years from the date of acceptance by the Secretary of the § 48C(e) application during which to provide evidence that the requirements of the certification have been met in accordance with section 7.02 of this notice. If such evidence is not timely received, the allocated § 48C credits will be forfeited. Section 48C(e)(3)(C) provides that a taxpayer that receives a certification has an additional 2-year period beginning from the date of issuance of the certification to place the project in service and to notify the Secretary that such project has been placed in service. If such project is not placed in service by that time period, then the certification is no longer valid.

.02 *Satisfaction of Requirements for Certification.* A project is eligible for certification only if the taxpayer has received all permits from federal, state, tribal, and local governmental bodies for construction of the project at the planned location, including environmental authorization or reviews necessary to commence construction of the project. The Secretary may conduct additional allocation rounds for applications for certification if the Secretary determines that: (1) there is an insuf-

ficient quantity of qualifying applications for certification pending at the time of the review, or (2) any certification made pursuant to § 48C(e)(2) has been revoked pursuant to § 48C(e)(2)(B) because the project subject to the certification has been delayed as a result of third-party opposition or litigation.

The taxpayer must submit to DOE through the eXCHANGE portal evidence establishing that it has met all requirements necessary to commence construction of the project.

(1) The documentation establishing that the certification requirements of section 7.01 of this notice are satisfied must be accompanied by a letter that includes the following written declaration: “I declare that I am authorized to legally bind [name of taxpayer]. Under penalties of perjury, I declare that I have examined this submission, including any accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete.”

(2) The taxpayer’s submission (the letter including the perjury declaration and documentation) must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. Further, the submission must be signed by a person authorized under state law to bind the taxpayer, such as an officer on behalf 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. If the taxpayer is a member of an affiliated group filing consolidated returns, the submission also must be signed by a duly authorized officer of the common parent of the group.

.03 *DOE Notification.* Upon receipt of the evidence described in section 7.02 of this notice that the taxpayer has satisfied the requirements for certification, DOE will notify the IRS and will send an acknowledgment to the taxpayer.

.04 *IRS Action on Certification.* After receiving the notification from DOE described in section 7.03 of this notice, the IRS will notify the taxpayer, by letter, of the IRS’s decision regarding certification. The date of the Certification Letter is the date of issuance of the certification for purposes of § 48C(e)(3)(C).

## SECTION 8. OTHER REQUIREMENTS

.01 *Significant Change in Plans.* The taxpayer must inform DOE and the IRS if the plans for the project change in any significant respect from the plans set forth in the concept paper and the § 48C(e) application. The additional § 48C(e) program guidance will provide the procedures for notifying DOE and the IRS. A significant change is any change that a reasonable person would conclude might have influenced DOE in recommending or ranking the project or the IRS in issuing the Allocation Letter had the person known about the change when considering the § 48C(e) application. Moving the project to a census tract different than the tract stated in the concept paper and § 48C(e) application is a significant change. Failure to satisfy the prevailing wage and apprenticeship requirements is not a significant change. See section 4.03 of this notice. Any significant change to the plans set forth in the § 48C(e) application will have the following effects:

(1) If the IRS is informed of the change after the date on which the final applications for DOE recommendation were due for Round 1 of the § 48C(e) program under section 5.02(3) of this notice and before the IRS sends the Allocation or Denial Letter, see section 5.02(7) of this notice, the IRS and DOE will not consider the project during Round 1 of the § 48C(e) program; and

(2) If the IRS is informed of the change after the Allocation Letter is sent to the taxpayer, any allocation or certification based on that acceptance is void.

.02 *Effect of an Acceptance, Allocation, or Certification.* An acceptance, allocation, or certification under this notice is not a determination that a project is eligible for the § 48C credit or that any property that is part of the project is eligible property under § 48C(c)(2). The IRS may, upon examination (and after any appropriate consultation with DOE), determine that the project does not qualify for the § 48C credit or that the property is not eligible property for purposes of this credit.

.03 *Reduction or Forfeiture of Allocated Credits.* The § 48C credits allocated under section 5 of this notice may be reduced or forfeited in certain situations. A taxpay-

er must notify the IRS of the amount of any reduction or forfeiture as required by this notice through the eXCHANGE portal. The amount of any reduction or forfeiture of the allocated credits will be returned and included in the aggregate credit remaining in the § 48C(e) program and under the procedures prescribed pursuant to section 9.02 of this notice

## SECTION 9. FUTURE ALLOCATION ROUNDS

.01 *Future Allocation Rounds.* After Round 1 of the § 48C(e) program, the IRS will conduct one or more additional allocation rounds for the § 48C(e) program. Guidance issued subsequent to the additional § 48C(e) program guidance (subsequent § 48C(e) program guidance) will prescribe the procedures applicable to future allocation rounds of the § 48C(e) program.

.02 *Review and Redistribution of Credits.* Under § 48C(e), credits available under § 48C(e)(2) may be reallocated if any certification made pursuant to § 48C(e)(3) has been revoked pursuant to § 48C(e)(3)(C). If credits under § 48C(e) are available for reallocation, the IRS may conduct an additional allocation program. Subsequent § 48C(e) program guidance will prescribe the procedures applicable to any additional program.

## SECTION 10. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48C(b)(2) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) apply for purposes of § 48C. Former § 46(c)(4) and (d) provided the rules for claiming the investment tax credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to the capital account with respect to that property. With

respect to a qualifying advanced energy project that is self-constructed property, amounts paid or incurred are chargeable to the capital account at the time and to the extent they are properly includible in computing basis under the taxpayer's method of accounting (for example, after applying the requirements of § 461, including the economic performance requirement of § 461(h)).

.03 To claim the § 48C credit with respect to the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying advanced energy project, the taxpayer must make an election (Qualified Progress Expenditures Election) under the rules set forth in § 1.46-5(o) of the Income Tax Regulations (26 C.F.R. part 1). A taxpayer may not make the Qualified Progress Expenditures Election for a qualifying advanced energy project until the taxpayer has received a Certification Letter for the project under section 5.02(10) of this notice.

.04 If a taxpayer makes a Qualified Progress Expenditures Election pursuant to section 10.03 of this notice, rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply. In addition to the cessation events listed in § 50(a)(2)(A), examples of other events that will cause the project to cease being a qualifying advanced energy project are:

(1) Failure to place the project in service within 2 years from the date of the Certification Letter; or

(2) A significant change to the plans for the project as set forth in the § 48C(e) application if, under section 8.01 of this notice, the allocation is void as a result of the change.

## SECTION 11. DISCLOSURE OF INFORMATION

Section 48C(e)(7) provides that upon making a certification under § 48C(e), the Secretary is required to disclose publicly the identity of the applicant and the amount of the credit certified with respect to such applicant. Accordingly, the IRS will publish the results of Round 1 of the § 48C(e) program and will disclose the identity of the taxpayer and the amount of the § 48C credits allocated to the taxpayer with respect to projects that have been al-

located a § 48C credit and have received a certification.

## SECTION 12. EFFECTIVE DATE

This notice is effective on February 13, 2023.

## SECTION 13 PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2151 and approval is pending. 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.

The collections of information in this notice are in sections 5, 6, 7, 8 and Appendix B of this notice. This information is required to obtain an allocation of § 48C credits. The IRS will use this information to verify that the taxpayer is eligible for the § 48C credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 275,000 hours.

The estimated annual burden per respondent varies from 70 to 150 hours, depending on individual circumstances, with an estimated average of 110 hours. The estimated number of respondents is between 2000 to 3000.

The estimated annual frequency of responses is on occasion.

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

## SECTION 14. DRAFTING INFORMATION

The principal author of this notice is John M. Deininger of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further infor-



mation regarding this notice contact Mr. Deininger on (202) 317-6853 (not a toll-free call). Any questions or comments regarding the non-tax aspects of this notice can be submitted to the Department of Energy at [48CQuestions@hq.doe.gov](mailto:48CQuestions@hq.doe.gov). DOE may post questions and answers

related to this notice on Infrastructure eXCHANGE at <https://infrastructure-exchange.energy.gov> (select 48C from the list of options to view questions and answers specific to notice). Any questions or comments received under this notice are subject to public release pursuant to

the Freedom of Information Act. DOE is under no obligation to respond to, or acknowledge receipt of, any questions or comments submitted under this notice and any responses provided do not constitute legal advice provided by either DOE or the IRS.

**APPENDIX A**  
**Qualifying Advanced Energy Projects**

For the purposes of determining eligibility for the § 48C tax credit, a qualifying advanced energy project means:

**1. Clean Energy Manufacturing and Recycling Projects**

A qualifying advanced energy project in this category re-equips, expands, or establishes an industrial or manufacturing facility for the production or recycling of:

*a. Property designed to be used to produce energy from the sun, water, wind, geothermal deposits (within the meaning of 26 U.S.C. § 613(e)(2)), or other renewable resources.*

(i) Examples of *eligible* property include solar panels and their specialized support structures; wind turbines, towers, floating offshore platforms, and related equipment; power electronics designed for use with eligible solar or wind property; equipment to concentrate sunlight to generate heat for industrial processes or to convert it to electricity; geothermal turbines and heat pumps; hydropower turbines; and other products directly used to generate electrical and/or thermal energy from renewable resources, as well as the specialized components, subcomponents, and materials incorporated into any such eligible property, including equipment for sensing communication, and control.

(ii) Examples of *ineligible* property include equipment for applications other than the conversion of energy from renewable resources for delivering electricity, building heat, or industrial process heat such as a gas turbine generator set which burns natural gas, or building that houses a boiler to heat water from fossil fuel.

*b. Fuel cells, microturbines, or energy storage systems and components.*

(i) Examples of *eligible* property include stationary batteries; stationary hydrogen fuel cells; hydrogen storage vessels; microturbines for combined heat and power systems; pumps and turbines for pumped hydropower storage systems; and the specialized components of any such equipment, including equipment for sensing communication, and control.

(ii) Examples of *ineligible* property include heavy gas turbines. For electric vehicle batteries and fuel cells for vehicles see the “light-, medium-, or heavy-duty electric or fuel cell vehicles” project class.

*c. Electric grid modernization equipment or components.*

(i) Examples of *eligible* property include grid equipment for electricity delivery; power flow, control, and conversion, such as transformers, power electronics, advanced cables and conductors, advanced meters, breakers, switchgears, composite poles, converters, MVDC and HVDC lines, grid enhancing technologies, and electrical steel or alloys used in transformer cores. Examples of eligible property also include the specialized components of any such grid modernization equipment, including components for sensing communication, and control.

(ii) Electric vehicle supply equipment qualifies under the “light-, medium-, or heavy-duty electric or fuel cell vehicles” project class. Storage technologies for grid applications qualify under the “fuel cells, microturbines, or energy storage systems and components” project class.

*d. Property designed to capture, transport, remove, use, or sequester carbon oxide emissions.*

(i) Examples of *eligible* property include carbon capture equipment necessary to compress, treat, process, liquefy, pump or perform some other physical action to capture carbon oxides, including solvents; membranes; sorbents; chemical processing equipment; compressors; monitoring equipment; and injection equipment; and well components such as packers, casing strings, steel tubulars, well head, valves, and sensors suitable for use in Underground Injection Control (UIC) Class VI wells. Eligible property also includes transportation equipment, as in a system of gathering and distribution pipelines, including pipelines that collect carbon oxide captured from an industrial facility or multiple facilities for the purpose of transporting that carbon oxide.

(ii) Examples of *ineligible* property include scrubbers for conventional air pollutants (except those that are required to remove pollutants upstream of carbon capture equipment for technical performance reasons); energy generation equipment, (except as related to energy recovery at carbon capture systems); and refining equipment.

*e. Equipment designed to refine, electrolyze, or blend any fuel, chemical, or product which is renewable, or low-carbon and low-emission.* For the purposes of Round 1 of the § 48C(e) program, such renewable, and low-carbon, low-emission fuels, chemicals, and products include:

- (i) Renewable transportation fuel which:
  - (A) is suitable for use as a fuel in a vehicle, marine vessel, or aircraft,
  - (B) is derived from or co-processed with:
    - (I) a biomass feedstock, or
    - (II) hydrogen produced from renewable energy and inputs, and

(C) is not derived from palm fatty acid distillates or fossil fuels, including coal, natural gas, and petroleum.

A qualifying advanced energy project does not include any portion of a project for the production of any property which is used in the refining or blending of any transportation fuel (other than renewable fuels, as described herein).

(ii) Clean hydrogen produced with a well-to-gate carbon intensity of less than 4kgCO<sub>2</sub>e/kgH<sub>2</sub>, in accordance with the definition of qualified clean hydrogen under the § 45V tax credit program.

(iii) Other fuel which:

(A) is derived from or co-processed with a renewable feedstock or achieves at least a 50 percent lifecycle greenhouse gas emissions reduction in comparison with the conventional alternative,

(I) is not a transportation fuel, and

(II) is not derived from palm fatty acid distillates or fossil fuels, including coal, natural gas, and petroleum.

(iv) Product or chemical which:

(A) is derived from or co-processed with a renewable feedstock or achieves at least a 50 percent lifecycle greenhouse gas emissions reduction in comparison with the conventional alternative,

(B) is suitable for use as an industrial feedstock, and

(C) is not derived from palm fatty acid distillates or fossil fuels, including coal, natural gas, and petroleum.

(v) Examples of *eligible* property include electrolyzers; mixing devices; pumps; separation devices; bioprocessing equipment; biomass preprocessing equipment; and reactors, so long as they are intended for use to produce eligible fuels, chemical, and products, as demonstrated through engineering specifications or offtake agreements.

(vi) Examples of *eligible* fuels, chemicals, and products produced by eligible equipment include hydrogen produced through electrolysis powered by low- or zero-emissions energy; low-emissions ammonia; renewable biofuels, including sustainable aviation fuel and fuels intended to displace petroleum fuel in on-road and off-road applications; and low-emissions chemicals, basic organic chemicals, and polymer resins.

(vii) Examples of *ineligible* fuels and chemicals would include those derived solely from fossil resources produced through conventional petroleum and natural gas refining.

Instructions for calculating well-to-gate carbon intensity of clean hydrogen and lifecycle emissions rates will be provided in additional § 48C(e) program guidance.

*f. Property designed to produce energy conservation technologies (including residential, commercial, and industrial applications)*

(i) Examples of *eligible* energy conservation property include technologies and grid-interactive devices eligible for residential or commercial efficiency improvements for purposes of the § 25C credit or the § 179D tax deduction, as well as equipment that directly reduces net energy use in industrial applications, such as ultra-efficient heat pumps, insulation, ultra-efficient hot water systems, sensors, controls, and similar advanced efficiency technologies.

(ii) Examples of *ineligible* energy conservation property include those that reduce electricity usage by increasing direct natural gas or other fossil fuel use and/or lead to increased system-level emissions.

*g. Light-, medium-, or heavy-duty electric or fuel cell vehicles, as well as technologies, components, or materials for such vehicles, and associated charging or refueling infrastructure.*

(i) Examples of *eligible* property include battery electric, plug-in hybrid electric, or fuel cell cars, trucks, and buses, as well as the specialized components of those vehicles, such as batteries, electric drive systems, fuel cells, and the materials and subcomponents therein.

(ii) Examples of *eligible* charging or refueling infrastructure include electric vehicle supply equipment (EVSE), components from the grid connection to the vehicle, bidirectional charging equipment, and components used in hydrogen refueling stations (e.g., hydrogen compressors, pumps, storage vessels, and dispensing equipment).

(iii) Examples of *ineligible* equipment include internal combustion engine vehicles of all sizes, non-plug-in hybrid vehicles of less than 14,000 pounds gross vehicle weight rating, and their components, as well as associated refueling infrastructure, such as petroleum gas, liquefied or compressed natural gas, or ethanol refueling stations. Examples of ineligible equipment also include components of charging or refueling stations, such as signage, that are not directly involved in the transfer of fuel or power to the vehicle.

*h. Hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as well as technologies, components, or materials for such vehicles.*

(i) Examples of *eligible* property include traction batteries, converters, power electronics, and assembled hybrid vehicles themselves, but components and materials must be designed for large hybrid vehicles with a gross vehicle weight rating of not less than 14,000 pounds, as demonstrated through engineering specifications and/or offtake agreements.

i. *Other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary.*

(i) Examples of *eligible* advanced energy property include specialized components and equipment for nuclear power reactors or their fuels, and equipment used to reduce the emissions of industrial processes. Property may be determined to be designed to reduce greenhouse gas emissions either through published guidance or in the letter notifying a taxpayer that the IRS has accepted the taxpayer's application for §48C certification with respect to the property.

## 2. Greenhouse Gas Emission Reduction Projects

A qualifying advanced energy project in this category re-equips an industrial or manufacturing facility, including energy-intensive manufacturing sectors, such as cement, iron and steel, aluminum, and chemicals, with equipment designed to reduce greenhouse gas emissions by at least 20 percent through the installation of one of more of the following:

a. *Low- or zero-carbon process heating systems.*

(i) Examples of *eligible* equipment include electric heat pumps, combined heat and power (CHP) systems, and heating systems based on electricity, clean hydrogen, biomass, or waste heat recovery.

b. *Carbon capture, transport, utilization, and storage systems.*

(i) Examples of *eligible* equipment include carbon capture equipment necessary to compress, treat, process, liquify, pump, or perform some other physical action to capture carbon oxides, and specialized equipment and materials needed for the storage of carbon oxide including carbon dioxide pipelines; monitoring equipment; and injection equipment and well components such as packers; casing strings; steel tubulars; well head; valves; and sensors suitable for use in UIC Class VI wells.

(ii) Examples of *ineligible* property include scrubbers for conventional air pollutants, except those that are required to remove pollutants upstream of carbon capture equipment for technical performance reasons; energy generation equipment, except as related to energy recovery at carbon capture systems; and refining equipment.

c. *Energy efficiency and reduction in waste from industrial processes.*

(i) Examples of *eligible* equipment include technologies that reduce direct fuel use, electricity use, or waste in industrial applications, such as industrial heat pumps, combined heat and power (CHP) systems, insulation, sensors, controls, advanced recycling approaches, smart energy management, and similar advanced efficiency technologies.

d. *Any other industrial technology designed to reduce greenhouse gas emissions, as determined by the Secretary.*

(i) Examples of other *eligible* industrial technologies include electrification of direct fuel use processes, adoption of renewable or low-emissions fuels and feedstocks, and other equipment replacement or process redesigns that reduce fuel or process-related emissions or otherwise contribute to reducing greenhouse gas emissions by at least 20 percent.

Instructions for calculating and demonstrating an emissions reduction of 20 percent will be provided in the additional § 48C(e) program guidance.

## 3. Critical Material Projects

A qualifying advanced energy project in this category re-equips, expands, or establishes an industrial facility for the processing, refining, or recycling of critical materials (as defined in § 7002(a) of the Energy Act of 2020 (30 U.S.C. § 1606(a)). For purposes of this Phase I, critical materials will consist of:

a. The currently effective final list of critical minerals as determined by the U.S. Geological Survey (*see* 2022 Final List of Critical Minerals for the list published in 2022 available at: <https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals>); and

b. Any additional critical materials as determined by the Secretary of Energy and posted on the <http://www.energy.gov/criticalmaterials> by July 31, 2023.

Examples of *eligible* projects in this project category include industrial facilities that process raw ore, brines, mine tailings, end-of-life products, waste streams, and other source materials into critical materials.

Examples of *ineligible* projects under this project category include facilities that process critical materials into derivative products, such as metals processing. However, facilities of this latter type may be eligible under the Clean Energy Manufacturing and Recycling Projects category.

## APPENDIX B DOE APPLICATION PROCESS

### I. DOE Review Process

A two-stage technical evaluation process will be used for submissions:

- Stage 1 – Concept Paper
- Stage 2 – § 48C(e) Application

#### A. Concept Paper

The first stage requires taxpayers to submit concept papers describing the proposed project. Concept papers will be evaluated against criteria that may include eligibility requirements, definitions for qualifying advanced energy projects, reasonable expectation of commercial viability, and other factors described in the additional § 48C(e) program guidance. Following this preliminary review, taxpayers will receive a letter either encouraging them to submit a § 48C(e) application or discouraging them from submitting a § 48C(e) application. **DOE will begin accepting concept papers when the additional § 48C(e) program guidance is issued on May 31, 2023, and concept papers must be submitted to DOE no later than July 31, 2023.**

A taxpayer that receives a discouragement letter may still submit a § 48C(e) application in accordance with the § 48C(e) program guidance. Receiving a discouragement letter in response to a submitted concept paper does not disqualify a taxpayer from submitting a § 48C(e) application **but represents DOE’s feedback that the project, as proposed, is unlikely to receive a recommendation based on the information provided in the concept paper.**

#### B. § 48C(e) Application

The second evaluation stage will consist of a review of § 48C(e) applications submitted after the concept paper stage. **Taxpayers may not submit § 48C(e) applications unless they submitted concept papers by the specified deadline.**

DOE will review applications for DOE recommendation for compliance to determine that (1) the application meets the eligibility requirements, (2) the information required by the additional § 48C(e) program guidance has been submitted, (3) the taxpayer filed a timely concept paper, and (4) all mandatory requirements of the additional § 48C(e) program guidance are satisfied. The review will also include a thorough, consistent, and objective examination of applications for DOE recommendation based on technical review criteria and program policy factors outlined in the additional § 48C(e) program guidance.

### II. Application Evaluation Information

#### A. Technical Review Criteria

Applications for DOE recommendation will be evaluated based on technical review criteria to be described in the additional § 48C(e) program guidance. These criteria will include selection criteria described in § 48C(d)(3) and additional criteria that further the goals of the program.

As part of the technical review criteria to be described in the additional § 48C(e) program guidance, DOE anticipates evaluating applications for DOE recommendation based on the net impact of the qualifying project in avoiding or reducing greenhouse gases emissions, as described in the additional § 48C(e) program guidance. DOE also anticipates evaluating applications for DOE recommendation based on the community benefits of the proposed qualifying advanced energy projects, which may include community and labor engagement and commitment to high quality and accessible jobs and workforce pathways.

#### B. Program Policy Factors

In addition to technical review criteria, DOE may consider one or more policy factors in determining which applications for DOE recommendation submitted during Round 1 of the § 48C(e) program to recommend to the IRS for certification.

To achieve maximum benefits to strengthen U.S. industrial competitiveness and clean energy supply chains as well as to promote high quality jobs and community benefits, DOE may consider giving priority to qualifying advanced energy projects not eligible for support from other DOE financial assistance programs funded by the Infrastructure Investment and Jobs Act (Public Law 117-58) or the Inflation Reduction Act of 2022 (Public Law 117-169).

In some cases, benefits towards the program's goals may be enhanced if a project receiving a credit under § 48C also receives complementary assistance from other programs. For taxpayers seeking assistance from other programs for the same proposed qualifying advanced energy project, DOE may consider whether the application for DOE recommendation sufficiently justifies the need for and benefits of receiving assistance from multiple programs. Complementary assistance may also affect the tax treatment of property for which a taxpayer receives an allocation under the § 48C(e) program.

### C. Strengthening Secure, Domestic, Clean Energy Supply Chains

To help build more resilient, diverse, and secure U.S. clean energy supply chains, DOE may consider whether proposed projects address specific gaps, vulnerabilities, or risks in the domestic production of clean energy products. The additional § 48C(e) program guidance will indicate specific priority technologies that would address these gaps, vulnerabilities, and risks to relevant domestic supply chains.

To further ensure the § 48C(e) program supports these goals to the greatest extent possible, DOE may conduct a review to determine if an applicant has a connection with a foreign country of risk that could frustrate the achievement of these goals. To ensure transparency of foreign connections, DOE anticipates requiring applicants to provide certain information regarding, for example, board membership, ownership structure, and foreign relationships, as well as sources of, and any plans to export, critical minerals.

## III. Submission and Registration Requirements for DOE Recommendation Process

This section describes DOE's submission and registration requirements for applicants. An application for DOE recommendation will not be considered in Round 1 of the § 48C(e) program unless the concept paper is received by the concept paper deadline, and the § 48C(e) application is received by the end of the application period.

### A. Submission of Application

All § 48C(e) application materials must be submitted through the eXCHANGE portal at <https://infrastructure-exchange.energy.gov> to be considered. Taxpayers will not be able to submit a § 48C(e) application through the eXCHANGE portal unless registered. Please read the registration requirements below carefully and start the registration process immediately. If you have problems completing the registration process, send an email to the eXCHANGE portal helpdesk at <https://infrastructure-exchange.energy.gov>. Section 48C(e) applications submitted by any other means will not be accepted.

### B. Registration Process Requirements

Taxpayers that wish to participate in the § 48C(e) program must register and create an account on the eXCHANGE portal at: <https://infrastructure-exchange.energy.gov>. This account will allow the user to apply to any open Funding Opportunity Announcements (FOA) that are currently the eXCHANGE portal. It is recommended that each business unit use only one account as the appropriate contact point for each submission.

Potential applicants will be required to have a Login.gov account to access the eXCHANGE portal. As part of the eXCHANGE portal registration process, new users will be directed to create an account in Login.gov. Please note that the email address associated with Login.gov *must* match the email address associated with the eXCHANGE portal account. For more information, refer to the Infrastructure eXCHANGE Login Guide in the Manuals section of the eXCHANGE portal at <https://infrastructure-exchange.energy.gov/Manuals.aspx>.

### C. Electronic Authorization of Applications

Submission of § 48C(e) application materials through electronic systems used by DOE, including the eXCHANGE portal, will constitute the authorized representative's approval and electronic signature.

### D. Markings of Confidential Information

If elements of a § 48C(e) application contain information the taxpayer considers to be trade secrets, confidential, privileged or otherwise exempt from disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. § 552), the taxpayer may assert a claim of exemption at the time of application by placing the following text on the first page of the § 48C(e) application, and specifying the page or pages of the § 48C(e) application to be restricted:

“Pages [list applicable pages] of this document may contain trade secrets, confidential, proprietary, or privileged information that is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source. [End of Notice]”

The header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: “*Contains Trade Secrets, Confidential, Proprietary, or Privileged Information Exempt from Public Disclosure.*” In addition, each line or paragraph containing proprietary, privileged, or trade secret information must be clearly marked with double brackets or highlighting.

# Interim Guidance Regarding Certain Insurance Related Issues for the Determination of Adjusted Financial Statement Income under Section 56A of the Internal Revenue Code

## Notice 2023-20

### SECTION 1. OVERVIEW

This notice provides the additional interim guidance described in section 1 of Notice 2023-7, 2023-3 I.R.B. 390, that is intended to help avoid substantial unintended adverse consequences to the insurance industry from the application of the new corporate alternative minimum tax (CAMT), as added to the Internal Revenue Code (Code)<sup>1</sup> by the enactment of § 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). In addition to announcing that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing the application of the CAMT, sections 3 through 7 of Notice 2023-7 provided interim guidance regarding certain time-sensitive CAMT issues that taxpayers may rely on until the issuance of the forthcoming proposed regulations. Notice 2023-7 also stated that the Treasury Department and the IRS intended to issue additional interim guidance expected to address, among other issues, certain issues related to the treatment under the CAMT of life insurance company separate account assets that are marked to market for financial statement purposes, the treatment of certain items reported in other comprehensive income (OCI), and the treatment of embedded derivatives arising from certain reinsurance contracts. Sections 3 through 5 of this notice provide additional interim

guidance regarding these and other issues intended to be addressed by the forthcoming proposed regulations. Taxpayers may rely on the guidance provided in sections 3 through 5 of this notice until the issuance of the forthcoming proposed regulations.

Section 2 of this notice provides a summary of relevant law and other information underlying the rules described in sections 3 through 5 of this notice. Section 3 of this notice describes rules that address certain CAMT issues regarding variable contracts and similar contracts. Section 4 of this notice describes rules that address certain CAMT issues regarding funds withheld reinsurance and modified coinsurance agreements. Section 5 of this notice describes rules that address certain issues that arise under the CAMT for certain formerly tax-exempt entities whose exemption from Federal income taxation was repealed by statute and as to which Congress provided special rules for determining the Federal income tax basis in their assets held when the repeal of their exemption became effective. Section 6 of this notice describes the anticipated applicability dates of the forthcoming proposed regulations. Section 7 of this notice requests comments on the issues addressed in this notice. Section 8 of this notice provides drafting and contact information.

### SECTION 2. BACKGROUND

#### *.01 CAMT under the Inflation Reduction Act.*

(1) *Overview.* Section 10101 of the IRA amended § 55 to impose the new CAMT based on the “adjusted financial statement income” (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. In general, a corporation is an applicable corporation subject to the CAMT for a taxable year if it meets an average annual AFSI test for one or more taxable years that (i) are before that taxable year and (ii) end after December 31, 2021. See section 2.01 of Notice 2023-7 for a general description of the CAMT.

#### *(2) AFSI under § 56A.*

(a) *General definition of AFSI.* For purposes of §§ 55 through 59, the term *AFSI*

means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer’s applicable financial statement (AFS) for that taxable year, adjusted as provided in § 56A. See § 56A(a).

(b) *General definition of AFS.* For purposes of § 56A, the term *AFS* means, with respect to any taxable year, an AFS, as defined in § 451(b)(3) or as specified by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance, that covers that taxable year. See § 56A(b).

(c) *General adjustments to AFSI.* Section 56A(c) provides general adjustments to be made to AFSI, several of which are described in section 2.01(3)(c) of Notice 2023-7. Section 56A(c)(2) provides special rules that take into account the relationship between entities.

(d) *Treatment of dividends and other amounts.* Section 56A(c)(2)(C) provides that in the case of a corporation that is not included on a consolidated return with a taxpayer, the taxpayer’s AFSI with respect to such other corporation is determined by taking into account only the dividends received from such other corporation (reduced to the extent provided by the Secretary) and other amounts that are includible in gross income or deductible as a loss under chapter 1 of the Code (other than amounts required to be included under §§ 951 and 951A or such other amounts as provided by the Secretary) with respect to such other corporation.

(e) *AFSI of partners and partnerships.* Section 56A(c)(2)(D)(i) provides that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, the taxpayer’s AFSI with respect to such partnership is adjusted to take into account only the taxpayer’s distributive share of such partnership’s AFSI. Section 56A(c)(2)(D)(ii) provides that, for purposes of §§ 55 through 59, a partnership’s AFSI is the partnership’s net income or loss set forth on that partnership’s AFS (adjusted under rules similar to the rules set forth in § 56A).

(f) *Authority of the Secretary to provide necessary adjustments.* Section 56A(c)

<sup>1</sup> Unless otherwise specified, all “section” or “§” references are to sections of the Code.



(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of § 56A, including adjustments to AFSI to prevent the omission or duplication of any item.

(g) *General authority of the Secretary.* Section 56A(e) authorizes the Secretary to provide such regulations and other guidance as necessary to carry out the purposes of § 56A, including regulations and other guidance relating to the effect of the rules of § 56A on partnerships with income taken into account by an applicable corporation.

.02 *Variable Contracts under § 817 and Similar Contracts.*

(1) *Variable contracts accounted for under § 817.* Some insurance companies issue variable contracts (as defined in § 817(d)). In general, variable contracts are life insurance and annuity contracts under which the amount of the insurance company's obligation depends, at least in part, on the value of the assets held in a separate account that is segregated from the general asset accounts of the insurance company. Provided certain requirements are met, under § 817(c), an insurance company that issues variable contracts (as defined in § 817(d)) must separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. As a general matter, § 807 provides that increases in the life insurance reserves of a life insurance company are deductible and decreases in the life insurance reserves are includible in income. However, § 817(a) provides that for purposes of determining the net decrease or increase in reserves under § 807(a) or (b), amounts subtracted from or added to separate account reserves by reason of the depreciation or appreciation of separate account assets (whether or not realized) are disregarded. Under § 817(a), deductions for items described in § 805(a) (1) and (6), which include claims and benefits accrued and losses incurred during the taxable year on insurance and annuity contracts, are similarly adjusted for the depreciation or appreciation of separate account assets. Additionally, § 817(b) provides that the basis of each separate account asset is decreased by the amount of

depreciation, or increased by the amount of appreciation, of separate account assets (whether or not realized), to the extent separate account reserves are adjusted for such depreciation or appreciation under § 817(a). Generally, the result is a permanent elimination of any effects on company-level taxable income that would otherwise result from the change in the value of the separate account assets.

(2) *Contracts similar to variable contracts.* Like variable contracts accounted for under § 817, the value of certain other contracts similarly depends directly, at least in part, on the value of the assets supporting those contracts.

(a) *Closed block contracts.* When a mutual insurance company engages in a "demutualization" process to convert to a stock insurance company, the company may create a "closed block" for the benefit of holders of certain insurance contracts issued by the mutual insurance company. Generally, when a closed block is created, the company allocates assets to the closed block in an amount such that the assets, together with future revenue from the closed block, are expected to provide sufficient cash flow for future policy benefits, certain expenses, and policyholder dividends determined in a manner consistent with the manner in which they were determined prior to the demutualization. The closed block assets and the revenue from the closed block benefit only holders of the policies in the closed block.

(b) *Other similar contracts.* A foreign insurance company may issue contracts that are regulated as life insurance or annuity contracts in the jurisdiction in which they are issued and for which the insurance company's obligations to the contract holders (and the company's corresponding reserves) must reflect (in whole or in part) the change in the value of a designated pool of investments supporting the contract.

(3) *U.S. GAAP and IFRS accounting for variable contracts and similar contracts.* The contracts described in sections 2.02(1), 2.02(2)(a), and 2.02(2)(b) of this notice generally have the same accounting treatment under U.S. generally accepted accounting principles (U.S. GAAP) and international financial reporting standards (IFRS). For example, under an AFS prepared according to either U.S. GAAP or

IFRS, unrealized gain or loss on the supporting assets is included in the net income or loss set forth on the AFS, and there is an offsetting adjustment to certain liabilities to reflect the resulting change in the company's contractual obligations to contract holders, which is also included in the net income or loss set forth on the AFS. However, unrealized gain or loss on some categories of the supporting assets, but not the offsetting adjustment to liabilities, is required to be disregarded under § 56A(c) (2)(C) or (D)(i) for purposes of determining AFSI, resulting in a mismatch that could significantly overstate or understate AFSI relative to taxable income.

.03 *Funds Withheld Reinsurance and Modified Coinsurance Agreements.*

(1) *Overview.* Insurance companies regularly engage in reinsurance transactions in which one insurance company transfers all or part of its risk under an insurance contract to another insurance company. The insurance company that issues the underlying insurance contract and transfers the risk is called the ceding company, and the insurance company to which the risk is transferred is called the reinsurer. If the reinsurer in turn transfers all or part of the reinsured risk to another reinsurer, the transaction is called a retrocession.

(2) *Funds withheld reinsurance and modified coinsurance agreements.* In a conventional reinsurance transaction, the ceding company transfers to the reinsurer both the risk of the reinsured business (represented by the reserves) and the assets supporting the reserves. In funds withheld reinsurance and modified coinsurance agreements, from a legal title and financial accounting perspective, the ceding company retains the supporting assets (Withheld Assets) as security for the reinsurer's obligations under the reinsurance agreement. See *Credit for Reinsurance Model Law (MO-785), NAIC Model Laws, Regulations, Guidelines, & Other Resources*, § 3 (2019). The ceding company records a liability (Withheld Assets Payable) to the reinsurer to reflect the assets it has retained. Under U.S. GAAP and IFRS, the unrealized gains and losses from certain of the Withheld Assets are generally accounted for as part of the ceding company's OCI. However, any related change in the Withheld Assets Payable,

which is generally equal to the unrealized gains and losses included in OCI, is accounted for as part of the net income or loss of the ceding company, as set forth in the ceding company's AFS, and is not offset by the unrealized gains and losses that are included in OCI. The reinsurer has a corresponding asset (Withheld Assets Receivable) and the unrealized gains and losses on the Withheld Assets are generally accounted for as part of the net income or loss of the reinsurer that is set forth on the reinsurer's AFS. Financial accounting guidance states that the ceding company's Withheld Assets Payable and the reinsurer's Withheld Assets Receivable include an embedded derivative. *See, for example, FASB ASC paragraphs 815-15-55-107 to 109.*

The Treasury Department and the IRS understand that, in some circumstances, each of the ceding company and the reinsurer may be able to make certain types of "fair value" elections for AFS purposes to change the accounting treatment of one or more items relevant to its funds withheld reinsurance or modified coinsurance agreement such that both offsetting items related to the unrealized change in Withheld Assets value run through OCI or both run through the net income or loss set forth on the AFS. For example, under U.S. GAAP, the ceding company may be able to make a "fair value option" election that would move the unrealized gains or losses on certain of the Withheld Assets into the net income or loss set forth on its AFS, which would offset the changes in its Withheld Assets Payable to the reinsurer that are reflected in the net income or loss set forth on the ceding company's AFS. However, such fair value elections may be made only at the time a relevant asset is acquired or when the reinsurance agreement is entered into and also may be undesirable for business reasons.

#### *.04 Respecting Congressional "Fresh Start" Basis Rules.*

(1) Section 177 of the Deficit Reduction Act of 1984 (1984 Act), Public Law 98-369, 98 Stat. 494, 709 (1984), amended § 303(d) of the Federal Home Loan Mortgage Corporation Act (then 12 U.S.C. 1452(d)) to repeal the exemption "from all taxation now or hereafter imposed by the United States" (including taxation under subtitle A of the Code

(subtitle A)) for the Federal Home Loan Mortgage Corporation, effective January 1, 1985. Section 177(d)(2)(A) of the 1984 Act provides special rules for determining the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, for purposes of determining any gain or loss under subtitle A. Section 177(d)(2)(B) of the 1984 Act provides special rules for determining the adjusted basis of certain tangible depreciable property held by Federal Home Loan Mortgage Corporation on January 1, 1985.

(2) Section 1012(a) of the Tax Reform Act of 1986 (1986 Act), Public Law 99-514, 100 Stat. 2085, 2390-94 (1986), added § 501(m) to the Code, which generally provides that an organization described in § 501(c)(3) or (4) is exempt under § 501(a) from taxation under subtitle A only if no substantial part of its activities consists of providing "commercial-type insurance" (as defined in § 501(m)(3)). As a result of § 1012(a), "existing Blue Cross or Blue Shield organizations" (as defined in § 833(c)(2)) lost their Federal income tax exemption (subtitle A exemption). Section 1012(c)(1) provides that the amendments made by § 1012 of the 1986 Act were effective for taxable years beginning after December 31, 1986. In the case of any existing Blue Cross or Blue Shield organization, § 1012(c)(3) of the 1986 Act provided that for purposes of determining gain or loss under subtitle A, the adjusted basis of any asset held on the first day of its first taxable year beginning after December 31, 1986, was treated as equal to the asset's fair market value on such day.

In addition, § 1012(c)(4)(A) and (B) of the 1986 Act provided that the amendments made by § 1012 of the 1986 Act did not apply to repeal the subtitle A exemption with respect to the pension businesses of Mutual of America and the Teachers Insurance Annuity Association-College Retirement Equities Fund (pension business entities). For this purpose, "pension business" was defined as the administration of any plan described in § 401(a) that includes a trust exempt from tax under § 501(a), any plan under which amounts are contributed by an individual's employer for an annuity contract described in § 403(b), any individual retirement plan described in § 408, and any eligi-

ble deferred compensation plan to which § 457(a) applies.

(3) Section 1042(a) of the Taxpayer Relief Act of 1997 (1997 Act), Public Law 105-34, 111 Stat. 788, 939 (1997), terminated the subtitle A exemption provided under § 1012(c)(4)(A) and (B) of the 1986 Act for the pension business of each pension business entity for any taxable year beginning after December 31, 1997. In the case of a pension business entity that, under § 501(m), became subject to taxation under subtitle A solely by reason of § 1042(a) of the 1997 Act, § 1042(b)(2) of the 1997 Act provided that for purposes of determining gain or loss under subtitle A, the adjusted basis of any asset held on the first day of its first taxable year beginning after December 31, 1997, was treated as equal to its fair market value on such day.

*.05 Additional Defined Terms.* For purposes of this notice:

(1) *Covered Insurance Company.* The term *Covered Insurance Company* means (i) a company subject to tax under subchapter L of the Code or (ii) a foreign company that is subject to regulation as an insurance (or reinsurance) company by its home country and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance or annuity contracts.

(2) *Covered Variable Contract.* The term *Covered Variable Contract* means a contract described in section 2.02(1), section 2.02(2)(a), or section 2.02(2)(b) of this notice.

(3) *Covered Investment Pool.* The term *Covered Investment Pool* means a pool of investment assets designated to support one or more Covered Variable Contracts.

(4) *Covered Obligations.* The term *Covered Obligations* means the financial accounting liabilities, including contract reserves and claims or benefits payable, that reflect a Covered Insurance Company's obligations under one or more Covered Variable Contracts and are taken into account in determining Net Income.

(5) *Covered Reinsurance Agreement.* The term *Covered Reinsurance Agreement* means a funds withheld reinsurance or modified coinsurance agreement described in section 2.03(2) of this notice and any retrocession of all or part of the risk under such agreement.

(6) *Fresh Start Entity*. The term *Fresh Start Entity* means any formerly tax-exempt entity the repeal of whose subtitle A exemption is described in section 2.04(1) through (3) of this notice.

(7) *Net Income*. The term *Net Income* means the net income or loss as set forth on the AFS.

### SECTION 3. AFSI ADJUSTMENTS FOR COVERED VARIABLE CONTRACTS

.01 *Purpose*. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 3. The Treasury Department and the IRS are providing this interim guidance to assist taxpayers in determining AFSI with respect to Covered Variable Contracts prior to the issuance of the forthcoming proposed regulations.

#### .02 *Covered Variable Contracts*.

(1) *AFSI adjustments for Covered Variable Contracts*. For purposes of determining AFSI of a Covered Insurance Company issuing Covered Variable Contracts, to the extent (i) a change in the value of the Covered Investment Pool for such Covered Variable Contract(s) results in a change to the amount of the Covered Insurance Company's obligations to the holders of such Covered Variable Contract(s) by reason of law, regulation, or the terms of one or more such Covered Variable Contracts, and (ii) such change in the amount of the obligation is reflected in the Covered Obligations, then such change in the amount of the Covered Obligations for a taxable year is disregarded to the extent of the § 56A(c) (2) exclusion amount for that taxable year. For purposes of the preceding sentence, the § 56A(c)(2) exclusion amount for Covered Obligations for a taxable year is equal to the amount of financial accounting gains and losses in the Covered Investment Pool for the Covered Variable Contract(s) to which the Covered Obligations relate that is (i) taken into account in Net Income of the Covered Insurance Company for the taxable year and (ii) disregarded under § 56A(c)(2)(C) or (D)(i) for purposes of determining AFSI of the Covered Insurance Company for that taxable year.

(2) *Example*. The following example illustrates the rule set forth in section 3.02(1) of this notice.

(a) *Facts*. A is a life insurance company subject to tax under subchapter L of the Code and has a taxable year and accounting period that is based on the calendar year. A uses U.S. GAAP to prepare its AFS. On January 1 of Year 1, A issues a variable life insurance contract (as described in § 817) to an individual, X. A owns assets that support A's contractual obligation to X and holds those assets in a separate account that is segregated from the general asset accounts of A. A accounts for its contractual obligations to X in its Net Income. The separate account assets are stock in unrelated corporations. At the end of Year 1, no assets that support X's variable contract have been sold, and the fair market value of such assets has increased by \$10x. Pursuant to the terms of the variable life insurance contract, the increase in the value of the assets supporting X's variable contract caused A's contractual obligation to X to increase by \$10x. On A's AFS, the \$10x increase in the value of the assets supporting the variable contract is included in Net Income and offsets the \$10x increase in A's contractual obligation to X (which reduces A's Net Income).

(b) *Analysis*. A is a Covered Insurance Company as defined in section 2.05(1) of this notice, and the variable life insurance contract that A issued to X is a Covered Variable Contract described in section 2.05(2) of this notice. The assets in the separate account that A holds to support its contractual obligations to X constitute a Covered Investment Pool as described in section 2.05(3) of this notice, and A's contractual obligation to X is reflected in A's Covered Obligations as defined in section 2.05(4) of this notice. Pursuant to § 56A(c)(2)(C), although the \$10x unrealized gain in the Covered Investment Pool is taken into account in Net Income on A's AFS, it is not included in A's AFSI because it is not a dividend from another corporation and is not includible in the gross income of A under chapter 1 of the Code. The \$10x increase in the Covered Obligations is taken into account in Net Income on A's AFS. Pursuant to section 3.02(1) of this notice, for purposes of determining A's AFSI, the change in the amount of the Covered Obligations for the taxable year is disregarded to the extent of the § 56A(c)(2) exclusion amount for the taxable year. The relevant § 56A(c)(2) exclusion amount for the taxable year is equal to the \$10x unrealized gain in the Covered Investment Pool because such \$10x unrealized gain is taken into account in A's Net Income for the taxable year and is disregarded under § 56A(c)(2)(C) for purposes of determining A's AFSI for that taxable year. Accordingly, the \$10x increase in the Covered Obligations is also disregarded in determining A's AFSI for the taxable year. Thus, both the unrealized gain and offsetting change in the Covered Obligations are disregarded for purposes of determining A's AFSI, which eliminates what would otherwise be a difference between A's AFSI and A's life insurance company taxable income.

### SECTION 4. AFSI ADJUSTMENTS FOR COVERED REINSURANCE AGREEMENTS

.01 *Purpose*. The Treasury Department and the IRS anticipate that the forthcoming

proposed regulations will be consistent with the guidance provided in this section 4. The Treasury Department and the IRS are providing this interim guidance to assist taxpayers in determining AFSI with respect to Covered Reinsurance Agreements prior to the issuance of the forthcoming proposed regulations.

#### .02 *Covered Reinsurance Agreements*.

(1) *Generally*. For a Covered Insurance Company that is a party to a Covered Reinsurance Agreement, the following changes accounted for separately in the AFS with respect to each such agreement are excluded from AFSI:

(a) For the ceding company holding the Withheld Assets, changes in Net Income as a result of changes in the amount of the Withheld Assets Payable to the reinsurer that correspond to the unrealized gains and losses in the Withheld Assets to the extent such unrealized gains and losses are not included in AFSI.

(b) For the reinsurer, changes in Net Income as a result of changes in the amount of the Withheld Assets Receivable from the ceding company that correspond to the unrealized gains and losses in the Withheld Assets; provided, however, that such exclusion will be reduced to the extent the reinsurer's Withheld Assets Receivable is offset and the changes in its Net Income are reduced as a result of accounting for a retrocession of the reinsured risk.

(2) *Fair value election*. The exclusion provided in section 4.02(1) of this notice will not apply to the extent that: (a) the Covered Insurance Company elects to account for one or more items relevant to the Covered Reinsurance Agreement (offsetting item) at fair value on its AFS and (b) the election results in changes in the fair value of the Withheld Assets Payable (for the ceding company) or the Withheld Assets Receivable (for the reinsuring company) and changes in the fair value of the offsetting item both being accounted for either through Net Income or through OCI on the AFS of the Covered Insurance Company.

(3) *Example*. The following example illustrates the rules set forth in section 4.02(1) of this notice.

(a) *Example – Funds Withheld Reinsurance--(i) Facts*. Each of A and B is a life insurance company subject to tax under subchapter L of the Code and has a taxable and accounting year that is based on the calendar year. Each of A and B uses U.S. GAAP

for purposes of preparing its AFS. On January 1 of Year 1, A, the ceding company, enters into a funds withheld reinsurance agreement with B, the reinsurer. B does not retrocede any risk covered by the funds withheld reinsurance agreement. Pursuant to the terms of the agreement, from a legal title and financial accounting perspective, A retains the assets supporting the reinsured contracts (the Withheld Assets). A has a liability to B with respect to the Withheld Assets (the Withheld Assets Payable). A reflects all the unrealized gains and losses in the Withheld Assets in OCI on its AFS, and A accounts for the corresponding changes in the Withheld Assets Payable as part of its Net Income. B records an asset that corresponds to A's Withheld Assets Payable (the Withheld Assets Receivable), and B accounts for changes in the Withheld Assets Receivable as part of its Net Income.

At the end of Year 1, no Withheld Assets have been sold, and the fair market value of the Withheld Assets has increased by \$10x. On A's AFS, it includes the \$10x unrealized gain in OCI and records the effect of the \$10x increase in its Withheld Assets Payable in its Net Income. B records the effect of a corresponding \$10x increase in its Withheld Assets Receivable in its Net Income.

(ii) *Analysis.* Each of A and B is a Covered Insurance Company as defined in section 2.05(1) of this notice. The funds withheld reinsurance contract is a Covered Reinsurance Agreement as defined in section 2.05(5) of this notice. The \$10x of unrealized gain in the Withheld Assets is included in OCI on A's AFS. Pursuant to section 4.02(1)(a) of this notice, to the extent the \$10x of unrealized gain is not included in A's AFSI, the amount included in A's Net Income as a result of the \$10x increase in A's Withheld Assets Payable is excluded from A's AFSI.

The amount included in B's Net Income as a result of the \$10x increase in B's Withheld Assets Receivable corresponds to the unrealized gain in the Withheld Assets. Pursuant to section 4.02(1)(b) of this notice, this \$10x increase is excluded from B's AFSI.

## SECTION 5. AFSI DETERMINATION RESPECTS CONGRESSIONAL "FRESH START"

.01 *Purpose.* The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 5. The Treasury Department and the IRS are providing this interim guidance to assist the Fresh Start Entities in applying the CAMT to certain transactions occurring prior to the issuance of the forthcoming proposed regulations.

.02 *Respecting Congressional "Fresh Start" for Determining AFSI.*

(1) For purposes of determining AFSI of a Fresh Start Entity described in section 2.04(1) of this notice (and any successor(s) under § 381), the adjusted basis

rules provided in § 177(d)(2) of the 1984 Act apply with respect to any asset held by the Fresh Start Entity since January 1, 1985.

(2) For purposes of determining AFSI of a Fresh Start Entity described in section 2.04(2) or (3) of this notice (and any successor(s) under § 381), the gain or loss (but not depreciation, amortization, or other amounts) for any asset held by the Fresh Start Entity since the first day of its first taxable year beginning after the testing date is determined using its adjusted tax basis for such asset. For purposes of the previous sentence, the term *testing date* means December 31, 1986, in the case of a Fresh Start Entity described in section 2.04(2) of this notice, and December 31, 1997, in the case of a Fresh Start Entity described in section 2.04(3) of this notice.

## SECTION 6. APPLICABILITY DATES

It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in sections 3 through 5 of this notice apply for taxable years beginning after December 31, 2022. Prior to the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules in sections 3 through 5 of this notice.

## SECTION 7. REQUEST FOR COMMENTS

.01 *Comments Regarding Guidance Provided in this Notice.* The Treasury Department and the IRS request comments on any questions arising from the interim guidance set forth in this notice. Commenters are encouraged to specify the issues on which additional guidance (including additional interim guidance) is needed most quickly, as well as the most important issues on which guidance is needed. In addition to general comments regarding the provisions of this notice, the Treasury Department and the IRS request comments to address the following specific questions:

(1) *AFSI adjustments for variable contracts and similar contracts (section 3 of the notice).*

(a) Should a rule similar to that in section 3.02 of this notice apply to any con-

tracts other than those described in sections 2.02(1), 2.02(2)(a), and 2.02(2)(b) of this notice?

(b) Can the result of the rule in section 3.02(1) of this notice be achieved in a more easily administered manner?

(c) In what situations and for what reasons would assets be transferred between a Covered Investment Pool and a Covered Insurance Company's general account? Should there be additional adjustments beyond those described in this notice with respect to such assets?

(2) *AFSI adjustments for covered reinsurance agreements (section 4 of the notice).*

(a) Does the notice accurately describe the financial accounting for funds withheld reinsurance and modified coinsurance agreements? Does the rule described in section 4.02(1) of this notice adequately address the issue?

(b) Should the definition of Covered Reinsurance Agreement in section 2.05(5) of this notice be revised or expanded?

(c) Would it be useful to more specifically describe the fair value elections available under U.S. GAAP and IFRS? If so, how should the elections be described?

(d) Does the rule in section 4.02(2) of this notice appropriately adjust the rule in section 4.02(1) of this notice when fair value elections are made?

(e) Should the rule in section 4.02(1) of this notice reference the "embedded derivative"? If so, how should such rule reference the embedded derivative, and how should "embedded derivative" be defined?

(3) *Respecting "fresh start" for determining AFSI (section 5 of the notice).*

(a) Are there other formerly tax-exempt entities the repeal of whose subtitle A exemption was associated with special statutory "fresh start" basis rules similar to those applicable to any Fresh Start Entity?

(b) Should a rule similar to that in section 5.02 of this notice apply to any other entities?

.02 *Procedures for Submitting Comments.*

(1) *Deadline.* Written comments should be submitted by April 3, 2023. Consideration will be given, however, to any written comment submitted after April 3,

2023, if such consideration will not delay the issuance of the forthcoming proposed regulations.

(2) *Form and manner.* The subject line for the comments should include a reference to Notice 2023-20. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2023-0005 in the search

field on the [regulations.gov](http://regulations.gov) homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2023-20), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) *Publication of comments.* The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on [regulations.gov](http://regulations.gov).

## SECTION 8. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Ian Follansbee of the Office of the Associate Chief Counsel (Financial Institutions and Products). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, please contact Mr. Follansbee at 312-368-8238 (not a toll-free number).

# 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 2022–27 through 2022–52 is in Internal Revenue Bulletin 2022–52, dated December 27, 2022.

## **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 2022–27 through 2022–52 is in Internal Revenue Bulletin 2022–52, dated December 27, 2022.



# **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.